

Land Title Information

Understanding Charges on title - Covenants, Easements and Right-of Ways

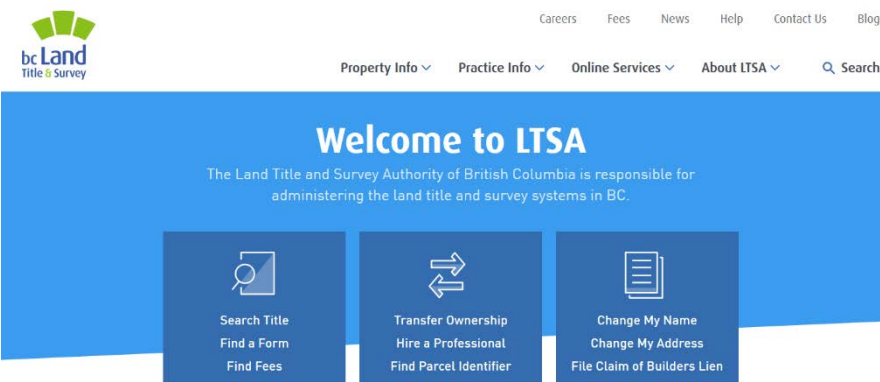
Purpose

This document provides a guide to Land Title information related to land use development applications or proposed building projects. Land Title searches are typically requested at the time of a permit application to confirm property ownership and identify any charges that could impact the proposed work on the property.

Background & References

The Building Department is responsible for ensuring that all buildings constructed within the City comply with the City's Building Bylaw and the BC Building Code to ensure they are safe for the use intended. In order to complete a planning or building permit application review staff must also ensure charges on title are verified prior to permit issuance.

A land titles search is evidence of the registered owner's interest in the land and indicates all legal interests, restrictions or encumbrances registered against the title. These title notations are known as "charges" and must be formally registered against the title at the Land Titles and Survey Authority of British Columbia.



Charges typically fall into these categories:

- Mortgages,
- Statutory rights of way,
- Easements,
- Covenants,
- Judgments filed in support of debt/tax collection,
- Certificates of Pending Litigation affecting the title, or
- Claims of Builders Liens.

Copy of a Land Title example can be viewed at <http://www.ltsa.ca/docs/Sample-Land-Title.pdf>

Covenants

In accordance with Section 219 of the Land Title Act certain bodies including provincial and local governments have the ability to hold covenants. Section 219 (3) (c) allows organizations not listed in statute and, in certain circumstances, individuals, to become designated to hold covenants.

Pursuant to Section 219 of the Land Title Act, covenants in favour of a local government may place either negative restrictions (the property owner shall not) or positive requirements (the property owner shall), in respect of the use of land. This could include provisions related to building on the land or provisions related

to subdividing the land. These covenants may provide local governments with a mechanism to preserve land or its special attributes.

Covenants for Conservation Purposes, Section 219, Land Title Act

A conservation covenant is a voluntary agreement to conserve land or protect specific attributes of the land. It is an agreement between a private land owner and a designated individual or organization registered on the land title and is legally binding on all future owners of the property. A covenant may include provisions that restrict the use of, or require that improvements be maintained on the property for the protection of natural, historical, cultural, architectural, environmental, heritage, scientific, wildlife or plant-life values.

These may include:

- Geotechnical requirements to involve the services of a professional engineer or no-build areas;
- Environmental setbacks or no-build areas;
- Land use restrictions;
- Building Scheme (architectural) covenants typically are not administered by the City but City staff may request confirmation that a review has been completed prior to issuing a permit.

Easements

An easement is the right to use or restrict the use of the land of another person (usually a neighbour) in some way. The right to use the land is a positive easement. The right restricting the use of land is referred to as a negative easement and is registered as a restrictive covenant.

Rights- of-Way

A statutory right of way (SROW) is a type of easement for a specific use that is usually granted to a government, public utility, pipe line company or railroad to place, maintain, access services and infrastructure on parcels of land. SROWs usually prohibit the land owner from building permanent structures within the statutory right of way.

Pursuant to the Land Title Act Section 218, statutory rights of way can be created in favour of local governments for the operation and maintenance of the local government's "undertaking" (for example, access over private land for the installation and maintenance of sewer works).

Any proposed work, including overhangs and excavations, within a SROW must be approved by the City's Engineering Department prior to commencement of the work.

Section 57 Notice on Title

A Notice on Title serves as notice to anyone searching the title of a property that the property in question may be in breach of local government bylaws or regulations. The Notice on Title itself does not disclose the details of any breach of bylaw or regulations, but rather, specifies that further information may be obtained from the local government office.

Once registered at the Land Titles Office, the notice will serve to advise anyone with interest in the land of the regulations contravened; provide disclosure to future owners; and protect taxpayers from potential claims with regard to the contravention, as per Section 57 of the Community Charter.

See [Section 57 Notice on Title Bulletin No.15-04](#) for further information.

For more information regarding Land Title information please contact [BC Land Title & Survey \(LSTA\)](#) or 1-877-577-LTSA (5872)

Implementation

For the purpose of completing certain applications, the following items must be provided at time of application:

Planning Applications:

- A Title search current up to 30 days. The City can provide a current Title document for a fee of \$20 plus \$1 GST or you may contact LSTA to obtain a copy. Please go to <http://www.lsta.ca/cms/conducting-a-title-search>

Registered documents related to charges on title such as covenant or easements may be requested to complete the plan review or an additional fee may be added for the City to obtain the registered documents from LSTA.

Planning and Building Permit Applications:

- If a recent property sale has occurred a copy of the registered Form A – Freehold Transfer can be accepted to confirm proof of ownership.
- Covenants required as part of a Planning or Building permit reviews are required to be registered prior to permit release. These could include requirements for:
 - Wildfire Interface areas
 - Riparian or Flood level areas, and
 - Geotechnical sensitive areas

Building Permit Applications

- All covenant boundaries, easements and ROW's must be indicated on the site plan provided for application.
- When a building location certificate (survey) is required at the time of inspections, all covenant boundaries; easements and ROW's must be indicated on the sealed survey as well as any required geodetic information.

Please refer to [BC Land Surveyors Association](#) and the [Land Surveyor Act](#) regarding to qualifications and regulations to Applied Science Technician and Technologists in preparation of site improvement surveys.

Have questions? We're here to help. Please contact the Building Department at 250-490-2571 or buildinginfo@penticton.ca for more information.