

Bulletin No. 2022-08 Releasing and Deleting Easements**Date: November 21, 2022 Land Titles Act**

This bulletin describes the various ways that an easement may be removed from title. The Land Registry Office generally refers to this action as: “releasing” an easement (typically, when an easement is removed from title by agreement of the parties, etc.); or “deleting” an easement (typically when an easement is removed from title as an administrative function, etc.). Customers will often also refer to this as “discharging”, “terminating”, “removing”, or “vacating” an easement. For the purposes of this bulletin, all of these terms mean the same thing – removing an easement from title.

To the extent that anything herein is inconsistent with or contrary to provisions in Bulletin 2005-02, then such inconsistent and contrary provisions of Bulletin 2005-02 are hereby revoked, and the terms of this bulletin shall apply.

The Transfer, Release and Abandonment

The Transfer, Release and Abandonment (“**TREL**”) is the principal document used to release a registered easement. This acronym is not well known outside of government, and is not that intuitive, but it is the nomenclature used in Teraview®. For greater certainty, the TREL document type cannot be used for any un-registered easements (e.g., prescriptive easements or unregistered statutory easements, none of which are registered in the electronic land registry system).

The TREL is registered on both the servient and dominant lands, except in the case of an “easement in gross” (which does not have a dominant tenement by statute – so a TREL in respect of an easement in gross is registered only against the servient tenement because there is no dominant tenement).

Statements in a TREL

The registrant must select "Remove Easement" in the Reason for Change, and make the following confirming statements:

19 All the parties having an interest have consented to this release of easement; or

29 There are no parties with an interest required to consent to this release of easement.

In this context, “parties having an interest” means, not only the dominant tenement owner(s), but also every chargee and lessee of that dominant tenement owner.

This document type also allows a solicitor to make the same statements as law statements:

***3637** (Solicitor's name) confirm that all parties having an interest have consented to this release of easement; or

***3638** (Solicitor's name) confirm that there are no parties with an interest required to consent to this release of easement.

The non-lawyer statements and the lawyer statements are identical but when Statement 19 is used (i.e., the non-lawyer statement), then the actual consents must be imported into the TREL, whereas the law statement does not actually require copies of the actual consents. Although Bulletin 2005-02 still references "consents must also be indexed" when using Statement 19, indexing will no longer available after December 31, 2022 (see Bulletin 2022-09).

Partial Release of an Easement Using a TREL

A TREL may be the release of the entire easement or may be a partial released. If the TREL is intended to only be a partial release of some of the servient tenement, then the registration number of the easement being partially released should set forth using Statement 3730. Then, in Statement 61, the relevant part of the servient tenement lands can be identified as being partially released.

A TREL can also be used for a partial release of an easement, not as to lands, but as to purpose. So, for instance, if an easement has several purposes, one or more those purposes can be released without releasing the balance of the purposes.

From time to time, a registered easement will fail to source from Teraview®. In these cases, the easement may be manually released by inserting the easement number in Statement 3730 (as would be the case in a partial release). Then, in Statement 61, the registrant must confirm that, even though Statement 3730 is being used, the registrant intends a complete release (not just a partial release).

Writs of Execution and Land Transfer Tax

The TREL also generates a land transfer tax affidavit and triggers a search of writs against the releasing party (the dominant tenement owner). To the extent that there are writs outstanding on the releasing party, then it is necessary to have the appropriate writ clearing statement or else the TREL will be remarked as being subject to writs.

In a few unusual circumstances, the dominant tenement owner will use a TREL even though writs of execution do not need to be searched. So, for instance, a dominant tenement owner can release an expired easement or a merged easement (see below) even though writs of execution never apply to expired easements or merged easements (there is a discussion below about using a TREL even though the easement becomes of no force and effect through the operation of law, not through the release of the dominant tenement owner). Where a TREL is marked subject to writs but it is actually in respect of

a merged easement or an expired easement, then an Application to Delete Writs may be registered with an appropriate explanation can be used to delete the “S/T Writs” notation. Alternatively, the parties, knowing that the dominant tenement owner is subject to writs, might want to have those easements deleted by the servient owner – servient owners can also delete expired or merged easements (see below).

When an Application General Can be Used by the Dominant Tenement Owner

Although the TREL is the preferred document to be registered by a dominant tenement owner, a dominant tenement owner may use an Application General in lieu of the traditional TREL in certain circumstances. In this bulletin, all of the references to “Application General” mean an Application to Amend under Section 75 of the Land Titles Act.

Although TREL is registered by the dominant tenement owner, it exists in Teraview® as a two-party document. This means that, the servient tenement owner can frustrate the registration of a TREL by simply refusing to sign any acknowledgement and direction authorizing the TREL. There are circumstances when all benefitting parties (all dominant tenement owners and their respective mortgagees and lessees, etc.) have agreed to release certain easements, but the servient tenement owners refuse to cooperate with the registration of the TREL.

Since the servient tenement owner’s ability to frustrate a TREL arises only because of a feature in Teraview®, we will permit the Application General (instead of a TREL) to be used by the dominant tenement owner in these circumstances. All of the same information required in a TREL must be replicated in the Application General, including a writ search by the client and a land transfer tax affidavit.

If an easement has expired in accordance with its own terms (e.g., because it has an expiry date or expires on the happening of an event like the dedication of a highway), or has merged, the dominant tenement owner should use a TREL. Dominant tenement owners must use the TREL unless absolutely necessary to switch to an Application General.

When an Application General May be Used by the Servient Tenement Owner

As noted above, the registering party of a TREL is the dominant tenement owner (it has the benefit of the easement, so the dominant tenement owner is the right party to release it (with the consent of other parties that take title through the dominant tenement owner – i.e., chargees and lessees). Although the servient tenement owner is a party to the TREL (see discussion above), the servient tenement owner is never the appropriate registering party.

There some circumstances, however, when a servient tenement owner may register an Application General to release an easement. These circumstances are set forth below:

Exception #1: PIN Error: In cases where the servient tenement owner asserts that the easement should not exist on the servient PIN (because, e.g., it is some sort of

mistake, a conversion error, or some other technical reason why the easement is erroneously shown on the servient PIN). Where the servient tenement owner is asserting some sort of a problem with or correction needed on the PIN, then a persuasive and detailed case must be made as to the nature of the alleged mistake.

Exception #2: Easement has No Dominant Tenement: Occasionally, a servient tenement owner wishes to release an easement because there is no dominant tenement at all (an easement – other than an easement in gross – cannot exist without a dominant tenement). This cannot of course be accomplished using a TREL (by definition, there is no dominant tenement owner and, therefore, there cannot be a dominant tenement owner to register the TREL). This scenario is contemplated in Paragraph 2.2.4(d) of Bulletin 2005-02. Where the servient tenement owner is asserting an absence of a dominant tenement, then a persuasive and detailed case must be made as to absence of a sufficiently described dominant tenement. This is more than a missing “T/W” on a dominant PIN (that would just be an abstracting issue) – the argument has to be that the easement is actually acting like an easement in gross without any statutory authority for so doing. These cases should be quite infrequent and must be supported by a law statement and a covenant.

62 The easement registered as Instrument No. xxx is not legally an easement in gross and makes no reference whatsoever to any benefiting dominant tenement. As a result, the said easement is not of any force or effect.

3640 Covenant to Indemnify the Land Titles Assurance Fund (import PDF covenant)

Exception #3: Expired Interest: If an easement has expired in accordance with its own terms (e.g., because it has an expiry date or expires on the happening of an event like the dedication of a highway, etc.), the servient tenement owner may register an Application General to delete the expired easement.

Note: A dominant tenement owner can also delete an expired easement but should use a TREL instead of an Application General (see above).

Note: There is a difference between an “expired easement” and an “abandoned easement”. It is legally possible to delete an easement because it has been abandoned (i.e., not used), but that can only be done by court order. An Application General may never be registered to release/delete an abandoned easement.

Exception #4: Merger The other exception relates to the doctrine of “merger”. Merger is a legal concept which arises whenever the servient tenement owner and the dominant tenement owner become the same person or corporation. There are many ways that the servient tenement owner can be the same person or corporation as the dominant tenement owner. For example:

- (1) the servient tenement owner buys the dominant tenement;
- (2) the dominant tenement owner buys the servient tenement;

- (3) a third party buys or expropriates the servient and dominant tenements;
or
- (4) in the case of corporate owners, the servient tenement owner and dominant tenement owner amalgamate with each other); etc.

If an easement has merged and the servient tenement owner and the dominant tenement owner are one and the same person, (i.e., one person or corporation has become both the dominant tenement owner and the servient tenement owner at the same time), then that person can release the merged easement at any time during that common ownership using a TREL. In this context, “release” merely means the act of removing the easement from title. An owner in this situation can apply to release a merged easement using a TREL even if easement itself actually got cancelled by operation of law (i.e., not actually by the owner’s release).

If the easement merges but the owner does not release the merged easement with the TREL as discussed above, then the easement will stay on title (i.e., S/T and T/W, if any, will remain on the servient and dominant tenements, respectively). Just because the easement merges, there is no obligation for the common owner to actually remove the easement from title. If the properties then separate again (sometimes referred to as “un-merged” or “de-coupled” or “split”), so that the dominant owner and the servient owner are now again different parties, then different rules will apply for the release and deletion of the easement.

In this scenario, the current owner of the dominant owner can still release the merged easement using a TREL, but the current owner of the servient tenement can release the merged easement only with an Application General which must contain the following:

62 The servient tenement was conveyed to [common owner], who was the dominant tenement owner at the time, pursuant to instrument No. xxx [or] the dominant tenement was conveyed to [common owner], who was the servient tenement owner at the time, pursuant to Instrument No. xxx, so that, immediately upon the registration of said instrument, the then-current dominant owner and then-current servient tenement owner were one and the same party. Instrument No. xxx contained no language evidencing an intent not to merge. As a result, the said easement merged and is no longer of any force or effect.

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The Land Registry Office does not independently search for merger and will never delete an easement for merger as a PIN Correction.

A merged easement to be reflected in an Application Consolidation (without the need for a separate TREL or Application General to be registered evidencing the merger). Nothing has changed in the dealing of merger of easements in an Application Consolidation.

Where to Register an Application General

Whenever an Application General is used to release an easement, whether it be registered by the dominant tenement owner and the servient tenement owner, it should be registered against both the servient and dominant tenements (except in those rare circumstances, of course, where there is no dominant tenement set forth – e.g., easements in gross, etc.). There is no need for independently registered Application Generals – one for the dominant tenement and one for the servient tenement.

Servient Tenement Owners May Not Otherwise Use an Application General to Delete an Easement.

Historically, the Land Registry Office has allowed servient tenement owners to delete easements with the dominant owner consent (using an Application General) in circumstances other than the four exceptions described above. This typically arises because, while the dominant tenement owner consents, it does not want to have to incur the inconvenience or cost of registering a TREL (and the dominant tenement owner is the only party who can register a TREL).

Notwithstanding anything to the contrary in the Electronic Registration Procedure Guide, this practice is no longer permitted, so that the four exceptions discussed above will be the only four circumstances in which a servient tenement owner may delete an easement.

If a dominant tenement owner is prepared to consent to incur the inconvenience or cost to the release of an easement, but does not want to incur the inconvenience or cost of registering a TREL, then the dominant tenement owner can simply sign an acknowledgement and direction authorizing the servient tenement owner (or its lawyers) to register a TREL on behalf of the dominant tenement owner.

Deleting Easement Agreements

Easements may be registered as Section 71 Notices (and if so, are typically referred to by the Land Registry Office as “easement agreements”) but they are not abstracted in the property descriptions as is the case with easements created by Transfer of Easement or reserved in a Transfer (i.e., easements registered as Section 71 Notices do not get “T/W” or “S/T” notations in the respective property descriptions). These easement agreements can, however, be true easements in all respects. Accordingly, it is worth noting how they can be deleted from title.

An easement registered as a Section 71 Notice may, of course, be deleted from title, but not by using a TREL or an Application General described above. It can be released from title in the same way that any document registered as a Section 71 Notice can be released (deleted) – a Discharge of Interest with a law statement confirming that “[T]he consent or release of all benefitting parties have been obtained”.

Even though Section 71 easement agreements are true easements, the current practice remains that they are not required to be shown on plans filed in the Land Registry Office.

Miscellaneous: Power of Sale, Easements in Leases and Charges, etc.

Although it is rarely considered as a “release” or a “deletion” of an easement, easements can also be cut-out by Transfer Power of Sale (“TPS”) if the easement was created after the relevant charge and is listed in the TPS as a document to be deleted, etc. Also, while easements may no longer be created inside leases and charges, there are some old easements that were created within leases and charges – all of those easements automatically terminated when the corresponding lease was terminated or the corresponding the charge was discharged.

Original signed by

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