

Land Registration Administration Regulations
made under Section 94 of the
Land Registration Act
S.N.S. 2001, c. 6

Revised Aug 4/2020

N.S. Reg. 207/2009 (April 29, 2009, effective May 4, 2009)
as amended by N.S. Reg. 189/2010 (November 22, 2010, effective December 15, 2010)

Rationale appears in blue font

Comments by Ian MacLean appear in green font

Citation

1 These regulations may be cited as the *Land Registration Administration Regulations*.

Definitions

2 (1) In these regulations,

“Act” means the *Land Registration Act*;

“AFR” means an application for registration in accordance with Section 37 of the Act;

“authorized lawyer” means a qualified lawyer who is subject to the Property Online user agreement and pre-authorized debit agreements required under Section 3;

“authorized lender” means a chartered bank, trust company, credit union or Provincial government lender, that is subject to the Property Online user agreement and pre-authorized debit agreements required under Section 3;

“authorized surveyor” means a practising land surveyor licensed under the *Land Surveyors Act* who is subject to the Property Online user agreement and pre-authorized debit agreement required under Section 3;

“benefit” means an appurtenance to a registrable or registered interest in a parcel;

“burden” means a restriction or limitation on the use and enjoyment of a parcel that attaches to a registrable or registered interest in a parcel;

“Condo Common View” means the information which is displayed electronically in Property Online which is linked to a condominium corporation registered under the *Condominium Act*;

“Department” means ~~Department of Service Nova Scotia and Internal Services; Service Nova Scotia and Municipal Relations;~~

Updated department name to our new department name

Inconsequential

“dual-purpose document” means a single document that affects 2 or more parcels, 1 or more of which is registered under the Act **or a single document that is recorded more than once, at the same time, in the same parcel register, to enable multiple interests.;**

This definition now includes a document that needs to be recorded more than once to add multiple interests to the same parcel register (i.e. a deed that conveys a licence in addition to a fee simple interest).

Non-controversial

“electronic document submission” means submission of a document using Property Online;

“Land Information Network-Nova Scotia” or “LINS-NS” means the Province’s electronic database in which all land-related information and documents under the Act and the *Registry Act* are maintained;

“lender” means a chartered bank, trust company, credit union or Provincial government lender;

“non-enabling section of a parcel register” means the section of a parcel register in which documents are recorded which do not enable an interest in the parcel but are changes of address, written directives or notices under these regulations, or provide necessary information concerning the extent of the parcel;

Added this definition to clarify the purpose of this section of the parcel register and its meaning.

Defacto consolidations and crown releases would also fall under this category. I don't see this as being controversial, unless I am missing something. On the one hand the existence of the definition might be perceived as creating a new limitation, but on the other hand the words “or provide necessary information concerning the extent of the parcel” helps address this concern. It may be useful to review the “POLICY FOR COMBINED DOCUMENTS FILED AT THE LAND REGISTRATION OFFICE” (Revised June, 2018).

“parcel description certification application” or “PDCA” means an application in accordance with Section 7 to confirm the legal description of a parcel and other related information and to provide evidence and certification that the parcel was created by a subdivision that complies with, is exempt from or is not subject to the subdivision provisions of Part IX of the *Municipal Government Act*;

Definition of “parcel description certification application” amended: N.S. Reg. 189/2010.

“PID” means parcel identification number;

“Property Online” means the Province’s online real property information system that provides Internet browser-based query access to Provincial mapping and other land-related information and electronic access for submitting documents under the Act and the *Registry Act*;

“registration and recording particulars of a document” means the year the document was registered or recorded and the document number or the book and page reference for the document;

“short form legal description” means a legal description that describes a parcel by referring to a plan of survey or subdivision that has been registered with an instrument under the *Registry Act*, filed under the *Registry Act*, or registered or recorded under the Act and includes all of the following:

- (i) the unique identifier for the parcel on the plan,
- (ii) the document number or plan reference for the plan as assigned by the land registration office,
- (iii) the registration district where the parcel is located;

“textual qualification” or “TQ” means a statement in the textual qualification section of the parcel register which provides

- (i) a qualification of the lawyer’s certification of title,
- (ii) an explanatory note,
- (iii) a reference to title information or documentation, or
- (iv) a reference to an interest enabled by statute or common law;

“user number” means the unique identification number given to a Property Online user for the purpose of document submission.

(2) For the purposes of the Act,

“addresses of the parties” in subsection 67(1) of the Act means a complete address at which a person is able to receive information, including notices, by mail;

“mortgage” in subsection 37(3) of the Act and clause 46(1)(c) of the Act includes any amendment to a mortgage or agreement with the lender that increases the amount of the obligation secured, increases the amount available for borrowing under a mortgage, adds an additional parcel or permits additional advances up to the original amount secured, but does not include any of the following:

- (i) amendments other than those included under this clause,
- (ii) an assignment,
- (iii) a mortgage of a leasehold interest,
- (iv) an advance on an existing security interest that secures present and future advances up to the original principal amount secured;

“municipality” has the same meaning as in the *Municipal Government Act*;

“non-resident” means any of the following:

- (i) an individual who resides outside the Province for 183 days or more in a calendar year, and includes a person who intends to reside outside the Province for 183 days or more in the present calendar year or the next

calendar year,

- (ii) a body corporate
 - (A) whose head office is not in the Province, or
 - (B) in which the majority of the issued and outstanding shares are beneficially owned by non-residents, unless the body corporate is registered to do business in the Province and owns or leases an office, plant, factory or other structure in the Province for use by its business,
- (iii) a person who acquires a parcel for or on behalf of an individual or body corporate referred to in subclause (i) or (ii);

“party” in subsection 79(1) of the Act means the person or persons who collectively make up one side of the transaction evidenced by an instrument;

Defined party to clarify that this includes ALL of the individuals on one side of the instrument

For ease of reference I have set out section 79(1) of the Act.

Proof of execution

79 (1) A registrar shall accept for registration or recording every instrument that may be registered or recorded pursuant to this Act that includes a certificate of execution to the effect that

- (a) at least one party executing the instrument has sworn or affirmed that the party executed the instrument;
- (b) the person who signed the instrument as a witness has sworn or affirmed that at least one of the parties to the instrument signed it in the presence of the witness; or
- (c) at least one of the parties to the instrument signed it in the presence of a person authorized by this Act to sign the certificate of execution.

This allows us to continue the practice of recording mortgages, amendments, assignments, releases, and so on, where the signature of only one “side” of the instrument is present/sworn.

“person’s name” in subsection 66(8) of the Act means

- (i) if a parcel is registered under the Act, the name of the registered owner of the registered interest as shown in the parcel register, or
- (ii) if a parcel is not registered under the Act, the name shown on the relevant instrument registered under the *Registry Act*;

“Provincial mapping” means the system of geographical representation of parcels created and maintained as part of the land registration system established under the Act.

- (3) In the Act and these regulations, a reference to a provision of the *Municipal Government Act* includes a reference to a provision of the *Halifax Regional Municipality Charter*, relating to the same subject matter, to the extent that it relates to property located in the Halifax Regional Municipality.

Subsection 2(3) added: N.S. Reg. 189/2010.

Property Online

- 3 (1) Property Online is prescribed as the system through which persons authorized in this Section may query information or submit documents that are registered or recorded under the Act.
- (2) LIN-NS is prescribed as the system in which all documents that are registered or recorded under the Act are maintained.
- (3) To be an authorized lawyer, a qualified lawyer must
- (a) be a party to a current and valid Property Online authorized lawyer user agreement with the Minister; and
 - (b) be authorized under a current and valid Property Online pre-authorized debit agreement between their law firm and the Minister, **unless they are exempted due to the nature of their practice, under a written approval from the Registrar General.**

Included an exemption clause for situations where it would not be practicable for certain lawyers to obtain a Pre-Authorized Debit agreement for Property Online.

I don't see this as being controversial.

- (4) To be an authorized lender, a lender must be a party to the following current and valid agreements with the Minister:
- (a) an authorized lender user agreement; and
 - (b) a Property Online pre-authorized debit agreement.
- (5) If an authorized lawyer or authorized lender uses a separate debit account for payment of electronic document submission fees, they must be a party to an additional current and valid pre-authorized debit agreement for that account.
- (6) To be an authorized surveyor, a surveyor must be a party to the following current and valid agreements with the Minister:
- (a) a Property Online parcel certification user agreement; and
 - (b) a Property Online pre-authorized debit agreement.
- (7) Except as provided in subsection (8), to query information in Property Online, a person must be a party to, or be authorized under, the following current and valid

agreements with the Minister:

- (a) a Property Online query user agreement; and
- (b) a pre-authorized debit agreement, **unless they are exempted, due to the nature of their business, under a written agreement from the Registrar General.**

Included an exemption clause for situations where it would not be practicable for certain query users to obtain a Pre-Authorized Debit agreement for Property Online.

I don't see this as being controversial.

- (8) A person may query information in Property Online at a land registration office without a query user agreement or pre-authorized debit agreement if they pay the applicable fee prescribed under the *Land Registration General Regulations* made under the Act.

Prescribed forms

- 4 (1) The forms listed in the following table and as attached to these regulations are prescribed to be used in the administration of the Act for the purposes stated and must include a certificate of legal effect in the manner prescribed in the form as required:

Form No.	Purpose of Form	Certificate of Legal Effect Included
1	to request a PID assignment	no
2	to submit a PDCA electronically	no
5	to provide a declaration by the registered owners of a parcel on their residency status and whether the parcel is occupied without permission	no
6	to submit an AFR electronically	yes
6A	to correct errors or omissions in information previously submitted with a certificate of legal effect	yes

8	<p>to give notice to a parcel owner as required under Sections 14, 15, 16, and 18</p> <p>The requirement for notice in Form 8 when adding a benefit or burden to an affected LR parcel (flip side) has been removed. The reasoning is that now, in order to add a benefit or burden to an affected flip side parcel, the document must either be executed by the affected owner or must include their written consent. The previous regulations were written in a manner that required the lawyer to add the flip-side benefit or burden to an LR parcel, where the affected owner may not have been a party to the document , which is why notice was required to be given to that owner in Form 8.</p> <p>Sections 15 and 18 have been repealed (see those sections for details).</p> <p>This is in line with the LRO’s tightening of the addition of an overriding interest procedure. For a period of several years at least some Registrars permitted the establishment of a prescriptive right of access affecting less than 20% of the area of the migrated servient parcel. Whether or not this was in accordance with the “Guideline 24 Addition of Overriding Interest” is food for thought. In any event that door has been closed, as the consent of the affected owner must now be included.</p>	no
8A	to register notice under the <i>Registry Act</i> as required under Section 14	no
9	to give notice to an occupier or the most recent owner as shown on the consolidated index under Section 10	no
10	to give notice of crystallization of a floating charge in a debenture that affects a parcel registered under the Act	no
15	to give notice requiring the registrar to cancel the recording of a security interest in accordance with subsection 60(2) of the Act	yes
15A	<ul style="list-style-type: none"> • to give notice as required under Section 63 of the Act, requiring a registrar to cancel the recording of a recorded interest or judgment that is recorded in a parcel register, and • to provide proof of service of the notice to the holder of the interest or judgment 	yes

16	to renew the recording of a judgment in accordance with subsection 66(5) of the Act	no
19	to record a certificate of <i>lis pendens</i> against a parcel registered under the Act in accordance with Section 58 of the Act	no
20	to update the name or address of a judgment debtor or creditor in accordance with subsection 26(3) Added the ability to update the creditor name or mailing address with a form 20 I don't think this is controversial, but I don't act for creditor-clients.	no
21	<ul style="list-style-type: none"> • in accordance with Section 22 of the Act, to register a change of name of an owner of an interest in a parcel register, • to remove a deceased joint tenant as owner of a parcel registered under the Act in accordance with Section 27 of the Act, or • to correct the misspelling of the name of an owner of an interest in a parcel register 	yes- to correct misspellings
22	to change the mailing address in a parcel register for <ul style="list-style-type: none"> • a registered owner or recorded interest holder, or • occupier of lands owned by the Nova Scotia Farm Loan Board 	no
24	to change a registered interest and appurtenant interests or other interests and information in a parcel register, in accordance with Sections 29 to 32 and 37A of the Act	yes
26	<ul style="list-style-type: none"> • to record an interest in a parcel register, in accordance with Section 47 of the Act • to record a power of attorney or revocation of a power of attorney 	yes
26L	to enable a lender, or a lender's authorized agent, to record a mortgage or mortgage-related document, to which the lender, or a predecessor organization, is a party	no
26N	to file a Form 9 and written directives in a parcel register under Section 10	no
27	to request cancellation of a recorded interest	yes
27L	to enable a lender, or a lender's authorized agent, to record a release of a mortgage or mortgage-related document, to which the lender, or a predecessor organization, is a party	no

28	<p>to record any of the following relating to a parcel registered under the Act:</p> <ul style="list-style-type: none"> • a plan, boundary line agreement, statutory declaration for a deemed consolidation under Section 268A of the <i>Municipal Government Act</i> or to evidence the basis of an exemption to a subdivision requirement • an instrument of subdivision or repeal of subdivision • a condominium declaration, condominium plan, initial condominium bylaws, or termination of condominium <p>Included declarations that evidence the basis of an exemption to a subdivision requirement.</p> <p>This would include the registration of a declaration or other document effecting subdivision/consolidation pursuant to section 268(2)(a) of the Municipal Government Act, where each of the resulting parcels has an area in excess of ten hectares.</p>	no
45	<p>to add, confirm, delete and correct the interests, textual qualifications or parcel access type that are either not shown in the parcel register or have been placed in, or removed from, a parcel register on subdivision or registration of a condominium declaration, in accordance with subsection 13(5) of the Act and Section 9</p>	yes
46	<p>to record a certificate of judgment in the judgment roll</p>	no
47	<p>to record a certificate of satisfaction relating to a judgment in the judgment roll</p>	no
48	<p>to record in the judgment roll, a full or partial release of a judgment signed by the judgment creditor in the judgment roll and/or to cancel the recording of a judgment in a parcel register</p> <p>Added the ability to cancel a recording of judgment in a parcel register on this form, which previously had to be submitted with a Form 48A. If a full or partial release had to be recorded in the judgment roll and in a parcel register to remove a judgment, submitters had to complete two forms to do that (48 & 48A). Now, they will have the ability to do both with one form, eliminating the need for a Form 48A.</p> <p>This appears to be beneficial.</p>	no/ yes

48A	removed Eliminated this form because it was merged with Form 48. See rationale and commentary in 48 above.	yes
48B	to record a judgment-related document in the judgment roll and in a parcel register	no
49	removed Eliminated this Form as all corrections can be made with a form 6A I have not used a Form 49 nor have I seen one used in quite a number of years. Elimination makes sense to me, given the fact that we rectify using Form 6A.	yes
50	removed Eliminated this Form as the document can be registered in the Registry of Deeds with a form 44. The stated purpose of this Form was to “update a parcel register respecting the transfer (for no value) of a tenant in common interest which is not registered under the Land Registration Act”. The Form was useful for that purpose and I suppose there is no harm in replacing it with Form 44 except that we will now have to remember to use Form 44 rather than the long-established practice of using Form 50.	no

Subsection 4(1) amended: N.S. Reg. 189/2010.

- (2) To the extent permitted by Property Online, electronic forms in Property Online that correspond to the forms prescribed in this Section are prescribed for the same purposes and in substantially the same form, but an electronic form is not required to contain all the options and datafields available on the corresponding non-electronic form.
- (3) A form that includes a certificate of legal effect may be submitted only by an authorized lawyer, and must be signed by the authorized lawyer who submits the form.
- (4) Directions and explanations included in a form prescribed in this Section are binding but may be deleted when the form is submitted for filing, registering or recording at a land registration office.
- (5) The place of execution or a jurat in a form prescribed in this Section may be altered when the form is executed.
- (6) Any reference to location or place of residence in the Province contained in a form prescribed in this Section may be altered when the form is executed.

- (7) For a parcel that is owned by more than 1 person, any of the following may sign and submit a form, other than Form 5 as provided in subsection (8), that is required to be signed by the owner or registered owner of the parcel:
 - (a) any registered owner;
 - (b) any person who is entitled to be registered as an owner of a registrable interest in the parcel.
- (8) Except as provided in subsection 10(7), Form 5 must be signed by every owner of a registered interest in the parcel that is described in the form.

Document submission requirements

- 5
- (1) A document that is submitted for registration or recording must be submitted together with the form prescribed for that purpose in Section 4, with all required fields completed, and the fee prescribed under the *Land Registration General Regulations* made under the Act, if any.
 - (2) The submitter is responsible for the accuracy of all of the information required under subsection (1) and a registrar is entitled to rely on the information submitted in processing a document for registration or recording.
 - (3) Subject to subsections (4) and (5), a document that is submitted non-electronically for registration or recording must be an original of the document or a copy of the document that is certified to be a true copy of the original by a court of competent jurisdiction or a registrar.
 - (4) A document attachment or plan that is submitted non-electronically for registration or recording that is larger than 11 in. x 17 in. must be an original of the document and be submitted together with 1 of the following:
 - (a) a duplicate original copy;
 - (b) a copy that is certified to be a true copy of the original by a person authorized under the Act to sign a certificate of execution.
 - (5) A dual-purpose document that is submitted non-electronically for registration or recording must be an original of the document and be submitted together with a copy or copies, as applicable, that are certified to be true copies of the original by a person authorized under the Act to sign a certificate of execution.
 - (6) ~~Documents that are submitted for registration under the *Registry Act* must be submitted separately from documents that are submitted for registration or recording under the Act, and payment of registration fees under the *Registry Act* must be made separately from payment of fees for registration or recording under the Act~~

Repealed

Removed the requirement to pay separately for documents submitted for recording under the LRA and the *Registry Act* and to submit documents separately for recording under both systems.

I assume this means we no longer have to provide a certified copy in addition to the original of the document, if it is a dual purpose situation.

- (7) To record a plan of subdivision as exempt from the approval requirements under the *Municipal Government Act*, a submitter must provide all of the following, either on the face of the plan or in an attached affidavit:
 - (a) a clear statement of the exemption relied upon and the facts that support the exemption;
 - (b) evidence of the consent of the registered owner.
- (8) A document that relates to a parcel registered under the Act must incorporate the legal description for the parcel by stating one of the following:
 - (a) the full text of the legal description as set out in the parcel register;
 - (b) the short form legal description as set out in the parcel register;
 - (c) the PID for the registered parcel, as at the date of registration or recording.
- (9) A document that is submitted non-electronically for registration or recording must
 - (a) be typewritten in an ink that is not green or red and that remains visible when photocopied or scanned; and
 - (b) remain legible when photocopied or scanned.
- (10) A document may not be registered or recorded unless any required affidavit or certificate of execution has been properly sworn or signed before or by a person authorized under the Act to take the affidavit or sign the certificate and the authorized person's name has been typed, stamped or printed legibly below their signature.

Submitting documents electronically

- 6 (1) To the extent permitted by Property Online, an authorized lawyer must submit a document electronically for registration or recording in a register or roll, that has been established under the Act.
- (2) Despite subsection (1), an authorized lawyer may submit a document non-electronically if the authorized lawyer meets all of the following criteria:
 - (a) ~~they do not have access to high speed Internet service; they are affected by ongoing technical issues which prevent electronic submission;~~

Most authorized users now have high speed internet capabilities, however this provision still permits an exemption for other ongoing technical issues which may affect a user's ability to submit documents electronically.

Non-controversial.

- (b) they have obtained the prior written approval of the Registrar General, who may withhold approval or impose limitations or other requirements that the Registrar General considers appropriate in the circumstances.
- (3) To the extent permitted by Property Online, and in accordance with the Property Online authorized lender user agreement, an authorized lender may submit a mortgage or a release of mortgage electronically for recording in a parcel register.
- (4) Except where the Act or the regulations state otherwise, a document submitted electronically and in accordance with the Act and the regulations has the same effect for all purposes as a document that is submitted non-electronically and in accordance with the Act and the regulations.
- (5) Subject to Property Online availability, a document may be submitted electronically at any time in accordance with the regulations, but is processed during the hours ~~that the land registration officers are assigned to processing the documents. the land registration office is open to the public.~~

Changed this provision to align with varied working hours of LRO staff, especially those who work flex-time.

Non-controversial.

- (6) A document that is submitted electronically must be reviewed by a registrar before it is registered or recorded, and is subject to the registration and recording requirements of the Act and regulations.
- (7) Once a document that is submitted electronically is registered or recorded, the document is deemed to have been received and indexed by the registrar at the time of submission.
- (8) Electronic submission of a document is effected by submitting all of the following electronically:
 - (a) the applicable form prescribed in Section 4, with all required fields completed;
 - (b) a scanned copy of the duly executed affidavit of value, if required under the *Municipal Government Act*;
 - (c) a scanned copy of the duly executed original document in portable document format, no larger than 4 megabytes (MB)
- (9) An authorized lawyer or authorized lender who submits a document electronically is responsible for the creation, quality and completeness of the electronic image of the document.
- (10) An authorized lawyer or authorized lender who submits a document electronically is required to retain either an original or true copy of the executed document and make it available for review by the Registrar General upon request and, if an authorized lawyer, for audit by the Nova Scotia Barristers' Society.

Parcel Description Certification Application (PDCA)

- 7 (1)** Subject to subsection (3), a PDCA must be submitted electronically in Form 2.
Subsection 7(1) amended: N.S. Reg. 189/2010.

(2) A PDCA must be one of the following types:

- (a) an Initial PDCA—to submit the first PDCA for a parcel;
- (b) a Correcting PDCA—to correct errors or omissions in a PDCA which has been conditionally approved under subsection (14); or
- (c) an Amending PDCA—to amend any information in an approved PDCA.

Subsection 7(2) replaced: N.S. Reg. 189/2010.

(2A) All of the provisions of this Section that apply to a PDCA apply to an Amending PDCA only to the extent that they relate to the amendment.

Subsection 7(2A) added: N.S. Reg. 189/2010.

(3) If the length of a legal description exceeds the space available in Form 2,

- (a) the PDCA in Form 2 must be submitted electronically and the legal description must be sent to the land registration office as a text file attached to an e-mail;
- (b) a statement that the legal description is being submitted by e-mail must be inserted into the legal description field on the PDCA; and
- (c) the PDCA number provided by the system once the PDCA is successfully submitted must be stated in the e-mail to which the legal description is attached.

(4) Except as provided in subsection (5), a PDCA must be submitted by one of the

following who is authorized in writing by the parcel owner, or another person permitted under subsection (6), or as required in Sections 14, 15, 16 and 18:

- (a) an authorized lawyer;
- (b) an authorized surveyor.

(5) If a person authorized in accordance with subsection (4) confirms the information contained in the statement of compliance on a PDCA, their staff may submit the PDCA on their behalf.

(6) Submission of a PDCA may be authorized by a person other than the owner of a parcel if the authorizing person is one of the following:

- (a) a mortgagee of a parcel, and the owner of the parcel has refused to register title to the parcel;
- (b) a mortgagee who is the plaintiff in a foreclosure action respecting the parcel, or a receiver or trustee by way of assignment in bankruptcy or otherwise and has authority to act by virtue of a court order, debenture or other document, and the document evidencing the authority has been recorded under the Act or registered under the *Registry Act*. ;-

(c) a non-owner who has permission from the owner to act in the place of the owner, and the document evidencing the permission has been recorded under

the Act or registered under the *Registry Act*;

- (d) a person who has authority to act by virtue of a court order, debenture or other document, and the document evidencing the authority has been recorded under the Act or registered under the *Registry Act*; or
- (e) a solicitor acting for a municipality on a pending tax sale of the property.

Subsections 7(6)(c) and (d) were added to match the provisions of s. 10(5)(b) and (d) relating to persons authorized to submit an AFR.

Subsection 7 (6) (e) was added to include solicitors acting for municipalities on pending tax sales.

The Rationale makes sense. I don't think this will change our practice, as the same evidence/permission is required whether submitting a PDCA or an AFR.

However, I am struggling to understand the meaning of paragraph (c) above. Perhaps it is limited to powers of attorney, in which case we are faced with the requirement of recording the power of attorney in the Roll before submitting the PDCA. Timing may thus become a problem.

I can't think why "a solicitor acting for a municipality on a pending tax sale of the property" would be required to or wish to submit a PDCA. I don't see the need for this change, nor do I understand its implications.

- (7) Subject to subsection (8), before an AFR in final form is submitted, the PDCA submitter must assist the parcel owner or authorizing person under subsection (6) in identifying the parcel's PID and take reasonable steps to identify the parcel, including all of the following:
 - (a) reviewing the legal description;
 - (b) reviewing Provincial mapping of the parcel;
 - (c) placing a comment in the comments field if errors in the Provincial mapping of the parcel are identified .

(7A) If an authorizing person under subsection (6) is authorizing the submission of a PDCA, the submitter must provide sufficient evidence of reasonable attempts to obtain the information from the owner, a review of the records or a site visit.

When someone other than an owner authorizes a parcel description certification application the submitter must provide evidence that they made reasonable attempts to gather information about the property necessary to complete the Form 5

Again I have unanswered questions:

- a) What is "sufficient evidence of reasonable attempts to obtain the information from the owner"?**
- b) What constitutes "a review of the records"?**
- c) In the absence of survey fabric, isn't it dangerous for a lawyer to submit a PDCA**

without first having had the opportunity to obtain the informed authorization/input of the owner?

d) How would a site visit result in the obtaining of sufficient information to justify a PDCA submission? A site visit by a surveyor is one thing; a site visit by a lawyer is quite another.

- (8) Subsection (7) does not apply in respect to a parcel that is a condominium unit.
- (9) If a PID has not been assigned to a parcel in Provincial mapping, the parcel owner must make a request for PID assignment in Form 1 and provide such information as will enable the preparation of a geographical representation of the parcel in Provincial mapping before submitting a PDCA.
- (10) Unless the description is for a unit as defined in the *Condominium Act*, every legal description submitted to a registrar must be accurate and complete and must contain
 - (a) a description of the location, boundaries and extent of the parcel
 - (i) in full text, or
 - (ii) by reference to a unique identifier on either a plan of survey or subdivision, that has been
 - (A) registered with an instrument under the *Registry Act*,
 - (B) filed under the *Registry Act*, or
 - (C) registered or recorded under the Act;
 - (b) a description of all benefits, burdens and all parcels excepted out of the legal description
 - (i) in full text,
 - (ii) by reference to a unique identifier on either a plan of survey or subdivision, that has been
 - (A) registered with an instrument under the *Registry Act*,
 - (B) filed under the *Registry Act*, or
 - (C) registered or recorded under the Act, or
 - (iii) by reference to the registration or recording particulars of a document that has been registered or recorded under the *Registry Act* or the Act, if the document contains a description in full text;
 - (c) all information pertinent to the use of easements
 - (i) in full text, or
 - (ii) by reference to the registration or recording particulars of a document that has been registered or recorded under the *Registry Act* or the Act, if the document contains the usage details in full text; and
 - (d) a statement that the parcel was created by a subdivision that complies with,

is exempt from, or is not subject to the subdivision provisions of Part IX of the *Municipal Government Act* and, as applicable,

- (i) the registration and other relevant details of how the parcel complies,
- (ii) the exemption relied upon and the facts supporting the exemption, or
- (iii) an explanation of why the parcel is not subject to the subdivision provision.

Clause 7(1)(d) replaced: N.S. Reg. 189/2010.

Clause 7(1)(e) repealed: N.S. Reg. 189/2010.

(10A) If the portion of the legal description submitted in a PDCA that describes location, boundary and/or extent of the parcel is a new or amended description of the parcel, the PDCA submitter must provide

- (i) a statement of the reason for the new or amended legal description,
- (ii) the name and designation as “surveyor, lawyer or other” of the author of the new or amended legal description, and
- (iii) the registration details of all of the registered documents in which the parcel or each portion of the parcel was most recently described.

Subsection 7(10A) added: N.S. Reg. 189/2010.

(10B) A legal description submitted under subsection (10) must be set out in the following order:

- (a) the description of the location, boundaries extent as required in clause (10)(a);
- (b) the description of all parcels excepted out of the legal description as required in clause (10)(b);
- (c) the description of each benefit as required by clause (10)(b), immediately followed by the information pertinent to the use of the benefit as required in clause (10)(c);
- (d) the description of each burden as required by clause (10)(b), immediately followed by the information pertinent to the use of the burden as required in clause (10)(c); and
- (e) the statement required in clause (10)(d).

This provision was added to provide clarity and consistency in PDCAs across parcel registers and to prevent confusion where benefits and burdens appear in conjunction with saving and excepting descriptions. Additionally, these amendments pave the way for future system changes to organize PDCAs into discrete fields on submission to ensure consistency in legal descriptions across parcel registers.

These changes will require that the elements of the description appear in the following sequence:

- a) **The description;**
- b) **Any exceptions;**
- c) **Benefits;**
- d) **Burdens;**
- e) **MGA compliance statement.**

I believe most lawyers are following this practice in any event.

- (11) When the legal description submitted for PDCA approval relates to a unit as defined in the *Condominium Act*, the description must be accurate and complete but must contain only
 - (a) the name of the County where the condominium corporation is situated, together with the condominium corporation number as assigned by the Registrar of Condominiums;
 - (b) the description for the unit as detailed in the condominium description on file with the Registrar of Condominiums;
 - (c) a benefit, using the following wording: “together with the common interest appurtenant thereto”; and
 - (d) a burden, using the following wording: “subject to the Declaration and By-Laws (*remove reference to By-Laws if none have been registered*) of (*insert condominium corporation name and number*)”.
 - (12) If a legal description submitted in a PDCA makes reference to a plan of survey or approved plan of subdivision that is not registered or recorded in the land registration office, the PDCA submitter must
 - (a) forward a copy of the referenced plan of survey or approved plan of subdivision to the registrar for recording in the parcel register once created; or
 - (b) include detailed reasons with the PDCA why the plan of survey or approved plan of subdivision cannot be located or obtained by the submitter.
 - (13) If the legal description of a registered parcel must be amended as the result of the creation of a plan of survey or the approval of a plan of subdivision affecting the parcel, the registered owner of the parcel, or a municipal development officer, as applicable,
 - (a) must record the plan upon which the legal description is based in the parcel register; and
 - (b) may use a short form legal description as the amended legal description.
 - (14) A registrar may conditionally approve a PDCA subject to a correction of an error or omission in the PDCA by the PDCA submitter.
- Subsection 7(14) amended: N.S. Reg. 189/2010.**
- (15) An AFR of a parcel may not be submitted in final form in accordance with clause 10(2)(b) until the submitter has corrected an error or omission in the PDCA if

required by the registrar.

Subsection 7(15) amended: N.S. Reg. 189/2010.

- ~~(16) Subject to subsection (17) and notwithstanding that watercourses are vested in the Crown by virtue of Section 103 of the *Environment Act*, a watercourse is deemed not to subdivide the parcel or parcels through which it flows~~

Repealed

- ~~(17) Except as provided in subsection (18), if after considering the nature and use of both a watercourse and the land through which it flows, a PDCA submitter or a registrar determines that the watercourse creates a natural boundary,~~

~~(a) the watercourse is deemed to subdivide the parcel or parcels through which it flows; and~~

~~(b) the parcel owner must make a request for PID assignment in Form 1 and provide such information as will enable the preparation of an electronic geographical representation of the parcel before making a PDCA~~

Repealed

- ~~(18) A parcel for which subdivision approval has been granted under the *Municipal Government Act*, or the former *Planning Act*, may not be subdivided under subsection (17).~~

Repealed

This provision is removed as it is covered by s268B of the Municipal Government Act, which was amended in 2015.

268B Provides as follows:

- (1) Notwithstanding Section 103 of the Environment Act, a watercourse does not subdivide a lot unless the watercourse creates a natural boundary, considering the nature and use of both the watercourse and the land through which it flows.**
- (2) Subsection (1) does not apply to subdivide a lot that**
 - (a) Has received subdivision approval; or**
 - (b) Is a parcel registered pursuant to the Land Registration Act**

Thus I don't believe the changes to be consequential. However, uncertainty remains. What is meant by "considering the nature and use of both the watercourse and the land through which it flows", and what kind of evidence is required in order to make this determination? Generally the determination is made by the POL Mapper, in accordance with "PDCA Standard Watercourses", although I have found that some Mappers will leave the determination to the lawyer, even if the watercourse is depicted as a "double-line watercourse" and/or appears to measure "greater than 80 feet in width along the entire length of the portion of the watercourse that is within the described parcel" as set out in the Standard.

- ~~(19) If a registrar determines that a PDCA is accurate, complete and in compliance with the Act and the regulations, the registrar must approve the PDCA~~

Repealed

This provision has been removed to provide clarity respecting the Registrar's discretion to reject PDCA's

The right of the Registrar to reject a PDCA is now made abundantly clear by this change.

Creation of legal description on subdivision

- 8 (1) If a parcel registered under the Act is subsequently subdivided, a legal description must be created for each subdivided parcel and the remainder lands.
- (2) The registrar may
- (a) create a short form legal description for one or more of the subdivided parcels and the remainder lands if the details shown on the plan of survey or approved plan of subdivision for a parcel referred to in subsection (1) are sufficient; or
 - (b) require the registered owner of the parcel referred to in subsection (1) to submit the full text of the information required in subsection 7(10) by submitting a PDCA under subsection 7(1) for each subdivided parcel and the remainder lands.

Amendment of PDCA and parcel register on subdivision or condominium unit creation

- 9 (1) On subdivision, the registrar shall remove the parcel access type from the parcel register of each parcel created on subdivision, including the remainder parcel.
- (2) On registration of a condominium declaration, the registrar shall place in the parcel register of each unit created by the condominium declaration, the interests, and textual qualifications that were in the parcel register of the parcel existing prior to the registration of the condominium declaration.
- (3) **Subject to subsection (5), the registered owner of a parcel registered under the Act that is created on subdivision or registration of a condominium declaration must file all of the following must do all of the following within 30 days of the creation of the parcel and** before submitting an request to change the registered owner of the parcel:
- (b) **create and record in all affected parcel registers all of the benefits and burdens indicated on the approved plan of survey or in the condominium declaration;**
 - (b) **submit** a Form 45 adding, confirming, deleting or correcting, as necessary, the interests, textual qualifications and parcel access type that
 - (i) are not shown in the parcel register,
 - (ii) have been placed in the parcel register under subsection 13(5) of the Act or subsection (2), or
 - (iii) have been removed from the parcel register under subsection (1);
 - (c) **submit** any consequential amendment of the PDCA for the parcel in Form 2 **which is needed to reflect the changes made under clauses (a) and (b).**

This change provides a deadline to file a form 45, as often, form 45s are not filed

until individual parcels are sold.

A common problem exists where parcels located within larger developments do not contain the appropriate easements as reflected on the development/survey plan. Documents creating benefits and burdens are not being recorded for the entire subdivision and are added inconsistently on a case by case basis as parcels are sold. This often creates mismatches between parcels throughout the subdivision.

I like the change, in theory. Until now there has been little incentive for the owner to update the parcel register by filing Form 45 in a timely manner. Now it is mandated that this be done within 30 days of the creation of the parcel. As noted by the Registrar General, the benefits and burdens are often added inconsistently, and by different lawyers at different times. Surely the best time to file Form 45 is shortly after creation of the parcel, at a time when the lawyer is most likely to have ready access to the surveyor for input if need be. However, this gives rise to the following questions:

- a) What is the mechanism by virtue of which the owner's obligations to retain and instruct a lawyer to file Form 45 is enforced? Presently many parcels are created without involvement of a lawyer.
- b) What are the consequences of non-compliance?
- c) Given that the proposed subparagraph (b) requires that the owner "create and record in all affected parcel registers all of the benefits and burdens indicated in the approved plan of survey or in the condominium declaration" within 30 days of creation of the parcel, does this mean that the document creating such benefits/burdens is to be registered before, concurrent with, or after filing of Form 45? Concurrent filing would be possible only if Form 45 is filed in paper form (which is still an option).
- d) What if the owner has a change of heart and decides not to create a particular benefit or burden, because by that time a buyer of one or more of the affected parcels has been identified and that buyer objects to a proposed benefit or burden? There should be some mechanism for allowing the owner to deviate from the benefits/burdens proposed in the plan. However in that situation we may have no choice but to create and register an extinguishing document.

- (4) A person authorized under subsection 7(6) is authorized to fulfill the requirements of subsection (3).

To align with other provisions where an authorizing person/non owner instructs a lawyer to submit a PDCA or AFR

Upon first reading the proposed change I thought perhaps this might authorize a surveyor or some person other than an authorized lawyer to file Form 45. However, Form 45 contains a certificate of legal effect and thus a lawyer will need to submit the Form.

- (5) If it is necessary to facilitate a consolidation process, a consolidation deed accompanied by an approved consolidation plan may be recorded prior to the completion of the requirements in subsection (3).

Previously, the land registration office permitted consolidation deeds to be registered and processed prior to the Form 45 by creating a separate instrument type that would bypass the inherited interest flags, however there was no formal authorization in the regulations to do this. This amendment provides authorization for the current practice.

This makes sense. Registration of the consolidation deed needs to come first, and

thus nothing changes on this front from a practical point of view.

Clause 9(3)(b) amended: N.S. Reg. 189/2010.

Section 9 heading amended: N.S. Reg. 189/2010.

Application for registration (AFR)

- 10** (1) An AFR must be submitted by an authorized lawyer who is authorized to do so by the parcel owner or another person permitted under subsection (5).
- (2) An AFR must be submitted electronically in Form 6
- (a) in draft form for preliminary approval by the registrar; and
- (b) in final form, after receipt of the preliminary approval of the registrar.
- (3) An AFR submitted in final form under clause 2(b)
- (a) contains and satisfies the requirements under clause 37(4) (b), (ba), (f) and (g) of the Act;
- (b) registers title to the parcel under the Act; and
- (c) creates the parcel register for the parcel at the time the application is submitted.
- (4) A reference in the AFR to the book and page in the registry of deeds for the document that most recently conveyed the registrable interest will be accepted as evidence of compliance with Part V of the *Municipal Government Act* for the purposes of clause 37(4)(e) of the Act.
- (5) Submission of an AFR and any forms associated with the application, may be authorized by a person other than the owner of a parcel if the authorizing person is one of the following:
- Non-consequential.**
- (a) the mortgagee of a parcel and the owner of the parcel has refused to register title to the parcel;
- (b) a non-owner who has permission from the owner to act in the place of the owner, and the document evidencing the permission has been recorded under the Act or registered under the *Registry Act*;
- (c) a mortgagee who is the plaintiff in a foreclosure action respecting the parcel, or a receiver or trustee by way of assignment in bankruptcy or otherwise and has authority to act by virtue of a court order, debenture or other document, and the document evidencing the authority has been recorded under the Act or registered under the *Registry Act*;
- (d) a person who has authority to act by virtue of a court order, debenture or other document, and the document evidencing the authority has been recorded under the Act or registered under the *Registry Act*; or.
- (e) a solicitor acting for a municipality on a pending tax sale of the property.

To align with s. 7(6)

Self-explanatory – subject to my comments with respect to the proposed revision to section 7 (6).

- (6) An authorized lawyer who submits an AFR in final form under clause (2)(b) must complete, retain and make available for review by the Registrar General upon request and audit by the Nova Scotia Barristers' Society, the original or a true copy of any of the following items:
- (a) written authorization to submit the PDCA and AFR, if the submitting lawyer does not have a solicitor-client relationship with the owner of the parcel being registered;
 - (b) an owner's declaration regarding occupation of the parcel and residency status in Form 5 and, if signed by the authorized lawyer or authorized surveyor, evidence of the information relied upon under subsection (7);
 - (c) the notice of parcel registration, in Form 9, sent in accordance with this Section, together with proof of service in accordance with Section 30, and any written directions given by the Registrar General under this Section, if applicable;
 - (d) the Statement of Registered and Recorded Interests that was sent electronically to the submitting lawyer upon submission of the AFR in final form;
 - (e) the official report for the legal description from the parcel description database in *Property Online* at the time of submission of the AFR in final form;
 - (f) the abstract of title upon which the submitting lawyer's certified opinion of title is based showing the chain of ownership of the parcel; and
 - (g) evidence of compliance with the *Municipal Government Act*.
- (7) An owner's declaration in Form 5 may be executed by an authorized lawyer or authorized surveyor if the authorized lawyer or authorized surveyor is able to execute the declaration based on either of the following:
- (a) personal knowledge of the facts;
 - (b) information received from the current or previous owner.
- (8) If a person executing an owner's declaration in Form 5 is an authorizing person under subsection (5), the Form 5 may indicate that the person executing the Form 5 has no personal knowledge regarding occupancy of the parcel, **but must provide sufficient evidence of reasonable attempts to obtain information from the owner, a review of the records or a site visit.**

When someone other than owner authorizes a PDCA, the submitter must provide evidence that the authorizing person/non-owner has made reasonable attempts to gather information about the property necessary to complete the Form 5

See my comments respecting the proposed changes to section 7 (6).

- (9) If a parcel owner's declaration regarding occupation in Form 5 discloses that the parcel is occupied without permission, **including the use of a travelled way across the parcel**, the authorized lawyer submitting the AFR must
- (a) **submit a textual qualification with the AFR which provides the details of the occupation and the notice given to the occupiers and a statement of the owner's position with regard to the occupation;**
 - (b) **no later than 14 days prior to ~~immediately after~~ submitting the AFR in final form, provide a notice of parcel registration in Form 9 to the occupier indicating that an AFR ~~is being submitted of the parcel has been made~~; and**
 - (c) submit a true copy of the notice sent to the occupier in Form 9 **with the AFR**, together with proof of service in accordance with Section **2930**, using Form 26N.

This provision includes prescriptive use on the Form 5 declaration and requires that information be included in the parcel register in order to provide notice to subsequent owners.

Previously there was no time limit for serving notice in form 9 which could be months after migration. This establishes a timeline for the Form 9 to be registered in conjunction with the submission of the AFR.

This one is problematic, for the following reasons:

- (a) **First and foremost, the fourteen day provision will slow down the process of migration and in some cases it will negatively impact the timing of the sale, possibly resulting in a lost sale. I don't understand the logic; if the objective is to give the "user" the opportunity to protect/preserve/perfect their right of usage, the user will in fact have very little time within which to do so. While it is conceivable evidence might be marshalled so as to permit the establishment on the public record of adverse possession or a prescriptive right, the quality of the evidence assembled within that period of time may be suspect. There will be a race to register within the fourteen day period, there will be pressure and perhaps temptation to get the job done, without having due regard to the quality of the documented evidence.**

If on the other hand the user must go to court, there will be very little time within which to commence an action and file a lis pendens (if indeed it is appropriate to do so). Thus the end result is too little time for the user; too much for the owner.

I'm not sure what useful purpose is served by the requirement of a textual qualification which includes "a statement of the owner's position with regard to the occupation".

- (b) **There may be situations where the name and address of the occupier are not known to the owner, and are not readily available to the owner. What happens in those situations? Presumably the owner will be able to apply to the Registrar General for directions.**
- (c) **Form 9 is to be submitted "with the AFR" but it isn't clear how this is to be done. Do we prepare and submit it after the draft AFR has been pre-**

approved? Given the fact that Form 26N (to which Form 9 and proof of service or the directions from the Registrar General are attached) is presently limited to paper filing, simultaneously filing it with the AFR is a mystery to me.

I favor the addition of the words “discloses that the parcel is occupied or used without permission” in the second and third lines of section 10 (9) above. It is my opinion that any use of a travelled way without permission of the owner ought to have been disclosed in Form 5, but because of the wording of the section, some argued that this was not the case. Any reason for doubt has now been removed.

- (10) Except as provided in subsection (11), if an authorized lawyer who is certifying title to a parcel whose ownership is registered in whole or in part on the basis of adverse possession, must
- (a) no later than 14 days prior to submitting the AFR in final form, serves ~~send a~~ notice of proposed registration in Form 9 to the last known owner on record of the parcel, based on a title search of the records maintained under the *Registry Act*, prior to ~~before~~ the owner(s) whose possessory interest is being registered with the AFR, ~~of the parcel as shown on the consolidated index that is maintained under the *Registry Act*~~; and
 - (b) submit a true copy of the notice sent in Form 9 and any written directions from the Registrar General under subsection 31(2) using Form 26N, together with proof of service in accordance with Section 30, immediately following submission of the AFR in final form

Previously there was no time limit for serving the form 9, and it could be done months after migration. This provision establishes a timeline for the Form 9 to be registered in conjunction with the submission of the AFR.

This section requires filing of Form 26N “immediately following submission of the AFR in final form”. At least this makes more sense than submitting Form 26N “with the AFR” as set out above.

- (11) Notice is not required to be sent under subsection (10) if
- (a) the Registrar General is satisfied that it would not be practicable to give notice in the circumstances and provides written directions to the authorized lawyer that no notice is required; and
 - (b) the authorized lawyer submits a true copy of the Registrar General’s written directions using Form 26N.
- (12) If at any time after registration of title to a parcel, a registered owner becomes aware that the declaration required under clause (6)(b) was not accurate, they must do all of the following without delay:
- (a) complete a new Form 5;
 - (b) provide notice in Form 9 to any occupier;
 - (c) submit a true copy of the notice and proof of service, as required by subsection

(9), using Form 26N.;

- (d) add a textual qualification in the parcel register which provides the details of the occupation and the notice given to the occupiers and a statement of the owner's position with regard to the occupation.

Added a requirement to provide notice by way of a TQ on the parcel register about the details of occupation when those details become known after migration, in keeping with the requirements under s 10 (9).

If I understand the situation correctly, the person required to give notice is the “registered owner” who, during the course of his registered ownership, becomes aware the declaration was inaccurate. Let us suppose the property has changed hands several times. How is the current registered owner to know:

- a) what was reported in the Form 5;
- b) whether or not the occupation existed at the time Form 5 was signed;
- c) whether or not the registered owner had given consent to the occupation;
- d) who is going to force the registered owner to comply by giving the required notice and placing a textual qualification which will then perhaps render title less than marketable?

- (13) An authorized lawyer who is certifying title to a parcel whose ownership is registered in whole or in part on the basis of adverse possession must ensure that all of the following are done with the necessary statutory declarations that provide evidence of the adverse possession interest being certified, in compliance with Nova Scotia Barristers' Society practice standards:
 - (a) the declarations are filed in the Registry of Deeds before the parcel is registered under the Act;
 - (b) the declarations are listed as enabling documents in the registered interest portion of the AFR for the parcel, noting the registered owner as the interest holder for each of the statutory declarations.
- (14) Sections 14, 16, and 17 ~~and 18~~ apply, with necessary changes, to an AFR that includes the recording of a benefit or burden that affects another parcel in addition to the parcel being registered.

Section 18 has been repealed

10A Parcel Access Types

- (1) When providing an opinion under clause 37(9)(a)(ii) of the Act concerning the direct or indirect right of access to the parcel, if any, from a public street, highway or navigable waterway, an authorized lawyer must do all of the following:
 - (a) choose the appropriate access type from the following options, for the following

circumstances:

- (i) “no documented right of access”, if there is no documentation recorded at the registry of deeds sufficient to support an opinion that there is a right, which runs with the land, of uninterrupted access from the parcel to a public street or highway,
- (ii) “public”, if the parcel abuts a public street or highway,
- (iii) “private”, if there is a document(s) recorded at the registry of deeds sufficient to support an opinion that there is a right, which runs with the land, of uninterrupted non-public access to a public street or highway, which is created by grant, prescription, implication, or through operation of law,
- (iv) “navigable waterway”, if the parcel abuts a navigable waterway;

This reduces the parcel access types to four from the previous list of 12, many of which were ambiguous. This section also provides an explanation of each access type and when it should be used.

Various changes to access, including the proposed reduction to four access types are the result of recommendations made by a working group comprised of real estate practitioners and government representatives about six years ago. This change will apply to AFRs, Forms 45, and revisions involving access, as well as to Forms 6A. In other words, in any situation where we must choose the access type, we will be limited to four choices. Presently there are twelve choices.

Consider the following:

No Documented Right of Access

A lawyer must choose this type of access if:

- a) There is a gap in the right of access, for example the access road crosses a railway or former railway and there is no documented right to do so, except by way of license.
- b) The owner’s right to cross the parcel is based only or in part upon a license or other personal right.
- c) Actual access to a parcel is over another parcel owned by the same owner, but there is no grant or other documented right of access which runs with the parcel.

Use of the term “no documented right of access” does not necessarily mean that there is no access or right of access to the parcel; it does mean that the lawyer has been unable to locate or document, in the Land Registration Office, the uninterrupted right of access.

A lawyer should (but there is no requirement that the lawyer must) create a textual qualification setting out additional information which would not be available or apparent in the parcel register. For example, if there is common ownership of the subject parcel and that over which access is in practice gained, it is recommended that this be set out in a textual qualification. However there are other situations (see next page) where a textual qualification is mandatory.

Public

In order to select this option, the lawyer must determine, based upon available and reliable evidence, that the road in question is indeed public. In other words the mapping graphic is not conclusive in this regard nor is the legal description, and of course we cannot blindly accept the advice of our client.

Private

This includes all non-public access which is created by grant, established by prescription or implication or necessity, or through operation of law. As has always been the case since implementation of the LRA, the lawyer must ensure that the party granting the easement had the authority to do so, and that there is marketable title for the grant. The requirements of Professional Standard 2.3 must be adhered to. The lawyer must be satisfied, based upon registered documentation, that there is authority for the use and continued use of the means of access.

Navigable Waterway

I don't think anything has changed on this front. There is still no definition of the term "navigable waterway" in the Act nor in the Administration Regulations and thus the lawyer will need to make a determination of whether the water is navigable or non-navigable. Garth Gordon's "Access – Red Flag Issues Under LRA" (revised March 2, 2007) is a useful resource.

- (b) include a textual qualification setting out a description of the actual access to the parcel, including the details of any limitations or restrictions on the access, and any additional information necessary to describe the access, including the nature of the waterway, if applicable, in all of the following cases:
 - (i) if actual access to the parcel is not as indicated by the access type chosen,
 - (ii) if there are any limitations or restrictions on actual access to the parcel if relying on the access type chosen,
 - (iii) if the access to the parcel is not apparent from the documents in the parcel register,
 - (iv) if the access is based on an unrecorded interest or statutory provision,
 - (v) if the access type chosen is "navigable waterway".

Requires an explanation of any limitation or restrictions on the access type in the form of a TQ in order to provide additional information in a parcel register. As an example: if a parcel abuts a controlled access highway, a TQ must provide an explanation of the limitation associated with an access type of 'Public'.

The addition of a textual qualification will be a key component of the selection of certain access types in certain situations. For example:

- a) If the parcel fronts on a public highway, a textual qualification will be required if

- that highway is a controlled access highway.
- b) If the parcel fronts on a public highway, but that highway is listed but not maintained, this should be noted. Otherwise the subsequent purchaser of such a parcel may be bitterly disappointed if the snowplow doesn't come.
 - c) There are certain situations where the plan of subdivision notes access restrictions imposed as part of the approval process. These should be reflected in a textual qualification.
 - d) There are situations where a parcel fronts on a public highway but there is a legally documented right of access over an adjoining parcel or parcels. In that case I would suggest that the parcel access type be "public", but that this be coupled with a textual qualification identifying the document by virtue of which the alternative access is established.

For a further discussion of these issues, see Raffi Balmanoukian's "You Can't Get There From Here" Access Issues Under the LRA presented at the December 2015 RELANS conference.

- ② An authorized lawyer acting on behalf of a registered owner is permitted to amend a parcel register at any time in accordance with this Section, by filing a Form 24, to update an access type previously available in Property Online to an applicable access type in subsection (1).

These provisions are not retroactive but do provide the ability for a lawyer to update or change access on land registered parcels that have any of the former access types that are no longer in the above list, if so desired.

As noted, we do not have to revise existing access types just because the choices are now limited, but we may choose to do so. If access is being changed for any reason, we must comply with the new rules. However it should be noted that section 22 of the Regulations (which remain unchanged) establish certain rules for correcting earlier errors.

Textual qualifications

- 11 (1) An authorized lawyer submitting an opinion on title in an AFR or a certificate of legal effect may include a textual qualification if the lawyer is of the opinion that the textual qualification is the only means to provide a complete statement of all the interests affecting the parcel.

(1A) An authorized lawyer submitting an opinion on title in an AFR or a certificate of legal effect must include a textual qualification in all of the following circumstances:

- (a) when registering a tenant in common interest, to indicate the percentage or fraction of interest held by each owner of a tenant in common interest in the parcel;

A TQ is required for a tenant in common interest to indicate the percentage or fraction of interest held by each TIC owner, to ensure that this information is apparent to anyone reviewing a parcel register.

This brings the law in line with the policy adopted by the LROs a couple of years ago. I have never understood nor accepted that policy. There are situations where it is time consuming and perhaps impossible to determine with certainty the various percentages.

The various Cape Chignecto developments scattered throughout certain parts of the Province are a prime example. Catherine Walker has stated that

“There may be no evidence in historic titles as to the basis for this percentage. For example, on Belmont on the Arm a list of owners own as tenants in common (and usually a mixture of tenancy in common and joint tenancy) a waterfront access parcel. There is no recorded documentation as to the percentage of the ownership interest for the tenancy in common – how is the lawyer to comply with this requirement?”

Catherine has also asked *“Does this obligation apply to common elements in condominiums?”*

- (b) if the lawyer is aware about competing chains of title or claims of ownership affecting title or extent of title, to disclose the information;

A TQ is required to disclose notice of competing chains of title or ownership claims that affect title or extent of title in order to provide notice to a prospective purchaser.

I am puzzled by this, both in terms of what is intended and why. Again, borrowing Catherine Walker’s thoughts and words:

“In the proposed new language, if a lawyer is aware about competing chains of title or claims of ownership affecting title or extent of title, the lawyer must disclose the information in a Textual Qualification on the parcel register.

What is meant by ‘aware’. What is meant by ‘extent of title’. Lawyers do not certify extent of title-only a surveyor can certify as to extent of title. Lawyers certify the historic title on record in accordance with the requirements of the legislative and common law standards. This requirement expands the scope of a lawyer’s responsibility beyond that required at law otherwise and extends a lawyer’s liability inappropriately. The obligation of the lawyer in this circumstance is framed as ‘a lawyer must’ – there is no room for the exercise of professional judgment.

This requirement will have the effect not only of mandating the insertion of a mandatory cloud on title – it will be creating title uncertainty – for both the owner and any prospective purchaser and adds a new legal responsibility on the lawyer that was previously not there and which is not in his client’s best interest. It is a lawyer’s responsibility to assess the information on record and provide an opinion to the client and the system. If that lawyer is able to provide a clear opinion to the system, having reviewed any competing chain information that may have been on record, that lawyer should not now be obliged to add a TQ putting that non-effectual chain of title on record.”

- (c) wherever required by the Act or the regulations.

Other TQ’s must be added as required by the Act or pursuant to these regulations under the following sections; 10, 10A, 11, 14 and 17

I don’t see this as being controversial.

- (2) A textual qualification must meet all of the following criteria:

- (a) it must include a clear statement of the certifying lawyer’s opinion about its effect;
- (b) it must form part of the authorized lawyer’s certificate of legal effect or opinion of title;
- (c) it must not limit, contradict or make ambiguous any other information in the parcel register, including the legal description.

Registration of condominium units

12 (1) An AFR for a unit as defined in the *Condominium Act* must include

- (a) a benefit, using the following wording: “together with the common interest appurtenant thereto”;
 - (b) a burden, using the following wording: “subject to the Declaration and By- Laws (*remove reference to By-Laws if none have been registered*) of (*insert county name or initial(s)*) CC No. (~~*insert condominium corporation number*~~)”;
 - (c) all other benefits and burdens that are not declarations, by-laws or amendments to declarations or by-laws, but are interests in the unit or the common interest appurtenant thereto, including those detailed in the condo declaration; and
 - (d) all recorded interests in the unit or the common interest appurtenant thereto.
- (2) The enabling instrument for the benefit and burden described in clauses (1)(a) and (b) must be the declaration for the condominium corporation.
- (3) Subject to the caution displayed in the Important Notice section of the Condo Common View, the relevant documents displayed in the Condo Common View, including in the linked screen views in the section entitled “Parcels as existing prior to the Condominium Declaration”, are deemed to be registered and recorded, as applicable, in the parcel register for each of the condominium corporation units, that is registered under the Act.
- (4) A document certifying the deregistration of a condominium corporation with units registered under the Act may not be recorded unless all the units in the condominium corporation have been registered under the Act.

Registration of interest under Section 41 of the Act

13 A person registering an interest in a parcel under Section 41 of the Act must first submit

- (a) a PDCA in accordance with Section 7; and
- (b) an AFR in accordance with Section 10.

Addition of a benefit or burden to a parcel registered under the Act

14 (1) An authorized lawyer may add any benefit or burden permitted under the Act to be added to a parcel register, if authorized by the registered owner of the parcel, by

submitting a Form 24 together with the document that conveys or evidences the benefit or burden.

- (2) If a benefit or burden added under subsection (1) affects another parcel registered under the Act, and the corresponding benefit or burden is not already included in the affected parcel register, an authorized lawyer submitting a Form 24 under subsection

(1) **must do one of the following if the corresponding benefit or burden is not shown in the affected parcel register:**

- (a) **subject to subsection (5), ensure that the corresponding benefit or burden is added to the affected parcel register; or**
- (b) **add a textual qualification in the parcel register in which the Form 24 has been recorded indicating that the corresponding benefit or burden is not shown in the affected parcel register. ~~must also submit another Form 24 to add the corresponding benefit or burden to the affected parcel register.~~**

The current Regulations require the lawyer to add a benefit or burden to the corresponding “flip side” parcel when registering a benefit or burden to a Land Registered parcel. However, there may be valid reasons why this would not be possible, and in those circumstances, a lawyer is permitted to simply add the benefit or burden along with a Textual Qualification indicating that it is not appearing in the corresponding parcel register.

I don't see this as being a material change and in fact many lawyers are already using textual qualifications for this purpose.

- (3) **Subject to subsection (3A), if a benefit or burden added under subsection (1) affects another parcel not registered under the Act, an authorized lawyer submitting a Form 24 under subsection (1) must do both of the following:**

- (a) **register a notice of the corresponding benefit or burden under the *Registry Act*, by filing ~~a Form 44 and one of the following documents:~~**
 - (i) **a Form 44 and a Form 8A, and ~~for all benefits or burdens other than as referred to in clause (b);~~**
 - (ii) **each document evidencing the benefit or burden, if the document is a grant of easement or a statutory declaration, together with a Form 44 for each document filed ~~the document evidencing the benefit or burden, if it is a grant of easement, and~~**
- (b) **add a textual qualification in the parcel register in which the Form 24 has been recorded indicating that the affected parcel, identified by the property address and owner named on the Form 8A, was not registered under the Act at the time that the benefit or burden was added, but that a Form 8A was filed under the *Registry Act*.**

Previously, lawyers could file the Form 8A or register the document if it was a grant of easement. This section was amended to require the recording of a grant of easement or statutory declaration if non LR parcels are affected. In addition, a Form 8A must be recorded to provide notice that an LR parcel reflects a benefit or burden affecting a non LR parcel. A TQ is required to provide confirmation that the Form 8A was filed, for anyone

reviewing the LR parcel register.

This is further to the discussion earlier concerning Form 8. The recording of a grant of easement or statutory declaration is now required if dealing with LR parcels. It is not clear to me when it might be appropriate to register a statutory declaration and thus comply with these requirements.

You will note the additional requirement of a textual qualification when a Form 8A is filed.

(3A) If there is no assessment account associated with the affected parcel referred to in subsection (3) and the apparent owner of that parcel is shown on Property Online as unknown, owner unknown, unknown owner, local common, or road parcel owner undetermined, an authorized lawyer is exempt from the requirements of subsection (3) but must add a textual qualification in the parcel register to which the Form 24 was added under subsection (1) which states as follows:

“Under subsection 14(3A) of the Land Registration Administration Regulations, notice to the owner of PID (PID of affected parcel) shown in POL as (ownership attribute) was not provided concerning the addition of (particulars of benefit/ burden).”

This provision was added to eliminate the need for a lawyer to make a request to the RG for an exemption for filing the 8A if the Non-LR parcel is in the name of owner unknown or local common, etc. Lawyer’s currently need permission to do so, but now lawyers can simply add the TQ as noted above if the apparent owner is one of the ‘unknown’ variations listed under this subsection.

As a consequence of this proposed change we will no longer have to apply to the Registrar General for exemption from the requirement of filing Form 8A in situations where Property Online identifies “unknown, owner unknown, unknown owner, local common, or road parcel undetermined”. In the past we had to request an exemption; now we will simply have to add a textual qualification.

- (4) An authorized lawyer who submits a Form 24 under subsection (1) must also apply to amend the legal description for each parcel registered under the Act to which a burden or benefit has been added.
- (5) An authorized lawyer who submits a Form 24 under subsection (1) ~~must serve notice, in Form 8, on the owner of the parcel to which the benefit or burden is being added under~~ must add the corresponding benefit or burden to the parcel register of an affected parcel noted in subsection (2), ~~unless the owner has~~ if the owner of the affected parcel executed the document that conveys or evidences the benefit and corresponding burden or has properly executed a written consent to the addition of the interest, which must be submitted as an attachment to the document.

This provision makes it a requirement to add the flip side benefit/burden if the affected parcel owner is a party to the document or provides written permission attached to the document. This is to ensure that the lawyer will record the document, when appropriate, to the corresponding parcel register instead of simply adding a TQ about a mismatch.

The Form 8 requirement is removed. A lawyer submitting a Form 24 adding a benefit or burden to an LR parcel must add the flip side benefit/burden if the owner of the affected parcel has executed the document creating or evidencing the benefit/burden or “has properly executed a written consent to the addition of the interest, which must be submitted as an attachment to the document”. Again this

is in line with recent policy of the LROs, but it is not clear to me what form this “properly executed written consent” is to take. Even if written consent is obtained, the usual marketable title and priority issues will remain to be dealt with.

~~(6) If notice is required to be served under subsection (5), an authorized lawyer who submits a Form 24 under subsection (1) must retain a true copy of the notice in Form 8 together with proof of service in accordance with Section 30, file both in the parcel register in which the Form 24 has been recorded using Form 26N and make it available for review by the Registrar General upon request and audit by the Nova Scotia Barristers’ Society~~

Repealed

Removed the requirement to serve notice on the owner in Form 8 under clause (5).

The Form 8 requirement has been removed.

- (7) ~~The Form 8A~~ ~~A document~~ filed under ~~subsection 3 clause 3 (a) or (b)~~ must reference the owner of the parcel not registered under the Act as shown on the consolidated index maintained under the *Registry Act*, unless
- (a) an assessment account is associated with the parcel in Property Online, in which case the document may instead reference the owner of the parcel as shown in Property Online; or
 - (b) the Registrar General is satisfied that it would not be practicable to identify the owner on the consolidated index and the Registrar General does one or both of the following:
 - (i) provides written directions to the authorized lawyer about how the owner must be referenced;
 - (ii) issues a written directive about how an owner may be referenced in the applicable circumstances.

This provision clarifies how the Form 8A filed under subsection 3 must reference the owner on the form. If there is an issue with identifying the owner, the lawyer can seek direction from the RG.

This doesn’t appear to be controversial.

- (8) An authorized lawyer must retain a true copy of any written directions received under subsection (7) and make it available for review by the Registrar General upon request and audit by the Nova Scotia Barristers’ Society.

~~Addition of a benefit or burden to a parcel not registered under the Act~~

- 15 ~~(1) — A person who registers a document that creates or evidences a benefit or burden on a parcel not registered under the Act, which also affects a parcel registered under the Act, must also cause an authorized lawyer to submit a Form 24 to add the corresponding benefit or burden to the affected parcel register together with a true copy of the document that conveys or evidences the benefit and the corresponding burden, which has been certified to be a true copy of the original by a person authorized under the Act to sign a certificate of execution.~~

- ~~(2) The authorized lawyer who has submitted the Form 24 under subsection (1), must also make application to amend the legal description of the parcel registered under the Act to which a benefit or burden has been added under subsection (1).~~
- ~~(3) The authorized lawyer who has submitted the Form 24 under subsection (1) must serve notice, in Form 8, on the owner of the parcel registered under the Act to which a benefit or burden has been added under subsection (1), unless the owner has executed the document that conveys the benefit and the corresponding burden.~~
- ~~(4) Where notice is required to be served under subsection (3), the authorized lawyer who has submitted the Form 24 under subsection (1), must retain a true copy of the notice in Form 8 together with proof of service in accordance with Section 30, and make it available for review by the Registrar General upon request and audit by the Nova Scotia Barristers' Society~~

Repealed

Section 15 put an obligation on a lawyer working on behalf of the owner of a non-land registration parcel, to add the corresponding benefit/burden to the LR parcel, which is problematic since a non LR parcel is not regulated by these regulations.

This appears to make sense.

Addition of burdens and restrictive covenants which do not require identification or addition of benefit

- 16 (1)** Despite Section 14 ~~and 15~~, an authorized lawyer is not required to identify or add a corresponding benefit to other affected parcels when adding
- (a) a burden in favour of a public utility, an unidentified utility, or a municipality, or
 - (b) restrictive covenants,
- to a parcel registered under the Act.

- (2) The authorized lawyer who makes an application to add an interest in clause (1)(a) or (b) to a parcel registered under the Act must
- (a) submit a request and certificate of legal effect, in Form 24, to revise the parcel register of the parcel to which the interest is being added; and
 - (b) make application to amend the legal description of the parcel to which the interest is being added; and
 - (c) ~~if not acting on behalf of the registered owner, serve notice in Form 8, on the owner of the parcel to which the interest is being added, attach to the document that conveys or evidences the interest, the properly executed written consent of the owner to the addition of the interest, unless the owner has executed the document that conveys or evidences the interest.~~

Notice in Form 8 is no longer required (and was removed from the list of prescribed forms) because if a lawyer is not acting on behalf of a registered owner, they must now ensure that they have attached their written consent to the document that conveys or evidences the interest, unless they were a party to the document.

This is in line with the changes noted above.

- (3) ~~If notice is required to be served under clause (2)(c), the authorized lawyer who makes application to add the interest in clause (1)(a) or (b) to a parcel registered under the Act, must retain a true copy of the notice in Form 8 together with proof of service in accordance with Section 30, and make it available for review by the Registrar General upon request and audit by the Nova Scotia Barristers' Society~~

Repealed

Removed the requirement to serve notice on the owner with a Form 8, under clause (2) (c) .

The Form 8 requirement is removed, as discussed earlier.

Exemption from requirement to identify or add corresponding benefit or burden

17 (1) Despite Section 14 ~~and 15~~, an authorized lawyer who is adding a benefit or burden to a parcel that is registered under the Act, ~~may be is~~ exempted from the requirement to identify or add a corresponding benefit or burden to other affected parcels ~~if a registrar is satisfied that it would not be practicable to do so.~~ in any of the following circumstances:

- (a) ~~the location or extent of the affected parcels is uncertain;~~
- (b) ~~the benefit or burden is intended to be added to future lots created in a subdivision;~~
- (c) ~~a significant administrative burden would be created due to the excessive number of affected parcels;~~

- (d) the affected parcels are units in a condominium corporation.

This provision is to allow for the use of various PIDs for benefits and or burden without having to obtain permission from the RG and provides the circumstances where it is permitted.

This removes the requirement of obtaining the consent of the Registrar General if using the term “various PIDs”. Although the new Regulation purports to provide the circumstances where use of the term “various PIDs” is permitted, I am unsure of the utility of the ability to use the term where it is intended that the benefit or burden will be added to future lots created in a subdivision. As well, what is meant by the words “a significant administrative burden would be created due to the excessive number of affected parcels”? What is the magic number? What is the enforcement?

- ~~(2) To obtain an exemption under subsection (1), an authorized lawyer must apply in writing to a registrar, providing the reasons for the request and any additional information requested by the registrar.~~
- ~~(3) An authorized lawyer must retain a true copy of an exemption obtained under subsection (1) and make it available for review by the Registrar General upon request and audit by the Nova Scotia Barristers' Society.~~
- (2) An authorized lawyer who is exempt under subsection (1) must add both of the following to the parcel register in which the benefit or burden has been added:
- (a) a reference to “various PIDs” or “various owners” in relation to the benefit or burden;
 - (b) a textual qualification setting out all of the following:
 - (i) the basis of the exemption claimed under this Section,
 - (ii) any available information regarding the location and identification of the affected parcels and the source of that information,
 - (iii) a statement that the affected parcels may not reflect the corresponding benefit or burden.

This section outlines the criteria for adding a benefit or burden using ‘Various PIDs’ or ‘Various Owners’ and for the TQ that is required to be placed in the parcel register.

This is straight forward enough, except for the requirement that the textual qualification include “any available information regarding the location and identification of the affected parcels and the source of that information”. Presumably available survey fabric falls into this category, but if survey fabric is available and shows that the easement affects a particular parcel, then surely that parcel ought to be identified by PID. I suppose the survey fabric might be suggestive of the location of the easement with respect to other parcels.

Could the source of information be the property owner? If so, is it intended that we should report, in the textual qualification, what the registered owner of the

parcel has said about the location of the easement?

- (3) The Registrar General may add a textual qualification to a parcel register which had a “various PID” or “various owners” reference added regarding a benefit or burden prior to the requirement in subsection (2), which states that the affected parcel may not reflect the corresponding benefit or burden.

This provision allows the RG’s Office to add TQs to parcel registers that already have various PIDs designation for benefits and burdens so they align with the new amendments. In particular, that the TQ will state that the corresponding benefits or burdens may not be reflected in the affected parcel(s).

This does not appear to be controversial.

Notice of overriding interest in a registered parcel

~~18—Any person recording an overriding interest in a parcel registered under the Act must notify the registered owner in Form 8 and, if adding a benefit or burden to a parcel, comply with the requirements in Sections 14,16 and 17.~~

Repealed

Overriding interests are not permitted to be added to a parcel register unless there is a court order or the document has either been executed by the owner or contains the consent of the owner, in accordance with s 74 of the LRA. In addition, Form 8 has been repealed.

As discussed earlier, this is in line with the new requirement that an overriding interest cannot be added to a parcel register absent consent of the owner, or a Court order. This is in line with the recent policy of the Registrar General. Thus in the face of absence of cooperation on the part of the owner of a migrated parcel, we will not be able to establish a prescriptive easement or right except by going to Court, no matter how long the access has been exercised.

- 19 (1) Except as provided in Section 20 for correcting a registrar’s error or omission, the Registrar General may correct an error or omission in a parcel register in accordance with this Section.
- (2) The Registrar General must provide notice in writing of the details of any identified error or omission and the proposed correction to all of the following:
 - (a) any registered owner of the affected parcel;
 - (b) any interest holder shown in the parcel register who may be affected by the error or omission;
 - (c) the authorized lawyer who certified the information being corrected.
- (3) Any registered owners and any interest holders notified under subsection (2) must be given 15 days from the date of the notice to consent or object to the Registrar General’s proposed correction.
- (4) If a notified registered owner or interest holder objects to a proposed correction

within 15 days from the date of the notice under subsection (2), the Registrar General must make any necessary further inquiries and notify any registered owners and any interest holders who received the original notice that

- (a) the Registrar General has abandoned the proposed correction; or
 - (b) the proposed correction will take effect 30 days after the date of the notice under this subsection unless they have commenced a proceeding in the Supreme Court of Nova Scotia and submitted a certificate of *lis pendens* in Form 19 for recording.
- (5) If all notified registered owners and interest holders consent or do not object to the Registrar General's correction proposal, the Registrar General may direct a registrar to correct the error or omission as proposed.
- (6) Nothing in this Section affects the Registrar General's powers under Section 56 of the Act.

Correction of registrar's errors

- 20 (1) The Registrar General may direct a registrar to correct a registrar's error in a parcel register caused by an error in processing, indexing or accepting a document.
- (2) All of the following must be done to complete the correction of a registrar's error under this Section:
- (a) the registrar must ensure that a written record of the correction is placed in the parcel register;
 - (b) notice is provided in accordance with Section 19, unless the Registrar General is satisfied that no registered owner or interest holder could be adversely affected by the correction.

Request for correction of errors in recorded interests previously submitted without a certificate of legal effect

- 21 (1) An authorized lawyer who is acting on behalf of a registered owner of an affected parcel or any other interest holder affected by an error in a request to record, or request to cancel the recording of, a recorded interest previously submitted on a Form 26, 26L, 27 or 27L that does not contain a certificate of legal effect may request correction of the error by submitting a request to a registrar in Form ~~6A 49,~~ if the lawyer has done one of the following:

All corrections made by an authorized lawyer can be done with a Form 6A, eliminating the need for a Form 49. This form was rarely being used as it appears to be a common practice for lawyers to simply use Form 6A. This is not controversial.

- (a) they have notified and obtained the consent, in writing, of the registered owner of the affected parcel and any other interest holder shown in the parcel register who may be affected by the error;
- (b) they have obtained the prior written approval of the Registrar General, who may withhold approval or impose such notice or other requirements

as the Registrar General considers appropriate in the circumstances.

- (2) An authorized lawyer must retain a true copy of all documentation or information that supports their requested correction and any approvals and consents obtained under this Section and make them available for review by the Registrar General upon request and audit by the Nova Scotia Barristers' Society.

Correction of errors or omissions in registration, recording or other information certified by certificate of legal effect

22 (1) In this Section, "certificate of legal effect" includes an opinion of title on an AFR.

- (2) An authorized lawyer who is aware that there is an error or omission in a registration or recording or other information in a parcel register certified by a certificate of legal effect that the authorized lawyer previously submitted as required under these regulations must, without delay, request a correction of the particulars certified by the certificate of legal effect in Form 6A and do one of the following:

- (a) notify and obtain the consent, in writing, of the registered owner of the affected parcel and any other interest holder shown in the parcel register, who may be affected by the error or omission; or
- (b) obtain the prior written approval of the Registrar General, who may withhold approval or impose any notice or other requirements the Registrar General considers appropriate in the circumstances.

- (3) An authorized lawyer who is acting on behalf of a registered owner of an affected parcel or any other interest holder affected by an error or omission may submit a correction of the error or omission in a registration or recording or other information in a parcel register certified by a certificate of legal effect previously submitted by another authorized lawyer, if the lawyer complies with the requirements in subsection (2) and has one of the following:

- (a) the agreement, in writing, of the authorized lawyer who previously submitted the certificate of legal effect;
- (b) the written approval of the Registrar General, who may withhold approval or impose any notice or other requirements the Registrar General considers appropriate in the circumstances.

- (4) An authorized lawyer must retain a true copy of all documentation or information that supports their correction and any approvals and consents obtained under this Section and make them available for review by the Registrar General upon request and audit by the Nova Scotia Barristers' Society.

Content of parcel register

23 (1) A parcel register must contain all of the following:

- (a) the PID assigned to the parcel;

- (b) a legal description for the parcel that complies with subsection 7(10);
- (c) the name and mailing address, ~~if known~~, of each registered owner of the registered interest in the parcel described in clauses 17(1)(a), (b) and (c) of the Act, ~~current as of the date of registration or revision, or as subsequently amended by the owner~~;

This formerly said ‘if known’ regarding the mailing address which has been removed to make this a requirement for a registered interest.

I don’t think this will be a problem. I would think that in every situation where we have the consent of the registered owner, we will have the address of that owner. If we don’t have the consent, we shouldn’t be making the change to the parcel register.

- (d) the names and mailing addresses, ~~if known~~, of all holders of a recorded interest in the parcel, ~~current as of the date of recording in the parcel register, or as subsequently amended by the interest holder or the owner, unless a satisfactory explanation is provided as to why there is no ability to provide a mailing address~~;

Removed ‘if known’ regarding the mailing address to place more emphasis on this requirement and to afford the lawyer an opportunity to provide an explanation for circumstances when there isn’t the ability to add a mailing address for a recorded interest.

In almost every case the address of the recorded interest holder will be known and should be placed in the parcel register so as to enable section 60 or section 63 removal in appropriate circumstances. There will be the odd situation where the address of private mortgage holders or now-defunct lenders is not known, in which case a satisfactory explanation is to be provided. Presumably this is to be provided to the Registrar General.

- (e) the submission particulars or full text of every document by which the title to the parcel is affected, as registered or recorded under the Act or the *Registry Act*, ~~or a textual qualification with sufficient description, if based on an unrecorded interest or a statutory provision~~;

This provision now includes a TQ that sufficiently describes how title is affected if based on an unrecorded interest (i.e. license) or a statutory provision (i.e. s 280 (2) of the MGA).

This seems logical. Aside from the examples provided in the Rationale, I would think that the right of passage enshrined in the Cemeteries and Monuments Protection Act would fall into this category.

- (f) a reference to the instrument type assigned to any registered or recorded interest, which information is provided for convenience only and is not part of the registered or recorded interest;

- (g) a reference to the interest **holder** type assigned to any registered or recorded interest;

This distinguishes an interest type or document type (i.e. deed) from the interest holder type for each category of registered and recorded interests (i.e. fee simple, mortgagee, etc.).

This is not controversial.

- (h) a reference to any judgment **and any associated renewals, assignments or postponements of judgment**, recorded within the registration district which is, or may be, a charge upon the registered interests of the registered owner and any predecessor in title at the time of registration or revision of the registered ownership of the parcel;

This now includes other associated judgment related documents such as renewals, assignments, and postponements of judgments, that may have to be added to a parcel register at the time of migration or revision of ownership of a parcel.

This is not controversial in my opinion.

- (i) a reference to any statement made under Section 38 of the Act as to whether any of the owners of the interest is a non-resident;

- (j) the manner of tenure for the registered interest in the parcel;

- (k) any textual qualification added under **these regulations Section 11**;

This includes any TQ that complies with the requirements as stated throughout these regulations, notwithstanding S 11.

This is not controversial in my opinion.

- (l) **parcel access type as required by clause 37(9)(a)(ii) of the Act and Section 10A-**

To include the parcel access type as a part of the parcel register as explained under S 10 (A).

This is not controversial in my opinion.

- (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 or, if subsequently revised, at the time of the last revision of the registered ownership of the parcel.~~

Repealed

This was removed to provide clarity and avoid misinterpretation. It may have appeared to conflict with the LRA which states that a judgment recorded in the judgment roll attaches to any property that the judgment debtor owns, whether or not it appears in the parcel register.

However, the way this provision was written, it might give the impression that if a judgment wasn't appearing in the parcel register, that title wasn't affected by a judgment based upon the following wording '*a parcel register is deemed to be a complete statement of all judgments recorded...*', which could easily be misinterpreted and which is inconsistent with the LRA.

Therefore, given the ambiguity of this clause, it is being repealed.

This change is logical. Of course section 20 of the Act remains intact.

- (3) An archive register is not part of a parcel register.
- (4) A reference to an enabling instrument in a parcel register can be used to enable all benefits and burdens referred to in that instrument, which are between the same parties.

Prescribed contracts

- 24 (1) Option agreements, ~~and~~ rights of first refusal **and licenses** are prescribed contracts for the purposes of the definition of "interest" in clause 3(1)(g) of the Act.
- (2) A prescribed contract may be recorded in a parcel register and, if recorded, is subject to the Act's recording and cancellation of recording provisions.

Added Licenses to list of prescribed contracts

This makes sense.

Tenants in common

- 25 (1) An application for registration of a tenant in common interest in a parcel which has not been registered under the Act must be made in accordance with the provisions of Section 10 and must clearly state the percentage or share of each interest being registered.
- (2) In order to register an unregistered tenant in common interest in a parcel which has been registered under the Act, an authorized lawyer must complete and submit a request and certificate of legal effect in Form 24 and complete, retain and make available for review by the Registrar General upon request and audit by the Nova Scotia Barristers' Society, the following items:
- (a) an owner's declaration regarding occupation of parcel and residency status in Form 5;
 - (b) a copy of the abstract of title upon which the submitting lawyer's opinion in Form 24 is based; and

- (c) a copy of the notice of registration in Form 9, together with proof of service in accordance with Section 30, if applicable.

~~③ If an unregistered tenant in common interest in a parcel which has been registered under the Act is transferred for no value as disclosed in the affidavit filed under the Municipal Government Act, the owner of the unregistered tenant in common interest must apply to have the parcel register updated using Form 50.~~

Repealed

Removed the requirement to record a Form 50 because the deed can simply be recorded with a Form 44, pursuant to the *Registry Act*. There wasn't any purpose served in using a Form 50 and it has been removed from the list of prescribed forms.

Removal of the Form 50 requirement was discussed earlier in this review. I don't believe this to be controversial.

Judgment information

- 26 (1) For the purposes of recording a judgment in accordance with subsections 67(1) and (4) of the Act or requesting confirmation of a debtor's identity in accordance with Section 68 of the Act, information that tends to distinguish a person from another person of the same or similar name includes a date of birth.
- (2) For the purposes of clause 66A(2)(a) of the Act,
- (a) surnames that begin with "Mc" are identical to surnames that begin with "Mac" and *vice versa*;
 - (b) surnames that include apostrophes, accents, spaces or a mixture of upper and lower case letters are identical to names of the same spelling that do not include these features; and
 - (c) names of legal entities that include "the", "a" or "an" are identical to names of the same spelling that do not include these words.
- (3) A judgment creditor who holds a judgment that is recorded in the judgment roll may update the name or address of the judgment debtor or creditor in the judgment roll and, if applicable, the parcel register, by recording a request in Form 20.

Added the ability to change the name or address of a judgment creditor on the Form 20.

I don't believe this to be controversial.

- (4) An update of name or address under subsection (3) is effective from the date and time that the request was recorded.
- (5) On the coming into force of the Act, statutory declarations respecting judgments must be recorded in the judgment roll.
- (6) An affidavit recorded under subsection 68(3) of the Act must be recorded in the judgment roll and must have attached as exhibits
 - (a) a copy of the request for confirmation that was sent to the judgment creditor

under subsection 68(1) of the Act;

- (b) proof of delivery of the request for confirmation;
- (c) any request for further information received from the judgment creditor; and
- (d) a copy of the response to any request for further information together with proof of delivery of the response.

Deemed removal or request for cancellation of judgments

27 (1) A judgment is deemed to be removed from the judgment roll when any of the conditions of subsection 66(4) of the Act are met.

- (2) For a judgment recorded in the judgment roll or a parcel register,
 - (a) a full or partial release signed by the judgment creditor under subsection 69(3) of the Act, and recorded using a request in Form 48; or
 - (b) a certificate of satisfaction or certificate of discharge from the court that is recorded using a request in Form 47,

is deemed to be evidence of a request by the holder of the interest to cancel the recording of the interest under clause 57(1)(b) of the Act, and may be recorded by the debtor or debtor's agent.

Security interest holder compliance with subsection 51(4) of the Act

28 (1) Subsection 51(4) of the Act does not apply to a security interest that is intended to remain in place to secure future advances.

- (2) Except as provided in subsection (3), a security interest holder is not in compliance with the requirement to record a release of a security interest in subsection 51(4) of the Act unless all necessary releases of a security interest and related documents are submitted for recording within a reasonably prompt time after the obligation secured by the security interest is paid in full.
- (3) A security interest holder is deemed to be in compliance with subsection 51(4) of the Act if, at an owner's request, the security interest holder sends a release of the security interest to the owner for recording **together with the completed and signed Form 27L** and the release is recorded.

This provision was added to ensure that the Form 27L is completed and signed by the lender and included with the release that is sent to the owner.

The effect of this change is unclear to me, although I suspect it will make little difference to us in our practices. Does this mean that the owner (i.e. a layperson) can submit the Form 27L and release for recording? Perhaps so. I have from time to time received the completed and signed Form 27L but I have simply destroyed it and replaced it with my own Form 27.

If a lay person is submitting the Form, presumably they would do so in person or by mail.

Notice to cancel or amend a recorded interest

- 29** (1) A notice in Form 15 to a registrar to cancel or amend the recording of a security interest under subsection 60(2) of the Act must be submitted together with
- (a) a statutory declaration that outlines to the registrar's satisfaction the reasonable and probable grounds that were used as a basis for the demand to cancel or amend the recording of the security interest; and
 - (b) proof that the demand was served on the security interest holder in accordance with Section 31 ~~0~~.

Corrected the section which was erroneously referred to as 30 instead of 31.

This is not controversial.

- (2) A notice in Form 15A to a registrar to cancel the recording of a recorded interest or judgment under Section 63 of the Act must be submitted together with
- (a) an affidavit that complies with subsection 63(2) of the Act; and
 - (b) proof that the demand was served on the interest holder in accordance with Section 31.

Proof of service

30 The service of any document may be proved by an affidavit, which must state

- (a) by whom the document was served;
- (b) the day of the week and the date on which it was served;
- (c) where it was served; and
- (d) how service was effected,

and a copy of any document served must be attached as an exhibit to the affidavit.

Service of notice

- 31** (1) Unless otherwise provided in the Act or these regulations, all notices required by the Act or these regulations to be sent must be sent by any means that affords proof of delivery.
- (2) If the name or address of a person to whom a notice must be sent is not known, or if service under subsection (1) is not practicable, the Registrar General may provide directions for substituted service of any notice required by the Act or these regulations.

Appeals to Registrar General

- 32 (1) To appeal a decision of a registrar under Section 90 of the Act, a person must submit an appeal in writing to the Registrar General in paper format or – electronically, ~~following the instructions in Property Online~~, together with all of the following:

Removed the requirement to follow instructions in POL because all of the requirements to appeal a decision are outlined in this section.

This makes sense.

- (a) the fee prescribed under the *Land Registration General Regulations*, if any;
 - (b) a copy of the registrar’s decision that is being appealed;
 - (c) a copy of the documents that are the subject matter of the appeal;
 - (d) a clear statement of the reasons why the registrar’s decision is incorrect and any other explanatory information.
- (2) An application for an appeal under this Section must state in bold in the subject line “Appeal of a Registrar’s Decision - PID(s) (*insert PIDs of affected parcel(s)*)- County(ies) (*insert name(s) of County/ies where affected parcel(s) are located*)”.

Revised Forms

- Form 1
The only revision is the addition of the following option near the top of the first page:
“This parcel is for the purpose assigning PID for LR Deemed Consolidation (under Section 268A of the MGA)”

- Form 5
The following changes have occurred:
 1. A statement of purpose appears near the top.
 2. Headings have been added, thus making the document more user-friendly.
 3. The significant change is the addition of the following:
*“Statement regarding property use by permission and property disputes.
Details known about any boundary disputes, any use of the property with permission (eg. Letters of permission granted), knowledge of any competing claims to the title of the parcel or part of the parcel are as follows:”*

- Form 6A
The following changes are noted:
 1. Previously the Form called upon the submitter to confirm that “I have read the requirements for submission of this form, as set out in Section 22 of the Land Registration Administration Regulations.” Now reference to Section 21 has been added to this statement.
 2. The following option appears under the “Additional Information” section of the existing form:
“This Form 6A is adding a benefit or burden where the corresponding benefit/burden in the “flip-side” parcel is already identified in the LR parcel register and no further forms are required.”

This has been replaced by the following options:

 - “This Form 6A is adding a benefit or burden where the corresponding interests are identified in the affected land registration parcel register.*

 - This Form 6A is adding a benefit or burden where the corresponding interests are not identified in the affected land registration parcel and a TQ is being added.*

- *This Form 6A is adding a benefit or burden where the corresponding affected parcel is non-land registration and either; (select one of the following)*
 - *a Form 8A is being recorded and a TQ is being added to provide notice of the recording*
 - OR*
 - *a TQ is being added to explain why a Form 8A wasn't recorded.*

- Power of attorney statements have been added. The submitter must indicate that the attached document (if indeed a document is attached) is or is not signed pursuant to a power of attorney.
- The formatting of the remainder of the Form has been changed. I suspect this may make it more user-friendly but time will tell.
- Form 8A
The format has changed somewhat, but the only change of significance appears to be the addition of headings which will, in my opinion, make the Form more user-friendly.
- Form 9
While the formatting and the wording have been revised somewhat, I don't think these changes are material.
- Form 10
The appearance has changed, but the only significant difference is the addition of the words "of debenture recorded under the Registry Act" (under the first Document Reference heading), to be used in cases where the floating charge debenture is not recorded in the parcel register. This explanatory note makes the Form more user-friendly.
- Form 15
The boxes to be completed have been revamped, which should probably make the Form more user-friendly.
- Form 15A
The boxes have been revised, which should make the Form more user-friendly.
- Form 16
 - In addition to stating the name of the judgment debtor as it appears in the judgment, any name change resulting from a recorded change of name document or a name updated with a Form 20 must be added.

- The same applies to the name of a judgment creditor.
 - The current mailing address of the judgment creditor must be added.
 - If the judgment has been assigned, the particulars must be stated.
 - We are no longer required to set out the judgment number and date of issuance of the Court. Of course the date of first recording (and subsequent renewals) (if applicable) must be set out, as must be the recording particulars of any recorded assignment.
- Form 19
 - The changes are inconsequential and probably make the Form more user-friendly.
- Form 20
 - The name of the judgment creditor must be set out.
 - The submitter must choose from among the following options:
 - a) Certificate of judgment
 - b) Renewal of judgment
 - c) Assignment of judgment
 - The Form now permits updating of the judgment creditor’s name and/or address.
- Form 21
 - Insertion of the document number/book and page number of current enabling instrument is now optional.
 - The following section has now been added:

*“The parcel register must be revised to change the name from:
_____ to _____
(for an individual including any “otherwise known as names” that
must be added and include the qualifier).”*

- The second page of the Form includes the following addition:
*“The parcel register must be revised to correct the spelling of the name from:
_____ to _____.”*

- Form 22

- The format has changed but the content is essentially the same.

- Form 24

- The “Additional information” options have been expanded. I do not believe this to be controversial.
- There is a single power of attorney option to be selected, if a power of attorney is in play, rather than choosing among three.
- The format of the various boxes has been revised. Upon initial review I don’t see anything controversial.
- **However, there was a discussion quite a number of years ago about adding a “comments” box similar to that which appears in Form 6 (Application for Registration), thus allowing us to communicate with the LRO in the event of unusual circumstances. I still think that this would be a very useful addition and it is an option of which I avail myself frequently when submitting an AFR.**

- Form 26

- Just as is the case with Form 24, a single option exists with respect to applicable powers of attorney.
- There is now a separation of the boxes to be completed in the event of recording of an interest on the one hand, and the filing of a power of attorney in the roll (or as a duplication of a power of attorney registered under the Registry Act) on the other hand. There is also a box for completion of name to be changed to “Interest Assigned” situations.
- There is also a new option which provides as follows:
“The interest holder recording the interest on the attached document is a successor company or organization to the interest holder that currently appears on the parcel register and the document relating to this name change or amalgamation has been previously registered or recorded.”

- Form 26L

- I did not review this one as I assume it is of no interest to we practitioners.

- Form 26N
 - I may be missing something, but the only change I see is deletion of the words “take notice that”. For that matter those words have been deleted from various other Forms.

- Form 27
 - Again the power of attorney options have been condensed into a single box in those situations where a power of attorney applies.

 - Aside from that it appears that only formatting changes have occurred.

- Form 27L
 - Again I have not reviewed this as it does not apply to we practitioners.

- Form 28
 - A new option has been added:
“statutory declaration (not deemed consolidation)”. I assume this would pertain to Section 268(2)(a) of the MGA (each resulting lot having an area exceeding ten hectares).

- Form 45
 - The parcel access changes have been limited to the four which are proposed to be permitted under the new Regulations.

 - A textual qualification is to be provided, if required with respect to the selected access type.

- Form 46
 - The “Purpose” statement now includes “amendment of judgment in the judgment roll”. As well, there is now a box for completion in the event of amendment of a judgment previously recorded.

 - Aside from that the changes appear to be limited to formatting.

- Form 47
 - Aside from formatting changes, the only other change which I have noticed is the addition of boxes to be completed for “other judgment related documents” which have been recorded.

- Form 48
 - The stated “Purpose” has now been expanded to include “and/or to cancel the recording of a judgment in a parcel register with a certificate of legal effect”.

- The Note respecting partial releases has been expanded to provide as follows:

“If a judgment has to be removed from a Land Registration register, an authorized lawyer must also complete Part 2 of this form.”

Part 2 is an entirely new page.

- The second page of the revised Form (not to be confused with Part 2, which appears after that page) has a heading which reads as follows:

“Prescribed form of release.” This is followed by separate sections for a partial release of judgment on the one hand and a full release of judgment on the other hand.”

- Form 48A

- This has now been deleted.

- Form 48B

- The list of options has been expanded to include:
 - a) Disclaimer by bankruptcy trustee.
 - b) Bankruptcy orders.
 - c) Certificate of filing of a consumer proposal.
 - d) Certificate of poor performance of proposal.
 - e) Affidavit filed pursuant to section 68(3) of the Land Registration Act [Section 68(3) allows removal of the recorded interest in the event the judgment creditor has not replied to a Section 68(1) demand for “confirmation that the person is or is not the judgment debtor referred to in the judgment and that the judgment is or is not satisfied”, within ten days after the demand was received.
 - f) Order filed pursuant to section 3(3) of the Land Registration Act. [Permitting the registration or recording of an order, judgment, charge or lien pursuant to an enactment.]
 - g) There are various formatting changes which do not appear to be controversial.

- Form 49

- The option of using this Form will no longer exist.

- Form 50

- The option of using this Form will no longer exist.