

# Caveats, Certificates of Pending Litigation and Court Orders



Presented by: L. Bealle and D. Meyer

Deputy Registrars

June 6, 2024

Innovation. | Integrity. | Trust.



# First Nations Acknowledgement

---

We acknowledge that we are presenting this webinar from the Kamloops and New Westminster Land Title Offices on the ancestral, traditional territories of the Tk'emlúps te Secwépemc and Qayqayt First Nations.

We are privileged to live and work on the traditional and ancestral territories of Indigenous Peoples and Nations throughout British Columbia.

# Welcome & Introductory Remarks

---

- Introductions
- Submit your questions during the presentation
  - Include your name, firm name & email
- Recording and PowerPoint
  - [itsa.ca/webinar-resources](https://itsa.ca/webinar-resources)
- Survey - we want to hear from you!



bc Land Title & Survey 6,944 TOTAL VIEWS

# Caveats, Certificates of Pending Litigation and Court Orders

Presented by: L. Bealle and D. Meyer  
Deputy Registrars  
June 6, 2024

Innovation. | Integrity. | Trust

bc Land Title & Survey

© Land Title and Survey Authority of British Columbia

Chat

General chat

Today at 8:12 AM

Grace 10:49 AM  
Testing. Testing.

Grace 10:49 AM  
👍

Send a message...

Videos About Privacy

**Survey**

🔗 Troubleshooting    🔗 Webinar Survey

We want to hear from you. Please fill out the survey after the webinar.

Link to presentation (PPT) and recording:

[Webinar Resources](#)

Type Here

Resources



# Agenda

---

- Caveats
  - Common Rejection Reasons
- Certificates of Pending Litigation (CPL)
  - Common Rejection Reasons
- Court Orders
  - Top 5 Defect Reasons



# Acronym Definitions

---

CPL – Certificate of Pending Litigation

---

GSHMT– Good Safe Holding and Marketable Title

---

LTA – Land Title Act

---

LTO – Land Title Office

---

LTSA – Land Title Survey Authority

---

R/O - Registered Owner

---

PAN – Parcel Activity Notifier

---

CPS – Contract of Purchase and Sale

---

NOI – Nature of Interest

---

A/R - Assignment of Rents

---

# Caveats



## Section 282 – Lodging Caveat

282 (1) A person, in this Act referred to as the “**caveator**”, claiming

- (a) under an **unregistered instrument which is incapable of immediate registration,**
- (b) **by operation of law,** or
- (c) **otherwise,**

to be entitled to land the title to which is registered under this Act, may by leave of the registrar, granted on terms, if any, the registrar may consider proper, lodge a caveat with the registrar prohibiting registration of a dealing with the land either absolutely or in the manner or to the extent expressed in the caveat.

- Extraordinary measure – “by leave of the registrar”
- Recommend a CPL and a Parcel Activity Notifier (PAN)



# Section 282(1)(a) Land Title Act

## a) An unregistered instrument which is incapable of registration

### Scenario #1:

- Caveator lent money to the registered owner
- They did not register a mortgage to secure their interest on title but there was agreement to do so
- A Form B mortgage was drafted but never executed
- The owner defaulted on payment
- Owner has an agreement to sell the property and
- Caveator has reason to believe the owner will sell the property to avoid paying the debt.

### When reviewing the grounds, we would be looking for evidence:

- of an agreement to register a mortgage
- that money had been lent
- of an instrument that was incapable of immediate registration
- that the R/O was incapable or unwilling to execute the mortgage
- that there was urgency and no time to get the CPL registered

# Section 282(1)(a) LTA

## a) An unregistered instrument which is incapable of registration

### Scenario #2:

- Caveator (purchaser) entered a CPS with the registered owner (vendor) to purchase the property
- Deposit was paid, subjects were removed, Caveator was ready to complete the sale of the binding contract
- The owner (vendor) breached the contract by not completing the sale on the completion date

### When reviewing the grounds, we would be looking for evidence:

- of a binding CPS between the vendor and purchaser
- that the deposit was made by the purchaser
- that the subjects were removed, if any
- that the R/O (vendor) breached the contract. (ie. completion date passed and there is no application to transfer submitted)

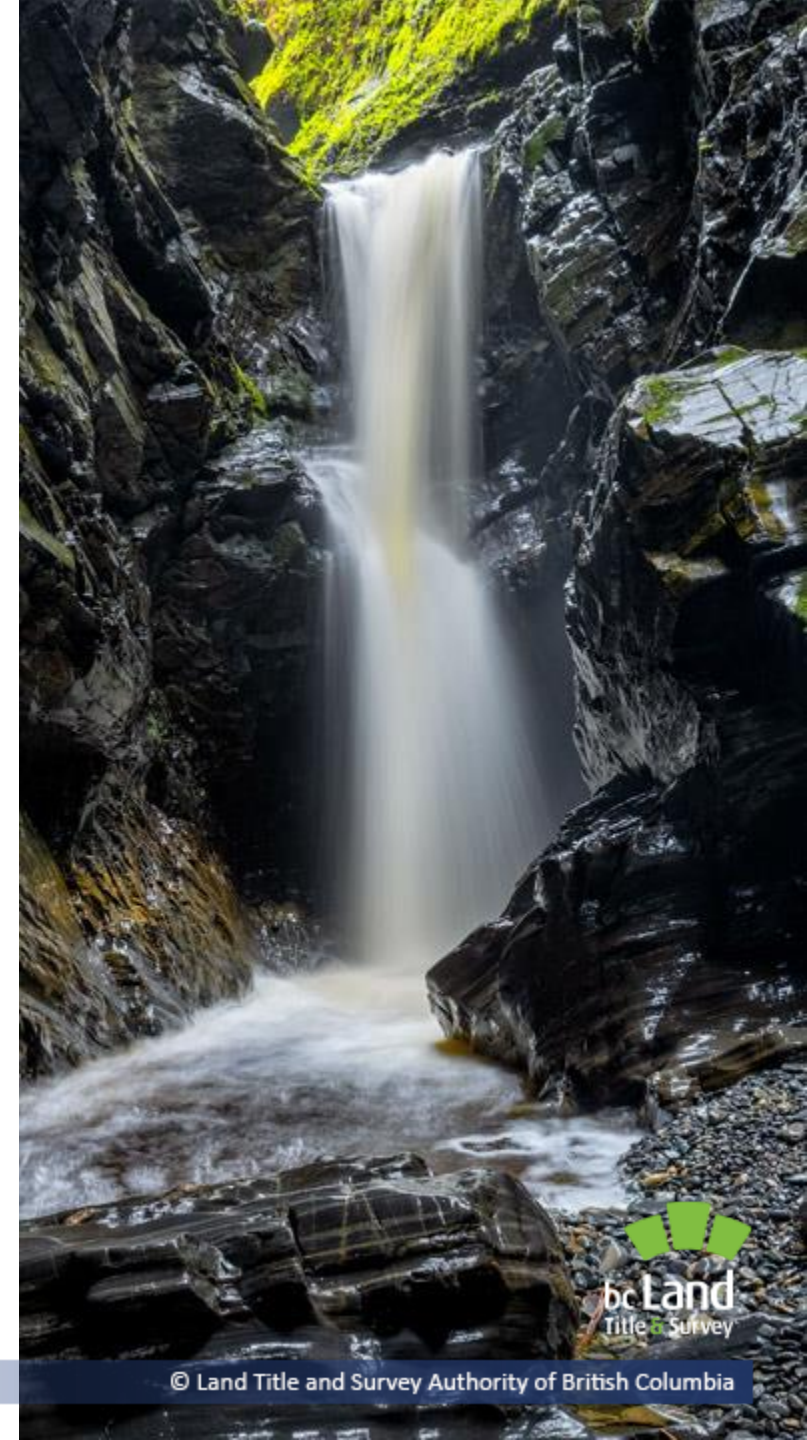


# Section 282(1)(b) LTA

## b) By operation of law

The registrar would be looking for:

- A right of action in respect of land (ie. Wills Estate Succession Act, Family Law Act, Fraudulent Conveyance Act etc.)
  - Evidence of urgency – Is there time to get a CPL registered to protect the interest.
- The registrar does not want to be inserted into the middle of disputes unless it is necessary to do so.
- Arguments need to be made to the courts for a determination.



# Section 282(1)(c)

## c) Otherwise

- This section gives the registrar the authority to accept a Caveat if it is determined necessary.
- Rarely used, convincing grounds and evidence are required in support.
- Recommend setting up a PAN to monitor title until the CPL can be filed, whenever possible.

# Section 286 – Form of Caveat

---

**286 (1)** A caveat may be in the **form approved by the director**.

(2) A caveat must be verified by the affidavit of the caveator, or the caveator's solicitor or agent and must set out in numbered paragraphs the following:

- (a) a description of the land against which the caveat is to be lodged;
  - (b) the nature of the estate or interest claimed;
  - (c) the grounds on which the claim is founded;
  - (d) an address within British Columbia at which notices may be served.
- (3) This section does not apply to a caveat lodged by the registrar.

# Form 38

## Land Title Act

### FORM 38

(section 286)

### CAVEAT

TO: Registrar

\_\_\_\_\_ Land Title Office, British Columbia

I, \_\_\_\_\_ [full name, address and occupation of caveator or caveator's solicitor or agent], prohibit the registration of any transfer or other instrument or subdivision plan or other change in boundaries dealing with the land described in paragraph 1 until this caveat is withdrawn by me or is discharged by the order of a court of competent jurisdiction or a judge of it, or until after the lapse of 21 days from the date of the service of notice under section 293 of the *Land Title Act* on me or my solicitor or agent, as the case may be, to withdraw the caveat or take proceedings in court to establish my title.

to be lodged is: \_\_\_\_\_

claimed in the land is: \_\_\_\_\_

founded are: \_\_\_\_\_

sets forth the facts relied on and the alleged consequence of these facts

of notices on me is: \_\_\_\_\_

\_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
SIGNATURE OF CAVEATOR, OR  
SOLICITOR OR AUTHORIZED AGENT

\_\_\_\_\_ (or \_\_\_\_\_ solicitor or agent, as the case may be) do hereby affirm (or affirm, as the case may be) and say that the allegations in the foregoing paragraph 1 are true (and, if no personal knowledge, add, as I have been informed and

\_\_\_\_\_ in

of

in the manner prescribed by Part 5, e.g., a commissioner for taking affidavits

\_\_\_\_\_ the signatory to the caveat.

2. Compensation where caveat lodged wrongfully:

Section 294 of the *Land Title Act* reads:

- (1) If a caveator wrongfully and without reasonable cause lodges or causes to be lodged with the registrar a caveat, the caveator is liable to pay to the person who sustains damage by it such compensation as the Supreme Court considers just.
- (2) This section does not apply to a caveat lodged by the registrar.

FEE: (includes notices)

TO: Registrar

\_\_\_\_\_ Land Title Office, British Columbia

I, \_\_\_\_\_ [full name, address and occupation of caveator or caveator's solicitor or agent], prohibit the registration of any transfer or other instrument or subdivision plan or other change in boundaries dealing with the land described in paragraph 1 until this caveat is withdrawn by me or is discharged by the order of a court of competent jurisdiction or a judge of it, or until after the lapse of 21 days from the date of the service of notice under section 293 of the *Land Title Act* on me or my solicitor or agent, as the case may be, to withdraw the caveat or take proceedings in court to establish my title.

1. The land against which this caveat is to be lodged is: \_\_\_\_\_

2. The nature of the estate or interest claimed in the land is: \_\_\_\_\_

3. The grounds on which the claim is founded are: \_\_\_\_\_

[Here set out in numbered subparagraphs the facts relied on and the alleged consequence of these facts under the law.]

4. My address in the Province for service of notices on me is: \_\_\_\_\_

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Source: [ltpm.ltsa.ca/form-38](http://ltpm.ltsa.ca/form-38)

# Key Examination Points – Form 38

- **The “I” statement** must be the Caveator, or solicitor for the Caveator and the Caveators name must be expressly stated.
- In **item 1**, you must identify the PID and legal description of the land.
- In **item 2**, you must be claiming a registerable interest in the land. (ie. Fee Simple, Mortgage, Lease, Easement etc.) – "a beneficial interest" or just "an interest" that is not sufficient. We need to see what interest you are claiming to be able to determine if the grounds in item 3 support such a claim or not.
- In **item 3**, the grounds must support the interest claimed in item 2 and there should be supporting evidence attached in support of the grounds (ie. contracts, receipts, agreements etc.). Verbal agreements are hearsay and not something the Registrar would consider.
- In **item 4** The Caveators address for service must be provided.



# Section 288 – Effect of a Caveat

- 288** (1) As long as a caveat lodged with the registrar remains in force, the registrar **must not**
- (a) **register another instrument** affecting the land described in the caveat, unless the instrument is expressed to be subject to the claim of the caveator, or
  - (b) **deposit a plan of subdivision** or otherwise allow any change in boundaries affecting the land described in the caveat, unless consented to by the caveator.
- (2) An instrument expressed to be subject to the claim of the caveator may be registered or deposited, unless the claim of the caveator, if successful, would, in the opinion of the registrar, destroy the root of title of the person against whose title the caveat has been lodged.





# Section 293 - Lapse of a Caveat

**293 (1)** A caveat lodged under this Act lapses and ceases to affect the title to land after the expiration of **2 months** after the date it was lodged with the registrar, unless within that period the caveator commences an action to establish the caveator's title to the estate or interest claimed and registers a certificate of pending litigation.

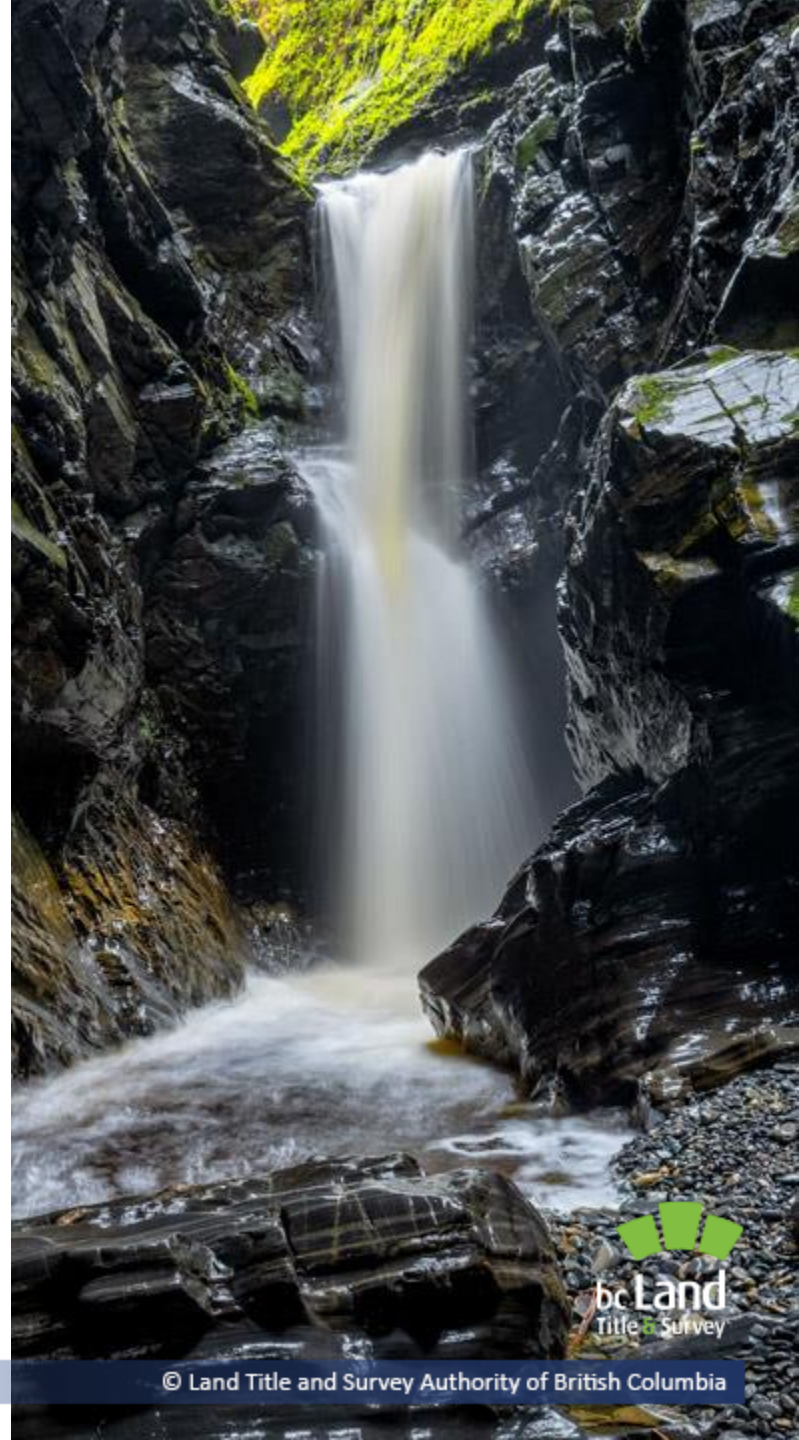
(2) Despite subsection (1), if a caveatee, in accordance with the caveat serves, at least 21 days before the expiry of the 2 months referred to in subsection (1), a notice in the form approved by the director on the caveator or the caveator's solicitor or agent filing the caveat, as the case may be, to withdraw the caveat or take proceedings in court to establish the claim made in the caveat, the **caveat lapses and ceases to affect the caveatee's title to the land after the expiration of 21 days** after the date of service, unless within the 21 day period the caveator commences an action to establish the caveator's title to the estate or interest claimed and registers a certificate of pending litigation.

(3) This section does not apply to a caveat lodged by the registrar.

# Section 293(2) – 21 Day Notice



- 21 Day Notice (Form 40)
- Served on the Caveator (or Caveator's Solicitor or Agent, if they filed the original Caveat) in accordance with notice provisions in the LTA.
- Submission requirements:
  - Form 17
  - Statutory Declaration, confirm service dates
  - Form 40



# Section 290 – Withdrawal of Caveat

**290 (1)** A caveator may, by notice in writing, which may be in the form approved by the director, to the registrar, withdraw the caveat at any time, but the withdrawal of the caveat does not prejudice the power of the court to make an order as to payment by the caveator of the costs of the caveatee incurred before the receipt by the caveatee of the notice.

(2) The notice may be signed by the caveator or the caveator's personal representative, or, if the caveat was signed by a solicitor, by that solicitor.

**Source:** [ltpm.ltsa.ca/form-39](http://ltpm.ltsa.ca/form-39)

## Land Title Act

### FORM 39

(section 290(1))

#### WITHDRAWAL OF CAVEAT

TO: Registrar

\_\_\_\_\_ Land Title Office, British Columbia

Caveat No. \_\_\_\_\_, lodged in your office against the following land,

\_\_\_\_\_ is withdrawn.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

SIGNED IN THE PRESENCE OF:

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
OCCUPATION

} SIGNATURE OF CAVEATOR  
PERSONAL REPRESENTATIVE OR  
SOLICITOR WHERE CAVEAT  
IS SIGNED BY SOLICITOR

#### OFFICER CERTIFICATION

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

# Section 291 – No Second Caveat

Once a Caveat has expired, a **second Caveat may not be filed in respect of the same matter** except under specific circumstances.

- 1) If the Caveator agrees to lift the Caveat to permit the registration of an application, when the subsequent applicant is unwilling or unable to register “subject to” the Caveat.
- 2) If the Caveator withdraws the Caveat in good faith, but events have occurred that require the Caveat to be re-established to prevent improper actions by the owner or other parties.

# Common Rejection Reasons

- Does not claim a registerable interest in the land (ie. Fee Simple, Mortgage, Lease, Easement etc.).
- Grounds do not support the interest claimed.
- These are matters for the courts to rule on.

# Certificates of Pending Litigation



# Common Filing Requirements for CPLs

## Certificate of Pending Litigation

- Land Title Act* Form 31  
or
- Land Title Act* Form 32  
or
- Land Title Act* Form 33 (*Family Law Act*)  
or
- Land Title Act* Form 33 (*Family Relations Act*)  
or
- Land Title Act* Form 34  
and
- The originating process or, if applicable, the notice of motion or other document by which the claim is made or where applicable
- Form 1 (section 23 (1) of the *Civil Forfeiture Act*)

This transaction will receive preliminary examination prior to receiving immediate application number, date and time.

Source: [Form 17 Help Guide](#)



# Key Examination Points

---

- Item 4 of Form 17 matches party(s) in CPL
- Correct form used (Form 31, 32, 33, 34)
- Signed and stamped by the court
- Originating process or motion aligns with the form used



# Form 17 - Guidance

- Note "of Lease (application #)" in Item 1
- Do not add a fractional interest in Item 2
- Do not create fractional interest group or specify joint tenancy
- Is the CPL holder properly set out in Item 4?
  - Name in Item 4 matches style of cause in CPL

Source: [help.ltsa.ca/myltsa-enterprise/form-17-charge-notation-or-filing#transferee](https://help.ltsa.ca/myltsa-enterprise/form-17-charge-notation-or-filing#transferee)

# Section 215(1) Land Title Act

215 (1) A person who has commenced or is a party to a proceeding, and who is

- (a) claiming an estate or interest in land, or
- (b) given by another enactment a right of action in respect of land,

may register a certificate of pending litigation against the land in the same manner as a charge is registered, and the registrar of the court in which the proceeding is commenced must attach to the certificate a copy of the pleading or petition by which the proceeding was commenced, or, in the case of a certificate of pending litigation under Part 5 of the *Court Order Enforcement Act*, a copy of the notice of application or other document by which the claim is made.

# Form 31

## CERTIFICATE OF PENDING LITIGATION

I CERTIFY that in a proceeding commenced in this court a **claim is made for an estate or interest in land** or a **right of action in respect of land** is given by an enactment other than the *Land Title Act*. The particulars are set out in the attached copy of the document by which the claim is made.

Given under my hand and the seal of the court at \_\_\_\_\_, British Columbia, this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

\_\_\_\_\_  
REGISTRAR

\* Fee not applicable where certificate of pending litigation relates to proceedings under the *Builders Lien Act*.

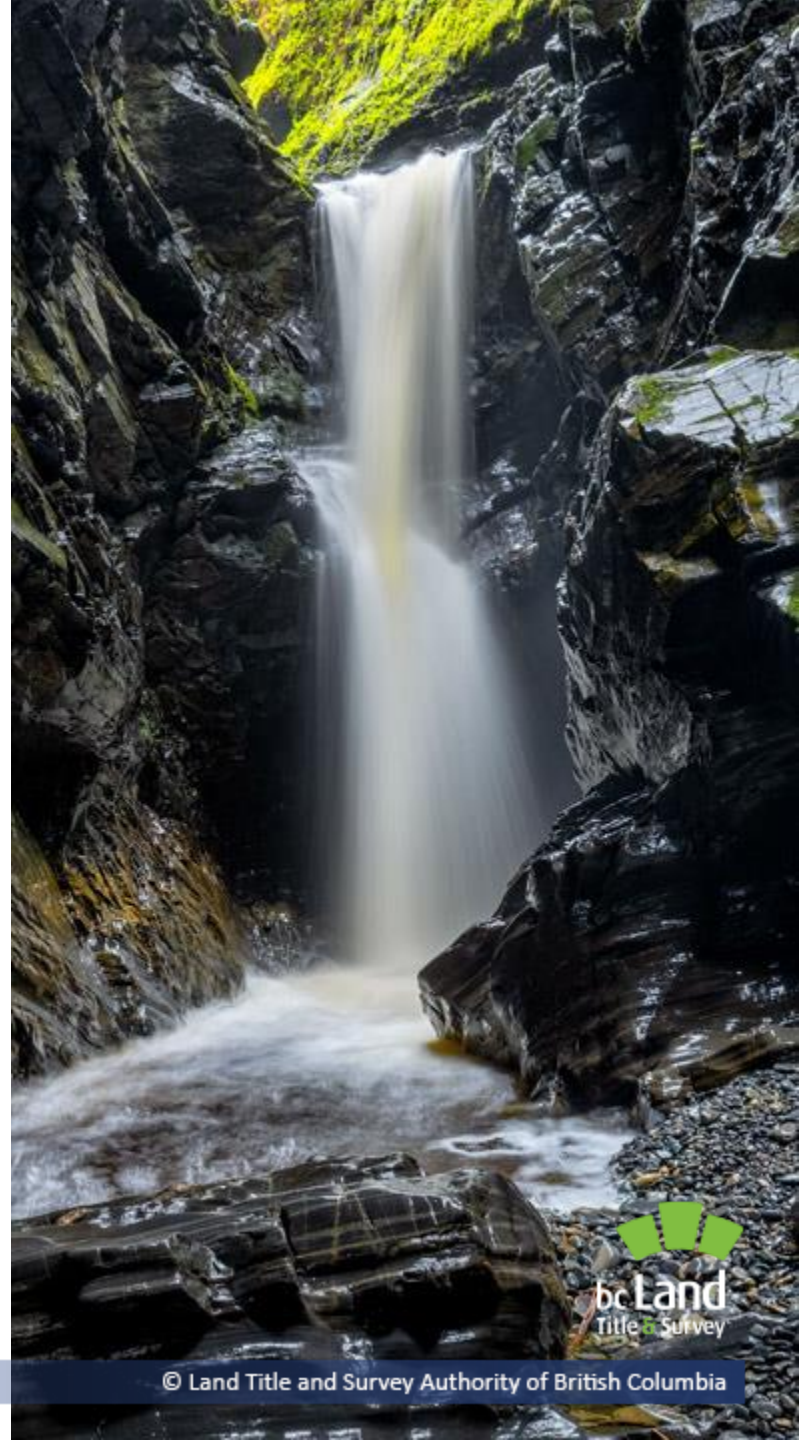
# Form 31

---

- The original Form 31 is required when filing a CPL in accordance with section 215(1) of the Land Title Act.
- The originating process must be filed in support of the application.
- The originating process will be reviewed to determine the estate or interest in land that is being claimed or the right of action in respect of land that is being relied on.

## Section 215(5) Land Title Act

215(5) Despite subsection (1), if a person entitled to enforce a restrictive covenant or building scheme has commenced an action to enforce it, the person may register under this section a certificate of pending litigation in the form approved by the director against land in respect of which a breach is alleged to have occurred.



# Form 32

## CERTIFICATE OF PENDING LITIGATION

I CERTIFY that in this proceeding to **enforce a restrictive covenant or building scheme** it is alleged that a breach has occurred in respect of the lands specified in the attached document.

Given under my hand and the seal of the court at \_\_\_\_\_, British Columbia, this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

\_\_\_\_\_  
REGISTRAR

# Section 215(6) Land Title Act

215 (6) A party to a proceeding for an order under the Family Law Act respecting the division of property may register under this section a certificate of pending litigation in the form approved by the director in respect of any estate or interest in land the title to which could change as an outcome of the proceeding.



# Form 33

## CERTIFICATE OF PENDING LITIGATION

I CERTIFY that this proceeding claims for an order under the *Family Law Act* respecting the division of property. Subject to Rule 22-8 of the Supreme Court Family Rules, a copy of the document by which the claim is made may be obtained from the Court Registry.

Given under my hand and the seal of the court at \_\_\_\_\_, British Columbia, this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

\_\_\_\_\_  
REGISTRAR



# Section 215(7) Land Title Act

---

215(7) Despite subsection (1), a person who has commenced an action under the Wills, Estates and Succession Act may register a certificate of pending litigation in the form approved by the director against the land affected.

# Form 34

## CERTIFICATE OF PENDING LITIGATION

I CERTIFY that a proceeding has been commenced under the *Wills, Estates and Succession Act* and that the lands described in the attached document by which the proceeding was commenced may be affected.

Given under my hand and the seal of the court at \_\_\_\_\_, British Columbia, this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

\_\_\_\_\_  
REGISTRAR

## Section 216 Land Title Act – Effect of CPL

216 (1) After registration of a certificate of pending litigation, the registrar must not make any entry in the register that has the effect of charging, transferring or otherwise affecting the land described in the certificate until registration of the certificate is cancelled in accordance with this Act.



# Section 217 Land Title Act – Prior Applications

---

217 (1) The registrar may, despite section 216, make an entry in the register to complete the registration of an indefeasible title or charge that was applied for before an application to register a certificate of pending litigation was received by the registrar.

(2) If, in the circumstances described in subsection (1),

(a) the prior applicant is a party to the proceeding, the registrar must register the indefeasible title or charge claimed by the prior applicant subject to the certificate of pending litigation,

## Section 217 Land Title Act, con't

---

(b) the prior applicant is not a party to the proceeding, the registrar must, on registration of the indefeasible title or charge claimed by the prior applicant, cancel the registration of the certificate and give notice of the cancellation to the person who applied to register it, or

(c) the certificate relates to a proceeding

(i) in respect of a charge, or to enforce, foreclose or cancel a registered charge,

(ii) referred to in section 215(6), or

(iii) referred to in section 215(7),

the registrar must register the indefeasible title or charge claimed by the prior applicant, subject to the certificate of pending litigation, whether or not the prior applicant is a party to the proceeding.

# Effect of Section 217 Land Title Act

	Time 1	Time 2	Registrar's Action
1	Transfer received and pending	Charge CPL	<ul style="list-style-type: none"> <li>- Register title</li> <li>- Register Charge CPL [217(2)(c)]</li> </ul>
2	Transfer received and pending	Transfer CPL (Transferee joined)	<ul style="list-style-type: none"> <li>- Register title</li> <li>- Register CPL [217(2)(a)]</li> </ul>
3	Transfer received and pending	Transfer CPL (Transferee not joined)	<ul style="list-style-type: none"> <li>- Register title</li> <li>- Cancel CPL [217(2)(b)]</li> </ul>
4	Charge received and pending	Charge CPL	<ul style="list-style-type: none"> <li>- Register charge</li> <li>- Register Charge CPL [217(2)(c)]</li> </ul>
5	Charge received and pending	Transfer CPL (chargee joined)	<ul style="list-style-type: none"> <li>- Register charge</li> <li>- Register CPL [217(2)(a)]</li> </ul>
6	Charge received and pending	Transfer CPL (chargee not joined)	<ul style="list-style-type: none"> <li>- Register charge</li> <li>- Register CPL [217(2)(b)]</li> </ul>

**Source:** [ltpm.ltsa.ca/217-effect-certificate-pending-litigation-if-prior-application-pending](http://ltpm.ltsa.ca/217-effect-certificate-pending-litigation-if-prior-application-pending)



# Section 253 Land Title Act - Discontinuance

---

253 If an action in respect of which a certificate of pending litigation is registered **has been discontinued**, the registrar must cancel the registration, on

(a) application, and

(b) production of a certificate of the registrar of the court that issued the certificate of pending litigation, certifying that the action has been discontinued in whole or in part as to the land in respect of which the certificate of pending litigation is registered.

# Section 254 Land Title Act - Dismissed

- 254 If an action in respect of which a certificate of pending litigation is registered **has been dismissed**, the registrar must cancel the registration as provided in the regulations, or, on
- (a) **application**, and
  - (b) production of a **certificate of the registrar of the court** that issued the certificate of pending litigation, endorsed by the registrar of the Court of Appeal, certifying that
    - (i) the **action has been dismissed** and that the **time limited for appeal has expired** and no notice of an appeal has been filed with the registrar of the Court of Appeal, or
    - (ii) a notice of appeal has been filed and has been finally disposed of, and the dismissal of the action has not been set aside by the Court of Appeal or the Supreme Court of Canada.



## Section 25 Land Title Act Regulations

25 If a person applies to cancel the registration of a certificate of pending litigation **following a dismissal** of the proceeding, the registrar may cancel the certificate

(a) on production of a **consent to cancellation signed by the party** who filed the certificate of pending litigation, **or**

(b) on **giving notice to the party** who filed the certificate.

Note: The regulation requires that it is the party, and not the party's solicitor, who must consent to the dismissal order.

# Section 255 Land Title Act

255 (1) If an action in respect of which a certificate of pending litigation has been registered **has neither been discontinued nor dismissed**, the registrar, on application, may cancel the registration of a certificate of pending litigation, on the written request of the party initiating the proceedings or the party's solicitor. (2) The request must be in a form satisfactory to the registrar, describe the land in respect of which the registration is to be cancelled, and, **in the case of a party, witnessed and proved in the manner required under Part 5.**

# Common Rejection Reasons

---

- No claim for an interest in land or right of action in respect of the land
- Formatting issues with Item 4 of the Form 17
- “Of Lease (Application #)” in Item 1 additional information
- Order setting out the action has been Discontinued or Dismissed not meeting the requirements under s. 253 or 254 LTA
- Application to cancel pursuant to s. 25 of the Land Title Act Regulations has not been clarified on the application or supported by a letter signed by the party

# Court Orders

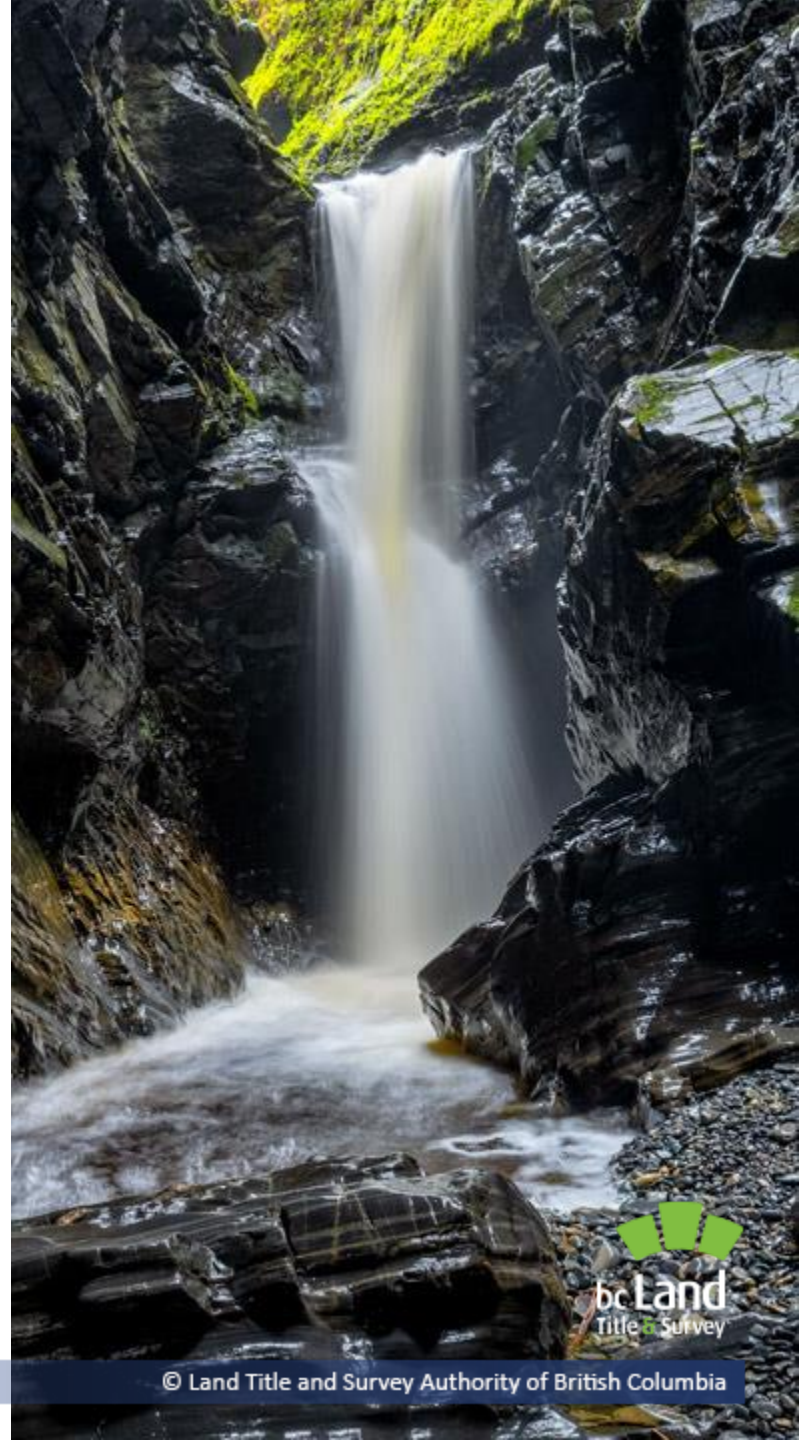


# Court Orders - Agenda

- Basic Requirements
  - Section 34 GSHMT language
- Release of CPL by Court Order
- Release of Mortgage by Court Order
- Foreclosure Court Orders
- Vesting Court Orders
- Section 38 Law and Equity Act
- Injunction Court Orders
- Top 5 Defect Reasons related to Court Orders

# Basic Requirements

- Form 17, including mergers requested (if any)
- Court certified copy of the court order
- Appropriate/affected parties are joined in the court action
- Statutory authority for the order
- Vesting language or clear direction
- Section 34 GSHMT language



# Section 34 Land Title Act

---

34 (1) Except as provided in section 180, the registrar **must not register an indefeasible title in favour of a person under a direction contained in an order of a court unless the order declares that it has been proved to the satisfaction of the court on investigation that the title of the person designated in the direction is a good safe holding and marketable title.**

(2) Subsection (1) applies to the registration of a charge.



# Section 34 Land Title Practice Manual - Practice

## Registration of Indefeasible Title by Court Order

Section 34 [↗](#) requires the court to make a declaration to the effect that a good safe holding and marketable title exists as a condition of directing the registrar to register an indefeasible title or charge.

## Determination of Good Safe Holding and Marketable Title

The mandatory requirement in s. 34 applies only if a court order directs the registrar to register an indefeasible title or charge. Where the court order does not contain a declaration as to a good safe holding and marketable title, the registrar has no authority to comply with the direction in the order unless the order contains other apt words that enable the registrar to determine that a good safe holding and marketable title exists.

Examples include:

- (1) a declaration that a named individual is the sole beneficial and legal owner of the interest;
- (2) vesting language, including expressions such as the described land “be conveyed to and vested in” a specified person; or
- (3) foreclosure orders, which by operation of law, extinguish the borrower’s right to redeem.

## Effect of Vesting Language

Where the court order does not contain a direction to the registrar but the court order contains vesting language, the vesting language operates in the same way as words of transfer and the registrar gives effect to the order in the same way as a freehold transfer or other conveyancing instrument.



# Court Orders: Release of CPL by Court Order

# Release of CPL Court Orders

- Section 252 Cancellation Of Certificate Of Pending Litigation
- Section 256 Cancellation Of Certificate Of Pending Litigation On Other Grounds
- Section 257 Power Of Court To Order Cancellation
- Section 258 Cancellation Of Registration



# Release of CPL Court Orders, con't

## Example of **acceptable** language:

“The court orders that, upon filing a copy of this order, pursuant to Section 252 Land Title Act, the CPL registered under number CB12345 on title number CA567891, is cancelled.”

## Example of **unacceptable/questionable** language:

“The court orders that, upon filing a copy of this order, The Registrar of Land Titles is directed to cancel CPL CB12345 on title CA567891”



# Section 252 Land Title Act

---

252 (1) If a certificate of pending litigation has been registered and **no step has been taken in the proceeding for one year**, any person who is the registered owner of or claims to be entitled to an estate or interest in land against which the certificate has been registered **may apply for an order that the registration of the certificate be cancelled.**

(2) An application under subsection (1) must be made to the court in which the proceeding was commenced and must be brought

(a) as an application in that proceeding, if the applicant is a party to the proceeding, or

(b) by petition, if the applicant is not a party.

(3) **The registrar must, on application and on production of a certified copy of the order of the court directing cancellation under subsection (1), cancel the registration of the certificate of pending litigation.**

# Section 252 Land Title Act, con't

---

## Example of **acceptable** language:

“The court orders that, upon filing a copy of this order, pursuant to Section 252 Land Title Act, the CPL registered under number CB12345 on title number CA567891, is cancelled.”

# Section 256 Land Title Act

---

256 (1) A person who is the registered owner of or claims to be entitled to an estate or interest in land against which a certificate of pending litigation has been registered may, on setting out in an affidavit

(a) particulars of the registration of the certificate of pending litigation,

(b) **that hardship and inconvenience are experienced** or are likely to be experienced by the registration, and

(c) the grounds for those statements,

**apply for an order that the registration of the certificate be cancelled.**

# Section 257 Land Title Act

---

257 (1) On the hearing of the application referred to in section 256(1), **the court**

**(a) may order the cancellation of the registration of the certificate of pending litigation** either in whole or in part, on

(i) being satisfied that an order requiring security to be given is proper in the circumstances and that damages will provide adequate relief to the party in whose name the certificate of pending litigation has been registered, and

(ii) the applicant giving to the party the security so ordered in an amount satisfactory to the court, or

## Section 257 Land Title Act, con't

---

257 (5) On receipt of an order made under subsection (4), the registrar **must file it and cancel** the registration of the certificate of pending litigation.



# Section 258 Land Title Act

258 On

(a) application to the registrar for the registration of an order of cancellation of registration of a certificate of pending litigation under section 257, and

(b) production of **the order or a certified copy, and a certificate from the registrar of the court** from which the certificate of pending litigation was issued certifying that the security required has been given,

**the registrar must cancel the registration of the certificate of pending litigation** as to the land affected by the order.

# Section 258 Land Title Act, con't

Example of **acceptable** language:

"Upon filing a copy of this order, pursuant to sections 256, 257 & 258, CPL filed under registration number CB123456 shall be cancelled from title."

# Court Orders: Release of Mortgage by Court Order



# Release of Mortgage Orders

- Section 243
  - Redemption Of Mortgage If Mortgagee Absent
- Section 244
  - Mortgagee's Refusal Or Neglect To Give Discharge
- Section 249
  - Power Of Court To Order Cancellation Of Charge



# Section 243(3) Land Title Act

---

(3) On application to the registrar for cancellation, and on deposit of a **certified copy of the order with proof of**

(a) **payment**, if any, into court in compliance with the order, **and**

(b) **mailing** a copy of the order to the mortgagee at the mortgagee's last known address,

**the registrar must make an entry in the register cancelling the registration of the mortgage**, and the entry is deemed to be a valid discharge of the mortgage and has the same effect as a similar entry made on an application for cancellation accompanied by the production of a discharge of mortgage executed by the mortgagee.

# Section 243(3) Land Title Act, con't

## Example of acceptable language:

“Upon filing a copy of this order with the registrar of land titles, pursuant to S 243, mortgage registered under number CB123456, shall be cancelled and discharged from title.”

### Submissions

On the Form 17 Cancellation of Charge, Notation or Filing, select Nature of Interest, Charge (by Court Order) (No PTT), and attach an image of the court certified copy of the order and certificate of payment to the court.

**Source:** [ltpm.ltsa.ca/243-redemption-mortgage-if-mortgagee-absent](https://ltpm.ltsa.ca/243-redemption-mortgage-if-mortgagee-absent)

# Section 244 Land Title Act

244 (1) **If a mortgagee**, without just cause, refuses or **neglects to give the mortgagor** or owner of the equity of redemption, herein referred to as the “owner”, **a discharge of the mortgage**, despite the tender or attempted tender of all money due and owing by the owner to the mortgagee, **the owner may make an application to the Supreme Court in the same manner as provided in section 243**, and the court has all the power conferred on that court by section 243.

(2) Section 243(1)(a) and (b) does not apply to this section.

## Example of acceptable language:

“Upon filing a copy of this order, pursuant to section 244, mortgage registered under number CB123456 is hereby cancelled and discharged from title.”

**Source:** [ltpm.ltsa.ca/244-mortgagees-refusal-or-neglect-give-discharge](https://ltpm.ltsa.ca/244-mortgagees-refusal-or-neglect-give-discharge)

# Section 249 Land Title Act

---

249 (1) If, in a proceeding pending in the Supreme Court,

(a) a question is raised

(i) as to the validity of a registered charge, or

(ii) as to money owing on or rights respecting a registered charge, and

(b) in the opinion of the court, the question raised is sufficiently material for the application of this section,

**on affidavit** or other proof of the good faith of the question raised, the court may, on terms as to security and otherwise it considers proper, **order that the registration of the charge be cancelled on payment into court of a specified amount of money by the person claiming relief.**



## Section 249 Land Title Act, con't

---

(2) Except under special circumstances to be established to the satisfaction of the court, an order must not be made under this section for the cancellation of the registration of a mortgage, except on payment into court of the full amount which the mortgagee, or the mortgagee's successor in title, has stated on affidavit to be due.

### Example of acceptable language:

"Upon filing a copy of this order, together with the certificate for payment into court, pursuant to Section 249, mortgage registered under number CB123456 is hereby cancelled and discharged."

**Source:** [ltpm.ltsa.ca/249-power-court-order-cancellation-charge](https://ltpm.ltsa.ca/249-power-court-order-cancellation-charge)

# Court Orders: Foreclosure



# Foreclosure Orders - Basic Requirements

---

- **Form 17** with merger requests listed, if any
- Certified copy of the **Final Order of Foreclosure (Order Absolute)**
- **Letter from petitioner**, respondent or their legal representative if said letter is required by the Final Order of Foreclosure;
- An application to Release of certain claims or charges, if required by the Final Order of Foreclosure
- Anything else required by the court to accompany the Final Order of Foreclosure

# Foreclosure Orders - Example of Foreclosure Language

---

Example of **acceptable** foreclosure language:

“The respondents stand **absolutely debarred and foreclosed** of and from all their estate, right, title, interest and equity of redemption in the mortgaged lands.”; **or**

“Any interest in the mortgaged lands of the respondent or anyone claiming through the **defendant is hereby extinguished.**”

# Foreclosure Orders - Mergers

Charge	Charge Owner	Date of Registration	Charge Number
Mortgage	CIBC	2010	CA123456
Mortgage	RBC	2012	CA567894
A/R	RBC	2012	CA567895
Judgement	ABC Company	2016	CA9944558
CBL	John Smith	2016	CA9956999
CPL	RBC	2017	CB56688
Judgement	123 Inc.	2017	CB59966
Strata Property Lien	The Owners, Strata Plan EPS2345	2017	CB889977
Mortgage	Tru Solutions Co.	2018	CB1234567

Style of Cause:

RBC

Petitioner

Vs.

Tammy Owner

ABC Company

John Smith

Respondent(s)

**Source:** [ltpm.ltsa.ca/30-notice-unregistered-interest-affecting-registered-owner-charge](http://ltpm.ltsa.ca/30-notice-unregistered-interest-affecting-registered-owner-charge)

# Court Orders: Vesting Court Orders



# Vesting Orders – Basic Requirements

- Form 17
  - The name of the transferee must match the order
  - Tenancy must match the order, if applicable
- Court certified copy of the court order
  - Contain vesting language
  - Affected Parties to the Vesting Order
  - If the order directs charges to be released, they should be released by Form C by the charge owners, not merged



# Vesting Orders – Example of Vesting Language

## Example of **acceptable** vesting language:

- "Upon filing a certified copy of this order, the lands shall **be conveyed to and vest** in the purchaser in fee simple"; **or**
- "**a declaration that** <named person> is the sole beneficial and legal owner of the interest"

## Example of **acceptable** Section 34 language:

- "It has been proven to the courts that a **good safe holding and marketable title** exists."

## Example of **unacceptable/questionable** language:

- "Upon filing a certified copy of this order, the registrar of land titles is hereby directed to enter the purchaser as the owner in fee simple."



# Vesting Orders - Mergers

---

- Section 30(3) LTA does not apply to general vesting orders, only Foreclosure orders
- What is the statutory authority to request a merger in a vesting order?

# Court Orders: Section 38 Law and Equity Act



# Section 38 Law and Equity Act

## Execution of instruments by order of court

38 (1) If any person neglects or refuses to comply with a judgment or order directing the person to execute any conveyance, contract or document or to endorse any negotiable instrument, **the court may**, on terms and conditions as may be just, **order that the deed**, conveyance, contract, assignment or other document **must be executed** or that the negotiable instrument **must be endorsed by a person the court may nominate for that purpose.**

(2) If an order is made under subsection (1), the conveyance, contract, document or instrument executed or endorsed operates and is for all purposes available as if it had been executed or endorsed by the person originally directed to execute or endorse it.

# Court Orders: Injunction Court Orders



# Section 284 Land Title Act

---

284 (1) In this section, "order" includes injunction.

**(2) The Supreme Court may, (a) on the application of a person interested in land, or (b) on application made on behalf of the owner of a future or contingent interest, make an order prohibiting dealing with that land.**

(3) The court may annex to the order terms and conditions it may consider proper, including an expiry date.

(4) The order may be lodged with the registrar, and, if lodged with the registrar, the registrar must deal with it in the same manner as a caveat.

(5) This section applies only to land registered under this Act

# Injunction Orders – Basic Requirements

---

- Form 17
  - NOI: Injunction
- Certified copy of court order
  - Containing language that prohibits dealings with the land
- Effect of an injunction

## Example of **acceptable** language:

“Pursuant to Section 284 LTA, all dealings of the Lands are prohibited until further order of this court.”

# Top 5 Defect Reasons Related to Court Orders

---

- It is not evident that the registrar has the authority to cancel the certificate of pending litigation.
- A court certified copy of the [foreclosure/vesting] order has not been provided.
- The letter from the petitioners' solicitor authorizing the filing of the [foreclosure/vesting] order has not been provided as required by the order.
- The tenancy stated in Item 4 of the Land Title Act Form 17 does not match the appended order.
- The application does not satisfy the requirements necessary to merge the Strata Property Act Lien.

# Resources & Contact Us

---

## Resources

- [Land Title Practice Manual](#)
- myLTSA Resource Tutorials:
  - [itsa.ca/products-services/myltsa/myltsa-resources-tutorials/](https://itsa.ca/products-services/myltsa/myltsa-resources-tutorials/)
  - [How to order a PAN](#) (video)

## Contact Us - Customer Service Centre

- 1-877-577-LTSA (5872) or 604-630-9630 Option 2
- [customerservice@itsa.ca](mailto:customerservice@itsa.ca)



# LTSA 2024 Webinar Schedule

---

- Apr 24 – 2024 Update on LOTR Filings and LOTA
- May 8 - Estates, Trusts and Powers of Attorney
- Jun 6 - Caveats, Certificates of Pending Litigation (CPLs) and Court Orders
- **Oct 3 – Dealings with Easements, Restrictive Covenants and Right of First Refusal**
- **Bi-monthly Web Filing Tutorials**

 **To Register: [LTSA.ca/webinars](https://LTSA.ca/webinars)**

# LTSA Webinar Recordings

---

- Fundamentals on Form A, B, C (Release and Charge)
- Land Title Application Help Resources
- All About Land Title Defects
- Minimizing Turnaround Times for Land Title Applications
- Survey Plan Submissions Part 1 and 2
- LOTR Filing Requirements and Ongoing Obligations
- Web Filing: Introduction, Pro Tips and More
- 2024 Update on LOTR Filings and LOTA
- Estates, Trusts and Powers of Attorney

 **To Watch:** [itsa.ca/webinar-resources](https://itsa.ca/webinar-resources)

# Thank you



Innovation. | Integrity. | Trust.

