

BACKGROUND

The doctrine of merger involves the destruction or merger of a lesser estate into a larger estate. "In real estate law merger occurs when two estates coalesce through a vesting in the same person at the same time in the same right. For example, when a tenant for years acquires the reversion in fee simple the term of years is merged or, more colourfully phrased, it is 'annihilated' or 'drowned'." (1)

The rigid common law rule of always merging the lesser estate into the larger was tempered by the courts of equity which made the question of merger a matter of intention to be determined having regard to all the circumstances. (2) This latter approach to merger is embodied in section 62 of the Law of Property Act (3) which provides that "there shall not be a merger by operation of law only of any estate the beneficial interest in which would not be deemed to be merged or extinguished in equity."

It has become established practice of the Land Titles Office to apply the doctrine of merger in certain situations where there is evidence of the intention to merge a lesser estate into a larger estate. The Alberta practice is more liberal than most other Torrens jurisdictions. (4)

REGISTRATION PROCEDURE

1. Merger can be applied to the following documents:
 - a) a mortgage or caveat by the mortgagee when the mortgagee acquires the fee simple estate,
 - b) a lease or caveat by the lessee when the lessee acquires the fee simple estate, and,
 - c) a caveat by a purchaser under an agreement for sale or an offer to purchase or a transferee under an unregistered transfer when the caveator acquires the fee simple estate.

If the person or persons entitled to both the lesser and larger interests are not identical, merger is not to be applied and a discharge of the document is required.

2. Merger will only be effected when there is a written request to do so at the time of registration of the transfer. This request is usually contained in the "Special Instructions" section of the Document Registration Request form ("D.R.R.") relating to the transfer but may also be by way of separate letter from the transferee or his solicitor or by a request on a plan. Attach the document label to the D.R.R. (or photocopy of D.R.R.) or the letter requesting the merger. [Tariff item 11\(2\)](#) is charged.

3. A caveat or a certificate of *lis pendens* relating to a mortgage which has been registered by the person acquiring the fee simple title may be merged when the mortgage is merged.
4. **Lease** - If a leasehold title has been issued, merger should not be applied if there are instruments or caveats registered against the leasehold title which are not also registered against the fee simple title. However, merger may be applied if instruments and caveats registered against only the leasehold title are discharged before registration of the transfer.
5. If a title has been issued for the interest that is merged, the merger is registered using the request to cancel life or leasehold title (RLEC) and surrender of lease (SURL) document types. In all other cases the merger (MERG) document type is used.
6. A merged document does not appear on the new certificate of title.

STATUTE AND CASE REFERENCES

1. *Fraser-Reid et. al. v. Droumtsekas et. al.* (1980), 9 R.P.R. 121 at p. 139 (S.C.C.)
2. *Hashman, Riback & Bel-Aire Estates Ltd. v. Anjulin Farms Limited*, [1973] 2 W.W.R. 361 (S.C.C. on appeal from Alta. C.A.); *Morretta and Morretta v. Western Computer Investment Corporation Ltd.*, [1984] 2 W.W.R. 409 (Alta. C.A.)
3. Law of Property Act, R.S.A. 2000, c. L-7
4. V. DiCatri, *Thom's Canadian Torrens System*, 2nd ed., p. 546