

Interest Transactions Manual

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Interest Transactions

Interests are not indefeasible. Anyone can claim anything as an interest – a court judges the validity of the interest and its priority in relation to the title. In the Old Paper-based System, an applicant had to prove she/he had the capacity to register an interest. In the new LAND System, the Land Titles Registry will not check that the necessary prerequisites have been met in relation to the initial registration of an interest.

An interest is any claim against the whole parcel of land, or against an undivided interest in a parcel. In the new LAND system, the terminology and handling of interests is simplified in comparison to old, paper-based system. For example, anything that can be registered against a title (i.e., a writ, a mortgage, a lien, etc.) is now referred to simply as an interest. In addition, the Land Titles Registry will not be checking the validity of an interest – the system is simply a claims registry.

In the LAND System you can:

- Register an interest – a first time marker of an interest on a title. You can register an interest against a title, an interest, or an abstract directory record.
- Assign an interest – changes the holder of an existing interest. An interest assignment was a transfer of an interest in the Old Paper-based System.
- Amend an interest – changes the terms of registration of the interest (i.e., adds a name or changes the value). An amendment is effective from the time it is registered. If the amendment applications a renewal (i.e., an extension to the expiry date), then the interest retains its original priority.
- Discharge an interest.

Interest Registration

What Can Be Registered?

Under the new legislation, the term “interest” is used to include any right, interest, or estate, whether legal or equitable, in, over, or under land recognized at law that is less than title.¹ This includes:²

- Interests in land recognized at law as an interest in land, such as leases, mortgages, and easements.
- Interests in land that are registrable pursuant to federal or provincial statute, such as writs of execution, builders’ liens, heritage property designations, and dozens of others.
- Any interest in land that is designated in the regulations to be registrable, if it does not fall into the first two categories. A possible future use of this category includes encroachment agreements, which do not definitively fall into the first category.

Interests can be registered against titles and interests.³ For example, a lease may be mortgaged. In that case, the lease is registered against the title, and the mortgage is registered against the lease.

Under the new legislation, postponements can be registered for most interests.

Under the old legislation, postponements could only be registered to affect “encumbrances”⁴ (that is, mortgages, “mechanic’s” liens, and executions). However, customers routinely attempted to postpone other interests as well. Under the new legislation, postponements can be registered for most interests.⁵

¹ *Op. Cit., The Land Titles Act, 2000*, clause 2(1)(s)

² *Ibid.*, section 50

³ *Ibid.*, subsection 50(2)

⁴ *Op. Cit., The Land Titles Act*, section 146

⁵ *Op. Cit., The Land Titles Act, 2000*, section 62

Effect of Registration

The old legislation did not speak to the effect of registration, against a title, of an interest in land. Some very old case law (none of it from Saskatchewan) spoke to the issue somewhat indirectly at times. Therefore, in the new legislation, the effect of such registration is made clear.

First, registration of the interest constitutes notice of the interest to third parties.⁶ As mentioned above, for any interest that is not registered, parties dealing with the owner can blissfully ignore it, even if they are aware of it. However, if it is registered, the notice is real.

Second, the interest is effective only according to the terms of the agreement or the law on which the interest is based and is not deemed to be valid through registration.⁷ This means that:

- If there is a signed agreement between the parties, but there are legal arguments as to why that agreement may not be enforceable (such as non est factum, total failure of consideration, breach of fiduciary duty, etc.), the mere registration does not confer validity.
- If there is a signed agreement between the parties, no terms of that agreement are imputed through registration – the terms of the agreement and the relevant law determine the rights and obligations of the parties.
- If there is no signed agreement between the parties, there may still be an interest in land.
- Regardless of what the interest in land is named, the agreement determines the rights and obligations (for example, a lease does not become a mortgage merely by registering it as such).

Third, an interest in land must be valid before it is registered. It must be one of the interests listed in section 50, and it cannot be perfected after registration.⁸

⁶ *Ibid.*, subsection 54(2)

⁷ *Ibid.*, subsection 54(3)

⁸ *Ibid.*, subsection 54(4)

Fourth, for certain interests, disclosure of the terms of the interest is mandatory to make registration valid. For interests in the first category (that is, recognized at law as an interest in land) and the third category (that is, interests declared in the regulations to be registrable), the application for registration must include either:

- A summary of the interest (e.g., mortgage for \$100,000 at 10% for 5 years). OR
- An attachment that provides disclosure of the interest.⁹ This attachment can be a piece of paper that summarizes the relevant terms or a copy of the agreement between the parties.

The automated system will reject the application for registration if it does not detect either the summary on the registration form or an attachment. However, no staff person in the Land Titles Registry will read the attachment. If it does not relate to the interest claimed, the registration will proceed but it will be invalid.

Finally, although the registration provides notice to third parties, those third parties need not concern themselves with terms of the interest that are not disclosed.¹⁰ It is therefore wise to disclose as much information as possible to protect all possible rights. Attachment of the full agreement will provide the best disclosure possible. If there are terms of that agreement that are confidential, a summary of the agreement may provide notice of the other rights, but not for any rights that are not disclosed.

If an interest contains both a summary of the interest and an attachment, the information provided in the attachment prevails.¹¹ This resolves any potential conflict between the two descriptions of the interest. As well, if the original registration included only a summary of the interest, the notice can be “upgraded” by registering an amendment that attaches the agreement. The improved notice has priority only from the date of the registration of the amendment.

⁹ *Ibid.*, subsection 54(5)

¹⁰ *Ibid.*, subsection 54(5). This was previously the case for caveats, as confirmed by the Supreme Court of Canada in *Ruptash v. Zawick*, [1956] S.C.R. 347, 2 D.L.R. (2d) 145

¹¹ *Ibid.*, subsection 54(6)

For interests that are in the second category – that is, interests in land that are registrable pursuant to federal or provincial statute – the rights protected by registration are found in the relevant statute, and no additional disclosure, other than provided for by the legislation, is required to make registration valid.¹² An example of this is a builder's lien, which requires a certain form for registration.

The important features that are found in the above-mentioned rules are that:

- An interest can be valid without registration, but it is not effective against third parties.
- An interest can be registered without being valid.
- If it is determined at any time that a registered interest is not valid, it can be removed, usually by court order¹³.

Disclosure of Information by Interest Holder

There is no absolute requirement to disclose the full agreement when registering an interest, so provisions have been enacted to permit an interested individual to receive a copy of the instrument on which the registration is based.¹⁴ It is expected that this option would be exercised most often by the registered owner or interest holder against whose title or interest the interest is registered, since no other third party is bound by any term that is not disclosed.

Since most interest types do not require disclosure, it is at your discretion to determine the extent of the disclosure. The exception to this rule includes interests whose governing statute has a prescribed form. This form will be required by way of attachment in most cases. When there is no prescribed form, you have the choice of:

- Disclosing the nature of the interest in the text box provided (to a limit of 180 characters).
- Attaching a document that summarizes the interest or agreement on which the interest is based.
- Attaching the entire document or agreement on which the interest is based.

¹² *Ibid.*, subsection 54(7) and 54(8)

¹³ For an exception to this general statement, see "Improper Registration".

¹⁴ *Ibid.*, section 57

Features and Significant Features

“Features” are interests in land that apply to less than the full parcel of land.¹⁵ There is nothing in the legislation that provides for any different registration for features than for any other interest in land, apart from section 151 of *The Land Titles Act, 2000*, which is not now proclaimed in force.

Authorization to deal with interests

The Land Titles Registry will not be checking for authorization of the title or interest holder on registration of an interest against that title or interest, given the effect of the registration of that interest. However, because there could be severe consequences if a valid interest were to be amended, assigned, or discharged improperly, the Land Titles Registry will require appropriate authorization to deal with that interest.¹⁶ As in the case of transfers, that authorization can include the consent of the registered interest holder, or an authorization that dispenses with the consent of the interest holder, such as an expropriation order, court order, or transmission to a personal representative or trustee in bankruptcy.

Registering an Interest

This process allows you to register an interest against a title, an interest, or an abstract directory record, by filling in the appropriate forms and including the necessary authorization. It is important to keep in mind that the required fields on the forms must be filled in or the application will be rejected. The system, and not Land Registry staff, will check to make sure that all mandatory fields have been filled in.

All transactions in the new LAND System require forms to be filled out “applicationing” the transaction. The process for applicationing an Interest Registration is as follows:

- Download the Application for Interest Registration form available on the ISC website (www.isc.ca) under the Forms tab.¹⁷

¹⁵ Note that “feature” is not a term used in either *The Land Titles Act, 2000* or *The Land Surveys Act, 2000*

¹⁶ *Op. Cit., The Land Titles Act, 2000*, section 58

¹⁷ You simply have to download the form each time you need to do a transaction. You may also photocopy the form, as long as the bar code is still readable.

Assurance protection is not provided for customers who deliberately choose to register their mortgage as a different interest type (such as a miscellaneous interest in land) to avoid paying the fees incurred when registering a mortgage.

If no value is entered when the value is mandatory, or if the value is not greater than 0, the Application will be rejected, which means a delay in getting the interest registered.

- Complete the Application Sequence Number field.
 - This tells the Land Registry staff what order you want each of the forms in a packet to be entered into the system. Because a packet can deal with different applications to register interests, you need to indicate the order of work for the whole packet.
- Complete the Interest Register Type field in the application form.
- Choose the condition. You must check or enter details for this section of the form by way of one of the following three choices:
 - Check **No Conditions** if you will accept any existing interest, writ, or maintenance order that carries forward or is set up on the new title.
 - Enter the date and time in the **Conditional Registration Date and Time** box if you wish the transfer to be subject to any interest, writ, or maintenance order existing on this date, but that the application should be rejected if any new registrations against the surrendered title have occurred since.
 - Check **Free and Clear Registration** only if the title should be issued clear of any and all interests.
- If you want the interest to automatically expire, enter the required date in the Scheduled Expiry Date field.
 - The system will automatically discharge the interest on this date without any action required of the registrant or any other individual.
 - The date you enter into this field must be in the future and valid.
- Complete the Interest Register Value field, if applicable.
 - This is a mandatory field for the following interest types:
 - Liens for arrears pursuant to the Condominium Property Act, 1993.
 - Public Trustees Lien.
 - Arbitration costs pursuant to the Condominium Property Act, 1993.
 - Bank Act security.
 - Builder's Lien.
 - Mortgage.

- Complete the feature number on the Application form, if applicable.
 - The feature number is available from the plan of survey.
 - The system verifies that the feature is on the parcel in question.
- Complete the Description of Interest box, if applicable.
 - Since most interest types do not require disclosure, it is at your discretion to determine the extent of the disclosure.
 - The exception to this rule includes interests whose governing statute has a prescribed form. This form will be required by way of attachment in most cases.
 - When there is no prescribed form, you have choice of:
 - Disclosing the nature of the interest in the text box provided (to a limit of 180 characters).
 - Attaching a document that summarizes the interest or agreement on which the interest is based.
 - Attaching the entire document or agreement on which the interest is based.

**NOTE**

The “Description of Interest” field for Applications for Interest Registration is limited to 180 characters (including spaces, punctuation, etc.).

- Any Application for Interest Registration which contains more than 180 characters in the “Description of Interest” field will be rejected by the TPS worker.
 - To include a description that is more than 180 characters, print the description on a separate sheet of paper and append it to the application as an attachment, using the “Begin Attachment” sheet.
 - If you have any further questions about the registration of interests, please contact the Customer Call Centre at our toll-free telephone number at 1-866-ASK-ISC1 (1-866-275-4721) or by email to ask@isc.ca.
- Complete the Attach Interest To section of the form.
 - You have a choice of what the interest will be registered against:
 - Parcel Number. This will attach the interest to all titles in a parcel.
 - Title Number.
 - Interest Number.
 - Individual Share number.
 - The Application Sequence number. This is used in cases where you are registering an interest against a newly created title or interest that has been established in a previous application in the same packet.



NOTE

You should complete only one field in each row of the “Attach Interest To” grid. For certain interest types, however, you may be required to check a box in the “Dominant” or “Benefiting Interest” column.



NOTE

For a Postponement, you must register against at least two interests, and at least one of them must be checked as a benefiting interest.

*The **Dominant Indicator** must be included for Easement Mutual, Easement Non-Mutual, Party Wall Agreement, Restrictive Covenant Mutual, and Restrictive Covenant Non-Mutual interests.*

For the following types, you **must** register against the **parcels**, and you **must** indicate at least one of the parcels as dominant.

- Easement – Non-mutual,
- Restrictive Covenant – Non-mutual.

*The **Benefiting Interest** must be included for a Postponement.*

For the following types, you **must** register against the **parcels** and you **must** indicate all parcels as dominant:

- Easement – Mutual
- Restrictive Covenant – Mutual
- Party Wall Agreement

If the Dominant and Benefiting fields are not filled in the appropriate instances, the application will be rejected.

- Complete the Fractional Share field and its associated Interest Holder section.
 - The Fractional Share field represents the Interest Holders share of the interest.
 - There are 2 Interest Holder sections. Complete only one.
 - Section A is used when an Interest Holder has a Client Number.
 - Section B is used when an Interest Holder does not have a Client Number.
 - There are 3 possible scenarios:

Scenario 1: A single holder:

- Complete the fractional share field as 1/1.
 - If you have a client number, put it in the corresponding field in Section A, then put your name or your corporate name in the Name field to the right of your client number.
 - If you do not yet have a client number, complete the name and address information in Section B. Give as much information as possible including a postal code.

Scenario 2: Holding as joint tenants:

You may have to use additional page 2s if there are more than two joint tenants being set up.

- Complete fractional field as 1/1 for every joint tenant.
 - Use Section A for every joint tenant with an existing client number. This entails entering the client number in the Client Number field and your name or your corporate name in the Name field.
 - Use Section B for every joint tenant without an existing client number. Give as much information as possible including a postal code.

Scenario 3: Holding as tenants in common:

You will have to use additional page 2s if more than three fractional shares are being set up or if there are more than two joint tenants being set up.

- For each holder, complete the Fractional Share field by indicating the fractional ownership share (e.g., if two owners of an interest each have a 50% share of the interest, the Fractional Share field for each owner will be $\frac{1}{2}$).
 - You do not have to use a common denominator but the total number of shares must add up to 1 (e.g., $\frac{2}{3} + \frac{1}{6} + \frac{1}{6}$).
- A share of the tenancy in common may be held by joint tenants. If this is this case, the joint tenants are set up as follows:
 - Use Section A for every joint tenant with an existing client number. This entails entering the client number in the Client Number field and your name or your corporate name in the Name field.
 - Use Section B for every joint tenant without an existing client number. Give as much information as possible including a postal code.
- Repeat the above steps for each share(s) and holder(s) required.

 **NOTE**

If you are disclosing the nature of your interest by way of an attachment (such as a prescribed form, your agreement, or a summary of your agreement), include a completed Begin Attachment Sheet, and place the attachment immediately behind it.

 **NOTE**

A paper copy of the title showing the newly registered interest may be requested by submitting a Title Print Request form. (See the appendix). If there is an attachment, make sure your Title Print Request is in front of the Begin Attachment Sheet.

Remember that the owner whose title or interest the new interest is registered against will have a notification sent to her or him.

Interest Assignment

In assigning an interest, only the holder information will change. The original substantive information, such as value, expiry date, or attachments will not change during interest assignment. The holder information required is precise in that in the case where individual interests are to be assigned, the exact interest numbers must be indicated. In the case of assigning partial shares of an interest, these must also be indicated. The interest numbers or share numbers can be ascertained through a search.

Authorization

Section 60 permits an individual to register an assignment of any interest. Such an application must be supported by the authorization of the original interest holder.

Interests can be assigned as long as the proper authorization has been secured from the original interest holder.

The form "Interest Authorization" must be completed in full.

 **NOTE**

*The scanning equipment in the e-Business Services Centre cannot generally detect an embossed seal; i.e. **the seal will not appear on the image that is reviewed by LAND Registry staff in association with the application for registration.** As a result, when an authorization document is signed under an embossed seal, it will be necessary to submit a certificate of a lawyer with respect to the presence of a seal on the relevant instrument.*

If an individual is making the application, and the witness is not a lawyer in and for the Province of Saskatchewan, the authorization must be witnessed by an individual who must swear an Affidavit of Execution before a individual authorized to take an affidavit as prescribed in section 24 of the Regulations and as indicated on the Authorization form.

Bodies corporate are responsible for appointing signing authorities. If a body corporate is making the application, and the authorization is not executed under corporate seal, then the corporate signing officer must either:

- Swear an affidavit verifying corporate authority to execute the document without affixing a corporate seal. Or
- The authorization must be witnessed by an individual who must swear an Affidavit of Execution before an individual authorized to take an affidavit as prescribed in section 24 of the Regulations and as indicated on the Authorization form.

 **NOTE**

If a body corporate is making the application, and the corporate officer signing the authorization accompanying that application is under embossed seal, then the applicant must include a lawyer's certificate or a notarial certificate certifying the use of the embossed seal.

 *NOTE* There are special rules contained in the Regulations which apply to documents signed on behalf of the Provincial Mediation Board, the Government of Saskatchewan, and the Canadian Armed Forces. Please refer to sections 25, 26 and 28 of the Regulations.

 *NOTE* There are special rules contained in section 29 of the Regulations with respect to the contents of the Affidavit of Execution attested to by a witness where an authorization is signed on behalf of a individual with a disability.

Assigning an Interest

It is important to keep in mind that the required fields on the forms must be filled in or the application will be rejected. The system, and not Land Registry staff, will check to make sure that all mandatory fields have been filled in.



NOTE

The top half of the form “Application for Interest Assignment” is for the new assignment information. The bottom half of the form is for client information.

- Download the Application for Interest Assignment form from the ISC website (www.isc.ca) under the Forms tab.¹⁸
- Determine the Application Sequence Number and enter it in Application Sequence Number field.
 - This tells the Land Registry staff what order you want each of the forms in a packet to be entered into the system. Because a packet can deal with different applications to register interests, you need to indicate the order of work for the whole packet.

These two fields are a way for the system to verify you have a match with the original interest registration.

- Complete the Interest Register Number field, even if the assignment is not a full assignment.
- Complete the Interest Type field.
- Enter all the interest numbers associated with the interest register being assigned in the Assignment of Interest grid.
 - If specific Interest Shares are being assigned, use the Assignment of Shares grid
- Complete the bottom half of the form with the client information as follows:
 - If you have a client number, put it in the corresponding field in Section A, then put your name or your corporate name in the Name field to the right of your client number.
 - If you do not yet have a client number, complete the name and address information in Section B. Give as much information as possible.

¹⁸ You simply have to download the form each time you need to do a transaction. You may also photocopy the form, as long as the bar code is still readable.

-  *NOTE* These steps must be repeated for each assignment involving a different interest register number, or if there are more interests or clients involved than can fit on one form.
-  *NOTE* Use the Additional Interest Holders form to complete re-assignment for three or more holders.
-  *NOTE* An Interest Authorization form must be completed for each assignor. Make sure the current date appears on the Interest Authorization form.
-  *NOTE* If you require copies of the titles with amendments be sent to clients, fill out a Title Print Request form.
-  *NOTE* A Notification of Assignment will be sent to the parties involved.

Interest Amendment

This process allows you to amend an interest that has been registered against a title, an interest, or an abstract. Any interest that has been registered can be amended by application using the proper form.¹⁹ Amendments can be used to:

- Add better disclosure, by either revealing terms of the agreement that were not previously revealed, or attaching the full agreement.
- Change the title or interest to which the interest applies.
- Change one or several of the terms, such as the value of an interest, or the duration of the interest.

The disclosure provided by any amendment that is registered takes effect only from the date of registration of the amendment.²⁰ Therefore, any individual that has registered an interest in the meantime is not bound by the amendment.

-  *NOTE* Writs and Maintenance Orders may only be amended by registration in the Personal Property Registry.

¹⁹ *Ibid.*, section 59

²⁰ *Ibid.*, subsection 59(3)

Amending an Interest

The Interest Authorization form must be completed and signed by the holders of the interest being amended.



NOTE

To amend an easement, the dominant tenement must authorize the amendment. A partial discharge may also be used in certain circumstances involving full titles.

Completing the form for amending an interest is very similar to completing a form for registering an interest. You must:

- Download the Application for Interest Amendment form from the ISC website (www.isc.ca) under the Forms tab.²¹
- Complete the Application Sequence Number field.
 - This tells the Land Registry staff what order you want each of the forms in a packet to be entered into the system. Because a packet can deal with different applications to register interests, you need to indicate the order of work for the whole packet.
- Enter the Interest Register Number of the interest you are amending.
- Enter the Interest Register Type.
 - This must correspond with the interest type on the title.
- Choose the condition. You must check or enter details for this section of the form by way of one of the following three choices:
 - Check **No Conditions** if you will accept any existing interest, writ, or maintenance order that carries forward or is set up on the new title.
 - Enter the date and time in the **Conditional Registration Date and Time** box if you wish the transfer to be subject to any interest, writ, or maintenance order existing on this date, but that the application should be rejected if any new registrations against the surrendered title have occurred since.
 - Check **Free and Clear Registration** only if the title should be issued clear of any and all interests.

²¹ You simply have to download the form each time you need to do a transaction. You may also photocopy the form, as long as the bar code is still readable.

- Choose which interest information you want to amend. You can do any combination of the following amendments:
 - **Scheduled Expiry Date.** If you want to amend the interest to automatically expire, enter the required date in this field.
 - The system will automatically discharge the interest on this date without any action required of the registrant or any other individual.
 - The date you enter into this field must be in the future and valid.
 - **Interest Register Value.** Simply enter the value you want the interest to be in this field.
 - **Feature Number.** The feature number is available from the plan of survey. The system verifies that the feature is on the parcel in question.
 - **Description of Interest.** Amend the interest description by entering information in the Description of Interest box. This will replace any description currently existing.



NOTE

The “Description of Interest” field for Applications for Interest Amendment is limited to 180 characters (including spaces, punctuation, etc.).

- Any Application for Interest Amendment which contains more than 180 characters in the “Description of Interest” field will be rejected by the TPS worker.
 - To include a description that is more than 180 characters, print the description on a separate sheet of paper and append it to the application as an attachment, using the “Begin Attachment” sheet. *See the Attachment bullet below.*
- **Delete Description of Interest.** Check this box if you would like to amend the interest by deleting the currently existing interest description.

Attach Interest To grid:

You should complete only one field in each row of the “Attach Interest To” grid. For certain interest types, however, you may be required to check a box in the “Dominant” or “Benefiting Interest” column.

- **Parcel Number.** This will attach the interest to all titles in a parcel.
- **Title Number.**
- **Interest Number.**
- **Individual Share number.**
- **The Application Sequence number.** This is used in cases where you are amending an interest against a newly created title or interest that has been established in a previous application in the same packet.

- **Detach Document Number.** If you are deleting an old attachment, enter any document numbers referencing those attachments, or support documents, that no longer apply because of the amendments. If what you are attaching is additional disclosure to what you disclosed originally, do not delete the existing attachment(s).
- **Attachment.** If you are disclosing the nature of your interest by way of an attachment (such as a prescribed form, your agreement, or a summary of your agreement), include a completed Begin Attachment Sheet, and place the attachment immediately behind it.
 - There are no boxes to check or fields to fill out. The presence of the Begin Attachment form will amend the interest's attachment.

**NOTE**

A paper copy of the title showing the newly registered interest may be requested by submitting a Title Print Request form. If there is an attachment, make sure your Title Print Request is in front of the Begin Attachment Sheet.

Remember that the owner whose title or interest the new interest is registered against will have a notification sent to her or him.

Interest Discharge

If an interest has interests registered against it, the discharge of the “parent” interest will discharge all of the “children” interests registered against it.

These reasons will be shown on any notifications the system produces upon the discharge of an interest.

If the authorization is received by way of Power of Attorney, the discharge will still be seen as voluntary.

There are a number of methods that can be used to discharge interests from titles and from interests against which they are registered. With all of these methods, it is important to remember that, if an interest has interests registered against it, discharge of the “parent” interest has the effect of discharging all of the “children” registered against it.

Reasons for Discharge

To aid you in understanding what documentation and information you will have to provide, the following is a brief description of each of the reasons for discharge by category:

Voluntary Discharge

The most common method of discharging an interest registration is by the action of the interest holder.²² The interest holder is required under the legislation to discharge the registration of the interest when it has come to an end.²³ There is no fee for discharges, which is intended to encourage interest holders to discharge them appropriately, and keep the registry clean.

The holder of the interest must provide authorization for the removal of the interest, usually as a result of the obligations under the instrument or statute creating the interest having been met.

Discharge by Operation of Law

In the event that an interest is erroneously carried forward onto a title that has been raised, for example, by way of tax proceedings or expropriation, this reason could be used once the error has come to the attention of the Registrar.

²² *Ibid.*, section 64

²³ *Ibid.*, section 66

Expiration of Time

It is possible for interest registrations to be time-limited, either because a time limit is selected by the registrant or the interest itself is of the type that has a limited life.²⁴ An example of this is a writ of execution, which has a life of 10 years unless renewed.

At the expiration of the time specified in the registration, unless it is renewed, the interest will simply be erased from the registry, without any action required of the registrant or any other individual.

Any such interest may be renewed, without losing priority, at any time before the registration expires.²⁵

Lapse

An interest may be discharged through lapse. The lapsing process is a two step process involving the service and registration of the Notice – Lapse Procedure Commenced and the swearing of an Affidavit of Lapse.

The lapsing process is discussed in detail in the Lapse of Interest Manual, found on the ISC website (www.isc.ca) in the Reference Materials section under Interest Transactions.

²⁴ *Ibid.*, section 55

²⁵ *Ibid.*, section 56

Exhaustion

Exhausted interests are those that have ceased to have any effect due to the passage of time. Section 67 deals with exhausted interests. There are a limited number of interest types that are subject to exhaustion. The regulations will include a list of exhausted interests as follows:

There are a limited number of interest types that are subject to exhaustion. An interest is exhausted either when a certain period of time has elapsed since its registration, or if certain conditions have come into being since its registration.

- A caveat based on a restrictive covenant that was filed in the Old Paper-based System, when it is more than 50 years old.
- Mutual and non-mutual restrictive covenants that are more than 50 years old. And
- Homestead rights, replotting schemes under The Planning and Development Act, 1983, or orders under The Surface Rights Acquisition and Compensation Act²⁶, when they either expire in accordance with an express provision in the instrument or an event occurs that makes the interest unenforceable.
 - A Homestead interest may be exhausted upon the Registrar receiving proof of the death of the interest holder, or proof of the dissolution or annulment of the marriage of the owning spouse and the interest holder.

Court Order

The court retains the power to order, in appropriate circumstances, that a registered interest be discharged. The general jurisdiction of the court is found in section 109. There are also specific references to the court ordering a discharge of a registration, including section 57, on an application in the case of an interest holder who refuses to disclose the nature of the interest, and under section 68, where there has been an improper registration.

²⁶ R.S.S. 1978, c. S-65

Summary Discharge

Summary Discharges are specific to Writs and Maintenance Orders (and other interests deemed as Writs).

An Affidavit of Identity is required to have the relevant interest removed from the title/interest. This documentation must accompany the Application for Discharge.

Writs and maintenance orders are registered against the title or interest without entering into an agreement with the registered owner or interest holder. Often they are registered based on a similarity or exact match of the name of the debtor or respondent with the name of the registered owner or interest holder, when that individual is not the individual responsible for the debt or maintenance order. In those cases, the registered owner or interest holder against whose title or interest the writ or maintenance order is registered may apply for a summary discharge of the writ or maintenance order from the title or interest.²⁷

The procedure will be set out in the regulations. It will involve an application by the registered owner or interest holder to discharge the writ or maintenance order, and will require an affidavit from the registered owner or interest holder to the effect that he or she is not the debtor or respondent named in the writ or maintenance order.

Registrar's Discharge

Certain provisions of The Land Titles Act allow the Registrar, in response to a question relating to the Act or the operation of the registry, to effect any registration s/he considers just in the circumstances. This includes the discharge of an interest that was improperly registered or held to be invalid. The documentation supporting a discharge application in these instances will be a Registrar's Order.

Section 68 allows an individual "who alleges that an interest was improperly registered by a individual who lacks the authority to do so or that a registered interest is invalid" to apply to the Registrar or the court for a discharge of the interest. Some cases in which the use of this provision might be appropriate include:

- Where a registered interest was valid when registered, but has ceased to be valid.
- Where an interest was carried forward on a new title and should not have been.
- Where an error is made in registering the interest, such as registration against the wrong title or interest.
- Where the claim does not represent a valid interest in land (such as an unsecured loan).

²⁷ *Ibid.*, sections 175 and 181

The question arises as to the extent of the Registrar's power, as opposed to the court's power, to rule on whether or not a registered interest is an improper registration. It is quite clear that the Registrar has the power to correct errors.²⁸ However, if the purported "improper registration" is challenged as not being an interest in land, does the Registrar have the constitutional ability to make such a ruling?

The Land Titles Registry will proceed on the assumption that, if there is a legitimate question as to whether or not an interest is "an interest in land", the ruling is a quasi-judicial one that is outside the powers of the Registrar. In such cases, the Registrar will refer the matter to court. If, however, it is clear from the instrument that it is a personal obligation that does not affect land, the Registrar may discharge it.

The legislation also permits a court to award damages against the interest holder, if the registration of the interest or its continuance is not justified under the circumstances.²⁹

Crown Discharge

In appropriate cases, the Act permits the Crown to direct the Registrar to remove an interest against a title held by the Crown, or against an abstract.

²⁸ *Op. Cit.*, *The Land Titles Act, 2000*, section 97

²⁹ *Ibid.*, section 68

Discharging an Interest

To discharge an interest, simply fill out the Application for Interest Discharge form and provide the appropriate documentation and authorization to support this application. It is then up to the LAND Registry staff to review all the documentation provided and determine a reason for discharge that he or she will then enter into the system. See the section above for an indepth description of each reason for discharge.

The procedure for an Interest Discharge is as follows:

- Download the Application for Interest Discharge form. This form is available on the ISC website (www.isc.ca) under the Forms tab.³⁰
- Complete the Application Sequence Number field.
 - This tells the Land Registry staff what order you want each of the forms in a packet to be entered into the system. Because a packet can deal with different applications to register interests, you need to indicate the order of work for the whole packet.
- Complete Section A if it is known in advance that a writ will auto-attach to a title or interest if the transfer or interest registration is being submitted in the same packet:
 - Enter the application sequence number of the Application for Transfer application or the Application for Interest Registration in the correct field.
 - Enter the Saskatchewan Writ Registry number of the writ in question in the appropriate field.
- Provide the interest register number.
- Complete the Interest Type field in the application form.
- Attach all necessary documents and authorizations to support the application.
- If a title print is required, fill out a Title Print Request form, including all the addressing information.

³⁰ You simply have to download the form each time you need to do a transaction. You may also photocopy the form, as long as the bar code is still readable.

LAND Tips

Statements of Law - The part of the Act entitled “Statements of Law” is a consolidation and restatement of legal statements that were in the old legislation.³¹ For instance, it gives rules of law respecting mortgages, leases, and easements that are not registry rules.

Interest Register – this does not mean instrument register. The instrument register is really the daybook in the Old Paper-based System. In the new LAND System, the interest register number is the number assigned to an interest. The interest register number contains the link to the group of titles or other interests against which the interest is registered if indeed it is registered against more than one title or interest.

There is also an interest number specific to the registration of that interest against each title or against each other interest in that group. For example, a mortgage registered against four titles will have one interest register number and then a unique interest number for each title against which it is registered (i.e., four interest numbers which reference the same interest register and the same interest). Very simply, this model allows an interest to be easily added to or removed from specific titles or interests with the interest register tracking the various “locations” of the interest.

Conditional Registration of an Interest:

- For a first level interest: if Free and Clear is checked, this means there can be no other interest on this title, and the application will be rejected if there is.
- For a sub-interest: do not check the Free and Clear box. Use the Conditional Registration Date instead.

Assignment of Interests – if you have two holders (A and B) each owning ½ a share, and their shares are being assigned to one of the holders (A), it is better to assign the share value as 1/1 to A, rather than two halves assigned to A.

For registration of interests, certain kinds require “interest value.” This means the value of the entire interest register – you cannot and should not break it down between the various interests (i.e. Titles) in the interest register.

³¹ *Ibid.*, Part XVII, sections 123 to 160

Title Print – Where an application affects one or more but not all the titles in an Interest Register and a title print is requested, a title print will be provided for all the titles and not just the one or few affected. If your intention is to only obtain a title print of the affected titles in a particular registration, it is recommended you wait until the packet has been registered and then conduct your own search of the titles and request title prints

**NOTE**

You can override your default delivery method on the Title Print request. On the Title Print request, if you select a third party to send the title print to, and if you identify that party by their client number, the title print will be sent via that client's preferred method of delivery, for which the individual requesting the service will pay. Some methods cost more than others, and the client could have selected all methods, so the customer may end up paying for three delivery methods. So be careful, or you run the risk of paying more than you expected to pay for title prints.

Authorizations

Witnesses

All authorizing signatures must either be witnessed or signed under seal. Signing under seal nullifies the requirement for a witness for any authorization. The requirements for a witness differs depending on the specifics of the authorization. The following three factors determine what is required of a witness:

- The nature of the party providing the authorization (individual or corporation).
- The use of a corporate seal. And
- The jurisdiction where the authorization is completed.

Individuals

If the authorizing party is an individual person, there **must** be a witness to the signature.

- If the witness is simply another individual or a lawyer outside of Saskatchewan, the affidavit of Execution is required to be completed.
- If the witness is a lawyer in and for the province of Saskatchewan the check box of the same name found in part one of all authorization forms can be 'checked'.

<input checked="" type="checkbox"/>	Check if Witness is Lawyer in and for the province of Saskatchewan
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- When this check box is 'checked':
 - The Affidavit of Execution is not required.
 - The witness signature and lawyer name in part one of the authorization form is still required.

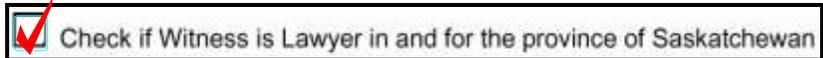
Corporations

If the authorizing party is a corporation, there **must** either be a witness to the signature or the presence of a corporate seal.

- If the corporation signs under seal, there is no need for a witness or a verification of corporate signing authority.
 - You can seal over the name of the authorizing party as long as the seal does not completely obliterate the signature (photocopy if you are unsure if a signature is still visible).

The Affidavit Verifying Corporate Signing Authority section of the authorization form is not required when signed under seal.

- If the corporation does not sign under seal, a witness and the Affidavit Verifying Corporate Signing Authority section is required.
 - If the witness is simply another individual or a lawyer outside of Saskatchewan, the Affidavit of Execution is also required to be completed.
 - If the witness is a lawyer in and for the province of Saskatchewan the check box of the same name found in part one of all authorization forms can be 'checked'.



- When this check box is 'checked' the Affidavit of Execution is not required.
- The witness signature and lawyer name are still required.
- The Affidavit Verifying Corporate Signing Authority section of the authorization form is required to be completed if authorization is provided by a corporation and there is no corporate seal present.

Jurats – “sworn before me.”

Certain rules apply if the person swearing the affidavit is in or out of Saskatchewan and is a Notary Public or a Commissioner for Oaths. Section 24 of the Regulations provides additional requirements for Government Officials, etc. outside of Saskatchewan (i.e., in foreign countries).

For detailed information on the completion of the Authorization and Affidavits please refer to the Common Authorizations Manual, available at www.isc.ca under the Support tab, Reference materials.

Authorization forms

ISC Authorization forms (available from ISC website - www.isc.ca - under the Forms tab) have three distinct sections:

- Authorization section - differs slightly for each transaction type (e.g., Title Transfers, , Interests and Transforms).
- Affidavit of Execution section.
- Affidavit Verifying Corporate Signing Authority section.

The following factors will determine which requirements must be identified within the authorization:

- The nature of the party providing the authorization (individual or corporation).
- The use of a corporate seal. And
- The jurisdiction where the authorization is completed.

These factors will determine which parts of the Interest Authorization form are mandatory.



NOTE

The ISC sample authorization forms provided on www.isc.ca are for usage in the LAND System. Their usage is not mandatory and custom made authorization forms are still acceptable as long as they meet the mandatory requirements for the transaction they authorize.

For more information on completing the Interest Authorization and Affidavits , see the "Common Authorizations Manual, available at www.isc.ca under the Support tab, Reference materials.

