

Desk Applications for Orders and Fiats re land

The most common Desk Applications for an order or fiat with respect to land are:

- (1) Directing the Registrar of Land Titles to register an instrument even though execution of the instrument is defective (or original is missing); and
- (2) Dispensing with a spouse's consent to a disposition under the *Dower Act*.

Defect in Execution of an Instrument

Sections 155-163 of set out the requirements for "Attestation of Instruments" under the *Land Titles Act*. The court's role is set out in s. 162.

Power of the court

162 On being satisfied of the due execution of the instrument, the court may authorize its registration, notwithstanding that the proof of the execution may be absent or defective.

Form of authorization under section 162 may be either an order or a fiat

Order is a separate document, but must make it clear what the Registrar of Land Titles is being directed to register notwithstanding the defect.

A fiat is usually placed on the instrument that the Applicant wants the Registrar of Land Titles to register.

Sometimes counsel choose a fiat because they think that it is easier to get than an order.

Requirements to get a fiat are the same as for an order

Many counsel think that all they have to do is write a letter providing an explanation, such as urgency, for the granting of a fiat. That is not acceptable.

A fiat is a court order. “No evidence, No order”:

Baker v. Baker, 2014 ABQB 710, per Master Schlosser.

What should be in the Affidavit?

The evidence must show why the instrument cannot be executed properly in a timely manner.

Urgency, such as a pending closing is often put forward.

Often involves execution of the instrument abroad.

If there is any question on the defect, attach the LTO rejection to the Affidavit.

Series of decisions by Justice Lee
regarding without notice applications for fiats
under predecessor to s. 162 of the *Land Titles Act*

- ***Re Precision Sound Corporation*, 2001 ABQB 393**
- ***Re Yan*, 2002 ABQB 250**
- ***Re Miranda (Land Titles Act)*, 2003 ABQB 566**
- ***Re Rakic (Land Titles Act)*, 2004 ABQB 445**

Dispensing with dower consent

Court's authority to dispense with dower consent is found in s. 10 of the *Dower Act*.

Providing notice of the application is the norm. But subsection 10(2) of the Act provides the limited circumstances under which the Court may grant the order *ex parte*.

Separate court order or a fiat on the instrument of transfer are both acceptable.

Rule 13.38 of Rules of Court

This rule deals with fiats directed to "court officers" and therefore has no application to the Registrar of Land Titles Office.