

POWER POINT SLIDES SUMMARY

1. Introductory Slide

Regulation 10(14) *Land Registration Administration Regulations*

Registrar General's Directive August 31st, 2009

Benefits/Burdens on AFRs

A Discussion

2. Context for today's discussion

May 4th amendments- The 2007 rules for adding benefits and burdens apply to AFRs

Regulation 10(14) -rules apply to AFR's with 'necessary changes'

3. Benefits and Burdens- what are they in the parcel register? The parcel register is not static, and note that there is no language of 'guarantee'. Note section 20 changes:

"s.20 A parcel register is a complete statement of all interests affecting a parcel, as are required to be shown in the qualified lawyer's opinion of title pursuant to s. 37, subject to any subsequent qualifications, revisions of registrations, recordings or cancellation of recordings in accordance with the Act."

-Section 18 now provides that a lawyer must submit a CLE for both recorded as well as registered interests and is liable for any CLE for 10 years from the date given. Section 37 clarifies a lawyer's responsibility in certifying title to land

4. Parcel 'Fixes'- Why do I have to respond to notice from another lawyer that I might have made an error on a prior migration?

" Regulation 22

(2) An authorized lawyer who is aware that there is an error or omission in a registration or recording or other information in a parcel register certified by the certificate of legal effect that the authorized lawyer previously submitted as required under these regulations **must, without delay** request a correction of the particulars certified by the certificate of legal effect in form 6A.." (Emphasis added)

(**Note:** A person aggrieved by a registration may apply for a declaration pursuant to s. 35, and compensation will be payable pursuant to s.85, and note s.86 for those factors which will result in compensation not being payable. Note also new s.33 which provides that the RG can, under certain circumstances correct errors or omissions in a parcel register.)

5. What about the 'Curtain' principle? Can we/should we not be able to simply reply on the face of the parcel register, once migrated? Can we ignore the likelihood that there is a body attached to the feet sticking out at the bottom of the curtain?

-importance of review of parcel register- is it complete?

- obligations of due diligence do not end with migration
- while parcel register may not contain reference to a burden, overriding interests will still apply, if they exist (see s.73)

6. The obligation of due diligence:

Parcel register is three dimensional, not single dimensional. Enabling instruments part of the parcel register- and must be examined to ensure manner in which they are reflected in the parcel register correct, and so too must other parcels affected. (One dimensional/three dimensional slide graphic.)

7. Today's Environment- The more things change, the more they are the same

- still have to defend opinion
- still have due diligence- title inquiries to carry out- post migration, will be in the context of review of a parcel register
- title questions with regard to benefits/burdens still the same in many respects
- What would I have done in the old world?

8. Matching/Mismatch assessment

Jigsaw puzzle effect with the new system

Regulation 22:

- (2) An authorized lawyer who is aware that there is an error or omission in a registration or recording or other information in a parcel register certified by the certificate of legal effect that the authorized lawyer previously submitted as required under these regulations **must, without delay** request a correction of the particulars certified by the certificate of legal effect in form 6A.." (Emphasis added)

- While this is the statutory obligation on the part of lawyers to respond to any notices received of errors, as in the past, there is always an obligation to be able to defend the exercise of professional judgment. See also s.18 of the *Act* which provides that lawyers responsible for 10 years from the date of a CLE. Maintain the foundation documents together for the underpinning for any CLE given. Print off parcel registers and searches conducted at the time carried out.

9. AFRs- how does the matching work? Documenting benefits/burdens on an AFR IS different than documenting new B/B created post AFR. On an AFR they already exist. Some examples of types of benefits/burdens on AFR's:

- Deemed- no strict statutory authority but consider MTA
- Grant/use mismatch
- Community quirks- coal roads, old woods roads
- Regulation 15- no requirement to match certain burdens- utility easements, restrictive covenants
- Overriding interests- "openly used and enjoyed"

10. Visual Match

11. Visual Possible match/mismatch

12. Visual Mismatch

13. AFR's- Beginning the 'Match' assessment- what is the flipside parcel?

- use of POL mapping, survey fabric, client knowledge
- what kinds of searches can you carry out on POL which will assist (ie. Plan searches, mining data from other parcels)
- MTA search time limitations may impact identifying flipside parcel
- extent of title issues- do you know where the easement is on the ground?

14. 'No fault' Mismatches

- there can be a mismatch where nobody has done anything wrong
 - ie. different MTA time frames, different rules applied at the time of migration, intervening better survey fabric
- eg. historic easement appears only behind 40 year root document, and not referenced in the chain of title forward, and no survey fabric
- exemption? Or can we figure out a way to 'fix' where a result of different rules in place, o/s MTA time frame, etc.-(**Note:** adding a specific PID to a "Various PID's" entry on a flipside parcel for example, will not attract a fee)

Matching Process and Steps to Reconcile Mismatch:

I Clear Match or Deemed Match- FLIPSIDE LR (Green):

15. Flipside parcel has corresponding puzzle piece that will match your parcel, once migrated- and your PID is noted- DONE

16. Flipside parcel has 'Various PID's' - your PID not noted- but B/B noted in parcel register of flipside- you satisfy yourself that it is the same benefit/burden- DONE

- flipside parcel has TQ 'match'- if you are satisfied that it refers to the same benefit/burden- DONE

- if none of the above result in a match- then what????....

(**Note:** italicized boxes on Form 6A and Form 24 as circulated with the Directive- Form 24, if adding a benefit/burden, will assume you need to deal with a flipside parcel, when sometimes you will be doing the 'match' as second parcel in- if so the italicized box on the Form may apply)

II No Clear Match, BUT did you consider...? (Yellow) (Slide 17):

18. **Overriding interests-** if your B/B an overriding interest- is it to be recorded? Consider:

- s.73(1)(e)- retain statutory priority, even if not in the parcel register
- s.47(4)- an overriding interest 'may' be recorded
- Regulation 18- Any person recording an overriding interest must notify the owner in Form 8, and comply with the requirements of 14, 16, 17.
- s. 20 "A parcel register is a complete statement..." (But see also s.86- owner not compensated if interest not shown in parcel is overriding..)

III- Rules for Reconciling Mismatch

Slide 19 Rules A, B

Slides 20, 21,22 A. Rules if flipside -LR Parcel

20. STEP 1- Notify the migrating lawyer (see sample Notice) Regulation 22

- 'Heads up I think there is an error' notice
- intervening interest holders- notify last revising lawyer as well
- if migrating lawyer agrees- 6A- NOTE REQUIREMENTS FOR 6A
 - migrating lawyer can file 6A if still acting in solicitor/client relationship if consent of owner, or consent of RG if owner does not consent;
 - authorized lawyer can fix if migrating lawyer consents, or if not, then RG consent difficulty in identifying the affected PID's (which includes extent of title issues);
 - any lawyer filing a 6A must be able to defend foundation for change made

21. Obligations of Lawyers in receipt of Notice of Possible Mismatch

Respond in a timely fashion-

- if you disagree, say why you disagree. Maybe it was outside your MTA time frame, maybe it was an overriding interest but without any survey fabric, you could not be sure where it was, etc.
- Regulation 22 states the obligation to respond **"without delay"** to any notice of a possible error in a parcel register. Try to file any objection you may have as early as possible to allow time to review and make any changes that may be required

22. Considerations in Mismatch Assessment

- Extent of title issues?
- How does match/mismatch affect intervening interest holders?

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STEP 2- Ask for RG Office assistance

- Migrating lawyer or if applicable, last revising lawyer, disagrees there is an error, and you have considered the reasons advanced- **CONSIDER ASKING RG OFFICE FOR ASSISTANCE**
- if this results in a reconciliation-matching process done- if not, then proceed to Step 3

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STEP 3- Apply for Exemption pursuant to Regulation 17

- Urgency alone not a basis for an exemption being granted
- provide as much information as possible- this may have already been done in Step 2 and the earlier the information can be provided, the better
- provide details as to the nature of the disagreement

Slide 25-must apply to RG for authority to use "Various PID's"

- if not practicable to identify the flip parcels- too many to be identifiable- RG may authorize "Various PID's" entry with or without a corresponding entry "ie. TQ that says The property abuts a coal Road extends from Apple Street to Zinc Street"
- there may be extent of title issues that make it impossible to identify the flip parcels;
- if flip side a condominium, exemption granted
- apply as early as possible, giving as much detail as possible

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B. Rules if Flipside Non LR

- File Form 8A in nonLR parcel with a Form 44
- no requirement to serve owner
- owner identified by search in GGI
 - OR** owner as shown on POL if AAN
 - OR** RG has determined it is not 'practicable'- RG will provide direction about how owner referenced- keep directions on file for NSBS auditor

Slides 27-31 Case samples

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Case #1- Example of Match

- When AFR complete, burden to be added to AFR parcel would match benefit shown in LR parcel already migrated.
- flipside parcel found, examined and match achieved.
- Note- Topo and LR Parcel shading layers in POL can be extremely useful

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Case #2- Example of simple error fix in LR parcel required- Revision

- PID noted in LR parcel incorrect- see how amendment in parcel register noted
- Note:** PDCA did not require changes for the amendment made to the parcel register, but consider the use of Grantor/Grantee, which loses effect in land registration system. Use of Grantor/grantee should be avoided. Always review PDCA when changes made to a parcel to assess whether corresponding change required.

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Case #3- Example of "Various PID's" use- coal road

- it makes sense to try to identify those situations in which Various PID's appropriate. Filling up parcel registers with multiple entries to other PID's not particularly helpful- rather reference to a well known community road/lane, and if possible the beginning and end point helpful to all (ie. Property abuts coal road extending from Apple Street to Zinc Street).

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Case #4- Example of Error- Burden shown on Parcel register did not apply

- lawyer objected on revision to selling lawyer
- migrating lawyer no longer authorized
- application to RG for consent to file 6A
- examination of enabling instruments, and plan index data confirmed that burden did not apply
- parcel register amended, and PDCA amended as well

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Case #5 Mismatch identified on revision

- selling lawyer (last revising) and migrating lawyer notified by buyer's lawyer
- migrating lawyer carried out 'fix'
- consent of owner not required as parcel of owner already had burden noted
- amendment made to flipside parcel to add benefit so that parcel registers, once correction made would 'fit'
- amendment to parcel register, and also PDCA

Slide 32- Sample Checklists for match/mismatch

- Sample Notice of Possible Mismatch to migrating/last revising lawyer(s)
- Sample Form Authorizing PDCA/AFR and amendments

Slide 33-

Summary Points

- all known interests, should be reflected, where possible in a parcel register
- information should be reviewed with clients to assist in identifying flip side parcels affected
- lawyers have an obligation to defend any opinion of title given (CLE, AFR) consider how this is not unlike the old world, just in a new environment
- due diligence on a revision includes a review of the parcel register in question, the enabling documents on the parcel register (does the deed into the owner match what is on the parcel register?), the available survey fabric of the lot, and surrounding lots, and an assessment of how the parcel relates to others affected by the interests shown (Regulation 5(1) and (2))
- lawyers have an obligation to respond in a timely fashion to any 'heads up' notice received, and provide reasons for disagreement with the alleged mismatch

Slide 34- Province slide on percentages

Slide 35-

Where are we headed????

We are an important part of the bricks and mortar of this system, and what we are building is a system that will serve the public, land owners, both now and in the future. We need to be able to advise our clients about what a parcel register means, and what it doesn't mean, and how to ensure it is the best it can be for a clear reflection of all interests affecting a parcel, always with the limitations of extent, and those interests that may have statutory priority outside of the land records...

SAMPLE
NOTICE OF POSSIBLE MISMATCH

DATE OF NOTICE:_____ PENDING TRANSACTION DATE:_____

TO: MIGRATING LAWYER _____

TO: LAST REVISING LAWYER _____

FROM: ALERTING AFR LAWYER _____

REGARDING PID: _____
(migrating lawyer's PID)

AND ALSO PID: _____
(alerting lawyer's PID)

DESCRIPTION OF POSSIBLE MISMATCH:

EASEMENT/RIGHT OF WAY: _____

OTHER: _____

BENEFIT/BURDEN: _____

ENABLING DOCUMENT: _____

=====

RESPONSE OF MIGRATING LAWYER:

AGREE: _____ WILL FILE A 6A

DISAGREE: _____

REASONS IF DISAGREE: _____

REVISING LAWYER:

AGREE: _____

DISAGREE: _____

REASONS IF DISAGREE:

SAMPLE CHECKLIST FOR MATCH/MISMATCH

1. REVIEW TITLE SEARCH AND IDENTIFY BENEFITS/BURDENS THAT APPLY TO LOT BEING MIGRATED

2. DOES TITLE SEARCH IDENTIFY ALL DOMINANT/SERVIENT TENEMENTS?

3. REVIEW ANY SURVEY PLANS OF LOT, AND ADJOINING LOTS

4. REVIEW POL MAPPING AFR LOTS, AND ALL OTHER LOTS AFFECTED TO SEE HOW CORRESPONDING PARCELS REFLECT BENEFITS/BURDENS (ENSURE LR PARCEL LAYER AND TOPO LAYER TURNED ON)- ARE THEY LR _____ NON LR? _____

5. REVIEW POL MAPPING AND PLANS WITH CLIENT _____

6. IDENTIFYING CORRESPONDING PARCEL:

I- FLIPSIDE LR?

PID's _____

MATCH ASSESSMENT:

A. IS B/B SHOWN IN PARCEL REGISTER? Yes _____ No _____
-IF YES MATCH- is same/comparable enabling Yes _____ No _____
-IF NO: BUT
-TQ?- same/comparable enabling Yes _____ No _____
-Various PID's same/comparable enabling Yes _____ No _____
-IF YES TO ANY OF ABOVE= MATCH
-PDCA checked- B/B shown? Yes _____ No _____
-IF NOT SHOWN- Amending PDCA req'd

B. IF NO TO ABOVE QUES (IS B/B SHOWN IN PARCEL REGISTER?) -THEN MIS MATCH

MISMATCH ASSESSMENT:

Overriding? Yes _____ No _____
- IF YES:
-Is evidence sufficient to convert to prescriptive right? Yes _____ No _____
- Discussed implications with client of not reducing to writing -Yes__

Any other lots affected ? Shown in any of those parcel registers?

STEPS IN MISMATCH PROCESS:

-Step 1: Notify Migrating/Last Revising Lawyer Done _____
Response: Agree _____ Disagree: _____
No response _____ No longer in practice/No longer authorized _____

-Step 2: Ask for RG Assistance Done _____
Response: Resolved _____ Not resolved _____

Step 3: Seek Exemption Regulation 17

Section 17 Exemption info:

Community Quirk- _____

Condo: _____

Multiple PID's _____

Difficulty in identifying: _____

Other Factors for Exemption: _____

II-FLIPSIDE NON LR?

-check last legal description. B/B Referenced? Yes _____ No _____

-PID's affected? AAN? Yes _____ No _____

If No- Direction from RG sought _____ Full search _____

Directions from RG (retain on file for audit) _____

-Owners on POL: _____

-POL printout

-Form 8A prepared and filed: Yes _____

SAMPLE

AUTHORIZATION TO SUBMIT/AMEND PARCEL DESCRIPTION CERTIFICATION APPLICATION AND/OR APPLICATION FOR REGISTRATION

(Could also be combined with Confirmation of Graphics)

Registration District: _____

Submitter's User Number: _____

Submitter's Name: _____

IN THE MATTER OF Parcel Identification Number (PID)

PID:	12345678
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AND IN THE MATTER OF the above noted parcel.

I, Susan Smith am the owner of the parcel identified by the above-noted PID.

I HEREBY AUTHORIZE _____ ("my agent" herein) to perform such investigations and to submit such documents or forms as may be required in order to submit the parcel description certification application.

I HEREBY AUTHORIZE _____ ("my agent" herein) to perform such investigations and to submit such documents or forms as may be required in order to submit an amending parcel description certification application if the amendment relates to the title at the time of registration of the parcel*.

I HEREBY AUTHORIZE _____ ("my agent" herein) to perform such investigations and to submit such documents or forms as may be required in order register title to the above-noted parcel, or file any correction to the title if such correction relates to the title at the time of registration of the parcel* pursuant to the provisions and requirements of the *Land Registration Act*, and regulations made thereunder.

DATED at Halifax, in the County of Halifax, Province of Nova Scotia, this 2nd day of September, 2009. _____

Susan Smith
1234 Jones Lane
Phone:
Email:
Fax:

*Note- authority to amend tied to state of title at time of migration, even if amendment later in time