

# A PENDING REGISTRATION QUEUE AT THE ALBERTA LAND TITLES OFFICE – HOW WILL IT WORK?

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Starting with documents submitted for registration on April 1, 2021,<sup>[1]</sup> the concept of a voluntary pending registration queue (“**PRQ**”) at the Alberta Land Titles Office (“**LTO**”) will be introduced, thanks to various amendments to the *Land Titles Act*<sup>[2]</sup> plus a forthcoming *Pending Registration Queue Regulation*.<sup>[3]</sup> This Bulletin summarizes the current requirements for utilizing the PRQ and how the new registration process is intended to work.

The key takeaway is that by utilizing the PRQ, a submitting party will, in most instances, have priority on title guaranteed on submission. In turn, transactions may be able to close and funds may be able to be released without the necessity of waiting for actual registration. The implementation of the PRQ may also enable parties to avoid obtaining gap title insurance coverage, resulting in further time and cost savings on closing. Notwithstanding the foregoing, reliance on the PRQ is an optional regime and lawyers or transaction parties may decline to rely on it. It will be important for the parties to determine in advance of a closing whether or not the PRQ regime will be used and relied on to facilitate closing.

## Practical Considerations

The implementation of the PRQ creates several practical considerations for closing processes in Alberta real estate transactions. Specifically, the following high level items should be considered in transactions:

- When negotiating a purchase and sale for a property, the parties should consider explicitly drafting into the purchase and sale agreement whether or not they will rely on the PRQ at closing, as the PRQ is a voluntary regime.
- There are various documents that will not be given a legal land identifier (as discussed below at *Documents Not Found in the PRQ*), accordingly, when conducting initial due diligence searches, a party should be aware of the various documents for which there is no legal land identifier, as it may necessitate further searches to determine if any of these potential exceptions may exist and could affect title to the property. If there is uncertainty regarding the existence of any of these excepted documents, title insurance may still be required to cover the potential risk.

- On submission of a Document Registration Request (“**DRR**”), LTO has advised parties to check the PRQ or search for pending registration requests to ensure that a DRR was received by the LTO, and to contact LTO if the DRR was not received within two hours of submission. Given the possible delay between submission of a DRR and its appearance in the PRQ, parties should consider conducting a search on or after the two-hour mark from DRR submission on closing to ensure that the documents were properly received and entered in the PRQ. This may result in the overall timing of closing being adjusted to include this additional step or may still require parties to consider a policy of gap title insurance to allow immediate release of funds and closing.

### **Document Registration Requests**

Generally, subject to certain exceptions, as long as documents submitted to the LTO have been given a legal land identifier, the submitted documents, so long as they otherwise comply with LTO registration requirements, will be accepted for registration in the order they were received. The LTO will consider a document “received” once it is submitted to the LTO and entered in the PRQ.

The PRQ will expressly not apply to submissions that are either survey documents or large registration requests.<sup>[4]</sup> The LTO defines a large registration request as one document including more than 20 titles or more than eight document registrations on one SPIN2 DRR (i.e. maximum 160 titles per DRR).<sup>[5]</sup>

DRRs will continue to be created on the LTO’s SPIN2 system and will now include a legal land identifier for priority status when registered. After registration, certified copies of title will no longer be provided by LTO. A copy of title can be obtained through the SPIN2 system.

LTO has made a further change regarding time sensitive documents. These documents will now be registered in the order they were received in the PRQ.<sup>[6]</sup> In other words, time sensitive documents that require same-day registration will not be registered immediately upon being received in the PRQ.

### **Exceptions**

A document may be registered out of order from the PRQ if the LTO feels doing so is necessary to correct an error made by the LTO, to comply with a Court order, or because an out of order registration would not “affect any other estate or interest in respect of which” another document has been entered in the PRQ which relates to the same land as the proposed out of order registered instrument or caveat.<sup>[7]</sup>

Caveats registered on behalf of the Crown or a person with a disability prohibiting the transfer of or dealings with the subject land will be registered as soon as they are filed.<sup>[8]</sup>

### **Searching the PRQ**

Any person conducting an LTO land titles search will receive search results including documents entered in the PRQ (which will have a status of “received” or “deficient”), the date such documents were entered and therefore their prospective priority of registration.<sup>[9]</sup> Only active DRRs in the PRQ will be shown.<sup>[10]</sup>

The PRQ information will now be shown at the bottom of title, namely the date a DRR was received, the type of document and the submitter’s contact information,<sup>[11]</sup> similar to how current registrations on title are depicted.

### **Documents Not Found in the PRQ**

Certain documents will not require a legal land identifier, e.g. a mortgage standard form, right of way plans, restricted development area notices, tax arrears lists etc., as a result, they will not show up in a search of the PRQ or the PRQ endorsements on title.<sup>[12]</sup> This means that one of the above documents may have priority on title, as compared to another document that has been entered in the PRQ. If there is a particular concern that one or more of these types of documents may be registered against title, the PRQ system in and of itself may be insufficient to guarantee priority and title insurance may be an alternative solution.

### **Curing Deficient Submissions**

Generally speaking, minor deficiencies in submissions to the LTO will be able to be rectified without losing position in the PRQ.

If an instrument or caveat submitted to the PRQ is deemed incomplete or otherwise deficient by the LTO, the LTO will return the document along with a Notice of Deficiency (formerly called a Rejection Notice) identifying the deficiency. The submitting party then has thirty (30) days to correct the deficiency, with their document being marked “deficient” in the PRQ and resubmit the document, with priority on title (i.e. their place in the PRQ) maintained.<sup>[13]</sup> The start of the thirty (30) day period will be indicated by the “deficiency date” on the issued Notice of Deficiency.<sup>[14]</sup> If the submitting party fails to meet the thirty (30) day resubmission deadline, the corresponding documents are removed from the PRQ.<sup>[15]</sup> With the PRQ being an optional regime, parties should consider whether any potential deficiencies can actually be addressed within the thirty (30) day window, or if it is better to avoid using the PRQ for that document.

A document that the LTO determines was “submitted in bad faith or its defects are such that they cannot reasonably be corrected” will be rejected without an opportunity for correction and removed from the PRQ.<sup>[16]</sup>

### **Recourse for a PRQ-related Mistake or Omission Under the Land Titles Act**

The Land Titles Act currently provides recourse for a party that suffers loss or damages because of acts or omissions of the LTO or its employees, through an action against the LTO Registrar for recovery of damages.<sup>[17]</sup> This provision will now be extended to LTO acts or omissions that contravene the priority registration of the

PRQ and which are not caught by the above-noted exceptions.<sup>[18]</sup>

## Conclusion

McMillan's Commercial Real Estate team stands ready to help you utilize the PRQ and will continue to keep you apprised of any updates relating to the implementation of the PRQ.

[1] [OIC 55/2021](#) (February 17, 2021).

[2] [Land Titles Act](#), RSA 2000, c L-4 [*Land Titles Act*], as amended by the [Red Tape Reduction Implementation Act, 2020 \(No. 2\)](#), SA 2020, c 39, s 7 [[Red Tape Reduction Implementation Act, 2020 \(No. 2\)](#)].

[3] [Pending Registration Queue Regulation](#), OIC 56/2021 (February 17, 2021) [PRQ Regulation].

[4] Land Titles & Surveys, "[Alberta Land Titles and Surveys Policy and Procedures Changes](#)", (8 February 2021), online (pdf) ("Pending Registration Queue Changes posted March 2021" pdf) [LTO PRQ Factsheets].

[5] *Ibid* ("Policy and Procedures Changes 2021" pdf).

[6] LTO PRQ Factsheets, *supra* note 4 ("Pending Registration Queue Changes posted March 2021" pdf).

[7] PRQ Regulation, *supra* note 3, s 1.

[8] [Red Tape Reduction Implementation Act, 2020 \(No. 2\)](#), *supra* note 2, s 7(13), (15) (new sections 151(2), 168(3)).

[9] [Red Tape Reduction Implementation Act, 2020 \(No. 2\)](#), *supra* note 2, s 7(5) (repealed and replaced section 17).

[10] Land Titles & Surveys, "[Pending Registration Queue Overview](#)" (22 March 2021), online (pdf) at 4 ("Pending Registration Queue Memo Volume Data posted March 29 2021") [LTO March 29 Update].

[11] *Ibid*.

[12] [LTO March 29 Update](#), *supra* note 10 at 2–3.

[13] PRQ Regulation, *supra* note 3, s 2; [Red Tape Reduction Implementation Act, 2020 \(No. 2\)](#), *supra* note 2, s 7(4) (new section 14.1(6)).

[14] [LTO March 29 Update](#), *supra* note 10 at 3, 12.

[15] [Red Tape Reduction Implementation Act, 2020 \(No. 2\)](#), *supra* note 2, s 7(4) (new section 14.1(6)(a)(ii)).

[16] [Red Tape Reduction Implementation Act, 2020 \(No. 2\)](#), *supra* note 2, s 7(4) (new section 14.1(6)(b)).

[17] [Land Titles Act](#), *supra* note 2, s 168.

[18] [Red Tape Reduction Implementation Act, 2020 \(No. 2\)](#), *supra* note 2, s 7(15) (new section 168(2)–(4)).

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## A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

The logo for mcmillan, featuring the word "mcmillan" in a lowercase, sans-serif font. The "m" and "c" are in a dark red color, while the "m", "i", "l", "l", "a", and "n" are in a light blue color. The logo is positioned in the upper left corner of a banner image that shows a low-angle view of a modern glass skyscraper against a clear sky.

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