



A Lot from the DOT

Teraview Changes

December 20, 2021

As previously discussed with the Ontario Bar Association and the Federation of Ontario Law Associations as part of the “21 Things for 2021” proposals, the following changes are being implemented in Teraview®, effective immediately.

1. There was a need for a convenient place to insert the date on which the notice of sale was served in a Transfer Power of Sale, so this new statement has been added to this document type:

3305: The charge was in default at the time notice of sale was given on (yyyy/mm/dd) and continues to be in default and the money has been advanced under the charge.

2. There were few document types in Teraview® that may have been overly complex and that could be simplified and streamlined to reduce, in particular, the amount of manual data input required. In these cases, we have modified existing statements to eliminate the need for manual data input.

- The corporate authorization statements 10, 18 and 3544 have been updated by removing the requirement the name of any corporate signing authority to be entered at all:

10, 18 and 3544: A person or persons with authority to bind the corporation has/have consented to the registration of this document.

- The Spousal Statements 03 and 05 have been updated by removing the removing the requirement for the name of any spouse to be entered:

03 My spouse is a party to this document.

05 My spouse has consented to this transaction.

3. There was a concern that the existing Power of Attorney Statements 2917, 2918, 2922 and 2923 in Teraview® did not adequately prevent the use of powers of attorney in fraudulent

schemes because they relied on the assurances of the attorney only. As a further tool against title fraud, these statements have been updated to require the solicitor to confirm, to the best of the solicitor's knowledge and belief, the *bona fides* of the power of attorney. These new statements remain consistent with the solicitor's professional obligations relating to powers of attorney and will provide greater protection against fraud.

(a) Where the attorney is not a company:

***2917, *2922** The solicitor signing this document on behalf of this party confirms that I have reviewed the power of attorney with the attorney, and to the best of my knowledge and belief, I confirm that:

1. The attorney is the lawful party named in the power of attorney,
2. The attorney is acting within the scope of the authority granted under the power of attorney, and
3. The power of attorney was lawfully given and has not been revoked.

(b) Where the attorney is a company:

***2918, *2923** The solicitor signing this document on behalf of this party confirms that I have reviewed the power of attorney with the attorney, and to the best of my knowledge and belief, I confirm that:

1. The attorney is the lawful party named in the power of attorney,
 2. The attorney is acting within the scope of the authority granted under the power of attorney,
 3. The power of attorney was lawfully given and has not been revoked.
 4. At the time this document was executed, name was the position of company/bank (donee) and had the authority to bind the attorney.
4. Many charges are transferred before being discharged, and there was a need for a convenient place in Teraview® to confirm such transfer of charge in a subsequent discharge. Accordingly, the Discharge of Charge statement 3700 has been updated in order to have it selected in the appropriate situations.

3700: The party giving this discharge is the new chargee by a transfer of charge or is the original chargee and has changed its name. The party giving this discharge is entitled to give an effective discharge.

5. Discharge of Charge Statement 3714 had become redundant and is now retired and no longer available for selection.
6. Teraview® allowed, in some circumstances, the registration of a caution on title without actually identifying a cautioning party, so owners could not determine who was asserting a

cautionable interest in the land. Accordingly, the Caution-Land document type has been updated to require that a cautioner be identified in all circumstances.

7. Teraview® allowed a Notice of Security Interest to be registered on title even though there may have been a court order previously registered on title restricting registrations. Accordingly, Teraview® has been updated so that, whenever there has been an Application for Restriction based on Court Order registered on title, the resulting No Dealings Indicator will block the registration of a subsequent Notice of Security Interest.
8. Certain atypical or unusual documents may have been pre-approved by the Ministry under certain circumstances, but Teraview® had no way of providing details of such pre-approval. To make such pre-approved documents less likely to be refused certification once submitted for registration, a new optional statement has been added to all document types to indicate to certifying staff that a document has received a pre-approval from the Ministry.

3765: This instrument is approved as to form for registration, under preapproval number (insert preapproval number).

9. The use of vesting orders, many of them obtained *ex parte*, are on the rise of late and there was a need to ensure that all parties affected thereby had been made party to the cause (or were otherwise properly bound by the vesting order). Accordingly, Statement 501 in an Application for Vesting Order has been replaced with a new statement to better correspond with the requirements contemplated in Subsection 25(2) of the *Land Titles Act*.

3659: The applicant who is authorized by court order (import order and, if applicable, Land Registrar's approval) which is still in full force and effect and in which all parties affected by the order have been made a party to the cause or matter or the applicant has furnished such evidence as is requisite to show that the person is bound thereby, as evidenced by the written approval of the Land Registrar, applies to have the register amended as follows: insert proposed amendment for the application court order.

10. There has been an increasing problem with the use of unilateral liens to encumber real estate. This includes both Vendor's Liens and Purchaser's Liens in Teraview®. Although the common law has long since contemplated that a vendor's lien may arise in respect of unpaid purchase moneys, modern Vendor's Liens have been used mainly to secure re-adjustments on the Statement of Adjustments, and have, in almost all cases, been registered against the property of new-home buyers. For new-home buyers, Vendor's Liens operate like "execution before judgement", making it very hard for such new home buyers to dispute or remove Vendor's Liens which they disagree with. The Director of Titles has the discretion to determine which estates, rights, interests, and equities can be registered on title, and has determined that, from a policy perspective, the Notice of Vendor's Lien document type should be retired, and that Vendor's Liens may no longer be registered on title. This applies even if the relevant agreements of purchase and sale contractually allow the registration of a Vendor's Lien on

title. If vendors insist on security for re-adjustments and other amounts allegedly owed to them, they may still attempt to contract for the right to a charge from the home buyer – a charge will provide similar (if not better) security for the vendor but be more apparent as an encumbrance to a home buyer and provide statutory rights to the home buyer under the *Mortgages Act*.

In like manner, some purchasers have been using the Notice of Purchaser's Lien (registered as a Notice under Section 71 of the *Land Titles Act*) to encumber a property after having defaulted under an agreement of purchase and sale. These Notice of Purchaser's Lien have been registered ostensibly as leverage for the return of some or all of the deposits paid. For vendors, the Notice of Purchaser's Lien operates like "execution before judgement" and effectively encumbers the property, making it very difficult for vendors to re-sell the property in a timely manner after the default of the original purchaser. The Director of Titles has the discretion to determine which estates, rights, interests, and equities can be registered on title, and has determined that, from a policy perspective, the Purchaser's Lien may no longer be registered on title, whether as a Notice under Section 71 of the Land Titles Act or otherwise.

If any of the above statements are in a WIP or document on December 20, 2021 and any of the above statements selected, they will need to be selected again and the document re-signed before the document can be registered. Documents that have been returned for correction will also have to be resigned.

The Electronic Registration Procedures Guide is hereby deemed to be immediately updated to include all of these changes.