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Make sure your lawyer's on the e-train

Land transfers process going electronic in Peel as part of Ontario-wide automation

Property conveyancing in Mississauga and Brampton has moved from the 18th century to the 21st century with the introduction of electronic property registration across Peel Region.

Joining Middlesex (London), Wentworth and Halton, the Peel land registry office in Brampton becomes the fourth in Ontario to introduce "e-reg," an all-electronic, paperless system, where documents are created, submitted, recorded and maintained in electronic format instead of big, paper volumes. The e-reg (pronounced ee-rej) system is being developed by the province of Ontario in partnership with Teranet Land Information Services. Users access the online registration and title searching system using Teranet's gateway software called Teraview.

Over the past eight years, Teranet has been converting Ontario's land registration records to an electronic format. The project involves automating each of more than 4 million properties in Ontario, searching millions of land registry office paper records.

They are then converted from the 200-year-old land registry system to the more modern, (only) 120-year-old land titles system, and then to an electronic format from the paper-based system. To date, more than 3 million properties have been automated and the conversion work continues.

A total of 24 out of 55 Ontario land registry offices are fully or partially automated and accessible through Teraview. Electronic registration is being introduced slowly throughout the system, with the next rollout scheduled for Dufferin County.

Under this system, buyers and sellers will no longer have to hand-sign any deeds, mortgages, land transfer tax affidavits or similar government forms. Once they have authorized their lawyer to sign the documents for them electronically, the lawyer will be able to electronically sign and then register title documents from his or her desktop computer.

Back in 1994, the Ontario government passed amendments to the Land Registration Reform Act, which removed the requirement for handwritten signatures on documents like deeds and mortgages.

The legislation permits electronic signatures, applied by lawyers and other system users equipped with an encrypted digital code that uniquely identifies them. Under this system, buyers and sellers will no longer have to hand-sign any deeds, mortgages, land transfer tax affidavits or similar government forms. Once they have authorized their lawyer to sign the documents for them electronically, the lawyer will be able to electronically sign and then register title documents from his or her desktop computer.

Each authorized user has a unique security disk and password which are required to complete an electronic registration. Registration costs and land transfer taxes will be automatically deducted from a special trust account the lawyer sets up just for that purpose. An electronic audit trail leading back to the user will further protect the system from hackers, fraud and unauthorized users.

Here's how the process works:

Instead of preparing title transfer and conveyancing documents on paper, the e-reg system allows documents, such as deeds, mortgages, and discharges to be prepared on the lawyer's office computer using a series of prompts built into the system.

Lawyers for both the vendor and purchaser will still open their files with a copy of the agreement of purchase and sale.

When the vendor's lawyer or the assistant starts preparing the title transfer documents on the Teranet system, certain fields of information, such as the municipal address, legal description and current owner's name, are automatically filled in or "populated" by Teranet from the electronic title database. The documents are stored on the main Teranet computer, or server, rather than on paper copies in the lawyer's file.

The vendor's lawyer then makes the documents available electronically to the purchaser's lawyer, who has an update or correction capability, so she can change the document as required.

When both lawyers are satisfied with the form and content of the documents, they log into the system and indicate that the documents are complete. These completion signals are referred to as electronic signatures.

On or just before the day of closing, each of the parties will visit their lawyer's office and sign - alas, by hand - an authorization to proceed with the transaction electronically.

At the same time, both lawyers will enter into a document registration agreement which allows the keys to be delivered to the purchaser's lawyer and the funds to the vendor's lawyer. Under this agreement, the funds and keys are frozen (or held in "escrow") until the documents are electronically registered.

After the vendor's lawyer receives the funds, he or she goes on line again into the e-reg system and electronically signals for release of the deed. The purchaser's lawyer can then enter the system, register the deed and mortgage and complete the transaction.

Unlike the system that has been in use since the 1790s, at no time will any piece of paper bearing the signatures of the parties ever cross the threshold of the land registry office. In fact, under the new system, land registry offices themselves may become obsolete and exist only in little electronic chips in the central computer at Teranet's offices.

At the moment, electronic registration in Peel is optional, and most lawyers are sticking to the old system. But in about six months or so, paper documents will no longer be accepted at the Brampton land registry office, and lawyers who are not fully automated and ready for e-reg will no longer be able to handle closings for their clients.

Buyers who are today signing offers for new homes and condominiums which will be completed next year after e-reg becomes compulsory in Mississauga and Brampton must now find themselves a lawyer equipped for the electronic process.

Some lawyers have embraced the electronic process and are looking forward to it. Others will reluctantly sign on (no pun intended), and still more will retire, be forced out of the practice or will no longer be able to process real estate deals in Peel.

According to Teranet president Aris Kaplanis, "e-reg is the first of its kind in the world, and our success in Ontario has initiated related projects all over the world."

For better or for worse, Ontario lawyers and their real estate clients are the guinea pigs for this brave new electronic world of property conveyancing. The "e-train" is leaving the station, and those system users who do not jump aboard are going to be left behind.

Make sure your lawyer has a ticket on the e-reg train.

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