



Subject CONSENT TO ASSIGN, TRANSFER, MORTGAGE OR CHARGE CROWN OR MINISTRY DOCUMENTS		Policy PL 2.05.01	
Compiled by - Branch Lands & Waters	Section Land Management	Date Issued October 14, 2005	
Replaces Directive Title Same	Number Same	Dated February 11, 1997	Page 1 of 5

1.0 **DEFINITIONS**

In this policy,

"assignment" means the change of ownership of a leasehold estate, a licence of occupation, an interest of the claimant to improvements occupying a land use permit site; but excludes a transfer;

"consent" means the permission required from the Minister to assign an interest in a Crown or Ministry document;

"Crown or Ministry document" includes a Crown lease, Summer Resort Lease, Water Lot Lease, Provincial Parks Lease, Licence of Occupation, Water Power Lease or Water Power Lease Agreement;

"Minister" means the Minister of Natural Resources and includes a delegate; and

"transfer" means the change of ownership of a leasehold estate which is registered under the Land Titles Act.

2.0 **INTRODUCTION**

Most Crown or Ministry documents require the consent of the Minister for certain actions including the assignment, transfer, sublease, and where applicable, the mortgage or charge of lands held under authority of a Crown or Ministry document. The Ministry has an obligation to not arbitrarily withhold consent.

3.0 **PROGRAM DIRECTION**

3.1 **Application**

This policy applies where consent is required for post disposition transactions by terms of a Crown or Ministry document issued under the Public Lands Act or the Provincial Parks Act. The policy also addresses the process regarding an assignment of improvements held under a land use permit.

This policy does not address Mining Leases, Licences of Occupation issued under the Mining Act, or Exploratory Licences of Occupation which are administered by the Ministry of Northern Development and Mines.

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3.2 **Guiding Principle**

Most Crown or Ministry documents require the consent of the Minister to assign/transfer, charge/mortgage, sublease, etc. a document.

Consent does not apply in the case of Land Use Permits which terminate upon death of the permittee or assignment, although a new permit is required by anyone who acquires the interest of a previous permit holder.

3.3 **Goal**

To provide prompt review of requests for assignment/transfer of Crown or Ministry documents while ensuring that the Crown's interests are protected.

3.4 **Objectives and Strategies**

A) To provide prompt and effective quality public service.

The Ministry will place a high priority on requests for consent and will to the best of its ability provide prompt service. To assist in providing prompt service, Area Supervisors have been delegated the power to consent by notice under section 40 of the Public Lands Act.

Potential lessees and licencees should be advised of their obligations under the lease.

B) To maintain and improve the knowledge base.

It is necessary for the Ministry's records to accurately reflect the identity and address of our clients. Area Supervisors will ensure that the Land Index System (LIS) and revenue accounts records are updated to reflect a change of a lessee/licencee.

C) To ensure that the interest of the Crown is protected when consent is given as required by a Crown or Ministry document.

Area Supervisor's Responsibilities

Before giving consent, Area Supervisors shall advise the new lessee/licensee of:

- a) the annual rent/fee to be paid;
- b) the applicant is legally entitled to hold land in Ontario;
- c) any known breaches of the Crown or Ministry document have been remedied prior to consent (e.g. lack of compliance with building conditions, or the site is not in a safe and clean condition); and
- d) the proposed licencee or lessee is aware of all conditions, covenants, restrictions and requirements of the document (e.g. rent adjustment provisions, prior approval from District Manager for construction, etc.).

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Non-Compliance

A lessee or licensee of the Crown, and his/her heirs or legal representative is obligated to meet all conditions of the lease/licence (i.e. building conditions). If the conditions are breached, the lease is subject to cancellation and all monies paid and improvements made are subject to cancellation under section 23 of the Public Lands Act.

Justifiable reasons for a lessee assigning/transferring a Crown or Ministry document which remains unimproved before a building condition period expires include:

- a) the lessee or his/her spouse is seriously ill or incapacitated resulting in an inability to fulfill the conditions of the lease;
- b) the lessee is required for business reasons to move his/her principal residence, making it impractical to fulfil the conditions of the lease; and
- c) cases where other extenuation circumstances exist and the merits of the case justify an assignment/transfer.

Options to fulfilling incomplete conditions include extending the time period at the prescribed fee or granting an assignment to a third party(ies) who is capable of completing the required condition.

D) To not unreasonably withhold consent.

Under the terms of some Crown or Ministry documents (i.e. Summer Resort Leases), the Ministry has a contractual obligation to not unreasonably withhold consent. In other cases, the Ministry should not unnecessarily withhold consent.

However, in some circumstances, it is not unreasonable to withhold consent. Consent should not be given where:

- a) the lessee/licensee etc. is in breach of the terms of the document;
- b) a mortgage or charge might result in a mortgagee or chargee who is ineligible to hold land in Ontario from taking ownership of a leasehold interest (i.e. a corporation not eligible to hold land in Ontario); or
- c) in the case of a power of sale, the mortgagor has not satisfied the requirements of Policy Directive PL 2.05.02 Power of Sale Assignments.

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- E) To maintain title integrity to lands held under authority of a Crown or Ministry document.

Where applicable, the Ministry will comply with the requirements of the Land Titles Act, the Registry Act, the Land Registration Reform Act, the Public Lands Act and the regulations made thereunder for the assignment of leases, term easements and any registered licences of occupation (i.e. clause 22 (4) (f) of the Registry Act. The Ministry will also comply with and support the requirements and practices of the local Land Registry Office regarding registration.

In the case of an estate transaction the Ministry will require sufficient proof to determine who is properly entitled to the deceased's interest. This interest may arise from:

- survivorship, in the case of a joint tenant;
- a will; or
- in the case where a person has died intestate (without a will) through application of Part II (Intestate Succession) of the Succession Law Reform Act.

- F) To consider applications for the issuance of a new land use permit, where the improvements have been assigned.

Land use permits are not assignable. However, an individual may assign his/her interest in the improvements. In this case, the existing permit terminates although, at the discretion of the District Manager, a new permit may be issued.

No credit is to be made for the unused fee paid on a terminated permit, with the exception of tenure upgrades to lease or sale/patent of recreation sites.

- G) To recover costs for processing the transaction from the beneficiary.

Where the document or extension thereof being assigned stipulates a fee to be paid on assignment/transfer, that fee shall be collected. In the absence of a fee being stipulated, the fee stipulated in Policy Directive PL 6.02.01 Administrative Fees for Public Lands Transactions shall be charged.

- H) To provide a procedure for processing those transactions which require consent.

Procedure Directive PL 2.05.01 Consent to Assign, Transfer, Mortgage, or Charge Crown or Ministry Documents is to be followed when processing consent transactions.

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4.0 **REFERENCES**

4.1 **Legislative References**

- Land Registration Reform Act
- Land Titles Act
- Mining Act
- Public Lands Act, sections 23 and 40
- Provincial Parks Act
- Registry Act, clause 22 (4) (f)

4.2 **Directive Cross References**

- PL 2.05.01 (POL) Consent to Assign, Transfer, Mortgage, or Charge Crown or Ministry Documents
- PL 2.05.02 (POL) Power of Sale Assignments
- PL 6.02.01 (POL) Administrative Fees for Public Lands Transactions