

Carolynne R. Maguire

A Matter of *When*, Not *If*

Since April 1 of this year, when the Land Title Office (LTO) introduced its Electronic Filing System (EFS), BC conveyancing practitioners have been evaluating the decision of *when* to begin filing land title documents electronically. I stress the word “when” because it is expected the system will inevitably become mandatory, rendering this ongoing evaluation moot.

Though many still ponder the pros and cons, we must ultimately adapt to survive—change is the only constant.

My office has used the EFS regularly since early May. As to be expected when adapting to any new way of doing things, both our office and the LTO have experienced some minor growing pains with the adoption of EFS, but most have been remedied with a little help from each other.

The relative value of the EFS to a conveyancing practice will vary according to its size, hours of operation, technical expertise, and of course staff readiness. Overall, it is a welcome new tool on the conveyancing workbench, affording previously unavailable document-flow options.

The two areas in the conveyancing process primarily affected by the choice to file electronically are document preparation and submission. All else is relatively unaffected and does not vary in practice from a manually filed transaction. Other recent changes in required conveyancing procedure have been at least as disruptive and not half as rewarding to the practitioner—consider the various “Wirick protocols” and the “two-cheque” commission system.

The widespread use of EFS is driving industry software developers to bridge to the new format.

The documents required for the EFS are Adobe Acrobat forms, available for download from BC OnLine. Instruction on their use and completion are available in the *Land Titles Electronic Filing System Reference Manual*—also available from BC Online—and “the Green Book” from CLE.

Acrobat is a versatile and robust program; the prescribed forms are relatively similar to those used for manual filing. Until the office conveyancing

software can populate the fields directly, however, users are forced to re-input transaction data manually. Duplicate entry is not a system responsibility, of course, but it is a costing factor.

The widespread use of EFS is driving industry software developers to bridge to the new format. Pro-Convey—the Web-based conveyancing software created by The Society of Notaries Public of BC—has just now introduced this feature, which is a welcome time-saver for its users.

In the meantime, the redundant entry and increased risk of input error are unfortunate disincentives for many of us still using older conveyancing packages.

The truly significant benefit to the EFS is that you no longer need to possess nor physically submit an originally executed anything. Though execution requirements are unchanged, fax copies on your file will do nicely, thank you. This feature overcomes many time and distance constraints for remote clients and for firms in remote areas, in addition to reducing courier costs.

Once the executed document or a true copy thereof is in the possession of a legal professional enabled to use the system, his or her digital signature must be applied to render the electronic document registerable. The application of the digital signature cannot be delegated; that requires the Notary or lawyer to examine and



match the content of the electronic version to the executed paper version.

Conveyancing assistants who had free reign with document filing will now have to coordinate more than before with their legal professionals prior to document submission—and perhaps get to know each other better.

EFS document submission is where you notice the real difference between the two available systems. For those of us accustomed to our document package's receiving a guaranteed pre-filing inspection by our agents, you cannot help but feel alone with the risk and responsibility when, having applied that digital signature, you push the Submit button.

As with practitioners who have always filed their own documents, some will perceive this as an opportunity to pay themselves or their staff—for their added involvement and risk—the money that would otherwise have been paid to a Land Title Agent. Of course, each must determine the optimal value for his or her own practice, even if on a file-by-file basis.

One prevailing and fundamental misunderstanding of the EFS is that you receive instant registration upon submission. This is simply untrue. In fact, documents filed during “manual filing” hours at the LTO (9 am to 3 pm) receive no priority advantage whatsoever.

As with the manual system, documents are date- and time-stamped upon receipt. While the computer may “mark up to title” right away, a manually filed document received earlier but marked up later will retain its priority. Accordingly, you cannot pay out funds for a purchase or a mortgage filed electronically any sooner than a post-registration search can be obtained for manual filings, without risk of an intervening charge. On the other hand, because documents filed prior to the LTO's opening its doors (6 am to 9 am) vie only with other electronic filings for priority, a post-registration search obtained within minutes of filing can safely be relied upon—still, however, showing pending, not registered, numbers.

If you like an early start to the day, staying late until 8 pm or working Saturdays, the EFS hours (14 hours a day, 6 days a week) afford that opportunity. The standard Real Estate Board contract of purchase and sale does, however, establish 4 pm as the deadline for filing on completion day. Future versions are expected to address Saturday closings.

To address the forecast shift from outsourced (agent-assisted manual filing) to in-house (electronic) registrations, Land Title Agents are seeking ways to retain their position as a value-adding service, while facilitating use of the EFS for their clients—a bit of a balancing act, to be sure. Through various educational and transitioning programs, the more forward-thinking companies are preparing themselves and their clientele for the new regime.

With the Form 17 expected to be available in electronic format by the end of the year, most of the common LTO transactions will soon be possible through the EFS. Once all LTO functions can be accomplished electronically, mandatory use of the system cannot be far behind. For now, however, the choice still exists as to whether or not the benefits of the EFS outweigh the shifts in costing and responsibility resulting from requisite practice changes.

EFS users are still on the thin edge of the wedge with only about 6 to 8 percent of all LTO registrations being filed electronically. Practitioners must ask themselves if their decision “to EFS or not to EFS” is being influenced more by sound business-case analysis or reticence to try something new.

For those in the latter category, transitioning with Land Title Agent assistance will perhaps be one way to ease into the new system *when* the time comes.

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