



Land Titles Simplifying Real Property

by Dennis M. Foerster

A little recognised but vital government service is the Land Titles Offices located throughout the province. Land Titles plays an essential yet often unappreciated role in the organization of real property ownership. It simplifies, speeds up and reduces the costs of both property purchases and sales. It also provides a public registry for almost all interests in real property or land.

When property is sold both the owner and vendor wants to be able to provide what is known as “clean title”, that is, the purchaser wants to be able to obtain the property without anyone else having an interest in the property of which he or she is not aware. The vendor, in order to complete the sale and receive the purchase price, wants to be able to ensure that he or she is the owner of the land and that upon the completion of the sale he or she is in compliance with the sales agreement by providing the property free of any other interests to which the

purchaser has not agreed.

Historically, deeds were used to show ownership of land. A deed is a legal document that identifies the land and shows who is the owner. Over time as ownership of land changed new owners would want proof that the vendor was in fact the owner of the land and who had any interests over the land. The history of the ownership of land creates what is known as a “chain of title”. As property is transferred, sold or mortgaged, the chain of title can get quite long showing how various owners transferred their interests, created new interests in the property and how these subsequent interests were either maintained, themselves transferred or eventually extinguished. Owners, in order to show they owned what they were selling were required to show the chain of title. In fact in England there are chains of title that go back to the time of William the Conqueror.

Such a system was very time consuming and expensive. You may not be aware, but Manitoba probably has some of the most inexpensive legal fees for the sale of land in Canada. This is due in part to our Land Titles System.

Historically, the Land Titles System was modeled on the ship registering system. A central registry, basically a list, was established whereby the registry would show who owned any particular ship. When the ship was sold the registry would be changed to show the new owner. It was therefore thought that a similar system, provided by the government could be used for land.

The Land Titles System not only provides a list of who owns property but also certifies this information as true. This means that the vendor does not have to show his or her chain of title. Once a proper transfer takes place from one registered owner to another, then the new owner has good title. The Land Titles System

however also registers almost all interests in land. The most common example is a mortgage.

Most people when purchasing a home will require the assistance of a financial institution to provide financing or a mortgage. The Land Titles System creates an official and public list of most interests in land. When an owner wants to sell the land the financial institution, by having registered, its mortgage in the Land Titles Office obtains security for its loan and this security has priority over subsequent registrations. The financial institution is assured that as part of the transfer of the property to the new owner the vendor will deal with their mortgage as part of the transfer of the land.

In the normal course of a sale of a home the purchaser has their name put on title and the previous owner's name is removed. The new owner, if required, has their mortgage registered. If the

previous owner has a mortgage registered the new owner, through their lawyer, will require the vendor or their lawyer to have the previous mortgage discharged. In order to discharge the mortgage the vendor's financial institution will provide a payout amount to the lawyer for the vendor. Once the financial institution receives the payout amount they provide a discharge form to be filed in the Land Titles Office, which, after being processed, will remove the vendor's mortgage from the title of the property. The Purchaser will then be shown as the owner subject to the mortgage of their financial company.

Although this sounds a bit complicated it is a very efficient system. It is efficient for two reasons. First it does away with the deed system for the ownership of land and secondly, it not only registers the ownership or interests in land it also guarantees that the

information as recorded is accurate and can be relied upon.

Today, in jurisdictions but not yet in Manitoba, the Land Titles System has become even more streamlined in allowing for documents to be filed electronically. In Manitoba, although paper documents are still required to be filed, the information with respect to the registered interests is available electronically which is of great assistance when assisting clients with the purchase, sale or mortgaging of land.

The Land Titles System is one of those little known and underappreciated government services. It simplifies and streamlines proof of ownership and many other interests in land. The result of these two virtues is that it both speeds up the sale of property and allows it to take place at a significant cost savings for all those involved.