

THIRTY DAY NOTICES

One method for removing unwanted judgments, caveats and builders' liens from a certificate of title is through the use of a thirty day notice. The thirty day notice process is not suitable for all situations and can lead to unwanted litigation. Accordingly, serious consideration to the circumstances and the consequences must be given prior to making an application for such a notice.

THE PROCESS

Application for the Notice

- As a rule Land Titles will not issue thirty day notices for District Registrar's Caveats, building restriction caveats, easement caveats, judgments for child support, or judgments for spousal support..
- The thirty day notice process is started by filing in Land Titles a request/transmission form asking for that a thirty-day notice be issued. In box 2 of the request form insert language to the effect of "Request 30-day notice regarding Caveat 1234567."
- Where the instrument to be removed is a builders' lien, Land Titles will automatically issue the thirty day notice upon receipt of the request..
- Where the instrument to be removed is either a caveat or a judgment, Land Titles will not issue the thirty day notice automatically or as a matter of right. In addition to requesting the notice, the applicant must add into box 2 evidence in the form of a statement or series of statements advising why the caveat or judgment is not properly registered against the title.

Issuance of the Notice

- Upon receipt of the request, Land Titles will review the evidence provided. If satisfied that the allegations made genuinely call into question the appropriateness of the registration, Land Titles will then issue the thirty day notice.
- Where the instrument in question is a judgment, and the applicant requests the notice based upon the fact that, in their opinion, the courts made an error in issuing the judgment, land titles will not issue the notice. The correct procedure is, where available, to file an appeal with the courts.

Furthermore, Land Titles will not issue a thirty day notices to remove judgments simply because the judgment has been on title for a particular length of time (10 years for example). The *Judgments Act* allows parties to make application to court to have statute barred judgments removed from title, and no similar authority is given to land titles staff.

- As discussed above, where the instrument in question is a builders' lien, land titles will issue the thirty day notice automatically.

THIRTY DAY NOTICES (Continued)
THE PROCESS (continued)

Service

- Upon the applicant's receipt of the thirty day notice it is the responsibility of the applicant and not land titles to serve the notice upon the person who registered the instrument.
- Where there is what appears to be a good address for service on file at land titles for the instrument in question, Land Titles will normally give instructions for service to be made by mailing the notice by registered mail to that address.
- Where there is no such acceptable address, personal service will be ordered.

Application for Removal of the Instrument

- Once service of the thirty-day notice has been effected and the time period specified in the notice has passed, without any action having been taken by the claimant in the original instrument, a second request may be filed.
- In box 2 of the second request insert language to the effect of "Request lapse of Caveat 1234567 by virtue of service of 30-day notice. Proof of service attached hereto."
- Affix to the request an affidavit of service with attached thereto a copy of the thirty day notice served as an exhibit.
- Upon receipt of such a properly completed request, with appropriate evidence and where no action has been taken by the claimant, Land Titles will remove the subject registration from title.
- Where registered mail service has been ordered, the notice must actually be delivered. A notice which has been sent but not accepted has not been served.

THIRTY DAY NOTICES (Continued)
THE PROCESS (continued)

Failure to Serve / Substitutional Service

- In the event that service of the notice cannot be effected in accordance with the instructions in the notice, application may be made for an order of substitutional service. This application is made using the request/transmission form.
- In box 2 of the request form insert language to the effect of “Request for an order of substitutional service upon 1234321 Manitoba Ltd. by virtue of the attached affidavit of attempted service.”
- Attach to the request form your affidavit of attempted service. The affidavit must detail the efforts made to serve the party and the efforts made to locate the party where service has failed.
- Upon receipt of an application for substitutional service, Land Titles will review the attempted service affidavit and either request further information or issue an order of substitutional service.
- Once an order of substitutional service has been issued, service of the notice must then be made in accordance with that order.
- Once proper service has been made and the time period specified has passed without any action having been taken by the claimant in the original instrument, the request to lapse may be filed.
- Where registered mail service cannot be made, service can always be made on the party personally without any need for an order of substitutional service. Personal service is always accepted.

THIRTY DAY NOTICES (Continued)

THE PROCESS (continued)

Pending Litigation Order / Proof of Proceedings

- Land Titles will not lapse the subject instrument from title where the registrant has, within the time period specified in the notice:
 1. Taken proceedings in the Court of Queen's Bench to establish/protect the claim made; and
 2. Filed proof of those proceedings at land titles.
- Where the subject instrument is a builders' lien, a pending litigation order drawn in accordance with Form 9 in the Schedule to *The Builders' Liens Act* must be registered at land titles to stop the thirty day notice proceedings. Due to the specific wording in that act, no other materials will be accepted.

It is important to note that land titles will not remove any builders' lien from a title where a pending litigation order has been registered against the affected title, even if the pending litigation order was registered by a party other than the party who registered the builder's lien.

- Where the subject instrument is either a caveat or a judgment, evidence satisfactory to the district registrar that court proceedings have been taken is all that the act requires. As a rule land titles deems a pending litigation order to be satisfactory evidence .
- On those occasions where a pending litigation order cannot be obtained in a timely enough fashion, and where the registration in question is either a caveat or a judgment, land titles may accept copies of court pleadings wherein the applicant has requested a pending litigation order.

In these cases land titles will take in the evidence, initiate the registration process as though a pending litigation order had been filed, and hold the materials for such time as the Registrar feels is appropriate to allow the applicant to obtain the pending litigation order.

Where the order ultimately cannot be obtained, or cannot be obtained in a timely enough manner, Land Titles will reject the materials.

These materials will not be accepted where the instrument in question is a builders' lien. As noted above, a pending litigation order must be filed to preserve the registration of a builders' lien.