
❧ **LOST DUPLICATE INDEFEASIBLE TITLE** ❧

Background

Years ago, the Land Title Office would issue a copy of an indefeasible title to a property if requested by the property owner and if the property was not subject to a mortgage or agreement for sale. The duplicate indefeasible title was often called “duplicate certificate of title” or “duplicate title”. The most common reason for the issuance of a duplicate title was to constitute security for a loan against the property. This was a simpler, less formal approach to obtain security than registering a mortgage against the property – especially where the amount of the loan was relatively small compared to the value of the property.

The owner of the property would withdraw the duplicate title from the Land Title Office who would endorse the title to the property with a note indicating the date the duplicate title was withdrawn and to whom it was delivered. The owner would then deliver the duplicate title to the lender who would hold the duplicate title as security for a loan until it was paid in full. Once the loan was paid, the lender would return the duplicate title to the owner of the property who was supposed to re-lodge the duplicate title with the Land Title Office. If that happened, the Land Title Office would destroy the duplicate title and cancel the endorsement on the title.

Another less common reason that an owner would withdraw a duplicate title would be to prevent any transfer or other dealing with the property by third parties, e.g. to prevent a fraudulent sale.

The major problem with duplicate titles was a practical one: duplicate titles were often lost, destroyed or merely forgotten. Possibly, the owner or the lender simply misplaced it. The result was that the endorsement on title to the property was not cancelled. The endorsement would only become evident when, years after the loan was paid, the property was to be sold. If the duplicate title could not be located and the endorsement cancelled, the registered owner could not sell the property.

The procedure below may be followed in the event that the duplicate title is lost and efforts to locate it are fruitless. At present, the Land Title Office rarely issues duplicate titles. However, there are still duplicate titles outstanding that cannot be located and therefore, there still the necessity to replace those lost duplicate titles.

Procedure

Where there is an endorsement on title to a property’s title that the duplicate title was issued but it cannot be located and re-lodged in the Land Title Office (the “LTO”), an application to the LTO must be made to replace the lost or destroyed duplicate title with a provisional indefeasible title (s. 193 of the *Land Title Act*). This may take several weeks, if not months. This is often done in a rush as the personal representatives want to dispose of the property and the transmission documents cannot be registered unless the duplicate title is located or replaced and returned to the Land Title Office and the endorsement on title cancelled.

The steps to follow are:

1. obtain a search of the property from the LTO to determine to whom the duplicate title was delivered;

2. prepare a Statutory Declaration or an Affidavit of the personal representative (see *Statutory Declaration No. 1*) covering all points in the attached example;
3. if the information shows that the duplicate title was delivered to someone other than the Deceased, prepare the *Statutory Declaration No. 2* by the person to whom the duplicate title was delivered;
4. if the duplicate title passed through several hands, investigate who received it and prepare Statutory Declarations for each party who had the duplicate title in order to establish an unbroken chain of events leading to the loss of the duplicate title.
5. once the required Statutory Declarations have been sworn, file them electronically with a *Form 17 – Charge Notation* and select “**Provisional Indefeasible Title**” as nature of interest;
6. if the explanations contained in the Statutory Declarations are satisfactory to the LTO, they will send you a letter with a completed Notice which should be published once in the BC Gazette (for publishing procedure in the BC Gazette, see **Estates – Pre-Application Documents – Notice to Creditors and Other Claimants**);
7. once the Notice is published and you have received the tear sheet from BC Gazette, prepare the *Statutory Declaration No. 3*:
 - (a) attaching a copy of a letter from LTO; and
 - (b) confirming that the advertising requirements have been met and attach the page from the BC Gazette showing the advertisement and the date of publication;
8. arrange to have the Statutory Declaration sworn and file it electronically with the LTO with *Form 17*, and mark it as “Final Registration on work Order No. _____”.

STATUTORY DECLARATION No. 1

CANADA)
PROVINCE OF BRITISH)
COLUMBIA)
TO WIT)
IN THE MATTER OF THE ESTATE of {NAME
OF THE DECEASED FROM LAND TITLE
OFFICE SEACH} AND IN THE MATTER OF A
LOST DUPLICATE INDEFEASIBLE TITLE No.
{number}

I, {NAME OF PERSONAL REPRESENTATIVE}, {Occupation}, of {address}, DO SOLEMNLY DECLARE THAT:

1. {NAME OF THE DECEASED also known as {NAME}} (the “Deceased”), who was {relationship to the declarant, e.g. my father} passed away on {date}, intestate/leaving a Will appointing me as the Executor of it.
2. I am the executor of the Will/administrator of the estate of the Deceased pursuant to a grant of {type of grant} issued by the Supreme Court of British Columbia on {date} and as such have personal knowledge of the facts and matters hereinafter stated.
3. As at the date of his death, the Deceased was the registered and beneficial owner of the following property (the “Property”):

Parcel Identifier	Legal Description
{number}	{copy legal description from the Land Title Office search}

4. According to the records of the {location} Land Title Office, the Duplicate Indefeasible Title No. {number} (the “Duplicate Title”) was issued to {name of party to whom the Duplicate Title was issued} on {date}.

Note: If the Duplicate Title was issued to a party other than the Deceased, find out who that party is and follow the history of the parties who held the Duplicate Title, to whom they delivered it, and prepare Statutory Declarations (see Statutory Declaration No. 2) for each of them that collectively reflect the history of the lost Duplicate Title.

5. I have conducted a search among the documents left by the Deceased and was unable to locate the Duplicate Title.
6. The Deceased has been in uninterrupted legal possession of the Property for {number} years without any adverse claim having been made on it.
7. The assessed value of the Property including any improvement on it as of the date hereof is \$_____.
8. To the best of my knowledge, the Property has not been pledged or hypothecated by way of security for a loan or otherwise.

- 9. The Property must be transferred into my name as executor/administrator in order to enable me to sell same.

- 10. I swear this Statutory Declaration in support of an application that a Provisional Title be issued by the Land Title Office as soon as possible.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

DECLARED before me at _____,)
Province of British Columbia, this ____)
day of _____, 20__)
)
)
)
_____)
A Commissioner for taking Affidavits)
in British Columbia)

***{NAME OF PERSONAL
REPRESENTATIVE***

STATUTORY DECLARATION No. 2

CANADA)
PROVINCE OF BRITISH)
COLUMBIA)
TO WIT)
IN THE MATTER OF THE ESTATE of {NAME
OF THE DECEASED FROM LAND TITLE
OFFICE SEARCH} AND IN THE MATTER OF A
LOST DUPLICATE INDEFEASIBLE TITLE No.
{number}

I, {NAME OF PARTY}, Barrister and Solicitor, of {address}, DO SOLEMNLY
DECLARE THAT:

1. I am a partner/associate with the law firm of {name} and as such have personal knowledge of the facts and matters hereinafter stated except where same are stated to be based on information and belief, which I verily believe to be true.
2. The Deceased was the registered and beneficial owner of the following property (the "Property"):

Parcel Identifier	Legal Description
{number}	{copy legal description from the Land Title Office search}

3. According to the records of the {location} Land Title Office, the Duplicate Indefeasible Title No. {number} (the "Duplicate Title") was issued to the law firm on {date}.
4. I have conducted a diligent search among the files and records of the law firm and have been unable to locate the Duplicate Title nor found any reference to the law firm having ever received the Duplicate Title.
5. I swear this Statutory Declaration in support of an application that a Provisional Title be issued by the Land Title Office as soon as possible.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

DECLARED before me at _____,)
Province of British Columbia, this ____)
day of _____, 20____)
)
)
)
_____)
A Commissioner for taking Affidavits)
in British Columbia)

{NAME OF DECLARANT}

STATUTORY DECLARATION No. 3

CANADA)	IN THE MATTER OF THE ESTATE of
)	<i>{NAME OF THE DECEASED FROM</i>
PROVINCE OF BRITISH)	<i>LAND TITLE OFFICE SEACH}</i> AND IN
COLUMBIA)	THE MATTER OF A LOST DUPLICATE
)	INDEFEASIBLE TITLE No. <i>{number}</i>
TO WIT)	

I, *{NAME OF SOLICITOR/PARALEGAL}*, Solicitor/Paralegal, of *{address}* **DO SOLEMNLY DECLARE THAT:**

1. I am a paralegal/associate employed by the firm of *{name of law firm}*, Barristers and Solicitors, solicitors for *{NAME OF APPLICANT}* and as such have personal knowledge of the facts and matters hereinafter deposed to. \
2. Now produced and shown to me and marked as Exhibit "A" to this my Statutory Declaration is a true copy of a letter from BC Land Title & Survey dated *{dated}*, together with Notice which provides that upon expiration of two weeks from the date of publication, *{name of signatory on the letter}* will issue a Provisional Indefeasible Title in lieu of lost Duplicate Title No. *{number}*.
3. The Notice with respect to the issuance of a Provisional Indefeasible Title was published in the Queen's Printer Publications (British Columbia Gazette) on *{Date}* and now produced and shown to me and marked Exhibit "B" to this my Declaration is page *{number}* of the British Columbia Gazette evidencing such publication.

DECLARED before me at _____,)
Province of British Columbia, this ____)
day of _____, 20__)

_____))
_____))
A Commissioner for taking Affidavits)
in British Columbia)

{NAME OF DECLARANT}