

Information Bulletin from the Office of the Registrar General of Land Titles
***Land Registration Act* amendments - Bill 156**
and consequential regulatory amendments

Changes to the *Land Registration Act* and the *Land Registration Administration Regulations* are planned for this spring. The planned implementation date is May 4, 2009, subject to Cabinet approval of the proclamation date.

The amendments came about as a result of more than four years of operational experience in the land titles system, coupled with close consultation with the Nova Scotia Barristers' Society.

The changes to the Act and the regulations will result in some changes to the requirements and practice of authorized lawyers and others who work in the land titles system.

The changes to the Act can be found in Bill 156, which was passed by the legislature in the spring of 2008. The regulatory changes are contained in a consolidated version of the regulations which will come into effect when Bill 156 is proclaimed this spring. Not all of the regulations have been changed, but the current version is being repealed and replaced with a new consolidation combining the current version with the changes.

The following is a review of the major changes to the Act and the regulations.

Certainty of Title - clarification of effect of registration

The intent of amendments to Section 20 of the Act is to remove ambiguity and make clear that there is no need to do any historical research in the Registry of Deeds once a property has been registered under the Act- ie that a person may rely on the information in the parcel register as being a complete statement of the interests affecting the ownership of the property at the time it was initially registered.

As well, amendments to Section 44 clarify the transitional provisions of the Act and the effect of documents registered in the traditional registry on properties registered in the land titles system.

The amendments complement other amendments to Section 37 which clarify the effect of the lawyer's opinion on title when a property is registered and to the compensation provisions, Sections 85 and 86, of the Act.

Clarification of the responsibility of lawyers certifying title to land

Amendments to Section 18 and Section 37 of the Act clarify the lawyer's responsibility in certifying title to land.

Section 37 deals with the opinion on title on initial registration and clarifies the standard and content required.

The new subsections 18(1) to (5) provide that the lawyer must submit a certificate of legal effect (CLE) not only when submitting documents evidencing ownership (registered interests) but also

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for any other documents (recorded interests), as prescribed in the regulations. The new provisions also provide that the lawyer is liable for errors and omissions for all such certificates, for a period of ten years (just as they are currently for opinions on initial registration).

Section 4 of the regulations prescribes the forms to be used, including the certificates of legal effect, and sets out the requirement for a certificate of legal effect for various forms. The forms which currently require a lawyer's certification will have CLE's and in addition, new forms 26 and 27, to record or cancel recorded interests, will contain a CLE, as well as Form 21 for the purpose of correcting a misspelling.

Restrictions on submission of documents by non-lawyers

Currently, under the regulations, any person may submit or remove recorded interests using a Form 26 or 27, respectively. As a result, this creates more opportunity for error or omissions in the land titles system, which reduces the reliability of the parcel register and exposes the Province to greater liability.

As a result of changes to Section 18 of the Act and new forms 26 and 27 prescribed under Section 4 of the regulations, non-lawyers will no longer be able to submit or remove recorded interests.

The exception will be to allow certain lenders to be authorized to submit mortgages and releases of mortgage, to which they are a party, as long as they are under an agreement with the Department which will set out the terms of their authority and provide for their indemnity in case of error. This is provided for in the regulations but will not be implemented until there has been a transition period and electronic forms (26EL and 27EL) have been implemented.

During the transition period, any lender or their authorized agent, may submit a new paper form 26L or 27 L to submit mortgages or releases of mortgage to which they, or a predecessor organization, are a party.

New requirement to add corresponding benefit/burden on AFR

Subsection 10(14) of the regulations adds a new requirement to give notice and file documentation on initial registration (AFR) of a property, to show the corresponding benefit or burden on another property. The requirements in Sections 14 to 18 (which set out the requirements when adding burdens or benefits) will apply, with necessary changes. The intent is to reduce the numbers of mismatching parcels and improve reliability of the parcel registers.

Corrections by the Registrar General

Amendments to Section 33 of the Act permit the Registrar General to correct errors and omissions in any type of information in the parcel register, in accordance with the regulations,

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and to alter registers to bring them into conformity with current regulations.

The amendments contained in Sections 19 and 20 of the regulations set out the circumstances and manner, in which corrections can be made. The provisions balance the rights of interest holders and the need to make necessary corrections to maintain the integrity of the records.

Corrections by lawyers

Amendments to the regulations now allow a more comprehensive Section 22 (formerly Section 21) to require lawyers to correct any error or omission in a parcel register (which had been submitted with a CLE) using a new Form 6A. The existing Form 17 will be deleted from the list of prescribed forms. The procedures in Section 22 have now placed the onus on the lawyer to obtain all the necessary consents and to certify the changes instructed on the Form 6A. A lawyer will only need to obtain the consent of the Registrar General if they are unable to obtain the necessary consents, as required in the regulations.

Form 49 remains the form to be used to correct errors in information submitted on the existing Forms 26 and 27 (ie with no CLE) and on Forms 26L and 27L. Section 21 sets out the notice and other requirements that a lawyer must meet before submitting the form. The requirements have been harmonized with the requirements for submitting a Form 6A, but there is no requirement to obtain the consent of the original submitter.

Layered Access- preventing fraud and increasing privacy

Changes to Section 10 and the new clause 94(1)(da) of the Act give authority to limit access to the registry records, as prescribed in the regulations. The intention is to create different levels of access for different types of users to prevent fraud and increase privacy. Currently the wording allows any person to see any document filed in the system. Experience from other jurisdictions shows that this type of access, combined with the ease of electronic access, can increase the risk of fraud and invasions of privacy. The regulations are not yet developed, as the implementation of what we are calling “layered access” will require enhancements to our electronic system which are planned for 2009/2010.

Claims- improving accessibility by aggrieved parties

The new Section 34 of the Act permits a person who objects to any information in a parcel register to ask the Registrar General to investigate and correct the perceived error. It gives the Registrar General the authority to investigate and adjudicate. Any matters beyond the Registrar General’s jurisdiction will be referred to proceedings before the courts.

Amendments to Section 35 of the Act permit any person who objects to any information in a parcel register to commence a proceeding in the Supreme Court to have the matter addressed. The amendments also clarify the principles to be applied by the court in adjudicating conflicting

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interests.

Notice to the Registrar General in court proceedings concerning a land titles parcel

Sections 35 and 92A create a requirement to notify the Registrar General of any proceeding affecting a land titles or the administration of the Act. The Registrar General is given discretion to intervene or become a party to any such proceeding.

Clarifying when compensation is payable

The significant amendments to Sections 85 and 86 of the Act clarify when the Province is required to compensate for a loss caused by an error or omission in the land titles system.

Appeals to the Registrar General

Amendments to Section 90 of the Act now mandate that an appeal from a decision of a registrar is to be made in writing to the Registrar General.

The new appeal provisions are fleshed out in Section 32 of the regulations. A person who wishes to appeal must do so in writing, either in paper, or by email to the Registrar General, attaching a copy of the registrar's decision (generally, this will be the rejection comments), a copy of the relevant document(s), and a clear statement of why the registrar was wrong. The subject line of the appeal must state "APPEAL TO THE REGISTRAR GENERAL"- the PID and the County of the relevant parcel register(s).

Instructions on submitting the appeal will be in POL. Lawyers will find that submitting an appeal by email to RGLandTitles@gov.ns.ca will be the most efficient way to have an appeal dealt with.

Other amendments creating clarity, streamlining processes for users and staff

Bill 156 made numerous amendments by changing wording or reorganizing sections in order to create clarity and improve readability. Many of the consequential regulatory changes are also intended to improve clarity and streamline processes. For example:

Original document requirement

Section 5(3) mandates the policy requirement that only an original or a court /registrar certified copy of a document may be filed non-electronically.

Affidavit or certificate of execution requirement

Subsection 5(10) mandates that all required affidavits or certificates of execution must be sworn or signed before or by a person authorized under the Act and the person's name must be typed, stamped or printed legibly below their signature.

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Lenders' obligations

Subsection 6(2) and Section 28 improve the integrity of the system by tightening the obligations of lenders who submit documents.

Subdivision and condominiums

Section 9 amendments make clear what is shown in the parcel register on subdivision and creation of condominiums. Section 12 mandates what is shown in the parcel registers for condos and in the condo common view

Clearer wording

Subsection 10(6) clarifies a lawyer's requirement to retain documents when submitting an AFR. Amendments to Sections 27 and 28 improve wording and organization to make the requirements more understandable for users in relation to cancellation of judgments and security interests. In addition, many of the prescribed forms have been made more user-friendly by adding directions and more accessible language.

Form 26N

Changes in Section 10 require lawyers to file Form 9 notices and related documents in the parcel register with a new Form 26N. This replaces the current requirement for these documents to be sent for filing to the Registrar General.

Textual Qualifications

The regulations provide a definition of textual qualification and set out, in Section 11, the requirements for use of a textual qualification, which have been developed in policy over time but have not previously been mandated in regulations.

Removal of prescribed forms

Form 17 is removed, as it is no longer needed due to expanded role of Form 6A. Forms 13 and 14 are removed from list of prescribed forms as they are internal for government users only. Prescribed electronic forms are removed, replaced by a flexible regulatory provision [4(2)] which will allow for future enhancements as our electronic system develops. Electronic forms are accessed through POL and will be upgraded for increased functionality over time.

CROs will no longer be available

As a result of Bill 156 changes, Form 30, certificate of registered ownership, is removed. CROs will no longer be available.

Certifying title based on adverse possession

Subsection 10(13) mandates the practice requirements when establishing title based on

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possession. If title is certified based in whole, or in part, on the basis of adverse possession, then the statutory declarations evidencing possession must be filed in the Registry of Deeds before the parcel is registered and then be listed as enabling documents in the registered interest portion of the AFR, noting the registered owner as the interest holder.

Watercourses and PDCA submissions

As a result of amendments to subsection 7(17), PDCA submitters must provide comments in the PDCA's where the property is shown in Property On-line as having a double line watercourse severing the parcel. If there is no comment, mapping staff may set the correction description flag and ask that a comment be made to acknowledge that the watercourse(s) running through the parcel does not create a natural boundary. If a large watercourse, such as the LaHave River, is contained within a parcel description, the PDCA will be rejected.

Subsection 7(18) makes clear that a lawyer may not subdivide a parcel, due to the presence of a watercourse, if the parcel has been previously created by subdivision approval.

Life interest/ life lease and PDCA submissions

While this is not a change to the regulations, we have noticed that there is a need to remind lawyers that neither a life interest or a life lease should be included in a parcel description. In the past, the only reference to such an interest was contained in the description. However, under the LRA these interests must appear as a registered or recorded interest, as applicable, in the parcel register, and mappers will setting the correcting description flag requiring them to removed, if included in the description.