

## CHECKLIST FOR DEFACTO CONSOLIDATIONS

1. What is the purpose of the proposed Defacto Consolidation? Is it required because the house or some other structure straddles two or more lots, or is it being done for efficiency? If being done for efficiency, have you carefully weighed the risks against the possible benefits? If you are considering this defacto during the course of a current sale transaction, should you not consult with (and possibly obtain the consent of) the Buyer before proceeding? Consolidation may be problematic if the Buyer had contemplated purchasing two separate parcels.
2. Both parcels must be LR or non-LR, as the case may be.
3. The parcels must have had common ownership at all times since at least April 15, 1987. For example, the lots may not (depending upon judicial interpretation) be eligible for consolidation if a wife and husband own one lot but the wife alone owns the other lot.  
  
Special care must be taken to establish common usage if consolidating a parcel which has paper title with a parcel to which possessory title has been established. It may be that if title to the consolidated lot or a portion thereof is based upon possessory title which matured after April 15, 1987, there is a lack of common ownership prior to April 15, 1987.
4. The parcels must be contiguous. They cannot be separated by another parcel, by a highway or railway (unless the railbed is leased) or by a body of water which constitutes severance.
5. The Statutory Declaration must include evidence that the parcels were used together since at least April 15, 1987. Section 268A(1) of the Municipal Government Act requires that the Declaration include “the facts that support the statement”. There should be sufficient recitation of the facts to support the statement. It is also important to state that the parcels have been used together at all times since at least April 15, 1987.
6. The Statutory Declaration must include the present descriptions of the lots including any property identifiers and the description of the consolidated single parcel. From a policy perspective each of the parcels being consolidated require descriptions even if no description previously existed. Be careful to retain, in the new description, reference to relevant plans/documents as the referenced plans/documents may contain useful information.
7. Consult Property Online mapping but do not rely upon it for accuracy; it is simply one of the resources which will have to be accessed.

8. Consult with the parcel owner bearing in mind the fact that before an AFR in final form is submitted, the PDCA submitter is required, pursuant to Land Registration Administration Regulation 7(7) to “assist the parcel owner or authorizing person . . . in identifying the parcel’s PID and take reasonable steps to identify the parcel, including reviewing the description and the mapping”. The same requirements exist when amending descriptions of LR parcels (see Land Registration Administration Regulation 7(2)).
9. Is there any survey fabric upon which to base the creation of the new description? Be aware of the pitfalls of trying to deal with and perhaps changing the extent of title. As a general rule it is dangerous to attempt a defacto consolidation without the involvement of a surveyor. An attempt to consolidate in the absence of survey fabric may create new problems. Remember that POL graphics and the Owner’s perception of the situation on the ground may not reflect reality. Perhaps the parcels are not contiguous.
10. As a general rule the lawyer ought to be wary of taking on the role of Declarant, unless the lawyer has specific and personal knowledge of the common usage and the nature of that usage throughout the period since at least April 15, 1987.
11. Do any of lots making up the consolidated description include a benefit or burden? If so, we cannot expand the scope of the easement. If the consolidation is of Lots A and B, and if only A has the benefit of an easement giving access to a public highway, the description ought to include a notation to that effect. When creating or revising the Parcel Register, a textual qualification will have to be added.
12. Be aware of running afoul of development restrictions which may “grandfather” development of a lot for certain purposes. This ability to “grandfather” may be lost upon consolidation.
13. Consider the possibility that your client’s right to create parcels without road frontage may be limited as a consequence of consolidation. Many Municipalities permit creation of one such parcel. If you are consolidating two lots, the ability to create new parcels without road frontage will be reduced from two to one.
14. Consider the implications of consolidating a parcel which is subject to a recorded interest with a parcel which is not subject to such recorded interest. Title to the consolidated parcel will be affected by the recorded interest, perhaps with adverse consequences. The same applies to a parcel with flawed title; the consolidated parcel will be tainted by a flaw affecting any portion of it.
15. The MGA compliance statement of the consolidated parcel must, in accordance with Land Registration Administration Regulation 7(10)(e), state the exemption relied upon and the facts supporting the exemption.

16. If the consolidation is a LR-parcel, the Statutory Declaration is to be registered using a Form 24 in which case the checkbox stating “this Form 24 creates or is part of a subdivision or consolidation” must be checked so that LRO staff are aware of the need to update the graphics.
17. Filing of a Form 45 is required pursuant to Land Registration Act Administration Regulation 9(3) if consolidation occurs post-migration. Section 3(ab) of the Land Registration Act provides that “subdivision” has the same meaning as in the Municipal Government Act. Section 191(q) of the Municipal Government Act provides that subdivision includes consolidation.

#### Authorities/Resources

1. Section 268A(1) of the Municipal Government Act
2. Land Registration Administration Regulation 7(2)
3. Land Registration Administration Regulation 7(7)
4. Land Registration Administration Regulation 7(10)
5. Property Online standards for PDCAs
6. Paper presented by Leslie Hickman at the RELANS Conference on March 2, 2007
7. Paper presented by Garth Gordon at RELANS Conference on March 2, 2007

#### Procedure for Registering a Statutory Declaration Supplementing an Earlier Deficient Declaration:

Submit the document on a Form 28. This may result in the removal of the original Declaration but it will still be viewable in the “Details View”. The LRO should be asked to create an instrument association between the two Declarations so that a person clicking on the supplementary document will be pointed to the original document, in case the original is not otherwise viewable.