

Subject: **UTILITY RIGHTS OF WAY**

## **BACKGROUND**

Section 69 of the Land Titles Act provides for an interest in land known as a utility right of way ("U.R.W."). This interest is most commonly granted for gas and oil pipelines and for municipal utilities where there is a need for a continuous right of way under one or multiple parcels of land. In these circumstances, the common law requirement of a dominant tenement has been dispensed with by the enactment of a statutory provision to allow the granting of specified rights to specified entities.

A U.R.W. must comply with the statutory requirements set out in clause 69 of the Land Titles Act in order to be registrable and is registered only against the land that is subject to the rights granted. Once it is registered, the right to use the land in accordance with the terms of the grant remains with the grantee and its successors or assigns until a discharge is registered. (1)

## **REGISTRATION PROCEDURE**

1. The parties to a U.R.W. agreement must be as grantor, the registered owner of a parcel of land (except as noted below), and as grantee, the Crown or a corporation. A corporation can be any corporate entity, including for example, municipal corporations. The grantor and grantee can be the same entity. (2) The registered owner of the parcel that the U.R.W. is to be registered against must execute the agreement. Attestation and Dower requirements must be complied with.
2. Notwithstanding item 1 above, the Crown may grant a U.R.W. over untitled land. The registration particulars are endorsed on a record sheet for non-patent land.
3. The instrument must grant a right on, over or under the land for one or more of the following purposes:
  - a) carrying, laying, constructing, maintaining or using conduits, cables, wires, poles or transmission lines,
  - b) laying, constructing, maintaining and operating pipelines for the transmission, transportation or conduct of any substance,
  - c) conveying water,
  - d) drainage, irrigation, flooding or erosion,
  - e) disposing of sewage,
  - f) constructing or maintaining a public work, including a municipal berm or noise barrier fence,
  - g) constructing, maintaining and operating a railway, street railway or light rail transit, or

h) constructing, maintaining and operating a temporary roadway. (3)

4. It is not necessary to reject for the reason only that consideration is not stated in the instrument.

#### 5. Legal Description Requirements

a) The U.R.W. may be granted in respect of an entire parcel (e.g., section, quarter section, lot or block). One common form in use grants a blanket U.R.W. but provides that a plan of survey and partial discharge will be registered at a future time limiting the U.R.W. to a portion of the parcel and this proposed portion of the parcel is sometimes illustrated in an attached sketch. The right is granted in respect of the whole parcel until the plan of survey and partial discharge are registered.

b) The U.R.W. may be granted in respect of only a portion of the parcel in which case the portion must be described by:

(i) reference to a registered plan of survey, which should be checked to ensure that it affects the parcel described in the title, or

(ii) a metes and bounds description which has been approved by the Surveys section.

A sketch may be attached to illustrate an acceptable metes and bounds description but cannot be used in lieu of such a description.

c) The U.R.W. may be granted in respect of an existing improvement made for the purposes of items listed in 3 provided it does not refer to any sketch or reveal the location.

6. Dower is not required to accompany a U.R.W. for rural utilities granted to a member-owned cooperative association (4) or in the case of a U.R.W. granted in favour of a rural gas co-operative association, a municipal gas utility or the Rural Electrification Association. (5)

7. An instrument submitted pursuant to section 69 is entered on the title as a U.R.W. even if the instrument is labelled as an easement. An instrument is only endorsed as an easement if there are dominant and servient tenements. An example of the particulars is:

"UTILITY RIGHT OF WAY TO XYZ LTD. (PLAN 8420113)".

8. **Fees** - [Tariff item 11\(6\)](#) is charged for the registration of a U.R.W. and [Tariff item 13](#) is charged for each endorsement after the first. If description approval is required, [Tariff item 9](#) is charged.

The SPIN2 document type to be used when creating a Document Registration Request (DRR) form is: Utility Right of Way

The code used for registration at Land Titles is: UTRW

9. **Mortgage of Utility Right of Way** - A mortgage or encumbrance executed by the current grantee of the U.R.W. is registrable in the same manner as other mortgages

or encumbrances. (6) An example of the endorsement on title is:

"MORTGAGE OF UTILITY RIGHT OF WAY 841000012 TO XYZ LTD".

The SPIN2 document type to be used when creating a Document Registration Request (DRR) form is: Utility Right of Way

The code used for registration at Land Titles is: MURW

10. **Transfer of U.R.W.** - A U.R.W. can be transferred by the current grantee. Although there is no prescribed form, (FORM 18), which is the prescribed form for transferring a mortgage, encumbrance or lease, **can be** conveniently **adapted** to transfer a U.R.W. The transferee must be one of the permitted grantees specified in item 1. Execution requirements must be complied with. (7) **Tariff item 11(6)** is charged for the registration of the transfer and **Tariff item 13** is charged for each endorsement after the first.

The SPIN2 document type to be used when creating a Document Registration Request (DRR) form is: Transfer of Instrument

The code used for registration at Land Titles is: TFIN

11. **Discharge of U.R.W.** - As there is no prescribed form, any document discharging the U.R.W., which is properly executed by the current grantee, can be accepted for registration. (8)

If there is a mortgage or encumbrance registered in respect of the U.R.W., either it must be discharged or the mortgagee or encumbrancee must consent to the discharge of the U.R.W. (9) Both the endorsement for the U.R.W. and the mortgage or encumbrance are discharged.

If a discharge signed by an individual is submitted, the original instrument is checked, as it is probably a common law easement, which has different discharge requirements. (10)

**Tariff item 11(5)** is charged for a discharge and **Tariff item 13** is charged for each cancellation after the first.

12. **Partial Discharge of U.R.W.** - Blanket U.R.W.'s are often partially discharged after a plan of survey has been registered showing the actual surveyed location of the right of way. The partial discharge discharges the right granted as to the parcel except the portion shown on the registered plan. The right of ingress and egress to and from this portion is often excepted from the discharge. An example of the endorsement on title for a partial discharge is:

"PARTIAL DISCHARGE EXCEPT AS TO PLAN 8420113".

The SPIN2 document type to be used when creating a Document Registration Request (DRR) form is: Discharge

The code used for registration at Land Titles is: DISC

## **STATUTE AND CASE REFERENCES**

Statute references are to the Land Titles Act, R.S.A. 2000, c. L-4, unless otherwise indicated.

1. s. 69(3)
2. s. 69(2)
3. s. 69(1)
4. s. 52(5), Rural Utilities Act, S.A. 2000, c. R-21; see procedure on Dower [DOW-1](#)
5. s. 11, Gas Distribution Act, S.A. 2000, c. G-3
6. s. 69(4); see procedure on Mortgages, Debentures and Encumbrances [MOR-1](#)
7. s. 69(4); see procedures on Attestation [AFF-1](#), [AFF-2](#) and [COR-1](#)
8. s. 69(5)
9. s. 69(6)
10. see procedure on Easements, Party Wall Agreements, Encroachment Agreements [EAS-1](#)