

MINOR LEAGUE REAL ESTATE LEGISLATION

The body of rules that make up our Nova Scotia Real Estate Law are found in common law and in many statutes. Some of these statutes are well known as the Registry Act and the Planning Act. Others, however, are obscure and may be sectioned buried in a statute which appears to be on a different topic.

It is important that real property practitioners be aware of the full range of legislation effecting real property. In the time available, it will not be possible to touch on all of these but some of the more interesting and unexpected pieces of legislation dealing with real property will be mentioned.

These Acts are listed in alphabetical order and the number after each is its Chapter in the revised statutes unless otherwise indicated.

Angling Act Chapter 14. Section 3 of this Act provides that any resident of the Province has the right to go on foot along the bank of any river, stream, or lake for the purpose of lawfully fishing with rod and line. This means that with a fishing pole over my shoulder and a can of worms in my hand, I can go just about anywhere in the Province.

Assessment Act Chapter 23. Section 44(3) of this Act provides that an easement is not terminated or extinguished by a tax sale and that it goes along with the dominant tenement if that is the property sold and remains with the servient tenement if that is the property sold by the tax sale.

Architects' Act Chapter 21. This Act provides that no building shall be erected, altered or enlarged to the extent of more than \$60,000 unless the work is supervised by an architect or professional engineer.

Beaches Protection Act Chapter 32. Section 6(1) of this Act makes it an offense for any person to remove sand, stone or gravel from a beach. There is, however, an exception to this contained in section 6(2) whereby a fisherman is lawfully permitted to remove these substances to use as ballast for his traps.

Beaches and Foreshore Act Chapter 33. We are often told as children that the provincial crown owns all the land between high and low water mark and that we may lawfully walk along a beach anywhere in the province with impunity. This is not necessarily the case, however, since pursuant to this Act the Governor in Council may grant exclusive right to the beach area between high and low water mark to an individual who presumably could then close off the beach for his own exclusive use.

Canadian Legion Act Chapter 54. This Act authorizes Canadian Legion Branches throughout the Province to acquire property. They cannot, however, sell the property without the consent of the Nova Scotia command of the Canadian Legion and any deed lacking such approval might well be void.

Conveyancing Act Chapter 97. This is a well known property statute but there are two provisions in it which are not generally appreciated. The first provides that each conveyance shall be read as a whole and if its provisions are found to be contradictory, the later provision

shall be effective. Another clause deals with the manner in which a conveyance is to be signed. It states that it shall be signed "by a party or by some other person in his presence by his direction or by his attorney." This would allow a third party to sign the name of the Grantor without it being a forgery. I would suggest that this procedure, if ever used, be set out in the body of the deed and in the certificate in proof.

Deed Transfer Tax Act Chapter 121. It is generally assumed that this legislation governs all municipal deed transfer taxes. There is an exception in the case of the City of Halifax where the Deed Transfer Tax Provisions are set out in Ordinance 110 which contain somewhat different criteria with respect to the payment of tax. Some transactions which might be non-taxable under the provincial legislation might attract tax pursuant to Ordinance 110 which lacks the exemption provision with respect to inter-spousal transfers and transfers to charitable institutions.

Dower Act RSNS 1967 Chapter 79. Dower and Curtsey at common law were abolished effective October 1, 1980 by the Matrimonial Property Act. There still exists, however, situations where a spouse has died prior to that date giving rise to a right of dower and this right would still subsist with respect to the property in question. This could have arisen in circumstances where a property was conveyed by a husband without his wife joining to bar her dower and he subsequently died prior to the coming into force the Matrimonial Property Act. The Dower Right would entitle his widow to 1/3 of the revenue from the property. If there is no actual revenue, the widow's entitlement was a deemed 5% income of 1/3 of the value of the property which could be demanded of the owners of the lands. It is for this reason that prudent conveyances check each transaction in a chain of title prior to October 1, 1980 to ensure that the wife of the owner executed the deed along with her husband.

Highland View Regional Hospital Act Chapter 126 of the Statutes of 1973. This Act authorizes that Highland View Regional Hospital to hold property by its Board but the Board is forbidden to transfer properties without the consent in writing of the municipalities participating in the operation of the hospital, namely Amherst and Cumberland County.

Indian Lands Act Chapter 219. This Act gives force to an Agreement between the Government of Canada and the Government of Nova Scotia for settling questions respecting Indian Reserve Lands. We learn from the recitals that two decisions of the Judicial Committee of the Privy Council relating to Indian Lands in Ontario and Quebec led to the conclusion that certain lands in this Province which were surrendered to the Federal Crown by the Indians and subsequently granted to other parties could only be lawfully conveyed by authority of the Government of Nova Scotia with the result that the Grantees of said lands held in effective titles. The purpose of the legislation was to clarify this situation and confirm the grants of former Indian Lands made previously on the part of the Federal Government. There are a list of the reserves concerned attached as a Schedule to the Agreement and it is interesting to note that the Province transferred to the Federal Government all rights and interests of the Province in reserve lands except lands lying under public highways and minerals.

Land Holdings Disclosure Act Chapter 248. This Statute provides that any non-resident individual or any corporation which is not registered under the Corporations Registration Act upon acquiring land in the Province, outside a city or town, must file a disclosure notice with the Registrar under the Act.

Land Surveyors Act Chapter 249. Pursuant to section 15 of this Act, a surveyor and his

assistants may enter upon any land for the purpose of doing a survey but are required to do as little damage as possible in the process. They have a right to go anywhere.

Money Lenders Act Chapter 289. This Act provides that anybody carrying on the business of lending money at an interest rate of more than 10% is liable to having the transaction reviewed by a court which may re-open and revise the deal if it is found that the rate of interest exceeds the permitted rate.

Mortgage Brokers and Lenders Registration Act Chapter 291. It is provided in this Act that any mortgage entered into after June 30, 1985, shall state whether it can be prepaid. If it is silent in this regard the borrower may prepay it without bonus or penalty.

Peggy's Cove Commission Act Chapter 339. This Act sets up a local planning scheme for the Peggy's Cove area in order to provide conformity of the architecture in the area. Any non conforming building which is destroyed to the extent of more than 50% may not be reconstructed without the consent of the Commission.

Private Ways Act Chapter 358. This Act allows a landowner to obtain an easement over his neighbour's property for the transportation of mineral and forest resource products and provides a procedure under which such an easement can be obtained.

Real Property Transfer Validation Act Chapter 386. This legislation validates deeds of property given in contravention of the Planning Act prior to April 30, 1977. There is a similar provision in the Planning Act, Section 114, which validates transactions prior to April 16, 1987.

Religious and Charitable Corporations Property Act Chapter 394. This Act provides that a religious or charitable corporation or educational institution may hold and sell property and to deal with it even if it is not authorized to do so in its act of incorporation.

Rental Property Conversion Act Chapter 399. This Act defines a "rental property" as one containing four or more units owned by the same person. It requires a three month notice to be given to the Registrar and to any tenant of the property that it is intended to be converted into condominiums. The effect of the notice is to offer the tenant a one year lease.

Shopping Centre Development Act Chapter 427. This Act defines a "shopping centre" as a new shopping centre containing 50,000 feet of retail space or an addition to a shopping centre comprising 10,000 feet of retail space. The written approval of the Utilities and Review Board is required before any such construction can take place.

Survivorship Act Chapter 454. This deals with a situation where two people die at the same time or in circumstances whereby it is uncertain which died first. It states that the younger is deemed to have survived the older. There are certain exceptions to this rule found in the Insurance Act and also an exception where the older person had made a will. In this case, if the will provided that a party other than the younger person involved was to take the property if the younger person died before the Testator or at the same time, then it will be deemed that the younger person died before the Testator.

Vendor and Purchasers Act Chapter 487. This Act provides a mechanism for determining rights of parties under an Agreement of Sale. It also sets out an evidentiary rule of general

application that recitals in deeds and statutory declarations over 20 years old shall be deemed to be accurate unless there is evidence to the contrary. This is a useful rule in title examination provided the statutory declaration meets the criteria set out by Hallett, J. in *Lynch v Lynch* (1985) 71 N.S.R. 2d (69) but is subject also to the restriction that statutory declarations as such may not be admitted in evidence at a trial unless it qualifies as an exception to the hearsay rule.

Veterans Land Act, RSV 1970 Chap. V-4 Section 5(3); This legislation provided a financial lending mechanism for veterans. Pursuant to this legislation the Director under the Act would take title to the property subject to an arrangement whereby the veteran could receive a deed to it upon payment to the Director of the purchase price. The Act stated that a deed from the Director had the same effect as a grant from the Crown of previously ungranted land. Some courts have given full effect to this provision but there must be some lingering doubt as to whether under our constitution the government of Canada has the right to legislate with respect to the effect of a document in the provincial system which would have the effect of wiping out the title of third parties.

Water Act Chapter 500. This legislation has the effect of vesting in the Crown every watercourse. A watercourse is given a very broad definition and generally includes every river, lake, stream, marsh and the bed, thereof. It states that as and from May 16, 1919, every water course was vested in the provincial crown, notwithstanding any other act or deed.

A full discussion of all the legislation relating to real property would take several days and the foregoing is just a sample of the gems that may be found in the pages of our statute books. It is hoped that this sampling will encourage you to browse through the Statutes where you will find

many other interesting provisions.

While these statutory sections may be considered minor league in the overall context, if knowledge of one of them prevents a real property practitioner from giving an erroneous opinion on a title, knowledge of it is well worth the effort of uncovering it.

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