

## DISCHARGES

### FULL vs. PARTIAL

There are two basic types of Discharges registerable at Land Titles, full and partial. In the event that the instrument being discharged is fully satisfied and the encumbrance is to be removed from all affected titles, a Full Discharge is to be used. At all other times a Partial Discharge is to be used, even where one title is being completely released, but the encumbrance survives on other titles.

### LIST ALL AFFECTED TITLES

In completing the Discharge form, regardless of whether the Discharge is to be full or partial, list all of the current titles that the discharge is to affect. In a Partial Discharge the affected lands must be set out, but should not be set out in a full discharge.

### INSTRUMENTS THAT HAVE BEEN TRANSFERRED, ASSIGNED, AMENDED

When discharging instruments which have been transferred, assigned or amended, please discharge the original instrument, and not the Transfer, Assignment, or Amendment. Discharging the original instrument will have the effect of removing all of the instruments that affect it. In cases where the instrument has been transferred or assigned, details of the transfer or assignment must be set out.

### ASSIGNMENT CLAUSE

The clause which reads, "The above instrument has not been assigned except as follows:" should never be deleted in its entirety. If the instrument has never been assigned it is appropriate to leave the form exactly as it is, without alteration. Land Titles will also accept the discharge form where just the words "except as follows" have been stroked out, or where the words , "NILL" or "NEVER ASSIGNED" are typed in following, "except as follows:".

### DISCHARGES EXECUTED BY AGENTS

- An agent may execute the Discharge of a Caveat where the agent also executed the caveat (s. 75 (7.1) The Real Property Act).
- An agent may discharge a builder's lien provided the agent has the authorisation in writing to do so (s. 55(1) The Builders' Liens Act). This authorisation must be attached to the Discharge when it is filed at Land Titles.
- A Judgment, provided that it is not for either alimony, maintenance, or child support may be discharged by "any person entitled to discharge the Judgment" (s. 20 The Judgments Act). This may be an agent (s. 75(7.1) The Real Property Act), provided that they are the agent who registered the Judgment.
- A Notice Exercising Power of Sale (NEPS) may be discharged by the mortgagee's agent where that agent signed the NEPS (Rule 1.05 Registrar General's Rules regarding Mortgage Sale & Foreclosure).

Note: Where an agent has the authority to sign a discharge on the grounds that they are the same agent that signed the initial registration, the discharge must be signed by the same person who signed the initial registration.

## **DISCHARGES (continued)**

### **DICHARGE OF MAINTENANCE ORDERS / SPOUSAL & CHILD SUPPORT ORDERS**

#### **Order for Spousal Support**

A Discharge of a Judgment (or Order) for spousal support may only be signed by the person in whose favour the Order was made (s.21 (5) *The Judgments Act*).

#### **Order for Child Support**

A Discharge of a Judgment (or Order) that contains a provision the support of children, may only be discharged by an Order of the court (s. 21(1) *The Judgments Act*). Please file a court certified copy of the order attached to a Land Titles Request/Transmission form.

### **DISCHARGE OF ATTACHING ODERS**

The court may, on motion, make an order, discharging the registration of an attaching order. The registration of the order at land titles discharges the attaching order (Queen's Bench Rules 46.13(1)(i) & 46.13(2)).

### **DISCHARGE OF PENDING LITIGATION ODERS**

A pending litigation order may only be discharged by the Court of Queen's Bench. This may be effected by either a certificate or by an order, depending on the circumstances.

#### **By Certificate Where Proceedings Discontinued or With Consent**

Where the proceedings in which the pending litigation order was made have been discontinued, or dismissed or otherwise finally disposed of, or where all parties' consent to the discharge of the pending litigation order, the registrar of Queen's Bench shall issue a certificate discharging the pending litigation order (Queen's Bench Rules 42.02(2) and s. 55(6) *The Builders' Liens Act*). The registration of the certificate at land titles discharges the pending litigation order.

#### **By Order Upon Application / Motion Where Proceedings Not Concluded**

The court may, following a motion/application make an order at any time discharging a pending litigation order (Queen's Bench Rules 42.02(1) and s. 55(4) *The Builders' Liens Act*). The registration of the order at Land Titles discharges the pending litigation order.

See **ESTATES** for the execution of Discharges by the executors named in an unprobated will.

See also **PERSONAL PROPERTY SECURITY NOTICES**.