

The Land Registration Act Audit program is administered by the Joint Audit Management Committee (JAMC), which includes members from Service Nova Scotia and Municipal Relations, the Nova Scotia Barristers' Society and the Lawyers' Insurance Association of Nova Scotia. A designated staff person has responsibility for administering the audit program including following up correction of errors by lawyers.

The audit program is risk-based. The JAMC identifies areas of risk, and transactions are identified in those areas based on the specific criteria such as migration based on possession. Once all transactions that meet the criteria are identified, a number of transactions are then randomly selected to be audited. Audits are performed on a quarterly basis and the goal is that the transaction is to be audited within six months.

The following is an overview of the findings from the 2012 and 2013 LRA Audits.

### **Application for Registration (AFR)**

When reviewing the AFR audits, the most common breaches in 2012 were of section 37(9)(a) and (b) of the [Land Registration Act](#) and Regulation 14(3). Common issues seen in 2012 include:

- Failing to include one of two enabling deeds;
- Failing to secure a mortgage release at the time of migration, or include a mortgage release in the abstract or other foundation documents;
- Incorrectly identifying access;
- Failing to check all name variations when doing a judgment search;
- Failing to include judgments in the parcel register;
- Failing to obtain a statutory declaration confirming the judgments are not against the owner;
- Using only a Statutory Declaration of the owner with no other independent evidence when establishing a benefit;
- Failure to include a servient tenement in the Benefits section of Parcel Register.

In 2013 the most common breaches were of section 37(9)(b) and Regulations 10(10) and 14(3). Common issues seen in 2013 include:

- Limited search on the Grantor/Grantee Index;
- Incorrect application of the law regarding Rights of Way;
- Incorrectly identifying access;
- Incorrect manner of tenure;
- Failing to understand the requirements in establishing a prescriptive easement as opposed to a title acquired through adverse possession;

- Failing to record a Form 8A in relation to non-LRA parcels that benefit from or are burdened by a right of way.

### **Parcel Description Certification Application (PDCA)**

When reviewing the PDCA audits, the most common breaches in 2012 were of section 37(9)(a) of the Land Registration Act, and Regulations 7(10) and 5(2). Common issues seen in 2012 include:

- Failing to reference one of two enabling deeds in the AFR;
- Referencing the wrong Deed when establishing an enabling interest;
- Referencing an incorrect MGA compliance statement;
- Errors contained in the MGA compliance statement;
- Incorrectly referencing another parcel in another community;
- Failing to have a judgment that appears in the judgment roll placed in the parcel registry at the time of migration;
- Failing to include restrictive covenants in a parcel description.

In 2013 the most common breaches were of section 268(a) of the Municipal Government Act, and Regulations 14(3) and 5(2). Common issues seen include:

- De facto declarations not containing sufficient statements to support common usage;
- Submitting a single PDCA when describing two parcels;
- Using the incorrect manner of tenure when establishing title based on adverse possession;
- Errors contained in the de facto consolidation parcel description;
- Failing to file Forms 44 or 8A for non-LRA parcels in respect of flip side benefits when migrating.

### **Revisions**

When reviewing the Revision audits, the most common breaches in 2012 were of Regulations 14(3), 14(4), and 5(2). Common issues seen in 2012 include:

- Delays with recording mortgages which may result in the Certificate of Legal Effect being outdated and therefore inaccurate;
- Failure to properly complete forms resulting in registration delays;

- Failing to instruct the Register in the Form 24 to revise the manner of tenure when noting that it was incorrect in the parcel register at the time;
- Failing to file a Forms 44 and 8A with respect to a non-LR servient PID;
- Failing to properly complete Form 5 indicating incorrect occupancy.

In 2013, the most common breaches were of Regulation 5(2). Common issues seen in 2013 include:

- Failing to search the Plan Index when conducting a final search before the execution of Form 24;
- Failing to include the PID for a second parcel of land identified in the deed;
- Errors in Form 24 such as incorrectly identifying names.

### **Subdivisions**

When reviewing the Subdivision audits, the most common breaches in 2012 were of Regulations 9(3)(b), 14(4), and 5(2). Common issues seen in 2012 include:

- Failing to file a Form 45 between filing the subdivision and the consolidation deed;
- Failing to amend the parcel description;
- Failing to add burdens to the parcel description following subdivision;
- Mismatches with the dominant and servient tenements
- Failing to note the priority of recorded interests;
- Insufficient search of the Judgment Roll bringing into question the accuracy of the Certificate of Legal Effect contained in the Form 24;

In 2013, the most common breaches were of section 37(9)(a)(ii) of the Land Registration Act, and Regulations 5(2) and 7(10) and Professional Standard 2.3. Common issues seen in 2013 include:

- Delays between conducting a judgment search and registering a Deed at the LRO resulting in the Certificate of Legal Effect contained in Form 24 being outdated;
- Failing to amend the parcel description to include benefits or burdens;
- Overlooking a benefit or burden which should have appeared in the parcel description and Parcel Register'
- Failing to remove a servient PID after being retired as a result of a consolidation;
- Describing the owner by different names on several enabling Deeds;
- Incorrectly identifying Deeds as enabling instruments;

- Identifying an inappropriate access type.

### **Textual Qualification Focused**

In 2012, auditors continued conducting Textual Qualification-focused audits, the most common breaches in 2012 were of Regulations 9(3)(b), 14(4), and 5(2). Common issues seen in 2012 include:

- Relying on an incorrect standard when certifying title (ie: the *Limitations of Actions Act* rather than the *Marketable Titles Act*)
- Submitting an incomplete Abstract or one that does not contain sufficient evidence of a subsearch at the time of migration;
- Failing to consider other possible name variations when conducting a final subsearch in the Grantor/Grantee Index

### **RRAC Focused**

In 2013, the Joint Audit Management Committee amended the risk criteria. As a result, textual-qualification focused audits were no longer being conducted and audits involving railways were introduced. The following breaches were seen:

- Failing to conduct final searches in the “Plan Index” or “Plans in Process” at the time of migration;
- Providing insufficient evidence in the textual qualification to show the factual foundation regarding the category of access chosen;
- Failing to describe a benefit in full text;
- Inconsistencies between the enabling instrument with that in the parcel register;
- Incorrect MGA Compliance statement.

### **Conclusion**

Most lawyers are quick to correct their mistakes and an overall review suggests that many of the errors found are as a result of lawyer oversight. Attention to detail, having good office procedures, and carefully proofreading before submitting documents are some ways to address these issues.

