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**MUNICIPAL GOVERNMENT ACT COMPLIANCE STATEMENTS**

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Prepared by:

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Authority

**Section 37(4)(f) of the Land Registration Act:**

An [Application for Registration] shall be in the prescribed form and shall be accompanied by . . .

*“(f) Evidence that Part IX of the Municipal Government Act has been complied with or certification by the qualified lawyer that Part IX does not apply.”*

**Land Registration Administration Regulation 7(19)(d):**

Unless the description is for a unit as defined in the Condominium Act, every legal description submitted to a registrar must be accurate and complete and must contain . . .

*“(d) a statement that the parcel was created by a subdivision that complies with, is exempt from, or is not subject to the subdivision provisions of Part IX of the Municipal Government Act and, as applicable,*

- i) the registration and other relevant details of how the parcel complies;*
- ii) the exemption relied upon and the facts supporting the exemption,*  
*or;*
- iii) an explanation of why the parcel is not subject to the subdivision provision.”*

**Section 268 of the Municipal Government Act (contained within Part IX of the Act):**

This section provides that an application for subdivision approval shall be made but it then lists a number of exemptions.

**DISCUSSION**

Thus, it is evident that an MGA compliance statement must be provided as part of the migration process and the same requirement extends to any legal description submitted to a registrar post-migration. Of course condominium units are exempt from this requirement.

Land Registration Administration Regulation 7(10)(d) merits careful examination. Pursuant to subparagraph i) “the registration and other relevant details of how the parcel complies” must be provided. That is why we must provide the registration district, the registration year and the plan or document registration number.

Subparagraph 7(10)(d) (ii) provides that if an exemption is being relied upon, we must set out the “facts supporting the exemption”. In other words a bald assertion that the parcel is exempt from the requirement is inadequate as is a statement that the parcel “is not subject to the subdivision provision”, in the absence of an explanation.

Leaving aside the requirement that a lawyer submitting a parcel description for approval must set out the particulars of the compliance or the exemption as the case may be, this information is both useful and necessary to a person subsequently reviewing a parcel description and a parcel register. Failure to comply with Section 268(1) of the Municipal Government Act in circumstances where no exemption is available is as problematic in the LRA environment as it is in the old world. The Mapper’s approval of a PDCA does not cure a failure to comply with the provisions of the MGA. The Supreme Court of Nova Scotia considered failure to comply with the MGA in Polycorp Properties Inc. v. Halifax Regional Municipality (2011 N.S.S.C. 241) where Justice Warner concluded that strict compliance with the statute is required. This was a situation where PDCA approval had been given and title had been migrated. Non-compliance was cured, not by PDCA approval nor by migration, but by registration of a supplementary Declaration placing the “missing” evidence on the public record.

Failure to provide the correct MGA compliance statement is a fairly common error identified as part of the Audit process. Rectification is of course easily accomplished by an amending PDCA.

On a related note, Section 268(3) of the MGA provides that:

*“An affidavit of the person making a disposition or encumbrance of land that would create a subdivision that specifies the exemption from the requirement for approval and that facts that entitle the subdivision to the exemption is sufficient proof that approval of the subdivision is not required, unless the person to whom the disposition or encumbrance is made has notice to the contrary.”*

While it would appear from the foregoing wording that an affidavit is not the only way to prove the exemption, it would seem to be the best way to establish the exemption and in fact it may be the only way in most circumstances. However, it is not uncommon to see Deeds purporting to effect the subdivision, absent any evidence of the claimed exemption.

Turning again to the subject of MGA compliance statements, please see the attached Resource Material providing examples of compliance/exemption statements which would appear to be suitable for the intended purposes.

**RESOURCES: Sample MGA compliance statements** (attached)

**Sample MGA Compliance Statements**

1.

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COMPLIANCE:

a)

The parcel is created by a subdivision (details below) that has been filed under the Registry Act or registered under the *Land Registration Act*

**Registration District:** \*

**Registration Year:** \*

**Plan or Document Number:** \*

b)

The parcel originates with an instrument (registration details below) and the subdivision is validated by Section 291 of the *Municipal Government Act*

**Registration District:** \*

**Registration Year:** \*

**Book:** \*

**Page:** \*

**Document Number:** \*

Note: Pursuant to Section 102A(1) of the Planning Act (the failure to comply with this Act or the former Planning Act or any regulation or by-law made pursuant to either Act does not affect and is deemed not to affect the creation of any title or interest in real property conveyed or purported to have been conveyed by deed, lease, mortgage or other instrument before the sixteenth day of April 1987.

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NOT SUBJECT TO:

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

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EXEMPTION:

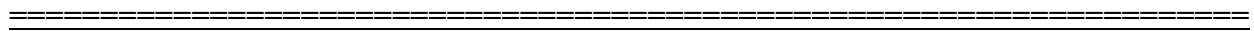
- a) The parcel is exempted from subdivision approval under the *Municipal Government Act* because the parcel was created by a subdivision in which all lots created, including the remainder lot, exceed 10 hectares in area, in accordance with Section 268(2)(a) of the *Municipal Government Act*.
- b) The parcel is exempted from subdivision approval under the *Municipal Government Act* because the parcel was created as the result of an expropriation, in accordance with Section 268 (2)(b) of the *Municipal Government Act*.
- c) The parcel is exempted from subdivision approval under the *Municipal Government Act* because it results from an acquisition or disposition of land by Her Majesty the Queen in right of the Province or in right of Canada or by an agency of Her Majesty, in accordance with Section 268(2)(c) the *Municipal Government Act*.

- d) The parcel is exempted from subdivision approval under the *Municipal Government Act* because it results from subdivision of a cemetery into burial lots, in accordance with Section 268(2)(d).
- e) The parcel is exempted from subdivision approval under the *Municipal Government Act* because the parcel was created as a result of an acquisition of land by a municipality for municipal purposes, in accordance with Section 268(2)(e).
- f) The parcel is exempted from subdivision approval under the *Municipal Government Act* because the parcel results from an acquisition of land by a village for village purposes in accordance with Section 268(2)(ea)
- g) The parcel is exempted from subdivision approval under the *Municipal Government Act* because the parcel was created by a subdivision resulting from the disposal, by [ **choose one of the options** ]
  - \_\_\_\_\_ a municipality
  - \_\_\_\_\_ Her Majesty the Queen in right of the Province

of a street or part of a street or a former street or part of a former street, including the consolidation of a street or part of a street or a former street or part of a former street with adjacent land in accordance with Section 268(2)(f).
- h) The parcel is exempted from subdivision approval under the *Municipal Government Act* because the parcel was created by a subdivision resulting from the disposal of a trail or part of a trail, including the consolidation of a trail or part of a trail with adjacent land, in accordance with Section 268(2)(fa).
- i) The parcel is exempted from subdivision approval under the *Municipal Government Act* because the parcel was created as a consequence of consolidation of a part of an abandoned railway right-of-way with adjacent land, in accordance with Section 268(2)(h).

- j) The parcel is exempted from subdivision approval under the *Municipal Government Act* because the parcel was created as a consequence of 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, in accordance with Section 268(2)(ia).
  
- k) The parcel is exempted from subdivision approval under the *Municipal Government Act* because the parcel was created by a subdivision resulting from the quieting of a title, in accordance with Section 268(2)(ib).
  
- l) The parcel is exempted from subdivision approval under the *Municipal Government Act* because the parcel was created by a subdivision resulting from a devise of land by will executed on or before January 1<sup>st</sup> 2000, in accordance with Section 268(2)(j).
  
- m) The parcel is exempted from subdivision approval under the *Municipal Government Act* because the parcel was created as a consequence of defacto consolidation pursuant to Section 268A of the Municipal Government Act. The Declaration effecting defacto consolidation was registered at the Land Registration Office on \_\_\_\_\_ as Document Number \_\_\_\_\_.

Note: The Section 268(2)(i) exemption resulting from a lease of land for twenty years or less, including any renewal provisions of the lease, has been deliberately omitted from this list. The exemption permits the lease of land without creating a subdivision, and therefore this “exemption” has no application to a situation where a lot is created.





4.

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OTHER:

- a) i) The parcel is exempted from subdivision approval under the *Municipal Government Act* because the parcel was created by a subdivision resulting from a boundary created by the existence of a public highway.
- ii) The parcel appears to be exempted from subdivision approval under the *Municipal Government Act* because, according to Property Online mapping existing as of \_\_\_\_\_, the parcel appears to have been created by a subdivision resulting from a boundary created by the existence of a public highway.
- b) i) The parcel is exempted from subdivision approval under the *Municipal Government Act* because the parcel was created by a subdivision resulting from a boundary created by the existence of land taken for railway purposes.
- ii) The parcel is exempted from subdivision approval under the *Municipal Government Act* because, according to Property Online mapping existing as of \_\_\_\_\_, the parcel appears to have been created by a subdivision resulting from a boundary created by the existence of land taken for railway purposes.
- c) i) The parcel is exempted from subdivision approval under the *Municipal Government Act* because, given the nature and use of the adjoining water course and the land through which it flows, the water course creates a natural boundary.
- ii) The parcel is exempted from subdivision approval under the *Municipal Government Act* because, according to Property Online mapping existing as of \_\_\_\_\_, given the nature and use of the adjoining water course and the land through which it flows, the water course creates a natural boundary.

- d) The parcel is exempted from subdivision approval under the *Municipal Government Act* because the parcel was created by a subdivision in which it is the remainder parcel and is therefore exempt from the approval requirement.
- e) i) The parcel is exempted from subdivision approval under the *Municipal Government Act* as it is an island and has not been subdivided.  
  
ii) The parcel is exempted from subdivision approval under the *Municipal Government Act* because, according to Property Online mapping existing as of \_\_\_\_\_, it is an island and has not been subdivided.
- f) The parcel is exempted from subdivision approval under the *Municipal Government Act* because of an exemption created by a Municipal by-law(the four lot rule) which was in effect at the time of creation of the parcel.

Note: The four lot rule continued in force until July 31<sup>st</sup> 1987 as the new Planning Act was not proclaimed until August 1<sup>st</sup> 1987.

- g) The parcel is exempted from subdivision approval under the *Municipal Government Act* as it is an original Crown Grant and was not subsequently subdivided.