



Ministry of Government and
Consumer Services

ServiceOntario

Regulatory Services Branch

Bulletin No. 2017- 03

**Section 102, Land
Titles Act, R.S.O. 1990,
c. L.5 (the act)**

**DATE: OCTOBER 16,
2017**

**Cessation of
Encumbrance
Pursuant to Section
102 of the Act**

Background

In almost all cases, a charge is removed from title by registering a good and valid discharge from the current chargee. In some rare cases, however, a charge can be removed from title by the land registrar upon the filing of an application by the registered owner pursuant to Section 102 of the Land Titles Act (the act).

Section 102 is an extraordinary remedy available at the discretion of the land registrar in those rare circumstances where: (i) the land registrar is satisfied that the chargee is not reasonably available to provide a registrable discharge; and (ii) the land registrar has been provided with due proof that the charge has in fact been satisfied.

Recently, the land registrar has received a number of applications based on Section 102 (collectively "**Section 102 Applications**" and each a "**Section 102 Application**") in circumstances where the current chargee was readily available, and without due proof that the charge had in fact been fully satisfied. These types of Section 102 Applications are not registrable and have been routinely returned.

New Procedures

It has become necessary for the efficient operation and integrity of the electronic land registration system to introduce new procedures regarding the registration of Section 102 applications. Effective immediately, the following procedures will be mandatory for all Section 102 applications.

Pre-approval Necessary in Every Case

Since Section 102 applications are entirely at the discretion of the land registrar, all applications must be pre-approved (pursuant to the pre-approval protocols then in place for the land registry office in which the lands are situate) before being submitted for registration. Under no circumstances may a Section 102 application be submitted

directly into the land registration system without approval. Section 102 applications that are submitted for registration without first being pre-approved will be denied certification and be immediately withdrawn without any refund of the registration fees.

Document Type

Section 102 applications may only be filed electronically as an Application General made by the registered owner.

Select and complete Statement 3602

- I name, the registered owner(s) of the lands, hereby apply under section 102 of the Land Titles Act to have the register for the said PIN amended by: deleting Charge No. xxx

Evidence Required

There must be sufficient evidence that: (i) the current chargee is not reasonably available to provide a registrable discharge; and (ii) the charge has in fact been fully satisfied.

This evidence must be presented as part of the pre-approval, but will not be attached to the Section 102 application itself and may not be indexed. The evidence must be summarized in a law statement.

Select and complete Statement 62

- I (name) solicitor make the following law statement. yyy is the current chargee under Charge No. xxx. The following efforts have been made to contact yyy, without success: [insert details]. I have reviewed the following proof that Charge No. xxx has been duly satisfied: [insert details] and have retained copies thereof in my files. There have been no claims or demands for repayment made under Charge No. xxx since [insert date]. Based on this proof, I confirm that Charge No. xxx has been fully satisfied.

Although the evidence is not to be incorporated into the Section 102 application itself as an attachment or otherwise indexed in the land registration system, all of the evidence relied upon must still be presented to the land registrar as part of the pre-approval process. It is not sufficient to simply identify the evidence considered in the law statement.

It is also not sufficient to simply conclude that there can be no enforceable claims under the charge based on the Real Property Limitations Act. There must still be due proof that the charge has in fact been fully satisfied (not simply due proof that the charge is no longer enforceable because there have been no claims within the relevant limitation periods under the Real Property Limitations Act). For greater certainty, a Section 102

application may reference, by way of supplemental information, that there have been no claims within the relevant limitation periods under the Real Property Limitations Act., Please note that an application that simply concludes that the charge has been satisfied because there have been no such claims within the relevant limitation periods under the Real Property Limitations Act (without any further proof of satisfaction) will not be approved.

There is no prescribed checklist of what evidence will constitute due proof of satisfaction. Historically, due proof of satisfaction for Section 102 applications has included any combination of cancelled cheques, other bank records, mortgage discharge statements, correspondence confirming repayment, for example. All Section 102 applications will be reviewed on a case-by-case basis, and the evidence requirements may vary from case to case. An affidavit or statutory declaration of a person having actual knowledge of the satisfaction of the charge may be included in addition to documentary evidence as to satisfaction of the charge. Any such affidavit or statutory declaration must be supplemented by a further law statement made on the Section 102 application, as follows:

The affidavit [statutory declaration] of xxx confirming [insert details] was made in my presence, and I satisfied myself as to the genuineness of the signature of the deponent [declarant] and administered the oath [declaration] in the manner required by law before signing the jurat. I am not aware of any of the matters set forth in the affidavit [statutory declaration] being untrue or misleading.

It is not sufficient to simply state that “the chargee cannot be located.” Details of the attempts made to contact the chargee must be provided, and it will be at the discretion of the land registrar whether the contact attempts have been thorough and exhaustive under the circumstances. Again, each Section 102 application will be considered on a case-by-case basis. Where the current chargee is an individual(s), and that individual chargee is deceased, every effort must have been made to identify and contact the relevant estate trustees to seek a registrable discharge pursuant to Section 11 of the Mortgages Act, R.S.O. 1990, c. M.40 before submitting a Section 102 application. For greater certainty, a Section 102 application in respect of a deceased chargee will not be approved where the estate trustees can be readily identified and located.

If the current chargee is an Ontario corporation, a search of the Companies Branch of the Ministry of Government and Consumer Services (or any successor registrar or other governmental authority in the case of corporations not governed by the laws of Ontario) must be completed to determine the status of the corporate chargee and the identity of its officers and directors. If a search discloses that the corporate chargee has dissolved, then the applicant under the Section 102 application must present the evidence of the charge’s satisfaction to the Ministry of Infrastructure (MOI), which has jurisdiction pursuant to the Forfeited Corporate Property Act, 2015, S.O. 2015, c. 38, Sched. 7. An unconditional, signed release from the MOI (MOI letter), in the form previously agreed-upon between the MOI and the Director of Titles, is the required evidence for any Section 102 application involving a corporate chargee that has dissolved. For greater

certainty, a Section 102 application in respect of a dissolved Ontario corporate chargee will not be approved unless an MOI letter can be produced as evidence in support thereof.

As of the date of this bulletin, the contact information for MOI is:

Manager, Portfolio Performance
Realty Management Branch
Ministry of Infrastructure
777 Bay Street, 4th floor, Suite 425
Toronto, ON M5G 2E5
Email: forfeitedcorporateproperty@ontario.ca

Corporate chargees governed by laws other than Ontario are to be dealt with in like manner.

If the current chargee is bankrupt, a signed written release (or other suitable evidence that the trustee in bankruptcy is not claiming that the charge is outstanding) must be obtained by the applicant and included in the pre-approval package for a Section 102 application.

Covenant to Indemnify the Land Titles Assurance Fund Required in Every Case

A Covenant to Indemnify the Land Titles Assurance Fund pursuant to Section 55 of the Act, in the form prescribed in Bulletin 2015-4 (the Covenant to Indemnify), must be included with every Section 102 application.

Select Statement 3640

- Import Covenant to Indemnify

While the applicant is typically also the party providing the Covenant to Indemnify, there may be circumstances where it is appropriate for a third party (for instance, a prior registered owner) to provide the Covenant to Indemnify. The land registrar will consider every Covenant to Indemnify on a case-by-case basis.

Court Orders

Section 102 applications are extraordinary remedies available only in rare circumstances. They are not to be considered as convenient administrative alternatives to properly registered discharges, especially in circumstance where the current chargee is readily available or where there might be an outstanding dispute as to the satisfaction of the charge. If the provisions of this bulletin cannot be complied with, for whatever reason, then the appropriate remedy for an owner seeking a cessation of an

encumbrance without a registrable discharge would be a court order pursuant to Section 12 of the Mortgages Act, R.S.O. 1990, c. M.40.

Other Encumbrances

Although Section 102 has historically been used to delete charges from title, the land registrar may remove other encumbrances in like manner.

(original signed by)

Jeffrey W. Lem
Director of Titles