Canadian Bar Association – Midwinter 2019

RANTS & RAVES FROM THE REGISTRAR

Serge Gauvin – Registrar General of Land Titles

February 8, 2019 – Fredericton, New Brunswick
Registration in St. Stephen, under the *Registry Act*

- If you are submitting a document for registration purposes that is not parcel-specific, please indicate the county in which you want it registered.
- Otherwise, we will register the document in Charlotte County.
- Examples include Judgments, Powers of Attorney, Bankruptcies, etc…
Registration in St. Stephen, under the *Registry Act*

- When you submit a document for registration under the *Registry Act*, you need to include a Schedule « A » with the document, *in addition* to the PID.
- If not, the document will be registered, but will not be specifically coded against any PID.
- Example: Assignment into the Trustee in Bankruptcy – if you want it registered against the PID under the *Registry Act*, you must include a Schedule « A » description.
Seal enhancement

• 21(3.2) & (3.3) of Regulation 83-130 of LTA and 2(4) & 2(5) of Regulation 84-190 of Registry Act

• If an instrument with a crimped or raised seal affixed to it is to be filed or registered under the Act by submitting a digitally scanned image of the instrument, **the seal must be darkened or otherwise sufficiently enhanced so that the seal may be identified.**

• A registrar **may refuse to file or register an instrument** with respect to a digitally scanned image of an instrument **if the seal cannot be identified by the registrar.**
Seal – decision of Deputy Registrars

• We stand behind their decision to reject a document if in their opinion, the seal is not sufficiently enhanced to be identifiable
• They have been told NOT to contact us on issues with the seal
• Submitters will also be told not to contact the RG’s office on such rejections
Scanning colours

- Our scanning capabilities do not involve colours yet.
- If you wish to identify an easement as part of a schedule to a paper document, please cross-hatch instead of colouring, as the scanning will not pick up the colour.
- Accordingly, we will reject a document that identifies an interest outlined in colour as an attachment.
Trust documents, except Estate of deceased and bankruptcies

- Does not apply to Form 41, estates of deceased individuals and bankruptcies
- Trustee has to sign declaration stating that the terms of the trust have been complied with
- Refer to Directive 2001-010
- This is a paper submission without the necessity of an exemption from the RG’s Office.
Conveyance by entity holding in Trust

• When a Trustee IN TRUST (for the owner of an RRSP as Mortgagee as well) discharges a mortgage, or transfers in a mortgage sale where they foreclose, the conveyance has to be a paper submission, as they need to comply with section 58 of the LTA, as per directive 2001-010, with a statutory declaration stating that the terms of the trust have been complied with.
Life Estates under LT

- You can never create a life estate by the submission of a transfer by E-Submission.
- To create or to get ride of a life estate under Land Titles, the Transfer has to be submitted in paper format, as it limits the interest transferred and is, therefore, automatically exempted from E-Submission.
CLE as to effect of doc registered in the past

• If you omitted to instruct to remove encumbrances as a result of a mortgagee’s Transfer (or other instruments), then we will ask that you provide the RG’s Office with an original certificate of legal effect.

• That CLE will state that the effect of the registration of document number such and such was to remove the encumbrances named therein.

• This CLE will be attached to Form 52 for rectification purposes.
Discharge of Mortgage by Estate of deceased Mortgagee

- Form 41 does not apply, as Form 41 can only be used for ownership, not for encumbrancers.
- Direct the question to the office of the Registrar General.
- We will advise you to apply for an exemption to register in paper format, with a copy of the Will attached to support the signature of the personal representative on behalf of the deceased.
Contemplate joint tenancy mortgages

• When mortgagees are individuals, contemplate making the mortgage a joint tenancy mortgage.
• The effect will be that when one mortgagee dies, the other mortgagee can discharge the mortgage by himself/herself.
• All you need is to attach a proof of death for the first joint mortgagee to die.
• You will need an exemption to register in paper format.
If mortgage not in joint tenancy

• Then make sure that each mortgagee has a Will that can be attached to the discharge of mortgage if either individual mortgagee dies before the mortgage is paid out

• Always think about the discharge in case of the death of one of the mortgagees, or both
Mortgage discharged in error

- When a mortgage is discharged in error by a financial institution, the mortgage will have to be re-registered, as there is no error on title as far as we are concerned – it was discharged.
- If the re-registration changes the priority of the mortgage in question, then you may have to register a postponement agreement, or obtain a Court Order to re-establish priority.
- At the end of the day, we remind you that we are registrars, not judges, and we will not rectify to put the mortgage back on.
- See documents 35156968, 34692435 and 37338267 in terms of examples of Orders by the Courts to cancel the effect of a discharge of mortgage and to re-establish a mortgage as an encumbrance on title.
Withdrawal of judgment

• The judgment to be withdrawn may be a re-registration of the original, within 5 years of the registration of the initial judgment

• In such cases, when you submit Form 36.1, please instruct staff to remove the initial registration as well, or insert the registration particulars for both registrations on Form 36.1.

• If you omit to do this, we may require the registration of Form 36.1 to remove the initial judgment as well.
Typos and changes of civic address

• The Office of the Registrar General no longer deals with typos or changes of address or any kind
• See Directive 2001-008 for changes of name, and Directive 2001-009 for changes of address.
• If your scenario fits Directive 2001-008, use the Directive.
• Directive 2001-009 applies in every case for changes of address
• For typos in the names of owners and encumbrancers, please contact St. Stephen
Old mortgage on AFR – to reflect it or not

- See section 18 of our practice standards
- Is it a valid outstanding encumbrance or not?
- If it is reflected on title as an encumbrance, we will consider it a valid encumbrance and we will require a discharge of mortgage to remove it, or an application to Court pursuant to section 38.1 of the Property Act to have it removed.
- At the end of the day, we remind you that we are registrars, not judges.
PDBA exemptions – 10.1(4)

• To associate 2 descriptions with one PID, or to redescribe a parcel to make it more clear and logical – please send the request for exemption to our mappers – we have a communique online to that effect

• To modify an existing description, or to associate the benefit of a right of way by reference to a plan, please send the request to the RG’s Office.
Standards – section 27 exemptions

• To associate a benefit statement by plan where it was not created by the registration of an easement
• If the servient tenement is under LT, your PID has to be an encumbrancer on that CRO
• The right of way to your lot must leave a public right of way to reach your lot – it can be a combination of plans from the public road to your lot.
• If the servient tenement is not under LT, we only worry about the third bullet above
• We do not grant exemptions, on the private right of way, based on prescriptive behaviour, as the owner of the servient tenement may not agree that there is a prescription period established
Once administrative consolidation has occurred

- 10.4(1) of LTA – once two or more parcels bear the same PID as a result of the consolidation of these parcels, the parcel constitutes one parcel for the purposes of subdivision within the meaning of the *Community Planning Act*.

- Accordingly, any further subdivision of this PID has to have the stamp of approval from a regional services commissioner, either via an approved Schedule « A » description, or by a subdivision plan.
Administrative Consolidation under LT

- Financial encumbrances have to be the same on all parcels to be administratively consolidated
- There are no exceptions or accepting undertakings to do so – we strictly comply with section 7 of Regulation 2000-40
- This does not apply to non-financial encumbrances, such as easements, leases or restrictive covenants
Administrative Consolidations

• If you want a mortgage from one PID to be an encumbrance on the other PID to administratively consolidate, you have to amend the mortgage from one PID to have it reflected as an encumbrance on the other PID.

• Lately, there have been attempts to convince the RG’s office to rectify to put the mortgage on the other PID as an encumbrance in order to administratively consolidate – this will never happen, as the mortgage was never registered on the other PID to start with.
Communication with RG’s Office

- Always provide a PID with your E-Mail
- Please do not provide a CRO, we never look at it and you are scanning for no reason
- **Please do not provide us with a Form 52,** we never use it and we prepare our own – unlike a judge of the the Court of Queen’s Bench, we do not ask that you prepare or provide same.
Rectifications

- Only the LT owner can sign Form 49
- Form 49 only to be used to **add** encumbrances, not to **remove** encumbrances
- **We need Form 44 or Form 45 with it**
- Please do not send Form 49 to the Registry Office – it will be returned to you with instructions to forward it to the office of the Registrar General of Land Titles at 985 College Hill Road, P.O. Box 1998, Fredericton, N.B., E3B 5G4. This has been communicated several times to subscribers.
We will never say this enough but here it goes again: please look at the resulting CRO following every registration under Land Titles to make sure that what you registered is how you want it to look on title. If there is a discrepancy, please advise the Registry Office immediately and they will make the correction.

Staff will escalate to the Registrar General’s Office if need be.
Original Wills with or without Form 41

- It is the exception to the rule that all paper documents can be submitted by pdf format to St. Stephen.
- As per subsection 25(2) of the *Registry Act*, a Probate Court Judge may ask that we produce the original at any time, from the Registry Office, for probate purposes.
- In other jurisdictions, you cannot submit an original will for registration purposes in the land registry, as the will has to be probated.
Notarial Wills from Quebec or South Africa

- Subsection 23(3) of *Registry Act*
- Notarized certified copy obtained – you will not get the original from these jurisdictions
- Affidavit from the officer with whom the Will is deposited that such will is **valid** and **subsisting** under the laws of those jurisdictions
- Accompanied by an affidavit of death of the testator
- The same applies for Form 41 under the LTA, where that information has to be attached as well, since you do not receive the original.
How we react to the registration of POA’s

- It is registered as an encumbrance in the name of the attorney as the individual encumbrance holder.
- It will not be registered as an enabling instrument for the owner with the « In Trust » qualifier.
- The particulars of the registration of the power of attorney in question will appear in the authentication field of your E-Sub transfer.
- Please remember to instruct to remove the POA upon submission of your E-Transfer.
Not removed by Mortgagee Transfers under LTA

- Certificates of pending litigation that are not related to mechanics’ liens
- Liens for the payment of condo fees under the *Condominium Property Act*
- Notices of Security Interest
- Various other statutory liens that are in priority to the mortgage – employee liens
PID specific discharges of mortgage

- A discharge of mortgage under the LTA only discharges the description associated with the PID upon submission of the discharge of mortgage.
- Although it is deemed to be a full discharge of the mortgage, it does not discharge anything else.
- Even if a discharge is called a partial discharge of mortgage, it is always a full discharge of the PID and its associated description at the time the discharge of mortgage is submitted for registration purposes.
Reimbursements for overpayment of transfer tax

• Please indicate who the cheque is payable to once it is issued by the Department of Finance
Non-standard forms under the LTA

- If there is a prescribed form, use it
- Registry forms vs Land Titles forms
- If you use a prescribed form as a starting point to create a non-standard document, please remove references to the form number and sections of the Act which don’t apply
- Land Titles basic requirements Naming Convention names
- Civic address
- LT proof of execution
- No Schedule A description
- CLE
Form 14 for easements

• If you do not use Form 14 for an easement created on a servient tenement that is a Land Titles parcel, we will reject your document, as there is a prescribed form for easements.

• All practitioners should know this after 19 years of Land Titles.
Bilingual Transfers on Form 13

• If you prepare a transfer for submission purposes in paper format, please comply with the statutory form – namely that it has to be in bilingual format.

• Otherwise, it will be rejected, with no exceptions.

• The requirement for a bilingual transfer has been the law for the past 10 years.
Execution of docs under the Registry Act

• Section 44 of the Registry Act - a commissioner of oaths cannot witness the signature outside New Brunswick
• It has to be in front a Notary Public
• And no, lawyers from Quebec are not Notaries.
• If Form 44 is used under Land Titles, it has to be in front of a Notary in another jurisdiction, it cannot be signed by lawyer/non-Notary from Quebec.
Leasehold mortgages

• Can be submitted in paper format, as it limits the interest mortgage

• You do not need an exemption to register in paper format.
Expired Leases under LT

• Section 16 of Regulation 83-130 of LTA
• If a lease contained Option to renew, it cannot be removed by rectification even if the option has expired
• Either register a Surrender (Form 22) or obtain a statutory declaration from an owner that the lessee vacated the premises on such and such a date and that no lease payments have been made or accepted since.
Surrenders of lease under Land Titles

• If there is a leasehold mortgage attached to the lease to be surrendered, have the leasehold mortgagee sign Form 22, and that will have the effect of removing the leasehold mortgage as well.

• Otherwise, a discharge of mortgage will have to be registered after the Surrender of lease is registered.
St. Stephen

- A communique was sent to all lawyers by Eric Nadeau in May 14, 2018. See following link:
- [https://www.pxw1.snb.ca/snb7001/b/pdf/PLRO_BPEF_20180514.pdf](https://www.pxw1.snb.ca/snb7001/b/pdf/PLRO_BPEF_20180514.pdf)

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