

Catherine S. Walker, Q.C.

Walker Law Inc.

2016 Quinn Street, Halifax

December 8<sup>th</sup>, 2015

# FORM 8As, CONSENTS AND THE MGA IN THE LRA ENVIRONMENT

# Form 8As...

- Auditors note that Form 8As on the frequent flier list.
  - What is the purpose of a Form 8A and when do you file one?
  - Pre 2009 requirements
  - Since May 2009, and LRAR 10(14) Form 8As are required to be filed at time of migration on a non-LR dominant/servient PID for any benefit/burden;

# Form 8A requirements..

- The Form 8A is required to be filed for **non-LR** parcel under the *Registry Act* affected by benefit/burden
- Must be filed against owner of the non LR parcel “as shown in the consolidated index” (Reg.14(7)(8))
- Form 8As – found Property Details? If not check GGI.
- If the owner is ‘unknown’ (ie road parcel) see Reg 14(7) for options
- Adding easement to LR parcel and non LR affected? Original filed for non LR (*Registry Act*) and a certified copy in the Land Registration parcel

# Resources for 8A issues ..

- “Real Estate Boo Boos” Brenda Rice-Thomson (LIANS website)
- Power point Slides for RELANS Presentation on May 2009 LRAR 10(14) legislation changes (LIANS website);
- LR Manual online has guidelines for filing 8As and sample 8A forms (POL);
- See also the RG Directive dated August 31, 2009 which provides some guidance on filing of 8As (POL)

# Fixes and consent to fix CLE

- Regulation 22 requires lawyer to fix errors on a CLE “without delay”
- Must get consents or waiver of consent from the RG;
- Can we make it getting consent easier on us?

# Examples on Migration:

- lawyer misses outstanding  $\frac{1}{4}$  interest. Your client thankful that nuisance missing heir dealt with in such expedient fashion...
- lawyer forgets to register private right of way burden in favour of neighboring non-LR owner- they have been fighting for years... "yippee" says your client when denying consent

# Example on Revision

- lawyer forgets to add restrictive covenants to parcel register which prohibit subdivision...“excellent” says your client, “just what I wanted to do”..
- lawyer forgets to add easement shown on subdivision plan...your client says “I didn’t know I would have to share a trench”..

# Improve the odds...

- **ADD CONSENT TO RETAINER**
- **DOCUMENT, DOCUMENT, DOCUMENT**
- **CLIENTS' MEMORIES FADE WITH TIME, AS WILL YOURS. I guarantee it.**



# Sample Consent added to retainer:

“We further authorize ABC Law to file any documents with the Land Registration office that in the opinion of our solicitor are required to complete this transaction on our behalf, including any amendments or rectifications that may be necessary or appropriate prior to or after the completion of this transaction. This consent extends to anyone retained by ABC Law or its successors.”

# And...you may wish to add:

“We hereby waive the requirement of notice, written or otherwise, prior to correction of any errors or omissions made in the Application for Registration, Parcel Description Certification Application, recording or other information certified by a Certificate of Legal Effect for the purposes”

# MGA changes afoot?

- The provincial government recently announced possible changes to the *Municipal Government Act*
- The CBA Real Estate and Municipal Law sections recently held a joint meeting- issues that arise on new subdivisions were discussed

# MGA changes afoot cont'd..

- I leave you only with a few of the points discussed/suggested:
  - Consider broadening the deemed easement provision in s.280(2) of the MGA for new easements on subdivision
  - Consider when drafting private agreements of purchase and sale, or under lawyer review clause in standard agreements, requesting the builder/seller be required to update the parcel register for all new easements/attributes pursuant to s.61(2) and (3) of the LRA?

# MGA changes afoot cont'd..

- Consider whether restrictive covenants can be placed on the parent parcel before subdivision pursuant to s. 61 of the LRA to avoid the inconsistent addition of restrictive covenants in infant parcels and possible jeopardy to the effectiveness of the building scheme created
- Stay tuned for more discussions to come....

# Summary Points...

- Consider the requirements for filing Form 8As:
  - When reviewing parcel registers- have the requirements been met?
  - At the time of migration- are any non LR parcels affected that require Form 8A notice be filed?
- Get consent at the time of retainer from the client to assist in your ability to fulfill your obligation to fix “without delay” pursuant to LRAR Reg. 22 ; and
- When in doubt as to what needs to be done, pick up the phone and consult a colleague...we are never far away...