

# BURCHELL MACDOUGALL

## PROBATE, ESTATES AND THE LAND REGISTRATION ACT

### *AN OVERVIEW*

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PROBATE, ESTATES AND THE LAND REGISTRATION ACT

The implementation of the *Land Registration Act* ("LRA") will require estate practitioners to understand how ownership interests in real property are updated on the government electronic Land Registration system and to understand how the old Registry system may still be relevant, when the title of real property transfers. Certain forms are now required to inform the staff at the Land Registration Office ("LRO") how to make changes to ownership of real property.

Authorized lawyers and eligible lawyers are permitted to provide the information necessary to make such changes. These are lawyers who have received the training presented by the Nova Scotia Barristers' Society. The authorized lawyer is an "eligible lawyer" who has entered into a Property On Line Authorized Lawyer User Agreement with the Minister of Service Nova Scotia and Municipal Relations. See the list of terms attached for more in depth definitions.

The *Land Registration Act* is now in effect in the following Counties:

1. Colchester
2. Pictou
3. Cumberland
4. Antigonish
5. Kings
6. Hants
7. Digby
8. Annapolis
9. Halifax

The Act will be proclaimed in the remaining counties (Guysborough, Inverness, Richmond, Victoria, Lunenburg, Queens, Shelburne & Yarmouth) on March 1, 2005.

ATTACHMENTS:

1. Summary of relevant *Land Registration Act* provisions;
2. New Terminology - List of acronyms
3. LRA Forms - 21, 24, 44
4. Relevant LRA Sections for Estate Practitioners;
5. AFR procedures for Estates.

OPENING AN ESTATE

There are therefore now two important questions to ask when opening an estate:

1. What is the date of the Will or the date of death of the intestate?
2. Has the real estate of the deceased been converted to the *Land Registration Act*?

### Vesting of Real Property

Pursuant to the *Probate Act*, the title of the real estate will vest either in:

1. An heir-at-law for intestate death on or before to October 1, 2001;
2. A direct devisee for some Wills dated on or before October 1, 2001;
3. The personal representative for some Wills dated on or before October 1, 2001 and all Wills dated thereafter.

### Triggers for Conversion

The *Land Registration Act* requires conversion of the real estate ("parcel") on certain triggering events. The most common triggers requiring mandatory conversion are:

1. Transfers for value (as shown in the Deed Transfer Tax Affidavit);
2. Mortgages;
3. Subdivisions creating three or more lots (including the remainder) unless for family gifting purposes;

A Grant of Probate or Administration is not a trigger and therefore, the Personal Representative of the estate is not required to convert the parcel of land under the LRA at the time of applying for the Grant of Probate or Administration.

However, sections. 24(3) and 25(2) of the LRA requires the Registrar of Probate to include with each Grant of Probate or Administration forwarded to the Registrar of Deeds, a list of parcel identification numbers (PIDs) provided by the executor or administrator with respect to which the deceased owned a registered or recorded interest.

In some cases the parcel(s) will already have been converted by the deceased, but in many other cases, the parcel(s) will not have been converted. As time goes on, more and more parcels will have been converted by the deceased prior to death.

The Registrar of Probate and Registrar of Deeds will need to know whether the parcel(s) of land held by the personal representatives have already been converted under the LRA or whether the parcels have not been converted and therefore remain in the old system.

### Forms Required

At the time of application for a Grant of Probate or Administration, we must include one or more Forms under the LRA with the application to inform the Registrar of Probate and Registrar of Deeds in which system to record the Grant (and Certified Will, if applicable). The Form will be attached to the Will and/or Grant prior to it being recorded at the Registry of Deeds (old system) or the Land Registration Office (new system).

The two relevant forms are Form 24 and Form 44. Copies are attached for your review and can also be found at [www.gov.ns.ca/snsmr/property](http://www.gov.ns.ca/snsmr/property).

The first step is, therefore, to determine if the parcel has been converted to the Land Registration Act.

You may determine the status of a parcel by searching online through the Property Online (POL) service. This service is provided to subscribers and is available to non-subscribers at all of the Registry of Deeds and Land Registration Offices. Records can be searched in Property Online by civic address, owner name, PID, and Assessment Account Number. Property Online indicates whether each parcel is a "Land Registration " or "Not Land Registration" parcel.

If you have a copy of the deed into the deceased, it is easiest to search POL by Book and Page reference. This will bring up a screen that shows the status of the parcel. Alternatively, try searching by the last name of deceased and county where the parcel is situate.

Once you have found the parcel in question, you can determine it's status which will determine the proper Form to use.

#### Non-Converted Parcels (Registry of Deeds or Old World)

If the parcel in the estate has not already been converted, as is therefore, a Non-Land Registration parcel (non-LR) then you must include a Form 44 with the application for Grant of Probate or Administration. A sample of Form 44 is attached at the end of the paper. This form is used for multiple purposes and for other than Probate matters. It is used when the document being registered does not trigger a conversion. This Form directs the staff at the Land Registration Office (LRO) to record the document attached to the Form in the old Registry system. This Form is a cover page which is relied upon by the staff for directing the document to the appropriate recording system. The document itself is used for indexing the information on the document provided under the appropriate name.

You must check off the appropriate box on the form. For Grants of Probate or Administration, use the last box entitled:

- any other instrument not mentioned above that is not a trigger under subsections 37(2) and 37(3) of the *Land Registration Act*.

You are not required to be an "authorized lawyer" with the appropriate training to use this form.

Once the Will and Grant is recorded at the Registry of Deeds, the Registry of Deeds staff will update the POL records showing the Personal Representative **and** the deceased as the "owners" with the qualifier as "estate" for deceased and "in care of" for Personal Representative.

## Converted Parcels - LR Parcels

If one or more parcels held by the personal representative is already a Land Registration Parcel (an LR parcel), then the Parcel Identification Number (PID) must be used to update the ownership in the Parcel Register for that parcel. The Parcel Register is the location on POL where information relating to the parcel can be found. The government guaranteed ownership is shown in the Parcel Register.

The PID has become a “label” for the parcel’s certified description. As earlier indicated, sections 24 and 25 of the Land Registration Act require the Registrar of Probate to provide a list of PIDs to the Land Registration Office (“LRO”). The lawyer for the estate will provide this information on behalf of the Personal Representative to the Registrar of Probate.

Form 24 is used to list the PIDs and to confirm any change in legal status of the parcel. There is a Certificate of Legal Effect as part of the form. The eligible lawyer confirms that the effect of the document is to update the ownership to the Personal Representative for the PIDs listed. The deceased is still shown as an owner at this point and the Personal Representative is also shown as an owner with the qualifier “Executor” or “Trustee”. When recorded at the LRO, the parcels of land affected are updated based on the information provided. Only one Form is needed even if several parcels have been converted. The form states that it must be signed by an eligible lawyer. The eligible lawyer may make the revisions using Form 24 but may not submit Parcel Description Certification Applications or Applications for Registration unless the Government Agreement is also signed.

When using a Form 24, the LRO staff use the information provided on the form for updating the Parcel Register. The staff **do not** check to confirm the attached document matches the information provided on the Form. Therefore, it is now extremely important to ensure the information provided, particularly the PID numbers, are accurate. If a mistake is made on the form, the lawyer will be responsible to correct it. If you give the wrong PID number, the wrong parcel may be affected and the correct parcel will not be updated.

When using Form 24 for parcels that have already been converted, there are two possible categories to consider for both testate and intestate deaths:

### A. Testate Death:

#### **Scenario 1:**

Facts - parcel has been converted (i.e. PID 41112222);  
-Will dated prior to October 1, 2001; and

-Will contains direct devise:

(1) Example: Alice Smith devises the parcel(s) at 22 Shannon Drive, Truro, Nova Scotia directly to son, John Smith.

Form 24 would be filled out to indicate:

Instrument	Will/Grant of Probate
Expiry Date	N/A
Interest holder and type to be removed	Alice Smith Fee Simple
Interest holder and type to be added	John Smith Fee Simple
Mailing address of interest holder added	22 Shannon Drive Truro, NS B2N 3V6
Manner of tenure	N/A
Non-resident	No
Reference to related instrument ...	N/A

See sample completed Form 24 attached.

## Scenario 2:

Facts -parcel has been converted; (i.e. PID 41112222)  
-Will contains a conveyance of the real estate to the Personal Representatives in trust (regardless of the date of the Will and any Codicils) or where the Will or any Codicil is dated October 1, 2001 or later,

Form 24 would be filled out to indicate:

Instrument	Will/Grant of Probate
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Expiry Date	N/A
Interest holder and type to be removed	Alice Smith Fee Simple
Interest holder and type to be added	1. Alice Smith Estate Fee Simple  2. c/o John Smith Personal Representative <u>or</u> Trustee

See sample completed Form 24 attached.

## B. Intestate Death

### **Scenario 1:**

Facts -parcel has been converted prior to death of intestate; (i.e. PID 411112222)  
-deceased died intestate after October 1, 2001 vesting title in personal representative

Form 24 would be filled out to indicate::

Instrument	Grant of Administration
Expiry Date	N/A
Interest holder and type to be removed	Alice Smith, Fee Simple
Interest holder and type to be added	1. Alice Smith Estate Fee Simple  2. c/o John Smith Personal Representative <u>or</u> Trustee

This is basically the same scenario when there is a will dated on or after October 1, 2001 but the instrument is Grant of Administration instead of Grant of Probate.

## **Scenario 2: (unusual)**

Facts -deceased died prior to October 1, 2001 (vesting title in heirs-at-law)  
-parcel has been converted by heirs-at-law; (PID 41112222)  
-Grant of Administration applied for late, after conversion

In this scenario, it would seem unnecessary to use the Form 24 to update the Parcel Register as the Grant does not affect the real estate. I would think you would provide the form but request that it not be sent to the Registry of Deeds. There may be a situation where it may be advisable to record the Form 24 but at this point, I cannot think of any scenario where it would be useful. If it was to be used, the Grant of Administration would not have the effect of transferring ownership to the Personal Representative so the Form would have to be adapted not to change ownership. This is an unusual situation that will rarely come up.

In some cases there will be several parcels owned by the deceased, some of which have been converted and some of which have not been converted. In this case, you will need both Form 24, for all parcels which have been converted, and Form 44, for all parcels which have not been converted. In this scenario the lawyer provides to the Registrar of Probate, the original and a copy of the Will, for certification by the Registrar of Probate. The Registrar or Deputy Registrar of Probate will forward the original plus the certified copy of the will to the Land Registration Office. The original together with a Form 44 is submitted for recording in the Registry of Deeds. The certified copy together with a Certificate of Legal Effect and the Request to Revise the Registration of a Parcel in Form 24 is submitted for registration in the land registration system.

## SALE OF PROPERTY BY THE PERSONAL REPRESENTATIVE

### Trustees Deeds

1. The gifting of a real estate in a Will that has not already been converted, followed by a Trustees Deed for that parcel to the beneficiary will not trigger a conversion. However, you will need to attach a Form 44 to the Trustees Deed to confirm to the Registrar of Deeds that the property remains in the old Registry system.
2. The gifting of a parcel in a Will, followed by a Trustees Deed for a parcel which has been converted will require another Form 24 with information to transfer the ownership from the deceased and the Personal Representative to the beneficiary.
3. The sale for value of a parcel of land by the estate that has not already been converted

will trigger a conversion. It is also possible that a transfer to a beneficiary for value, will trigger the conversion. If the Deed Transfer Tax affidavit discloses consideration, the conveyance is a trigger for conversion. If the transfer is to a beneficiary as part of his or her share of the estate and there is no additional consideration, it should fall into the gift category and not trigger a conversion by the estate.

#### CONVERSION OF PARCEL(S) BY THE ESTATE

If the estate is selling a parcel of land, the parcel will have to be converted before the deed into the buyer can be registered. There is no rule about who must convert - the estate or the buyer. It is a matter of the agreement between the parties. Refer to s. 37(2) of the Act which states:

"Subject to Section 46, any person who has, for valuable consideration, acquired the ownership of a parcel that is not registered pursuant to this Act shall apply to the registrar of the district in which the parcel is situated to have the title to the parcel registered pursuant to this Act."

Section 46 prohibits the Registrar of Deeds from accepting a deed into the old Registry if the Deed Transfer Tax Affidavit discloses that the transfer was made for valuable consideration

#### CONVERSION ISSUES

The government website contains a section under "User Group Resources" where Lawyers and other user groups can find useful information. In the section entitled "AFR procedures" you will find information on how to fill out the ownership interest of the deceased and Personal Representative when converting a parcel owned by the estate. I have attached this section at the end of the paper for your reference.

As noted earlier, you must first determine if the Will or Death has the effect of a direct transfer of the real estate to the beneficiary (direct devise) or heir-at-law (intestate prior to October 1, 2001). The current information as to how to show this on the AFR appears to be a bit confusing on the web site with respect to Estates of the Deceased for Wills Executed Prior to October 1, 2001. SNSMR has not addressed the situation where there is a direct devise in a Will dated prior to October 1, 2001. It is really the same situation as an intestate death prior to October 1, 2001 and so I have provided some additional information on how to complete the AFR for those situations.

In these cases, the name of the direct devisee or heir(s)-at-law should be shown as the registered owner and not the deceased. You should definitely put a comment as to why you are doing this so that the LRO staff will understand why you are doing it this way.

The document which shows the enabling interest is the Will. If there is no Will and the death was prior to October 1, 2001, and there is no petition for Administration or Application for Grant of Administration on file at the Registry of Deeds, then, you must record a Statutory Declaration confirming the names of all the heirs-at-law are prior to the conversion. You use the Statutory Declaration as the enabling document. The Statutory Declaration is seen as the foundation document. Since there is no "document" as such which creates the interest of the heirs (as it is by operation of law), you must first create one and register it. This electronic system operates only with documents that create interests, and this is why you must create one first and register it under the old system before the conversion. If there is a petition for Administration or a Grant of Administration on file at the Registry of Deeds, then you may use that document as the foundation document or enabling instrument in the AFR.

It is much easier to do a conversion where the real estate is vested in the Personal Representative. This will be the case for any will which vests the real estate in the Personal Representative and for all Wills dated on or after October 1, 2001.

You will enter the name of the deceased in the Individual Registered Owner sub-screen with a Qualifier "Estate". You will also enter the Personal Representative (Executor or Trustee) as an owner in the Individual Registered Owner or Enterprise Registered Owner sub-screen (as applicable) with the appropriate Qualifier.

The list of Qualifiers is not on line or in the training materials at this time.

A list of Qualifiers may be found in the drop down boxes on the Electronic Application for Registration. They are:

1. Estate
2. In care of
3. Owner Unknown
4. Trustees
5. Otherwise Known As
6. Personal Representative
7. Executor

The remainder of the conversion is completed in the same manner as any other conversion of a parcel of real estate.

#### Election by surviving spouse under Intestate Succession Act

This election is filed at the Registry of Deeds using a Form 44. When converting the parcel, the surviving spouse is shown the registered owner with the election as the enabling instrument.

### Tenant in Common Interests

The parcel register shows all the “ownership” interests in a parcel. If the parcel of land now in the estate had already been converted prior to death of the deceased, and the interest owned by the deceased was a tenant in common (partial) interest in the land, then (necessarily), only the ownership of the deceased will be updated on the parcel register when the Form 24 is provided at the time of the Grant of Probate or Administration. The remaining ownership interests of the other tenants in common will remain unchanged in the parcel register.

If the parcel of land had not been converted by the deceased before death, and the interest owned by the deceased was a partial interest, then Form 44 is used to record the deed in the old system conveying that partial interest.

However, when an estate is converting a parcel and the interest is only a partial interest in the land it would be most beneficial, but not necessary, to convert all the interests in the parcel at the same time. This will mean the personal representative may wish to contact the other owners who may agree to cost share the conversion.

For example, the Will may provide that the estate pay for the conversion of the interest in the parcel as part of the gift to the beneficiary. In this case, the estate would convert the partial tenant in common interest only and then give a Trustee's Deed to the beneficiary. The remaining tenant in common interests will remain in the old system unless those persons convert their interest at the same time.

### QUIRKS AND TWISTS - to be updated as we learn!

#### 1. Straddling boundaries

What is going to occur with properties that straddle county boundaries?

The new system will allow one PID to exist in more than one county, and the dual county status will show on POL. County boundaries do not sever or subdivide parcels, so, in cases where parcels cross county boundaries (similar to municipal boundaries), there will be two assessment accounts and one PID.

Service Nova Scotia and Municipal Relations staff will send updates manually to Assessment for these accounts. If both counties are “land registration counties”, when a parcel is converted to the new system, Property Online will show a primary and secondary county for the registered parcel. If only one of the counties is a “land registration county”, the parcel will still be converted to the new system and shown as a land registration parcel. In all cases, documents concerning the parcel must still be submitted in both registries as they are today.

#### 2. Direction to Revise

(i) Deed from Administrator

The LRA provides that the Registrar must revise the information about a parcel upon being provided with certain documents. There is one section that requires a court order to be provided to effect the revision.

Section 26 of LRA states:

26. A deed from an administrator shall not be accepted by a registrar as a direction to revise a registration unless the will or petition for administration is recorded in the register for that parcel *and the order of the court authorizing the sale* is recorded in that register and the deed is accompanied by a certificate of a qualified solicitor setting out the legal effect of the document. 2001, c. 6, s. 26. (*emphasis mine*)

Court orders are sometimes required to transfer real estate of a minor or of a deceased who died intestate prior to October 1, 2001, but are not always required in probate matters. The wording of LRA Sections 26 has been flagged for amendment. In the meantime, no court order is required if it does not apply to your situation.

Therefore, if the Grant of Probate and Will or Grant of Administration is recorded, a deed from the Personal Representative with Form 24 will be sufficient to transfer the ownership interest.

(ii) Proof of Death of Joint Tenant

Section 27 of the Act deals with the death of a joint tenant and the revision of the ownership interests as a result of the death of a joint tenant. The section reads:

Proof of death

27 (1) A registrar shall accept proof of death of a joint tenant as a direction to revise a registration to delete that joint tenant as an owner.

(2) A registrar shall record the proof of death of the joint tenant in the parcel register identified by the applicant.

Form 21 may be used to take the name of the deceased off the ownership interest. A death certificate must be attached. There is no recording fee for the proof of death as LRA subsection 27(2) establishes this as a registrar's recording. Note that Form 21 is used for change of name of a person who is alive.

See sample of completed Form 21 attached.

3. Death of Life Interest Holder

Form 21 may be used for this purpose even though it will need significant editing.

4. First refusals in Wills

If converting a parcel owned by an estate, where the Will provides a right of refusal to a beneficiary of the deceased, there is no clear category for this interest in the Recorded Interests section. A textual qualification may be used to disclose the terms of the right of first refusal.

There will be many other challenges that we will face as time goes on in the new world of real estate and probate. I believe the biggest challenge is learning how to adapt old scenarios into the new "electronic speak" system so that interpretation of the parcel register will provide us with certainty of the interests in land that we must deal with as estate practitioners.