

REPORTS ON TITLE

The *Land Registration Act* has created a new system of certifying title to real property in Nova Scotia. It is important to realize that although it is now the government which certifies the title to the public, it is the lawyer's job to interpret, explain, object to and certify to the client the formal record of the title to the property that is the subject of the purchase. So in many ways, our job as lawyers is exactly the same as it was before. As legal counsel to the purchaser and the mortgage lender, we are merely examining a different document. Instead of examining a large title search, we are now only examining what appears on a computer screen or on the Statement of Registered and Recorded Interests (SRRI). While the actual document we are reading and interpreting may be different, the lawyer's duty is still the same as before. The lawyer's job is to:

1. Examine the title, determine the title holders, consider the access to the property, obtain copies of all covenants, burdens and benefits;
2. Meet with the clients, in advance of the closing, to show them the title, explain the title to them;
3. Take instructions from the client as to their acceptance or non-acceptance of the benefits and burdens, the access, and any other unusual item arising from the examination of title;
4. Write notes in the file, to document the details of any issues reviewed with the client, and the client's instructions as to how to proceed in respect to those issues;
5. Write the objection letter to the legal counsel for the Seller;
6. Close the transaction making sure that all objections have been dealt with on closing;
7. Report to the client.

The Report on Title to the client and to the mortgage lender should be carefully prepared as it is a document that will be carefully examined in any litigation arising between the client and the lawyer.

The preparation of the Report on Title is not something to be rushed and dashed off. It should be carefully and thoughtfully prepared as it is a permanent record of the nature of the title purchased.

The Report on Title should reflect the particular circumstances of the purchase and should:

- detail the information found on the SRRI;

- detail that the information has been interpreted for the client;

- detail the client's instructions in respect to the title.

For this reason, I suggest that the Report on Title be customized to fit each particular transaction.

While the Report on Title is the final document prepared for the client, it is a document which should be considered right at the beginning of the transaction. In your opening letter to your client, you should attach a sample Certificate of Title. I have attached to the end of my paper, a sample Certificate of Title used by our office. Additionally, I have attached a sample opening letter in which you address many matters with the client. In the letter to the client, bring to the client's attention the overriding interests to which their ownership may be subject. The letter should explain that these overriding interests may not necessarily show up on the parcel register. The letter should ask the client to contact the lawyer if any question arises following the client's review of the sample Certificate of Title.

I suggest that you begin the preparation of the Report on Title on the day that the file is opened. At the same time, I suggest you diarize your calendar to expect to receive the SRRI from the Seller's lawyer on the date called for in the Agreement of Purchase and Sale. The standard clause being used by real estate agents in the HRM calls for the property to be migrated at least seven days prior to the closing. The agreements usually provide the buyer's lawyer with 5 days to examine the title and to make objections. Carefully examine the agreement of purchase and sale to determine the deadlines for the exchange of the SRRI and the objections to title and note them in your reminder system.

I encourage all of us to treat these deadlines as we used to treat the deadline for objecting to title under the old system. During the past two years, since the commencement of the Land Registration System, we have all been kind to each other. We all know what it can be like to meet the deadlines set by the agents in the Agreement of Purchase and Sale. I expect that each of us has represented a Seller in a transaction where the SRRI was not available in the 5 to 7 day period immediately prior to the closing date. We all understand that when a title is complicated, the Seller's lawyer may not be able to get the migration done in the appropriate time line. If such is the case, we should be documenting our files with correspondence requesting an extension of the deadlines for migration and for objections.

Once the SRRI is received from the Seller's lawyer, it must be carefully examined. Did the Seller's lawyer provide you with copies of the approved plan, benefits and burdens, restrictive covenants, etc.? Can you easily run off those documents from Property Online? If not, contact the Seller's lawyer and have him/her forward to you copies of the relevant documents from his/her search. One way or another, these documents must be present for examination by the Buyer's Lawyer. Next, the SRRI with the attached documents must be examined by the lawyer. Copies of any relevant benefits, burdens, access documents should be sent to the client. The lawyer should meet with the client to discuss these items and to interpret the documents for the client. **A NOTE SHOULD BE MADE TO THE FILE INDICATING THIS HAS BEEN DONE, THE DATE SHOULD BE NOTED, AND NOTES SHOWING THE CLIENT'S INSTRUCTIONS SHOULD BE IN THE FILE.**

At the time you are forwarding the details of the benefits, burdens, restrictive covenants and or access to the client, you should open up the Report on Title and fill in the details of the benefits and burdens on the Certificate of Title. It would be appropriate to note on the Certificate, "a copy of which was forwarded to you on March 12, 2006, and approved by you on the same date", if such was the case. I suggest this method to you for two reasons. Firstly, it is helpful to complete the report on title as you have the transaction fresh in your mind. You are less likely to miss noting an

encumbrance on the Certificate of Title. Secondly, the Report on Title is another piece of evidence indicating what really occurred during the period leading up to the closing date.

I bring to your attention the Professional Standards: Real Property Transactions in Nova Scotia. The standards are available on the Nova Scotia Barristers Society Web Page. Those standards require that a lawyer have written evidence to prove:

1. Identification of an issue;
2. Advice was given to a client;
3. Clients instructions following the advice.

Standard 1.5 which is the standard regarding documentation states:

“A lawyer should document in writing

- (a) **advice to the client, including explanations and confirmation of the explanations, the lawyer’s advice with respect to restrictions, if any, on the client’s quiet use and enjoyment of the property and qualifications to the opinion on title; and**
- (b) **instructions received from the client, including instructions limiting the lawyer’s retainer and instructions arising out of the lawyer’s advice described in clause (a).**

A lawyer should also document in writing the lawyer’s advice to an unrepresented party pursuant to Standard 1.4.

When a lawyer explains to the client the effect of a document signed by the client, the lawyer may consider the client’s signature evidence of the client’s instructions. The lawyer should meet personally and explain the effect of the document to the client.”

Attached is a printout of the Professional Standards Reporting Table, which is a good checklist of the various topics which the lawyer should discuss with the client during the meeting in which he/she discusses the title.

The Certificate of Title should be customized to reflect the advice given. For instance, if there is an

issue arising from access to the property, and access to the property as shown on the Statement of Registered and Recorded Interests states “no access”, the lawyer should put notes in the file to describe the identification of the issue, the advice given, and the clients’ instructions. In such a case, the Report on Title should be customized to state as follows:

“You will recall we met on September 16, 2006 at which time we discussed the problems arising from the fact that there is no public access to the property. You advised that your brother owns the adjacent property and has agreed to give you a right of way. You instructed me to complete the purchase despite there being no public access or deeded right of way, and you indicated that in the New Year (2007) you would be in my office to complete the right of way documentation.”

If the Report on Title is prepared in advance and annotated as the transaction progresses, it will make the reporting on title just a little easier when the documents are returned from the Registry.

I realize that the ideas put forth in this paper reflect a very cautious approach to real estate transactions, and I most certainly know that it is very difficult to get clients to meet with you to discuss these matters prior to the closing date. I believe that if we:

- a) start the Report on Title at the beginning;
- b) annotate the Report on Title as the transaction progresses;
- c) keep in mind that the Report on Title is a document that must be customized to each transaction;
- d) refer to the Professional Standards: Real Property Transactions in Nova Scotia, available on the Nova Scotia Barristers Society Web Page Property Transaction;

as a result, the clients will be better served, and the lawyer’s file will be better documented.

REPORT ON TITLE

This property, represented by PID **, is registered under Nova Scotia's Land Registration System. Under the Land Registration System, the government guarantees that **, being the registered owner, is the person entitled to occupy and deal with the land. The government does not guarantee the boundaries, location or size of the property. As well, the ownership is subject to the following overriding interests even if not shown on the parcel register:

- An interest of Her Majesty in right of the Province that was reserved in 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.
- A lien in favour of a municipality pursuant to an enactment.
- An easement or right of way that is being used and enjoyed.
- A leasehold for a term of three years or less if there is actual possession under the lease that could be discovered through reasonable investigation.
- A lien for assessments pursuant to the Workers' Compensation Act.
- An interest created by or pursuant to a statute that expressly refers to the *Land Registration Act* (LRA) and expressly provides that the interest is enforceable with priority other than as provided in the LRA.
- A utility interest.
- Any right granted by or pursuant to an enactment of Canada or the Province
 - to enter, cross or do things on land for the purpose expressed in the enactment;
 - to recover municipal taxes, duties, charges, rates or assessments by proceedings in respect of land;
 - to control, regulate or restrict the use of land; or
 - to control, regulate or restrict the subdivision of land.

The state of title for PID ** is shown on the attached parcel register. It is subject to the following:

- **

We have received information for the Halifax Regional Municipality that the property taxes are paid until **, and there are no municipality improvement or betterment charges, capital charges for utilities or municipal charges due and owing, except as follows:

**

DATED at _____, Nova Scotia, this * day of * A.D., 200*.

FIRM NAME

Per: _____
Solicitor

SAMPLE OPENING LETTER

Dear:

Re: Purchase of 1234 Main Street, Halifax, Nova Scotia

My firm has received your Agreement of Purchase and Sale. Thank you for asking me to act on your behalf in the above purchase. I trust that my legal services will meet with your complete satisfaction. Mary Smith of my office will be assisting me in processing your file. Should you have any questions and be unable to reach me by phone, please ask for Ms. Smith. She will attempt to assist you or will have me return your call promptly.

The Agreement of Purchase and Sale requires the Seller's lawyer to forward to me the Statement of Registered and Recorded Interests (a computer printout from the Provincial Government detailing the title to the property you are purchasing) for the property you are purchasing, I will review the same. I want to meet with you, prior to the closing, to describe the title to you and to explain to you any restrictions which may relate to your property. Once the transaction is completed, and once your deed and other documents are returned to me from the Registry of Deeds, I will forward to you a closing package containing documents relevant to your purchase. One of the most important document in your closing package is the Report on Title. A sample Report on Title is attached to this letter. Please closely examine the attached Report on Title. Please note that the Report on Title will indicate that properties are subject to many overriding interests which may not necessarily appear on the Statement of Registered and Recorded Interests. Please call my office to set up a time to meet with me, before the closing, to discuss the title. Should you have any immediate questions concerning the nature of the Report on Title, please call. Otherwise, I will discuss this sample Certificate of Title with you during our meeting.

My examination of the title to the property will relate only to the title to the land. In recent years there have been a number of occasions when the houses supposedly located on the land being purchased turned out to be built over the property lines or on the wrong lot. A solicitor has no way of ensuring that the house is actually on the land being purchased, and it is in your best interest to obtain a survey certificate by a qualified land surveyor who would certify that the

house is situated upon the property you are purchasing. If you choose to rely on a location certificate supplied by the vendor, there are two risks: Firstly, you do not have a contractual relationship with the surveyor who did the work. This could cause difficulty if you find that the surveyor made a mistake and you wish to sue him.

Secondly, because the survey is not up to date, it may not reflect the present status of the property. A new addition to your house may have been erected since the old survey was done. Perhaps a neighbour has upgraded or renovated their house or driveway, and is now encroaching on the property you are buying. It is wise to order a new location certificate, and I would recommend that you do so. Should you wish to obtain a survey certificate, please contact me as soon as possible and I will arrange for a surveyor to carry out this job for you. A survey certificate costs in the range of \$425.00 plus HST for the average lot.

Our firm recommends the purchase of a title insurance policy. Enclosed in this letter are brochures outlining the benefits of title insurance. The cost of title insurance for a home with a purchase price of \$200,000.00 or less is approximately \$250.00. There are slight increases in the cost of policies for houses in excess of \$250,000.00.

Perhaps you could **advise my office how you wish me register title to your property**. I will, of course, be happy to discuss this with you, but first I would like to draw your attention to some of the most common alternatives:

FIRST: The most common practice among couples is for the property to be purchased as Joint Tenants. In this case, if one of the two persons in whose name the property is registered dies, title to the land automatically passes to the survivor.

SECOND: Title may be put in the name of one spouse only. This may be done for a number of reasons. One reason may be for income tax purposes. Another reason for putting the property in the name of one spouse only is to protect the property against possible debts of the other spouse. For example, many business people have their property in the name of their wife or husband so that any debts will not attach to the house in case of business failure. If you should decide to put the property in the name of your spouse only, I would point out two possible pitfalls, namely marriage breakup and death. In case of marriage breakup, the property will be divided according to the terms of the Matrimonial Property Act. This can involve an expensive court battle. In case of death, if the spouse with the property dies without a will, the property may also have to be divided according to the Matrimonial Property Act or other legislation dealing with spouses rights to property after death of one spouse.

THIRD: Both spouses may purchase the property as Tenants in Common as opposed to Joint Tenants. Owning your property as Tenants in common means that upon the death of either spouse, his or her one-half share of the property does not necessarily pass to the surviving spouse but passes firstly as directed by the deceased's will if there is a will or if no will to the heirs of the deceased.

I will be writing to the Tax Collector's office requesting an up to date statement of taxes due and owing and the status of any liens and charges against the property.

A few days prior to the purchase date I will contact you to advise you of the approximate amount

of cash required to complete the transaction. The funds to be provided by you for the purchase must be in the form of either a **bank draft or a certified cheque** payable to the firm of "XXXXXXXXXXXXXXXXXXXX, "IN TRUST".

At the time of purchase I will require a copy of the **fire insurance** policy protecting you against a financial loss from fire. Should you be unable to obtain the insurance policy in time for closing, a letter signed by the insurance agent setting out the policy number, the insurance company, the amount of coverage, effective date, location of the property, full names of the insured, and loss payable to the relevant mortgage company will be accepted in place of the insurance policy.

If you have any questions with respect to the transaction, please do not hesitate to call my office.

Yours very truly,

THE LAW FIRM