Pending registration queue for land titles in Alberta: What you need to know

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Land registration system in Alberta: Overview

The land registration system in Alberta is based on the Torrens system, which is regulated under the legislative authority of the Land Titles Act, R.S.A. 2000, c. L-5 (the Act). The land registry is maintained by the Government of Alberta who is responsible to maintain a registry of all land related documents including titles, documents, and plans at the Land Titles Office (LTO). The Torrens system is based on three (3) principals: (1) the mirror principle, meaning that the title to a property will correctly and entirely reflect its current and relevant facts, (2) the curtain principle, meaning that the information provided on title includes all the relevant information about the property, and (3) the insurance principle, which refers to the public assurance fund that has been created to compensate anyone who has suffered a loss due to any negligent act or omission made in the title. Under the Torrens system the Government of Alberta guarantees the accuracy of the title.

As a result of substantial increase in real estate activity over the past few years, the LTO is dealing with unprecedent backlogs in registrations causing delays, resulting in longer wait times from the time of submission to the time of registration for all land titles documents.

Pending registration queue

Over the years, the land registry system in Alberta has increasingly been automated. One of the implementations of the LTO in recent years is the Pending Registration Queue (PRQ). In function, the PRQ shows up on title when pulled, and lists out any DRRs (as defined herein) that have been submitted to the LTO for registration but have not been reviewed and subsequently registered. The PRQ was implemented to help deal with the registration delay currently of issue at the LTO. Prior to the PRQ, any registrations that were submitted prior, but not yet registered, were unknown risks and led to uncertainty of parties. With the advent of the PRQ, parties can ascertain documents which may have priority and identify possible risks.

The PRQ allows parties to preview certain information relating to the pending registrations on the title of the specific land they are interested in, however, it does not allow parties to view the actual document submitted itself until it is registered on title. This helps parties gather information and assess possible risks about yet to be registered instruments on the land of their interest. The PRQ can help parties avoid last minute unforeseen registrations as any prospective registration will first appear in the PRQ prior to it being formally registered on title. This early notice of pending registration can help parties decide the impact of the pending registrations on any potential transaction they might be contemplating.

The LTO considers a document to have been received and simultaneously entered the PRQ when it is either mailed or dropped off at the LTO. When submitting a document to the LTO, the party submitting the document must prepare a Document Registration Request (DRR) to be submitted alongside it. The DRR is a companion document that describes what type of instrument needs to be registered along with the land identification number related to the parcel of land where the instrument is supposed to be registered. After the document enters the PRQ, the information in the DRR is used to input the relevant information in the PRQ. Once the process of entering a document in the PRQ has been completed, the LTO grants automatic priority to documents entered in chronological order.

There are certain exceptions relating to registration documents and the PRQ. One of the common scenarios are when a document has deficiencies. If a document is considered deficient by the LTO, the LTO will send the DRR package back to the submitting party with a Notice of Deficiency, which includes the specific deficiencies that were uncovered. The submitting party will then have a thirty (30) day window to correct the identified deficiencies in which it retains its priority in the PRQ. If the thirty (30) day window is not adequate, extensions maybe requested from the LTO. In the event the submitting party fails to rectify the deficiencies within the given timeline, the document is removed from the PRQ and loses any priority it had on submission of the document.

Deemed registration per s.14.1(7)

The Alberta legislature enacted an amendment to the Act in 2021 which introduced the concept of deemed registration into the Act. As per s.14.1(7) of the Act, any instrument or caveat that must be registered within a specific time period as a result of legislation or court order, will be deemed to have been registered when entered into the PRQ. There are certain instruments that are inherently time bound; builders' liens for instance are required to be registered within sixty (60) days from the last day that services or materials were provided, while a builders' liens for an oil or gas well or site, must be registered within ninety (90) days. Prior to the PRQ, builders' liens required registration on an accelerated timeline. With the implementation of the PRQ, builders' liens are now deemed as registered once entered into the PRQ. In the event that a deemed registration document has deficiencies that prohibit registration, the thirty (30) day correction window is still provided to the submitting party in order to rectify any deficiencies.

As a result of deemed registration, there has been some changes in how financial transactions related to real estate are structured. As every registration such as a builder's lien must be treated as registered when entered into the PRQ, lenders can require holdbacks of certain amount of the loan in order to deal with the deemed

registration. Other methods to deal with a deemed registration in financial transactions include obtaining an undertaking from the other side that they will adequately deal with the registration and have it discharged.

Deemed registrations should not however be taken as absolutes as even a deemed registration can still be rejected and removed by a registrar when they find the registration to be made in bad faith or that it contains fatal defects which cannot be corrected. As a result, relevant parties such as builders and contractors should not rely on the PRQ and its mechanism to cure deficient submissions within the 30-day period as a fail-safe, but rather as a last resort.

Key takeaway

With the current delays at the LTO, the PRQ and its deemed registration process is a valuable tool to better understand any potential risks with regards to title. The PRQ allows parties to proceed knowing they will not be ambushed with an unforeseen registration in the final stages of a particular transaction. The PRQ provides parties with the opportunity to plan ahead and tackle challenges relating to a registration in a timely manner. The PRQ also allows the submitting party to correct any curable deficiencies within the registration documents without losing their priority.

The introduction of deemed registration allows parties the opportunity to satisfy any time restrictions that either legislation or a court order has placed on them to register their instrument or caveat. Through deemed registration, as soon as the instrument or caveat is received and entered into the PRQ, it is deemed to be registered and the time limit stops ticking. Interested parties should still exercise caution and not completely lean on this feature as the registration can still be rejected in certain circumstances. The deemed registration feature has led to changes in financial transactions as the need for holdbacks and trust conditions have arisen to deal with a registration that is not yet on title but has already been deemed to be registered.

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