



A LOT FROM THE DOT
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Zombie Deeds are Dead!

As most of you know, the Director of Titles has always been opposed to the so-called “Zombie Deeds” – transfers registered by owners who have already died. Well, there is finally a case dead on point (pun intended) confirming that Zombie Deeds are improper in all circumstances.

Thompson v. Elliott 2020 ONSC 1004 (*Thompson v. Elliott*) is an excellent decision by Madam Justice MacLeod-Beliveau of the Ontario Superior Court of Justice confirming that it is never appropriate to be registering a Zombie Deed. Once your client has died, you must comply with *The Estates Administration Act* (typically, but not always, requiring probate) or you can go to court and get a vesting order (as was the case in *Thompson v. Elliott*). You cannot, however, under any circumstances, just go ahead and register a transfer by that deceased owner, even if you have an Acknowledgement and Direction (“Ack & Dir”) signed by the client prior to the client’s death, and even if you are pretty sure that is what the client would have wanted.

The case is a must read for anyone even thinking that they can try and register a Zombie Deed. *Thompson v. Elliott* is particularly useful because it discredits the use of *Winarski v. Sproul*, 2015 ONSC 812 as an authority for the right to register Zombie Deeds. *Thompson v. Elliott* makes it perfectly clear that anyone registering a Zombie Deed in the electronic land registry system is guilty of making false law statements!

Zombie Deeds typically arise in residential real estate. However, Zombie Deeds can also arise in commercial real estate scenarios, where owners are corporations. Lawyers will sometimes try and register a transfer or an application to amend for a dissolved corporation, based on an Ack & Dir or other authority signed before dissolution (the corporate equivalent of death). The Director of Titles also considers such corporate transfers and applications to be a form of prohibited Zombie Deed, even if there is an Ack & Dir, power of attorney (whether or not coupled with an interest), general conveyance or other form of corporate authority that had been signed prior to dissolution.

TAKEAWAY: Zombie Deeds are improper. Period.