Module Three: Application for Registration

INTRODUCTION

Learning Objective(s)

In this section, you will learn about the second electronic process, the Application for Registration or AFR. This is the application which confirms all the current interests in a parcel. From your title search, you will have assessed all the interests in the parcel and will enter them in the AFR to create the parcel register. Again there are legal issues to understand and processes or procedures to follow as required under the Act and Regulations.

This section also contains a detailed discussion of easements in the Land Registration context, and what enquiries must be made to "match" easements with applicable parcels, including ones other than that of your client/owner. We also discuss developments arising out of the May 4, 2009 LRAR and the Directive of the Registrar General of August 2009 on how the rules in LRAR 14-18 work in the AFR context, and when there are "mismatched" easements.

Instructions

- Read the Content Materials for this section
- Read the Resources for this section

Background

An Application for Registration "AFR" is the process required for converting the title of a parcel from the old Registry System to the Land Registration System. This section will provide an overview of the process and then detail the basics involved in the AFR process.

This is the longest and, in some ways, the most important module in these materials – the process of converting Registry of Deeds lands to Land Registration parcels using the AFR. Over time, AFRs will decrease in number as more parcels are converted, and Module 4 (which deals with parcels already in the system) will become more critical to your practice. In other words, keep printing and using these modules as you will come across the need for these materials again and again.

This module also covers various types of interests you will encounter, both in terms of their existence in the "old world," and in terms of how they are treated under the LRA. Debentures, leaseholds, and powers of attorney for example have special treatment. Foreclosures require a particular procedure depending on whether they are LR or non-LR lands. Challenging and removing interests are also introduced, and covered in more detail in Module 4.

The AFR submits all interests in a parcel of land which affect title to that parcel into an electronic system which displays those interests. The registered interests are guaranteed while the effect of recorded interests are not. There are four interests which may be registered:

1. A fee simple estate;
2. A life interest;
3. Remainder interests;
4. An interest of Her Majesty.

The most common example is the fee simple interest in a parcel. The registered owner is the guaranteed owner, subject to certain provisions in the LRA such as overriding interests.

The effect of **recorded interests** are **not guaranteed** by the LRA. Recording confers priority of interest. Each recorded interest must be reviewed by the lawyer to determine its legal status including validity and priority. Note, however, that with the 2009 LRAR, lawyers who record interests are required to sign certificates of legal effect

certifying that the document being placed on the parcel register has the effect that it purports to have. Your ten year liability to the Province for negligent errors or omissions in Certificates of Legal Effect (“CLE”) pertaining to recorded interests is the same as for registered interests. Recorded interests by authorized lenders (ie banks with access to the system) do not have to have the same CLE. Thus, there will be some duality as to what is and is not certified to the system, but what is certified BY the system will not be changed.

The title to a parcel is most often based on the documents on file at the Registry of Deeds; however, there may be situations where additional documents not found at the Registry of Deeds must be recorded or obtained before conversion of the parcel into the Land Registration system.

The AFR documents all of the current interests of a parcel identified by a PID (registered owners, benefits, burdens, recorded interests, and qualifications on the registered interest), together with the certified parcel description (approved PDCA), which is added electronically when the final AFR is submitted.

A draft AFR is first prepared and submitted for pre-approval electronically to the Land Registration Office. Once approved, the final AFR is submitted, which creates an individual electronic parcel register in which all registered interests and recorded documents associated with a parcel of land (except post-migration judgments, general powers of attorney and overriding interests) are listed together with the approved PDCA. Note that judgments affecting the property up to the time of migration must be incorporated into the parcel register at the time of the final AFR: LRAR 23(2).

Any document which creates an interest in a parcel (or “enables” it) will be, or is already, scanned and linked to the parcel register to allow it to be viewed in the parcel register. Currently, most, but not all documents at the Registry of Deeds are scanned.

Once the parcel register is created, you will find it on POL by entering the PID, if known, or by searching for the PID by name of owner. As previously indicated, the registered owner of the PID is guaranteed to have marketable title to the parcel. All other interests in the parcel must be reviewed by the lawyer to determine their priority and effect on title.

Module Materials

Click here for printable copy of Module Three content materials

GATHERING THE FACTS BEFORE DRAFTING THE AFR

All unregistered documents upon which you intend to rely in your abstract or include on the AFR must be registered at the Registry of Deeds (the old system) using a Form 44, prior to migration. Exception: Overriding interests, possession/occupancy disclosed on Form 5 or on a plan. See possessory interests.

All necessary title search work must be completed, and you must be satisfied that the title is marketable.

If the parcel being migrated contains a benefit, such as a right of way, you will additionally need to certify that the benefit was properly granted, and any “flip side” properly reflects the corresponding burden or falls within one of the allowable exemptions. Therefore you will need to have a separate title search which confirms that the party granting the benefit had marketable title. If the benefit appears in the chain of title for the full Marketable Titles time frame (most often "40 years plus a day") then a separate title search is not required. Remember that benefits and burdens can appear and disappear from deed descriptions during your search – consider the effect of s. 13(d) of the *Conveyancing Act* when this happens. The easements section will discuss these issues in more detail.

From your title search you will have completed an Abstract Summary of all the interests to be entered in the AFR. There are several forms available to assist you in doing this.

It is worth taking the time to read the steps so that you know what the system requires, however, the system is not the law. You will learn that the entry of an interest in a parcel in the new system must be done so that the proper legal interest may be correctly interpreted by another lawyer who represents a successor in title.

The AFR must be made in the name of the current owner of the property. In a purchase and sale transaction, this will be the Seller.

DRAFTING THE AFR

Once you have access to the POL system, you will be able to find your AFR worksheet to commence the process. You will go to "Property Online" and click on “Enter Property Online". Then click on “Application For Registration Work Area" (the page that comes up is your work sheet which shows all the AFRs in process and AFRs which are pre approved as well the place to commence a new AFR), then click on “New AFR”, enter the Property Identifier (“PID”) and click on “insert”. You will see a worksheet page for that PID. (See Tutorial – Module 4 – Application for Registration)

A warning system has been established to notify lawyers if another authorized user is completing work on the parcel. The warning system identifies the name of another authorized user. This may happen if another lawyer or surveyor had already submitted a PDCA on the PID. You may need to ask your client about this. You may still proceed with the AFR but will want to know why the PCDA was completed by another.

The lawyer or legal assistant may input the data to complete the draft AFR. The user password for PDCA and draft AFR may be shared between lawyer and staff. The second password for the final AFR submission is private to the lawyer only and shall not be shared. The lawyer will be subject to serious discipline if the private password is shared with anyone else. (See the introduction.)

Once a new AFR is started, the system will import certain information from POL and will:

- Assign an AFR tracking number, Identify the PID,
- Identify an address which must be verified,
- Provide a space for you to insert your file reference if you wish
- Provide the time and date of commencement of opening the AFR worksheet

A note on the Comments Field: This is a space for you to communicate with the LRO staff. The regulations and policy require you to fill in this space with comments in the following situations:

- The most recent conveyance document and the one noted on POL do not match;
- The owner(s) of the parcel is not the same as indicated on POL;
- Mailing addresses of any of the interest holders is noted as unknown (as in the case of restrictive covenant holders);
- You have comments which may assist with the facilitation of the process.
- Any subsequent documents to your AFR appear on POL which are not part of your AFR (for example, a redundant deed or a de facto consolidation)

It is important to remember that when you add anything to the draft AFR, it will only be saved if you press “update” after inputting any new information.

The enabling instrument will usually be the deed (or deeds) into the current owner. Note however that the enabling instrument for easements, covenants, and other benefits/burdens are the first instrument in which they appear (often the root of title or the deed from a developer).

Also note LRAR 10(13) which requires the statutory declarations to be enabling instruments, regardless of where they are in the chain of title, where title is raised in whole or in part on the basis of possessory title. More on this in the section on possessory title.

When entering information about an enabling instrument in the AFR, you may find that, in some cases, the enabling instrument does not have a book or page assigned to it. If that happens, leave the field blank. Do not place a zero or n/a in the book and page reference fields. HOWEVER, note the following rules respecting document numbers:

- If the document has a “real” number (e.g. Book 123, Page 456, document 1234), use the “real” number regardless of what POL says (you will get a warning screen on submission of the AFR, which you can then ignore)
- If the document does not have a number but there is an arbitrary one assigned by POL in the GGI (e.g. Book 123, Page 456, document 24681234), use the arbitrary number
- Only use a blank when neither of the above apply (usually only very old documents – you will generally only find this for very old origins of easements, restrictive covenants, and sometimes roots of title)

Prior to sending the draft AFR for pre approval, review the draft with an AFR checklist. (see next section) If you do not follow the procedures, you run the risk of being rejected as not conforming to the procedural requirements.

Prior to sending the draft AFR for pre approval it is recommended that you do a sub-search in the Grantor/Grantee Index (GGI), and the Judgment Register to confirm that there have been no further entries since your title search was completed which may affect your title. Sometimes a release of mortgage is recorded after the search was complete. This would be found by doing a Grantee search into the name of the current owner looking for releases of mortgage. If the mortgage is released, it must be removed from the AFR before submitting for pre-approval.

Once the PDCA is approved, the draft AFR should be reviewed by the lawyer and then can be submitted for pre-approval to the system by the lawyer or the legal assistant. Each lawyer will develop his or her own practice as to whether he/she does the entries for the AFR and submission for pre approval or whether the legal assistant does the entries and the submission. Either way, the lawyer must review the draft and final AFRs to ensure they reflect all current interests in the parcel at the time it is submitted for pre-approval.

There are certain warning screens that may be displayed when submitting the AFR for pre-approval. In some cases, the POL information does not match what you have found on your title search. When you attempt to submit your AFR, a warning screen comes up to indicate that the documents entered in your AFR do not match with POL. If you are sure your document references are the correct ones, you can proceed through the screen (see above comments regarding document numbers). However, you should do the double check before submitting so that you won’t be rejected. This is simply a way of the system matching its entries with yours and checking for errors in your AFR entries.

The LRO staff will take “about one business day” (though realistically this sometimes takes longer) to review the draft AFR. Until it is reviewed, the draft AFR sits in the section on the worksheet noted as “AFRs submitted for pre approval”.

If the draft AFR is rejected by LRO staff, it is returned to the AFR worksheet area and is placed back in the “in process” section of the worksheet. If the AFR is rejected, you will receive an email from the LRO staff explaining why it was rejected. You can also view this email in the “View Notification Reports” section.

Once the draft AFR is pre approved for registration, the AFR is returned to the AFR worksheet area and the AFR now noted as “Approved for Registration” and it is locked to prevent any further changes that are not approved by the LRO. You can make changes if you need to by unlocking the AFR, making the changes and resubmitting it for approval.

You will be notified by email when the AFR is approved for registration which email can also be viewed under View Notification Reports.

There is no set time period within which a pre approved AFR must be finally submitted, it will stay in the worksheet area as pre approved for final submission until the pre approved AFR is submitted for final approval.

If you amend your PDCA, after you have received pre approval of the AFR, then you may need to unlock your pre approved AFR, amend the AFR to reflect the changes in the PDCA, then re submit the AFR for pre approval. You may not need to do this depending on the nature of the required amendment to the PDCA.

SUBMITTING THE FINAL AFR

As indicated earlier, only the "authorized" lawyer is allowed to submit the final AFR. An authorized lawyer is one who has completed this qualification assessment and has signed an authorized user agreement with Service Nova Scotia and Municipal Relations ("SNSMR"). The private password must not be shared with anyone, even the lawyer's assistant or partners. You will certainly face internal discipline from the Society if you share your private password with anyone. As authorized lawyers, we have been given the privilege and burden of maintaining the integrity of the land registration system. The seriousness of this cannot be emphasized enough. (See Introduction.)

You are liable to the Registrar General ("RG") with respect to any negligent error or omission in an opinion on title as furnished in your AFR, regarding a registered interest for period of ten years from migration. Your work is also subject to audit – see Module 4 and see also Part 13 to the Regulations under the *Legal Profession Act*.

It is recommended that you avoid distractions while drafting the AFR or reviewing it for submission. When you are about to do your final submission, remember that it is your last chance to ensure that what you are submitting is correct. Errors are expensive, embarrassing and time consuming. If you discover an error, you will need to correct it via the rectification process. If the error is discovered after the property has been sold, you may or may not be able to correct it. The Rectification section will expand on this.

When the pre-approved AFR is returned to you as "Approved for Registration", a new section will have been added. This new section is the Opinion on Title. You will be required to enter additional information to the AFR prior to your final submission. This will include:

1. The Root of Title Document (where there are two or more roots, use the oldest);
2. The basis on which you certify title (Marketable Titles Act, Limitation of Actions Act, common law, other legislation); and
3. Whether title insurance was used for the purposes of the certification and, if so, why.

The following must be complete before submitting the pre-approved AFR for final approval:

1. AFR when it is returned to you as approved for registration;
2. Your own authorization/consent form and Form 5 (for every owner except as provided in Section 10(5) of the LRA Administration Regulations) executed in proper form;
3. Approval of the PDCA with no correcting flag;
4. The abstract of title together with the relevant supporting documents (i.e. all information and material, including notes, research, etc. used to justify your opinion – the "foundation documents" referred to in Part 13 of the *Legal Profession Act* Regulations);
5. All documents referred to in the pre-approved AFR and/or needed to certify that title have been recorded in the Registry of Deeds, if recordable;
6. All documents referred to in the bundle, except the SRRI, are in the file;
7. If the parcel was converted by an adverse occupier or by a paper title holder who has knowledge of an adverse occupier on his or her land, you must have a copy of the notice required in Form 9, together with proof of service and a copy to the Registrar General in accordance with LRAR 10(9) or 10(10), as applicable; and
8. A sub search.

CONDUCTING SUB SEARCHES BEFORE THE CONVERSION

When the lawyer is prepared to submit the pre approved AFR for final approval, a “real time” sub search using POL must be completed as the last step in the process. All documents that are registered or recorded or have been submitted for registration are able to be identified as affecting the title or not. As you conduct each portion of the sub-search, it must be printed off and kept as part of the abstract of title.

Use POL to perform the following searches from your desktop:

1. Perform a grantor search in the GGI from the date the abstract of title was completed;
2. Perform a grantee search in the GGI from the date the abstract of title was completed;
3. Perform a judgment search from the date the abstract of title was completed;
4. Search the Plan Index for plans from the date the abstract of title was completed;
5. Search by name for non LRA documents in process; and
6. Search for plans in process.

When conducting a sub-search, you may find an entry that could affect the title you are searching. If an entry is found that does affect title, you must unlock your AFR, enter it, and re-send the AFR for approval.

As unlocking and re-submitting the AFR will delay the process, it is advisable for the Seller in a transaction to complete the conversion at the earliest possible time so that delays can be managed. This will not happen often if your search has been completed very recently.

Once the lawyer is ready to sub-search, he/she may consider filling in the opinion on title on the pre approved AFR (also called “AFR approved for Registration” on your worksheet) before doing the sub-search. This takes a few minutes and will make the AFR ready for final submission after the sub-search.

When the lawyer is prepared to submit the pre approved AFR for final approval, the subsearch using POL is completed and the Title Certification Date/Time field on the AFR must be revised to reflect the time of the subsearch. **IT IS CRITICAL** that you click “update” (date/time is the one field that can be updated on a “locked” AFR without unlocking it) and not “unlock.” In the latter case, it will be re- submitted with the accompanying delay (which would, in turn, require yet another subsearch and update – chances are you will only make this mistake once!) You must do your sub-search then enter the ending time of your sub-search in this field. This is your certification date and time. Once you fill in the date and time, remember to save it by pressing the Update button. You must use your private password within 10 minutes of the sub-search time to complete the migration.

If you are interrupted and do not finish the migration within 10 minutes of that time you entered as your sub-search ending time, then the system will not accept the final AFR. The rationale for this 10 minute rule is that the LRA is designed to create certainty of interests in the parcel register. 10 minutes is thought to be the most time that should pass between final search and migration. While it is possible that a problem could “sneak in” in that gap of time, it is highly unlikely.

When you enter your private password and submit the AFR, you may receive a warning screen. If the box says “Yes” in the “correction required” column, then the enabling instrument reference must be corrected before the draft AFR can be submitted for pre-approval. You must go back one screen and correct the error. The error may be one that requires you to unlock your AFR and re-submit for pre- approval. This is one reason not to wait until the last minute to do the final submission. If you have a closing the same day, you may not be able to close because of a delay in the conversion. If the enabling warning screen comes up with a “No” in the “correction required” column, the AFR will not be blocked from submission for final approval. Note, however, that the enabling instrument could still be wrong, and should still be verified before submitting the AFR for pre-approval.

The registration of the AFR and creation of the parcel register is instant and reflects the contents of the AFR, your opinion and title certification and the certified parcel description.

The system then emails confirmation of registration by way of Form 29, the Statement of Registered and Recorded Interests or SRRI, to the lawyer who submitted the AFR. The SRRI will include the AFR, Opinion and

Certificate of Title Certification and the approved parcel description.

Also, immediately, a notice is automatically filed in the GGI under s. 43 of the LRA (as Form 31) giving notice that the parcel has been migrated to the land registration system.

CONTENTS OF THE AFR BUNDLE

Bundles are retained by the lawyers and must be available in the lawyer's file to be produced upon request for audit by the Nova Scotia Barristers' Society or review by the Registrar General.

Bundles are to include:

1. Your own authorization/consent form – An Authorization to Submit PDCA and/or AFR. If the authorized lawyer has a solicitor/client relationship with the owner of the parcel being converted, no authorization/consent form is required. Most lawyers appear to be having an authorization/consent form signed in any event as evidence of retainer to do the migration work. Some lawyers have combined their Confirmation of Graphics form and Authorization form in one document. See discussion and sample in Module 2.
2. Form 5 – An "Owners Declaration Regarding Occupation of Parcel and Residency Status" which every owner must complete.
3. Form 9 – A copy of the Notice of Parcel Registration (only used in adverse possession or prescriptive right conversions). Also give notice to the Registrar General, including proof of service of the Form 9 (LRAR 10(9) and, if applicable, 10(10)) You use Form 26N to give notice. Keep a copy of the proof of service.
4. Form 29 – SSRI (which includes Title Opinion from AFR and certified parcel description). This is not a form the lawyer completes manually, but is a form that is sent to the lawyer electronically after being "signed" online (using the private password) to confirm the parcel has been converted. This document should be carefully reviewed by the lawyer upon receipt to ensure no errors occurred during conversion.
5. The abstract of title on which the lawyer's opinion is based, including the parcel register or search for any "flip sides" of benefits or burdens, or documentation that one of the allowable exemptions applies under Regulations 16 or 17.
6. Copies of all documents that the lawyer relies upon to support his or her opinion as to the chain of title should be included if the documents assist with understanding the abstract, e.g., the death certificate of a deceased joint tenant. See the requirement to retain "foundation documents" in Part 13 of the *Legal Profession Act* Regulations.

Helpful Hints:

1. When a technical issue comes up and there is no apparent answer, go to POL and click on "Ask Property Online a Question". Your question will be answered in a fairly short time frame.

Note that currently, POL will only answer questions regarding:

- system upgrades and application issue
- requests for RG consents/directions
- image and quality control issues agreement and financial issues

2. Join RELANS, the Real Estate lawyers Association of Nova Scotia. With numerous members it is a fantastic chat site where questions are posed and answered and occasional pearls of real wisdom are offered, together with some humour and "letting off steam". It has been a great source of information on technical and legal real estate related issues. To join, go to https://www.relans.ca/index.cfm

INTEREST TYPES

The Land Registration system defines various “Interest types”. The Interest type must be identified so that the system can place it in the parcel register in the proper category.

One interest type is a “registered interest” which confirms ownership of the type of interest specified (fee simple, life interest/remainder, Crown interest). Recording confers priority of interest (the distinction between “registered” and “recorded” is central to the LRA regimen). There is no guarantee of the effect of recorded interests by the system – you, on the other hand, will be called upon to certify privately to recorded interests as you always have (ie reports on title to mortgagees). Any lawyer reviewing the parcel register will opine on the effect of recorded interests and the priority of those interests. Note the advent of CLEs for certain lawyer- recorded interests and releases in and after mid-2009.With this, lawyers are required to provide certificates of legal effect for most recordings (authorized lenders with access for recording mortgages and releases are not, so your judgment will still be called for).

As previously noted, the parcel register is deemed to be a “complete statement” of the interests in that parcel, “as required to be shown in the qualified lawyer’s opinion of title”. That is, it does not certify as to interests which would not appear from a search of title, such as unrecorded overriding interests. It is also subject to “any subsequent qualifications, revisions of registrations, recordings or cancellation of recordings.” This is somewhat of a change of the former s. 20 which conferred the guarantee only on “registered” interests.

Registered Interests

To recap, only four types of interests may be registered:

1. A fee simple estate;
2. A life interest;
3. Remainder interests;
4. An interest of Her Majesty.

The clarification of a few terms will assist this discussion:

The term "**Fee Simple**" means that the owner is entitled to the entire property with absolute power to make decisions about the property during the owner’s lifetime, as well as power to leave the property to the owner’s heirs upon death.

The term "**Leasehold**" means land or property held under a lease. Note that leases of under three years that can be ascertained on reasonable diligence is an overriding interest without registration under s. 75(1) – more on overriding interests elsewhere in these materials.

The term "**Life Interest**" means an estate or interest which lasts during one's life, or the life of another person, but does not pass on death of the life tenant.

The term "**Tenants-in-Common**" means ownership by two or more people in which each person owns an undivided interest in the entire property and all have equal rights to use the property. When one tenant-in-common dies, that person's interest may be sold, mortgaged or transferred to another in a will or on intestacy.

At law, easements run with the land. In the LRA, the components of an easement are defined as Benefits (the “together withs”) and burdens (the “subject tos”). The Dominant Tenement PID is the parcel which has the benefit of the easement and the Servient Tenement PID is the parcel that has the burden of the easement.

Section 2 of the LRAR states:

“benefit” means an appurtenance to a registerable or registered interest in a parcel;

“burden” means a restriction or limitation on the use and enjoyment of a parcel that attaches to a registrable or registered interest in a parcel;

As a general statement, it is important to understand the purpose of the LRA, the LRAR, and the extent of the government guarantee of ownership interests. As one of the main purposes of the legislation is to provide certainty in ownership of interests in land, it is important to analyze the title search to be able to determine registered or ownership interests.

It is necessary to carefully review interests you discover in the course of a title search. It is not necessarily easy to distinguish between a registered and a recorded interest. The lawyer will be called upon to exercise his or her professional judgment in many situations.

Some examples (FAR from exhaustive) include

- treatment of utility easements, particularly unregistered ones
- when will a survey be needed
- expired interests or “old world” interests that do not form interests in LRA parcels (e.g. s. 40 LRA)
- burdens v. recorded interests (e.g. rights of first refusal that run with the land)
- redundant easements
- merged easements
- historic property designations

Interests that are not registered, or which are not benefits/burdens to the registered interests, are recorded. These can cover the waterfront – mortgages, leases, licenses, options, long term purchase and sale agreements, and so on. You will have to examine the actual instrument – whether you are converting the property or are dealing with a converted one – to determine the instrument and its effect. Not all labels neatly fit (e.g. a lease which contains an option to purchase).

Note that LRAR 24(1) provides that option agreements and rights of first refusal are prescribed contracts for the purposes of ‘interest” in Clause 3(1)(g) of the LRA. Formerly, licenses were included but this is no longer the case.

Do not hesitate to call upon senior members of the Bar for assistance and advice. The RELANS discussion forum, cited earlier, is particularly useful in this regard.

MANNER OF TENURE

Manner of Tenure can be simply defined as the manner in which one rightfully holds, occupies or possesses property. The AFR (Form 6) provides several types of tenure when there is more than one owner, including, the following:

- Not applicable (sole owner)
- Joint Tenants
- Tenants in Common
- Not specified
- Mixture of joint tenants in common

Please note there are certain provisions dealing with certifying interests of tenants in common (LRAR s. 25).

The LRA allows a person with a tenant-in-common interest to convert his/her interest into the land registration system even if the other tenant-in-common interests are unable or unwilling to convert their tenant-in-common interests at the same time. This may happen when the first owner of a partial interest in a common road must convert title. He or she will convert the partial interest in the road and the remaining owners will be shown as Tenants in Common not registered pursuant to the Land Registration Act. Shortly you will see an AFR screen; take note of the Tenant in Common section just mentioned. It falls immediately below “Textual Qualifications” on the screen.

Mandatory conversion triggers apply to undivided interests, so for example, if a party wishes to sell his/her tenant-in-common interest in a parcel, that sale will trigger conversion of their interest only. The other tenant-in-common owners are not required to convert his/her interest at that time.

Any tenant-in-common interests that are not being converted are not being certified in the parcel register. There is a special place for these uncertified interest holders. Therefore, these interests may not be relied upon until they have been “elevated” into the registered interests section of the Parcel Register.

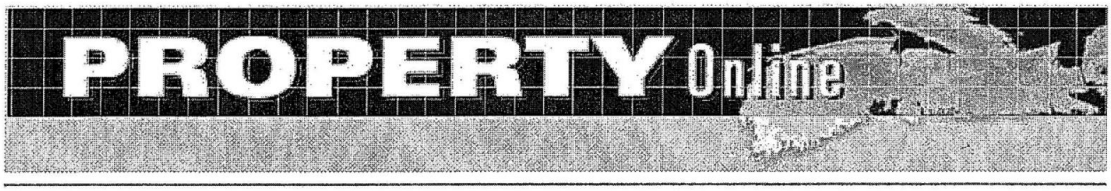
Any tenant-in-common interest which is to be converted either voluntarily or by mandatory trigger requires the lawyer to complete the full historic search of title and the Application for Registration in the same fashion as if all the interests were being converted at once.

LRAR s. 25(2) set out the requirements for registering tenant-in-common interests after one or more of the tenant-in-common interests in a parcel have been registered in the land registration system. In that case, a Form 24: A Request to Revise the Registration and Certificate of Legal Effect is used rather than a Form 6: An Application for Registration.

Please note the Manner of Tenure would be described as “Not Applicable” in instances where a sole owner or a company holds, occupies or possesses the property. The Manner of Tenure would be described as “Not Specified” in instances where an estate holds, occupies or possesses the property or in situations where a deed does not specify the manner of title itself or where there is an outstanding life interest.

When dealing with a life interest, the life tenant will be entered in the registered owner section as a Life Interest holder and the Manner of Tenure must entered as marked “Not Specified”.

Here is an example of how the screen would look if John Junior Smith was the owner and Grannie Jane Smith was the Life Interest Holder:



Application for Registration

AFR Tracking Number:	118853
PID:	342600
Location:	81 TANGMERE CRESCENT HALIFAX LOT 516
User Supplied Ref:	
Title Certification Date/Time (yyyy-mm-dd hh:mi):	2007-03-26 09:00
Parcel Access:	PUBLIC
Triggered By:	VOLUNTARY
Comments:	
Manner Of Tenure:	NOT SPECIFIED

The Description of Tenure field is optional if the Manner of Tenure is "Tenants in Common",
and mandatory if the Manner of Tenure is a "Mixture of Joint Tenants and Tenants in Common".

Description of Tenure:

Update Undo

Click Here to Delete AFR | Click Here to Copy AFR | Return to AFR Worksheet

Registered Interests

https://ows2.gov.ns.ca/LINNSDB/afrs001$afrs.queryview?P_AFRS_ID=118853&Z_CH... 18/03/2007

Individuals

ID	Name (Qualifier)	Interest Holder Type	Type	County	Date Recorded	Document Number	Book	Page	NS Non-res?
552201	SMITH, JOHN JUNIOR	FEE SIMPLE	DEED	HALIFAX COUNTY	1973-01-15	2304	2345	123	NO
628770	SMITH, GRANNIE JANE	LIFE INTEREST	DEED	HALIFAX COUNTY	1973-01-15	2304	2345	123	NO

New

Companies & Entities

No Records returned

New

Farm Loan Board - Occupants & Mailing Addresses

Individuals

No Records returned

New

Companies & Entities

No Records returned

New

Benefits to the Registered Interests

Benefit Details

No Records returned

New

Servient Tenement PIDs

No Records returned

New

Burdens on the Registered Interests

Individuals

No Records returned

New

Companies & Entities

No Records returned

New

Dominant Tenement PIDs

No Records returned

New

Textual Qualifications on Title

No Records returned

New

Tenants in Common not registered pursuant to

the
Land Registration Act

Individuals

No Records returned

New

Companies & Entities

No Records returned

New

Import Property Online Owners

Recorded Interests

Individuals

No Records returned

New

Companies and Entities

No Records returned

New

CERTIFICATE OF AUTHORIZED LAWYER

I hereby certify that:

1. The information contained in this Application for Registration is a true and correct summary of the title information disclosed by the records on file in the office of the Registrar of Deeds for the county where the parcel lies.

2. The parcel access information contained in this Application for Registration is a true and correct summary of the direct or indirect right of access to the parcel, if any, from a public street, highway or navigable waterway to the parcel appearing on the face of the record.

3. The information contained in this application includes any necessary reference to occupancy of the parcel and residency as identified by the applicant.

4. A title search with respect to the parcel described in this application has been conducted in accordance with the current Nova Scotia Barristers' Society Professional Standards: Real Property Transactions in Nova Scotia.

5. There are no other registered encumbrances affecting the title to the land except those specified herein.

6. I have obtained all affidavits and other documents required under section 37 of the *Land Registration Act* and the *Land Registration Administration Regulations*.

7. I will file the required documents with the applicable Land Registration Office within fifteen (15) business days of the submission of this Application for Registration.

Click Here to Submit AFR

Registered Interests - Individuals

Click Here to Return to AFR.

ID:	552201
Last Name:	SMITH
First Name:	JOHN
Middle Name:	JUNIOR
Qualifier:	
Interest Type:	FEE SIMPLE
Instrument Type:	DEED
County:	HALIFAX COUNTY
Date Recorded:	1973-01-15
Prefix:	
Document Number:	2304
Suffix:	
Book:	2345
Page:	123
| Comp Site ID:	
| Postal Delivery:	
| Postal Delivery ID:	
| Postal Station Name:	
| Floor:	
| Unit Type:	
| Unit ID:	
| Building Name:	
| Civic Number:	
| Suffix:	
| Street Name:	
| Street Type:	
| Street Direction:	

Place Name:	HALIFAXA
| Province/State:	NOVA SCOTIA LOV
| Country:	CANADA LOV
| Postal Code (Canada & US Only):	B3M 1K2
Non-Resident of Nova Scotia:	NO

Update Delete Undo New

Copy Interest Holder Info

Registered Interests - Individuals

Click Here to Return to AFR.

ID:	628770
Last Name:	SMITH
First Name:	GRANNIE
Middle Name:	JANE
Qualifier:	
Interest Type:	LIFE INTEREST
Instrument Type:	DEED
County:	HALIFAX COUNTY
Date Recorded:	1973-01-15
Prefix:	
Document Number:	2304
Suffix:	
Book:	2345
Page:	123
| Comp Site ID:	
| Postal Delivery:	
| Postal Delivery ID:	
| Postal Station Name:	
| Floor:	
| Unit Type:	
| Unit ID:	
| Building Name:	
| Civic Number:	
| Suffix:	
| Street Name:	
| Street Type:	
| Street Direction:	

Place Name:	HALIFAX
Province/State:	NOVA SCOTIA LOV
Country:	CANADA LOV
Postal Code (Canada & US Only):	B3M 1K2
Non-Resident of Nova Scotia:	NO

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Copy Interest Holder Info

REGISTERED INTERESTS

There are only two categories of registered interests.

1. Individuals
2. Companies and Entities

Please note when describing the names of individuals, every effort should be made to use the full name of the individual. This is the case even when a deed or other instrument is registered in less than a full name (e.g. John Jacob Dingleheimer Schmidt is registered as John J. Schmidt). This information can be determined by

- client interview
- documents in the chain of title (e.g. mortgages) signatures on documents
- “also known as” instruments
- formal change of name instruments (Form 21, statutory declarations, certificates under *Change of Name Act*)

Quite aside from mortgage instructions or compliance with anti-money laundering legislation, you should also note that Practice Standard 4.4 indicates that "A lawyer must take reasonable steps to confirm the identity of a person who:

a. signs a document in a transaction where the lawyer is responsible for the proper execution of the document;
b. executes a document the lawyer witnesses;
c. swears an affidavit before the lawyer; or
d. gives a solemn declaration to the lawyer.

The lawyer must take reasonable steps to document the confirmation in the lawyer's file or by other means.

See also Regulation 4.5 under the *Legal Profession Act* regarding identification and, generally, verification of identity of the client.

You should also note that when dealing with companies and entities, Practice Standard 3.13 provides that "a lawyer acting for a party acquiring an interest in a parcel from a corporation, municipal unit, university church, society, charitable organization, or other organization (an "entity"), should confirm that the entity, as applicable accommodates to the nature of the entity,

a. has the power to acquire, hold, and alienate real property;

b. is in existence and in good standing;

c. has taken all actions required to authorize the sale;

d. has received any consent required for the intended disposition.

However, see s. 83 LRA which permits execution by a single officer or director, and see also s. 40 re escheats from other than immediate predecessors in title.

A lawyer representing a party acquiring a parcel from individuals carrying on a partnership must examine the manner in which title was taken and ensure the partners required to execute the conveyance, sign either personally or by representation. (See Practice Standard 3.14).

In dealing with other entities, such as Estates, please note that the personal representatives will be described as having the registered interest(s). Practice Standard 3.10 states that "a lawyer must ensure that the required consents are obtained and be satisfied as to the authority of the personal representative and the validity of the testamentary instrument, if any.”

A lawyer should be familiar with the provisions of the current AND former Probate Acts and the Land Registration Act as they affect conveyancing, in particular with respect to the changes to the law and practice embodied in those statutes."

POSSESSORY TITLE AND PRESCRIPTIVE RIGHTS

A possessory title has been determined to be one that is considered marketable by the common law and by the courts considering the *Limitation of Actions Act*.

Subsection 4(1) of the *Marketable Titles Act*, which incorporates the definition of 'marketable title', was amended by the LRA ss. 116(1) to include a marketable title 'at common law or equity or otherwise'.

An owner pursuant to the *Limitations of Actions Act*, must bring an action to recover land within 20 years of being dispossessed. This time frame has not changed.

However, what has changed is the extension of time for those under a disability. The *Limitations of Action Act* defines a person under disability as being within the age of nineteen years or a person of unsound mind. Absence from the province is no longer considered a disability. If an owner is under disability the time is only extended by 5 years (ie total 25 years maximum), instead of a further 20 years as was previously the case.

For an exhaustive review of the law to the time of the presentation, read Catherine S. Walker, Q.C., "Adverse Possession and Prescriptive Rights: Old Doctrines in a New Environment".

The LRA attempts to balance the desire to preserve historic possessory interests and prescriptive rights in land, while creating a land registration system that provides certainty of ownership interests in land in the future.

The LRA achieves this balance by having matured possessory interests qualify for registration under the Act without any requirement for a prior judicial review. This means a possessory title may be converted to a guaranteed title if the lawyer, in his or her professional opinion determines that the title is "marketable".

The relevant practice standards are 3.2 and 3.3, as follows:

Possessory Title

A lawyer may certify title established by possession in accordance with legislation, common law and equity.

A lawyer must document facts evidencing possession. This should be done with the best possible and reasonably attainable evidence, such as recorded affidavits or statutory declarations provided by persons such as surveyors and neighbouring property owners. In determining whether the standard for proof of possessory title has been met, a lawyer must consider the extent and quality of the evidence as a whole and exercise professional judgment accordingly.

When preparing an opinion of title to certify title established by possession, a lawyer must consider the effect of the *Land Registration Act* with respect to possessory interests and lasting improvements and advise the client accordingly.

When qualifying an opinion of title to a client with respect to an interest that may be lost by the operation of the *Land Registration Act*, a lawyer must explain the qualifications to the client and confirm the client's instruction prior to closing.

Prescriptive Rights

A lawyer may certify title to interests acquired by prescription in accordance with legislation, common law and equity.

A lawyer must document facts evidencing prescriptive rights. This should be done with the best possible and reasonably attainable evidence, such as recorded affidavits or statutory declarations provided by persons such as surveyors and neighbouring property owners. In determining whether the standard for proof of prescriptive rights has been met, a lawyer must consider the extent and quality of the evidence as a whole and exercise professional judgment accordingly.

When preparing an opinion of title to certify title to interests acquired by prescription, a lawyer must consider the

effect of the *Land Registration Act* with respect to prescriptive rights and advise the client accordingly.

When qualifying an opinion of title to a client with respect to an interest that may be lost by the operation of the *Land Registration Act*, a lawyer must explain the qualifications to the client and confirm the client's instruction prior to closing.

These standards are under review; in particular, the type of evidence required will vary from case to case but will generally be of a high standard – "the best possible and reasonably attainable evidence." Garth Gordon's templates and suggestions are discussed in the next section. See also the suggestions of Hallett, J. (as he then was) in *Lynch v. AGNS and Lynch* (1985), 71 N.S.R. (2d) 69 (S.C., T.D.).

THE THRESHOLD

For every parcel of land that is converted into the Land Registration system, an opinion from an authorized lawyer is required. The threshold for the lawyer's opinion of title is that ownership must be to the standard required to demonstrate a marketable title pursuant to:

- The *Marketable Titles Act*;
- The *Limitation of Actions Act*;
- The common law; or
- Any other enactment.

The registration of a parcel of land for which the ownership is based on possessory interests, in whole or in part, will be afforded the same government guarantee as ownership that is based on a traditional paper title.

Refer to LRA s. 74(1) which states:

> 74 (1) Except as provided by Section 75, no person may obtain an interest in any parcel registered pursuant to this Act by adverse possession or prescription unless the required period of adverse possession or prescription was completed before the parcel was first registered.

Section 74 of the LRA prohibits anyone from obtaining a possessory interest in a parcel, subject to s. 75, unless that interest matured prior to registration of the parcel. Section 75 will be discussed shortly. It contains some exceptions. Most notably, these are "wandering boundaries" which do not exceed 20% of the parcel encroached upon, and possession against conjoint paper title holders (ie a dispossessed cotenant).

Possessory interests that are not matured at the time the paper title holder first registers the parcel in the land registration system are no longer able to ripen into matured interests after registration. Again, there are s. 75 exceptions, and there is a broader judicial discretion in s. 76 for "lasting improvements."

A lawyer who, through his or her professional judgment, determines that adverse possession has been established accepts the responsibility of that opinion. This places a heavy burden on the lawyer making this determination and should not be made without sufficient research established on the ground and on file at the Registry of Deeds. It is the editor's understanding that possessory title is a particular "audit flag," quite aside from the requirement to provide notice to the paper title holder and to the Registrar General under LRAR 10(10). Note that this notice applies if possessory title is ANY part of the chain of title, not just immediately preceding migration (ie even if there are intervening paper title holders).

With the 2009 LRAR 10(12), the declarations which evidence this possessory interest are the enabling instruments and must appear on the AFR regardless of where they appear in the chain of title (pre-2009 parcels, or those which have changed hands by deed since first conversion, may not have these as enabling instruments – look in the details view and archives if appropriate).

Under the LRA, lawyers have been vested with the privilege, and the corresponding professional responsibility, to determine the sufficiency of title both for traditional paper titles and for those titles that incorporate possessory interests and prescriptive rights.

Make sure you understand the law of adverse possession clearly before giving any opinion in this area. The paper by Catherine S. Walker QC is very helpful in this regard.

You will need an abstract supporting a possessory title or prescriptive right. It should include sufficient information to permit any other lawyer including an auditing lawyer to come to the same legal conclusion as you have. It is recommended that you provide an analysis of the evidence supporting the lawyer's exercise of professional judgment in the abstract when certifying a possessory title.

Documentation of possessory title is crucial. I strongly recommend Garth Gordon's paper: "Affidavit Templates and Comments for Documenting Possessory Interests", April 15, 2005.

A possessory interest in a parcel that has been accruing time but has not matured at the time of registration of a parcel under the LRA will (with a few exceptions) be terminated. Also, once a parcel is registered under the LRA, no new possessory interests may accrue, except those identified in LRA s. 75. As a result, a person may wish to migrate a parcel of land on a voluntary basis in order to extinguish the ripening of possessory interests before they mature.

MATURED POSSESSORY INTEREST HOLDERS AND REMEDIES

If the owner of a property who has good paper title ("the paper title holder) has converted his parcel to the land registration system without acknowledging a possessory or prescriptive interest that has all the attributes of good title under the *Limitation of Actions Act* or at common law or otherwise ("the squatter"), then the squatter has a remedy to fix that problem. The squatter has 10 years from the time of the paper title holder's registration to secure a court order confirming his or her interest. If 10 years passes and the squatter does nothing, his or her interest is void.

LRA s. 74(2) sets out what must be done by the squatter within 10 years:

> 74 (2) Any interest in a parcel acquired by adverse possession or prescription before the date the parcel is first registered pursuant to this Act is absolutely void against the registered owner of the parcel in which the interest is claimed ten years after the parcel is first registered pursuant to this Act, unless
>
> a. an order of the court confirming the interest;
>
> b. a certificate of *lis pendens* certifying that an action has been commenced to confirm the interest;
>
> c. an affidavit confirming that the interest has been claimed pursuant to Section 37 of the Crown Lands Act; or
>
> d. the agreement of the registered owner confirming the interest, has been registered or recorded before that time.

As at revision (spring 2016), the Registrar General's position is that this section precludes adding any interest claimed by adverse possession or prescription against a migrated parcel, at any time, absent one of the instruments listed in 74(2)(a) through (d). Consider, for example:

- Parcel A has marketable title free of benefits or burdens on the public record and is migrated accordingly
- Adjoining parcel B later claims a prescriptive easement over parcel A, or possessory title to a small encroachment on parcel A, and records sufficient evidence of same
- The LRO will refuse to register or record these interests against parcel A absent an order, certificate of *lis pendens*, or acknowledgement of the owner of Parcel A.

There is divergent opinion amongst the property bar on this issue.

Every parcel that is registered in the Land Registration system requires that the owner complete and file a Declaration of Ownership and Occupation (Form 5). This form requires the paper title holder to disclose any adverse occupation or prescriptive right, whether matured or not.

Form 5 requires all the owners of a parcel to declare whether anyone occupies the property without their permission and, if so, the name of the person, the date occupation commenced, and any other relevant details of occupation.

Always advise a buyer of the possibility of a possessory title holder coming forward within ten years of the date the parcel is first registered under the LRA (see Practice Standards 3.2 and 3.3, above)

If an owner knows of occupation of his parcel but does not acknowledge that it is a matured possessory interest, then notice must be provided to the squatter on Form 9. All occupation without permission must be closely examined and notice must be given to any person who is occupying any part of the parcel being converted without permission. Further if some occupation which was previously unknown becomes known, Form 9 must be served on that occupier after the title has been registered under the LRA.

Note: Prior to April 2007, an exception to this rule existed. The exception eliminated the need for notice when the extent of occupation was under 20% of the parcel.

As we have learned, the LRA allows a person with a matured possessory interest to convert his or her title under the Act. The title is then guaranteed by the government just as a paper title holder who has converted is guaranteed. Where a mature possessory title holder converts his or her interest before the paper title holder,

thereby winning the “race” to the registry before the paper title holder, the property interest of the paper title holder is extinguished.

If the interest of the possessory title holder which has been converted subsequently proves to have been “immature” then the paper title holder has the remedies available including compensation or rectification.

When the possessory title holder converts his or her title first, he or she is required to notify the paper title holder and the Registrar General of same on Form 9 (LRAR 10(10)); the copy to the RG is in form 26N. The time for advancing the claim by the paper title holder who has lost his or her interest runs from this notice.

Because loss of an interest in property is a significant issue, lawyers should be extremely cautious not to convert possessory title interests without full knowledge of the facts and law. It has been recommended that a lawyer should take the same care as he or she would if making an application under the *Quieting of Titles Act*. Again, as noted above, the Practice Standard is currently under review.

If a possessory title is being converted, pay particular attention to the PDCA and consult with a surveyor regarding the description of the parcel to be converted.

Exceptions

The basic rule is that only matured possessory interests can be converted under the LRA. Also, if a paper title holder converts his or her interest, the general rule is that any accruing possessory interests are terminated. There are three exceptions to the general rule which permit a person who is accruing time towards a possessory or prescriptive right to make a claim for possessory title or prescriptive right or continue to accrue time towards that right. To reiterate above, these are:

1. Wandering Boundary Rule
2. Tenants-in-Common
3. Lasting Improvements

Wandering Boundary Rule

The first exception is known as the wandering boundary rule as in s. 75 of the LRA.

> 75 (1) The owner of an adjacent parcel may acquire an interest in part of a parcel by adverse possession **or prescription** after the parcel is first registered pursuant to this Act, if that part does not exceed twenty per cent of the area of the parcel in which the interest is acquired. (emphasis added)
>
> (1A) .. see below
>
> (2) For the purpose of this Section, adverse possession and prescription include time both before and after the coming into force of this Act. 2001, c. 6, s. 75; 2002, c. 19, s. 33.

NOTE: the paper title holder must still notify the possessor when converting his or her title and the previous exception to 20% is no longer an exception to serving notice (via Form 9) on the occupier, together with a copy, and proof of service, to the Registrar General (LRAR 10(9)(b)).

Therefore, s. 75 says that if the possession (or prescription) does not exceed 20% of the parcel, the registration of that parcel in the land registration system does not affect the accruing rights of a person accruing time towards a possessory or prescription right. In other words, the clock does not stop running for the squatter when the paper title holder converts his or her parcel when the extent of the possession is under 20% of the lands converted by the paper title holder.

The exception in s. 75 of the LRA was meant to cover the small encroachments that are common. However, rights of way by prescription often affect less than 20% of a paper title holder’s parcel. If that person can continue to accrue time, then that person can later make a claim against the parcel. This is why it is

particularly important to obtain information about the use and occupation of the parcel when undertaking a migration so that if there are possible prescriptive rights accruing, the lawyer migrating can assess how to deal with the possible future claim. Always tell a buyer that there could be prescriptive or possessory claims out there which do not exceed 20% of the parcel the buyer is acquiring.

It is unclear as to what is to be the case when an encroachment exceeds 20% - can an occupier of a migrated parcel who occupies, say, 25% of it abandon the excess and lay a valid claim to 20%? Or is the entire claim defeated?

The requirement to have an owner sign Form 5 is your opportunity to have extensive discussions with your client about the use of the property by others without permission. Spend a little extra time asking whether there are any persons who use your client's land in any way without permission and discuss the 20% rule and how a person who claims a prescriptive claim can do so within 10 years of the conversion of the parcel. (again, this is an addition reason in the editor's view that it is poor practice for the lawyer to sign the Form 5, although permitted under LRAR 10(8)).

When you represent any Buyer of a parcel, make sure they are aware that possessory title and prescriptive rights are still alive within the 20% wandering boundary rule, and a claim could be made in the future against the property. This has been the situation in the old system since the beginning except that now, there is a limit to the extent of the claim.

Tenants-in-Common

LRA s. 75 provides a second exception to the prohibition of the accrual of time towards establishing adverse possessory and prescriptive interests in registered parcels notwithstanding they are not noted on the parcel register at the time of conversion. The second exception is that is co-tenants may continue to perfect adverse claims against another co-tenant notwithstanding the registration of a parcel.

> 75. (1A) An owner of an undivided interest in a parcel may acquire the whole interest in the parcel by adverse possession or prescription after the parcel is first registered pursuant to this Act.

This would prevent the issue of the registered interest holder having converted his interest without showing the other co-tenant, then passing away, leaving no will and no heirs and there being occupation by another co-tenant. That co-tenant can still claim a possessory title in the future. There may be other examples to this exception as well.

Lasting Improvements

LRA s. 76 provides a remedy for lasting improvements made to a property on the mistaken belief that the person improving the property owns the lands.

The Court has discretion to award various remedies, including requiring the improvement to be removed or abandoned, requiring the improver to acquire an easement on terms the Court thinks just, requiring the owner of the lands to compensate the improver. A similar application is available when it is the adjoining owner that is encroaching. The court has a similar discretion with respect to remedies, with the exception that there is no provision for the award of compensation. (LRA s. 76(3))

Possessory Interests and Prescriptive Rights

Here is a brief summary of what is relevant to establish possessory title and/or prescriptive rights:

1. Possessory/prescriptive rights are registerable without prior judicial review
2. They may be certified upon the appropriate exercise of a lawyer's professional judgment.
3. They must meet the threshold and have enough supporting evidence on the record to prove it. Documentation is critical to ensure that a lawyer can defend their exercise of professional judgment.
4. They require sufficient evidence of possession for the required period. There will be no new accrual of possessory title interests in a registered parcel in the future (limited exceptions).
5. They must be discussed with your client when migrating, or when representing a buyer of a migrated parcel.
6. They warrant special care being taken when entering easement benefits that the burden is acknowledged in the parcel register of the burdened parcel.
7. Do not forget the required notices – Form 9 and notice to the paper title holder and proof of service; and, in the case of the conversion being of the parcel encroached upon, notice to the Registrar General under LRAR 10 (9)(b)

Underlying Practice Considerations for Determining Possessory Title

In exercising your professional judgment, here are some questions to ask:

- What is the physical extent of the occupation? Do you need to involve a surveyor to describe the extent of the parcel?
- What are you certifying title to?
- Is it the whole of a parcel, previously described in a document and shown on a plan?
- Is it part of a parcel? Then the evidence of extent must be established - assess the survey fabric available and that can be further secured;
- What is the evidence that documents the possession? Is it recorded at the registry of deeds? Is the prescriptive right to the fee, or to a lesser right (eg an easement, well, profit a prendre, etc.)
- Are there ancillary rights that could accrue together with the prescription – e.g. a right to pass and repass the area around an encroaching shed or driveway? Is it to the footprint or does it include overhanging eves?

Refer to factual and objective evidence spanning the required time frames established by the *Limitation of Actions Act*.

See also reference to the Professional Standards on Possessory Interests (3.2) and Prescriptive Rights (3.3).

As noted above, a lawyer is well advised to consult with a land surveyor when converting a possessory title or prescriptive right to prepare the proper boundary description of the possessory or prescriptive interest being converted.

When migrating a parcel of land based on possessory title, the description of land is really a boundary definition and consideration should be given to retaining a qualified surveyor to prepare the description or boundary definition. Lawyers may not be qualified to create boundary definitions and may expose themselves to liability that could be avoided by consulting with a Nova Scotia Land Surveyor. As noted in Module 2, the Society and the Association of Nova Scotia Land Surveyors have delineated areas of concurrent, and exclusive, jurisdiction in defining quality and quantity of title, and preparation of descriptions.

A Note on 74(2) and migrated parcels:

One question that arises with increasing frequency is the interaction between parcels that have been converted when an adjoining parcel claims title through adverse possession on that parcel. This could be the result of a legitimate dispute over how long (and to what extent) the encroachment has been there, a genuine misapprehension of boundaries, or otherwise.

One school of thought maintains that s. 74(2) precludes registering or recording any claim of adverse possession in the first-migrated parcel, as it renders matured claims void against a migrated parcel absent acknowledgement, instigation of a claim, or a claim under s. 37 of the *Crown Lands Act* (unless the claim is preserved under the wandering boundary rule). Another is that it acts as a limitation period, requiring the person asserting a claim against a "migrated" parcel to act within ten years, or "forever hold their peace," but does not preclude placing notice of the dispute in the parcel register. At present, the author is not aware of any decisive authority on the point, but understands the LRO will refuse submission of such claims under the first interpretation above.

In submitting an AFR which includes a claim to lands based on adverse possession or prescription over a previously registered LR parcel (and therefore contains overlapping boundaries or an unrecognized overriding interest), one must be cognizant of s. 74(2) and its impact on LR parcels, particularly as the first LR parcels will passed the ten-year threshold in 2013.

EASEMENTS & THE LRA

Section 3(1)(aa) of the LRA defines “servitude” as an interest affecting the use or enjoyment of land created by covenant, condition, easement or implication at law, and includes a utility interest, but does not include a lien or a security interest.

The language now used regarding easements is “easement benefit” and “easement burden”. One parcel acquires a benefit and another is subject to a burden and vice versa. In the past we often used similar language where a benefit was an addition to a parcel of land prefaced by the words “together with”. A burden was described as the land being “subject to” the easement.

The LRARs define “benefit” as an appurtenance to a registerable or registered interest in a parcel (s.2) and “burden” is a restriction or limitation on the use and enjoyment of a parcel that attaches to a registerable or registered interest in a parcel (s.2).

We know that easements at law are associated with the fee simple ownership. In the LRA, the parcel register displays easements under the registered interests section but they are not called registered interests or recorded interests specifically. This is an area that is subject to some debate among lawyers who now have some experience in the system.

For the purposes of these materials it is important to understand how a parcel may be affected by an easement. Since easements necessarily burden one or more parcel(s) and (with the exception of utility easements), benefit another, a lawyer working in the land registration system must understand how that relationship is properly reflected in the parcel registers of the affected parcels.

With the exception of a utility easement, there will always be at least two parcels affected by an access and usage easement. There may be more. The lawyer must determine how many parcels are affected and determine the status of the easement in all parcels. There will be more on this issue later.

Conversion: Placing Easements on the AFR

LRAR 10(14) provides that the easement rules in the Land Registration Administration LRARs apply to AFRs, “with necessary changes.” At the time these LRARs took effect in May 2009, there was considerable discussion on what these “necessary changes” were, and how “mismatched” parcels were to be reconciled and by whom. The result has been a Registrar General’s directive. You will require it regularly, and not just for the qualification assessment. Download it now. You will also need to read the Catherine Walker commentary on RG Directive.pdf and the September RELANS 2009 materials on Easements.

An easement may be created or originate in various ways. It is important to understand how an easement was first created. The history of an easement may be useful and relevant to it’s establishment. It is recommended that when an easement exists in a parcel that the PDCA retain any historical “being and intended to be” clauses which formed part of the historical description.

An easement may be created in a number of ways:

1. By grant of easement recorded as a separate document, made between two parties dealing with the easement and perhaps its use.
2. By a grant of easement in a deed as described in the description.
3. By a reservation in a deed.
4. By operation of law such as by prescription, doctrine of lost modern grant, implied easement, easement of necessity, or
5. The easement may be an “overriding interest” because it is an easement (that is, an easement existing in law), that is openly used and enjoyed.

The process of converting a parcel into the land registration system cannot create the easement. The easement must have been created by a document as noted in 1,2 or 3 above (an enabling instrument) or if created by is

created by operation of law such as by prescription, doctrine of lost modern grant, implied easement, or easement of necessity, it must be documented properly with evidence on the record at the Registry of Deeds prior to the conversion or by court order on the record prior to the conversion.

The papers by Garth Gordon on Access, and Diana Ginn on Easements (Part 1 and Part 2) referred to earlier provide a good review of the various types of easements under the LRA. Again, the links are in the "Articles" resource section at lians.ca

A lawyer must use his or her professional judgment to determine if an easement exists when converting a parcel to the LRA. All available evidence must be reviewed and assessed to determine if an easement is to be placed in the AFR.

The evidence is derived from a number of sources and may include:

1. The title search;
2. Discussions with the client;
3. Review of all Plans;
4. Aerial photography;
5. Surveys;
6. Evidence from neighbours or relatives.

Generally, the existence of an easement which either burdens or benefits your client's parcel is discovered during the title search, unless it is an overriding interest (see s.73 of the LRA) or a prescriptive right.

If the easement was not created by a grant of easement, you will need to do more research as noted in numbers 2 through 5 above. The principles discussed above re prescription apply where the specialized principles of non-express easements (lost modern grant, easements of necessity, etc.) do not apply.

Form 5 (Owners Declaration regarding Possession and Residency) is the prompt for the lawyer to have discussions with the client regarding the use of the property by others without permission.

During the discussions, your client may alert you to the existence of a physical feature on the ground which may need to be investigated to determine if an easement exists. Information from your client may lead you to conclude that an easement has been created by prescriptive right, yet your examination of the title revealed no documented right of way.

If the lawyer determines an easement exists based on legal and factual analysis, it must be documented and registered prior to conversion of the parcel under the LRA. The requirement to document what exists is part of the foundation of the system: to create certainty of interests.

The best way to document an easement which has not been previously documented is to record a grant of easement. This, of course, requires agreement of the owners of the dominant and servient tenements. Sometimes this is able to be done. Sometimes it is difficult or impossible to determine who the owner of the dominant tenement is (if that parcel is not converted).

If however, the easement is a prescriptive easement, the LRA allows the lawyer to certify it as such, provided it is documented sufficiently to prove its existence. Such documentation (usually Statutory Declarations) must be recorded under the old registry system (Registry of Deeds) using a Form 44 cover page before the easement can be entered as such in the AFR. There will be more discussion on prescriptive easements later. Remember in such case, you must seek the direction of the Registrar General under LRAR 10(10)(b) if the owner cannot be practicably determined.

Whenever you are dealing with an easement, whether it is a benefit or burden to your parcel, you should review the title of the properties which abut parcel you are searching to determine if the parcel registers of the abutters show any easement benefits or burdens which affects your parcel. If your chain of title to the benefit to your lands

under search exceeds 40 years, no separate search of the servient tenament is needed. However, it is still worthwhile to check the parcel to ensure it is either there, or addressed in some fashion – it may have been missed by the converting solicitor, or it may enlighten you.

Also, check if the Property Online information (POL) of any abutter who is not in the Land Registration system is consistent with the easement you intend to include in the parcel register of the property you are converting. If the abutting parcels are all migrated, you can determine if those abutters have acknowledged any easements which benefit your parcel or show a benefit which burdens your parcel. If the other parcel matches the easement you are showing on your parcel, it is a happy day. You would, in most cases, be satisfied with that acknowledgement, provided all the other usual elements of the easement are present. If however, the abutting parcels are not migrated, you should try to look at the deed into the current owner of the abutting properties to determine if there is any reference to the easement. If there is no reference, you may want to search back further to determine if there was such a reference in a back title document. This process will become easier as more documents are scanned.

There are two common types of easements:

1. Utility easements; and
2. Access and usage easements.

When determining if an easement exists the lawyer must consider the following:

What is the extent and nature of the easement?

Professional Standard 2.3 provides guidance to the lawyer in this analysis. When a lawyer prepares an opinion of title, the lawyer must confirm in the abstract of title on which the opinion is based, the nature of the access, if any, to the parcel and whether the access is public or private.

If the lawyer determines the access to be private, the lawyer must determine whether the access has been granted. If the lawyer determines the access to be private and granted, the lawyer must ensure that there is an abstract of title for the grant of easement to the parcel.

If the lawyer determines the access to be private and not granted, the lawyer must be satisfied that there is authority for its continued use in conjunction with the parcel.

A lawyer should consider the implications of the legal description of a servient parcel that does not reference a private access to which it is subject. A lawyer should examine plans arising from the search and survey information affecting the parcel to ascertain whether the access granted and the actual traveled way correlate, and advise the client with regard to any material discrepancies. It is important to determine if the servient tenement parcel is in the Land Registration system or not. If the servient tenement has not been converted, it is impossible to know if the servient tenement owner acknowledges or recognizes the burden on his parcel of land. A lawyer must explain to the client any limitation.

The lawyer should also be familiar with the LRAR (s. 7) which specifies what is to be included in the parcel description certification application with respect to easements. Specifically refer to s. 7(10). Again, you are reminded of the requirements of the LRAR respecting notice and of showing declarations as enabling instruments, and of the Professional Standards on possession and documentation.

In a new subdivision, all the benefits and burdens of the parent parcel carry over to all the infant parcels when the infant parcels are created by the mapper at the LRO. They are said to be “inherited” to the infant parcels. This is more fully addressed in the subdivision/consolidation section but it is important for the lawyer to assess all benefits and burdens carefully when converting a parcel or when revising a parcel register. The access to an infant parcel must be added back in by the subdivider before the parcel can be sold. Form 45 is used for this process and there is no fee to file it.

There may be certain easements which attached to the parent parcel but, once subdivided, do not attach to all infant parcels and must be removed. Please refer to the Administration LRARs (s. 9(3)) which address the responsibility of the developer’s lawyer to make these revisions to both the parcel register and the approved description.

How is the easement created if I am satisfied an easement does exist?

- Is the easement found in an express grant?
- Is the easement referenced in the description for the full marketable title's time frame without any express grant?
- Is the easement only referenced on a plan? (Remember a plan is not an enabling instrument but it may provide evidence of the existence of an easement). If the easement is referenced on the plan, but there has not been an actual conveyance of an easement, you may wish to refer to this fact as a textual qualification in your AFR. See also s. 280 of the MGA for deemed easements on approved plans. While there is a difference of opinion among practicing lawyers, many do not view this section as retrospective (the MGA was proclaimed in 1999).
- Are there statutory declarations to substantiate a prescriptive right?
- If there are no statutory declarations that you discover during the title search, what statutory declarations are necessary to substantiate the evidentiary foundation for the easement?
- Am I satisfied the easement is an overriding interest as defined in s.73 of the LRA? If yes, then, is it appropriate in the lawyer's opinion to give notice of this by making reference to the easement in the textual qualifications on the parcel register? An overriding interest may be recorded under s. 47. Should notice of it be recorded? See also LRAR 18 with respect to the registration of overriding interests, and to the discussion of 74(2), earlier, in the context of registering interests and benefits/burdens on previously-migrated parcels which result in conflicting parcel registers.
- Is the easement exclusive or joint (e.g. a shared driveway)?
- Are there appurtenances by necessary implication (e.g., does an encroaching shed also include appurtenances such as overhanging eaves, the sweep of the door, or ingress/egress for access, repairs, etc.)?

For an easement created by prescriptive right, you must have documentary evidence to support your conclusion that an easement exists. This is usually derived by way of statutory declarations from the parcel owner, abutters, surveyor or other persons with knowledge of the easement. This evidence must be recorded in the registry of deeds prior to conversion and then the interest will be placed as a benefit or burden on the AFR, with the statutory declarations serving as the enabling instruments.

If a prescriptive easement is to be documented for the purpose of certifying a prescriptive right, the lawyer must address, through the exercise of his or her professional judgment, the sufficiency of evidence that will be required. The lawyer must also consider the quality of the evidence available and whether it is sufficient to establish the prescriptive right.

Professional Standard 3.3 establishes the essential elements the lawyer must include to support a conclusion of an easement by prescriptive right.

Prior to conversion of the parcel, you will meet with your client to sign an authorization form (your own form, examples are provided in Module 2), and Form 5 (Owner's Declaration re Occupancy and Residency).

The review and preparation of the Form 5 is an essential component of an adverse possession or claim of prescriptive right. It is to be reviewed carefully and may need to be changed or amended in light of information that comes to light as you move through the process with your client.

Form 5 is usually signed during your first meeting with your client. Be sure to discuss occupation of the lands or any usage of the property which the owner may have noticed during his ownership. It is not enough to tell you client to "sign here". Inquiries must be made of the owner, so that you can properly migrate the title. Please note LRAR 10(7)(a) and (b) which states:

> (7) An owner's declaration in Form 5 may be executed by an authorized lawyer or authorized surveyor, if the authorized lawyer or authorized surveyor is able to execute the declaration based on

a. personal knowledge of the facts; or

b. information received from the current or previous owner.

As noted above, it is the editor's view that this section should only be used when absolutely necessary. It has been the writer's experience that these can often be changed at the time of meeting, either by the client appreciating that it is a declaration under oath, a review of the relevant plan, or "present recollection refreshed." It is extremely important for the lawyer to meet personally with the client to obtain information about the property. This step should not be delegated to an assistant.

The "Other" Side of the Easement

Because easements necessarily burden one parcel and benefit another, a lawyer working in the land registration system must understand how this easement relationship (benefit vs. burden) is to be shown on the affected parcels. Remember there will always be at least two or more parcels affected for access and usage easements. The first is the parcel you are migrating. The second is the parcel that has the other side of the easement, be it a benefit or burden.

Not only must the lawyer understand how to input this information on an Application for Registration (AFR) but also how this entry may affect the other side of the easement. Both sides of the easements need to be matched so that the benefit and burden are properly reflected. It is still quite normal for the other affected parcel to be in the old registry system when you are doing a conversion which involves an easement benefit or easement burden.

Lawyers who come along after you will need to interpret easements once placed in the parcel register and will be looking to determine if both sides of the easement match.

Lawyers working within the system are charged with the responsibility to maintain an accurate land registration system.

It is important to properly reflect a traditional easement agreement in the new system so that others can form accurate legal opinions regarding the effect of the easement on the parcel.

When entering an easement benefit on an AFR, the system will ask you which other parcel is burdened. You can enter the PID for the Servient Tenement to match the benefit and burden. If you cannot determine from the title search which PIDs are burdened, the system permits you, with a Registrar's consent pursuant to LRAR 17, to enter the words "various PIDs." This is most useful for burdens that do not especially pertain to another particular lot – e.g. mineral/subsidence rights in parts of Pictou County, utility easements, etc.

While "Various PIDs" was once commonly used as a matter of convenience, LRAR 17 provides that it is only used on an AFR with the dispensation of the RG when it is "impracticable" to list all affected PIDs. This can arise in a number of situations

- The easement is difficult or impossible to locate on the ground and may or may not affect any given lot, or one can only ascertain some but not necessarily all affected lots
- The easement affects a very large parcel of lands (for instance, back alleys running from street to street)
- The traveled portion on the ground may be different from that mapped on a plan
- The location of the easement may be determined but the boundaries of the lots over which it crosses are vague or otherwise indeterminate (e.g. ill-defined cottage lots)

In August 2009, the Registrar-General issued a directive on LRAR 17 exemptions. It can be read here.

The relevant section reads:

> If you believe that it would not be practicable to identify or add a corresponding benefit/burden to other affected parcels, or if you are in the position as described in Paragraph 2B(iii), then you may request an exemption, in writing, from "a registrar", although practically, any registrar will be directed in this regard by the RG. The exemption, if granted, may incorporate directions on how the PID(s) should be identified,

what information must be included in a textual qualification on your AFR, if any notice is required, and if so, to whom, or any other terms or conditions of the exemption to be granted. When you have complied with the exemption directions, you will not be required to take any further action under LRAR 14.

For example, if it is not practicable to identify the PID(s), you will be allowed to indicate on the AFR that the “”flip-side” is “various PIDs”. Please note that a large number of affected PIDs does not necessarily mean that it is not practicable, although this may be a factor in the RG’s decision. Other factors may include: difficulty in identifying the affected PIDs (which can include extent of title issues) or large additional cost or administrative burden in adding the corresponding benefits/burdens. The RG will consider the circumstances in each case and may permit “various PIDs’ for all of the PIDs or may require you to comply with LRAR 14 in relation to some of the PIDs but allow you to use “various PIDs” for the some of the affected parcels.

Requirement for textual qualification with “Various PIDs”:

When granted an exemption under LRAR 17, you must add a textual qualification in the AFR, providing additional information about the benefit/burden on the parcel being registered and cautioning that the corresponding benefit/burden may not be shown in the parcel registers of other affected “flip-side” parcels. The textual qualification must be pre-approved by the Registrar General.

Blanket “Various PIDs” exemption for corresponding benefits/burdens affecting condos:

In the case where the corresponding benefit/burden affects units in a condominium corporation, and you believe it would be impracticable to comply with LRAR 14, then you may use the “Various PIDs” designation, without seeking permission from the RG, provided that you add the textual qualification as standardized by the RG’s office to the parcel being migrated. The RG will provide standardized language for the TQ, where possible.

Although this will allow you to move forward with your AFR, ultimately, any person reviewing the parcel register will not be able to determine which other properties (various PIDs) are burdened with the benefit unless the PDCA gives the detail of the extent of the easement benefit or there are good survey plans that delineate the extent of the easement. For this reason, it is more helpful to name the Servient Tenement PID where possible.

Note the requirement to file and serve Forms 8 and 8A, as the case may be, in LRAR 14 and 15 and to maintain a copy of the proof of service. (Note when the party has executed the instrument, service on that party is not required.) Note as well, however, that this is a relatively recent addition to the LRARs, so not all parcels with benefits and burdens will have followed this procedure. Be wary of this when reviewing “older” migrated parcels with benefits or burdens.

While the 8/8A amendments are not likely retrospective, it is a “best practice” to effect the match where the migrating and/or last revising lawyer is in a position to do so. If the mismatch is the result of a mistake, LRAR 22 requires (not permits) the correction. If it is a case of “old rules done right,” or from a migration that was not in error (for example, resulting from different *Marketable Titles Act* timeframes, discussed above), it is still best practice to effect the match if the same can be done. If not, the lawyer migrating the parcel must obtain dispensation from a Registrar pursuant to LRAR 17, or permission to “correct” the flip parcel pursuant to LRAR 22(3)(b). Any directions issued under those LRARs form part of your “bundle.”

If the servient tenement is already in the land registration system and the burden is acknowledged on the parcel register for the servient tenement, then both sides of the easement are properly reflected. This should happen when both parcels are in the LR system. This happens on a good day.

If, however, the servient tenement does not show the burden in favour of the benefitted parcel, you have to decide how to correct this possible problem. For the detailed “logic tree” on this topic, see the RG’s directive and the associated commentary, referenced for download above.

Summary: Remember that unless the easement is a utility easement, there will be a “flip” side to any easement: one or more parcels benefited, and one or more burdened. They may be LR, non LR, or a combination. Just remember that each time you deal with an easement, you

a. will need to deal with both sides,
b. in the appropriate system(s),
c. with the required notice and
d. the required amendments to the parcel description, and you should be fine.

Below are two PIDs which demonstrate “matching”

Burdens on the Registered Interests

Interest Holder (Qualifier)	Interest Holder Type	Mailing Address	Type	Year	Doc #	Book/Page/Plan	Registration Date
956698	EASEMENT/ROW HOLDER (BURDEN) - DOMINANT PID		EASEMENT/RIGHT OF WAY	2011	97671870 View Doc		Jan 28, 2011

Textual Qualifications on Title

Qualifications Text

Tenants in Common not registered pursuant to the *Land Registration Act*

Interest Holder (Qualifier)	Interest Holder Type	Mailing Address	Type	Year	Doc #	Book/Page/Plan	Registration Date
No Records Found							

Recorded Interests

Interest Holder (Qualifier)	Interest Holder Type	Mailing Address	Type	Year	Doc #	Book/Page/Plan	Registration Date
BANK OF MONTREAL	MORTGAGEE	865 HARRINGTON COURT BURLINGTON ON CA L7N 3P3	MORTGAGE	2011	97769591 View Form View Doc		Feb 15, 2011

Parcel Description

ALL THAT CERTAIN lot, piece or parcel of land, situate, lying and being at New Glasgow, in the County of Pictou, and bounded and described as follows:

BEGINNING on the Northern boundary of Willow Avenue at its point of intersection with the Western boundary of Mitchell Street;

THENCE to run along the boundary of said Mitchell Street, a distance of 140 feet;

THENCE Westerly parallel to said Willow Avenue, 123 feet;

THENCE Southerly a distance of 20 feet to an iron pin;

THENCE running Easterly along the real lands owned by Thomas Pushie 61.5 feet to an iron pin;

THENCE running Southerly along the boundary of Thomas Pushie lands a distance of 120 feet or until it comes to Willow Avenue.

THENCE running Easterly along the boundary of Willow Avenue a distance of 61.5 feet to the place of beginning.

BURDEN: Subject to easement recorded at the Land Registration Office as instrument 97671870.

*** Municipal Government Act, Part IX Compliance ***

Not Subject To:

The parcel was created by a subdivision that predates subdivision control or planning legislation or by-laws in the municipality and therefore no subdivision approval was required for creation of this parcel.

Non-Enabling Documents

Inst Type	Inst No	Year	Type	Book/Page	Registration System	Registration Date
Document	97794490 View Doc	2011	CROWN RELEASE - DNR		LAND REGISTRATION	Feb 18, 2011

Non-Enabling Plans

Inst Type	Inst No	Year	Type	Plan Name	Drawer Number	Registration Date
No Non Enabling Plans Found						

AFR Bundles

Inst Type	Inst No	Year	Type	Filing Reference	Instrument Date
No AFR Bundles Found					

Parcel Relationships

Related PID	Type of Relationship
No Related PIDs Found	

Back to Results | Details View | Parcel Archive View | Map View

This parcel IS REGISTERED PURSUANT TO THE *Land Registration Act*. The registered owner of the registered interest owns the interest defined in this register in respect of the parcel described in the register, subject to any discrepancy in the location, boundaries or extent of the parcel and subject to the overriding interests [*Land Registration Act* subsection 20(1)].

No representations whatsoever are made as to the validity or effect of recorded documents listed in this parcel register. The description of the parcel is not conclusive as to the location, boundaries or extent of the parcel [*Land Registration Act* subsection 21(1)].

Boundary/Area Problem | General Problem | Municipal Tax Query

PROPERTY Online — NOVA SCOTIA — caris powered

Search | Provincial Map | Bulletin Board | Help

Land Registration View

* Indicates interests inherited on subdivision or re-configuration of parcel

PID	00956698	Parcel Type	STANDARD PARCEL	Status	ACTIVE
Area	7392.0 SQUARE FEET	Parcel Access	PUBLIC	Manag. Unit	MU1305
Lot		Created	Jul 17, 2006 10:58:13AM		
PDCA Status	APPROVED	Municipal Unit	TOWN OF NEW GLASGOW	Manner of Tenure	NOT APPLICABLE
LR Status	LAND REGISTRATION	LR Date	Jul 25, 2006 09:41:11AM		

Location	County	Primary Location	Source
127 WILLOW AVENUE NEW GLASGOW	PICTOU COUNTY	Yes	Assigned by Municipality

Comments

MAP:04C1304SE

Assessment Account	Value	Tax District	Tax Ward	Tax Sub
03847551	$156,800 (2016 RESIDENTIAL TAXABLE)	000	030	

Back to Results | Details View | Parcel Archive View | Map View

Registered Interests

Interest Holder (Qualifier)	Interest Holder Type	Mailing Address	Type	Year	Doc #	Book/Page/Plan	Registration Date	NS Non-Res?
RAFFI ANDREI BALMANOUKIAN	FEE SIMPLE	132 WILLOW AVENUE NEW GLASGOW NS CA B2H 1Z7	DEED	2009	92486761 View Form View Doc		Jan 02, 2009	No

Farm Loan Board - Occupants & Mailing Addresses

Name	Interest Holder Type	Mailing Address
No Records Found		

Benefits to the Registered Interests

Benefit Details	Interest Holder Type	Type	Year	Doc #	Book/Page/Plan	Registration Date
TOGETHER WITN AN EASEMENT/RIGHT OF WAY	EASEMENT / RIGHT OF WAY HOLDER (BENEFIT)	EASEMENT/RIGHT OF WAY	2011	97671854 View Doc		Jan 28, 2011
956680	SERVIENT TENEMENT PID	EASEMENT/RIGHT OF WAY	2011	97671854 View Doc		Jan 28, 2011

Burdens on the Registered Interests

Interest Holder (Qualifier)	Interest Holder Type	Mailing Address	Type	Year	Doc #	Book/Page/Plan	Registration Date
No Records Found							

Textual Qualifications on Title

Qualifications Text

Tenants in Common not registered pursuant to the *Land Registration Act*

Interest Holder (Qualifier)	Interest Holder Type	Mailing Address	Type	Year	Doc #	Book/Page/Plan	Registration Date
No Records Found							

Recorded Interests

Interest Holder (Qualifier)	Interest Holder Type	Mailing Address	Type	Year	Doc #	Book/Page/Plan	Registration Date
BANK OF MONTREAL	MORTGAGEE	865 HARRINGTON COURT BURLINGTON ON CA L7N 3P3	MORTGAGE	2009	92516195 View Form View Doc		Jan 07, 2009

Parcel Description

ALL THAT CERTAIN lot, piece or parcel of land, situate, lying and being at west side New Glasgow, in the County of Pictou, Province of Nova Scotia and more particularly bounded and described as follows:

BEGINNING on the northern boundary of Frasers Lane, so-called at the western line of a lot of land sold and conveyed by the said, Margaret Fraser and Herbert L. Fraser to one Laura M. Nicholls;

THENCE to run northerly along the western line of said Laura M. Nicholls land one hundred and twenty feet;

THENCE westerly parallel to said Fraser Lane sixty one feet six inches;

THENCE southerly parallel to said western line of said Laura M. Nicholls land one hundred and twenty feet to the boundary of said Fraser Lane;

THENCE easterly along the boundary of said Fraser Lane sixty one feet six inches or to the place of beginning;

BEING AND INTENDED TO BE the same parcel of land conveyed from Frances Pushie to John A. Fraser by Deed dated July 4, 1991, and recorded at the Registry of Deeds in Pictou, NS July 5, 1991 in Book 1076 at Page 120.

ALSO BEING AND INTENDED TO BE the same parcel of land conveyed from John A. Fraser to Charles W. Denyar by Deed dated August 29, 1991, and recorded at the Registry of Deeds in Pictou, NS, August 29, 1991 in Book 1081 at Page 190.

ALSO BEING AND INTENDED TO BE the same parcel of land conveyed from Charles W. Denyar to C. William Denyar and Susan W. Denyar by Deed dated June 22, 1993, and recorded at the Registry of Deeds Office in Pictou, NS, June 22, 1993 in Book 1126 at Page 648.

ALSO BEING AND INTENDED TO BE the same parcel of land conveyed from Charles W. Denyar to C. William Denyar and Susan W. Denyar by Deed dated June 22, 1993, and recorded at the Registry of Deeds Office in Pictou, NS, June 22, 1993 in Book 1126 at Page 648.

ALSO BEING AND INTENDED TO BE the same parcel of land conveyed from C. William Denyar and Susan W. Denyar to Randall Edward Murphy and Catheryn Estelle Murphy by Deed dated July 13, 1995 and recorded at the Registry of Deeds Office at Pictou, NS on July 17, 1995 in Book 1179 at Page 677 as Document Number 3612.

BENEFIT: Together with an easement recorded at the Pictou County Land Registration Office as document 97671870.

The description for this parcel originates with a deed dated October 6th, 1904, registered in the registration district Pictou in Book 157 at Page 225 and the subdivision is validated by Section 291 of the Municipal Government Act.

Non-Enabling Documents

Inst Type	Inst No	Year	Type	Book/Page	Registration System	Registration Date
Document	97794490 View Doc	2011	CROWN RELEASE - DNR		LAND REGISTRATION	Feb 18, 2011

Non-Enabling Plans

Inst Type	Inst No	Year	Type	Plan Name	Drawer Number	Registration Date

No Non Enabling Plans Found

AFR Bundles

Inst Type	Inst No	Year	Type	Filing Reference	Instrument Date

No AFR Bundles Found

Parcel Relationships

Related PID	Type of Relationship

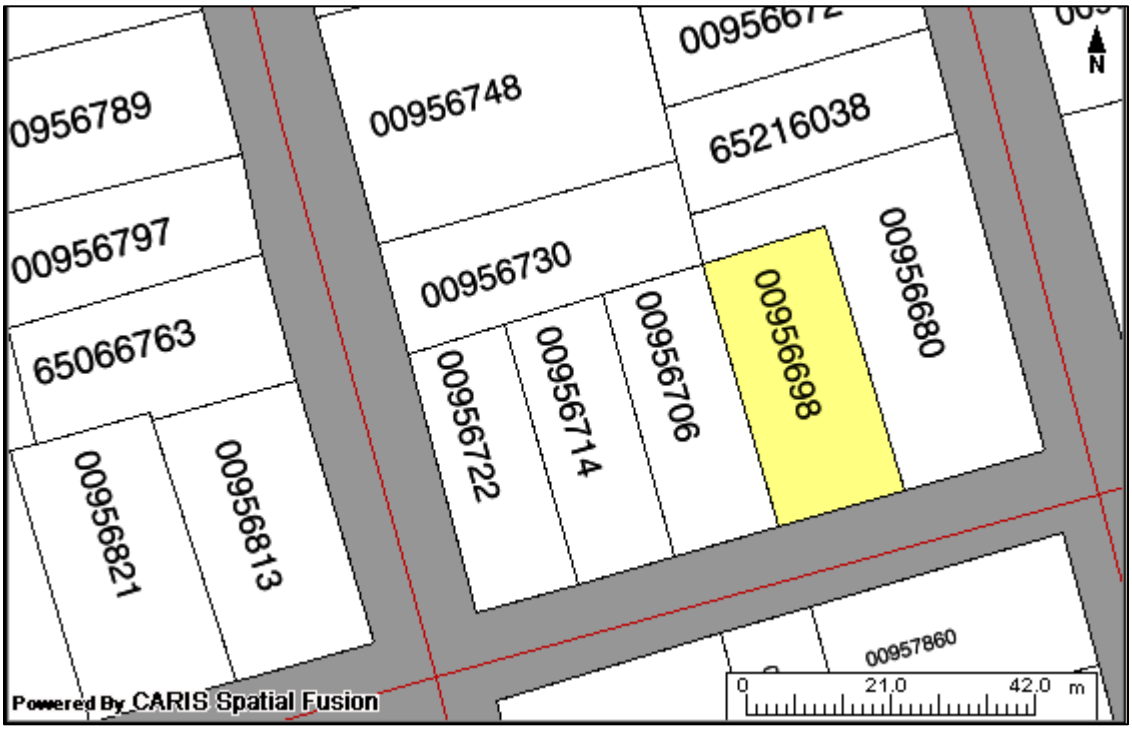
No Related PIDs Found

Back to Results | Details View | Parcel Archive View | Map View

This parcel IS REGISTERED PURSUANT TO THE *Land Registration Act*. The registered owner of the registered interest owns the interest defined in this register in respect of the parcel described in the register, subject to any discrepancy in the location, boundaries or extent of the parcel and subject to the overriding interests [*Land Registration Act* subsection 20(1)].

No representations whatsoever are made as to the validity or effect of recorded documents listed in this parcel register. The description of the parcel is not conclusive as to the location, boundaries or extent of the parcel [*Land Registration Act* subsection 21(1)].

Boundary/Area Problem | General Problem | Municipal Tax Query



Grant of Easement to Self

A substantive change in the law was created by s. 61(2) and (3), formerly s.19A of the LRA. This section allows an owner of a parcel to grant an easement in the parcel for the benefit of another parcel that he or she also owns. This allows a person to put an easement in place before a transfer of ownership and to ensure that both parcels affected reflect the easements and their PDCAs are amended. It is a great way to ensure consistency but it requires more initiative and thought on the part of a lawyer advising a client who is creating the easement. That easement will not merge due to common ownership of the parcels. Sections 61(2) and 61(3) allow the easement to continue to exist unless there is an express release of the easement.

Note that this is NOT the same as “old world” easements that have been extinguished by prior operation of law (e.g. by merger of title). Easements to oneself have to be created in the LRA “new world.”

Restrictive Covenants

“Servitude interests” include conditions and covenants. The effect of a condition or covenant is set out in LRA s.61 which states every successive owner of a parcel is bound by the condition or covenant “…if it is of such nature as to run with the land,…”. The court may modify or discharge a condition or covenant if it is satisfied that any of the conditions in s. 61(1) are met.

Section 61(2) allows a landowner to grant a restrictive covenant in a parcel for the benefit of another parcel he or she owns. The restrictive covenant will continue absent an express release of the restrictive covenant.

Again, developers may place the covenants on the parcel before the sale of lots in a subdivision using this process. It is a great method to “set up” the parcel before the sale. If this is not done, the seller will request the buyer to add the burden of the restrictive covenants on the Form 24 when registering the deed. The buyer would then amend the PDCA. If the buyer’s lawyer does not do this and the covenant isn’t properly incorporated, the building scheme could be affected.

Please refer to LRARs sections 7(10)(b) [PDCA] and 8 [subdivision] for information on the current process.

Although restrictive covenants, by their nature, often both benefit and burden a parcel. However, restrictive covenants are only placed in the Burden Section of the parcel register.

Other burdens

This, by its nature, covers the waterfront, but can include Historic Property designations, agreements re use of land, development agreements, profits a prendre that are not leases, and so on.

Overriding Interests

- Overriding Interests have been limited by the LRA and are identified in s. 73.
- Should the lawyer decide the interest is an overriding interest as set out in s.73 of the LRA, then technically there is no need to include any reference to the interest on the parcel register. However, many lawyers choose to reference the overriding interest in the textual qualifications field to ensure notice of the interest. Some overriding interests may be recorded.
- There are a number of legal rights which do not require registration and these can be legal rights or interests arising by common law or creation under express statute. (Brian Tabor, “Title Examination: A Practical Guide”, p.18)
- Overriding Interest is defined in the LRA at s.3(1)(k) as “an interest referred to in subsection 73(1)”.
- Overriding interests have priority, whether or not recorded or registered.
- Prior to the proclamation of the LRA there were at least 36 interests, potential interests or restrictions on real property. (Charles W. MacIntosh, Q.C. and Rosalind C. Penfound, “More Overriding Interests in Land”, Nova Scotia Law News, 1984, Vol. 11, No. 3, pp. 29 & 43): https://archives.nsbs.org/LNarticles/A163.pdf

- Section 73(1) of the LRA limits the number of overriding interests to eight interests. However, s. 73(1)(I) allows for an overriding interest to be created in any statute that expressly refers to the LRA which potentially re-opens the gates for a plethora of overriding interests to arise in other statutes. Recommended reading on this issue is the 2004 paper by Paul E. Radford, "Deemed Trusts and Other Super Priorities".

The overriding interests are:

- In interest of Her Majesty in the right of the province 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;
- A leasehold for a term of three years or less if there is actual possession under the lease that could be discovered through a reasonable investigation;
- A utility interest;
- An easement or right of way that is being used and enjoyed;
- 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.
- A lien for assessments pursuant to the *Worker's Compensation Act*;
- An interest created by or pursuant to a statute that expressly refers to this Act and expressly provides that the interest is enforceable with priority other than as provided in this Act.

NOTE that any interest that would fall in the above categories that are subject of an instrument (grant, judgment, expropriation of partial interest, etc.) must still be on the AFR. The fact that they are valid without registration does not remove the obligation to record them if they appear on the face of the record.

It is important to make your client aware of the possibility of overriding interests in your Certificate of Title. There will be more discussion on this later.

CROWN INTERESTS

When searching title, you will need to determine if there are any Crown interests in the parcel. If there are any Crown interests, it is important to note the time frame for establishing adverse possession as against the Provincial Crown has been reduced by the LRA from 60 to 40 years. This change is retroactive.

There is also a new provision under the LRA regarding adverse possession and the Crown. Adverse possession may be claimed on Provincial Crown land that was once covered by water. Refer to the consequential amendment to s. 108 of the *Environment Act* (ss. 103(3) LRA).

Amendments to the *Land Titles Clarification Act* (Part II of the Act) provide a mechanism to permit the Crown to release its interest in certain ungranted land. Under an application by the possessory title holder, the Minister shall consider the nature and extent of the current and historical usage of the land and whether the land is the subject of a deed containing a warranty as to title. A certificate of release will be filed at the Registry of Deeds for the registration district where the land is located. A plan of the area must also be filed. It remains to be seen how this type of application will work or how long it will take.

See also s. 37 of the *Crown Lands Act*.

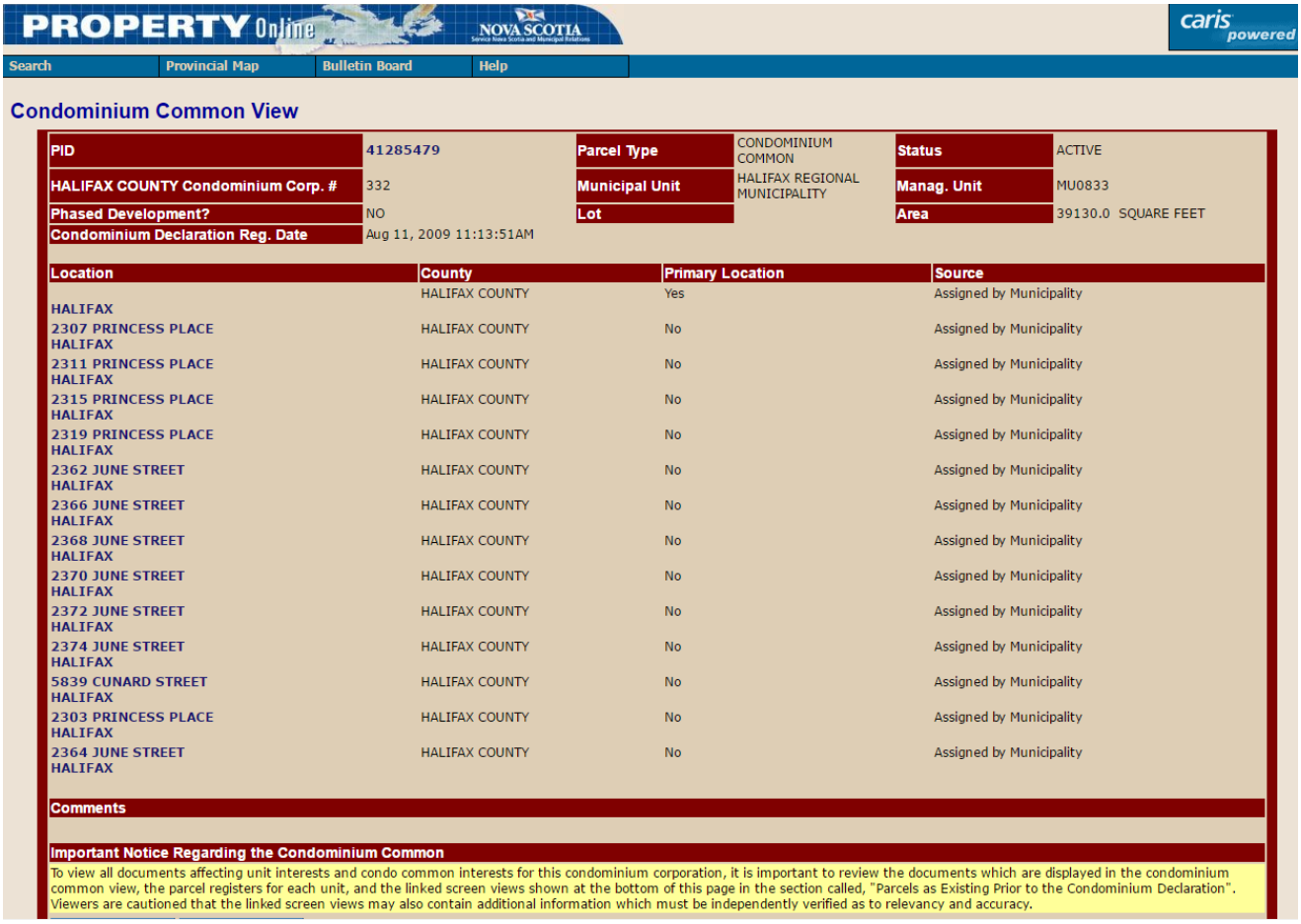
A chain of title for the requisite Marketable Title timeframe is also good as against ungranted Crown lands: *Brill v. AGNS* 2010 NSCA 69.

CONDOMINIUMS

Overview

Condominiums have two parcel registers. The first is the Condominium Common PID which contains the declaration and by-laws for the condominium corporation as well as any amendments to these documents. The second is the Condominium Units PID. This PID contains all information affecting the PID including benefits and burdens which affect the unit and the common elements.

Examples of both Parcel Registers are set out below.



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Condominium Common View

PID	41285479	Parcel Type	CONDOMINIUM COMMON	Status	ACTIVE
HALIFAX COUNTY Condominium Corp. #	332	Municipal Unit	HALIFAX REGIONAL MUNICIPALITY	Manag. Unit	MU0833
Phased Development?	NO	Lot		Area	39130.0 SQUARE FEET
Condominium Declaration Reg. Date	Aug 11, 2009 11:13:51AM				

Location	County	Primary Location	Source
HALIFAX	HALIFAX COUNTY	Yes	Assigned by Municipality
2307 PRINCESS PLACE HALIFAX	HALIFAX COUNTY	No	Assigned by Municipality
2311 PRINCESS PLACE HALIFAX	HALIFAX COUNTY	No	Assigned by Municipality
2315 PRINCESS PLACE HALIFAX	HALIFAX COUNTY	No	Assigned by Municipality
2319 PRINCESS PLACE HALIFAX	HALIFAX COUNTY	No	Assigned by Municipality
2362 JUNE STREET HALIFAX	HALIFAX COUNTY	No	Assigned by Municipality
2366 JUNE STREET HALIFAX	HALIFAX COUNTY	No	Assigned by Municipality
2368 JUNE STREET HALIFAX	HALIFAX COUNTY	No	Assigned by Municipality
2370 JUNE STREET HALIFAX	HALIFAX COUNTY	No	Assigned by Municipality
2372 JUNE STREET HALIFAX	HALIFAX COUNTY	No	Assigned by Municipality
2374 JUNE STREET HALIFAX	HALIFAX COUNTY	No	Assigned by Municipality
5839 CUNARD STREET HALIFAX	HALIFAX COUNTY	No	Assigned by Municipality
2303 PRINCESS PLACE HALIFAX	HALIFAX COUNTY	No	Assigned by Municipality
2364 JUNE STREET HALIFAX	HALIFAX COUNTY	No	Assigned by Municipality

Comments

Important Notice Regarding the Condominium Common

To view all documents affecting unit interests and condo common interests for this condominium corporation, it is important to review the documents which are displayed in the condominium common view, the parcel registers for each unit, and the linked screen views shown at the bottom of this page in the section called, "Parcels as Existing Prior to the Condominium Declaration". Viewers are cautioned that the linked screen views may also contain additional information which must be independently verified as to relevancy and accuracy.

Back to Results | Map View

Administered By

Name	Type	Year	Doc#	Book/Page	Registration Date
HALIFAX COUNTY CONDOMINIUM CORPORATION NO. 332	CONDOMINIUM DECLARATION	2009	94010411 View Doc		Aug 11, 2009

Declaration, Bylaws & Amendments

Type	Year	Doc#	Book/Page	Registration Date
CONDOMINIUM DECLARATION AMENDMENT	2015	107914971 View Doc		Oct 09, 2015
CONDOMINIUM DECLARATION	2009	94010411 View Doc		Aug 11, 2009
BYLAW (CONDOMINIUM)	2009	94010353 View Doc		Aug 11, 2009

Other Condominium Documents

Type	Year	Doc#	Book/Page	Registration Date

No Document Records Found

Condominium Plans

Inst No	Year	Type	Plan Name	Drawer Number	Registration Date
94010312 View Plan	2009	CONDOMINIUM PLAN	HALIFAX COUNTY CONDOMINIUM CORPORATION NO. 332 (1 OF 6)		Aug 11, 2009
99718828 View Plan	2009	CONDOMINIUM PLAN	HALIFAX COUNTY CONDOMINIUM CORPORATION NO. 332 (2 OF 6)		Aug 11, 2009
99718984 View Plan	2009	CONDOMINIUM PLAN	HALIFAX COUNTY CONDOMINIUM CORPORATION NO. 332 (6 OF 6)		Aug 11, 2009
99718935 View Plan	2009	CONDOMINIUM PLAN	HALIFAX COUNTY CONDOMINIUM CORPORATION NO. 332 (4 OF 6)		Aug 11, 2009
99718968 View Plan	2009	CONDOMINIUM PLAN	HALIFAX COUNTY CONDOMINIUM CORPORATION NO. 332 (5 OF 6)		Aug 11, 2009
99718919 View Plan	2009	CONDOMINIUM PLAN	HALIFAX COUNTY CONDOMINIUM CORPORATION NO. 332 (3 OF 6)		Aug 11, 2009

Condominium Units

PID	Unit Designators
41309626	LEVEL 1, UNIT 1, CIVIC 5839
41309634	LEVEL 1, UNIT 2, CIVIC 5839
41309642	LEVEL 1, UNIT 3, CIVIC 5839
41309659	LEVEL 1, UNIT 4, CIVIC 5839
41309667	LEVEL 1, UNIT 5, CIVIC 5839
41309675	LEVEL 1, UNIT 6, CIVIC 5839
41309683	LEVEL 1, UNIT 7, CIVIC 2303
41309691	LEVEL 1, UNIT 8, CIVIC 2307
41309709	LEVEL 1, UNIT 9, CIVIC 2311
41309717	LEVEL 1, UNIT 10, CIVIC 2315
41309725	LEVEL 1, UNIT 11, CIVIC 2319
41309733	LEVEL 1, UNIT 12, CIVIC 2362
41309741	LEVEL 1, UNIT 13, CIVIC 2364
41309758	LEVEL 1, UNIT 14, CIVIC 2366
41309766	LEVEL 1, UNIT 15, CIVIC 2368
41309774	LEVEL 1, UNIT 16, CIVIC 2370
41309782	LEVEL 1, UNIT 17, CIVIC 2372
41309790	LEVEL 1, UNIT 18, CIVIC 2374
41309808	LEVEL 2, UNIT 1, CIVIC 5839
41309816	LEVEL 2, UNIT 2, CIVIC 5839
41309824	LEVEL 2, UNIT 3, CIVIC 5839
41309832	LEVEL 2, UNIT 4, CIVIC 5839
41309840	LEVEL 2, UNIT 5, CIVIC 5839
41309857	LEVEL 2, UNIT 6, CIVIC 5839
41309865	LEVEL 2, UNIT 7, CIVIC 5839
41309873	LEVEL 2, UNIT 8, CIVIC 5839
41309881	LEVEL 2, UNIT 9, CIVIC 5839
41309899	LEVEL 2, UNIT 10, CIVIC 5839
41309907	LEVEL 3, UNIT 1, CIVIC 5839
41309915	LEVEL 3, UNIT 2, CIVIC 5839
41309923	LEVEL 3, UNIT 3, CIVIC 5839
41309931	LEVEL 3, UNIT 4, CIVIC 5839
41309949	LEVEL 3, UNIT 5, CIVIC 5839
41309956	LEVEL 3, UNIT 6, CIVIC 5839
41309964	LEVEL 3, UNIT 7, CIVIC 5839
41309972	LEVEL 3, UNIT 8, CIVIC 5839
41309980	LEVEL 3, UNIT 9, CIVIC 5839
41309998	LEVEL 3, UNIT 10, CIVIC 5839
41310004	LEVEL 4, UNIT 1, CIVIC 5839

41310012	LEVEL 4, UNIT 2, CIVIC 5839
41310020	LEVEL 4, UNIT 3, CIVIC 5839
41310038	LEVEL 4, UNIT 4, CIVIC 5839
41310046	LEVEL 4, UNIT 5, CIVIC 5839
41310053	LEVEL 4, UNIT 6, CIVIC 5839
41310061	LEVEL 4, UNIT 7, CIVIC 5839
41310079	LEVEL 4, UNIT 8, CIVIC 5839
41310087	LEVEL 4, UNIT 9, CIVIC 5839
41310095	LEVEL 5, UNIT 1, CIVIC 5839
41310103	LEVEL 5, UNIT 2, CIVIC 5839
41310111	LEVEL 5, UNIT 3, CIVIC 5839
41310129	LEVEL 5, UNIT 4, CIVIC 5839
41310137	LEVEL 5, UNIT 5, CIVIC 5839
41310145	LEVEL 5, UNIT 6, CIVIC 5839
41310152	LEVEL 5, UNIT 7, CIVIC 5839
41310160	LEVEL 5, UNIT 8, CIVIC 5839
41310178	LEVEL 5, UNIT 9, CIVIC 5839
41310186	LEVEL 6, UNIT 1, CIVIC 5839
41310194	LEVEL 6, UNIT 2, CIVIC 5839
41310202	LEVEL 6, UNIT 3, CIVIC 5839
41310210	LEVEL 6, UNIT 4, CIVIC 5839
41310228	LEVEL 6, UNIT 5, CIVIC 5839
41310236	LEVEL 6, UNIT 6, CIVIC 5839
41310244	LEVEL 6, UNIT 7, CIVIC 5839
41310251	LEVEL 6, UNIT 8, CIVIC 5839
41310269	LEVEL 6, UNIT 9, CIVIC 5839
41310277	LEVEL 7, UNIT 1, CIVIC 5839
41310285	LEVEL 7, UNIT 2, CIVIC 5839
41310293	LEVEL 7, UNIT 3, CIVIC 5839
41310301	LEVEL 7, UNIT 4, CIVIC 5839
41310319	LEVEL 7, UNIT 5, CIVIC 5839
41310327	LEVEL 7, UNIT 6, CIVIC 5839
41310335	LEVEL 7, UNIT 7, CIVIC 5839
41310343	LEVEL 7, UNIT 8, CIVIC 5839
41310350	LEVEL 7, UNIT 9, CIVIC 5839
41310368	LEVEL 8, UNIT 1, CIVIC 5839
41310376	LEVEL 8, UNIT 2, CIVIC 5839
41310384	LEVEL 8, UNIT 3, CIVIC 5839
41310392	LEVEL 8, UNIT 4, CIVIC 5839
41310400	LEVEL 8, UNIT 5, CIVIC 5839
41310418	LEVEL 8, UNIT 6, CIVIC 5839
41310426	LEVEL 8, UNIT 7, CIVIC 5839
41310434	LEVEL 8, UNIT 8, CIVIC 5839
41310442	LEVEL 8, UNIT 9, CIVIC 5839
41310459	LEVEL 9, UNIT 1, CIVIC 5839
41310467	LEVEL 9, UNIT 2, CIVIC 5839
41310475	LEVEL 9, UNIT 3, CIVIC 5839
41310483	LEVEL 9, UNIT 4, CIVIC 5839
41310491	LEVEL 9, UNIT 5, CIVIC 5839
41310509	LEVEL 9, UNIT 6, CIVIC 5839
41310517	LEVEL 9, UNIT 7, CIVIC 5839
41310525	LEVEL 9, UNIT 8, CIVIC 5839
41310533	LEVEL 9, UNIT 9, CIVIC 5839
41310541	LEVEL 10, UNIT 1, CIVIC 5839
41310558	LEVEL 10, UNIT 2, CIVIC 5839
41310566	LEVEL 10, UNIT 3, CIVIC 5839
41310574	LEVEL 10, UNIT 4, CIVIC 5839
41310582	LEVEL 10, UNIT 5, CIVIC 5839

Parcels as Existing Prior to the Condominium Declaration

PID	Type of Relationship
41158304	UNDERLYING RETIRED LAND PARCEL

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Property Details

PID	41310103	Parcel Type	CONDOMINIUM UNIT	Status	ACTIVE
HALIFAX COUNTY Condominium Corp. #	332	Parcel Access	PUBLIC	Manag. Unit	MU0833
Unit Designation	LEVEL 5, UNIT 2, CIVIC 5839	Created	Aug 11, 2009 02:30:06PM		
PDCA Status	APPROVED	Municipal Unit	HALIFAX REGIONAL MUNICIPALITY	Manner of Tenure	NOT APPLICABLE
LR Status	LAND REGISTRATION	LR Date	Aug 11, 2009 11:13:51AM	Phased Development?	NO

Location	County	Primary Location	Source
CUNARD STREET HALIFAX	HALIFAX COUNTY	Yes	Not Assigned by Municipality

Comments

To view all documents affecting this unit including condominium common interests for this condominium corporation, it is important to review the corporation's condominium common view.
HCCC No. 332

Assessment Account	Value	Tax District	Tax Ward	Tax Sub
10238511	$424,900 (2016 RESIDENTIAL TAXABLE)	080	000	

View All Related PIDs History | Back to Results | Land Registration View | Parcel Archive View

Owner Name	Interest Holder Type	Qualifier	Province	Country
CAMERON NEIL MCLEAN	FEE SIMPLE		BC	

Inst Type	Inst No	Year	Type	Book/Page	Registration System	Registration Date

No Documents Found

Inst Type	Inst No	Year	Type	Plan Name	Drawer Number	Registration Date

No Plans Found

Inst Type	Inst No	Year	Type	Plan Name	Filing Reference	Instrument Date

No Non-Registered Instruments Found

Parcel Relationships

Related PID	Type of Relationship
41285479	CONDO COMMON PARCEL

View All Related PIDs History | Back to Results | Land Registration View | Parcel Archive View

Non-Land Registration parcels ARE NOT REGISTERED PURSUANT TO THE *Land Registration Act*. As such, ownership and all information in this report is believed to be an accurate reflection of registered documents affecting the parcel of land to which it relates, however, it is not intended to be relied upon by the reader as advice on the current state of any title to land. A search of the records at the appropriate Registry of Deeds office may be required to determine the current owner(s) of the parcel of land under consideration. THESE ARE NOT OFFICIAL RECORDS.

Land Registration parcels ARE REGISTERED PURSUANT TO THE *Land Registration Act*. The registered owner of the registered interest owns the interest defined in this register in respect of the parcel described in the register, subject to any discrepancy in the location, boundaries or extent of the parcel and subject to the overriding interests [*Land Registration Act* subsection 20(1)].

No representations whatsoever are made as to the validity or effect of recorded documents listed in this parcel register. The description of the parcel is not conclusive as to the location, boundaries or extent of the parcel [*Land Registration Act* subsection 21(1)].

Boundary/Area Problem | General Problem | Municipal Tax Query

There are more standardized rules for Condominium AFRs which make them easier in some respects.

An application for registration for a condominium unit must include the following condominium interest benefit, using the following wording (LRAR 7(11) and 12(1)):

> "Together with the common interest appurtenant thereto".

This wording is entered in the Benefits section. The enabling instrument for this condominium interest benefit must be the Declaration for the Condominium Corporation. There is more detail below on how to enter this benefit.

An application for registration for a condominium unit must include the following condominium interest burden, using the following wording (LRAR 7(11) and 12(1)):

> "Subject to the Declaration and By-Laws of [insert county initial] C.C.C. No.[insert condominium corporation number].

For example, for Halifax County Condominium Corporation Number 999, put: "Subject to the Declaration and By-Laws of H.C.C.C. No.999". The enabling instrument for this condominium interest burden also must be the Declaration for the Condominium Corporation. There is more detail below on how to enter this burden.

Abbreviating the name will ensure that it is reproduced in the parcel register and on the SRI. The fact that Halifax and Hants, or Colchester and Cumberland Counties start with the same letter does not create a problem–the unit's PID is a unique identifier.

An AFR of a condominium unit must also include all other benefits and burdens that are not a declaration, by-law or amendment to a declaration or by-law, but are interests in the unit or the common interest appurtenant thereto. An application for registration of a condominium unit must also include all recorded interests in the unit or the common interest appurtenant thereto. The result is that you must show all the interests that affect the ownership of the common area (i.e. land on which condo was built) and the unit of air space (condominium unit).

When preparing your unit's AFR, check the Condominium Common PID, and search out of the Condominium Corporation, to ensure that all declarations, bylaws and amendments that appear in your search are indexed against the Condominium Common PID. That PID will serve as the repository for these items on initial unit registration and into the future. Any other interests that affect the unit's common interest need to be incorporated into that unit's AFR. If you encounter declarations, by-laws or amendments that are not indexed against the Condominium Common PID, place a comment in your unit's AFR so that a 'correction' to the Condominium Common PID can be made. You must also provide the recording particulars in the "Comments field" for the missing interest. The comment must have the following structure, so there will be no doubt as to what you are asking the Land Registration office (LRO) to do: "You are missing an amendment to the bylaw - Recording particulars - Book/Page....."

Condominium Common PID- Newly Constructed Condos

When a newly constructed condominium unit is registered under the Act, LRO staff will contemporaneously create a parcel register for the Condominium Common PID. A Condominium Corporation's declaration, by-laws, common element rules and amendments thereto (and no others) will be recorded as burdens in the Condominium Common PID.

The LRA confirms that an instrument that is registered or recorded and displayed in the land registration view of a condominium common PID is deemed to be registered or recorded, as applicable, in the parcel register for each unit in the condominium corporation. This is why we use the generic benefits and burdens, enabled by the Declaration only. All other By-laws and amendments to Declaration and By-laws are deemed to be part of the unit.

Condominium Common PID - Conversion of Existing Condos

To ensure the Condominium Common PID includes all of the Condominium Documents, you will need to review the abstract of title to determine what Declaration(s), Bylaw(s) and amendments affect title. Remember to search forward out of the Condominium Corporation once the Declaration has been registered to pick these up. If any Declaration, By-law or amendment to those is not listed in the Condominium Common PID, you are required to make a comment in your AFR.

To do this, find the Condominium Common PID, look at POL under the property you are converting. Then click "Details View", then go down to "Parcel Relationships" near the bottom of the screen where you will find the Parent PID. Click on Parent PID and you will go to the Condominium Common PID. If there are any missing entries in the details of that screen as compared to your title search, make a comment (not a textual qualification!) on your AFR regarding the missing information. Provide Document type, date of document, registration date. If you wish, you can print off a map of the land parcel on which the condo sits for your client at this location as well.

Remember, you only need to look for the Declaration, Bylaws and amendments.

How to Draft a Condominium AFR:

Benefits

Add the standard Benefit language under Enterprise section of Benefits as follows:

> "together with the common interest appurtenant thereto"

There is no requirement or need to match this benefit with another PID as you would do with a right of way. The enabling instrument for this benefit MUST be the Declaration. The regulations provide that all such documents (found in Condominium Common PID are deemed to be registered in the parcel register for each unit in the condominium corporation. Therefore the detail required with respect to Declaration and By-laws can be obtained from the condo common PID and not the AFR for the unit.

Burden

Add standard burden language as follows:

Subject to the Declaration and By-Laws (remove reference to By-Laws if none have been registered) of (insert county initial(s)) CC No. (insert condominium corporation number)"

Note that here you should use HCCC no. and not Halifax County Condominium Corporation Number (spelled out). This is a requirement of the system and from our perspective, it is just a rule we must follow to make the system work. Remember to remove the reference to By-laws if none are registered. The enabling interest MUST be the Declaration. (LRAR 12(2)).

Do not refer to common element rules, only Declaration and By-law (if applicable). Common Element rules are normally incorporated as part of the By-law and do not stand alone.

Benefits and Burdens Affecting the Land under the Condo

Here is the tricky part: Add all other benefits and burdens that are NOT Declarations, By-laws or amendments to Declarations or By-laws, but are interests in the unit OR the common interest. These benefits and burdens that affect the land on which the condo sits MUST go in the AFR but not the PDCA.

Really what we are doing here is adding all of the restrictive covenants, development agreements that are applicable, easements, rights of way, etc. that affect the common interest. This process is the same as for any other land parcel. Since the unit ownership also includes a proportionate interest in the common elements (which includes the land parcel), these interests are relevant to ownership of the condominium unit. This seems confusing because we do not put these benefits and burdens in the PDCA. AFRs for condos are often more difficult because of access driveways that may be shared by other condominium corporations or other parcels.

See the RG's Directive on blank exemption and various PIDS and the required pre-vetted TQ, noted earlier in these materials.

Recorded Interests

Add all the recorded interests in the unit AND recorded interests against the common interests. If there is a mortgage against the unit and also a mortgage against the common elements, both must be added. This might be the case for an old mortgage against the land on which the condominium sits. You must search out of the Condominium Corporation to pick up any recorded interests against the Condominium Corporation after the Declaration has been recorded. It will be rare to find a recorded interest against the Condominium Corporation after the Declaration has been filed unless perhaps a lien is filed against the common elements. It would also be rare to find a recorded interest against the land that existed prior to registration of the condominium if the unit is old and has changed hands a few times because all of the old undertakings would likely have been fulfilled. However, it is possible that there could be a Builders lien against the common elements or an old mortgage not yet released.

TEXTUAL QUALIFICATIONS

Overview

The purpose of Textual Qualifications ("TQs") is to have a place to enter information that does not "fit" into any other section of the AFR. They can be used to communicate information about the title that is useful to a lawyer reviewing the land registered parcel, and they can also be used to qualify title.

As of 2009, Section 11 of the LRAR restricts the use of TQs. They must be the "only means to provide a complete statement of all the interests affecting the parcel." In other words, it cannot be something that could properly appear in another field. The TQ must:

a. include a statement of the lawyer's opinion about the effect of the TQ;

b. form part of the lawyer's CLE or opinion; and

c. not contradict or contraindicate another part of the parcel (e.g. of the "John owns this…….unless he doesn't" variety)

For examples of the good, the bad and the ugly – and things that can be helpful or send you straight to audit, see Mark Coffin's "Textual Qualifications in the Land Registration System"

Under the LRA, title insurance can be used to register the parcel of land when the title is not completely "clean". However, if title insurance is used, it must be disclosed in the final AFR. Remember, all 'live' interests on title must appear in the parcel register, except for those specifically excluded by the Act (e.g. unreleased dower interests, certain unamended mortgages, etc. under s. 40).

If there are gaps or other defects in title then the lawyer has a number of options, including:

- Not to convert the parcel as the title has too significant a gap, or gaps, in the chain of title that prevents title from being marketable.
- To seek to correct the defects in the chain of title through the traditional methods, i.e., quit claim deeds or court order and once corrected to convert the parcel.
- Convert the parcel but include a textual qualification on the parcel register to explain the outstanding issue(s) with respect to title.
- Acquire title insurance to insure over the issue, but any use of title insurance in this regard must be disclosed to the land registration system using the Form 8 – the Lawyer's Opinion on Title. One must remember that the use of title insurance does not rectify the situation. The only protection it provides is to the owner of the parcel migrated, but it does not protect the lawyer who migrated the parcel.
- Rely on s. 37 (9) (b) of the LRA, which allows the Registrar General to approve the conversion of a parcel to a lesser standard than set out in s.37 (9) (a).

If the lawyer decides to include a textual qualification, he or she must be sure to give enough information to clearly describe what is being qualified or communicated. If there are facts that need to be disclosed which provide the basis for the textual qualification then such should be disclosed to give the foundation for the opinion.

Lastly, note TQs can, and often are, used to explain or otherwise discuss easements of uncertain or disputed location, which affect many parcels, which mismatch other parcels, or in respect of which a Registrar has granted a dispensation under LRAR 17. In this context, see the Registrar General's directive discussed earlier in this module. It can also be used to explain an easement or other appurtenance which appears on a plan but does not appear documented by grant. The RG's office has approved standard wording for such TQs to the effect that you are aware of them, but no grant appears in your title chain and you cannot certify as to the existence of the benefit/burden or otherwise.

RECORDED INTERESTS

Overview

As we have discussed, recorded interests are all interests except the four registered interests (fee simple, life interest, remainder interest, and an interest of Her Majesty). There is no definition of “recorded interests” specifically in the Act or regulations.

All outstanding interests are to be recorded in the parcel register in order to attach to the land with the exception of overriding interests for which no registered or registerable instrument or statutory declaration exists.

Judgments

If, at the time of conversion, there is a judgment outstanding against a current, or former registered owner, then the judgment is to be included on the AFR as a recorded interest. This is the only time a judgment will be placed in a parcel register. A subsequent buyer will not know all the names of previous owners and so the lawyer who completes the last historic search of title must ensure that any judgments affecting the parcel are placed in the AFR. Prior to May 16, 2005 when a regulation was made to clarify this issue, lawyers completing migrations may not have entered judgments against the owner since these were then searchable in the judgment roll accessed by the Grantor/Grantee index and the obligation was not clear. This regulation was effective May 16, 2005 and may not be retrospective (in the editor’s view, it is not). This means that if a parcel was migrated after that date, you can assume that any judgments will be in the parcel register. If migration was before that date, some lawyers feel that a 20 year judgment search should be done against the owner at the time of migration.

LRAR 23(2) states the following to confirm that lawyers do not search behind a parcel register once a parcel is in the land registration system:

> A parcel register is deemed to be a complete statement of all judgments recorded in the registration district which are, or may be, a charge upon the registered interests of the registered owner and any predecessor in title at the time of registration or, if subsequently revised, at the time of the last revision of the registered ownership of the parcel.

The idea is that a lawyer who is searching a parcel that is land registered may assume that any judgments that attached to any previous or current owner will show in the parcel register. Again this is the certainty principle.

If a judgment is obtained against an owner of a land registered parcel, the judgment will normally be recorded in the names based judgment roll in the applicable Land Registration Office. The names based judgment roll needs to be searched from the date of the last revision on the owner.

When determining the effect, or potential effect, of judgments, consider the naming rules in S. 66A (formerly 5) of the Act, the similar-name provisions in LRAR 26(2), and the requirement to record declarations in the judgment roll under LRAR 26(3).

Recorded Security Interests

Security interests do not transfer the title of the land charged by them and do not sever a joint tenancy. The most common security interest is a mortgage. Previous to the LRA, mortgages transferred the legal title to the mortgagee with the equity of redemption remaining with the owner.

A security interest is now only an interest in the land. Ownership remains in the name of the owner who mortgaged the property. (LRA s. 51) and title does not transfer to the mortgagee. The security interest is recognized only to the extent of the actual obligation of the debtor under law. However, if a foreclosure takes place, the mortgagee will make an application to the Court to have the property transferred to their name as the owner has defaulted on their mortgage payments and a Sheriffs’ sale proceeding will then occur. Please refer to the Foreclosure section of these materials for more information on the process.

No fee may be charged by a secured party to record a release unless the fee was agreed between the parties before the obligation was paid in full. Once the parcel is a land registered parcel, the mortgage or the holder of a debenture incorporating a mortgage may enforce all rights and remedies as if the parcel had been conveyed by mortgage subject to a proviso for redemption.

Challenging Recorded Security Interests

Where there are reasonable and probable grounds to believe the obligations pursuant to the security interest have been performed (the mortgage has been paid) and the holder of the interest (the bank) has agreed to release all or part of the collateral (the mortgage), the security interest (the mortgage) does not affect the parcel in the register and no security interest exists, then the named debtor (or the registered owner) may serve written demand requiring the interest to be discharged.

This section is s. 60 of LRA, which will become a well known provision to you. This provision can be used to remove a mortgage from the parcel register when the mortgage has been paid but a release cannot be obtained in a timely fashion. You would not use this for a private mortgage as you would always want that release signed before money was paid. This provision would be used, for example, if you paid out a Toronto Dominion Mortgage but did not get the release from them when needed. Banks can be very slow at providing releases of mortgages. Some banks are better than others and some record their own releases (i.e. Royal Bank's conventional residential mortgages).

Service of the demand to provide the discharge of the interest (i.e. mortgage) is done by registered mail or as otherwise prescribed by regulation. If the secured party (the bank) fails to comply with the demand within 30 days of service, the person making the demand may require the registrar to cancel or amend the recording in accordance with the demand upon proof of service. This provision can be very helpful to remove a recorded interest when the release is not forthcoming from the bank. The registrar will require evidence of this process before he will remove the recorded interest. Note LRAR29(1)

There is a Mortgage protocol which was approved by Bar Council, effective September 30, 2007, that provides that lawyer should avail themselves of this provision if the mortgagee has not provided a release of mortgage within six months from the date of payout of the mortgage. The detail on this protocol is described in a few paragraphs below. It forms part of Regulation 8 under the *Legal Profession Act* and is therefore mandatory. For a detailed review, as well as proformas of the required undertaking and precedents for challenging and removing non-judgment recorded interests, see https://www.lians.ca/sites/default/files/documents/Package-MortgagePayoutProtocol.pdf

If the secured party disagrees that the recorded interest should be released, it must obtain a court order for the continuance of the secured interest and then the registrar cannot cancel or amend the recording.

The secured party may apply to the court and the court may order the continuance of the secured interest as if the demand had not been made on such terms as the court thinks just, or may order the discharge or amendment of the security interest. The court order is to be recorded.

The secured party may not charge a fee or expense for compliance with a demand unless the charge was agreed to by the parties before the demand was given.

The revised protocol takes advantage of the *Land Registration Act* reversing the onus to lenders once a mortgage has been paid out, and requiring them to apply to court to maintain a security interest, notwithstanding the payout by the solicitor's office. These provisions set out in section 60 of the LRA, and by process in LRAR 29, allows a simple procedure to be followed if a release is not forthcoming after payout.

Section 60 noted above allows for a party who has paid out a mortgage to issue a demand via registered mail to the lender to either provide a discharge, or make an application within 30 days of the demand to show cause why the mortgage should remain undischarged. If the financial institution does not respond, the lawyer may file evidence of the demand with the Registrar General, along with a statutory declaration confirming the payout. The Registrar General is required to amend the recording in accordance with the demand upon proof of service of the demand by filing a "Registrar's Cancellation of Recorded Interest" to remove the recorded interest.

Non-mortgage security interests (eg. judgments, Builders' Liens)

Similarly, s. 63 allows a registered owner of a parcel to send a notice requiring cancellation of a recorded interest or a judgment referenced in the parcel register by serving notice on the holder of that interest or judgment to take proceedings in the court to substantiate the interest or judgment. If a judgment is paid out but you are unable to obtain a satisfaction piece, this is the section to use.

The notice shall include an affidavit showing that the interest is invalid with respect to the parcel. This notice will then be attached to Form 15 to record it at the LRO. This section cannot be used to eliminate:

- a registered interest; a security interest;
- an interest to which the registered owner(s) has consented; an overriding interest; or
- a recording pursuant to a statute other than the LRA.

The Registrar shall cancel the recording upon proof that sixty days (60) has expired from the date of service; that no certificate of lis pendens has been recorded to certify that court proceedings have commenced to substantiate the recorded interest; and that the person who caused the notice to be served is the registered owner of the parcel. The court has the authority to reduce the sixty day period upon hearing an ex parte application.

Note that Builders' Liens for which a *lis pendens* has been recorded can also be removed pursuant to subs. 58(2) of the Act.

LEASEHOLDS

Overview

LRA s. 55 provides for the recording of a lease, notice of lease or surrender of lease for a registered parcel. A lease that has been recorded, or with respect to which notice of lease has been recorded, is not valid against the holder of any other interest in the parcel unless:

- The lease or notice of lease was recorded before the other interest;
- The holder of the interest has consented in writing to the lease; or
- The holder of the interest adopts the lease.

A lease for three years or less is not required to be recorded and is binding on the other interest holders if there is actual possession under the lease that would be discoverable through reasonable investigation.

Leases may contain rights of purchase, extension or renewal, or rights to expand or contract the premises leased, but if these rights are not set out in the recorded lease or notice, then they are not binding on someone who did not sign the lease.

A lessee may, with the consent of the lessor, surrender a lease that has been recorded, or notice of which has been recorded, by recording the surrender of the lease.

DEBENTURES

Overview

LRA s. 53 provides that registered parcels may be mortgaged or charged by way of debenture. Where a floating charge in a debenture has been crystallized, a notice of crystallization must be recorded in the parcel register of all parcels secured by the debenture (Form 10). The debenture does not charge a parcel until the notice of crystallization has been recorded.

If you are buying from a developer, for example, and there is a floating charge debenture on the parcel register that does not crystallize before the sale, the charge is not a charge on the parcel. There is no release produced by the lender to remove the recorded interest. The floating charge debenture may be removed on the Form 24 when recording the deed into the buyer. However, this can only be done by paper filing and not e-submission.

JUDGMENTS

Overview

Judgments are maintained in the judgment roll which has been established in each of the 18 land registration districts.

A judgment roll is a computerized index of judgments for a particular county. Property Online allows the user to search the judgment roll of every district.

The roll is searched using the name of the judgment debtor as the judgment roll remains names based and not parcel based. Therefore, you will need to search judgments every time under the name of an owner and the buyer (if the transaction is a purchase/sale transaction).

Judgments will be found on the parcel register if the judgments were outstanding at the time the parcel was converted. Otherwise, they will be found in the judgment roll.

Remember that any judgments against any previous owner or the owner at time of conversion for the previous twenty years must be entered as a recorded interest at the time of conversion.

After March 24, 2008, judgments entered after March 24, 2003 began expiring. They are only valid for five years unless renewed before the expiry of that five year period (or any renewal – ie the 10 and 15 year marks). As a matter of practice, continue with a “normal” 20 year search as expired judgments are removed and no longer viewable, and cannot be renewed once expired.

If you find a judgment against the owner, it must be entered in the AFR even if the judgment is to be paid and released as a condition of a sale.

Refer to the Title Search section for the method to use when searching judgments. If your title search reveals a judgment which is not materially different from your client’s name you will need to file a Statutory Declaration using Form 48B. There is no fee for this filing.

Effect of Judgments

A judgment is considered to have the same effect as a recorded mortgage upon the interest of the judgment debtor in the amount of the judgment. (LRA s. 66(1)) Judgments recorded under the Registry Act prior to March 24, 2003 were automatically transferred into the LRA judgment rolls and are subject to the provisions of the LRA.

These transferred judgments continue to be effective for the remaining period of the 20 years from the date of the judgment but cannot be renewed.

New judgments recorded under the LRA are effective and remain on the judgment roll for 5 years from the date of recording, if recorded prior to May 4, 2009 (when Bill 156 was proclaimed). They are now effective for 5 years from the date of judgment or the date of last recording, as the case may be.

The LRA judgments may be renewed 3 times for a period of 5 years each so that the total amount of time that a judgment may attach to a parcel is a maximum of 20 years.

If a judgment recorded pursuant to the LRA is to be renewed, the notice of renewal (Form 16) must be recorded before the judgment expires; once the judgment expires it is removed from the roll and cannot be re-recorded.

If the time expires before a notice of renewal is filed, and it cannot be later recorded it will not attach to the parcel. The judgment itself is still binding on the judgment debtor but will not bind the parcel of land.

Note that Section 67(1) requires judgments to contain “such information as tends to distinguish the judgment debtor” from similarly named persons. As of July 19, 2010, this distinguishing information may NOT include:

- Social insurance numbers (SINs) Passport numbers
- Master number - driver's license or vehicle permit
- Phone numbers (unless provided as contact information for a judgment creditor)
- Information relating to a third party (e.g. spouse/partner/child of the debtor) such as the other party's occupation, date of birth, physical characteristics, etc.
- Physical characteristics of the debtor such as hair color, eye color, etc.
- Other properties owned by the debtor

The "distinguishing information," however, may include:

- Date of birth
- Occupation and/or name of employer
- Name of current or former spouse
- Current or former civic address (place of residence)
- AKA or alias name, nickname or significantly different given name
- Name of parent

Removal from the Roll

A judgment removed from the roll ceases to bind or be a charge upon any parcel in the registration district.

As noted above, any judgment recorded after March 24, 2003 will automatically be removed from the roll when the five year period expires unless it is renewed prior to the expiration date. When a judgment is removed from the roll, it is archived and no longer viewable on POL.

To cancel a judgment use Form 48A called "To Cancel the recording of a judgment that is recorded in a parcel register by means other than the recording of a Form 47 or Form 48 or removal of interest by "operation of law". This form is filed with the document that cancels the judgment or proves satisfaction of the debt.

Summary Regarding Removal of Judgments

If any of the five conditions in LRA s. 66(4) exist, then the judgment is automatically removed from the roll:

1. Cancellation of the recording;
2. The issuing registrar, prothonotary or clerk of the court recording a certificate that the judgment is set aside;
3. Expiration of the time for which the judgment was recorded (pre-March 24, 2003 judgments)
4. Recording a release; or
5. Expiration of five years from the date of the recording or the date of the last renewal of the recording of the judgment (post- March 24, 2003 judgments).

The validity of any title acquired by sale under a judgment is not affected by the removal of the judgment from the roll.

Release of Judgments

Judgments may be fully or partially satisfied. The release is recorded using Form 48: Request to Record a Full or Partial Release of Judgment. Form 48A and Form 48B will direct the release of the judgment in the roll, or if applicable, the parcel register.

LRA s.68(4) allows the registrar to cancel the recording of a judgment upon receipt of a certificate from the registrar, prothonotary or clerk that sufficient funds have been paid into court to satisfy the judgment and the judgment creditor has been notified of the payment into the court. Judgments may also be assigned and the assignment is recorded. (LRA s. 69)

Right to Require Confirmation (LRA s.68)

Prior to the LRA it could be difficult to obtain a Certificate of Satisfaction for a judgment that had been paid but for which no Certificate of Satisfaction was obtained. This was often the case with judgments by individuals against other individuals.

Now, s. 68 of LRA allows any person to require a judgment creditor to provide, without charge, confirmation that the person is or is not the judgment debtor referred to in the judgment. The creditor must also indicate if the judgment is or is not satisfied.

The debtor has an obligation to provide sufficient information for the creditor to make the assessment and the creditor may request further particulars within 7 days of the request. The creditor only has 10 days to respond to the request and if it fails to do so, then the person making the request may file an affidavit and the judgment will have no effect with respect to any parcel owned by the person making the request.

Should the creditor request more particulars about the alleged debtor, then time is extended such that the creditor has to respond within 10 days after the additional information is received.

If the creditor then does not respond to the request within those additional 10 days, then the person follows the same procedure re: filing an affidavit and the judgment will have no effect with respect to any parcel owned by the person making the request. The affidavit requirements are listed in Regulations s. 26(6).

Amending Judgments

A judgment creditor may update the name and address of the judgment debtor in the judgment roll, and if applicable, the parcel register, by recording a Form 20: A Request to Update the Name or Address of a Judgment Debtor. If Form 20 is used, the update is effective from the date and time the Form 20 is recorded.

POWERS OF ATTORNEY (POA)

General Powers of Attorney

General Powers of Attorney are maintained in the Power of Attorney roll for each land registration district and as with judgments, all rolls in the province are accessible via POL.

Specific Powers of Attorney

Specific Powers of Attorney that affect a parcel may be recorded on the parcel register and will be found in the "Recorded Interests" section of the parcel register or in the general power of attorney roll. A general power of attorney may only be recorded in the power of attorney roll.

The specific power of attorney will need to be removed from the parcel register once it is no longer needed for the purposes of the particular transaction. Like the floating charge debenture in the parcel register being able to be removed at the time of a deed being recorded by a buyer, a power of attorney can also be removed in this way. Again, e-submission cannot be used for this purpose at this time as a result of the functionality of the system; however, paper filing of the deed and Form 24 can accomplish this.

If the power of attorney is in the power of attorney roll, it can remain there without the need to remove it.

In addition, if a power of attorney is needed for a particular transaction, it can be inserted within the document without paying an additional fee for recording. This avoids the entire issue of entering the power of attorney in the system and having to remove it again almost immediately.

> LRA 72 (5) A power of attorney may
>
> a. be recorded in the attorney roll;
>
> b. be recorded in a parcel register; or
>
> c. be included in the document to which it relates.
>
> (6) A power of attorney that is included in the document to which it relates does not authorize the registration or recording of any other document pursuant to subsection (4).

Note that Forms 24 (revision of registered interests), 26 (recorded interests) and 27 (releases of recorded interests) all require you to address whether or not the instruments are executed pursuant to powers of attorney and, if so, where the POA is located (in the POA roll, within the instrument, or otherwise). It is advisable to recite the recording particulars (if applicable) in the instrument itself and to keep an in-house record of commonly-referred to POAs, for example those used by banks and their management companies.

FORECLOSURES

Overview

When dealing with foreclosures of unmigrated land, the following procedure should be followed:

1. After the Sheriff's Sale, register the Order for Foreclosure, Possession & Sale pursuant to the Registry Act using a Form 44;
2. Register the parcel in the name of the defaulting mortgagors, using their deed as the enabling instrument;
3. Complete the AFR as usual, but add the Foreclosure Order as a recorded interest in the parcel as Order (not transferring/not for judgment);
4. Add a TQ to explain that the interest of the owner is being foreclosed pursuant to an Order for Foreclosure, Possession & Sale;
5. You do not have to place the mortgage in the AFR once it is foreclosed, but if you do, on revision of the registration, Form 24 to remove the foreclosed mortgage (this will be the Form 24 used with the Sheriff's Deed). This is a similar process when removing floating charge debentures that have not been crystallized and when removing powers of attorney from a parcel register after the transaction for which it was needed is complete.

Use Form 24 (paper form) to remove the Foreclosure Order, and to remove the textual qualification respecting the foreclosure.

Note that the litigation aspects of foreclosure have been modified by the advent of the new (2009) Civil Procedure Rules (CPR), and reference should be made to the CPRs for this.

CERTIFICATE AND OPINION OF TITLE

Much of this section of this Module is presented with many thanks to Catherine Walker, Q.C. and her paper entitled: "Certifying Title and Qualifying Title under the Land Registration Act."

As the practice has developed, it is the seller's lawyer for the most part who is converting property on behalf of the seller in to the LRA system and therefore the seller's lawyer who is responsible for the title inquiries and the opinion on migration. The lawyer may or may not have acted for the seller before and therefore may or may not be privy to the peculiarities of the specific title under review.

As indicated earlier, the LRA differentiates between "registered" and "recorded" interests in land. While s. 20 of the LRA deems a parcel register to be a "complete statement" of interests, the validity, priority or effect of recorded interests are not opined upon by the system. Again, this is distinct from YOUR certificate of legal effect, either to your client or to the system for recorded interests or their cancellation under forms 26, 27, 46, etc. Section 20 also does not, in itself, guarantee that any or all of the "flip sides" to easements, building-scheme covenants, or the like "match" or "marry up" with your lands under search.

Note that your opinion on Title attached to the AFR which is Approved for Registration is now incorporated in the final submission of the AFR and specifically confirms that the certifying lawyer "expresses no opinion as to the validity or effect of the recorded interest listed in the signed Statement of Registered and Recorded Interests attached hereto."

So, while there is the obligation to include all recorded interests that are found in the abstract of title in the parcel register at the time of migration, that obligation does not extend to certification to the Government as to the effect of those interests in the opinion given.

The registered interests that are the subject of the government guarantee are backed by the authorized lawyer's opinion of title for a period of ten years from the date the certificate is given. Thereafter, the risk is transferred to government.

Of particular interest is s. 37 (11) of the LRA:

S. 37 (11) A qualified lawyer is liable to the Registrar General with respect to any negligent error or omission in an opinion furnished pursuant to this Section if the Registrar General has, within ten years after the opinion was furnished to the Registrar General, been required to pay compensation pursuant to this Act as result of the negligent error or omission.

(See also similar language in s. 18 (4) of the LRA)

The form of a solicitor's opinion of title on conversion is a statutorily mandated form. So at the time a property is first brought in to the LRA system either on the basis of voluntary conversion or by mandatory trigger, a full title search is conducted, and all of the interests affecting a parcel are reflected on the parcel register and are the subject of a solicitor's opinion of title to the government (s. 37 (4) (b) of the LRA).

The LRA also prescribes the foundation threshold for the solicitor's opinion (s. 37(9)):

(9) The qualified lawyer's opinion of title required in clause (4)(b) shall be prepared in accordance with the relevant Nova Scotia Barristers' Society practice standards in effect at the time of the opinion and

a. shall set out

(i) the interests being registered in the parcel and, subject to Section 40, all encumbrances, liens, estates, qualifications and other interests affecting the parcel, and

(ii) the direct or indirect right of access to the parcel, if any, from a public street, highway or navigable waterway to the parcel,

as appear on the records at the land registration office in the county where the parcel is situated; and

b. shall be based upon a title search, as evidenced in an abstract of title, that shows a chain of title to the standard required to demonstrate a marketable title pursuant to the Marketable Titles Act or to the standard required pursuant to the Limitation of Actions Act or any other enactment or the common law, or to such lesser standard as the Registrar General may approve.

37(9)(b) can be a useful tool on a case-by-case basis, for example to address gaps, titles which are the subject of agreements from LIANS, conversions on notices to certain persons, and other situations which will, presumably, be addressed as each situation arises. You will note that 37(9) incorporates a statutory requirement for compliance with the NSBS Professional Standards as in effect at the time of migration. The submitting solicitor must be familiar with Real Estate Standard 1.3, when giving his or her opinion. That standard distinguishes between LR and non-LR parcels:

Non LRA parcels (not being migrated)

For a parcel or an interest in a parcel not registered under the *Land Registration Act* a lawyer may give an opinion that the title is marketable if, after examining the abstract of title, the lawyer is satisfied that title to the parcel is marketable in accordance with legislation, common law and equity.

A lawyer who provides an opinion of title must explain any qualifications to the opinion to the client and confirm the explanation of the qualifications with the client prior to closing. The lawyer must confirm the client's instructions prior to closing.

LRA Parcels

Application for Registration

For a parcel or an interest in a parcel being registered under the *Land Registration Act* a lawyer may give an opinion that the title is marketable if, after examining the abstract of title, the lawyer is satisfied that title to the parcel is marketable in accordance with legislation, common law and equity.

A lawyer who qualifies an opinion of title to the registrar in a migration of a parcel under the *Land Registration Act*, must, after examining the abstract of title on which the opinion is based and considering the qualifications, document the qualifications in the opinion.

A lawyer completes an application for final registration of a title under the *Land Registration Act*, must ensure that all the documents required under the *Act* to be filed at the appropriate land registration office[8] or retained by the lawyer as part of the registration are complete, executed, and in all respects in final form[12] and shall compile and maintain all foundation documents which a reasonably competent lawyer would rely upon to support the opinion of title.

Parcel Registered Under Land Registration Act

A lawyer who provides an opinion or a certificate of legal effect for a parcel or an interest in a parcel registered under the *Land Registration Act*, must examine the parcel register and conduct all necessary searches in order to determine the registered ownership and interests pertaining to the parcel.

A lawyer who provides an opinion of title, must explain all interests in the parcel, qualifications and limitations on the opinion to the client and confirm the explanation of the qualifications with the client prior to closing. The lawyer must confirm the client's instructions prior to closing.

Revisions and Recordings of parcels under the Land Registration Act

A lawyer who applies to revise a parcel register must examine:

a. the parcel register;

b. the enabling documents in the parcel register;

c. the judgment roll; and

d. any document to accompany the certificate of legal effect, and be satisfied that the registration or recording which purports to change the parcel register is effective.

All of the title information upon which the certification is based must be retained in the lawyer's file and be available for audit (this is a requirement both under the *Legal Profession Act* Regulations, and the LRAR). These are known as the "foundation documents".

The Professional Standards for Real Estate Transactions in Nova Scotia ("the Professional Standards") set out the requirements before an opinion on title can be prepared (Professional Standard 3.1). The opinion must be based on the abstract of title, and

be capable of being read and understood by a person who has not searched the title, without reference to any documents or records external to the abstract.

Upon review of your abstract, if you have found a mortgage that you know is paid out but not released, you must still enter it as a recorded interest and then file the release (or a s. 60 discharge, if you have the foundation to do so). There is one exception to this.

That exception is that if the mortgage is on a residential property (not commercial or other, at the time the mortgage was placed) a historic enquiry may be needed. If it is older than 40 years, it is not considered to be a recorded interest that needs be included in the AFR. (see s. 40 of the LRA and also s. 24 (2) of the *Real Property Limitation of Actions Act* for mortgages matured more than 20 years ago if certain criteria are met).

Similarly, the fact that you know a judgment debtor with a name similar to or the same as the owner or purchaser is not the same person is not sufficient - a statutory declaration to that effect must be filed at the Land Registration Office (LRAR 26(5)), and a copy must be included in your abstract to show you addressed this issue.

The Certification

The solicitor submitting the certificate of title does so in the AFR which has been "Approved for Registration". The electronic form of certification is added to the AFR after the AFR is approved by LRO staff but before it is returned to the lawyer as "Approved for Registration".

After the migration is complete, an email attaching the Statement of Registered and Recorded Interests (SRRI or Form 29) is sent to the lawyer by LRO staff. The certificate of title in the SRRI is a repetition of your certification sent upon completion of the migration.

Nature of the Certificates

The electronic AFR application is very specific with regard to the certification for each parcel registered. Paragraph 1 of the electronic AFR Opinion and Certificate of title requires that the submitting solicitor certify that:

> "The information contained in the Application for Registration for this parcel is a true and correct summary of the title information with respect to the PID that is described below, as disclosed by the records on file in the land Registration Office for the county where the parcel lies, and in the Owner's Declaration Regarding Occupation of Parcel and Residency Status in Form 5."

Abstract of Title

The next part of the certification refers to the abstract of title, and how it has been prepared. The electronic version requires the lawyer to certify that:

This opinion of title is based upon a title search and abstract of title that have been conducted or completed in accordance with the current Nova Scotia Barristers' Society Professional Standards: Real Property Transactions in Nova Scotia.

The electronic version requires the lawyer to indicate the chain of ownership of the parcel to the standard required to demonstrate title to the s. 37(9) standard referenced above. (See Practice Standard 3.1)

If one can add a qualification on title but have the title remain marketable, then a qualification can be entered and the property may still be migrated. Such a TQ must comply with LRAR 11, namely:

> 11 (1) An authorized lawyer submitting an opinion on title in an AFR or a certificate of legal effect may include a textual qualification if the lawyer is of the opinion that the textual qualification is the only means to provide a complete statement of all the interests affecting the parcel.
>
> (2) A textual qualification must meet all of the following criteria:
>
> a. it must include a clear statement of the certifying lawyer's opinion about its effect;
>
> b. it must form part of the authorized lawyer's certificate of legal effect or opinion of title;
>
> c. it must not limit, contradict or make ambiguous any other information in the parcel register, including the legal description.

If, for example, a gap or other defect is found in the in title then the lawyer has a number of options, including:

- Not to migrate the parcel as the title has too significant a gap, or gaps, in the chain of title;
- To seek to correct the defects in the chain of title through the traditional methods, i.e., quit claim deeds or court order and record same before conversion;
- To convert the parcel but include a textual qualification on the parcel register to explain the outstanding issue(s) with respect to title;
- To acquire title insurance to protect against the problem but any use of title insurance in this regard must be disclosed to the land registration system. (Note this does NOT change the contents of your AFR or your obligation to place all "live" interests in the parcel); or
- To obtain approval under s. 37 (9) (b) of the LRA, which allows the Registrar General to approve the conversion of a parcel to a lesser standard than "normal."

It is always a critical imperative to understand the lawyer's obligations pursuant to the Professional Standards.

Root of Title of Certificate

The electronic version, Paragraph 5, next requires that you indicate the root of title to the parcel which is being migrated. On occasion, the property which is the subject of your migration has multiple back titles. The details to be inserted on the screen should refer to the earliest root document in your title search.

With respect to document numbers, the following rules apply:

a. If there is a document number, use the actual document number, even if the POL-generated number is different (you will get a mismatch warning screen which you can tell the system to ignore)

b. If there is no document number on the instrument but there is a POL-generated number, use that one.

c. If there is neither (usually only with very old, unscanned documents), use a blank or, if the system will not accept this, a 0 (zero).

Accuracy of Information Contained in the AFR

Paragraph 6 of the certificate is your certification as to the accuracy of the registered interests, benefits, burdens, recorded interests, etc.

Electronically, the lawyer certifies that:

> This Application for Registration is a true and accurate summary of the registered interest, benefits, burdens, qualifications on title, recorded interest, and means of access that apply to this parcel.

No Other Encumbrances

Paragraph 7 is your certification that there are no other encumbrances affecting the title. It requires the lawyer to certify that:

> There are no other registered encumbrances affecting the title to the land disclosed by the records on file in the land registration office for the county where the parcel lies except those specified herein;
>
> This statement reminds lawyers that the parcel register will constitute a guaranteed title, and so a lawyer must certify that there are no other interests other than those disclosed in the application for registration.

Certification Relating to Subdivision Approval or Otherwise

The certification requires you to certify that the statement placed in the parcel description accurately sets forth the status of the parcel in respect to the subdivision provisions contained in Part IX of the MGA.

Title Insurance

You are required to indicate whether a title insurance policy was purchased for the purpose of registration of the title and, if so, for what purpose (e.g. in lieu of an updated survey, because of lender requirements, etc.)

If title insurance is used, it may provide protection for the owner or a buyer but it will not diminish the responsibility to the lawyer vis a vis the LRA system inter se. The lawyer must still determine if the title may be certified or not and will be responsible for a period of ten years after the date of certification (migration).

Adverse Possession, Prescription, Overriding Interests

The certification in Paragraph 10 contains a statement:

Unless noted above, this opinion is subject to

a. rights in respect of the lands, which may have been acquired by adverse possession or prescription; and
b. overriding interests stipulated in Section 73 of the LRA that are not contained in registered instruments that appear within the period covered by the title search and abstract of title referenced in this certification and opinion.

Documentation to Support the Certificate

The electronic version of the Certificate, Paragraph 11, requires you to certify that:

> I have obtained all affidavits and other documents required under section 37 of the Land Registration Act and the Land Registration Administration Regulations, and these documents, and the Abstract of Title referenced in Certificate Statement Number 2, will be retained and available for audit by the Nova Scotia Barristers' Society.
>
> Lawyers must have all foundation documents which support their opinion in hand at the time an application for registration is submitted.

Restriction on certificate

In Paragraph 12, the submitting solicitor declares:

No opinion is expressed as to

a. the actual boundaries of the lands, the location of any buildings or structures in relation to the actual boundaries of the lands, or the size of the lands;

b. the validity, enforceability of, or compliance with, restrictive covenants if contained in the signed Statement of Registered and Recorded Interests attached hereto; or

c. the validity or effect of the recorded interests listed in the signed Statement of Registered and Recorded Interests attached hereto.

Representing and Certifying to the Purchaser

The LRA has created a system of certifying title to real property in Nova Scotia. It is important to realize that although Section 20 of the Act provides statutory protection for LR parcels to the public, subject to the other provisions of the Act, it remains 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 transaction.

We are now examining what appears on a computer screen or on the SRRI. The lawyer's job is to:

1. Examine the title, determine the title holders, consider the access to the property, and obtain copies of all covenants, burdens and benefits; conduct appropriate off-parcel enquiries (judgments, including judgments against purchaser in advance of financing deadlines) as well as traditional tax enquires. If the parcel shows any indication of having been converted on the basis of possessory title, or with encroachments whose ten year "use it or lose it" period has not expired, proceed accordingly.
2. Meet with the clients in advance of the closing to show them the title and 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 – in particular note the requirement for client awareness in Practice Standards 3.6 (Restrictive Covenants) and 2.3 (Access);
4. Write notes in the file to document the details of any issued 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, the Report on Title must 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.

Attached are two sample Certificates of Title. As well, here is a precedent that can be adapted for the circumstances of your particular purchaser: www.lians.ca/sites/default/files/documents/2011-01-06_ClientAsPurchaser.pdf

Begin the preparation of the Report on Title on the day that the file is opened. At the same time, 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. The majority of transactions now involve parcels already converted to the LR system. It is best practice to conduct your search as soon as you have the agreement (including judgment searches for the reasons noted before) to have the best flexibility in addressing problems. At the same time, it is fairly common for an agreement to list only one PID when in fact the vendor may own two or more – an early alert to this (by clicking on adjoining parcels in the course of your LR search) can enable one to clarify what is or is not included in the transaction before the last moment (or, worse, discovery post-closing).

Note that sometimes deadlines for conversion are "honoured in the breach," often without apparent legitimate reason. It is at best discourteous and at worst unprofessional. In the past, the standard form realtors' agreement allowed for rescission by a buyer if the property was not migrated in the requisite time.

The current (2009) form provides for a time frame without an explicit remedy – presumably the normal rights that flow from a breach of condition would apply. Many private agreements still contain the rescission version. In any event, it leaves the transaction in limbo and reflects poorly on everyone if a parcel is not converted in a timely fashion, absent a legitimate reason. Problem titles are one thing that we will all have from time to time, but there is does everyone a disservice when the only reason is work flow.

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? Are they embedded in the instrument but not reflected on the parcel register? If you believe there are relevant documents not viewable on POL, 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 26, 2007, 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.

Review the Professional Standards: Real Property Transactions in Nova Scotia. The standards are available on the Society's Web Page and through www.lians.ca . Those standards require that a lawyer have written evidence to prove:

Identification of an issue;

1. Advice was given to a client;
2. Clients instructions following the advice.

Standard 1.5 which is the standard regarding documentation states:

Standard 1.5
Documentation of Advice and Instruction

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 title1; 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 - Conflict of Interest.

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.2

For example, recent caselaw (*Rice v. Condran*) has emphasized the "duty to warn" when restrictive covenants contain an ability of the developer to waive provisions without changing the building scheme as a whole.

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 March 26, 2007 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 month of April 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.

Sample 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., 20*yy.

FIRM NAME

Per: _____

Solicitor

CERTIFICATE OF TITLE

To: *

Re: *

The undersigned certifies that as of *, the addressee has a good and marketable title in fee simple to the lands described in a deed recorded in the Land Registration Office for Pictou County, Nova Scotia for Parcel Identification Number *, free and clear from encumbrances subject to the qualifications shown below.

This Certificate of Title is subject to reliance upon the accuracy of the contents of a statement of Registered and Recorded Interests as received from the Land Registration Office for Pictou County, Nova Scotia, a copy of which is attached hereto and incorporated herein by reference. This certificate of title is further subject to any qualifications shown therein, as well as overriding interests preserved by law. In particular, the undersigned does not certify as to any unrecorded rights acquired by possession or otherwise (including easements so acquired), restrictive covenants, encroachments from or onto adjoining lands or as to compliance with zoning or set back requirements. Obligations and undertakings of the certifier and the right to indemnity of the addressee are not assignable or transferable, and the right to indemnity is restricted to the duration of ownership of the lands by addressee, and heirs of the addressee, and, except for conveyances by the legal representatives of the addressee to heirs of addressee, the right to indemnity ceases on the sale or transfer of the said lands.

QUALIFICATIONS

1. Subject to survey as to actual metes and bounds;
2. With respect to the interest holder shown as a prior mortgagee (being *), we have obtained and relied upon the undertaking of * to obtain and file a request to cancel a recording in respect of same.

DATED at New Glasgow, Nova Scotia this day of * _____ .