
Bulletin No. 2022-04**Land Titles Act, Registry Act****Date: October 27, 2022****Notices of Security Interests:
Amendments**

This bulletin discusses recent developments relating to the notice of security interest (the “NOSI”), the notice of lease of chattels (“NOLC”), and the Notice of Lodgement of Title.

1) **Make and Model:** All collateral types require a relatively specific collateral description. What constitutes a relatively specific collateral description will vary depending on the type of collateral and there will be a certain subjective element to it. The most common class of collateral for residential purposes include apparatus and equipment relating to home comfort, including:

- water heaters
- water filtration and/or purification systems
- heating, ventilating, and air-conditioning equipment
- carbon-recapture, carbon-scrubbing, and/or de-carbonizing equipment
- electric generators
- solar electricity panels and other alternative energy equipment
- home security or alarm systems
- built-in pest detection and deterrence equipment
- custom kitchen cabinets
- similar built-in equipment and apparatus designed for improved home comfort and functionality

This category of collateral is referred to herein as “HVAC” although the category is broader than just heating, ventilation, and air conditioning equipment. All HVAC collateral descriptions must have at least a make and model. Serial numbers and other descriptions, in addition to the make and model, are permitted but not necessary. For other types of collateral, the requirement is for a “relatively specific collateral description” which will also require at least the make and model unless otherwise approved by the Director of Titles.

2) **Expiry Dates:** These document types may or may not have an expiry date. A NOSI/NOLC that has an expiry date can have that expiry date extended by a Section 71 Notice, again and again (but only before the previous expiry date has passed). A NOSI/NOLC that has an expiry date that has in fact passed, may be deleted from title by an application from the owner. However, an owner may not register an Application General deleting a NOSI/NOLC simply because it did not have an expiry date. While these documents may or may not be required to have an express expiry date under the *Personal Property Security Act*, the Land Registry Office does not police the existence or non-existence of an expiry date.

3) **Windows, Doors, and Roofs:** This type of collateral is not allowed. Notwithstanding the foregoing, NOSIs and NOLCs in respect of windows, doors, and roofs may temporarily be

submitted for registration until December 31, 2022 in order to permit the industry a period of time to adjust its financing practices and to process existing files, etc. No make or model information is required during this temporary period of permitted registration. Starting on January 1, 2023, no NOSI may be registered in respect of roofs or doors (or any variations or permutations thereof or similar building materials), but there will be a limited exception for certain windows (see below).

NOSIs may be submitted for registration after December 31, 2022 in respect of energy efficient windows that are ENERGY STAR compliant, provided that they have the following exact statement:

61. This Notice of Security Interest is in respect of residential windows that are certified to comply with the ENERGY STAR program administered by Natural Resources Canada.

The brief collateral description for energy efficient windows must still have the make and model, like with HVAC collateral.

For greater certainty, there is no equivalent exemption for doors and roofs, all of which are not to be registered after December 31, 2022. There is also no exemption for any windows that do not meet the ENERGY STAR standard, as aforesaid. The policy with respect to energy efficient windows is entirely discretionary and may be discontinued at the sole and unfettered discretion of the Director of Titles at any time if there is evidence of fraud or other malfeasance in connection therewith.

- 4) **Notice of Lease of Chattels:** The NOLC is not an appropriate document type to be included in the real property registration system and will be discontinued after December 31, 2022. Notwithstanding anything to the contrary in any prior bulletin or in the Electronic Registration Procedures Guide, no NOLC may be submitted for registration after December 31, 2022. Existing NOLCs registered before such date may, however, continue on title.

The Notice of Lodgement of Title is not an appropriate document type to be included in the real property registration system and will be discontinued after December 31, 2022. Notwithstanding anything to the contrary in any prior bulletin or in the Electronic Registration Procedures Guide, no Notice of Lodgement of Title may be submitted for registration after December 31, 2022. Existing Notices of Lodgement of Title registered before such date may, however, continue on title.

- 5) **Small Claims Court:** A NOSI is ordinarily deleted by way of: (i) a Discharge of Notice of Security Interest Application (signed by the secured creditor); (ii) an Application to Amend Based on Court Order (with a copy of an order of the Superior Court attached thereto); and (iii) an Application General registered by the owner if the NOSI has an expiry date and has in fact expired.

However, a NOSI that arose as a result of unfair practices under the *Consumer Protection Act* may also be deleted with a Small Claims Court order that expressly provides as follows:

The agreement to which the NOSI registered as Instrument No. ____ on PIN ____ in Land Registry Office No. ____, has been validly rescinded pursuant to Section 18(1) of the Consumer Protection Act and, as a result, the said NOSI is cancelled, as if it never existed, pursuant to Section 18(14) of the Consumer Protection Act.

This Small Claims Court order must then be incorporated into an Application General in Teraview® with the following three statements described below:

3602 I [name] registered owner(s) of the lands hereby apply under Section 75 of the Land Titles Act to have the register for the said PIN amended by: deleting the NOSI registered as Instrument No. ____ on PIN ____ in Land Registry Office No. ____

3640 Covenant to Indemnify the Land Titles Assurance Fund [import PDF covenant]

62 I [name of lawyer], confirm that the attached order of the Small Claims Court remains in full force and effect and complies strictly with the requirements set out therefor in Bulletin 2022 - xx.

If the NOSI has been assigned or extended, as is often the case (sometimes multiple times), the details of the relevant documents must also be expressly identified as being cancelled in both the Small Claims Court order and in the required statements set forth above.

For greater certainty, the Small Claims Court order described above may only be registered in Teraview® as part of an Application General, and may not be registered using either the Application to Amend Based on Court Order or the Discharge of Notice of Security Interest document types.

The same Small Claims Court option is also available for NOLCs and Lodgements of Title Documents.

Original signed by

Jeffrey W. Lem
Director of Titles