
Land Title Act Part 8 (ss. 121 to 137)—Cancellation of Plans

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I. OVERVIEW OF PART 8 [§8.1]

This Part:

- (1) enables an original subdivider to annex, without compensation, adjacent dedicated roads and other public areas (s. 135);
- (2) gives municipalities, regional districts, local trust areas (under the *Islands Trust Act*, R.S.B.C. 1996, c. 239), and the Minister of Transportation and Infrastructure the power to oppose the cancellation of any highway or other public area that is still required for its dedicated purpose (ss. 132 and 133); and
- (3) ensures that if a highway or other dedicated area is ever cancelled, a land owner, other than the original subdivider, must pay market value for the land if that owner wishes to acquire it (s. 131).

CROSS REFERENCES AND OTHER SOURCES OF INFORMATION

See Part 3, Division 5 (Highways), of the *Community Charter*, S.B.C. 2003, c. 26 regarding the power of a municipality with respect to highways, and particularly s. 40 (Permanent closure and removal of dedication).

CASE LAW

Notes on Case Law: Various annotations or references have been included for cases decided under Part 8 of the Act before the repeal and replacement of the Part in 1993. While the subject of Part 8 remained the same, substantial changes were made to many of the legislative provisions and early cases should accordingly be considered with caution.

II. LEGISLATION AND COMMENTARY [§8.2]

121 Definitions and interpretation [§8.3]

121 (1) In this Part:

“arterial highway” has the same meaning as in section 1 of the *Transportation Act*;

“local authority”,

- (a) in relation to land in a municipality, means the municipal council,
- (b) in relation to land not in a municipality, means the regional board of a regional district, and
- (c) in relation to land in a local trust area, means the local trust committee;

“local trust area” and “local trust committee” have the same meanings as in the *Islands Trust Act*;

“party” means a person who has filed a notice of intention to appear at the hearing of a petition, in compliance with section 127, and includes the petitioner;

“plan” means a subdivision plan, reference plan or air space plan deposited in the land title office;

“public area” means an area dedicated as a highway, park or public square under this Act or the former Act;

“registrar” includes a person appointed by the director under subsection (2).

(2) The director may appoint a person other than the registrar to exercise and perform all or some of the powers and duties of the registrar under this Part.

1979-219-121; 1993-52-1; 2004-44-124, effective December 31, 2004 (B.C. Reg. 547/2004); 2010-21-226, effective July 30, 2010 (B.C. Reg. 245/2010).

CROSS REFERENCES AND OTHER SOURCES OF INFORMATION

Definition of “Highway”

See the definition of “highway” in s. 1 of the Act which provides:

“highway” includes a public street, path, walkway, trail, lane, bridge, road, thoroughfare and any other public way.

Definitions for Applying Part 8 to Treaty Lands

See the definitions of “local authority” and “regional district” in s. 15 of Schedule 1 to the Act (see chapter 28 (Land Title Act Part 24.01 (s. 373.11)—Treaty Lands)) for the purposes of applying Part 8 of this Act in relation to treaty lands:

15 For the purposes of applying Part 8 of this Act in relation to treaty lands,

- (a) a reference to “local authority” must be read as a reference to the treaty first nation, and
- (b) a reference to “regional district” in relation to “land” must be read as a reference to a treaty first nation in relation to its treaty lands.

122 Cancellation of plans by application to the registrar [§8.4]

122 (1) By order of the registrar, a plan may be cancelled

- (a) in whole, on petition by the owner of all the parcels in the plan, or
- (b) in part, on petition by the owner of a parcel in the plan.

(2) The registrar must not make an order cancelling or altering the boundaries of all or part of a public area

- (a) unless the public area is in the plan and is adjacent to a parcel that is owned by the petitioner and is in the plan, or
- (b) for which a certificate has been filed under section 132 or 133.

1979-219-122; 1993-52-1.

CROSS REFERENCES AND OTHER SOURCES OF INFORMATION

See s. 132 of the Act regarding opposition to the cancellation or alteration under this Part of the boundaries of all or part of a public area by a municipal council, regional board, or local trust committee.

See s. 133 of the Act regarding opposition to the cancellation or alteration under this Part of the boundaries of all or part of a public area that is an arterial highway by the Minister of Transportation and Infrastructure.

CASE LAW

The appellants were successors in title to four lots created by the subdivision of land within an earlier plan. A road allowance was also dedicated as part of the earlier plan, although it was never used for its intended purpose. Part 8 of the Act permits a petition for the cancellation of a plan by an owner who has dedicated adjacent land “in the plan” for a public area where that land has not been used for the purpose for which it was dedicated. The court found that the owners under the earlier plan had a residual interest in the dedicated road allowance. Under the Torrens system, an interest in land, including a residual interest, may be removed from the land either by agreement in writing for consideration or by the exercise of the power to expropriate. For a subsequent registration of a subdivision plan to extinguish an interest in an earlier subdivision, there must be some express or explicit authorization of that result. In this case, the subsequent subdivision did not alter the nature of the road allowance or the residual interest in it held by the successors in title. They were thus entitled to apply to the registrar for the cancellation of the unused road allowance (*Ratzlaff v. British Columbia (Registrar of Land Titles)*, 1999 CanLII 6647 (BC SC)).

123 Petition to cancel plan [§8.5]

123 (1) A petition under this Part must be

- (a) made by an owner referred to in section 122(1),
- (b) addressed to and filed with the registrar,
- (c) signed by the owner, and
- (d) verified by affidavit of a signatory to the petition.

(2) The petition must include all of the following information:

- (a) the date of deposit of the plan in the land title office, the plan’s number and a description of the land within the plan;
- (b) the name of the regional district in which the land is located and, if the land is also located in a municipality, the name of the municipality;
- (c) whether or not the land is in a local trust area and, if so, the name or identity of the local trust area;

- (d) whether the petitioner seeks cancellation of the plan in whole or in part, and, if in part, a description of the public areas and parcels within the plan that are affected by the petition;
 - (e) the name, occupation and address of the petitioner and a description of the land owned by the petitioner;
 - (f) the name, occupation and address of all freehold owners of parcels within the plan and a description of the parcels owned by them;
 - (g) the name, occupation and address of all charge owners, a description of the charges and of the parcels charged;
 - (h) if the petitioner was the owner of all the parcels in the plan at the time it was deposited in the land title office, a statement to that effect together with a summary of the record verifying the statement;
 - (i) the facts on which the petitioner relies in support of the petition and a description of the order petitioned for.
- (3) The petition must contain a notice that any person who wishes to make a submission at the hearing of the petition must file with the registrar, before the date set for the hearing, a notice of intention to appear.
- (4) A print of the plan showing, to the satisfaction of the registrar, the land referred to in the petition must be annexed as a schedule to the petition.

1979-219-123; 1993-52-1.

FORMS

Petition to Cancel Plan

Land Title Act

Part 8

IN THE MATTER OF the *Land Title Act*—Part 8, Section 123
and in the Matter of a Plan of Subdivision of Part of Section _____,
_____ District, Plan _____ and an Application to Cancel Part
of _____ Road

PETITIONER: *(Name)*

ON NOTICE TO: *(See Appendix A)*

TAKE NOTICE that an application will be made to the registrar of titles at _____ for an order cancelling part of plan _____ more particularly known and described as:

(Legal description of part of plan to be cancelled)

For an order in the nature of directions as to service on persons that the registrar considers might be affected by the within petition.

For an order that whatever public area is closed be consolidated with... .

For such further order of directions as may be necessary.

The facts upon which this petition are based are as follows:

(See Section 123(2) of the Land Title Act)

NOTICE

Notice to all those persons who deem their interest may be affected: Take notice that any person who wishes to make a submission at the hearing of this petition must file with the registrar, before the date fixed for the hearing, a notice of intention to appear.

Dated:

Petitioner

PRACTICE

Petition to Cancel Plan

On the Form 17 Charge, Notation or Filing, select Nature of Interest, Petition to Cancel Plan, and attach the original petition.

In order to delineate the property boundaries of the parcel that results from the cancellation of the plan, the registrar requires a s. 100(1)(a) reference plan that re-defines the parcel to accompany the petition. The authority for this requirement is found under s. 131(2)(a). Use the electronic “Application to Deposit Plan” and select “Reference or Explanatory” in Item 3. The “Number of new lots created” should be selected as 0, as the fees and the application number used to create the fee simple title will be derived from the subsequent Form 17—Fee Simple, Registrar’s Order to Cancel Plan Part 8 LTA. Include the Survey Plan Certification with s. 100(1)(a) plan attached.

Subsequent documents related to the service and hearing pursuant to ss. 125 and 126 of the Act are attached to an electronic Declaration and submitted with any additional fees required.

CROSS REFERENCES AND OTHER SOURCES OF INFORMATION

See s. 125(1) of the Act regarding the issuance of a notice of hearing by the registrar.

See s. 127 of the Act regarding the requirements for and consequences of filing a notice of intention to appear.

124 Report of approving officer and district highways manager [§8.6]

124 (1) Unless the registrar otherwise orders, before the date set for the hearing of the petition, the petitioner must file with the registrar a report of the approving officer that contains all of the following information:

- (a) whether any part of a public area affected by the petition is an arterial highway;
- (b) the approving officer's opinion as to whether, if the petition is granted, the plan referred to in the petition will comply with
 - (i) the applicable subdivision and zoning bylaws, and
 - (ii) the requirements of section 75;
- (c) other information that the approving officer considers material to the petition.

(2) If any part of a public area affected by the petition is a highway in a rural area or an arterial highway in a municipality, before the date set for the hearing of the petition, the petitioner must file with the registrar a report of the district highways manager of the Ministry of Transportation.

(3) A request for a report required under this section must be made in writing to

- (a) the approving officer, in the case of a report under subsection (1), or
- (b) the district highways manager of the Ministry of Transportation, in the case of a report under subsection (2),

and must be accompanied by a copy of the petition and a print of the plan annexed as a schedule to the petition.

(4) Within 60 days after receiving a request referred to in subsection (3), the approving officer or district highways manager, as applicable, must deliver the report to the petitioner.

1997-25-41, effective March 26, 1998 (B.C. Reg. 85/98); 2003-66-34.

CROSS REFERENCES AND OTHER SOURCES OF INFORMATION

References for Applying Section 124 to Treaty Lands

See s. 16(1) of Schedule 1 to the Act (see chapter 28 (Land Title Act Part 24.01 (s. 373.11)—Treaty Lands)) for the purpose of applying s. 124 of the *Land Title Act* in relation to treaty lands:

16 (1) For the purpose of applying section 124 of this Act in relation to treaty lands,

- (a) the reference in section 124(1)(b)(i) to “applicable subdivision and zoning bylaws” must be read as a reference to the applicable laws of the treaty first nation relating to subdivision and zoning, and
- (b) the petitioner must request and file the report required under section 124(2) only if any part of the public area affected by the petition is vested in the Crown in right of the Province or the BC Transportation Financing Authority for highway purposes.

125 Service of petition and other documents [§8.7]

125 (1) On receiving a petition under this Part, the registrar, by order, must set a date, time and place for the hearing of the petition.

(2) At least 6 weeks before the date set for the hearing, the petitioner must serve a copy of the petition and a notice of hearing on the following persons:

- (a) if the land affected by the petition is in a municipality, the municipality;
- (b) if the land affected by the petition is in a local trust area, the person appointed under section 17(1)(a) of the *Islands Trust Act* as secretary to the Islands Trust Council;