

Certifying To Your Purchaser

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"It is not clever of man to tailor his obligations to the standards of a different kind of being."

Michel de Montaigne

In preparing for this short paper I canvassed a number of law firms in Cumberland County and Colchester County and spoke to lawyers who carry on substantial property practices. The question for this paper is how do we now report to purchasers after the implementation of the *Land Registration Act*.

I strongly recommend you familiarize yourself with the professional standards for real property transactions as provided by the Nova Scotia Barristers' Society. I have for discussion purposes only attached a sample Certificate of Title or Report to Purchaser.

My inquiries disclose that a number of lawyers engaged in real property practice are not providing Certificates of Title following the implementation of the *Land Registration Act*. Many lawyers are simply sending out a reporting letter with a copy of the Statement of Registered and Recorded Interests. Other lawyers suggest that they have an obligation to provide the purchaser with a Certificate of Title. Certificates of Title may limit potential liability. Qualifications on title may be of little benefit to the lawyer if he or she fails to confirm the explanation of the qualification prior to closing. The practice standards and reported cases on solicitor's negligence are replete with the obligation of the lawyer to confirm the client's instructions prior to closing.

Certification of title where title involves registered interests are problematic. Care should be exercised in reporting the character and limitations on the benefit/burden of the easement and not simply reporting the existence of the easement.

In summary the practice in respect to Certificates of Titles is evolving. It is important for the lawyer to revise this document as the practice changes.

CERTIFICATE OF TITLE

TO:

YOUR PROPERTY:

1. The property you have purchased is located at _____, Cumberland County, Nova Scotia. The parcel identification Number (PID#) for your property is _____ and a textual description for your property is attached as Schedule "A"
2. The Nova Scotia Property On-line map of your property is attached as Schedule "B". This is a graphical representation and not a land survey.
3. Your property is encumbered by the registered and recorded interests disclosed in the Statement of Registered and Recorded Interests (SRRI), attached as Schedule "C".
4. Your property is subject to the restrictive covenants attached as Schedule "D".

Our Certification of Title To You

1. We have examined the Statement of Registered and Recorded Interests and our certification of title to you is based solely on the accuracy of the Statement of Registered and Recorded Interests attached as Schedule "C".
2. _____ is/are the registered owner(s) of the property described in this Certificate and _____ has/have marketable title to the property.
3. The following registered interest(s) affect this property. Prior to closing you were advised to conduct an inspection of the property to ensure there was no concern about the registered interest. (A short reference to the Burden or Benefit created by the registered interest would be inserted here.)

Or

3. There are no registered interests affecting this property.
4. There are no recorded interest(s) against the property, except for (the details of the purchasers mortgage for instance would be inserted here).

Or

4. There are no recorded interests against the property.
5. **Taxes:** We have obtained a Tax Certificate from the Municipality where the lands are located, and subject to the accuracy of this Tax Certificate, attached as Schedule "E", we hereby report as follows:
 - i) All outstanding taxes that have been billed are paid;
 - ii) Taxes are paid to and including _____
 - iii) Taxes are outstanding in the amount of _____

Or

5. We have not obtained a tax certificate from the Municipality where the lands are located and therefore this certificate is subject to unpaid taxes, if any.

This Certificate and the obligations arising from this Certificate as well as the right to indemnity, are not assignable or transferable to any other person.

OUR CERTIFICATE DOES NOT:

1. Our certificate is for title to your property only. We do not certify the actual dimensions of the property, its size, location on the ground, the location of any buildings thereon, nor do we express any opinion as to any possible encroachments on the property, all of which can only be determined by survey and a physical inspection of the property.
2. Disclose or certify for any overriding interests that are not required to be registered pursuant to the *Land Registration Act*. See Schedule "F" attached for an explanation of an overriding interest.
3. Certify that all Federal, Provincial or Municipal laws, by-laws or regulations in any way affecting this property have been complied with (e.g. building permits, codes, health permits and zoning by-law, and Department of Environment orders).
4. Certify the enforceability of any applicable restrictive covenants or that there has been no breach of any applicable restrictive covenants.

DATED at Amherst, Nova Scotia, this _____ day of _____, 2005.

ARCHIBALD, MORLEY

Per:

Schedule "E"

The *Land Registration Act* provides that there are certain "overriding interest" which may affect title of your property and which we cannot determine from over review of the parcel register. Examples of such interests are as follows:

1. An interest of Her Majesty in right of the Province that was reserved or excepted from the original grant of the fee simple absolute from Her Majesty, or that has been vested in Her Majesty pursuant to an enactment.
2. A lien in favour of a Municipality pursuant to an enactment.
3. An easement or right of way that is being used and enjoyed. A physical inspection of the property should be carried out by you to ensure whether this is a potential concern.
4. A leasehold for a term of three years or less, if there is actual possession under the lease that could be discovered through usual investigation. Again, this should be able to be determined by you in any physical inspection of the property.
5. A lien for assessments pursuant to the *Workers Compensation Act*.
6. A lien created by or pursuant to a statute that expressly refers to the *Land Registration Act* and expressly provides that the interest is enforceable with priority other than as provide in the *Land Registration Act*.
7. A utility interest.
8. Any grant granted by or pursuant to an enactment of Canada or the Province.
 - (a) to enter, cross or do things on land for the purpose expressed in the enactment;
 - (b) to recover municipal taxes, duties, charges, rates or assessments by proceedings in prospective land;
 - (c) to control, regulate or restrict the use of lands; or
 - (d) to control, regulate or restrict the subdivision of lands.

YOUR OWNERSHIP is therefore qualified with respect to these interests.