

Title Searching Land Registered Parcels

1. The correct starting point for an electronic subsearch is the date of migration or the last revision of ownership of the parcel, whichever is most recent. It is the date of the most recent revision of ownership as opposed to the date of the most recent recording which is relevant. Do not mistake the “updated” date appearing in the Land Registration View for the date of the most recent revision of ownership. Often they will coincide, but this is not always the case. According to Service Nova Scotia an “update” can be triggered by any change made to the parcel, including a drafting transmittal, an AFR Bundle Reference being added to the parcel, a change in parcel location or land area, assessment revisions and other factors.
2. As pointed out by Catherine Walker in her “Certifying Title and Qualifying Title Under the Land Registration Act” paper:

Although the lawyer who certified at the time of conversion has primary responsibility for the historic title, any lawyer who reviews the contents of a parcel register has the responsibility of due diligence for that review and ought to bring forward any concern discerned with regard to the particular attributes shown on the parcel register to the Seller’s lawyer.

3. A lawyer undertaking revision or a recording has a duty to the client (including the Lender if applicable) and to the system to comply with the provisions of the Land Registration Act and other legislation and the Professional Standards. It is not enough to simply rely upon the Parcel Register and to assume that it is accurate in all respects. Each of the interests or features noted therein should be considered and examined for accuracy. For example, the identification of access as “public” does not necessarily mean that it is accurate. There may or may not be limitations upon the exercise of that access. Access which is labelled as “private” may or may not be of a nature or in the location anticipated by the client.
4. The enabling documents for registered and recorded interests should be examined to determine if they are correctly identified or summarized in the Parcel Register and/or parcel description. Do the enabling instruments contain words limiting the extent, nature, or term of an interest, or the ability to assign the same?
5. Does the parcel description coincide with the graphic and with any available survey evidence? Do the easement benefits/burdens appearing in the Parcel Register and in the parcel description match? Do these benefits/burdens correspond with those shown in the Parcel Registers of the servient/dominant parcels? Does a review of the neighbouring parcels (even non-Land Registered parcels) (and scanned survey/subdivision plans respecting the same) reveal any inconsistencies? If the description is short form, it is particularly important to review the Plan to which it refers given that it incorporates the metes and bounds by reference. Look at the MGA compliance statement as it may lead you to a plan which could otherwise go undetected.

6. Consider the extent of any easements. Does a right of way benefit extend all the way to the highway or to the Shore, as the case may be? Examine any available plan to determine the extent of the right of way. If a short-form description has been used and is preceded by a full text description, examine the full text description. Consider the possibility of a recorded interest attaching to the servient parcel at the time of the grant, thus resulting in a priority issue unless the recorded interest was subsequently released or postponed with respect to the grant.
7. You need to determine when an easement benefit was created so that you can determine if there are any recorded interests attaching to the servient parcel, thereby creating a priorities problem. If the servient parcel was subject to a Mortgage at the time the easement was granted, the easement will be subject to the security interest and will therefore be subject to foreclosure.
8. If the parcel you are searching has been consolidated, you need to determine the extent of any easements benefiting the pre- consolidation parcels. It is unreasonable to take the view that the right of way is for the benefit of the entire consolidated parcel; it may be a benefit for only a portion thereof. Accordingly, a textual qualification should be added, stating that the benefit is only for a specific portion of the parcel. Building a house on a portion of the parcel which does not have the benefit of the easement would be disastrous. Similarly, you have to consider the effect of subdivision of the dominant parcel. Will each of the infant parcels have the benefit of easements granted to the owner of the parent parcel? This may result in unreasonable expansion of the extent of the easement. The law clearly prohibits the inappropriate or unanticipated use of the benefits of the rights of way granted.
9. Consider the validity of any textual qualifications or time-limited burdens. Should they remain in the Parcel Register? Is there a good basis for their removal? If removed from the Parcel Register, they should also be removed from the parcel description, if applicable.
10. The “Details View” screen ought to be checked. You may discover a Plan which is not otherwise identified. Statutory Declarations establishing or purporting to establish possessory title or a prescriptive right are sometimes found in the Details View rather than in the Parcel Register. Sometimes, if a prescriptive easement is documented after migration, but for a period which precedes migration, the declaration enabling (documenting) will be in the Parcel Archive, not in Details. Any such Declarations should be examined to determine the extent and description of the area claimed by adverse possession and the nature and extent of the right of way which is claimed by prescription. Given the ten year window of opportunity set out in paragraph 74(2) of the Land Registration Act, the quality of the evidence contained in the Statutory Declarations should be considered so that those for whom you are acting can be advised appropriately. Ask the other lawyer for a copy of Form 9 along with proof of service or directions given to the lawyer by the Registrar General, or access the Form 26N by searching under “Non-Enabling Documents” in the Parcel Register.
11. Be on the lookout for “embedded interests”. For example, an option may be contained within a Lease. You won’t be aware of that fact unless you examine the document.

12. If the present Owner has made an assignment in bankruptcy, look for evidence on the public record showing that the Trustee has conveyed that interest or has disclaimed it. (See Garth Gordon's "Notes on Bankruptcy & Land Registration in Nova Scotia")
13. Is title based, at least in part, upon adverse possession? If so, does the description of the parcel include the area claimed by virtue of adverse possession? There are a number of instances where considerable time and effort have been devoted to documenting adverse possession, only to be followed by a description which is limited to the area to which there is paper title. Depending upon the circumstances it may be necessary to consolidate (either by Plan of Subdivision or defacto consolidation) the area to which there is paper title and that to which there is possessory title.
14. The following electronic searches should be conducted:
 - 1) Review of Parcel Register, bearing in mind the issues raised above. While in the Parcel Register look under the heading of "Parcel Relationships" for parent parcels or addition parcels and then check these under "Details View".
 - 2) The graphic. Be sure to click the "LR Parcel Shading" box to see if it reveals title, area or subdivision problems. As well, click on the "Topo" box as this is a useful starting point in terms of identifying access roads and utility lines which may affect title to the parcel.
 - 3) Search by Name for Non-LR Documents in Process for Registered Owners and Purchasers
 - 4) Search by PID for Documents in Process on Land Registration parcels
 - 5) Search for non-Land Registration Documents in Process
 - 6) Search Plans in Process
 - 7) Judgments

Once the parcel is a land registered parcel, when searching judgments one only searches out of the current registered owner or owners (and of course the Buyer if acting for the Buyer). The authority for this search process is found at Regulation s.23(2). Prior to the May 15, 2005 amendment it was not clear whether it was necessary to execute a judgment search for the vendor. If you come across a property that was migrated prior to that date you may want to conduct a judgment search on the vendor at the time. Query whether parcels converted to the Land Registration system prior to May 15, 2005 require a full 20 year search of the registered owner as it appears this amendment is not retrospective.

Authority:

LRA Administration Regulation

23(2) A parcel register is deemed to be a complete statement of all judgments recorded in the registration district which are, or may be, a charge upon the registered interests of the registered owner and any predecessor in title at the time of registration of, if subsequently revised, at the time of the last revision of the registered ownership of the parcel.

Professional Standard 3.5 (revised October 23, 2009)

When a lawyer searches for judgments after the Land Registration Act comes into force and the search is of parcels that are registered under the Act, the lawyer must search for judgments against the names of:

- a. the purchaser; and
- b. the owner whose title is being searched.

When a lawyer searches for judgments after the Land Registration Act comes into force and the lawyer identifies a judgment that is recorded against a debtor whose name is not materially different than the name of the owner or the purchaser, the lawyer must determine if the judgment affects the title being examined.

15. When searching judgments it is generally true that “less is better”. For example, searching judgments in the name of “James Smith” will not identify judgments against “Jim Smith”. Frank DeMont’s flowchart is a useful reference.
16. Conduct at least two electronic searches. The first should be done when the file is opened, and another one should be done as of the time of closing.
17. It is suggested that the post-LRA Abstract should consist of at least the following:
 - Land Registration View
 - Graphic
 - Any available survey plan/location certificate
 - Copies of each of the screens viewed in the course of the electronic searches

18. Think of the Abstract thus compiled as a snapshot in time. The Parcel Register, the description and the graphic may be revised from time to time. Consolidation or subdivision may occur. Sometimes neighbouring parcels which are dominant or servient tenements are subdivided or consolidated and this may cause confusion with respect to the identity of the servient/dominant parcels. Retirement of a PID assigned to a dominant/servient parcel can be even more perplexing when viewed at a later date. (To access information respecting a retired PID, go to the "Property Query" screen, insert the retired PID, and select "any status" from the menu in the Status field in the lower right side of the screen. Alternatively, you can submit the name of the Owner at the time the PID was retired, instead of submitting the PID.) Perhaps the only way you can prove that to which you have certified is the retention of an Abstract or record of the parcel and its characteristics as of the date of the revision/recording. If you see something and intend to rely on it whether in your client's or another Parcel Register, print it off and put it in the file as there is no guarantee it will be there the next time you look.
19. While on the one hand you are not required to re-invent the wheel by again searching the Registry of Deeds records, there is an obligation to probe the data set out in the Land Registration View and in the parcel description, to determine if they are truly reflective of the nature and extent of the various interests.
20. Searches are required and therefore Abstracts should be compiled for any revision/recording. A lawyer may be able to accept reduced responsibility when effecting a conveyance of a non-LRA parcel. In that case, the lawyer may be relieved of the obligation of certifying title. However, once the parcel has been migrated, it makes no difference if the transfer is one for which there is no valuable consideration; the lawyer will be required to do the same searches and will be held to the same standard as if it were a transaction for valuable consideration. The lawyer cannot contract out of the obligation to carry out the required inquiries and to certify to the system.

The following scenarios involving migrated parcels are bound to cause distress on the part of unsuspected Buyers and their Lenders and may ultimately cause grief to the revising lawyer, even in the absence of negligence:

- A. The parcel access label is “public”. The only road frontage is on 100 series highway, access to which is prohibited.
- B. The parcel is in “cottage country”. The Parcel Register includes an easement benefit and identified a servient parcel. The parcel description appears to include access to the Shore. Upon closer examination the right of way does not extend all the way to the Shore, as the servient parcel is separated from the Shore by a third parcel.
- C. The parcel is in “cottage country”. The graphic would suggest that there is water frontage. However, examination of the parcel description reveals that the place of beginning is a point 100 feet from the top of the bank at Shore.
- D. Your client is buying two separate LR parcels. Examination of the plan of subdivision reveals that the two were consolidated prior to migration, and thus only a single parcel exists. Thus the opportunity to develop the two parcels independent of each other is lost or diminished.
- E. The parcel is a consolidation of two previously existing lots. The Parcel Register includes an easement benefit giving access to the Shore or to the public highway. Examination of the document enabling the easement reveals that only a portion of the consolidated parcel enjoys the benefit of the right of way. Construction of a dwelling on that portion of the consolidated parcel which does not enjoy the benefit of the easement may result in disappointment.
- F. The Parcel Register identifies an easement burden for the benefit of a single parcel. Examination of adjacent parcels identifies a second dominant parcel, thereby increasing the burden on your parcel.
- G. The Parcel Register does not reveal any burdens. However, examination of adjacent parcels reveals that each of them is subject to restrictive covenants. Examination of the Deed effecting the first conveyance of the parcel confirms that it was made subject to restrictive covenants.
- H. The Agreement of Purchase and Sale identifies a single PID. Review of the graphics of this and adjacent parcels identifies a second parcel owned by the same Seller. The parties contemplated that the entire area covered by the two parcels is included in the purchase/sale. The realtors and the Seller’s lawyer had not come to that realization.
- I. Past conveyances had included a fractional tenant in common interest in the common areas consisting of access roads, water frontage and backlands. The tenant in common interest has not been migrated nor has it been presented as part of the conveyance.

- J. The parcel is separated from the public highway by a railway or former railway. Access is said to be by prescription, notwithstanding the limitations upon the ability to obtain a prescriptive right over railway lands.
- K. The Form 24 relating to the Seller's Deed identifies three parcels; however, only two appear in the Deed. The Buyer is expecting to buy three parcels. The Seller simply doesn't have title to the third parcel as someone neglected to add it to the Seller's Deed.

Our clients have high expectations; often unrealistically so. However, I believe that our clients have the right to expect that we will conduct basic due diligence with a view to averting disasters such as those noted above.

Working in the LRA environment is challenging and at times frustrating. We all encounter Parcel Registers and results which don't reflect what was intended or what ought to have been intended. However, we have the ability to make the system better. I would suggest that when we do a revision or recording one of our primary objectives should be to leave the Parcel Register in an "equal or better" condition than that which existed prior to our involvement.