



HOW ARE UNPATENTED MINING CLAIMS AND LEASES TRANSFERRED?

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In Ontario, the transfers of unpatented mining claims and mining leases are regulated by the Ministry of Energy, Northern Development and Mines (the “ENDM”) in accordance with Ontario’s *Mining Act* (the “Act”). Under the Act, the transfer process for unpatented mining claims is self-directed, while the transfer process for mining leases requires a lawyer. Nevertheless, in all instances, claimholders and leaseholders are well advised to retain a lawyer to assist them with drafting a written agreement for the transfer, which is a necessary precondition to validate any transfer of unpatented mining claims or mining leases.

This article will outline the processes for transferring unpatented mining claims and mining leases, and inform on the role of a lawyer in assisting claimholders and leaseholders with their transfers.

Written Agreement Required

In accordance with the Act, transfers of unpatented mineral claims or mining leases must be clearly provided for by an agreement in writing that is fully executed by all interested parties (i.e. the transferor and the transferee). There is no prescribed form to a written transfer agreement. However, written transfer agreements for unpatented mining claims or mining leases can be complex, so parties are advised to consult with their lawyers to ensure that their transfer agreements are properly prepared.

Transfer Process for Unpatented Mining Claims

On April 10th, 2018, the ENDM launched the Mining Lands Administration System (“MLAS”), which is an online electronic system for managing legal interests in mining lands. Unpatented mining claims can only be transferred through MLAS. Therefore, claimholders must register on MLAS to transfer their unpatented mining claims. Registration on MLAS is only available online and requires an Ontario ONe-key ID (which can also be obtained online).

After an MLAS account has been successfully registered, only a claimholder, or an authorized individual of a claimholder, who holds a valid prospector’s license can



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manage the account. A claimholder who does not hold a valid prospector's license individual may still register for an MLAS account, but the claimholder must apply for a license immediately after registration or appoint an individual holding a license before the claimholder's mining interests can be managed on MLAS.

The ENDM's consent is not required for transfers of unpatented mining claims. Through MLAS, the transfer of unpatented mining claims is a self-directed process. A claimholder seeking to transfer its unpatented mining claims simply logs into its MLAS account and follows the onscreen instructions to initiate the transfer. For unpatented mining claims that are owned by more than one party as a joint tenancy, any one joint tenant may initiate the transfer but all other joint tenant(s) must approve of the transfer on their respective MLAS accounts. Once the transfer is initiated, a transferee has ten (10) days to accept the transfer by logging into its MLAS account and following the onscreen instructions. Users who experience difficulties with navigating the on-screen instructions may also refer to the step-by-step instructions with pictorial diagrams on ENDM's website for further assistance.

If a transfer is not accepted by the transferee within ten (10) days, the transfer will expire and the transfer will need to be restarted by the transferor. There are no governmental fees associated with transferring unpatented mining claims through MLAS.

Transfer of Mining Leases

The transfer of mining leases differs from the transfer of unpatented mining claims in two major ways: 1) the transfer process for mining leases is not self directed on MLAS; and 2) the ENDM's consent is required to transfer mining leases. Only a lawyer who is registered to electronically transfer real property on Teraview can effect the transfer of mining leases. There is no requirement for the lawyer to be registered under MLAS.

There is no prescribed form to obtaining the ENDM's consent. Generally, the application for consent is a signed letter of the lawyer who has been engaged by a leaseholder to electronically register the transfer on title against the leasehold lands. In addition to other items the ENDM may request, the following items are required to accompany the consent application letter from the lawyer:

1. "In-preparation" Transfer. An "in-preparation" Transfer details, *inter alia*, the transferor, transferee, and the relevant leasehold lands, and proposes the form and substance of the Transfer to be registered on title;
2. Executed Acknowledgement and Direction ("A&D"). An A&D is a legal direction provided by a leaseholder to its lawyer to authorize a transfer after the leaseholder has reviewed the "in-preparation" Transfer;
3. Corporate Profile Report. If either the transferor or the transferee (or both) is a corporation, a corporate profile report for each of the transferor or transferee corporation is required as part of the application;
4. Application Fee. The requisite application fee of \$100.00 + HST is payable by cheque to the Minister of Finance or by credit card over the phone to an ENDM clerk;
5. Evidence of up-to-date payment to the ENDM of all mining lease rent. If there are any unpaid rents, they must be paid in full to the ENDM; and
6. Evidence of up-to-date payment of taxes. If the mining lease includes surface rights, the leaseholder must provide proof of up-to-date payment of municipal property tax or provincial land tax, plus other land-based taxes.

This information can be obtained by contacting the Provincial Land Tax Office for unorganized areas/townships, or contacting Ontario Shared Services for organized townships.

The ENDM's processing time for a consent application may take up to six (6) weeks. However, a consent application can be expedited on request to the ENDM at no additional charge if all of the required information has been provided to the satisfaction of the ENDM. Expedited requests can be processed in as little as two (2) weeks.

The ENDM envisions that leaseholders will eventually be able to transfer their mining leases through MLAS similar to how claimholders are required to transfer their unpatented mining claims on MLAS. However, the functionality to transfer mining leases under MLAS is still under development, and the ENDM has yet to provide an expected completion date.

Conclusion

Claimholders and leaseholders seeking to transfer their mining interests are well advised to consult with their lawyers to prepare a clearly drafted transfer agreement. Once the underlying written transfer agreement has been fully executed, claimholders can initiate and complete the transfer of their unpatented mining claims on MLAS. Meanwhile, for the transfer of mining leases, leaseholders must engage a lawyer with access to Teraview to assist with their consent application to the ENDM and the actual transfer of their mining leases.

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