

Subject: **LEASES**Date Issued **2017 09 01**

## **BACKGROUND**

A lease is a contract that provides for the letting of a leasehold estate which entitles the lessee to exclusive possession of the property for a defined term. The lessor's interest becomes a fee simple estate in reversion since the right to possession which is normally an incident of the fee simple estate has been "carved out" for the term of the lease. In return, the tenant covenants to perform certain obligations such as pay rent and keep the premises in good repair. (1) Unlike the statutory transfer and mortgage of the Torrens system, a lease under the Torrens system does not differ in substance from a lease under the common law. It consists of the premises which include the date, the parties, the operative words and the legal description, the habendum which defines the term of the lease, the reddendum which specifies the rent, and any covenants and conditions which the parties agree to. (2) Certain usual covenants can be included in abbreviated form and have the same effect as an expanded version of the covenant as specified in Schedule A to the Land Titles Act. Also, the Land Titles Act expressly recognizes that a lease may provide that the lessee has the right to purchase the land if the lessee pays the purchase price stipulated. (3)

A lease is only registrable if it is for a term of more than three years. A certificate of title is deemed by the Land Titles Act to be subject to any lease for a period not exceeding three years where there is actual occupation of the land under the lease. (4) A lessee under a registrable lease can request the issuance of a separate certificate of title for the leasehold estate. Thereafter, any dealings with the leasehold estate are registered against the leasehold title. A sub-lease, whereby a lessee carves a further leasehold estate out of the term of his lease, can be registered against a leasehold certificate of title and a sub-leasehold title can be issued.

## **REGISTRATION PROCEDURE**

1. The following information must be provided in the lease:
  - a) the name of the lessor, which must be consistent with that of the registered owner(s),
  - b) a proper legal description, and
  - c) the name and post office address of the lessee (a corporate lessee must comply with section 27 of the Land Titles Act).

The date of execution should be indicated but it is not necessary to reject if the omission of the date is the only defect.

2. **Term** - The lease must state that the lessor leases the land for a term which is greater than 3 years or for a term which is dependent on the life of an individual. (5) The term must have a definite commencement date and either be for a specified

number of years or have an ascertainable termination date. If the lease submitted for registration does not specify the commencement date, a letter signed by the lessor or solicitor for the lessor may be accepted to establish the commencement date. A lease may be accepted for registration before the term has begun. A lease which has an original term of less than 3 years is not to be registered even if renewal options could extend the term beyond 3 years. Such a lease may be protected by registration of a caveat. (6)

3. A new lease will not be accepted for registration if a lease for the whole parcel or for the same part of the parcel is already registered against the title. A caveat may be registered to protect the new lessee's interest until the prior lease is discharged or surrendered.

4. The lease must be executed by the registered owner(s) and by the lessee (7) or by an attorney for either party pursuant to a power of attorney. See procedure under [POA-1](#) for the requirements with respect to use of a power of attorney.

5. Requirements relating to the following must be complied with:

- a) attestation (see procedures under [AFF-1](#), [AFF-2](#) and [COR-1](#))
- b) dower (see procedure under [DOW-1](#))
- c) subdivision approval pursuant to Part 17, Municipal Government Act, R.S.A. 2000, c. M-26 where only part of a parcel is being leased (see procedure under [SUB-1](#))
- d) approval under the Irrigation Act where only part of an irrigable unit is being leased (see procedure under [IRR-2](#))
- e) Foreign Ownership of Land (see procedure under [FOL-1](#))

6. **Certificate of Leasehold Title** - A certificate of leasehold title may be issued at the time of the registration of the lease or at any time during the term of the lease at the request of the lessee or his/her solicitor either in a letter or on a Document Registration Request form ("D.R.R."). If the request is received after the registration of the lease, endorsements on the fee simple title must be checked to ensure that the request is being made by the current lessee. The letter, a photocopy of the D.R.R. or the D.R.R. is given a registration number which is used as the title number for the certificate of leasehold title.

The following procedures apply when a leasehold title is issued:

- a) The legal description of the freehold title is used for the leasehold title if the whole parcel is leased. If only part of a parcel is leased, the legal description to be used must be approved by the Surveys section.
- b) The words on the certificate of title "estate in fee simple" are replaced and the original term of the lease is shown

For example:

"... is now the owner of a leasehold estate for a term of  
10 years commencing on January 1, 1984"

or

"... is now the owner of an estate created by lease for the  
life of X")

- c) On issuance of a leasehold title use PF21 to drop prior registrations.
- d) The following memorandum is endorsed on the leasehold title: (8)

"SEE TITLE FOR ESTATE OF LARGER EXTENT, IF ANY,  
FOR REGISTRATIONS PRIOR TO LEASE"

Where title is issued at some time after registration of the lease, all endorsements on the fee simple title after the memorandum for the lease are carried forward to the leasehold title.

Once a certificate of leasehold title has been issued, any further registrations in respect of the leasehold estate, such as mortgages and transfers of the lease, are not to be registered against the fee simple title. Caveats, builders' liens and certain other documents may be registered against both the fee simple and the leasehold title if the document indicates that both titles are affected.

The fees in [Tariff items 11\(6\) and 3\(2\)](#) respectively are charged for the registration of the lease and for the issuance of the leasehold title. Only [Tariff item 3\(2\)](#) is charged if the leasehold title is issued after the registration of the lease. An affidavit of value is required to establish [Tariff item 3\(2\)](#) fees.

7. **Sub-lease** - A sub-lease from the owner of a leasehold title can be registered. All of the requirements for a lease must be complied with. The term for the sub-lease must be less than the term of the lessor's lease so that the lessor has a reversionary interest in the term originally granted to him; often the term in the sub-lease will be one day less than the term in the lessor's lease.

If a certificate of title is requested, it is referred to as a "SUB-LEASEHOLD TITLE" and the memorandum endorsed on the title is

"SEE TITLE FOR ESTATE OF LARGER EXTENT, IF ANY,  
FOR REGISTRATIONS PRIOR TO SUB-LEASE"

The following procedures relating to amending agreements, transfers, mortgages and cancellation of leases apply with appropriate modifications to sub-leases.

If a leasehold title has not been issued, a sub-lease may only be registered by way of caveat.

8. **Amending Agreement** - An agreement amending a lease which is executed by the registered owner of the fee simple estate and by the lessee can be registered. (9) For a sub-lease, the agreement must be between the registered owner of the leasehold title and the sub-lessee. All of the requirements specified in items 4. and 5. for registration of the original lease must be complied with.

An amending agreement which adds new land to the leased premises cannot be registered as the lessee is not the owner of a registered interest in the new land as is required by section 129 of the Land Titles Act.

An amending agreement which changes the term of the lease may be used to change the term shown on the face of the leasehold title. The agreement is endorsed as an amending agreement using document code AGRE (enter Leasing Amending Agreement in PF 16) and by updating the term on the leasehold title through the correction (CORT) screens. The endorsement of the lease on the fee simple title is not altered in any way; only the leasehold title is amended.

9. **Transfer of Lease** - A lease for which a certificate of leasehold title has not been issued may be transferred by use of the prescribed form ([FORM 18](#)). An assignment of lease may be accepted if it is in substantial compliance with ([FORM 18](#)). Requirements relating to attestation, dower and Foreign Ownership of Land must be complied with. [Tariff item 11\(6\)](#) is charged.

If a certificate of leasehold title has been issued, a transfer in the prescribed form ([FORM 8](#)) with the appropriate modifications is to be used. Prior to transferring the leasehold title, it must be reviewed to ensure that the term of the lease is current. If the term appears to have expired, the transfer must be rejected until all applicable amending agreements (renewals of lease) have been registered. Requirements relating to attestation, dower, and the Foreign Ownership of Land must be complied with. The transfer fees outlined in [Tariff item 3](#) which are based on the value of the leasehold interest as determined by the lessee which is indicated in the affidavit of transferee, are charged. Consideration is shown on the title as specified in the affidavit of transferee. A new certificate of leasehold title is issued. The particulars of the transfer are not endorsed against the fee simple or prior leasehold title, as the case may be.

10. **Mortgage of Lease** - If no certificate of leasehold or sub-leasehold title has been issued, a mortgage of a lease or sub-lease can only be registered by way of caveat.

If a certificate of leasehold or sub-leasehold title has been issued, the procedure on mortgages applies (see procedure under [MOR-1](#)). The lessee or sub-lessee must mortgage all of their estate and interest. The mortgage is only endorsed against the certificate of leasehold or sub-leasehold title, as the case may be.

11. **Subdivision of Leasehold Estate** - If the leasehold estate is subdivided under a condominium or subdivision plan, "SUBDIVIDED BY PLAN \_\_\_\_\_" is added to the particulars for the lease memorandum on the fee simple title. The registration date of the plan is included.

12. **Cancellation of Lease** - A lease registration or leasehold title can be cancelled upon presentation of any one of the following:

a) A surrender in the prescribed form ([10](#)) ([FORM 14](#)) executed by the current lessee in favour of the current registered owner of the fee simple or leasehold estate, as

the case may be. Where a lease has been granted to an individual, a surrender must comply with dower requirements. If a certificate of leasehold title has been issued, each person entitled to the benefit of an instrument or caveat registered against the title must consent to the surrender.

b) A certified copy of a court order stating that the lease has expired and is no longer of any force or effect. The order must comply with the requirements of section 191 of the Land Titles Act (11) (see procedure under [ORD-1](#)). The order may also be used to discharge any caveat which is based on the existence of the lease.

c) A certified copy of a court order which directs cancellation of the lease or leasehold title or which establishes that there has been a lawful re-entry and recovery of possession by the lessor pursuant to section 97(b) of the Land Titles Act. (12)

d) A discharge executed by the current lessee certifying that the term of the lease has expired and the lessee is no longer in possession. (13)

e) A request to merge, where all requirements for merger are met (see procedure under [MER-1](#)).

f) If leasehold title issued use SURL to surrender lease from fee simple title and RLEC to cancel leasehold title.

An amending agreement relating to the lease is also cancelled when the lease is cancelled.

Apart from being provided with a discharge by the lessee, the Registrar has no authority to cancel a lease on the basis that the term appears to have expired. The lessee might still be in lawful possession of the leased premises by virtue of having exercised an option to renew or having rights as an overholding tenant.

**13. National Park Lease** - The above procedures apply to a lease in a National Park except as follows:

a) The lessor is Her Majesty the Queen in Right of Canada but there is no fee simple title issued for the land.

b) In lieu of an original instrument, a copy certified by or on behalf of the Deputy Minister, Acting Deputy Minister or Director of Realty Services Branch of the appropriate federal department, may be registered. (14) Alternatively, the Chief Executive Officer under the Parks Canada Agency Act or a person duly authorized by the Chief Executive Officer, can certify a copy of the original instrument. (15)

c) A renewal of an existing registered lease may be registered if the name of the registered owner is the same as on the renewal. [Tariff item 11\(6\)](#) is charged. When the name of the owner is not the same, we require the chain of documents connecting the name of the registered owner to the name on the renewal of lease. If there is more than one document in the chain, staple together and treat as one. The chain should be registered as a TFLH, prior to the renewal of lease, and fees should be based on the Affidavit of Value. A renewal of lease which refers to both the legal description in the leasehold title and a new legal description assigned pursuant to a registered plan of re-survey under the Canada Land Surveys Act is registrable if it is accompanied by a statutory declaration by a surveyor stating that the land referred to in the old legal description is the same as the land referred to in the new legal description. The consent of all interest holders to the change in legal description is required. [Tariff item 11\(4\)](#) is

charged.

The existing certificate of title is cancelled under the registration of the renewal of lease and a new certificate of title is issued, using the new legal description if applicable. All live memoranda from the cancelled certificate of title are carried forward to the new certificate of title. The title number is the registration number of the renewal of lease and the number of the cancelled certificate of title is the reference number.

d) When there is a subsisting leasehold title and a document is presented for registration with a new legal description which resulted from a re-survey, it may only be accepted after the legal description has been changed by registration of a statutory declaration and consents of interest holders as in (c) above. A new certificate of title is issued using the new legal description and the previous certificate of title is cancelled. All live memoranda are carried forward to the new certificate of title. The new certificate of title number is the registration number of the statutory declaration and consents and the reference number is the registration number of the cancelled certificate of title. [Tariff item 11\(4\)](#) is charged for the registration of the statutory declaration and consents. The appropriate fee is charged for the registration of the document which contains the new legal description.

e) Any disposition of an interest in the leasehold estate, such as an assignment or mortgage of the lease requires the consent of an official of the appropriate federal department, except a sublease within the Town of Banff.

f) An assignment of lease which includes a clause transferring the lessee's interest in the leased lands has historically been accepted as a substitute for a [\(FORM 8\)](#) transfer. However, the usual transfer affidavits are still required.

g) Subdivision approval is not required if only part of a parcel is being leased.

h) An amending agreement on a National Park Lease requires dower compliance for the **LESSEE**.

## STATUTE AND CASE REFERENCES

Statute references are to the Land Titles Act, R.S.A. 2000, c. L-4, unless otherwise indicated.

1. R.E. Megarry and H.W.R. Wade, *The Law of Real Property*, 3rd ed., p. 623
2. V. DiCatri, *Thom's Canadian Torrens System*, 2nd ed., p. 578 ff
3. s. 95(3)
4. s. 61(1)(d); *Eastcal Developments v. Whissel Enterprises Ltd.* 1980 25 AR 93 (Alta. C.A.)
5. s. 32
6. *Le Corporation Episcopale Catholique Romane of St. Albert v. R.J. Sheppard & Co., Ltd.* (1913), 3 W.W.R. 814 (Alta. S.C. Chambers); *In re The Land Titles Act [1921]* 2 W.W.R. 841 (Sask. Master of Titles); *Broersma v. Maier et ex.* (1970), 72 W.W.R. 153 (Alta. S.C.) raises some doubt about what constitutes a lease of less than 3 years but does not appear to have considered previous case law on this point.
7. Form 13, Forms Regulation, Alberta Regulation 480/81
8. s. 32(2)
9. s. 129
10. s. 100(3)
11. s. 101

12. s. 98
13. s. 101(4)
14. s. 30
15. s. 3 and 5, Parks Canada Agency Act, Chapter P-0.4 (1998, c. 31)