

CONDOMINIUM CONVERSIONS
EXISTING AND NEW CONDOMINIUMS
STEP BY STEP
ERIN O'BRIEN EDMONDS, Q.C.
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Where did we start and where are we going?

There have been several methods of completing condominium conversions since the *Land Registration Act* was first implemented.

I will briefly discuss the history before summarizing the proper method in place today.

Initially condominium interests created by the Declaration and By Laws were shown as “recorded interests” and not as “benefits and burdens”. At the beginning, the system did not provide any other option.

On December 1, 2004, certain changes were made to the system to allow the interests which were created by the Declaration and By-Laws to be added as both a benefit and burden. However, it was unclear as to how to add amendments to these documents in the AFR of the condominium unit.

At that time, the “condominium common PID” was used as a repository for all interests that affect the common interest. The condominium common PID was really a fiction because, the common interests in a condominium do not exist separate and apart from the unit itself. The condominium common PID was not to be considered as a Land Registration Parcel. It was a unique place to “put” all the common interests. In addition, at that time, it was required that the PDCA match the AFR with respect to all benefits and burdens that affected the common area as well the unit itself.

On May 16, 2005, further change was made and these rules what we follow today. The “condominium common PID” is now to be used only as a repository for the Declaration, By-Laws and all amendments to those documents. Any other burden or benefit document or other document that affects the common area does not go in the condominium common PID. Therefore the condominium common PID is cleansed of all interests that are not a Declaration, By-Laws and amendments thereto.

You may ask - how and when is the condominium common PID created? When the first conversion happens in a condominium corporation the Land Registry Staff create a PID for the common area, leave only the Declaration, By-Law and amendments thereto in that PID and

remove everything else.

For conversions done prior to May 16, 2005, the Land Registration Staff will rectify the parcel registers and condominium common PIDs. The “clean up” will be done to bring those old conversions into the current (May 16, 2005) rules.

Any other conversions that do not follow the May 16th rules will have to be rectified by the lawyer who completed the conversion.

When reviewing a parcel register for client who is buying or mortgaging, it is important to check the LR date on the parcel register to see when the conversion took place. If the conversion doesn't meet the May 16th, 2005 rules, and it was converted after that date, you should object to title to require the rectification from the lawyer who did the conversion. If the LR date was before May 16, 2005, the Land Registration staff will fix up the parcel register in due course.

A review of the various ways in which conversions have been done was made by the Registrar General. As a general comment, he indicated that many lawyers are still not "getting" how to register title to a condo unit. They continue to follow the 'old' condo rules (where the condo common PID was a repository) despite the requirements in Section 9A of the LR Administration Regulations which have been effective since May 16th, 2005.

As a consequence, we have quite a melange of condo unit registrations. A single corporation may and often does contain 3 types of LR unit titles:

1. Old rule conversions that were properly completed at the time but that would not be compliant with the new rules;
2. New rule conversions that are done properly (i.e. reference development agreements, easements and any other live interest in the common elements); and
3. New rule conversions that are done improperly, i.e. they seem to follow the old repository rules.

Service Nova Scotia and Municipal Relations are performing a title 'triage' on all registered units and this is a huge task. Rectifications can be commenced for units that fall within registration type #3, but the existence of type #1 means that SNSMR cannot simply 'cleanse' the condo common PID of interests that, by today's rules, would appear in the individual unit registers.

In short, this is a slow process and a mine-field for lawyers. We need to know when the unit was registered to be able to interpret whether or not the registration left out interests that should be appearing in the unit's register.

I will now review the process we follow as a result of the May 16th rules:

EXISTING CONDOMINIUMS - CREATED PRIOR TO LRA DATE

PDCA RULES AND TIPS (*from May 16, 2005 to today*)

1. Always use the description of the unit found in the Declaration, usually Schedule “C” of the Declaration. Do not add any extra pieces of information that identify the unit that are not in the Declaration such as Civic Numbers. Do not use description from last deed as we would have done pre-LRA.
2. Add standard or generic benefits and burdens with specific wording as follows:

Benefit statement - Together with the Common Interest Appurtenant Thereto;

Burden statement - Subject to the Declaration and By-Laws of HCCC No. ____.

Example of a (fictitious) description:

Level 2, Unit 4, Suite 204, in the Condominium administered by Halifax County Condominium Corporation No. 186.

Together with the Common Interest Appurtenant Thereto;

Subject to the Declaration and By-Laws of HCCC No. 186.

Note the use of “HCCC” after “Subject to” on the last line instead of the spelled out form.

Authority:

Administration Regulation:

5 (8) When the legal description submitted for PDCA approval relates to a unit as defined in the Condominium Act, the description must contain only

(a) the name of the County where the condominium corporation is situated, together with the condominium corporation number as assigned by the registrar of condominiums;

(b) the description for the unit as detailed in the condominium declaration;

(c) a benefit, using the following wording: "together with the common interest appurtenant thereto";

(d) a burden, using the following wording: "subject to the Declaration and By-Laws (remove reference to By-Laws if none have been registered) of (insert county initial(s))

*CC No. (insert condominium corporation number)".
Subsection 5(8) replaced: N.S. Reg. 99/2005.*

3. Do not add any benefits or burdens that affect the parcel of land on which the condo sits. These benefits and burdens go in the AFR for condominiums but do not go in the PDCA. This is different from conversions of land parcels which must contain the benefits and burdens that match in both the PDCA and AFR.
4. As lawyers working in the Land Registration system, we have an obligation to assist the parcel owner in identifying the PID for the parcel and to take reasonable steps to identify the parcel unless the parcel is a condominium unit. Also, with parcels that are not condominium units, we are required to have the parcel owner confirm the apparent match of the graphics identified by the PID with the legal description unless the parcel is a condominium unit. This step has made PDCA's for condo units much more straightforward. There are fewer rules to remember with these PDCA's.

Authority :Admin Reg 5(5)(d)(ii).

(5) Before an application for registration in final form is submitted, the PDCA submitter must assist the parcel owner in identifying the parcel's PID and take reasonable steps to identify the parcel, including

- (a) reviewing the legal description;*
- (b) reviewing Provincial property mapping graphics;*
- (c) placing a comment in the comments field if errors in the parcel graphics are identified by the parcel owner; and*
- (d) having the parcel owner confirm the apparent match of the graphics identified by the PID with the legal description **unless (emphasis added)***
 - (i)*
 - (A)...*
 - (B) ...*
 - (C) ...*
- (ii) the parcel is a condominium unit.*

5. We are not required to put in one of the standard MGA Compliance Statements for condominiums. The requirements of a PDCA have been included in the regulations, and there is no requirement for the MGA compliance statement in that regulation. The reasoning is that all condominiums are created under the provisions of the *Condominium Act* and not under the *Municipal Government Act* and also that no condominium corporation has been accepted for registration without having first obtained an occupancy permit from the municipality prior to the validation date of April 16, 1987 .

AFR RULES AND TIPS-CONVERSION OF EXISTING CONDOS

6. When reviewing the abstract of title, determine what Declaration(s), Bylaw(s) and amendments affect title. Ensure that all of these documents are listed in the Condominium Common PID. This PID is created (by property mapping staff at the Land Registration Office) when the first condo in an existing corporation is converted. Remember to search forward out of the Condominium Corporation once the Declaration has been registered to pick these up. Note that once the PID is created for the Condominium Common, all interests that are not Declarations, By-laws or amendments thereto are removed from the Land Registration View of this PID.

You will find the Condominium Common PID by looking at Property On Line under the property you are converting. Then click “Details View” , then go down to “Parcel Relationships” near the bottom of the screen where you will find the Parent PID. Click on Parent PID and you will go to the Condominium Common PID. If there are any missing entries in the details of that screen as compared to your title search, make a comment (not a textual qualification!) on your AFR regarding the missing information. Provide Document type, date of document, registration date. If you wish, you can print off a map of the land parcel on which the condo sits for your client at this location as well.

Only the Declaration, Bylaws and amendments will be indexed by the Land Registration Staff in the condominium common PID.

Authority:

Admin Regulation

9A(3): When a draft application for registration for a condominium unit is approved the registrar must create a parcel register for the condominium common PID in the name of the condominium corporation and must register the declaration, by-laws, and common element rules of the condominium corporation as burdens against the condominium common PID. and

(4) Any amendment to the declaration, by-laws or common element rules of a condominium corporation must be registered as burdens against the condominium common PID. and

(5) The parcel register of a condominium common PID may only contain the burdens or amendments enumerated in subsections (3) and (4).

7. Add the standard Benefit language under Enterprise section of Benefits as follows:

"together with the common interest appurtenant thereto"

There is no requirement or need to match this benefit with another PID as you would do with a right of way. The enabling instrument for this benefit MUST be the Declaration. The regulations provide that all such documents (found in Condominium Common PID are deemed to be registered in the parcel register for each unit in the condominium corporation. Therefore the detail required with respect to Declaration and By-laws can be obtained from the condo common PID and not the AFR for the unit.

Authority:

9A (1) An application for registration for a unit as defined in the Condominium Act must include

(a) a benefit, using the following wording: "together with the common interest appurtenant thereto";and

(2) The enabling instrument for the benefit and burden described in clauses (1)(a) and (b) must be the declaration for the condominium corporation.

9A(6) An instrument that is registered in the parcel register of a condominium common PID is deemed to be registered in the parcel register for each unit in the condominium corporation.

8. Add standard burden language as follows:

Subject to the Declaration and By-Laws (remove reference to By-Laws if none have been registered) of (insert county initial(s)) CC No. (insert condominium corporation number)"

Note that here you should use HCCC no. and not Halifax County Condominium Corporation Number (spelled out). This is a requirement of the system and from our perspective, it is just a rule we must follow to make the system work. Remember to remove the reference to By-laws if none are registered. The enabling interest MUST be the Declaration. (*Admin Reg 9A(2)*).

Do not refer to common element rules, only Declaration and By-law (if applicable). Common Element rules are normally incorporated as part of the By-law and do not stand alone.

Authority:

9A (1) An application for registration for a unit as defined in the Condominium Act must

include

(b) a burden, using the following wording: "subject to the Declaration and By-Laws (remove reference to By-Laws if none have been registered) of (insert county initial(s)) CC No. (insert condominium corporation number)"; and

(2) The enabling instrument for the benefit and burden described in clauses (1)(a) and (b) must be the declaration for the condominium corporation.

9. Here is the tricky part: Add all other benefits and burdens that are NOT Declarations, By-laws or amendments to Declarations or By-laws, but are interests in the unit OR the common interest. These benefits and burdens that affect the land on which the condo sits MUST go in the AFR but not the PDCA.

Really what we are doing here is adding all of the restrictive covenants, development agreements that are applicable, easements, rights of way etc. that affect the common interest. This process is the same as for any other land parcel. Since the unit ownership also includes a proportionate interest in the common elements (which includes the land parcel), these interests are relevant to ownership of the condominium unit. This seems confusing because we do not put these benefits and burdens in the PDCA. AFR's for condos are often more difficult because of access driveways that may be shared by other condominium corporations or other parcels.

Authority: Admin Reg:

Registration of condominium units and the condominium common PID

9A (1) An application for registration for a unit as defined in the Condominium Act must include

(c) all other benefits and burdens that are not declarations, by-laws or amendments to declarations or by-laws, but are interests in the unit or the common interest appurtenant thereto;

10. Add all the recorded interests in the unit AND recorded interests against the common interests. If there is a mortgage against the unit and also a mortgage against the common elements, both must be added. This might be the case for an old mortgage against the land on which the condominium sits. You must search out of the Condominium Corporation to pick up any recorded interests against the Condominium Corporation after the Declaration has been recorded. It will be rare to find a recorded interest against the Condominium Corporation after the Declaration has been filed unless perhaps a lien is filed against the common elements. It would also be rare to find a recorded interests against the land that existed prior to registration of the condominium if the unit is old and has changed hands a few times because all of the old undertakings would likely have been fulfilled. However, it is possible that there could be a Builders lien against the common elements or an old mortgage not yet released.

Authority:

9A (1) An application for registration for a unit as defined in the Condominium Act must

include

(d) all recorded interests in the unit or the common interest appurtenant thereto.

COMMON ERRORS ON PDCA's and AFR's since May 16, 2005 amendments.

1. The generic burden refers to the "common elements" which is an outdated form of the statement no longer used;
2. Bylaws and amendments to By-laws are showing up in the AFR as burdens on individual units;
3. More burdens in the PDCA than the standard burdens;
4. Description not matching the Declaration;
5. Not all interests affecting the common area are placed on the unit AFR. There are often easements for driveway access that are missed completely or if entered are entered either incorrectly or without the naming of a Servient Tenement PID when one was available.
6. No comments made in AFR that condominium common PID is missing references to amendments to Declaration and By-Laws or that there are additional documents in the condominium common PID that should not be there.

Conveyancing Issues with Condominiums

Since the Land Registration came into effect, new issues have arisen regarding the practice of conveyancing.

1. Deeds

One such issue that comes to mind is the way in which the description is provided in the deed. Many of us use the HOT DOCS program to create deeds. This program inserts the legal description in the body of the deed rather than in a schedule attached to the deed. The best practice seems to use the certified description for all conveyances whether the parcel be a land parcel or a condominium unit. This will assist the lawyer for the buyer ensuring the property description of the unit is included. The buyer's lawyer must always check the parcel register with the deed to ensure a proper description. When completing an e-submission, it will be easier for the buyer's lawyer to check the description if it is attached as a schedule and less likely for errors to be made.

2. Easements

The easements which affect the land parcel should be in the AFR but not the PCDA. The scanning project is helping tremendously. The easements can be viewed once scanned. It is common to find access easements between adjoining condominium corporations. The search usually discloses the parcel which is burdened by the easement. If it is possible to determine this servient tenement PID, then enter it in the AFR with the specific PID rather than Various PIDs. In this way, a lawyer who examines the parcel register in the future will be able to explain to his or her client the location of the various rights of way.

One recent confusing example that I experienced was a list of easements created in the first deed out of the Declarant. The easements were described in a previously recorded Statutory Declaration. It would be very easy to miss these easements if the description from the first deed out was not copied by the searcher.

NEW CONSTRUCTION CONDOMINIUMS HINTS AND TIPS ABOUT THE CONVERSION PROCESS

The parcel of land upon which the condominium is being built is converted before registration of the condominium. After registration, the PIDs are created by the mapper. If we understand the process that the mappers are required follow when assigning new PIDs to the new units created by the Declaration, then we should know what to look for when searching a PID for a newly constructed condominium. Remember, the conversion of the land must take place before the Declaration, By-laws and condominium plans are registered. Just prior to registration of the Declaration and By-laws, the mappers create new PIDs for each of the units. They must then create the short form description for each unit using the Declaration. As with new subdivisions, there are a few issues that only come up with infant parcels created from the parent using short form descriptions.

Some common questions come to mind:

1. What interests are automatically inherited into the new unit PID;
2. What interests are left in the condo common PID.

Kevin Blades, senior property mapper at Service Nova Scotia and Municipal Relations was kind enough to send me his procedures for assigning PIDs and transferring interests to the new PIDs. I have abbreviated his procedure sheet to make it more understandable from our side of the computer screen.

When submitting the Declaration for Registration, use Form 28. When submitting a By-law for registration with the Declaration, use Form 24.

Condominium Procedures **Land Registration** -Step by Step

Performed by the front counter staff

- 1. The Condominium Declaration is indexed and the receipt is generated at the front counter.** (Note Form 28 is the form filed with the Declaration and Form 24 with the Initial By-Laws).
Front Counter staff will add as interest holders (grantee): - Name of condo corp, and the Declaration is associated with the condominium common PID.
- 2. The Condominium By-Law is indexed and the receipt is generated at the front counter.**
The By-Law is associated with the condominium common PID.
- 3. The Condominium Plan is indexed, receipt generated and processed by registry staff as a separate document at the front counter.**
- 4. Declaration, By-Law and plan or a copies of are forwarded to the mapping section.**
The declaration or (copy of) and the plan is sent to the mapping section for maintaining.

PROCESSING THE CONDOMINIUM DECLARATION

Performed by the mapper

- 5. Mapper checks for other documents relating to the condominium common PID** that have been indexed prior to the declaration.
- 6. Check the Condominium Declaration to ensure each unit and parking unit can be uniquely identified by “Unit and Level” or “Parking Unit and Level”**

If they are not, then the declaration can not be registered until the PDCAs for those units or parking units are received in the queue. The mapper must notify the submitter of the declaration or the lawyer who converted the parcel.

Note to lawyers:

It is important for condominium surveyors to be advised by condominium lawyers that short form descriptions cannot be created by the mapper for new condo units when the description is not unique to that unit. If there is more than one unit in the building that has the same unit and level number but has additional distinguishing information, the mapper cannot create the short form description for the unit. The PIDs will be created and provided to the lawyer who must then submit the all the PDCAs for the units in the usual PDCA queue. If, however, the unit and level numbers are unique but there is additional

information such as a Suite number or Building number, the mapper can create the short form description. This will allow the Declaration and registration process to move forward. However, the lawyer will have to amend the description to match the Declaration before conveyance of the unit. These issues will affect the timing of closings on a new condominium project. The way around this issue is to make sure that each unit is described in the Declaration with only unit and level numbers and no other additional information. This includes parking condominium units and condominium units. The system can only accept two pieces of information (unit and level) in its system.

7. Change attributes on the Condominium Common PID

- The mapper enters the PID to be used as the Condominium Common and adds the parcel type as “Condominium Common” and adds the Condominium Corporation number in the “Condo Corp #” field.

8. Create all the new Units and/or Parking Units

- The infant PID(s) will automatically have a parcel type as “Condominium Unit”.
- The infants will inherit the management unit, public comments, internal comments, street name, street type, street direction, place name, owner names and parent status.
- Other attributes such as Parcel Access is added, if necessary
- The number of Infant Parcels is added.

9. Maintain and Register the Condominium Declaration

10. After the declaration is registered, the mapper will ensure the original has;

- the time of registration on the Document (within the registry stamp on the document).

The details to be worked out at a office or regional level with the registrar

11. Copy interest holders to Condominium Unit PIDs

12. Edit the Fee Simple Interest Holder of the Condominium Common PID

13. Enter information in Parcel Register and Register the By-Law

14. After the by-law is registered, the mapper will ensure the original has;

- the time of registration on the Document (within the registry stamp on the document).

The details to be worked out at a office or regional level with the registrar

15. Create Application PDCA #

- 16. Accept for Registration the Condominium Plan. This step may be performed by the Registry Staff as part of Step 3, if not the mapper would access the plan for registration.**
- 17. Associate the Condominium Plan with the Condominium Declaration**
- 18. Create Short Form Descriptions for the new parcels**
- 19. Enter information about each Parcel**
- 20. Register the Plan**

The new Land Registration parcels are now on the public record and allows the closings of the parcels to happen.

- 21. After the plan is registered, the mapper will ensure the original has;**
 - the time of registration written on the plan (within the registry stamp on the document).**The details to be worked out at a office or regional level with the registrar**
- 22. Return the originals (Declaration, By-Laws and Plan to the appropriate registry section**
- 23. Create Drafting Transmittal**
- 24. Create/Adjust Assessment Accounts;**
- 25. Final check**
- 26. Complete the Drafting Transmittal**