

## ***Whose Job Is It Anyway?***

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1. This outline identifies some of the procedural steps in converting the registration of real property to the *Land Registration Act* system. The conversion process is separate from, but closely associated with, the internal processes for the sale, mortgage or purchase transaction respecting the parcel being converted. A timely and accurate conversion of the parcels concerned is the key to a successful transaction. Hopefully this outline will be helpful in reviewing or establishing your internal procedures.
2. Have written internal procedures and checklists for staff and lawyers in your office. Written procedures and checklists are good training and quality assurance assets. These should include:
  - a. *A description of the steps to be taken and the assignment of responsibility for each step* as appropriate. This description will be your "How To Do It" Manual.
  - b. *Intake questionnaires* for gathering required information from the client and others. Base your questions on the information you will require for Forms 4 and 5 as well as for other documents you will prepare for the conversion. Be sure to determine the owner's residency, any possession/use of the parcel without the owner's consent, current ownership, name changes, matrimonial status, surveys, easements (benefits and burdens) and other modes of access.
  - c. *A conversion process checklist* for use in each conversion file folder. Using it will let you will see where you are at a glance when you pick up the file.
  - d. *A title search summary form* customized to your practice. Provide for information required for the PDCA and AFR forms including details of access and whether there is an underlying Crown Grant.
  - e. *A central reference file/list of helpful hints and reminders* for internal reference. We use an electronic file containing information, advice and directions from Mappers, LRO staff and ourselves. It saves a lot of time when looking for this information.
  - f. Bookmark the SNS&MR Registry 2000 Resource Site in your browser or have a centrally located binder with copies of material, current, Registry 2000 resources available to lawyers and staff.
  - g. *An information sheet for clients summarizing the conversion process* for compliance with Professional Standard 1.2.
3. Start the conversion as early as possible. This will allow time to detect and correct title or description issues if they arise. The mappers and LRO staff can get jammed or go on training and the system can go down - if you start early you should substantially reduce avoidable delays. If you really want to upset everyone else in a transaction, lose clients and realtor referrals start your conversion late and do not complete it by closing.

4. Intake process and file set up:

a. Staff

- i. Complete the intake questionnaire with the owner.
- ii. Place available title information and the parcel description in the file.
- iii. Print 2 copies of POL graphics for the parcel - one for the AFR and one for the form for confirming the parcel description - graphics match. (While you are on-line check the POL graphics for the "Green Layer" indicating possible Crown interests while you are printing the graphics).
- iv. Print 1 copy of the POL details for the parcel for the AFR review (check for references to a survey on which a short form description might be based).
- v. Print the Registry of Joint Stock Companies information for business owners to confirm the correct name, registration status and that a company is not struck off.
- vi. Print a WCB clearance for owners as required.
- vii. Prepare Forms 4, 5 and an internal form confirming the parcel description - POL graphics match. Have the client(s) sign these as soon as practical. Advise the lawyer if there are apparent issues before the forms are signed.
- viii. Obtain copies of other documents as required - *e.g.* death certificates, marriage certificates, divorce orders.

5. If the conversion is contracted out:

- a. Provide completed Forms 4, 5 and the confirmation of the parcel description - POL Graphics match to the converting lawyer with available title, survey and other relevant information in your possession according to your arrangement with the converting lawyer.
- b. Ask your converting lawyer to advise you as soon as practical if there are title or description issues to be resolved or if there are interests that will survive the closing (*e.g.* development agreements); give other counsel, if any, a "heads-up" as early as practical so there are no ugly last minute surprises.

6. If the conversion is done in-house:

- a. Open a separate conversion file for each parcel. Conversion files are subject to audit so limit the file contents to the conversion of one parcel (PID) only.
- b. We have found it is helpful to isolate bundle materials in a file insert within the folder - we can "build the bundle" as we go without mixing it up with non-bundle contents.
- c. Consider opening a separate computer sub-directory for each parcel.
- d. Have the parcel description typed in draft as early as practical unless you anticipate difficulties with the existing description; this will get the bulk typing out of the way early. Use a short form description if you can to save labour costs. Do not submit your draft parcel description for approval pending completion of the title search.
- e. Requisition the title search from your searcher.

- f. Title Searcher
  - i. Search title and produce an abstract of title per the Professional Standards.
  - ii. Determine access to parcel including searching title to granted Rights of Way per Professional Standard 2.2.
  - iii. Determine whether there is an underlying Crown Grant of the parcel from Crown Grant Sheets. *Marketable Titles Act*, s.9.
  - iv. Complete a title search summary (to facilitate completion of the AFR).
  - v. Note: the following were the most common problems with abstracts identified by the Auditors in October 2004:
    - (1) The date of the last sub-search in the abstract/abstract summary sheet was not the date of final submission of AFR or did not cover the period from main search to submission.
    - (2) The abstract did not contain a copy of the approved parcel description.
    - (3) Judgment summary sheets in abstracts did not show all the names checked.
    - (4) Abstract items did not include marital status of grantors.
    - (5) Abstract items did not show tenure of owners (JT, TIC *etc*).
    - (6) Abstracts did not evidence access to the parcel.
    - (7) Not all material abstract items (items that will be in AFR) include Document Numbers.
    - (8) Documents referred to in Abstracts were neither detailed nor copied in abstract.
    - (9) Not all abstract items clearly indicated whether the item affected the parcel searched.
  
- b. Staff - When the title search is returned:
  - i. Ensure that the abstract is in required order and is complete.
  - ii. Proof read the draft parcel description against the last deed.
  - iii. Proof read the draft parcel description against the survey (if any).
  - iv. Print the draft parcel description and initial it to evidence satisfactory proof reading.
  - v. Confirm or prepare the Title Search Summary form.
  - vi. Ensure any required off-Registry attachments for the AFR Bundle are attached, *e.g* a death certificate.
  - vii. Prepare the draft AFR and print a copy.
  - viii. Draft Forms 8 and 23.
  - ix. Draft other forms as required - *e.g* Form 1 Request For PID Assignment or Form 21 Request To Revise the Name of The Registered Owner or Interest Holder.
  - x. Prepare a draft requisition letter to other counsel or requests for pay outs from encumbrancers as required.
  - xi. Turn the conversion file over to reviewing lawyer for review with
    - (1) the abstract,
    - (2) the draft parcel description (and copy of PDCA checklist),
    - (3) a printout of the draft AFR worksheet,
    - (4) draft Forms 8 and 23, and
    - (5) draft requisitions, requests for releases or payout requests as required.

c. Lawyer

- i. Review the conversion file.
- ii. Exercise your professional judgment when deciding how particular interests are to be shown in the AFR.
- iii. Have any required corrections made.
- iv. When the draft parcel description is OK initial the PDCA Checklist as authorization to staff to submit the parcel description for approval.
- v. When the draft AFR is OK initial it as authorization to staff to submit the AFR for pre approval when the parcel description is approved.
- vi. Sign the draft requisitions, requests for releases or payout requests as required.
- vii. If there are title or description issues to be resolved or if there are interests that will survive the closing (*e.g.* development agreements) give other counsel, if any, a "heads-up" as early as practical so there are no ugly last minute surprises. "Do unto others....*etc.*" It is likely that the purchaser's counsel has to meet mortgage lender's requirements and deadlines so good communications of issues and potential issues gives her or him more time to help solve issues and keep the purchaser's lenders on-side.

d. Staff

- i. Submit the lawyer-approved parcel description to mappers for PDCA.
- ii. When the parcel description is approved submit the lawyer-approved draft AFR for pre-approval by the LRO.
- iii. It would be a courtesy to advise other counsel when the parcel description is approved so other counsel can review the description, in the on-line Parcel Description Database.
- iv. When the AFR is pre-approved:
  - (1) ensure the bundle is complete except for final sub-searches and SRRI
  - (2) co-ordinate the final AFR submission with the lawyer then update
    - (a) the grantor/grantee name searches,
    - (b) the documents in process search, and
    - (c) the judgment searchesand turn it over to lawyer for the final AFR submission.

e. Lawyer

- i. Confirm the bundle is complete except for the SRRI and that it includes the final sub-search for the period from the main search to present. It is absolutely essential that the entire bundle is ready for filing before you "press the button" on the final AFR. As a practical matter if you don't complete and file the bundle immediately after you submit the final AFR it is unlikely you will find the time to do it properly later.
- ii. Submit the AFR for final approval.
- iii. Proof-read the SRRI when received and, if OK, sign it for the bundle.
- iv. Sign and date Forms 8 & 23.

f. Staff

- i. Ensure the SRRI is in the bundle.
- ii. Ensure Forms 8 and 23 are signed and dated on the date of final AFR approval.
- iii. Double check that the bundle is complete. The following were identified by the Auditors in October 2004 as the most common problems with bundles:
  - (1) Forms 4 & 5 were not dated before final submission of AFR.
  - (2) Form 8 was not dated on the date of final submission of AFR.
  - (3) Paragraph 11, Form 8, (Subdivision Approval status) was incorrectly stated.
  - (4) Not all required documents were in the bundles.
- ii. Copy the bundle for LRO.
- iii. Punch the original bundle into the conversion file folder.
- iv. On AFR approval fax a copy of the SRRI and approved PDCA to other counsel as required.
- v. Have the bundle copy delivered to LRO ASAP. Provide a delivery receipt and have it signed by LRO staff in case your bundle goes astray in the LRO.
- vi. Diarize the return of the bundle acceptance notice from the LRO. Allow lots of time to correct the bundle if it is not accepted by the LRO - We follow up in 5 days.
- vii. Place the conversion file in pending file holder until you receive the acceptance notice from LRO.
- viii. Index the abstract/bundle in your title records for future reference/retrieval.
- ix. Close the migration file to permanent storage when appropriate. We find it convenient to hold the conversion file with the related transaction file until the transaction is completed.

2. Post Conversion Steps:

a. Lawyer

- i. If the conversion was out-sourced be sure to review the parcel register and all documents and plans referred to therein very carefully for title issues or description issues to be dealt with. If there are title or description issues to be resolved or if there are interests that will survive the closing (*e.g.* development agreements) give other counsel, if any, a "heads-up" as early as practical so there are no ugly last minute surprises. Again, "Do unto others....*etc.*"
- ii. As required, either draft requisitions on title or take steps to clear anticipated requisitions on title.

b. Staff

- i. Provide other counsel with a copy of the SRRI ASAP; provide copies of other materials as required.
- ii. Prepare a draft report to your client per Professional Standard 1.5.
- iii. Amend the parcel register as required - *e.g.* complete name changes with Form 21 *etc* if the registered ownership differs from current ownership - death, change of name, *etc.*

- c. Lawyer.
  - i. Review and approve/amend draft reports, parcel register amendments and requisitions/steps to clear title.
  - ii. Communicate steps taken to other counsel with appropriate undertakings as required.

3. Purchaser's Counsel:

- a. Ensure that you complete non-title due diligence checks such as zoning and, where required, statutory lien clearances within any time limit imposed by the agreement of sale.
- b. Assuming the vendor is converting the parcel follow up with Vendor's counsel to ensure the conversion is done in a timely fashion.
- c. You may want to check for judgments against your client early if you will be placing a mortgage on the client's behalf.
- d. Some conversions have errors. Be sure to study the parcel register and examine current outstanding interests recorded against title with a healthy scepticism. Keep a weather eye open for errors in the parcel register *e.g.* the absence of restrictive covenants recorded against a parcel in a development you know is subject to covenants. In a recent matter we found that a "boundary line agreement" referred to in the parcel register actually transferred additional land to the parcel that was not reflected in the parcel description.
- e. Examine relevant surveys disclosed in the parcel description. You may need to attend the LRO or have your searcher obtain copies of relevant plans and documents. You do not have to wait until the conversion is done to get a copy of a recorded survey noted in the POL details.
- f. Your pre-closing report and meeting with your client (Professional Standard 1.5) is a good time to have your client confirm whether your findings are consistent with her or his expectations.
- g. It has been our experience to date that late migrations cause many headaches. After bad experiences with a few closings in escrow because migrations were not complete we now generally will not close until the conversion is complete AND we have had time to thoroughly review the parcel register and the interests referred to therein.
- h. Remember the *Land Holdings Disclosure Act* does not apply in Land Registration Counties so you no longer need to file an LHD-100 form for non resident owners.