

THE LAND REGISTRATION ACT

DRAFT PROTOCOL FOR CONVERSION AND CONVEYANCING AND MISCELLANEOUS LRA TIPS

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DRAFT PROTOCOL FOR CONVERSION AND CONVEYANCING

The attached "Protocol" was drafted by several RELANS lawyers in response to some complaints advanced by practising real estate lawyers in the Province. Our practice has changed substantially since LRA has come into effect in our various counties.

For the most part, Sellers are doing the search and migration leaving the Buyer's lawyer to assess the parcel register without the benefit of the full title search. While this would have occurred on the second conveyance of a Land Registration parcel, it has left us with some discomfort. The first time a property sells after a migration is the first opportunity for the Buyer's lawyer to review a parcel register and assess the state of title. Timing of migration has affected the ability of the Buyer's lawyer to assess title in a timely fashion.

The Protocol is a first attempt at putting some courtesy rules around this process. Over last summer and fall of 2005, Tony Robinson, Cathy Walker, Jim Filliter and I (Erin O'Brien Edmonds) met to discuss the ongoing practice in the new world and have attempted to express what we feel are the most important issues affecting conveyancing lawyers in the real estate transaction today.

During the process we found that we identified important issues which do not fall into the category of "Protocol" but are miscellaneous tips on migrating property. These tips are a random grouping of tips and are not meant to be comprehensive but current common issues facing us. The tips have a separate heading and are listed at the end of the Protocol as miscellaneous tips.

We hope that in some way either RELANS or CBA will continue to improve on the Protocol to give us all direction and assistance in the migration process and conveyancing.

We are all under a lot of pressure to maintain the integrity of this new system. If we don't make an effort to provide the best information possible at the time of migration the system will be less valuable over time. If lawyers don't make the effort, no one else will. The day to day timing of how we deal with our files often gets lost when we have so many deadlines.

We hope you take this draft Protocol as a starting point to improve upon in the future. We recognize there are different points of view on how to migrate a property or to run a conveyancing practice. We started our discussions from the golden rule:

"Do unto others as they would have them do unto you."

Commandments of the LRA A Proposed Practice Protocol

When the Seller's lawyer is converting:

1. Start conversion at earliest possible moment to allow the Buyer's lawyer time to search and raise objections.
2. Pursuant to LRA Administration Regulation 5(5)(d), (unless the parcel is a condominium unit), have the parcel owner confirm the apparent match of the graphics identified by the PID with the legal description. This cannot be properly accomplished without a personal meeting with the owner(s). Owners often provide valuable information about the parcel location, configuration or the number of PIDs which make up the property.
3. Meet with client to sign LRA forms as soon as possible to avoid delay in conversion. It is not recommended that Form 5 be signed by the lawyer for the owner unless you meet the requirements of Reg 9(5) which requires personal knowledge of the facts or information and belief based on discussions with the current or previous owner. You should have clear instructions from these "discussions" with the client.
4. If you are unable to convert but your AFR is approved for registration, (i.e. because forms are not signed), send Buyer's lawyer a copy of AFR approved for registration and the certified description so that Buyer's lawyer will know what the title issues are and can communicate this to the Buyer in sufficient time before closing. Then, meet with your Seller as soon as possible to get forms signed and complete the conversion.
5. Follow the time frames in the agreement of purchase and sale for the supply of information to the Buyer. Notwithstanding the time frames in the agreement, be mindful that there are certain situations where the time frame in the agreement is not sufficient for the Buyer to search properly.
6. Act reasonably to requests from the Buyer's lawyer to provide copies of documents from the title search when converting. Use the golden rule - Do unto others etc.
7. Notwithstanding the time frames set out in the agreement, send a copy of the applicable plan, covenants etc. at the time when you are reviewing the title search. There is no need to wait until you have converted and have your SRI to send these available documents. Why wait? Give the Buyer as much time as possible to review the

documents affecting title.

8. Send the opening letter to Buyer's lawyer as soon as possible with the items stipulated in the agreement. Remember that a Buyer can terminate the agreement if not converted by the date required on agreement. As an additional courtesy, provide any of those documents when the file is opened, if available, rather than waiting until closing or after conversion.

9. If the title search reveals difficult issues that may be reflected in the AFR in more than one way, or if the issue is subject to some interpretation or opinion which may affect title, discuss this with the Buyer's lawyer so he or she will know why you have reflected the information this way and will understand your reasoning. Again, use the Golden Rule "Do unto others etc."

10. Once the AFR is approved for registration, convert as soon as possible. Don't leave the AFR on your worksheet. If you don't have the applicable LRA forms signed at this time, make an effort to do so, even if it means another meeting later to sign the closing documents.

11. Once the parcel is converted, immediately send the documents required under the Agreement of Purchase and Sale to the Seller's lawyer (if they have not been previously sent).

12. Use the most current certified description (approved PDCA) as the description in the deed so the Buyer's lawyer may more easily review it to ensure accuracy. It is recommended that the Buyer's lawyer should always check to ensure the description in deed is same as the description in parcel register at the time of closing. The description in the parcel register may change at any time if an amending PDCA has been submitted by another. In subsequent transactions, always match description in deed with parcel register at closing.

13. Regarding easements, don't be lazy and show "various owners" or "various PIDs" as the servient tenement when you can determine the particular servient tenement PIDs from the search. We should try to be as accurate as possible and not lose valuable information behind the curtain. Easements are one of the most difficult areas in the new system.

14. Language of Easements. When doing a PDCA, don't use "Grantor", rather use "owner of PID _____" or Lot no. _____ if possible. This will allow the future owners to properly determine what was intended to be granted at the time. Later interpretation of "Grantor" is impossible without doing a full search. Try to make the PDCA and AFR make sense to anyone interpreting it in the future.

15. If acting for a Developer, use Form 45 to remove easements that were incorrectly

inherited, and also proceed to amend the PDCA prior to closing.

16. If acting for a Developer, record a document to place restrictive covenants and easements on the parcel before conveying the parcel and then proceed to amend the PDCA. If a Developer's lawyer relies on a Buyer's lawyer to do the amending PDCA, it may not happen in a timely fashion or at all. If restrictive covenants are not added properly, the building scheme could be found to be invalid at a later date and the Developer's lawyer could be held responsible. Consider that Developer's lawyer cannot require an undertaking from the Buyer's lawyer to make these amendments. The standard agreement of Purchase and Sale does not require this of the Buyer or his/her/their lawyer. Refer to 7(3) of the Admin Regs.

17. If Developer's lawyer requests Buyer's lawyer to add easements or covenants on Form 24 because they are being added to the deed into the Buyer, Developer's lawyer should amend PDCA in advance of closing so that description in deed matches certified description in parcel register. Then Buyer only has to add the burdens on the Form 24 when recording deed.

18. If acting for a Developer and access is over a non_LR parcel, consider that Buyer's lawyer cannot add the burden of the easement to the non-LR parcel without an abstract of title to the servient tenement. Developers should consider what easements are to be added and communicate how this is being done with the Buyer's lawyer at an early stage in the transaction.

19. If acting for Condominium Declarant, provide the newly assigned PID for the unit as soon as it is assigned by mapper. Ensure short form PDCA provided by the mapper is same as in Declaration and in deed. If additional information is to be added to the description, such as Civic Numbers or Suite numbers, Declarant's lawyer should amend PDCA before conveying unit.

20. When considering whether to use a long form description or a short form description, use the long form description if the plan being used for the short form description provides less detail than the original long form description. In this way, you ensure the most detail survives the conversion. This comment is equally applicable if the plan existed prior to April 30, 1987.

21. When representing Buyer of an LR parcel, remind the Buyer to save the copy of the plan, covenants etc., it as it will be helpful to next Buyer at the time of the next sale. It is recommended that a reminder of this be placed in report to the client.

Recommendations to the Buyer's Lawyer when reviewing an LR parcel:

1. The newly revised standard form of LRA clause in the standard agreement of

purchase and sale requires less information for the Seller to provide if the parcel of land has been converted to the Land Registration Act prior to the date of the agreement of purchase and sale. Once the system has all documents and plans scanned and viewable, it will be quite easy for the buyer to access all information needed. In the meantime, the Buyer's lawyer will obtain whatever additional information the buyer would like from the Land Registration Office.

Recommendations to the Seller's lawyer when selling an LR parcel:

2. Provide PID(s) as soon as possible to Buyer's lawyer. Pay attention to time frames in agreement.

2. As a courtesy to the Buyer's lawyer, the Seller's lawyer should supply copies of plans and restrictive covenants in his/her possession. It is advisable to request the owner who has this information from the first transfer after conversion to save this information so that it may be easily passed along.

3. If a problem is found in a parcel register and the Buyer's lawyer objects to title, whose responsibility is it to do the clean up work? The lawyer who has the full title search is the proper party to do clean up or rectification work. It is recommended that if a problem is found, and the Seller's lawyer has undertaken to do a rectification or amend a PDCA, that this type of undertaking be completed within one week of closing. The file should not be put away for a later time such as when the release of mortgage is being recorded. The parcel register should reflect the current status of title at any time. An undertaking given but performed at a later date may have the affect of creating a system that is not accurate. This is contrary to the main reason for the system - to create certainty about interests in land.

4. If the selling lawyer is not the migrating lawyer but that lawyer's law firm completed the migration in a "migration department", the Seller's lawyer should be responsible to deal with the title issues raised by the Buyer's lawyer in the same fashion as we did under the Registry system. It is not effective to send the Buyer's lawyer to the Seller's lawyers migration department to deal with the issues.

5. Further if you did the migration and another lawyer who is now selling has an objection from the Buyer's lawyer, you have an obligation to fix it up. If a problem is identified that would allow a better result in the parcel register, don't require lawyers who didn't do the title search to correct the parcel register when you could have done a better job. If we don't look after this system, it won't be a good system and it opens the doors

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to title companies to be insurers of our system.

MISCELLANEOUS LRA TIPS- LEARNING AS WE GO

When converting:

2. Consider parcel access.
 - a) If parcel access is private, remember to add the right of way benefit to the parcel register or the AFR.
 - b) You need to ensure that the right of way is properly granted. This will mean, in some cases a full search of the burdened parcel.
 - c) If the right of way has been described in the full "Marketable Titles time frame", then you don't need a separate abstract of title for the burdened parcel. In many cases the grant of right of way originated with the first deed over 40 years ago and no separate abstract is required.
 - d) If you are receiving a grant of right of way on closing and the grant of right of way is over a non- LR parcel, then you need to file an abstract of title for the non-LR parcel and a Form 8 with the deed to your parcel. Seller's lawyers should communicate that rights of way are over LR or non-LR parcels in the opening letter and the Seller's lawyer should provide the abstract of title to this servient tenement and the Form 8 on closing. If the Seller's lawyer doesn't communicate this to the Buyer's lawyer, he or she will not know that a search is required of the burdened parcel until the last minute. It would be easier for the right of way to be created before the transfer to the buyer so that the Seller's lawyer places the easement benefit on the parcel being sold and the burden on the parcel being burdened before the lot is sold. An example of this problem is when a flag lot is being granted by the developer to the buyer and there is a right of way over another flag lot that is not yet an LR parcel, then the Buyer must file Form 8 and abstract of non-LR burdened parcel. Seller's lawyers should be mindful of this and put the easement on prior to the conveyance. If the burdened parcel is an LR parcel, ensure the right of way is added to that parcel with the grant in the deed or that it already exists in that parcel. Problems can be created if the non-LR burdened parcel transfers ownership before the burden is placed on that parcel. If the deed is recorded late, the burden could be too late to be placed on the non-LR parcel. Feeding the estoppel doesn't work to correct the problem.
 - e) If a parcel that has no access is being consolidated with a parcel that has private access, consider if an unauthorized extension of the parcel access has been created by virtue of the consolidation. Ensure parcel access was not inherited inaccurately through consolidation with another lot that had a different type of access. Currently, access types are not checked by mapper or LRO, it is up to converting lawyer to ensure access type is correct.

- f) If parcel access appears to be public, consider what needs to be done to verify same. It may not be obvious from the abstract of title.
3. Do a judgement search on the Buyer as soon as file is opened to ensure there are no surprises at closing. Judgement search on the Seller is required from LR date forward.
 4. Migrating lawyers must put judgments in the AFR if they are against seller or predecessor even if they are being paid out on closing.
 5. If a parcel was approved on a plan of subdivision even if it is also validated by s. 291 of MGA, refer to the plan in the PDCA so that subsequent buyers may find that plan easily on a later review of the parcel register.

After conversion

6. Remember SRRI is only current to date of migration. Review parcel register and do relevant subsearches rather than rely on SRRI.
7. Do judgment search against buyer for 20 years and seller from LR date forward.
8. Prior to closing, always review the parcel register with the Buyer to ensure correct parcel represented by PID is being purchased. There may be more than one PID. This is important for sales and mortgages as well.

Recommendations to Seller's lawyer when selling an LR parcel

8. Always review parcel register with Seller to ensure correct parcel represented by PID is being conveyed. There may be more than one PID.
9. When paying out a mortgage and recording a release, provide lending institution with PID.

Miscellaneous Tips

1. Timing. Be careful as feeding the estoppel doesn't work in the new system. A document can't be recorded late if the party granting the interest is no longer the registered owner.
1. Condominiums. Make sure you put the easement detail in the AFR as you would

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any land parcel. You do not need to put these in the PDCA's for condos and the PDCA description is generic.