Module Four: Working with Land Registered Parcels

INTRODUCTION

The key to understanding and changing a parcel register is good title searching skills, the same skills covered in the first section of this training. Title searching skills are essential for you to understand a parcel register, to advise your client properly, and to decide what changes need to be made to the parcel register.

The skills covered in this section have become proportionally more important as more and more properties are converted to LRA; the majority of transactions now take place on parcels already "in the system." As the legislation and practices have changed since 2003, there are increased instances in which we find parcels with "old rules done right" or in which new information (e.g. new or updated survey fabric) comes to light. These can require modification not only of the parcel owned or to be owned by your client, but also to others which "do not match" or are otherwise inconsistent with the current environment.

Learning Objective(s)

To understand:

1. What information is available in a parcel register and the responsibilities associated with making changes to it.
2. The steps required in reviewing the Parcel Register prior to making changes.
3. How to revise the parcel register
4. How to record and remove an interest
5. The steps for rectifying a Parcel Register
6. The possible changes needed when deal with subdivisions
7. How the parcel register for Condominiums is different than for other land registered parcels and how changes are made to them
8. When to search Judgments and when and how they need to be placed in the parcel register
9. The meaning terms associated with parcel registers and filing procedures for changes
10. When and what forms are required to make various changes to parcel registers.

Instructions

- Read the Content Materials for this section
- Review the resources

Module Materials

Click here for printable copy of Module Four content materials

INTRODUCTION

What is a Parcel Register?

A parcel register is a "complete statement" of the interests in that land as at the applicable date, subject to the exceptions contained in s. 20 of the LRA. Note that the enabling instruments (usually viewable via a "view document" link) are part of the parcel register as well (s. 13 LRA).

The parcel register provides a summary of title for that parcel of land. It is up to each of us as the reviewing lawyer to evaluate title and its marketability, and advise our clients accordingly.

As will be discussed this does NOT mean that the parcel register stands alone. You must review it in conjunction with other searches and in conjunction with changes in the law over time as well as information derived from other parcels which may affect, or be affected by, your parcel.

What is a Parcel Register *not*?

The parcel register is not a guarantee of recorded interests. The parcel register only provides notice of recorded interests. For example, the validity or priority of a mortgage is not guaranteed to the lender by the LRA system. In a recent RELANS listserv discussion by email, one lawyer put it as follows:

"You can rely on the parcel register as showing all the recorded interests and prescribed contracts recorded in the LRA system that affect the parcel you are examining; you do not have to do any historical search for them. As examining counsel, however, you are responsible for determining the legal effect of those recorded interests; LRA does not guarantee their legal effect."

Note, however, as indicated in prior modules, that lawyers, as of the 2009 LRAR amendments, generally certify to the legal effect of certain recorded documents. They are only certified to the extent that the document "is appropriate to make the changes" the authorized lawyer is asking for – such as recording, cancelling a recording, etc)., Authorized lenders may record many of the same documents, but do not "sign" Certificates of Legal Effect. ("CLE")

Reviewing the Parcel Register

The parcel register may contain errors. Review it with skepticism. Use other available sources of information, such as plans and location certificates, discussion with your clients about the manner of access, reviewing the POL mapping graphics, or reviewing the parcel register of a servient tenement parcel if it is LR. Always review the enabling instruments to ensure they are correctly reflected on the face of the register (e.g. inclusion of restrictive covenants, correct manner of tenure, access, etc.)

The parcel register is not written in stone. A parcel register will change over time, for example as mortgages are recorded and released, or when the property changes hands. As the purchaser's lawyer, you may object to a parcel register. For example, you may object to a mortgage, requiring that the seller's lawyer undertake to payout and remove the mortgage. (Reference the Mortgage Payout Protocol.)

Parcels are also affected by subdivision – that is discussed later.

The parcel register may not be up-to-date with the current Land Registration rules and policies ("old rules done right"). The Land Registration system rules have evolved since the *LRA* was first introduced. For example, you may see a parcel register with no *MGA* compliance statement because they were not required for the first couple of years. Or you may see an out-of-date *MGA* compliance statement stating that the parcel conforms to the subdivision requirements of the *MGA*. While it might not be strictly necessary to update the parcel register, it is a "best practice" to do so. In the Northern region, certain easement benefits/burdens were stated by name rather than by PID or "together with/subject to" and are out of date (sometimes by more than one owner). The growing pains of the LRA are manifest in early registers which were eminently "correct at the time" but now require updating.

Note: The parcel register should not contain terms that do not 'marry'. The PCDA portion of the parcel register & the AFR portion must match up, or ***marry***. For example, a purchaser's lawyer may add Restrictive Covenants with the Form 24 but forget to submit the amending PDCA. In this case the benefits and burdens section of the parcel register showing "Subject to restrictive covenants" will not marry with the parcel description portion that should contain the reference "Subject to restrictive covenants as described in document ###."

Reference: Lawyers and Legal Staff – Resource Materials and Procedures *PDCA Standards Checklist* in Module 2.

These last two topics are particularly susceptible to the changes in easement rules over time, particularly in light of the "matching" concepts contained in the post May 4, 2009 Administration Regulations. This was discussed in the AFR context in Module 3, but applies with equal vigor in examining existing parcel registers which purport to contain benefits or burdens.

The parcel register is subject to over-riding interests. Remember that some interests created by statute or underlining crown interests may not be shown on the parcel register. Although these ***over-riding interests*** are not recorded, they still have priority over what is shown on the parcel register.

The parcel register is not a guarantee of boundaries. Information on a parcel register is subject to survey. *LRA* s. 21

The parcel register may contain 'labels' that are inaccurate or incomplete. For example, a document may be labeled as a lease but include a right of first refusal. Similarly, the LRO may have "required" a document to be described in a certain way on migration, because of how it was indexed in the Grantor-Grantee index, when it may not in fact be the best or most accurate description of the actual instrument. You must rely on your own review of the documents.

The parcel register may not "match" the flip sides: Often, a parcel register will contain benefits or burdens (e.g. easements) which affect or are affected by other parcels. When they can be identified, the corresponding parcels should, but often do not, contain the "flip" benefit or burden as the case may be. These should be reviewed and, if necessary, corrected. You should always review adjoining parcels to determine if they claim or recognize benefits or burdens over your property that do not appear on your own parcel register. They can also provide hints of missing items on your parcel (for example, if an abutting parcel shows restrictive covenants, it may be an indicator that there is an error on your parcel if these covenants do not appear and both parcels appear to have come out of the same subdivision. Similarly, an adjoining parcel may claim a right of way over your land and it may not appear on your parcel, either through error or through it not appearing in the Marketable Titles timeline on your parcel's historic search. This is fairly common when dealing with older subdivisions and cottage lots, for example). If there is a mismatch, it is incumbent to resolve or at least discuss the matter with the client. It is no fun to receive a call a week after closing that "the neighbour won't move his car and says he doesn't have to."

The parcel register may reference incomplete or inaccurate PIDs for the "flip side" – This can arise when the "flip" has been subdivided and new PIDs assigned, for instance. Or one parcel or another may have used "various PIDs" to reflect the benefit or burden which may or may not reflect the best available current information (for example, as a result of intervening survey data).

Legal Review of Title

In summary, lawyers are doing what we have always done: Reviewing title and advising our clients on the state of title. The parcel register is our starting point. We are responsible for interpreting it and we are responsible to ensure all changes we make are accurate.

Only authorized lawyers can make certain changes to a parcel register. As well, only authorized lawyers and surveyors can change a parcel description (i.e. submit a PDCA). The reason for the restricted access is that as authorized lawyers, we are certifying to the Land Registration system that the change should be made. (*LRA* s. 18 "Registration requirements" subsections 18(3) and 18(4))

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PREPARING TO CHANGE THE PARCEL REGISTER

Step 1: What changes need to be made?

To decide whether the parcel register needs to be changed and how it should be changed, you must examine the parcel register, the document, and the subsearches.

In general, see Ian MacLean's paper and checklist on searching Land Registered parcels in for the types of searches/subsearches that should/must be made prior to revision.

Practice tip: Review the parcel register as soon as possible and review it often.

First review the parcel register. The parcel register is your guide to the parcel's state of title.

Second, review your document carefully, including the full text and all schedules. On a typical purchase transaction, the sellers own the fee simple interest and in a warranty deed the sellers convey that fee simple interest to the buyers. The grantors on the deed should match the registered interest holders shown on the parcel register, and these grantors must be removed from the parcel register at the same time, you add the names of the grantees to the parcel register. Often there are no other changes.

However, the deed (either in the text of the deed itself or in a schedule attached to the deed) may convey the parcel either ***subject to*** a burden or ***together with*** a benefit. For example, the deed may add restrictive covenants that are not on the parcel register and must be added to the parcel register along with changing the ownership. The deed may come together with a drainage easement over an adjacent lot, and that drainage easement must be added both to your parcel and to the servient tenement parcel. (See discussion on ensuring easement is properly granted). You must also ensure that the parcel "matches" any identifiable flip sides, or that it falls within one of the applicable exemptions (e.g. condominiums, matching TQ, Registrar's exemption under Regulation 17, etc.)

Remember a document can create an interest by reservation, or an interest may be created by law, such as an implied right-of-way.

Next do your LR searches, including recent plans and judgments. Don't wait until closing day to do your searches outside of the parcel register. You can do preliminary judgment searches as soon as you start your file. Some problems can be solved if you have time. (For example, if there is a judgment against either the seller or the buyer it takes time to track down the judgment creditor and confirm the particulars.) Sometimes, for example, there will be a judgment against a purchaser which did not show up on a credit search (and thus did not prevent a mortgage approval). Unless the judgement is addressed, it could impede the transaction. Such a situation will be a problem for you if it arises after a financing/objection deadline in an agreement. There may be a bankruptcy in which a trustee's involvement will be required, and so on. Keep a copy or notes of your searches in your file as the "abstract."

- Searches on a Land Registration Parcel;
- Review the parcel register. Remember that the embedded instrument (e.g. deed) is considered to be part of the register even though it is a hyperlink: s. 13(3) LRA
- Judgment search of owners i.e. the Registered Interest holders (from date of migration or date of last revision, whichever is most recent; IGNORE the LR date as shown on the Parcel Register view as this could be incorrect for a variety of reasons – the correct date is the s. 43 Notice as shown on the Details view.) Sometimes the name shown on the parcel register may differ from that shown on the enabling instrument – such as if there has been a change of name of an individual or corporate owner. Search the names shown on the instrument as well.
- Judgment search of purchasers (full twenty year search until March 2023)
- Search by Name for Non-LR Documents in Process for Registered Owners and Purchasers (for judgments only)
- Search recent plans, as there is often a gap between the time a plan is processed and no longer viewable as plans in process, and when it appears in the parcel register. How long this is may vary by season and registry. The editor's practice is to search all plans under the plan index for the last month or two to ensure this 'gap' is covered.

- Search for Plans in Process
- Search by PID for Documents in Process

If the parcel is a condominium unit, additional considerations apply. Those are discussed in in the Condominium section.

Again, for a full discussion, see the paper and checklist prepared by Ian H. MacLean QC appended to this section

Tricks and Tips on LR Searches

The general rule is to search back to the date of migration or the date that the last deed was registered, whichever is the later, but you have to think about it!

- For example, if the LR parcel is subdivided, the 'LR Date' shown on infant parcels is the date that the infant parcel was created, not the actual date of the migration of the parent parcel. You must do the judgment search from the migration date of the original parent parcel that was migrated. You may have to go back more than one generation.
- Refer to the Practice Standards and in particular Standard 1.3 on searches in general.
- Same if a Form 6A or a former Form 17 has been used to correct a Registered Interest (for example, incorrect surname so you file a Form 6A but the next judgment search should be done from date of original deed into owner).
- Section 23(2) of the Land Registration Administration Regulations states the following: "A parcel register is deemed to be a complete statement of all judgments against 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." A prior similar version was implemented in May 2005 (at the time, as LRAR 11(3)). However this section and its 2005 predecessor may ***not*** be retrospective, so when doing a judgment search against an owner of a parcel that was migrated prior to May 16, 2005, you may have to do a full 20 year search. Refer to Practice Standard 3.5 on Judgments.

When searching names, less is more. The broader the search the better, since it may "catch" more. So, for example, if your search enquiry is "Smith J" it will turn up John William Smith; but if you insert "Smith John" it will not reveal "J William Smith."When a lawyer searches for judgments after the Land Registration Act comes into force and the lawyer identifies a judgment that is recorded against a debtor whose name is not materially different than the name of the owner or the purchaser, the lawyer must determine if the judgment affects the title being examined.

Reference: LRA s. 66A (formerly 5(2)) re: material difference in names.
If the judgment does not affect the title, but the name is not materially different, the relevant statutory declaration (no fee) must be recorded, using paper Form 28: LRAR 26(5)

The final step is to compare the parcel register to the document and the subsearches. With this information, you can decide what changes to make to the parcel register. If there are differences in the document, ensure they are reconciled in a way that the system will accept. For example, if Mary Smith is now Mary Jones, either have the document reflect "formerly known as" or file the Form 21 respecting the Change of Name prior to closing. The LRO will not accept a deed naming Mary Doe as grantor, without more, when the registered interest holder is named as Mary Smith. Similarly, if only one person has signed the deed because s/he is a surviving joint tenant, the system will not remove the other person without reference in the deed to "why there is only one signature," or a prior filed Form 21 removing the deceased joint tenant.

Reference: Practice Standards

Practice Standard 1.3 Certified Opinion of Title and Certificate of Legal Effect
Practice Standard 1.6 Rebuttable presumptions
Practice Standard 2.1 Legal Descriptions
Practice Standard 2.3 Access
Practice Standard 2.4 Plans and Surveys
Practice Standard 2.5 Encroachments
Practice Standard 3.1 Abstracting
Practice Standard 3.3 Prescriptive Rights
Practice Standard 3.5 Judgments

Step 2: Are all requirements met to make the changes?

As an authorized lawyer, you certify to the Land Registration system that this change should be made. (LRA s. 18 "Registration requirements" subsections 18(3) and 18(4)) You are providing a certificate of legal effect and you must satisfy yourself that the document is effective at law to justify the changes you are asking to be made. In examining the abstract of the parcel register, examples of questions to ask include:

- Does the person have the right to do what they're doing (e.g. does the Grantor on the Deed match the registered interest holder on the parcel register)?
- Is an easement or right-of-way granted correctly? Only the proper owner of the servient tenement parcel can grant a right-of-way over that servient tenement parcel. If the servient parcel is land registration, check the parcel register to see who owns it and make sure that the proper owner grants the right-of-way. If the servient tenement parcel is not land registered, then you must do a title search to make sure the proper owner is granting the right-of-way, and retain that information with your foundation documents. Again, the "matching" principles in LRAR 14-18 must be addressed, and the "match," or allowable exception, forms part of your LR-parcel search. Review the Registrar General's directive of August 2009 on this point and on the reconciliation process for mismatches.
- Remember if a mortgage attaches to that parcel before the right-of-way is granted, than the right-of-way will be subject to that mortgage unless the mortgage is postponed to the right-of-way. In a recent RELANS listserv discussion by email, one lawyer put it as follows: "Another issue you are responsible for when examining a LR parcel is determining the relative priorities of the various interests in a parcel – registered and recorded. Most often this involves the priority of mortgages etc but it also applies to easements. This is no different from before (refer to Claims Wise Bulletin Issue No. 1, from February 1992, No. 9: Preserving Easements). You must determine that there are no prior interests in a servient tenement that could jeopardize a benefit to a dominant tenement that you are examining. Ideally migrating counsel will have Textually Qualified such prior interests in the Dominant Tenements PID's parcel register."

Reference: Claims Wise Bulletin Issue No. 1, February 1992, No. 9: Preserving Easements
Reference: Practice Standards, supra, particularly Part III.

Step 3: Does this change necessitate other changes?

Sometimes your preparations will reveal that other changes must be made. For example:

- If a judgment affects the property at the time of update (whether against a selling owner or the new person being added to title), you must also add the recorded judgment to the parcel register.
- If you are adding an easement that benefits a parcel, you must also add it as a burden to the servient tenement parcel. See Module 3 re the "flip" side of the easement, and LRARs 14(2) and 15(1).
- If the change affects another property that it is not land registration, you must also register the document in the Registry of Deeds system – See LRAR 15.
- If you are adding a benefit or burden, you must also amend the PDCA – See LRAR 14(4) and 15(2).
- If a parcel was on a private road when migrated and that private road was recently been taken over by the municipality, the "Parcel Access" needs to be changed to "Public" and the Right-of-Way benefit removed both from the parcel register and the parcel description

Some changes affect more than one parcel. When you are changing an interest on a parcel register, you must decide what parcels are affected by that interest and how you show that change for each parcel. An interest may affect:

- Only One Parcel
- Two or More Parcels in the Same Way
- Two or More Parcels, but in different ways. If the interest affects more than one parcel, find out if all the parcels are Land Registration parcels.

You will generally be dealing with more than one parcel when a parcel contains benefits or burdens, unless they are municipal or utility easements, or restrictive covenants. Yet again, Regulations 14-18 and the Registrar General's directive on these provisions require review.

CONDOMINIUMS

As we have seen, Condominium units are treated somewhat differently than other freeholds. The registered owner(s) show as usual, as do the manner of tenure and access. However, the parcel description is mandated as a short form (unit and condominium corporation number) with a single benefit (together with the common interests) and burden (subject to the declaration and bylaws). That does not necessarily reflect the entire picture.

First, the condominium may well have other benefits and burdens – especially in the case of bare land condominiums, the unit may have rights over and obligations towards other units. These should show on the condominium view in the ordinary way, but not in the parcel description.

Second, the following caveat appears on all LR condominium LR views:

- 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.
- This contains critical information pertaining to the unit, including the declaration and bylaws, the actual portion of the unit that is owned by the registered owner, and so on.
- To get to this, scroll to the bottom of the LR view for the condominium under search. You will see a PID for a “condo common parcel” in the last field, namely “parcel relationships.” Click on that “Related PID” number, and a new screen will appear.
- That screen represents the “Condominium Common View” listing all of the units, the declaration, the bylaws, and the plans. All of these should be searched like any other instrument to determine their content and legal effect, and reviewed with your client as to acceptability. Do so sooner rather than later when engaged to act for a buyer, and well before the deadline both for objections to title and (should you be so lucky as to have the agreement in a timely fashion) the deadline for “lawyer review” contained in the standard Nova Scotia form of Agreement of Purchase and Sale.

HOW TO MAKE CHANGES TO THE PARCEL REGISTER

Transfer of Ownership

In a purchase of residential property, typically title is transferred from the seller to the buyer with a deed (usually a warranty deed), which is the enabling instrument. In a land registration system, someone has to tell the system what changes to make (in other words how to revise the registered interests on the parcel register). As an authorized lawyer, you submit the deed accompanied by a Form 24 - Request to Revise the Registration and Certificate of Legal Effect. The information that the lawyer puts on the Form 24 tells the LRO staff how to change, or revise, the parcel register. On a typical purchase, as the purchaser's lawyer you remove the sellers from the parcel register and add the buyers to the parcel register. Generally, these will be required to be submitted electronically, although there can be exceptions in instances where the electronic functionality does not do everything required (for example, when a recorded interest is extinguished as a result of a transfer, such as in a sheriff's deed under a foreclosure).

It will be important to pay attention to any changes in the manner of tenure (for example, two sellers to one buyer does not automatically change the tenure field from, e.g., joint tenancy to not applicable – you have to tell it to do so!) Same goes for changes in access, and any benefits/burdens charged as a result of the transfer (e.g. addition of restrictive covenants, as is often the case in a deed from a developer).

Lawyer Responsible for Accuracy of Form 24

It is the lawyer's responsibility to complete the Form 24 accurately and to complete the Certificate of Legal Effect properly. LRA Admin. Regulation s. 5(2) states "the submitter is responsible for the accuracy of all of the information required" on every document submitted for registration or recording, and that the Registrar is "entitled to rely upon the information submitted [on the form] "

SRI to Confirm Registration

After the parcel register is revised, the system e-mails you a Statement of Registered and Recorded Interests (Form 29, commonly called an SRRI or SRI) to confirm the registration. As well, you can see a notice on your notification page. (On Property Online, click "View Notification Reports" and then "View Land Registration Document and Plan Registration/Recording Notifications".)

Preparing a Form 24

The paper Form 24 set outs the elements of a parcel register that might be changed:

1. The registered interests changed in the parcel's registration;
2. The tenant in common interests not registered under the *Land Registration Act* that are changed in the parcel's registration;
3. The judgments incorporated into the parcel register;
4. The benefits (e.g. right of way benefits) changed in the parcel's registration;
5. The burdens (e.g. right of way in favour of another person or parcel) changed in the parcel's registration;
6. The recorded interests changed in the parcel's registration; normally this would only be changed if there has been a merger of registered and recorded interests (e.g. by foreclosure) or if an instrument has been extinguished by operation of law.
7. Textual qualifications on title in the parcel to be changed.

On the Form 24, you must identify which elements are to be changed and how. The other sections can be deleted and marked "Not applicable". Note that it is inappropriate to mark n/a with respect to judgments, although occasionally you will see this on paper Form 24s – you must always either satisfy yourself that no judgments attach to the lands at the time of revising a registered interest, or incorporate those judgments.

At the end of paper Form 24 you tell the system that "It is appropriate to revise the parcel registration for the indicated PIDs as certified in this request."

Showing a Mortgage on a Parcel Register – Recording a Security Interest

Form 26: Request to Record an Interest is the most frequently used form to add a recording to a parcel register. The enabling instrument is attached to the Form 26.

Prior to the 2009 regulations, Forms 26 did not require a certificate of legal effect; after the 2009 amendments, lawyer-submitted recorded documents do have a CLE (those submitted by authorized lenders do not). You will need to review each recorded interest to determine whether they were signed under a CLE. Whether they were or were not, remember that recorded interests are NOT guaranteed by the system (although they may be guaranteed by you under your CLE or your certification to a client) and so you will need to exercise your own judgment as to what the document is and what it does.

Other Recorded Documents

Other documents recorded with a Form 26 include a builders' lien, lease, Power of Attorney, Assignment of Rents, Mortgage Amending Agreement, Assignment of Mortgage, a right of first refusal, and an Option to Purchase Agreement. Note that LRAR 24 defines "prescribed contract" as an option or a right of first refusal. It is unclear what effect instruments that are not provided for in the Act or Regulations (such as long-term purchase and sale agreements) would have against a bona fide purchaser for value without notice, now that s. 4(2) of the Act has abolished the doctrine of constructive notice for the purposes of determining fraud.

Determining where a document properly belongs

Sometimes you have to decide where the document belongs. For example with a Power of Attorney – do you want it just on the parcel register or do you want it on the attorney roll, or both? Generally, if a power of attorney is only with respect to a given property (or it's the only property a party owns or is expected to own), you may simply record it in the parcel register or incorporate it into the instrument. If it is for more global use – e.g. the powers of attorney issued by some banks and financial institutions – the attorney roll would be more appropriate. Remember that each recording will attract the applicable fee (exception: a specific – as opposed to general - Power of attorney incorporated into a deed, which will attract only one fee).

Adding or Removing Easements from the Parcel Register

The rules respecting adding benefits/burdens to existing parcels are contained in Regulations 14-18 of the Administration Regulations. Their application in the AFR context is discussed in Module 3. Again, refer to the Registrar General's directive of August 2009 when (a) the Registrar General agrees that it does not appear practicable to identify all the "flip sides" (b) in the case of condominiums and (c) when you are dealing with an LR parcel that does not "match" the apparent flip sides.

Before placing an easement on the parcel register you must:

- Review the parcel register to determine what already exists against this parcel.
- Assess the recorded interests which may be affected by the addition of a benefit or burden (e.g. a mortgage on the servient parcel that pre-exists the easement).
- Perform a judgment search to determine if any judgments have priority.
- Identify and review the PID for the parcel(s) which will be benefited or burdened by the easement you are adding to your parcel.
- Ascertain whether the servient tenement PID is Land Registration and if not, then determine whether you require an abstract of title for the servient tenement (Refer to Practice Standard 2.3).

The lawyer attaches the enabling document to the Form 24 to add the benefit or burden to a parcel register. A second Form 24 is needed to address the easement on the other parcel or parcels. Again, see LRARs 14 and 15 with respect to changes to the parcels, and approved descriptions.

The "Other" Side of the Easement

Since easements necessarily burden one or more parcels and benefit another or others, you must understand how the relationship is to be shown on the affected parcels. An interest may affect:

- Only One Parcel: The most common (and simplest) interest to be registered or recorded is adding an interest that affects only one parcel (e.g. an easement over your parcel in favour of Nova Scotia Power). You attach the applicable form (in paper or electronically) and submit it.
- Two or More Parcels in the Same Way: If the interest affects more than one parcel, but all in the same way, the process is still simple. You add all the PIDs to the same form. E.g., an easement benefit for all the infant parcels of a new phase of a subdivision.
- Two or More Parcels, but in Different Ways: If the interest affects more than one parcel but affects each parcel in a different way, then you have work to do. For example, a right-of-way over Parcel A in favour of Parcel B is a burden on Parcel A and a benefit to Parcel B. If the interest affects more than one parcel, first find out if all the parcels are Land Registration parcels.
    - If both parcels are LR: With the paper forms, you submit a separate Form 24 showing how the interest affects each parcel, attaching a certified copy of the enabling document to each Form 24. Be sure to check the appropriate box on the front page of the Form 24 so you only pay one recording fee. See LRAR 14. This will, at present, generally be paper-recorded.

  The current paper Form 24 is somewhat reversed from the pre-2009 version in that a separate Form 24 dealing with the "flip side" is expected (and thus will be rejected) unless the "no flip side required" box is checked. This box would be checked if there is no "flip side" (such as with a general utility easement), or if there has been a LRAR 17 "impracticable" dispensation, or if the "flip side" already reflects the corresponding appurtenance.

    - If one parcel is LR and one is not: You record the document both on the parcel register of the LR parcel and also in the old Registry of Deeds so that it is on record for a title search of the non-LR parcel. To record a document in the Registry of Deeds system, attach a Form 44 if an easement, or Form 8A if not, to the original of the enabling document. Use a Form 24 for the LR parcel, attaching a certified copy of the enabling document. Check the appropriate box on the front page of the Form 24 so that you only pay one recording fee. At present (spring 2009), this reads: This document also affects non-land registration parcels. The original will be registered under the Registry Act and a certified true copy for recording [sic] under the Land Registration Act is attached." Remember, notice to the affected parcel holders in Form 8 is required unless the party has executed the instrument.

    - If neither parcel is LR: Attach a Form 44 to the document to record it in the old Registry of Deeds system. Remember to consider whether the transaction has itself been a 'trigger' to require one or more parcels to be converted to land registration (e.g. if there has been an interest transferred for valuable consideration).

Amending PDCA

Whenever you are reviewing a parcel register (for a purchase for example), you must always check to determine if the description of the parcel contains all of the attributes listed in the parcel register. Always look at the enabling deed showing the registered owner and determine if the description in that deed contains any benefits or burdens that were not updated in the register when that deed was registered. Request the lawyer for the seller to amend the PDCA to match up ("marry") with the parcel register before closing.

The last section dealt with easements and how you need to check two parcel registers to determine if the dominant tenement PID (the benefited parcel) and the servient tenement PID (the burdened parcel) match. You want your benefit and burdens to match properly on each of their parcel registers.

If you are involved with drafting an easement document, be especially careful how you draft the description of the lots being benefited and burdened. Avoid using PIDs to describe a parcel. The PID is a label for a more detailed description at a particular moment in time. The extent of a parcel can change but the PID can remain the same. This was discussed briefly in the PDCA section. If you use a PID to describe a servient tenement and then that servient tenement is subdivided or consolidated, the PID of the resulting parcel may or may not accurately reflect the affected servient parcel (and indeed the PID may no longer exist).

However, on consolidation, all easements that were on the servient tenement PID are automatically inherited into the newly consolidated parcel by the system. The developer's lawyer is required to delete all inapplicable burdens using a Form 45 immediately after consolidation. This does not always happen and can lead to confusion. This is a situation where the procedures in the electronic system and the law may not match.

No matter how the benefit or burden is described in the parcel description, always check the PID numbers in the benefit/burden section of the parcel register to determine that they are still accurate and reflect any new or additional information that may have arisen since the last revision (e.g. consolidation or subdivision, new survey fabric, etc.)

Adding a benefit or burden requires an amending PDCA: LRAR 14(4) and 15(2).

Restrictive Covenants shown as Burden

Restrictive covenants, by their nature, often benefit and burden a parcel. However, restrictive covenants are only placed in the burden section of the parcel register. See s. 61(2) for the useful tool of providing restrictive covenants on mutually-owned LR parcels (e.g. by a developer).

Grant of Easement to Self

A substantive change in the law is effected by s. 61(2) (formerly 19A) of the LRA. This section allows an owner of an LR parcel to grant an easement in the parcel for the benefit of another LR parcel that he or she also owns.

Removing a Recorded Interest

A Form 27 is attached to a Release of Mortgage to remove the mortgage from the parcel register. CLEs are required for lawyer-submitted releases with the 2009 LRARs. Note that it is worthwhile to review the mortgage itself, prior to submitting a release, to determine if more than one parcel is being released. It is common to find releases which should have been submitted for more than one PID, being submitted only on one lot.

Reference: Practice Standards 3.4 Discharge of Mortgages

Challenging Recorded Security Interests (LRA s.60 & LRAR s. 25)

The LRA provides a procedure to challenge recorded security interests and have them removed from the parcel register without a document in certain circumstances. The process is outlined in s. 60 of the LRA. You should remember that mortgages that are paid out on a sale require use of this challenge mechanism by the solicitor who undertakes to effect its release, if "it is apparent" that the release will not be effected within 180 days of closing:

> Regulation 8 pursuant to the *Legal Profession Act*.

Challenging Recorded Interests (other than Security Interests)

The LRA also sets out a procedure to challenge recorded interests that are not security interests. (LRA s. 63 & LRAR s. 26) However, you cannot use this section 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.

New Judgments

After conversion, a new judgment is only recorded in the judgment roll in the applicable Land Registration Office and does not appear on the parcel register until a revision is done. For a judgment, use a Form 46. For an Order for Judgment, use a Form 26. To record the Cancellation of a Judgment & Certificate of Satisfaction, use Form 47. For a partial release of judgment, use Form 48. Again, the 2009 LRARs require CLEs for such documents submitted by lawyers.

A Note on Practicing in Adverse Economic Climates

Loan defaults often give rise to legal claims – faulty documentation, title defects, priority disputes. The commission of such mistakes will sometimes go undetected while the loan is being serviced, or on regular sales because security instruments more often are retired and less often have to be enforced. When they do have to be enforced, otherwise latent professional errors inevitably become exposed.

There have been a couple of recent claims with a little different twist from the more common claims above noted. These can generally be described as situations where lawyers who, after being retained to procure and record an easement in their clients' favour, have done so without first obtaining the consent or a postponement agreement from a prior mortgagee of the land to which the easement pertains.

An illustrative example is a claim file in which a lawyer, on the client's instructions, prepared and recorded a right-of-way which permitted the use of a driveway and parking area in a residential setting. The lawyer did not obtain the consent or a postponement agreement from the prior mortgagee of the neighbour's land. Once the easement was in place, the client expended a considerable amount of money in resurfacing the driveway and parking area, which the easement permitted the client to do.

The misfortune struck later when the neighbour defaulted on his mortgage and it was foreclosed upon. The result of the foreclosure, of course, was the extinguishment of the easement which made for a very unhappy client. Needless to say, a claim was made against the insured lawyer.
Absent the default, there is a good chance that the mortgage would eventually have been paid out and the professional error thereby neutralized. In any event, the example serves as a reminder that in creating any proprietary interest in land, lawyers must be alert to the consequences if there should happen to be a foreclosure by a prior mortgage.

Removal by operation of law

Occasionally, an interest in a parcel may be extinguished by operation of law, without a corresponding instrument to reflect that extinguishment. Examples include:

- A mortgage that has "expired" or is no longer enforceable pursuant to s. 40 of the LRA or 24(2) of the *Real Property Limitation of Actions Act*.
- Recorded instruments which have merged with the registered interests (such as pursuant to a foreclosure)
- Burdens that have expired (such as fixed-term restrictive covenants whose time has run)
- Options or rights of first refusal that have ceased to operate against the lands
- Claims that have expired such as certificates of lis pendens more than five years old (58(2)(d) LRA)
- Expired leases and other expired interests (57(1)(c) LRA
- Such interests are generally removed using a paper Form 24 (with accompanying CLE), denoting the interest to be removed and why.

Note that this is not a substitute for situations for which a specific procedure exists for removal – e.g. death of a joint tenant (Form 21), termination of effect of a judgment by virtue of bankruptcy (Form 28), deletion of a security interest due a s. 60 LRA challenge (Form 15), deletion of a judgment or other interest due to a s. 63 LRA challenge (Form 15A), etc.

POST SUBDIVISION

As lawyers, we have to educate our clients, and surveyors, to consult us before they subdivide property.

Subdivision Lingo

It is important to familiarize yourself with the conventional terms associated with the creation of new parcels. The term parent parcel refers to the complete parcel, or bulk parcel, of land before it is subdivided. A new parcel resulting from the subdivision of the bulk parcel is referred to as an infant parcel.

The effect of subdivision on the parent parcel PID will vary depending on the extent and nature of the subdivision. However, you should be aware that distinct terms are not used to describe the various results.

For example, the parent parcel PID may be completely subdivided into infant parcels. In such a case, the parent parcel PID for the parent parcel is retired. However the parent parcel PID may stay with the remainder parcel or be assigned to one of the 'new' infant parcels. As a result, the impact on “flip sides” may result in the benefit/burden being incorrect, non-existent, or incomplete. This is discussed below.

Subdivision is a Migration Trigger

Subdividing a parcel typically requires that the parcel must be migrated first. Section 23(11), formerly 17(9) of the LRA:

> A registrar shall not accept for registration or recording a plan of subdivision, instrument of subdivision or notice of subdivision with respect to a parcel that is not registered pursuant to this Act.
>
> When a municipality receives a subdivision application from a property owner, the municipality notifies the Land Registration Office (“LRO”). The LRO will notify the municipality if the parcel must be migrated. If migration is mandatory, then the municipality will not grant final subdivision approval until the parcel is migrated.

Advantages of Voluntary Migration Prior to Subdivision

It is best to advise your clients of the advantages associated with voluntary migration of a parent parcel before subdividing it. If the parent parcel is migrated before it is subdivided, then all infant parcels stemming from the parent parcel are land registered.

Mandatory Migration prior to Subdivision

If the subdivision is creating three or more lots migration is mandatory unless the subdivision is for family gifting purposes.

> Section 46(1) of the LRA says that a registrar cannot accept for recording:
>
> (b) a plan of subdivision, instrument of subdivision or notice of subdivision unless
>
> (i) the subdivision results in the creation of fewer than three lots, including any remainder, or
>
> (ii) the plan, instrument or notice is accompanied by an affidavit signed by each of the owners of the parcel to the effect that the sole purpose of the subdivision is to create lots to be gifted to a parent, spouse, brother, sister, child or grandchild of an owner;

Family Gifting Exception

For example, Mother owns a 10 acre parcel (the "parent parcel"). She wants to subdivide a two acre piece to give to her Son so he can build a house. Since it is a family subdivision creating only two parcels in total and the land is a gift, Mother's subdivision will not trigger a mandatory migration. This transaction does not require migration for three reasons (1) it is a gift; (2) it creates less than three lots; and (3) it is done for family purposes.

If the facts were different and Mother wants to create 5 lots, it would still be exempt if all of the lots were going to the family members.

However if the Son intends to mortgage his infant parcel in order to build a house, then the Son will have to migrate his parcel to be able to record the mortgage. We therefore think of a mortgage as being the same as a trigger for migration.

If the parent parcel had been migrated prior to subdivision, then both Mother and Son would have migrated parcels “two for the price of one.”

New Parcels Created by Mapper at LRO

After the municipality approves the subdivision, the plan is sent to the LRO where the mapper creates the new infant parcels.

Note that the graphics under the “Map View” in POL are done separately and are not created concurrently with the creation of the new PIDs. As a result, new parcels can be legally created and conveyed long before the infant parcels show up on the graphics. However, the subdivision plan will have been filed and a copy of that plan can be obtained.

In addition, there can be a “gap” between the time that a plan is approved for an LR parcel and it appears in the parcel register, as discussed earlier in the section on searching in preparation for revision of registration. So, for example, if you have an LR parcel that is subdivided on February 1, creating Lots 1 and 2, and you are searching on February 5, you may not see the plan. There may be a short period of time in which it does not appear under “plans in process” (because it has been approved) but also does not appear in the parcel (because of the scanning and indexing procedure for plans which is slightly different than for instruments such as deeds and mortgages). The “red flag” showing documents in process will also not appear on the parcel register.

It is therefore prudent when searching or subsearching not only to check documents and plans in process, but also the plan index for the last two or three weeks, to catch this potential “gap.” You can simply insert date parameters (to use the above example, search all plans in the county from January 20 to February 5) and you will then see the indexed plan referencing your lands, even if the plan itself has not yet been scanned.

Infant Parcels Inherit from Parent Parcel

The infant parcels "inherit" all the title characteristics of the parent parcel. In other words, all of the parent parcel attributes (including all benefits and burdens) are transferred to all infant parcels. However this 'inheritance' only passes to the parcel registry for the infant parcels, not to the legal description. So the legal description for each infant parcel must be amended to include the benefits and burdens properly inherited from the parent parcel. Access is deleted. Remember our (free!) friend Form 45 is used to add access and to make the necessary modifications to benefits, burdens, and recorded interests to the infant parcel.

While the LRARs currently only provide that Form 45 need only be filed before revision of registration of a subdivided parcel (ie a transfer), this is poor practice and should be done upon finalization of the plan for all of the affected lots. In this fashion, one can best be assured that the parcels’ benefits and burdens “match up” in a consistent and coherent fashion, rather than piecemeal as lots are transferred and addressed in a haphazard fashion (or, even worse, missed entirely).

Legal Review after Subdivision

After a parcel is subdivided, the owner's lawyer must review the infant parcels and, in consultation with the surveyor and the owner, compare the parcel registers to the survey plan and the parent parcel. The lawyer must determine how the subdivision affects all of the parcels. Ideally, this is done upon finalization of the subdivision, for the reasons noted above, but MUST be done before ownership is revised. LRAR 9(3).

Removing Attributes

It is crucial to determine whether benefits and burdens inherited by the infant parcel actually apply to the infant parcel. For example, there may be a utility easement that affects Lots 1 and 2 of a 10 lot subdivision. You may want to remove the utility easement if it doesn’t apply to Lots 8 through 10. Be sure to read the

document and satisfy yourself that there is no other general language in the easement document that might continue to burden Lots 8-10 before you have it removed from those lots.

To remove inherited benefits and burdens that do not affect an infant parcel, you will use a Form 45. There is currently no cost for this form.

Inherited burdens can be of all kinds. It may be easy to determine what lots are unaffected by the document but it may be difficult. For example, you may have part of the lands that are on a public road but after subdivision, the public access is no longer legally available. You will need to determine this from the client and the survey.

Amending PDCA

You may find that the particular attribute does affect one or more infant parcels. The parcel register reflects everything in the parent and so the register itself will be accurate.

You will still need to file Form 45 to reflect the access.

You must amend the PDCA so that the legal description will "marry" with the parcel register: (LRAR 9(3)(b)). Remember you can copy and paste the easement description from parent parcel, if it was in the parent. Go to the parent PID at the bottom of the parcel register and click on the PID under “parcel relationships”. This will take you to the parent. Go to the description near the bottom and copy the attribute that needs to be added.

Note that no MGA compliance statement is added to infant parcels by SNSMR; however, it is good practice to do so in the amending process, since you have particulars of the plan which “creates” the lot close at hand

Creation of Benefits or Burdens for New Parcels

In general: see the discussion on the “flip” side of the easement in Module 3.

Before the LRA, lawyers relied heavily on surveyors to draft legal descriptions for new parcels. Under the LRA, the mappers create new parcels and they use short form descriptions for those parcels. If the lawyer prefers a long form metes and bounds description, it can be changed to a long form using an amending PDCA.

However, new easements may need to be created before conveyance of the parcel. Therefore the lawyer, the surveyor and the client must work together to review the plan and see what new easements need to be established.

Communication among all parties is fundamental to ensure that no benefits or burdens are missed when that new parcel is conveyed for the first time.

Change in benefitted/burdened PIDs on subdivision

Whenever a parcel affected by a benefit or burden is subdivided, it is important to review any new PIDs that are assigned. The attributes may need to be changed on one or more parcels to reflect this information. For instance, if an easement burdens PID 123 and it is subdivided, it is entirely possible that the easement will be on a lot with the new PID assigned. Similarly, if a parcel is completely subdivided into ‘new’ lots, the former PID may be retired entirely.

In such instances, the information on all “sides” is updated using a paper Form 24. The form will designate “Code 451” to tell the LRO what is being done and why, and what information is changed as a result of the subdivision. There is no fee for this filing. The note to Form 24 reads:

(Instrument code: 451)

(Change to existing servient or dominant tenement PID number in a parcel register as a result of subdivision or consolidation.

Note: This form cannot be used to correct an error in a parcel register)

As this filing may not have always occurred, or always been fully completed (e.g. when a lot has been subdivided by a developer without counsel, or the developer has simply failed to effect the update), it is important not only to examine "flip sides" in a transaction, but also to ensure that the PIDs accurately reflect the affected parcels. To use the above example, if PID 123 had the burden and has been subdivided to form PIDs 123 and 456, the benefitted parcels will – until the Form 24/Code 451 has been filed – continue to show 123 even if the easement runs over the new PID 456. If you examine PID 123, and that PID still exists, it will "come up" and may even show the flip but would now be incorrect. So examine the plan!

Creation of Easement on Conveyance

Again, see the easement discussion in Module 3.

In many cases, a plan of subdivision will show benefits and burdens which have yet to be created. In this case the deed for the first conveyance of an infant parcel (the first sale from the developer) is often the enabling instrument for the benefits and burdens depicted on the plan of subdivision.

For example, the restrictive covenants are often added to the title when the developer makes the sale of an infant parcel for the first time. In this case, three things must happen:

1. The deed must contain the language required to add the covenants;
2. The deed must be recorded using a Form 24 and adding the burden of the covenants on that Form 24 so that the burden is added to parcel register;
3. The PDCA must be amended to reflect the addition of the restrictive covenant burden;

There is a better way to do this.

The Developer could have recorded the burden of the restrictive covenants on the parent parcel before subdivision or even after subdivision on all parcel registers. This may be done with a Statutory Declaration of the Developer, or grant pursuant to s. 61 (formerly 19A)with the covenants attached.

Then, each infant parcel would contain the burden in its parcel register. All infants would be correct in relation to this burden and it would not have to be done for each infant parcel separately. However, an amending PDCA would still have to be done by the Developer before the sale. The deed from the Developer to the Buyer would match the parcel register and there would be less clean up work. Further, if the Buyer's lawyer did not amend the PDCA or add the burden with the Form 24 correctly, this could easily be missed by a searcher who did not click on the enabling instrument. Indeed, if the deed omitted the covenants entirely, the building scheme as a whole could be at risk, with potentially disastrous results. If the conveyance creates new benefits and burdens of any type, you must ensure that the parcel registry for both the dominant and servient tenements are properly updated. If the benefit in the deed is a right of way over a new private road in the subdivision (unless it arises by implication of s. 280(2) MGA), you must add the benefit using a Form 24 with your deed to the parcel that is benefited. You must add the burden using a Form 24 to the parcel that is burdened. You attach a second copy of your deed to the second Form 24 and use the PID for the burdened parcel.

As well, you must amend the parcel descriptions to reflect the new benefits and burdens in both the benefited and burdened parcels.

There is a lot of work to do with subdivisions. Each time you must think through how all parcels are affected and which ones need to have amending PDCAs done on them.

Elias Metlej has provided some helpful insights and "tips and tricks" in his paper: Post-Subdivision Registrations.

Creation of Easement While Still in Common Ownership

Under the common law an easement could not exist while the servient and dominant parcels had the same fee simple owner. However, the LRA has changed that with s. 61 (formerly 19A). We can now create an easement or right of way while the parcels are still in common ownership.

Subsearches on a New Parcel

On a new parcel, the date shown as the "LR Date" at the top of the parcel register is the date that the infant parcel was created. IGNORE THIS. It is not the date that the parent parcel was migrated. So you have to review the parent parcel to decide from what date you must do your judgment subsearch. Go to Details view and, if it does not show the s. 43 Notice of Registration (which is the “real” date), go to the parent parcel and the details view for the parent should show the s. 43 date. As indicated earlier, the parent parcel can be understood to represent any judgments which affect the owner of the parent parcel. You would subsearch from the migration date of the parent parcel. Note that occasionally you may have to go back through the Details screen to find this and you may have to go back more than one generation to find the migration date.

Consolidation

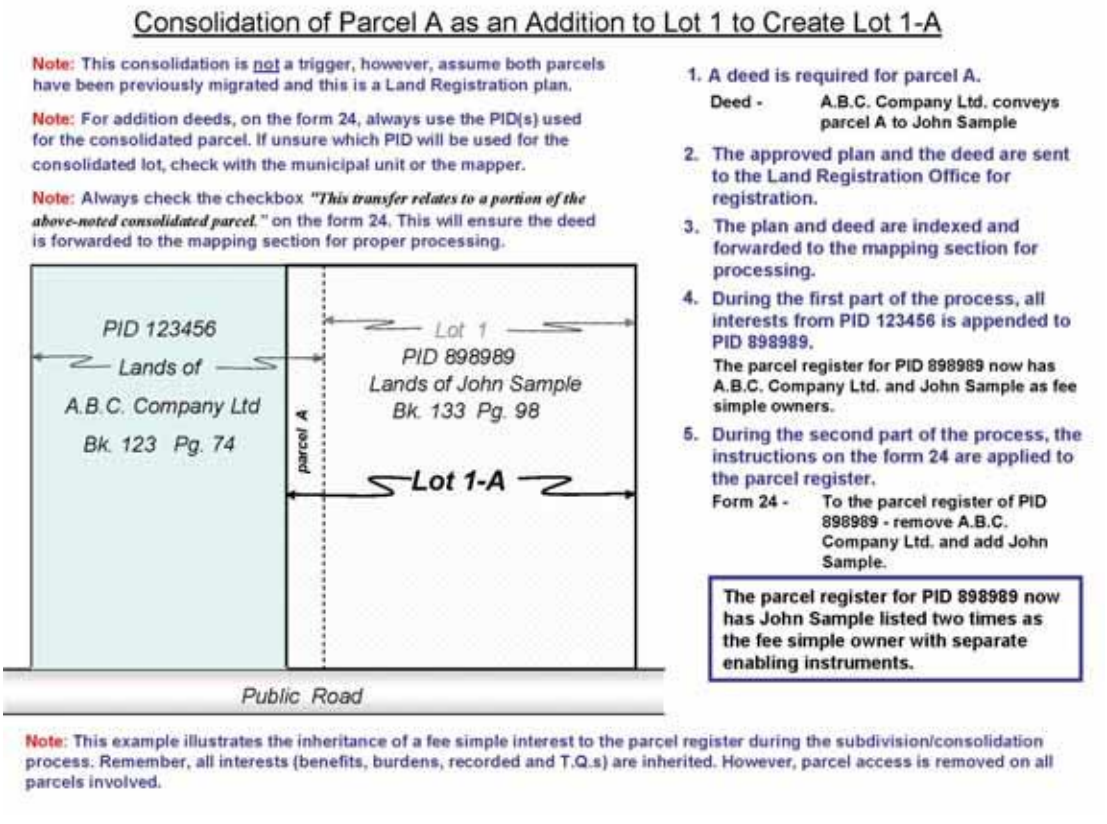
Throughout this section, we refer to the word “subdivision”. Under the MGA, subdivision includes a consolidation as well:

> MGA s 191
>
> (q) "subdivision" means the division of an area of land into two or more parcels, and includes a resubdivision or a consolidation of two or more parcels;
>
> A non LR parcel cannot be consolidated with a Land Registration parcel. We cannot mix and match. See LRA s. 23(3), formerly 18(11):
>
> A registrar shall not accept for registration a deed to a parcel that has been approved for consolidation with another parcel unless the deed contains a description of the consolidated parcel and the parcel from which any land is taken and the parcel to which any land is added are both registered pursuant to this Act.

Everything that has been said here about subdivision equally applies to consolidation.

What PID to use?

The SNS website on the Land Registration Act has a good visual explanation of how consolidations work.

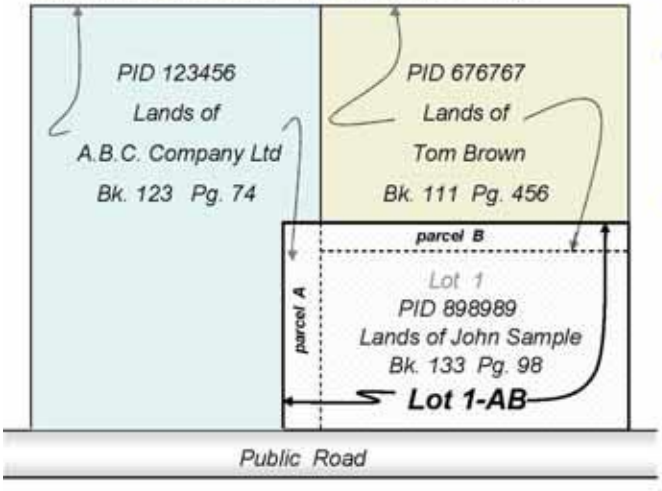


Consolidation of Parcels A and B as an Addition to Lot 1 to Create Lot 1-AB

Note: This consolidation is a trigger; assume all three parcels have been previously migrated.

Note: For addition deeds, on the form 24, always use the PID(s) used for the consolidated parcel. If unsure which PID will be used for the consolidated lot, check with the municipal unit or the mapper.

Note: Always check the checkbox ***"This transfer relates to a portion of the above-noted consolidated parcel."*** on the form 24. This will ensure the deed is forwarded to the mapping section for proper processing.



1. Deeds are required for parcels A and B
   - Deed 1. - A.B.C. Company Ltd. conveys parcel A to John Sample
   - Deed 2. - Tom Brown conveys parcel B to John Sample
2. The approved plan and the deeds are sent to the Land Registration Office for registration.
3. The plan and deeds are indexed and forwarded to the mapping section for processing.
4. During the first part of the process, all interests from PIDs 123456 and 676767 are appended to PID 898989.
   The parcel register for PID 898989 now has A.B.C. Company Ltd., Tom Brown and John Sample as fee simple owners.
5. During the second part of the process, the instructions on the form 24s are applied to the parcel register.
   - Form 24 (deed 1) ▸ To the parcel register of PID 898989 – remove A.B.C. Company Ltd. and add John Sample.
   - Form 24 (deed 2) ▸ To the parcel register of PID 898989 - remove Tom Brown and add John Sample.

The parcel register for PID 898989 now has John Sample listed three times as the fee simple owner with three separate enabling instruments.

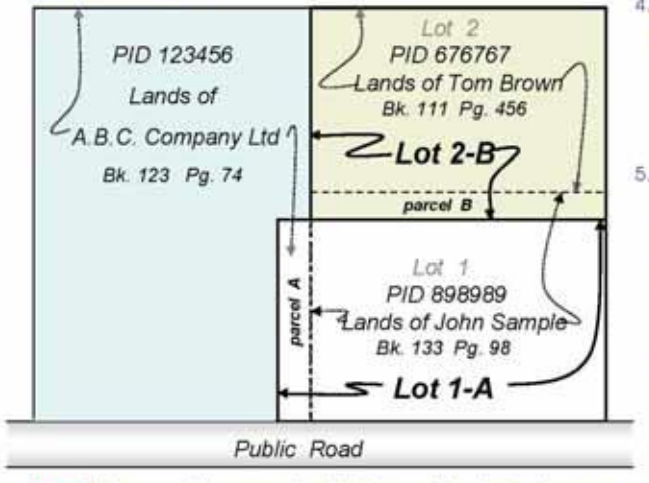
Note: This example illustrates the inheritance of fee simple interests to the parcel register during the subdivision/consolidation process. Remember, all interests (benefits, burdens, recorded and T.Q.s) are inherited. However, parcel access is removed on all parcels involved.

Parcel A as an Addition to Lot 1 to Form Lot 1A & Parcel B as an Addition to Lot 2 to Form Lot 2-B

Note: This consolidation is a trigger, assume all three parcels have been previously migrated.

Note: For addition deeds, on the form 24, always use the PID(s) used for the consolidated parcel. If unsure which PID(s) will be used for the consolidated lot, check with the municipal unit or the mapper.

Note: Always check the checkbox ***"This transfer relates to a portion of the above-noted consolidated parcel."*** on the form 24. This will ensure the deed is forward to the mapping section for proper processing.



1. Deeds are required for parcels A and B
   - Deed 1. - A.B.C. Company Ltd. Conveys parcel A to John Sample
   - Deed 2. - John Sample conveys parcel B to Tom Brown
2. The approved plan and the deeds are sent to the Land Registration Office for registration.
3. The plan and deeds are indexed and forwarded to the mapping section for processing.
4. During the first part of the process, all interests from PID 123456 are appended to PID 898989 and all interests from PID 898989 are appended to PID 676767.
   The parcel register for PID 898989 now has A.B.C. Company Ltd. and John Sample as the fee simple owners.
   The parcel register for PID 676767 now has John Sample and Tom Brown as the fee simple owners.
5. During the second part of the process, the instructions on the form 24s are applied to the parcel register.
   - Form 24 (deed 1) ▸ To the parcel register of PID 898989: - remove A.B.C. Company Ltd. and add John Sample.

The parcel register for PID 898989 now has John Sample listed two times as the fee simple owner with separate enabling instruments.

- Form 24 (deed 2) ▸ To the parcel register of PID 676767: - remove John Sample and add Tom Brown.

The parcel register for PID 676767 now has Tom Brown listed two times as the fee simple owner with separate enabling instruments.

Note: This example illustrates the inheritance of fee simple interests to the parcel registers during the subdivision/consolidation process. Remember, all interests (benefits, burdens, recorded and T.Q.s) are inherited. However, parcel access is removed on all parcels involved.

One question that arises is which PID will be used when two lots are consolidated. The PDCA section discussed this issue when explaining de facto consolidations. You should consult with the mapper to determine which PID will be used.

Non municipal subdivisions

Some subdivisions do not require formal approval by the Municipality. Some of these are listed in MGA s. 268 (see s. 268 of the MGA for a complete list):

(a) where all lots to be created, including the remainder lot, exceed ten hectares in area;

(ia) resulting from the acceptance for registration by the Registrar of Condominiums of a phase of a phased development condominium that meets the requirements, if any, prescribed by the regulations made pursuant to the *Condominium Act*;

(j) resulting from a devise of land by will executed on or before January 1, 2000.

MGA s. 268(3) requires the person making a disposition or encumbrance of land that would create a subdivision to specify the exemption in an affidavit.

If you have this situation where the municipality is not driving the process, you will need to speak to the mapper directly regarding the adjustment to the graphics and the assignment of a proper PID.

FIXING THE PARCEL REGISTER (RECTIFICATION)

Introduction

Beware of the notion that the parcel register is the stand-alone, current, and completely correct statement of title at the time of examination. The way in which ownership is reflected is based on what was input into the system by a lawyer migrating title or a lawyer revising the ownership or changing recorded interests. In other words, the system only knows what we tell it.

As noted earlier, the parcel may not be current (for example, subsequent judgments); it may not "match" with flip-side parcels; it may contain outdated information (as a result of subdivision or improved survey fabric); or it may be an instance of "old rules done right" under prior iterations of the LRA or the Administration Regulations (example: at first, benefits and burdens were listed by name, not by PID, and examples still exist when parcels haven't changed hands in some years). It may not "marry" with the current enabling instrument (access, manner of tenure, attributes).

As lawyers we must review the Parcel Register and evaluate it. If there are mistakes – errors OR omissions, they must be fixed. By whom, is addressed in LRAR 22.

If you are representing a Seller, it is a good idea to look at the parcel register before you send your title information off to the Buyer. You may pick up a mistake early on (even if you migrated it or are the last revising lawyer). This will give you time to correct errors as soon as they are found, instead of waiting for the purchaser's lawyer to object.

Similarly if you are representing a purchaser, everyone benefits if you review the Parcel Register and perform your searches as early as possible so you can ask questions, get copies of documents and plans, and identify objections. It is especially important to do a judgement search on the Buyer for 20 years as soon as you are retained to avoid a last minute problem (such as missing financing deadlines).

Errors or omissions can also come to light through the audit process.

When Might You Have to Fix the Parcel Register?

Here are two types of errors and omissions and some examples:

1. **Error in registration/AFR.** You made a mistake when migrating a parcel. Either you find it or someone else finds it when a transaction takes place in the future. Some examples include:
    - Documents missed in the abstract
    - "mismatches" with flip sides
    - Failure to incorporate benefits or burdens in the parcel description or parcel register
    - De Facto consolidations that did not contain adequate information to comply with s. 268A MGA
    - Incorrect MGA compliance statement
2. **Error in revision.** You made a mistake on a migrated parcel and you find the error when reporting to your client or someone brings it to your attention such as another lawyer representing the next buyer in the chain. For example:
    - Failure to incorporate covenants, benefits, or easement burdens in the parcel revision
    - Failing to amend the parcel description to incorporate new benefits or burdens
    - Releasing a mortgage but not an associated assignment of rents
    - Not removing a power of attorney in the parcel register as it pertains to a prior interest holder
    - Naming errors (names in instrument do not match names on parcel register)
    - Failing to change manner of tenure, access, or other attributes (e.g. two joint tenants acquiring title from a sole owner, and "not applicable" not being changed to "joint tenants" on revision)
    - Errors in instrument types (ie selecting the wrong instrument type from the drop-down menu)

Correcting an Error on the AFR or Errors made to a Registered Interest during Revision – Form 6A and 49 (formerly 6A, 17 and 49)

Conversions and revisions (changing a registered interest) can only be done by an eligible lawyer and include a lawyer's certificate of legal effect. Therefore, for a mistake on an AFR or on a revision of a registered interest, an eligible lawyer must file a Form 6A, which includes a Certificate of Legal Effect. Form 6A is the Request by Owner for Rectification and Certificate of Legal Effect.

If you find the mistake that you have made, you must rectify it – see Administration Regulation 22.

This requires the consent of the owner and anyone else whose interests may be affected by the rectification (or, failing consent, dispensation from the RG); thus it is good practice to have this consent on file (see the templates elsewhere in these materials). If you find mistake made by another lawyer when reviewing a parcel register for a buyer, you would raise this objection to the seller's lawyer. If you are refinancing the property for the owner by placing a new mortgage on the property and you find an error, you would normally raise the problem with the lawyer who last revised the parcel or possibly with the migrating lawyer, depending on the type of error. Again, Regulation 22 places the obligation squarely upon a lawyer who "is aware of" an error made by that lawyer, to fix it. By notifying the migrating or last-revising lawyer, as the case may be, they are under that notice.

Who can fix an error on the parcel register?

The lawyer for the registered owner, the migrating lawyer (in the case of an error on migration), the lawyer for a prior registered owner (in the case of an error that arose on that lawyer's watch) or the Registrar may make the correction to the parcel register. A third party lawyer (e.g. solicitor for a purchaser) can also make the correction with the consent of the lawyer who made the error, or with the permission of the RG. This last point can be of particular use when the lawyer who made the impugned error disagrees that there was an error ("you can change it on closing if you like, but I won't be doing it") or if the lawyer is no longer authorized in the LRA system (e.g. retirement).

The lawyer who effects the rectification takes the responsibility for the changes that are made as a result – as with other CLEs, you certify that it is "appropriate to make the changes" sought. In addition, in the case of rectification, you also certify that you have the appropriate permissions or dispensations, as the case may be.

There are different procedures for owner initiated rectification and Registrar initiated rectification. Section 33 of the LRA deals with rectification. Section 34 deals with priorities preserved when rectification takes place. Section 35 deals with errors on revision (change of ownership). Regulations 21 and 22 set out some of the procedures depending on whether a CLE was incorporated into the impugned action Form 49 is used when there was no prior CLE (LRAR 21(1)(c)); Form 6A is used when there was a prior CLE (LRAR 22(2)(b)).

You are greatly encouraged to put requests to "fix your work" on the front burner when (not if) you get them. From a Golden Rule perspective, some day the shoe will be on the other foot; you have greater control of the process and the cost and, if there are no intervening prejudiced parties, you will probably only have a cost in "time and face" rather than an actionable negligence issue (do not ignore, however, the obligation to report to LIANS in appropriate circumstances – more on that in the audit section). Lastly, you may assume that lawyers who routinely ignore or fail to address problem parcels of their making will eventually come to the attention of the Province and of the Society's for any action as may be warranted in the circumstances.

Occasionally, you may run into a situation in which although you believe it is "someone else's job" to fix an issue, they fail to do so. The result can be disastrous – at worst, a fallen transaction and one or more associated claims for damages, together with disappointed and frustrated clients. When possible, if faced with that situation the editor suggests it is best practices simply to obtain relevant consents (or RG dispensation) and effect the fix – worry about who pays for the time and effort after a successful closing. Remember, there is no fee for filing a Form 6A, so what is at issue is no longer the disbursement, but (a) identification and verification of the problem (b) the time and expertise to fix it, if fixable and (c) the authorization or dispensation so to do.

Updates and changes to rules and regulations

Sometimes a parcel register needs to be updated because over the past few years there have been changes in the procedural requirements, as the *Land Registration Act*, regulations, and standards changed, and as case law evolved.

For example, as noted above, benefits formerly showed the Registered Interest owner as the owner of the benefit. In other words, if you had the benefit of an easement across your neighbour's land, your name would have been entered as the easement benefit holder. The actual name of the owner was used. When the title transferred, the named benefit holder of the easement had to be changed at the same time. This was not in keeping with the law that holds "easements run with the land". A change was made in the system to reflect the law. The easement is now shown using a generic statement "Together with an Easement/ Right of Way". You will have been shown how to do this in the AFR module. Similarly, a burden on your parcel may show as an adjoining lot owner – who may not now even be the same person.

If you find this problem and you represent a Buyer, it is best to correct the format of this easement using the up to date format. This is done when you record the deed into the Buyer's name. File a Form 24 and amend the easement wording on that form at the same time your record the deed.

Easements and the "matching" concept have changed dramatically over the course of the LRA's lifetime. These are discussed in detail in Module 3 and in the resource material already referenced. There can also be 'no fault' mismatches arising from different Marketable Titles timeframes, new information resulting from updated survey fabric, and so on. While the new rules are not likely retrospective in the case of existing parcels ("old rules done right"), the obligation to correct mistakes ("old rules done wrong") has existed throughout, and in particular the "fix it when you have the foundation documents and required consents or dispensations to do so" is simply good practice and you may be assured you will be both requester and requestee as you practice within the system.

Several other updates to the system have changed the rules. Old rule migrations are not necessarily wrong. For example, condominium conversions are much different now than several years ago. In the specific case of condominiums, the LRO will make the changes upon request without charge.

MGA compliance statements have changed over time from having no requirement on PDCA to having a general statement required with PDCA, and now a specific "drop down menu" statement required with PDCA.

If you know what the correct MGA compliance statement should have been, you can do an amending PDCA; however, you are not required to do this and, in fact, might not have the correct information to be able to do it.

The "Easy" Fix

One common error is to find that the parcel register attributes do not match to those in the description. You would request that an amending PDCA be done by the Seller's lawyer. There is no cost to do this.

An error on a parcel register may be fixed simply by filing the Form 6A if the mistake meets the following criteria:

1. No intervening event prejudices the client or another party.
2. The lawyer continues to be in a position to correct the error, i.e., the lawyer still represents the registered interest holder or has their prior consent.
3. The ability to correct the error remains in the lawyer's control, i.e., there is no third party whose consent is required. If you need a third party's consent or waiver, ensure you have the necessary documents before going ahead.

As a lawyer, you must exercise your professional judgment to decide if the "easy" fix is enough. This decision is not difficult as long as you have time.

The May 2009 regulations require a lawyer to notify the registered owner without delay, in writing that there is an error, and either obtain the consent to make the changes, or obtain the written consent of the Registrar General.

If the registered owner has changed when the error in your CLE is found, you should notify The Lawyers Insurance Association of Nova Scotia (LIANS) and report the error. If the registered owner has not changed, you may be able to rectify the error but may have to consider reporting, depending on the circumstances.

Correcting a Mistake in the Approved Description

A PDCA can be fixed by submitting an amending PDCA. There is no filing fee. However if you no longer represent the owner, you must have their consent. While Regulations 14 and 15 contemplate changing a parcel in respect of which you do not have consent or a solicitor-client relationship with the owner, it is fraught with difficulty and liability to do so without, at the very least, dispensation from the Registrar General or a Court order authorizing it. Remember you are signing a CLE and the "other" owner may well disagree! The Registrar General's directive on 10(14), discussed in Module 3, contains the preferred method of reconciling benefits/burdens and, by extension, descriptions insofar as they pertain to benefits and burdens.

How does the Parcel Register look after rectification?

The Parcel Register will generally show the Rectification document (ex. Form 6A) as a scanned image in the Parcel Register instead of the original or incorrect document. To review that Parcel Register accurately you may need to review the original document that was removed or added. As well, when you subsearch that parcel you must go back to the date of the original document, not the rectification.

Remember that the LR date shown on the parcel may not be correct; and that in the case of a rectification, the date shown for the instrument may be the date of rectification, not the date that is relevant to your search (e.g. change in ownership). Review the associated document and the relevant dates, and search accordingly.

Some documents cannot be removed on e-submission

With a paper Form 24, you can remove a Power of Attorney ("POA") from the parcel register when registering a deed, but not with electronic submission. So if you are representing a seller who is signing by POA, you must think ahead and either (1) ask the purchaser's lawyer to use a paper Form 24 and remove the POA when registering their deed, or (2) charge the seller to remove the POA from the parcel register after the transaction closes.

Avoiding Rectifications

When you are drafting documents to be registered or recorded, here are some issues you will need to consider:

1. How will that document be added to the Parcel Register? What is the correct Form?
2. Is the Form filled out correctly? – double check!
3. What information needs be added and what information will need to be removed?
4. What will the parcel register look like after I add or delete information?
5. Once the parcel register is changed, go and look at it to see if you did what you intended to do.
6. How will that document be removed from the Parcel Register?
7. Pay attention to pre-populated menus for required changes (access, manner of tenure, etc.)
8. Direct your mind to changes required to the property description as a result of the changes taking place – for example, the deed from the developer may contain easements and covenants which not only need to be reflected in the parcel register on revision, but also in the approved parcel description (ie amending PDCA required).
9. Pay attention to the scanned document before submission – are all the pages there, in the correct order, and correct orientation? Scanners are not infallible.

Tips from Experiences from other lawyers

1. If a property which has a mortgage on a bulk parcel has been subdivided and is being paid out, advise the lender of the PIDs of the infant parcels so that all parcels secured by the mortgage are released. You want to ensure all infant parcels and the parent remainder (if any) is released from the mortgage;
2. If there are two or more parcels being conveyed in one deed, ensure your Form 24 contains the PIDs for all parcels.
3. If there are two or more parcels being mortgaged in one mortgage, ensure your Form 26 contains the PIDs for all parcels.

4. If there are two or more parcels being released in one release of mortgage, ensure your Form 27 contains the PIDs for all parcels.
5. If a document affects parcels that are not migrated as well as some that are migrated, make sure the original goes into one registry (Registry of Deeds) and the other certified copy goes into the other registry (LRO). For example, if a person mortgaged his home and an abutting vacant lot before the LRA came into effect and then sold his home after LRA came into effect but retained the vacant lot, then upon the payout of his mortgage, the release would have to be filed in the old registry of deeds system (Form 44) and also in the LRO. There is no extra cost to record the release in both systems.
6. In order to be in the best position to effect a rectification to a parcel when (not if!) you are called upon to do so, have an authorization at the time of your engagement. Samples are provided in Module 2

AUDIT AND ENFORCEMENT

All of your work – both in converting property to Land Registration and in dealing with Land Registration parcels already in the system – is subject to audit. This is, in part, to maintain the integrity of "complete statement 'guarantee'" in Section 20 of the LRA and, in part, to preserve and enhance the high standard of practice generally demanded within the LRA.

The Act also provides for compensation and other remedies for persons whose interests have been affected by negligent errors and omissions – such as when interests (e.g. a mortgage) are missed on migration or a priority is defeated by a stakeholder for value without notice. The audit process is intended to review work done by lawyers to minimize such occurrences, to encourage (and occasionally enforce) rectification before problems become 'unsolveable,' and to enhance the education and practice of lawyers working in the system.

Remember that each time you work within the system, you are not only certifying to your client (in accordance with your retainer and instructions) but also to the system by 'signing' a certificate of legal effect. The certification also states that you have complied with the Act, the Regulations, and the Professional Standards, and that it is appropriate to convert (or change the state of) title in accordance with applicable law (including the common law). All of these change from time to time and it is thus important to remain abreast of what they say at the time you 'hit the button.' The system recognizes you, at that time, as the specific lawyer who is certifying, and therefore is one of the reasons the privacy and security of your personal password (discussed way back in the introduction) is of tantamount importance.

Part 13 of the Regulations under the Legal Profession Act provide for the appointment of one or more LRA auditors (there are, in 2016, three such auditors).

Having emphasized the importance of their work, it is also important to note they are not 'Big Brother.' They are not your adversary.

Auditors review files for compliance with the Act, Regulations, and Professional Standards. You will often not know you have been audited at all, if the materials are in order. You will sometimes be asked for your 'bundle' and if it is complete and comports to the parcel register, that will be the end of the matter. Sometimes you will be asked a question about an instrument or a matter of title ("please explain X") which, if satisfactorily answered, will also conclude the audit.

Audits are risk-based and may be triggered by one or more factors in the parcel register which raise a question of compliance, or exercise of skill and judgment. One risk factor which frequently arises is conversion of title based on a possessory claim. The statutory declarations or other evidence will be reviewed by the auditor to assess whether a reasonable and competent solicitor could have reached the conclusion that the interest was certifiable to the required standard. "Monday morning quarterbacking" is not the threshold, but rather whether the conclusion is a justifiable exercise of the lawyer's professional judgment, including under the Act, Regulations, and Standards.

Auditors have the authority to require the lawyer to produce file materials to determine whether the lawyer requires further attention by way of education or disciplinary action. When a particular audit raises questions about a lawyer's appreciation / comprehension on issues of substance or procedure, the Society may make further enquiry including a further audit of the lawyer's other work. If there is a default either in the lawyer's response or standard so as to raise issues of competence, misconduct, or conduct unbecoming, the remedial and/or disciplinary processes may be invoked.

It is important to note that the obligation to retain 'foundation documents' – that is, materials used to reach and justify one's title opinion – lies with the firm with which the lawyer practices ("Foundation Documents" is defined in Part 1 of the LPA regulations and includes, but is not limited, to the traditional abstract). Part 13 of the LPA regulations provide for the transfer of such records if the firm dissolves or closes. The certification, however is by the individual lawyer. When an auditor calls for production of foundation documents or other information, both the lawyer and the firm (if they are different entities at the time under review) have an obligation to cooperate with the auditor's requests. Failure to do so can, in effect, lead to a suspension of a lawyer's authority to work within the system.

In extreme cases, the RG has authority to issue a stop order either against a specific parcel (e.g. in the case of a property dispute) and/or against a lawyer (prohibiting that lawyer from working within the system), until such stop

orders are rescinded. Those orders “freeze” either the parcel or the lawyer in their respective tracks until matters are resolved. The general principles of administrative law (e.g. duty of fairness) apply.

Often, an auditor will simply provide ‘practice points.’ Not every LRA issue calls for a “sledgehammer to smash a peanut.” The auditor will sometimes point out how a matter could have been more efficiently, or cogently, handled.

Sometimes, there will simply have been an oversight – a failure to amend a PDCA after a benefit or burden has been added, for example. If there are no prejudiced intervening third parties, it’s an easy (if somewhat embarrassing) fix.

An auditor’s adverse opinion on a substantive title error is more serious. The certifying lawyer may be required to ‘fix’ the issue, for example by obtaining more and better evidence of possessory title. The expense of so doing is to be borne by the certifying lawyer, as part of the lawyer’s obligation under the authorized user agreement with Service Nova Scotia.

It is important to note that although related, issues of audit, insurance (negligence), and discipline are distinct and separate. Therefore, for example, an audit will not generally involve issues of discipline unless the lawyer has demonstrated incompetence or professional misconduct; similarly, an audit that reveals a difficulty does not automatically put LIANS on notice and whether or not you wish to do so will depend on the particular issue under consideration (remembering your general obligations under your insurance policy).

The lawyer may, legitimately, take issue with an auditor’s opinion. The general standard, after all, is that of a reasonable and competent solicitor. LPA Regulations Part 13 provides for a quasi-appeal of an auditor’s adverse report. In such instance, a third party (another property lawyer or auditor) will review the matter. If the third party agrees with the certifying lawyer that no further action is required, that is the end of the matter. If the third party agrees with the auditor, the subject must be addressed.

Remember as well, before any of this arises in the course of your conversion or post-conversion work, “you are not alone.” Absent conflict of interest, other lawyers are around to consult (indeed, such exchange of views may form part of the basis for your conclusions and form part of your foundation documents). The LRARs will sometimes provide for direction from the Registrar General (e.g. substituted service under LRAR 31(2), RG’s consent to correct the error of another lawyer under LRAR 21(1)(c) and 22(2)(b); or dispensation of the requirement for a full marketable-title abstract period under LRA s. 39(9)(b)). The RG will not generally “adjudicate” a dispute, but may provide these dispensations, or other assistance.

When it Happens

There are two guarantees in the LRA: things will change, and you will make mistakes.

You will hopefully know of changes prior to implementation, or as they happen.

You will usually find out about mistakes after they happen. You may find out on your own, from a client enquiry, from an enquiry or objection from another lawyer, or from an auditor.

As noted in this module, mistakes are often ‘fixable.’ Consider LRAR 21 and 22 when they happen (depending on whether they are yours or someone else’s).

Consider whether there are potentially prejudiced third parties from the time the mistake was made to the present; they may be nearby landowners (e.g. the servient tenament of a missed easement) or an ensuing owner if the property has changed hands. When in doubt, report to LIANS. Do not admit liability without their knowledge and consent.