

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 many 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. is often referred to as an easement since it grants rights, which are similar to rights granted in a common law easement. However, it must comply with the statutory requirements in order to be registrable. Since there is no dominant tenement, it is registered only against the land that is subject to the rights granted (i.e., the servient tenements) and 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 release 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) Although both parties will normally execute the document, for registration purposes it is only essential to have the signature of the owner of the parcel against which the U.R.W. is to be registered. Attestation requirements must be complied with.

2. Notwithstanding item 1 above, it is established practice to accept a U.R.W. for registration where the grantor is the Crown and the right is being granted in respect of untitled land. The memorandum of the registration particulars is 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 (normally within one or two years) 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. Such an instrument is registrable as 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 requirements must be complied with except in the case of a U.R.W. for rural utilities granted to a member-owned co-operative 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.

9. **Mortgage of Utility Right of Way** - A mortgage or encumbrance executed by the grantee or transferee of the U.R.W. is registrable in the same manner as other mortgages or encumbrances. (6) An example of the particulars endorsed on title is:

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

10. **Transfer of U.R.W.** - A U.R.W. can be transferred by the grantee or the latest transferee. 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.

11. **Discharge of U.R.W.** - As there is no prescribed form, any document releasing or discharging the U.R.W., which is properly executed by the grantee, or the transferee where the U.R.W. has been transferred, 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 memoranda 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 releases or 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 but it is established practice to endorse it as a partial discharge in the particulars for the U.R.W. as follows:

"PARTIAL DISCHARGE EXCEPT AS TO PLAN 8420113".

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](#)