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PRACTICE CIRCULAR NO. 5
RELEASE OF EASEMENTS

This Practice Circular is an accompanying document to be used in conjunction with all applicable Bulletins released by the Ministry of Government and Consumer Services (“MGCS”), including Bulletin 2005-02 respecting Easements, Release of Easements (<http://www.cbs.gov.on.ca/tsso/english/EnglishBulletins/Bulletin2005-2Eng.pdf>), or any successors thereto (the “Bulletin”).

The example documents attached were created in the Teraview Training Environment and are only to be used as a guideline to assist users when preparing electronic documents to register releases of easements from title. Please note that the examples provided are not complete documents and will require additional statements particular to the properties, parties or situation, prior to registration.

One of the following two (2) document types attached are used when electronically registering either a complete or a partial release of easement electronically in the Land Titles System.

TRANSFER RELEASE AND ABANDONMENT (ATTACHMENT 1)

Use this document when the **dominant party or owner of the dominant lands** described in the thumbnail description as “together with” the registered easement is applying to release or re-convey the easement with the intention of abandoning the easement to the registered owner of the servient lands. When completing this document, please note the following:

Properties Section

- Choose “Remove Easement” from the Reason for Change Window to re-describe the property(s) and remove any other “subject to (“S/T”)” property interests referenced in the thumbnail description EXCEPT the Instrument being released.
- If the easement being released is an Easement in Gross (no dominant lands), include the PIN for the servient lands only.
- If the easement being released is a Partial Release of Easement (over a portion of the lands encumbered by the easement or a portion of the dominant lands), ensure that the description for the servient lands or dominant lands includes only the portion of those lands which the easement is being released over.

Documents to be Deleted

- Complete this field if the easement being released is a complete release, however, if the electronic document will not accept the easement Instrument in this field (i.e., easements created in a Transfer cannot be sourced), applicants must instead use Statement 3730 and/or Statement 61 and identify therein that it is a complete release of easement.

Statements

- Complete Statement 3730 “Instrument Relates To” for all partial releases or for complete releases if the Documents to be Deleted field above is not available.
- If Consent of other parties (which are not party to the release) are required, select Statement 19 “All the parties having an interest have consented to this release of easement”, as well as accompanying Statement 92 “this document is supported by evidence which is indexed at the Land Registry Office as index number . . .”. The preferred alternative to selecting Statement 92, is to select Statement 61 (Solicitor’s Statement that all parties having an interest have consented to this release of easement), which if said Solicitor’s

Statement is used, requires the document to be signed for completeness and release by the Solicitor making the statement.

- If the Consent of other parties (which are not a party to the release) is not required, select Statement 29 “there are no parties with an interest required to consent to this release of easement”. Although no accompanying Statement is required, MGCS prefers the use of accompanying Statement 61 (Solicitor’s Statement that there are no parties with an interest required to consent to this release of easement), which requires the document to be signed for completeness and release by the Solicitor making the statement.

For a release of an easement in gross (no dominant lands and the dominant party is usually a municipality, utility, etc.), the consent of Chargee(s) is not required

Land Transfer Tax Affidavit

- The Explanation for Nominal Considerations should include whether the document is a “complete” or “partial” release of easement.

Writs of Execution

- Writs are performed automatically upon registration as the document has the effect of conveying an interest in land.

APPLICATION GENERAL (ATTACHMENT 2)

Use this document when the **owner of the servient lands** described in the thumbnail description as “subject to” the registered easement is applying to delete an easement. When completing this document, please note the following:

Properties Section

- Choose either “Remove S/T Interest” or “Redescription” from the Reason for Change Window to re-describe the property(s) and remove any other “subject to (“S/T)”” property interests referenced in the thumbnail description EXCEPT the Instrument being released.
- If the easement being released is an Easement in Gross (no dominant lands), include the PIN for the servient lands only.
- If the easement being released is a Partial Release of Easement (over a portion of the lands encumbered by the easement or a portion of the dominant lands), ensure that the description for the servient lands or dominant lands includes only the portion of those lands which the easement is being released over.

Party To

- Although this section may be completed with the dominant party’s information when releasing an easement, the electronic document does not contain a Party To authorization, and therefore only the Applicant can sign the electronic document for completeness prior to registration.

Documents to be Deleted

- Complete this field if the easement being released is a complete release, however, if the electronic document will not accept the easement Instrument in this field (i.e., easements created in a Transfer cannot be sourced), applicants must use Statement 3730 and/or Statement 61 and identify therein that it is a complete release of easement.

Statements

- Complete Statement 3730 "Instrument Relates To" for all partial releases or for complete releases if the Documents to be Deleted field above is not available.
- Statement 61 must be selected and contain the following information:

To: The Land Registrar for the Land Titles Division of: I (we) . . . (name) . . . , registered owner of PIN . . . (servient land) . . . , which is subject to an easement registered as . . . (number and date) . . . in favour of PIN . . . (dominant land) . . . , hereby apply under the *Land Titles Act* to have the registers for said PINs amended by deleting the said easement (or portion of said easement). (omit reference to dominant land if an easement in Gross)

The evidence in support of this application consists of:

1. The release of . . . (dominant party) . . .
2. The consent of subsequent encumbrancers of the dominant lands. (if any)

The above release and consent(s) must be indexed OR

3. Solicitor's Statement (Statement 61) must identify the lawyer and state: "All parties having an interest have consented to the deletion of this easement" with the document signed by the lawyer making the statement, which will negate the need to index the release and consent(s). This statement covers evidence 1 and 2 above.

For a release of an easement in gross (no dominant lands and the dominant party is usually a municipality, utility, etc.), the consent of Chargee(s) is not required.

Land Transfer Tax Affidavit

- Insert a minimum consideration of \$1.00 or the Land Transfer Tax Affidavit will not attach itself electronically to the registered document.
- The Explanation for Nominal Considerations must reference whether the document a "complete" or "partial" release of easement.
- As an alternative to having the dominant party complete this section, the Applicant (servient land owner) may, if applicable, select statement 9120 or 9121 to authorize the Applicant to act for the dominant party.

Writs of Execution

- To be performed manually by the registrant using the WritSearch function as the document has the effect of conveying an interest in land and the details of same must be included in Statement 61.

DOCUMENT GENERAL - REGISTRY SYSTEM

A complete or partial release of easement can be registered on title by completing a paper type Document General and accompanying Land Transfer Tax Affidavit on behalf of the servient land owner or the dominant party to the easement being released using the same basic guidelines to release an easement in the Land Titles System, however releases and or consents of parties must be attached in paper format to the application as the use of law statements or indexing is not permitted in Registry. Two (2) originals of the document must be presented to the applicable Land Registry Office in person for registration along with the applicable registration fee. Registration forms are not currently available to the public on-line.