

Condominiums & the *Land Registration Act*
PDCAs, AFRs & Advil
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The *Land Registration Act* (LRA) defines “parcel” as follows:

3(1)(m) "parcel" means any area of land that may be owned in fee simple absolute, and includes a unit as defined by the *Condominium Act*.

Other than requiring parcel registration prior to creation of a new condominium corporation¹, that is the only mention of condominiums in the LRA. The only reasonable inference to be drawn from this is that the framers of the statute intended that condominium units be treated in the same way as any other parcel in the new title registration system.. As with any other parcel, then, all “live” interests affecting the condominium unit must be included in the lawyer’s Opinion of Title and Application for Registration (AFR) for the unit.

The proverbial condominium chicken has come home to roost with a vengeance now that Halifax County has gone “live” in the new system. Condominiums, after all, are unique creatures and are only the same as other parcels to the extent that a person can acquire, transfer and encumber a fee simple estate in a unit. Beyond that, condominiums do not fit well into the new system [legislative or computer]. The benefits and burdens that attach to the common elements are the culprits.

New Brunswick’s *General Regulation - Land Titles Act* [NB Regulation 83-130] excepts condominium units from the operation of the *Land Titles Act* by removing them from the conversion triggers [transfer for value and mortgaging] under their statute²:

¹**46(2)** The Registrar of Condominiums shall not accept for registration pursuant to the Condominium Act any condominium corporation where the property, as defined in the Condominium Act, is not registered pursuant to this Act.

²3(5) An instrument or document transferring title to any parcel of unregistered land which is not excepted from the operation of the Act may be recorded under the *Registry Act* on or after the coming into force of this section, if

(a.2) the transfer is of title to a condominium unit.

3(6) An instrument or document that has the effect of mortgaging any parcel of

New Brunswick may have been on to something. That is a facetious comment, of course. There are almost 10,000 condominium units in Nova Scotia, and more are being created monthly. That is a large sub-set of parcels to have living forever in the *Registry Act* world, never to benefit from the ownership guarantee and efficiencies that the LRA provides to all registered parcels. Better that we find a way to make the square pegs that are condominium units fit in to the round hole that is the title registration system.

The common elements in a condominium corporation are owned collectively by the various unit owners, in the percentages allocated to the units in the Declaration. On creation of the condominium corporation, the common elements may be subject to a development agreement with a municipality, a developer's mortgage, an easement or some other interest. Interests may also be placed against the common elements after the Declaration is accepted for registration by the Registrar of Condominiums. Technically, the title to all of the units is affected by interests that are registered or recorded against the common elements. If condominiums are to be treated as any other parcel, every unit will be subject to all of these interests. Unless the easement goes through the living room of one or more of the units, should it be shown as a burden on the unit's title?

There have been a wide range of approaches to unit registrations since December 1, 2004 and there is no doubt but that a uniform approach is in the best interests of the system and its users. Enter the External Land Registration Procedures Advisory Working Group (AWG). This is a group of eligible lawyers, surveyors and government staff from Service Nova Scotia and Municipal Relations (SNSMR) who meet on an ongoing basis to discuss and implement policies and procedures to improve the Land Registration system³.

Recently, the AWG has met to discuss how to properly reflect ownership interests in

unregistered land that is not excepted from the operation of the Act may be recorded under the *Registry Act* if the instrument or document has the effect of mortgaging a condominium unit.

³See membership list attached to this paper

condominiums and how to properly reflect revisions to the unit ownership and its relationship to the common elements. One of the first items discussed was the possibility of treating all condominium common PIDs as a repository for those interests that affect the common interest for all of the units in a corporation.

The December 1, 2004 *Land Registration Administration Regulations* contain a provision [subsection 11(6)]⁴ that was designed to permit a single registration or recording for documents affecting pre-LRA condominium projects, i.e. where not all of the units have been registered under the LRA. The AWG felt the regulation could be used to put pre and post-LRA condominium projects on the same footing, i.e. all condominium common PIDs could become a repository for interests affecting all units, whether the condominium common PID was created as a land registration parcel or not.

The AWG reviewed subsection 11(6) and recommended that the condominium common PID take on the 'repository' function for both existing and new condominium corporations.

Some explanation of the condominium common PID seems in order. Briefly put, the condominium common PID is the parcel upon which the condominium development, apartment style or townhouse, sits. Before a condominium Declaration is accepted for registration by the Registrar of Condominiums, the parcel is like any other. Mappers index documents that potentially affect the parcel, and the indexed "attributes" appear in the Property Details view in *Property Online*. Unless the condominium common parcel is a land registration parcel when the condominium comes into existence, there is no Land Registration view or parcel register for the condominium common PID.

Once a condominium corporation is created, interests that affect all units are indexed against the condominium common PID. The condominium common PID becomes an abstract or

⁴11(6) An instrument that is registered or recorded against a condominium common PID is deemed to be registered or recorded, as applicable, in the parcel register of each unit in the condominium corporation.

theoretical parcel and not a "standard" PID, in the sense that it represents the common elements, which are attached to the individual units. The original, pre-condominium parcel mapping graphics are not replaced when the corporation is registered. Individual units are not mapped on Property Online.

For pre-LRA condominium corporations, then, the condominium common PID is not registered under the LRA. For post-LRA corporations, the condominium common PID has land registration status because, as noted above, the parcel upon which the complex is built must be converted prior to the granting of condominium status by the Registrar of Condominiums.

The AWG believed that all condominium common PIDs could serve as repositories for instruments that affect the common interest. This would leave the individual unit registers uncluttered by interests that affect the common elements. Two complications arose: for pre-LRA condominium common PIDs, a way had to be devised so that lawyers could separate the wheat from the chaff in the interests or attributes that are indexed against pre-LRA condominium common PIDs. For land registration condominium common parcels, not all interests would need to be inherited by the individual units.

The AWG then determined that the best course of action might be to require a textual qualification on unit registrations for existing (non-land registration) condominium units, that would outline the applicable and inapplicable interests or attributes that had been indexed against the condominium common PID over time. This idea raised two issues:

- First, each unit would potentially have different opinions as to which interests appearing in the condominium common PID affect the unit and which were inapplicable.
- Second, once the textual qualifications came in for the individual units, who would "clean up" the non-land registration condominium common PID and remove the textual qualifications?

As discussions continued, the problems compounded. For example, not all interests that appear in a condominium common PID should reside there instead of in the individual unit

registers. Developers' mortgages are an example. If the mortgage and partial releases remained in the condominium common PID only, title searchers would have a nightmare on their hands sifting through the partials to determine whether the unit under search had been released from the blanket mortgage. Also, on creation of the condominium common PID and infants in a new condominium corporation, the mappers would have to manually "cherry pick" which interests get inherited by the infant units, and which stay in the condominium common PID.

The repository idea foundered. The AWG realized that much more "workshopping" ["blame-storming"?] would have to take place before the repository idea could be made feasible.

The bottom line

It was decided that until further notice, the initial intent of the LRA should be honoured. Condominium units should be registered with all "live" registered and recorded interests appearing in the parcel registers.

Therefore, a notice will be going out to all eligible lawyers that advises them to treat condominium units as they would any other parcel, notwithstanding the fact that this will mean that individual units may show easements, development agreements and other interests in their parcel registers. Registrants will be advised to add a generic condominium burden to the units' registration, as follows:

Subject to the Declaration of Halifax County Condominium Corporation No. 000 [Declaration registration particulars are the enabling instrument reference]; and

Subject to the By-Laws and common element rules of Halifax County Condominium Corporation No. 000 [original by-law registration particulars are the enabling instrument reference].

This will at least permit the condominium common PID to be the repository for Declaration and by-law amendments.

PDCAs & AFRs when converting non-land registration condominium units

Condominium unit PDCAs will need the standard benefit and burden wording listed above. The *Municipal Government Act* (MGA) compliance statement must be the statement that fits the condominium common PID. Individual units are created under the *Condominium Act* and not the MGA, and therefore an MGA compliance statement for the individual unit is not required.

AFRs for condominium units must include the standard condominium benefit and burden, enabled by the Declaration or by-laws as appropriate. Individual units must also show relevant registered and recorded interests from the condominium common PID. No textual qualification about the applicability of the interests in the condominium common PID is needed.

When converting a condominium unit or when transferring a converted unit, the lawyer must review the interests in the unit PID and the condominium common PID.

The AWG will continue to discuss the condominium registration process, so further refinements to the policies are inevitable.

What about condominium units that have already been registered under the LRA?

A review of the parcel register for a few registered units will show that some show easements and development agreements etc., and some do not. Those that do not show the interests that bind all units in a corporation are still subject to regulation 11(6) so no “clean up” by the registering lawyer is necessary. The AWG will be looking at options to standardize the parcel registers for converted units in the coming weeks.

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