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CHAPTER 4

THE SUBDIVISION OF LAND AND TITLE REGISTRATION IN BRITISH COLUMBIA

Learning Objectives

After studying this chapter, a student should be able to:

- Describe who owns the land
- Describe the difference between Crown ownership, private ownership, and treaty settlement lands
- Describe how land is subdivided
- Explain the differences between “traditional” subdivisions, strata title subdivisions, and air space parcel subdivisions
- Describe how strata developments are created
- Describe how the common law dealing with the transfer of estates and interests in land has been changed by the Torrens system of title registration
- Explain the underlying purpose of the Torrens system and how it is achieved
- List and explain the four main components of our Torrens system: the principle of indefeasibility, the registration principle, the abolition of the doctrine of notice, and the assurance fund
- Describe the process for conducting a search of title
- Identify when a manufactured home must be registered

INTRODUCTION

In Chapter 3: “What the Purchaser Buys: Estates and Interests in Land”, we discussed the legal concepts of estates and interests in land. The present chapter builds on this knowledge and asks three related questions:

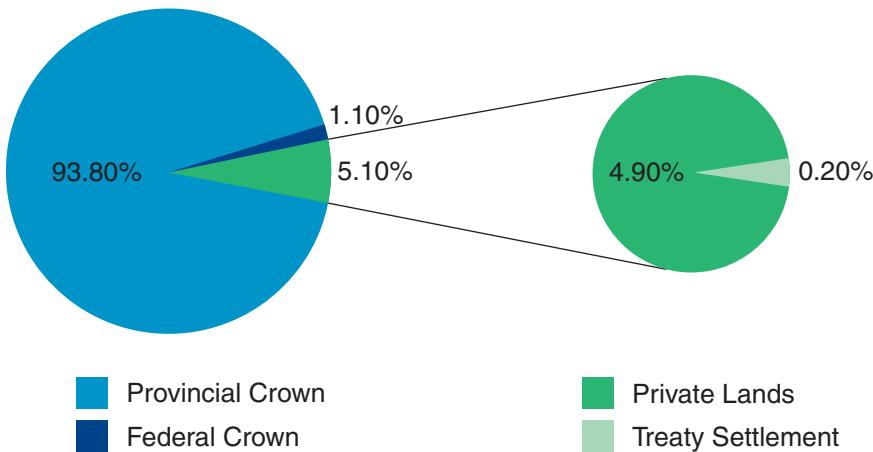
1. Who owns the land in British Columbia?
2. How is land divided in British Columbia?
3. How does one register an interest in land in British Columbia?

In the first section of this chapter, we discuss the difference between Crown lands, private lands, and treaty settlement lands. In the second section, we focus on how land is divided, sub-divided, and stratified in British Columbia. In the third section, we examine the title registration system in British Columbia and compare it to historical methods of transferring and verifying ownership in land. This section also discusses the title search process, title insurance, and manufactured homes.

WHO OWNS THE LAND?

Land ownership in British Columbia falls under five categories: provincial Crown lands; federal Crown lands; privately owned lands; treaty settlement lands; and Aboriginal title. We will discuss each in turn.

FIGURE 4.1: Land Ownership in British Columbia



Source: “Crown Lands: Indicators and Statistics Report,” Ministry of Forestry, Lands, and Natural Resource Operations (2011).

Crown Lands: Provincial and Federal

According to the *Land Act*, “Crown land” is defined as any land or interest in land, whether covered by water or not, that is vested in the government. Approximately 94% of the land in British Columbia is in the name of the provincial Crown and administered by various government agencies. The Crown lands, tracked in a Crown land system called Tantalis, are divided for record keeping purposes into parcels called district lots, but they are generally not subdivided under the *Land Title Act*. The Crown may grant land or interests in land to individuals, corporations, or municipal governments. At its discretion, the Crown may grant leases, licenses, permits, rights of way, and fee simple interests. All privately held land interests in British Columbia were at one point held by the Crown. When a Crown grant is issued by the Province, the grant must be sent to the Land Title Office, accompanied by a plan describing the nature of the interests that is being granted. Once the lands are registered in the Land Title Office, the lands may be the subject of subdivisions as described later in this Chapter.

Approximately 1% of the land in British Columbia is owned by the federal government as federal Crown land. This land includes Indian reserves, national parks, national defence areas, and federal harbours.

Indian Reserves

Reserves under the *Indian Act* are lands owned by the Federal Crown for the use and benefit of First Nations. First Nations have a collective right to benefit from the reserve land allocated to them, though individual members of a First Nation may be given an “allotment”, which is the right to use and occupy a piece of land within the reserve. Reserves are not subject to the *Land Title Act* and they are generally not subdivided; however, there have been some limited exceptions to this rule.

Private Lands

Private lands are those granted or sold in fee simple by the provincial Crown to individuals, corporations, and local governments. As discussed in Chapter 3: “What the Purchaser Buys: Estates and Interests in Land”, the fee simple is the highest estate known to Canadian law and is akin to absolute ownership. Private lands account for only about 5% of the total land in British Columbia, though in high-density areas (such as the Greater Vancouver Region) the vast majority of the land is privately held.

Treaty Settlement Land

Unlike in other parts of Canada, treaty agreements with Aboriginal groups were not frequently carried out in British Columbia in the early stages of European settlement. For this reason, British Columbia is involved in an ongoing, modern treaty-negotiation process. Since 2000, four treaties have been agreed to and implemented, those being with the Nisga'a Nation, Tsawwassen First Nation, the Maa-nuuth First Nations, and Tla'amin Nation. Other treaties have been signed but not yet implemented. The purpose of these negotiations is to promote reconciliation between the Crown and Aboriginal groups and also to promote certainty over the distribution of land ownership in British Columbia. The penultimate stage of the treaty negotiation process in British Columbia is the creation of a “Final Agreement,” which sets out the terms of the treaty prior to ratification. Pursuant to the four implemented treaties, each First Nation owns its treaty lands (comprising former Provincial Crown lands and former reserves) in fee simple. Each First Nation also has extensive governance authority over the treaty lands.

In dealing with First Nations land, a licensee needs to understand that many different ownership regimes apply. Before conducting any transactions, licensees should ensure that the parties have been encouraged to seek legal advice.

Aboriginal Title

Since the assertion of British sovereignty over what is now Canada, the Crown has held the underlying title to all land. However, Canadian courts have recognized that Aboriginal groups occupied vast portions of Canada before European settlement. In the 1970s and 1980s, Canadian courts concluded that Aboriginal rights survived European settlement and remain valid unless extinguished by treaty. In particular, the courts have found that, while the Crown acquired the underlying title to all land at the time of sovereignty, this title is burdened by Aboriginal peoples’ pre-existing legal rights to use and occupy certain lands. These pre-existing land rights, known as Aboriginal title, were affirmed by the Supreme Court of Canada in *Tshilqot'in Nation v British Columbia* (2014). In that decision, the Court granted a declaration of Aboriginal title for more than 1,700 square kilometres of land in the interior of British Columbia. In the case, the Supreme Court described Aboriginal title as “the right to decide how the land will be used; the right of enjoyment and occupancy of the land; the right to possess the land; the right to the economic benefits of the land; and the right to proactively use and manage the land.” To prove a claim for Aboriginal title, an Aboriginal group must prove that their use of the territory was regular and exclusive prior to the assertion of Crown sovereignty. If they are relying on their present use of the land as evidence of their pre-sovereignty occupation, they must also prove continuity between their present occupation and their pre-sovereignty occupation.

Aboriginal title is a unique interest in land and, as the Supreme Court has said, cannot be described in terms of traditional property law concepts. Aboriginal title is an inherently collective land right, meaning that those who hold it cannot put it to uses that would destroy the ability of future generations to benefit from the lands in a communal manner. Also, due to the independent and communal nature of the interest, Aboriginal title cannot be alienated (i.e., sold) except to the Crown.

Aboriginal title may be established either by court declaration or by way of contractual agreement between the Crown and an Aboriginal group. When Aboriginal title is established, governments and others cannot use or develop the title land unless they have the permission of the Aboriginal title holders. Absent this permission, governments may be able to justify an infringement of the title rights, providing they abide by the constitutionally-mandated process for doing so. This process requires consultations with the Aboriginal group and a compelling and substantial public objective balanced with the Crown's fiduciary obligation to act in the best interest of Aboriginal peoples.

HOW IS LAND DIVIDED?

Subdivision of Lands

The *subdivision* of land is the creation of smaller parcels of land from a larger parcel of land. It need not involve “new homes” or the requirement for disclosure under the *Real Estate Development Marketing Act* (discussed in Chapter 2: “The *Real Estate Services Act*”). A commercial developer creating 50 new lots out of a large parcel of land and a residential owner selling the northerly ten feet of their lot to a neighbour are both considered to be subdividing their property.

At common law, the owner of an estate in fee simple had an inherent right to subdivide their parcel of land. No regulatory authority was involved. That common law right has been extinguished in British Columbia. Section 73 of the *Land Title Act* provides that a person must not subdivide land except in compliance with the *Land Title Act*. Certain acts of subdivision are permitted, including leases for less than three years. Subdivision is discussed in more detail in the chapter on Local Government Law.

Briefly, modern subdivisions require regulatory approval. The approving authority is required to decide if the subdivision is in the public interest. As long as the approving authority acts in good faith, on a factual basis, and without discrimination, its decision is largely the final word. As part of the approval process, the subdivider will have to comply with all local bylaws, and may be required to dedicate some of the land as road or park, or to install certain services at its own expense. The registrar at the Land Title Office must not deposit a subdivision plan unless it has been approved by the approving officer appointed by the relevant authority.

There are different ways that land registered in the Land Title Office can be subdivided. First, an owner can do a “traditional”, two dimensional subdivision (e.g., subdivide one lot into two lots). Or, the owner could reconfigure two lots into three, with new interior lot lines. As you will see in the discussion of strata subdivisions, bare land stratas look remarkably similar to “traditional” subdivisions but have different obligations. Second, the owner could subdivide airspace. The most common use of airspace subdivisions is in the creation of strata developments where the developer wishes to establish separate ownership of portions of the development. Airspace strata developments are discussed later in the chapter.

The Strata Concept

The strata concept allows the subdivision of a building, or sometimes land, into separate parts for individual ownership, together with an ownership interest in the common property. The terms “strata” and “condominium” are synonymous. The words refer to the same concept and may be used interchangeably. For marketing purposes, licensees sometimes also use the term “townhouse”, which has no legal meaning. If a strata plan has been filed, *strata lots* and *common property* are created, regardless of the “look” of the building or the marketing terms used.

In a strata development, individuals can own separate parts of the same development but share the ownership and use of common property. The part of the property that an individual separately owns is called a “strata lot”. Informally, we often call this the strata “unit”, while the rest of the property is called the “common property”. Subject to the *Strata Property Act*, we treat a strata lot in the same way as any parcel of land for which a title is registered in the Land Title Office. For example, for the purposes of assessment for real property taxes, each strata lot, together with the strata lot owner’s share in the common property, is deemed to be a separate parcel of land

subdivision
the division of land into
two or more parcels

strata lot
the parts shown on the strata plan that
are created for individual ownership

common property
any part of a strata plan that is not
part of a strata lot, and a variety of
service facilities, depending on their
location and use

and is assessed and taxed individually. A strata lot is a parcel that can be owned by one or more persons, by a corporation or partnership, or by a combination of these entities. A strata owner owns the strata lot plus their proportionate share of the common property. For example, in an apartment style strata development, the owner purchases fee simple title to their apartment (the strata lot). With the purchase of the strata lot, the owner also automatically acquires a proportionate fee simple interest in the common property as a tenant in common with the other owners in the apartment. In this apartment example, everything within the boundaries of the development that is not within the boundaries of any of the strata lots is common property, which would include, amongst other things, the apartment building's roof and exterior, the entrance lobby, hallways, elevators, recreational facilities, and all of the land.

Subdividing a Building

The strata concept allows the subdivision of a building into separate parts, some of which are privately owned and some of which are commonly owned. Although the building is typically affixed to the underlying land, the presence of the land is secondary to the primary task of dividing the building into separate parts for individual ownership. When the subdivision occurs, the building is subdivided into strata lots, while the underlying land forms part of the common property of the development. In other words, the strata lots are created out of the building, not out of the land. We can think of this as a “building” strata development, even though this phrase has no technical meaning in the real estate industry.

FIGURE 4.2: Subdividing a Building

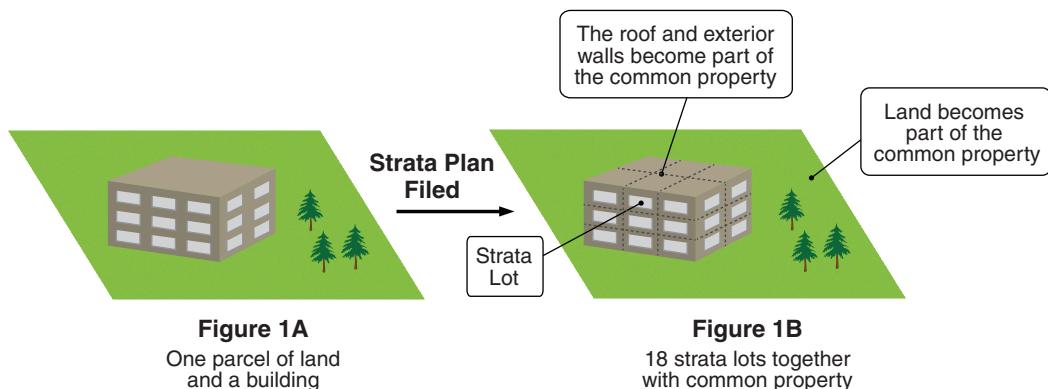


Figure 4.2 contains a schematic diagram showing how a building is subdivided in a strata development. At the outset (Figure 1A), the developer owns a single parcel of land on which they construct a building. In this example, when the developer deposits the strata plan at the Land Title Office (Figure 1B), the property is subdivided into 18 strata lots together with common property. Each strata lot is equivalent to a separate parcel of land. The common property includes the building's roof and exterior and the land underneath and around the building. The owner of strata lot 1 owns their strata lot in fee simple. The owner of strata lot 1 also owns a proportionate fee simple interest in the common property as a tenant in common with the owners of the other strata lots. Each owner's proportionate interest in the common property is set out in a table called the *Schedule of Unit Entitlement*, which is discussed further in Chapter 7: “Strata Properties (Condominiums) and Cooperatives in British Columbia”.

schedule of unit entitlement
a table that sets out each owner's proportionate interest in the common property. It is often used to calculate a strata lot owner's share of a strata corporation's expenses

conversion (of a building)
a project in which the developer stratifies a building by subdividing it into strata lots

Conversions

In a strata development, the term “conversion” refers to a project where the developer owns a building and wishes to stratify it by subdividing the building into strata lots together with common property. For instance, a developer might buy an older high rise apartment building and convert it into a strata development in order to sell the

individual apartments as strata lots. Note, however, that conversions are not limited to buildings that were previously occupied or occupied for a residential purpose. The building may have been previously used for a variety of purposes, including commercial, industrial, or recreational uses.

A developer who wishes to convert an existing building into a strata development must first obtain the necessary approval from the local municipal council or regional board of the regional district, as the case may be. In making its decision, the approving authority must consider, among other things, the priority of rental accommodation over privately owned housing in the area, any proposals for relocating persons presently occupying the building, and the life expectancy of the building.

If a developer wishes to convert a building occupied by residential tenants, then the *Residential Tenancy Act* also applies. Once the developer obtains all necessary permits and approvals to convert the building to a strata complex, the developer must comply with the *Residential Tenancy Act* to terminate the tenancies of existing tenants.

In some municipalities, there is a virtual moratorium on conversions because of the scarcity of rental units.

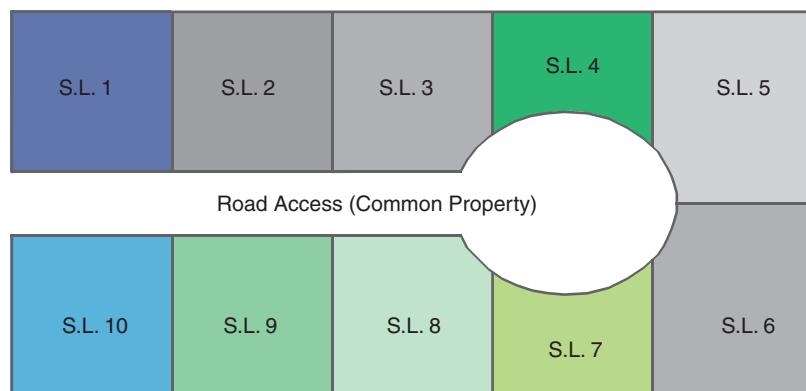
Bare Land Strata Developments

A developer may also subdivide bare land (i.e., land without buildings). There may be one or more buildings on the land at the time the subdivision occurs, or buildings might be added later. Whether buildings are present does not matter: the defining characteristic of a bare land strata development is the stratification of land, rather than a building, into separate parts, some of which are privately owned and some of which are commonly owned.

Figure 4.3 illustrates how a developer with a five acre parcel of land might create a bare land strata development by subdividing the property into several bare land strata lots with a common property road for access. In this example, buyers can purchase the individual bare land strata lots, but the road remains common property in the development. If the road, being common property, requires repair, then the strata lot owners are liable for the costs, unlike a “traditional” subdivision where title to the roads vests in the municipality. A buyer who purchases a bare land strata lot can build a house on it. Typically, the same developer who sells the bare land strata lot to the buyer will separately contract with the buyer to build a house for the buyer. Usually, a building scheme governs the development to ensure a uniform appearance among the houses built on the bare land strata lots.

The bare land strata device is a flexible development tool, allowing developers to use the bare land strata concept to create recreational, commercial and industrial developments. For example, a developer may use the bare land strata concept to create a manufactured home park. Here, the developer subdivides the property into bare land strata lots with common property. The developer typically paves the surface of each bare land strata lot with a concrete pad. In this example, the common property likely includes an access road, underground services for water, sewage, and electricity to every bare land strata lot, and recreational facilities. When a buyer purchases a bare land strata lot in the development, the buyer can park their manufactured home on the pad. Subject to the development's bylaws, an owner may also rent the owner's manufactured home and pad, or perhaps the pad alone, to a tenant. If the owner rents the pad alone, the tenant will park the tenant's own manufactured home on the owner's bare land strata lot pad. The owners of the strata lots, and their tenants, enjoy the use of the common property and are liable for its expenses.

Similarly, in a recreational development, a developer may subdivide a large parcel of land into bare land strata lots together with common property. When a buyer purchases a bare land strata lot, they can build a cottage on it. There may be a building scheme registered against each bare land strata lot to ensure uniform building standards among the cottages. The owners of the bare land strata lots would enjoy the use of the common property, which might include recreational facilities such as hiking areas, a man-made lake, swimming pools, hot tubs, or tennis courts. Once again, the owners also bear the ongoing costs associated with the common property.

FIGURE 4.3: A Bare Land Strata Plan

Air Space Strata Developments

As set out in Chapter 3: “What the Purchaser Buys: Estates and Interests in Land”, air space can be subdivided under the *Land Title Act* in a similar manner to land. Air space subdivisions can be expensive, and are most commonly used in condominium developments, where, for example, the developer wants separate ownership of the residential and commercial components. The developer would construct the building and, once the building was near completion, would file an air space plan that would “carve out” the commercial or residential component from the building. If, for example, the developer wished to retain the commercial component, the developer might create an air space parcel, the plan for which would be filed at the Land Title Office, for the portion of the building that would be residential. The remainder of the parcel (everything within the property boundaries and not within the boundaries of the air space plan) would continue to be owned by the developer. The developer could lease all or portions of the remainder, or could file a strata plan relating to the remainder and sell some or all of the commercial strata lots. Or, the developer may wish to sell both the residential and commercial components. In that case, it would be more common for the commercial portion to be the air space parcel. The developer would then file a strata plan for the area within the air space parcel, creating commercial strata lots with their own strata corporation, and also file a strata plan for the residential remainder, with residential strata lots in the rest of the building, and the remainder of the whole parcel forming part of the common property of the residential strata corporation. One of the advantages of creating a separate air space parcel within a building is that the residential and commercial strata lots are in different strata corporations, with different bylaws, rules and expenses, etc.

There will be complex agreements necessary for such a development to work efficiently. For example, there will be easements between the separate parcels, dealing with matters such as support, elevators, water and sewer pipes, and “common” facilities. The purchaser of a commercial or residential strata lot in such a development may be faced with a long, complex list of charges on the certificate of title. A prudent licensee will familiarize themselves with the title matters and advise prospective buyers to obtain such professional advice as may be necessary.

Mixed Use Strata Developments

Developers sometimes create strata developments that share two or more different kinds of uses. Typically, these developments contain residential strata lots with strata lots designed for other uses, like stores or offices. We call these “mixed use” strata developments. This would occur where no air space plan has been filed to create separate properties.

Strata Principles

There are several important principles that apply to all strata developments in British Columbia.

The First Principle: A Strata is a Strata

A *strata* is a *strata* is a *strata*. The strata legislation applies to every type of strata development. The same legislation that governs a 500 unit apartment-style strata complex applies equally to a 100 unit industrial warehouse strata project, to a 20 unit bare land strata development, and to a two unit strata, sometimes called a duplex. In some cases, the legislation adds extra requirements for a particular type of project, but the legal fundamentals remain the same for all strata developments.

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Although many people don't view duplexes as condominium properties, duplexes can face the same issues as a 100-unit condo. A strata property simply refers to a development in which individuals own separate parts of the same development but share the ownership and use of certain common property. The principle that a *strata* is a *strata* is a *strata* therefore applies to strata developments with as little as two units, otherwise known as duplexes.

In *Whiting v. Peters*, 2021 BCCRT 96, the owners of a duplex strata corporation commenced claims against one another at the Civil Resolution Tribunal (CRT) on the grounds that the other owner was not fulfilling their obligations under the *Strata Property Act*. The allegations included failures to cooperate with shared responsibilities such as scheduling meetings and preparing financial statements. One of the parties also alleged that the other owner refused to contribute to the repair and maintenance of common property. Interestingly, this was not the parties' first dispute; in fact, the CRT had previously issued two decisions between the parties respecting the management of the duplex property. Ultimately, the CRT decided that both parties had defaulted on certain statutory obligations and ordered that the strata corporation reimburse the parties for various expenditures. When dealing with a duplex property, licensees should be aware that a duplex is a strata and the same issues that may arise in a condo of several units may arise amongst the two owners of a duplex.

The Second Principle: The Strata Scheme is Self-Enforcing

There are no "strata police" who regulate compliance with the strata legislation. Every strata development is self-enforcing. If the owners are concerned that strata council is not meeting its obligations, the owners, as the strata corporation, may, by majority vote in an annual general meeting or special general meeting, direct the strata council to do what is necessary to comply with the *Strata Property Act*, subject to a few exceptions. Section 165 of the *Strata Property Act* also gives every owner the right to apply to the Supreme Court of British Columbia for an order requiring the strata corporation to comply with the legislation.

The Third Principle: Not on Reserves

Since Indian reserve land constitutes an exclusively federal undertaking, provincial legislation, which includes the *Strata Property Act*, does not apply on such lands (subject to the "leasehold landlord" provision discussed below). If, however, a First Nation has concluded a treaty with British Columbia and Canada, then the *Strata Property Act* will apply, as the First Nation lands are no longer "reserve" but are owned by the First Nation in fee simple. The Nisga'a Nation (Nass River area), the Tsawwassen First Nation, the Maa-nulth First Nations (Vancouver Island), and the Tla'amin Nation (Powell River area) have concluded treaties that are now in effect. For example, the Tsawwassen First Nation owns the fee simple title to a development named Tsatsu shores, and that development, post Final Agreement, is a leasehold strata development.

Some First Nations in British Columbia have permitted real estate developments on Indian reserve lands. Outwardly, some of these developments may look like condominium projects; however, they are not. In these projects, the developer does not subdivide buildings, or land, into separate parts for individual ownership together with common property. Instead, these projects tend to create strata-like features using contractual provisions in long-term lease agreements. However, section 12.1 of the *Strata Property Regulation* provides for, among other entities, the Sechelt Indian Band and Musqueam Block F Land Ltd. to be "public authorities"; therefore, these entities may be "leasehold landlords" under the *Strata Property Act*.

HOW A STRATA DEVELOPMENT IS CREATED

The *Strata Property Act* uses the term “owner developer” to describe the person who creates a strata development. We will simply refer to the “owner developer” as the “developer”.

Strata Plan

To create a strata development, a developer must first subdivide a building or land into strata lots together with common property. This is done by depositing a document called a “strata plan” at the Land Title Office. The plan must show which parts are strata lots available for purchase by individual owners and which portions are common property. The strata plan is an essential document for every strata owner. In the case of a strata plan that subdivides a building, the plan is not normally filed until the building is nearly complete, as the plan must “match” the building. Since the boundaries of a strata lot in a building are the middle of the floors, walls and ceilings, the developer must not file the strata plan until late in the development so the boundaries can be accurately set out in the plan.

There are, in effect, two basic types of strata plans: one that subdivides a building, and one that subdivides land. The first is simply called a “strata plan” and the second is called a “bare land strata plan”. There is an easy way to tell whether a strata development subdivides a building or land. The regulations require that in the case of a bare land strata development, the strata plan must clearly state next to the approving officer’s signature that it is a bare land strata plan.

A developer must obtain the required approvals, including approval from the appropriate local government authorities, before depositing a strata plan in the Land Title Office. Though the requirements for depositing a strata plan are very technical, every plan must show, amongst other things, the following:

- a unique registration number (e.g., Strata Plan No. VR 150);
- the boundaries of the land;
- the location of any buildings (except in bare land strata developments);
- a drawing distinguishing the strata lots from one another by numbers or letters in consecutive order; and
- the area of each strata lot in square metres.

In addition to the requirements for what a strata plan must show, a strata plan being deposited at the Land Title Office must be accompanied by, among other things, the following documents, which are each separately registered in the Land Title Office:

- a Schedule of Unit Entitlement;
- a Schedule of Voting Rights, if there is at least one non-residential strata lot; and
- any bylaws that differ in any respect from the Standard Bylaws.

Under the strata legislation prior to the *Strata Property Act*, the Schedule of Unit Entitlement and the Schedule of Voting Rights were included on the strata plan, so, for strata corporations created under such prior strata legislation, the strata plan will contain these schedules. However, if a Schedule of Unit Entitlement or Schedule of Voting Rights for such a strata corporation is amended under the *Strata Property Act*, then the relevant schedule in the strata plan will be cancelled and replaced with the amended schedule that will be separately registered in the Land Title Office. Appendix 4.1 contains sample excerpts from strata plans that illustrate some of these features.

When the developer files the strata plan in the Land Title Office, it has the effect of subdividing the building or bare land into strata lots and common property. The registrar of the Land Title Office then issues a certificate of indefeasible title for each newly created strata lot.

A licensee who lists a strata lot for sale must search the title of that strata lot. In addition, BC Financial Services Authority (BCFSA) expects the licensee to check, among other things, the registered strata plan, any amendments to it, as well as any resolutions affecting the common property. A real estate licensee can search for strata documents on file at the Land Title Office, although typically a licensee conducts the search through

myLTSA (previously BC OnLine), which provides internet access to the Land Title Office. Using myLTSA, the licensee can view and obtain copies of the necessary strata documents. During business hours, a licensee may also go in person to the relevant Land Title Office to view strata records and request copies. Alternatively, the licensee can hire a private search service to perform the search. In each case, the cost of a search varies according to the nature of the information sought and the quantity of records copied. The buyer's agent should also warn the buyer to carefully review these documents, ideally with the buyer's lawyer.

TYPES OF STRATA PROPERTY

In a strata plan, everything is either part of a strata lot or part of the common property.

Strata Lots

Generally speaking, a developer who intends to develop a strata project will either purchase the necessary land or lease it. The choice determines whether the developer will ultimately sell freehold or leasehold strata lots.

Freehold

If the developer purchases the land for development, the developer becomes the registered owner in fee simple. After the developer subdivides the land by depositing the strata plan, the land title office records the developer as the fee simple owner of each of the newly created strata lots. The developer can then sell fee simple title to the buyers of the strata lots. These strata developments are called “*freehold*” because buyers acquire fee simple title to their strata lots from the developer. The strata lots may be part of a building (e.g., a condominium) or may be part of a bare land strata development.

freehold strata

a strata development in which lots are owned in fee simple, entitling the strata lot owners to all of the property rights associated with fee simple ownership

Leasehold

A strata development may also be created from leased land, rather than land held in fee simple. *Leasehold stratas* are somewhat unique, in that they may only be located on land owned by specific entities, known to as leasehold landlords. These include governments, certain First Nations, and universities. Additionally, the land on which a leasehold strata development is created must be leased for a minimum of 50 years.

In a leasehold strata, the developer leases the land from the leasehold landlord through a ground lease, and registers it against the land as a charge. The developer then develops the land and subdivides it by filing a leasehold strata plan. Once subdivided, the ground lease converts into individual strata lot leases for each strata lot. The developer is free to sell or otherwise transfer each of these leasehold interests to buyers. Leasehold tenants may be required to make rent payments to the leasehold landlord over the term of the lease, or may be required to make an upfront payment of rent. At the end of the lease term, the leasehold landlord may either renew the lease or terminate it. If terminated, unlike typical residential or commercial leases, the leasehold landlord must purchase a leasehold tenant's interest in the strata lot.

leasehold strata

a strata development created by a developer on leased land, such that the strata lots are sold through assignments of the developer's leasehold interest in each strata lot

Leasehold stratas will be discussed in greater detail in Chapter 7: “Strata Properties (Condominiums) and Cooperatives in British Columbia”.

The Boundaries of a Strata Lot

Section 68 of the *Strata Property Act* provides, in effect, that in a building strata plan, the boundaries of a strata lot are the centre of each wall, floor or ceiling that separates the particular strata lot from another strata lot, the common property or from another parcel of land. In a bare land strata plan, the boundaries of the strata lots are those shown in the plan for each strata lot.

TITLE REGISTRATION IN BRITISH COLUMBIA

This portion of the chapter explains how British Columbia came to have its Torrens system of registration, what licensees should understand about the system, and the role that searching and reviewing title plays in real estate transactions. This section of the chapter also discusses manufactured homes, their transfer and the granting of security interests.

Historically: The Common Law Approach

Real property plays a key role in modern economic and social life. Owners want to protect their property and purchasers want to ensure that they are taking possession of a valid interest in land. At common law, absent any registration system, title to land or “ownership” of land was proven by producing all of the relevant deeds and other documents affecting a particular piece of real property for several decades. This was called “establishing the chain of title”. This system was awkward, inconvenient and expensive because a large number of documents had to be safely kept and produced for review whenever there was a transaction concerning the land. Each new purchaser had to ensure that the chain of title was complete and valid and could not be struck down by some invalidity in a previous transaction. Under this system, mistake or fraud could arise, and documents could be lost, destroyed, or misplaced.

Void Deeds

A *deed* is any document under seal. For our purposes, a deed is a document that effects the transfer of real property. A void deed is one that, although it looks valid, has no legal effect and is not capable of transferring any title in the land from the vendor to the purchaser. At common law, once a “break” in the chain of title has occurred, all subsequent transfers or other dealings with the land are of no effect, even though the transactions have been made in good faith and for value. This is referred to as the doctrine of the void deed and expresses a fundamental tenet of English law: *nemo dat quod non habet*, or, one cannot give what one does not have.

deed

A document used to transfer an interest in land from one party to another

Example

Assume the common law applies to the following transaction: Mike, the owner of Blackacre, leaves the country for a long holiday. Dave forges a deed that transfers title to Blackacre from Mike to Dave. Dave then sells Blackacre to Scott, who honestly believes Dave is the true owner. Over the next five years, Blackacre is sold three times, to Leslie, Adele, and then Deborah. Mike returns. Because the deed from Mike to Dave was void, so are the deeds from Dave to Scott, Scott to Leslie, etc. Mike can recover title to Blackacre and Deborah must sue Adele, who must sue Leslie, etc. The same result would apply even if the deeds had been filed in a recording office. As you will see, the result is very different under the Torrens system of title registration.

Three of the most common types of void deeds are:

- a forged deed;
- a deed given in exchange for an illegal act or thing; and
- a deed signed in circumstances where the party can plead *non est factum* (that is not my deed – see the chapter on the law of contract).

Under the common law doctrine of the void deed, a person whose title was “transferred” by a void deed could recover title upon proving in court that they were, in fact, the rightful owner. As in the example above, the rightful owner could recover title to their land regardless of how many times it had subsequently changed hands. The current “owner” would lose the title and would have no remedy other than to sue the person from whom they had bought the land, and so on back to the forger or to the person who had perpetrated the fraud. Unfortunately, forgers are usually impossible to locate after the fraud is complete. This left the individual who purchased the land from the forger without a remedy (aside from the possible title insurance coverage they had purchased, discussed later).

The above rule created uncertainty in land holding. A purchaser of land could not be sure that title was secure until they had held the land for 20 years (the limitation period for claims in respect of void deeds). In a number of common law jurisdictions, a system of deeds registration or recording was introduced in an

attempt to solve these problems. Under the deeds registration (or “recording”) system, deeds had to be filed in a local recording office. This was just a record-keeping system, with the validity of title to land still dependent upon whether the deeds themselves were valid. Registration had no effect upon the validity of the deeds, and a void deed remained void even though it was registered.

Although the development of recording the documents in a central office helped to reduce the possibility of misplacing deeds, it did nothing to prevent the filing of a void deed. Nor did the recording system mitigate the adverse effects of a void deed: if purchasers took their interest pursuant to a fraudulent or forged document, that transfer, as well as all subsequent transfers, would be void at the outset. For this reason, the system of deed registration was inadequate to protect innocent purchasers from later losing title to the rightful owner of the land. Considerable risk was born by innocent purchasers. Historically, in England, land was not bought and sold like a commodity. Land often stayed in a family for generations. Therefore, the risk to innocent purchasers was not as important a consideration as in some other jurisdictions (for example, in Canada and Australia) where land transactions were becoming more frequent in the nineteenth century and played an important role in the economy.

In some jurisdictions in Canada, a form of the recording system continues to exist. Therefore, licensees who deal with property in other provinces must be aware of the added cost and increased risk involved in such a system. In these jurisdictions, purchasers will often acquire title insurance to protect their investments. Title insurance is discussed later in this chapter and also in the Statements of Adjustments chapter.



As a Licensee...

You should always request government photo identification when dealing with sellers. While not “fool proof,” requesting government photo identification can be one of many tools to reduce the number of fraudulent transactions.

The Canadian Real Estate Association (CREA) provides REALTORS® with an Individual and Corporation/Entity Identification Record form to use when working with clients in respect of the purchase or sale of real estate, to ensure compliance with the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. This form requires the REALTOR® to verify the identity of (i) the individual by inspecting and recording their identification documents, or (ii) the corporation/entity by inspecting and recording documents that prove its existence.

THE TORRENS SYSTEM OF LAND REGISTRATION

Background

One way to solve the problems of the recording system was to adopt a system under which, rather than simply filing the documents affecting title, the actual title to land could be registered. Such a system was introduced in South Australia in 1858, following the approach of Robert Richard Torrens. Torrens was a customs officer who believed that the same system of registration that had been successfully applied to the ownership of ships could be applied to the ownership of estates and interests in land. The central feature of the Torrens system is the certificate of title, which sets out the name of the owner of the estate in fee simple, a legal description of the property, and the names of those who claim an estate or interest in land based on that fee simple.

The main objects of the *Torrens system* are to provide certainty in the holding of estates and interests in real property and to remove the need for reviewing old title documents. These goals are achieved by various “guarantees”. First, the Torrens system guarantees that the title document is an accurate reflection of the true state of title. Second, the Torrens system guarantees that the title document is the only relevant source of information concerning title. In short, purchasers do not have to worry about any interest in the land that is not registered on title, with a few limited statutory exceptions to protect victims of fraud and bad faith. The most important guarantee of the Torrens system, as discussed below, is that the registration of a fee simple interest is absolute proof of ownership, so long as that interest was acquired in good faith and for valuable consideration. The title of such a purchaser cannot be successfully attacked by a person who claims to hold a competing title. In formal terms, the registered owner’s title is “indefeasible”. The guarantee of indefeasibility upon the registration of the fee simple is the key feature of the Torrens system. The legislation establishing the Torrens system in British Columbia is the *Land Title Act*.

Torrens land registration system
a system for registration of the
actual title to land in order to
provide security to those holding
interests in land and to remove the
need for retrospective investigation
of titles to land

Example

Refer to the earlier example. Assume that the common law has now been altered by statute and the Torrens system applies. What is the difference? Under the Torrens system, once Scott registers his deed in the land registry, his fee simple title is guaranteed. The transfer from Dave to Scott is no longer void, as Scott was innocent and paid market value for the property. Scott is referred to as a “good faith purchaser for valuable consideration.” Because the transfer from Dave to Scott is valid, so are the subsequent transfers, assuming these parties were also good faith purchasers for valuable consideration and registered. Therefore, when Mike returns, he cannot recover his property from Deborah. However, the Torrens system does provide a remedy to Mike, the assurance fund, which is discussed later in this chapter.

The operation of our system of title registration can best be explained by referring to four important aspects of the Torrens system:

- the indefeasibility principle;
- the effect of registration;
- abolition of notice; and
- the assurance principle.

The Indefeasibility Principle

The word “indefeasible” means something that cannot be defeated or made void. Under the Torrens system, the principle of *indefeasibility* means that if a person is named on a certificate of title as the owner of the fee simple estate in land, then that is conclusive proof, as far as the world is concerned, that they are entitled to that fee simple estate. Therefore, a good-faith purchaser can rely completely on the ownership shown on the certificate of title, and can acquire good title upon registration, even though there are defects in the vendor’s registered title. In the British Columbia Torrens system, the principle of indefeasibility is limited by certain exceptions to complete indefeasibility (see Figure 4.4 below). It should be noted that Torrens legislation is not the same in every jurisdiction, so licensees from other Torrens jurisdictions should not assume that the British Columbia system is identical to others.

The principle of indefeasibility overrules the common law doctrine of the void deed. As explained earlier, at common law the rightful owner who lost title by means of a void deed could recover their title from an innocent purchaser. In a Torrens system, the guarantee of indefeasibility means that the registered title of an innocent purchaser cannot be set aside, even by the claim of a previous rightful owner who lost their interest due to fraud, forgery, or some other means. The remedies available under the Torrens system to those previous

rightful owners are discussed below in the section entitled “The Assurance Principle”.

The indefeasibility principle means that, in British Columbia, any registered owner who acquires a fee simple estate in good faith (honestly) and for valuable consideration (a reasonable price, given the circumstances and market value) is protected by our land title system. That purchaser can keep their title, even if the previous registered owner acquired title by way of fraud or forgery. However, people acquiring a fee simple estate in land by their own dishonest means are not protected by the indefeasibility principle. So long as the dishonest “owners” have not sold that fee simple estate to a good faith purchaser, the true or rightful owner can recover the title from someone who became registered through fraud. This rule is contained in section 23 of the *Land Title Act*, which contains 10 exceptions to the rule or principle of indefeasibility. These exceptions are outlined in Figure 4.4.

indefeasibility

in British Columbia, subject to certain statutory exceptions, the Land Title Register is conclusive evidence that the person named as holding a fee simple estate in land is in fact entitled to that interest, and their holding is not subject to any condition or encumbrance other than those shown on the Land Title Register

rightful owners are discussed below in the section entitled “The Assurance Principle”.

The indefeasibility principle means that, in British Columbia, any registered owner who acquires a fee simple estate in good faith (honestly) and for valuable consideration (a reasonable price, given the circumstances and market value) is protected by our land title system. That purchaser can keep their title, even if the previous registered owner acquired title by way of fraud or forgery. However, people acquiring a fee simple estate in land by their own dishonest means are not protected by the indefeasibility principle. So long as the dishonest “owners” have not sold that fee simple estate to a good faith purchaser, the true or rightful owner can recover the title from someone who became registered through fraud. This rule is contained in section 23 of the *Land Title Act*, which contains 10 exceptions to the rule or principle of indefeasibility. These exceptions are outlined in Figure 4.4.

FIGURE 4.4: Exceptions to the Indefeasibility Principle

There are 10 exceptions to the indefeasibility principle:

1. Reservations contained in the original or other Crown grant
2. Federal or Provincial taxes, rates, or assessments, etc.
3. Municipal charges, rates, or assessments, etc.
4. Leases for terms of three years or less where the tenant is in actual occupation
5. Highways or public rights of way, watercourses, public easements, etc.
6. Rights of expropriation or to an escheat
7. A caution, caveat, charge, builders lien, judgment, certificate of pending litigation, etc. noted or endorsed on the certificate of title
8. The right of a person to show that the land is, by wrong description of boundaries, included in the certificate of title
9. Fraud, including forgery, by the registered owner
10. A restrictive condition imposed on the land by the *Forest Act* that is endorsed on title

Example – Ownership

Anton is the owner of Blackacre. Marta forges a transfer of an estate in fee simple from Anton to Marta and registers it. Result? Anton is entitled to Blackacre and can recover title from Marta. The principle of indefeasibility will not protect Marta because her title is the result of fraud in which Marta participated. See section 23(2)(i) of the *Land Title Act* (exception 9 above).

If, on the above facts, Marta gifted Blackacre to Clara, who was unaware of the forgery, and Clara registered, what is the result? Anton is entitled to Blackacre and can recover title from Clara. The principle of indefeasibility will not protect Clara because she obtained the title as a gift, which is not valuable consideration, from Marta, who acquired her title through fraud. Section 25.1 of the *Land Title Act* states that a fee simple estate transferred by way of a void instrument will only be valid if the transferee acquires the estate in good faith and for valuable consideration.

If Clara paid \$1.00 for Blackacre, which is worth \$100,000, what is the result? Anton is entitled to Blackacre because \$1.00 will not be considered “valuable consideration” under section 25.1. Typically, “valuable consideration” means a reasonable price, given the circumstances and the market value of the property.

If Marta sold Blackacre for market value to Clara, who registers, what is the result? Clara is entitled to Blackacre because she obtained title in good faith and for valuable consideration. It does not matter that Marta obtained the title fraudulently so long as Clara did not participate in that fraud and did not know about it. Anton would have to recover from the Assurance Fund.

Example – Other exceptions to indefeasibility

Anton purchases Blackacre. The certificate of title does not disclose any charges. The Government of British Columbia asserts its rights to the minerals under the surface of Blackacre, which were reserved in the original Crown grant (see the previous chapter). Result? The Government would be successful, even though the mineral rights are not “registered”, as exception 1 (above) to indefeasibility protects all reservations of mineral rights in the original Crown grant.

Anton owns Blackacre, and has entered into a two year lease with Marta as tenant. Marta lives there but the lease is not registered. Clara buys Blackacre and when she tries to move in, discovers Marta living there. Result? Marta has a right to stay for the balance of the term of her lease, as exception 4 (above) protects her unregistered lease (less than 3 years). Licensees should always make investigations about tenants, whether or not any lease is registered, and should review the ‘Possession’ and ‘Title’ clauses of the standard form Contract of Purchase and Sale in this regard.

Registered Charges Are Not Indefeasible

Unlike some other Torrens jurisdictions, British Columbia’s Torrens legislation does not extend indefeasibility to charges. (Recall that a charge is any interest in land less than a fee simple. Rights of way, liens, mortgages, and easements are all examples of charges.) The *Land Title Act* states that the certificate of title in the Land Title Office is conclusive proof that the fee simple owner owns the fee simple estate in the property,

subject to certain stated exceptions. However, registration of a charge only raises a rebuttable presumption that the charge is valid. In other words, unlike a registered fee simple, a registered charge is not “guaranteed”. Section 26 of the Act provides:

1. A registered owner of a charge is deemed to be entitled to the estate, interest or claim created or evidenced by the instrument in respect of which the charge is registered, subject to the exceptions, registered charges and endorsements that appear on or are deemed to be incorporated in the register.
2. Registration of a charge does not constitute a determination by the registrar that the instrument in respect of which the charge is registered creates or evidences an estate or interest in the land or that the charge is enforceable.

Example 1

Arthur is the registered owner of Blackacre. Bart forges a transfer from Arthur to Bart and registers the transfer. Bart then grants a mortgage interest in Blackacre to Carla for the sum of \$50,000. Carla registers the mortgage. Result? The common law rule of *nemo dat* applies: Bart cannot create a mortgage for a property that he does not rightfully own. Arthur is entitled to Blackacre free and clear of Carla’s mortgage. Although Carla registered the mortgage, she was not a fee simple purchaser and is therefore not entitled to rely on the principle of indefeasibility. Further, because Carla’s mortgage is based on a forged deed, Carla cannot claim against the Assurance Fund for the \$50,000 that she advanced to Bart. This is because at common law, Carla would have taken no interest in the property, and therefore it cannot be said that the operation of the *Land Title Act* caused her to lose her interest (this is a requirement for a successful claim against the Assurance Fund).

Example 2

Andy is the registered owner of Blackacre. Barney forges a mortgage from Andy to Barney and proceeds to register. Barney sells the mortgage to Floyd for value and Floyd registers the assignment of mortgage. Result? Andy is entitled to Blackacre free and clear of the mortgage. The principle of indefeasibility will not protect Floyd because it does not extend to charges. Floyd does not have a claim against the Assurance Fund because he would not have had a claim at common law (remember, at common law void deeds transfer no interest). Therefore, it cannot be said that the operation of the *Land Title Act* caused Floyd to lose an interest in land because, at common law, he never had an interest in the first place.

In *Gill v. Bucholtz* (2009), the British Columbia Court of Appeal confirmed that, while registered fee simple owners enjoy the guarantee of indefeasibility, registered charge holders do not. Accordingly, an innocent purchaser of any interest less than a fee simple estate in land may not rely on our land title system as being conclusive proof of ownership.

Gill v. Bucholtz, 2009 BCCA 137 (CanLII)

The respondent, the registered owner of a property, lost his title to the subject property through the fraudulent conveyance by a fraudster. The fraudster then granted mortgages to two innocent parties, one of whom, relying on the title documents to the property as conclusive proof of ownership, subsequently registered their mortgage interest on title. The respondent eventually found out about these transactions and went to court to have his title restored.

The British Columbia Court of Appeal restored the respondent as the registered owner and discharged the mortgage on title, holding that, when registered charges are at issue, the *Land Title Act* preserves the long-standing principle of the common law that, “One cannot give another person that property which one does not have.” The Court also decided that although the mortgagees had relied on the title in good faith, they did not have a valid claim against the assurance fund for monies to satisfy the mortgage because the cost of fraud should not be borne by the public but should instead be the responsibility of the lenders themselves. This case highlights the importance of potential lenders and charge holders satisfying themselves as to the validity of the fee simple title of an owner of property in which they may acquire an interest.

Figure 4.5 sets out a number of fact situations that can arise involving fraudulent transfers of estates and interests in land, and the remedy of the rightful owner. You may wish to test yourself using the chart.

FIGURE 4.5: Summary of Indefeasibility

| Fact Situation | Remedy of the Rightful Owner of the Fee Simple |
|--|--|
| Andy is the registered owner of a fee simple interest that he acquired from the rightful owner of the fee simple ("RO") by forgery. | RO can recover the property from Andy and become the registered owner again. |
| Barb is the registered owner of the fee simple which she bought from Anton. Anton became the registered owner through fraud, of which Barb was unaware. | Barb gets to retain the title. If RO can meet the criteria, they can get compensation from the assurance fund. |
| Ben is the registered owner of a mortgage granted by Art. Art is the registered owner of the fee simple which he fraudulently transferred to himself from RO. Ben did not know of Art's fraud. | RO can recover the land from Art free of Ben's mortgage. Although Ben dealt with the registered fee simple owner, he was not a fee simple purchaser and is not entitled to rely on the principle of indefeasibility. Ben will not be able to claim against the assurance fund. |

In summary, if a person honestly deals with the registered owner of the fee simple of a piece of property, and acquires the fee simple for valuable consideration, the *Land Title Act* protects that person's title. A person who deals with the registered owner to acquire a charge (e.g., a mortgage) has no absolute assurance of the validity of the charge. It depends on the validity of the title of the vendor of the charge and on the validity of the preceding chain of title, just as at common law.

Effect of Registration

At common law, the title to an estate or interest in land was effective when the transfer deed was signed, sealed, and delivered. As you will recall, the Torrens system is premised on the idea that the registry is a complete and accurate reflection of the state of title. For this reason, in a Torrens system, deeds do not transfer an interest or estate in land until they are registered. This principle is embodied in section 20(1) of the *Land Title Act*:

- 20(1) Except as against the person making it, an instrument purporting to transfer, charge, deal with or affect land or an estate or interest in land does not operate to pass an estate or interest, either at law or in equity, in the land unless the instrument is registered in compliance with this Act.

In the above section, the wording "except as against the person making it" indicates that an unregistered transfer is operative between the transferor and the transferee. This means that if A transfers a fee simple estate to B, who does not register, B can still enforce the transfer against A. However, B cannot enforce the transfer against any other person until they register it. While registration is not mandatory, B places their interest at risk if they fail to register.

In other words, a person's estate or interest (fee simple, mortgage, lease, etc.) does not have to be registered to be valid against the person who granted it (vendor, mortgagor, lessor, etc.). However, a person with an unregistered estate or interest is not protected against third parties who were not a party to the original transaction and who acquire their estate or interest honestly. Leases not exceeding three years are an exception, and are valid against "the world" even though unregistered, provided there is actual occupation of the premises under the lease or agreement (see exceptions to indefeasibility).

Example

Alan grants a mortgage to Royal Bank, dated December 1. Alan then grants a mortgage to CIBC, dated December 4. At common law, Royal Bank would have first priority. Under the Torrens system, if CIBC registered December 4 and Royal Bank had not registered its mortgage, CIBC would have the first mortgage. The Royal Bank mortgage, having not been registered, would not be enforceable against third parties. Therefore, CIBC's registered mortgage takes priority. However, the Royal Bank mortgage is effective against the person making it – Alan – so the Royal Bank could still sue Alan for any money advanced.

Abolition of Notice

At common law, persons were presumed to know about all estates and interests affecting the land they were dealing with, so long as those estates and interests could be discovered by reasonable inspection and inquiry. This was true even if the estates or interests were not recorded or the vendor did not know about them. As a result, a purchaser took title subject to those other estates and interests, even though they had not been disclosed by the vendor. This is the doctrine of notice. In order to effect the object of the Torrens system, namely to provide certainty of title, the doctrine of notice was abolished by section 29 of the *Land Title Act*.

Under section 29, a purchaser dealing with the registered owner only needs to be concerned with those estates and interests contained on the title. Section 29 is subject to some exceptions, but generally speaking this section abolishes the doctrine of notice.

However, section 29 does not protect a purchaser who has participated in a fraud. That raises a further question: what constitutes fraud? What happens when a purchaser knows (or should know) about an unregistered estate or interest but registers their transaction in disregard of the unregistered estate or interest? The British Columbia courts have said that knowledge of a pre-existing unregistered interest does not constitute fraud unless that knowledge is combined with dishonest conduct. In addition, the courts have said that the formation of contract is the key point in time for assessing whether a purchaser has acted dishonestly.

Examples

Anna is the registered owner of Blackacre and sells it to Patrick. Patrick does not register the transfer. Anna learns that Patrick has not registered, and she enters a second contract with Mark, who agrees to pay market value and is unaware of the previous sale of the same property to Patrick. After paying a substantial deposit to Anna, Mark discovers the previous sale to Patrick. Mark completes and registers his transfer. Result? Post-contractual knowledge of the unregistered interest is not enough to constitute fraud, and on these facts, Mark would probably keep title.

Before signing an offer to purchase, Walter was told by the vendor's agent of the existence of an unregistered lease over a portion of the property he wanted to buy. Walter was given an unsigned copy of the lease but made no effort to obtain a signed copy of it. The lease was for a period greater than three years, and therefore had to be registered to affect third parties. Immediately after purchasing the property, Walter attempted to evict the tenant on the basis of section 29 of the *Land Title Act*. Result? This was the situation in *Woodwest Developments Ltd. v. Met-Tec Installations Ltd. et. al.*, 1982 Carswell 657. The British Columbia Supreme Court held that the purchaser's notice of the unregistered lease prior to the offer being signed, his refusal to obtain a copy of the signed lease, and his immediate attempt to use section 29 to evict the tenant amounted to fraud. Therefore, he was not protected by section 29. In other words, his knowledge of the lease prior to being contractually bound and his conduct as a whole indicated he bought the property with the purpose of defeating the unregistered lease, and that was tantamount to fraud.

The Assurance Principle

Whenever legislation creates new rights for some people, it usually takes away existing rights from others. When the Torrens system was first introduced in British Columbia, it was recognized that the indefeasibility principle might cause some persons to lose rights in land that they had at common law. To compensate such persons, the assurance fund was established. The fund was initially administered by the provincial government, but on January 21, 2005, when the provincial government transferred land survey and registration responsibilities to the Land Title and Survey Authority of British Columbia (LTSA), the LTSA also took over the maintenance of the fund for transactions taking place on or after January 20, 2005.

The fund serves two purposes. First, the fund is intended to compensate parties who, as a result of the principle of indefeasibility and through no fault of their own, have lost an estate or interest in land. In other words, if the Torrens system had not been introduced, such persons could have recovered their estate or interest. To qualify for compensation, a claimant must prove the following:

- that the claimant has lost an estate or interest in land as a result of the registration of a person other than the claimant as the owner;
- that, if the *Land Title Act* had not been passed, the claimant would have recovered the estate or interest at common law by a court action; and
- that the claimant cannot recover that estate or interest (or compensation for it) by a court action.

If claimants can satisfy these three conditions, they will be entitled to recover compensation from the fund. However, a claim will always be subject to section 294.6(f) of the *Land Title Act*, which states that the assurance fund is not, under any circumstances, liable to compensate for the proportion of the loss, damage or deprivation caused or contributed to by the act, neglect or default of the claimant. For example, if a person fails to register their interest in the land title office, and then that interest is fraudulently transferred to an innocent third party who registers, the person who initially failed to register will not be able to access the assurance fund.

For this purpose, the assurance fund can only be used as a last resort. The third condition ensures that, if claimants can recover the lost estate or interest or compensation from some other source (e.g., by suing the fraudster), they cannot claim against the fund. However, if their only remedy is to sue a person who is dead, absent from the jurisdiction or “judgment proof” (i.e., has no money), the fund is available to them. Where compensation is obtained under such circumstances, the fund itself has the right to recover all or part of the amount paid from the person responsible.

The second purpose of the assurance fund is to maintain the integrity of the land title registration system by compensating individuals who have suffered loss or damages caused, solely or partially, by an omission, mistake or misfeasance of the registrar or employees of the Land Title Office. It is important to note that the accuracy of the plan defining a parcel of land that is registered in the land title office is not guaranteed by the land title office. Therefore, if there is an error in the boundaries or dimensions listed in a particular plan, no claim may be made against the assurance fund.

In both types of claim against the assurance fund, the LTSA must be named as a defendant in the action, and it may plead a number of defences. However, a court action is not always necessary. The LTSA, without a proceeding being brought, may admit a claim made against the fund and may pay all or part of the claim.

Example

Nick is the registered owner of Blackacre. Harold forges a transfer and registers title in his name. Harold then sells to Mac who is a good faith purchaser for valuable consideration. Mac registers the interest. Mac is entitled to Blackacre. Nick can claim against the assurance fund if Harold disappears or has no money, because: Nick has lost Blackacre; he cannot recover it from Mac; and if the *Land Title Act* had not been passed, he could have recovered Blackacre (e.g., at common law through the doctrine of void deed).

Notation of Trusts

There are times when property is not registered in the name of the beneficial owner. For example, because an infant cannot own or transfer property in their own name, the title is put into the name of an adult, who holds the property “in trust” for the benefit of the infant. The adult is called a “*trustee*”. The infant, for whom the trustee holds the property, is called a “*beneficiary*”. Another situation where a trust can arise is where the owner of property dies and leaves the property to their heirs. The executor of the will can put the title into their name, “in trust” for the heirs. Under a pure Torrens system, no mention of a trust can appear on the register. In British Columbia, the recognition of trust estates is covered by section 180 of the *Land Title Act*:

1. If land vests in a personal representative or a trustee, that person’s title may be registered, but no particulars of a trust created or declared in respect of that land shall be entered in the register.
2. In effecting registration in the name of a personal representative, the registrar must add, following the name and address of the personal representative, an endorsement containing such additional information that the registrar considers necessary to identify the estate of the testate or intestate and a reference by number to the trust instrument.

trustee

an individual or business entity in whose name a trust is held

Courts have stated that registration of a trust on title is not mandatory, and that trustees and beneficiaries may choose not to register at all.¹ If trustees or beneficiaries choose to register the trust on title, a notation of the trust is made on the title, and the trust document is filed in the land title office. As a result, and provided that the trust is registered, third parties will realize from the face of the register that the trustee is not the beneficial owner of the property but instead holds it in trust. However, the terms of the trust will not be known unless the third party obtains a copy of the trust document from the Land Title Office.

¹ *Smith v. Graham*, 2009 BCCA 192 at para 28

The Form of Documents

Most types of transactions have a form prescribed by the *Land Title Act*. For example, the freehold transfer document (i.e., the document given by the vendor to the purchaser to transfer a fee simple title) must be in a prescribed form, known as a “Form A”. This is the form of transfer document that is registered; the actual contract that is signed by the parties is not registered at the land title office. In most other jurisdictions and at common law, this document is referred to as a deed. The transfer is usually completed by a lawyer to ensure its correctness, though this is not legally required. The transfer must be in writing and it must be signed by the vendor. A sample Form A transfer document is found at Appendix 3.1. Licensees can access Form A and other prescribed form documents on the website of the LTSA (www.ltsa.ca).

The *Land Title Act* provides for the registration of a uniform first page of all conveyancing documents. For example, the Act provides for a standard form of mortgage document to be used by lenders together with the uniform first page referred to above. This eliminates the filing and maintaining of thousands of lengthy mortgage documents in the land title office each year. A lender is required to file only a two page document containing all pertinent contractual details such as the names and addresses of the parties, the principal amount and the interest charged. The other ten or more pages of each mortgage, containing standard clauses, will be incorporated by reference in the one page document and need not be filed with each new mortgage. Licensees should note that if they need to know if a certain term is included in a mortgage (e.g., is it assumable?) they will need to obtain a full copy of the mortgage when doing a search, not just the first page of the form.

Title Transfer Fraud²

Title transfer fraud is becoming an increasing concern for the real estate industry, especially with the increasing use and abilities of technology. Title transfer fraud occurs when title to (i.e., ownership of) a property is stolen from the true owner. For example, in two cases in British Columbia, rental property managers responsible for renting the homes of the client owners took instructions from fraudsters using different phone numbers and email addresses than those authorized by the clients, and shared documents that enabled the fraudsters to better impersonate the clients. Both properties were listed for sale by trading services representatives who accepted scanned copies of forged passports to verify the identities of the supposed owners. In one of these cases, the fraudster also deceived a legal professional and was able to transfer title to the property away from the true owner.

There have also been reported instances of money transfer frauds targeting lawyers, where fraudsters have hacked a lawyer’s or client’s email account and provided fictitious payment instructions. With real estate brokerages responsible for holding and transferring significant funds, licensees can expect to be targets of these money transfer fraud attempts as well.

Whether title or money transfer fraud, the following are some key red flags that may indicate fraud:

- **Changing communication methods:** Be wary of clients’ instructions requesting changes to their communication methods, especially with clients who live abroad.
- **High urgency or unorthodox listing methods:** Be cautious of clients who want a quick sale or who request unorthodox listing methods, such as listing the property well below market value, not listing the property online, and not using “for sale” signs on the property.
- **Brand new or scanned copies of client’s documents:** Pay special attention to clients providing brand new documentation or scanned copies of their documents. Always insist on seeing original forms of identification.
- **Using power of attorney:** Be very cautious when a power of attorney is being used for the authority to list and sell a property. A licensee should recommend that their buyer clients seek legal advice on the use of a power of attorney by a seller. If a licensee is acting for a seller through a power of attorney, they should consider whether further confirmation from the actual seller is possible.

² Much of the content in this section has been adapted from Murray, K., and Jadis, S. 2023. “Battling Funds and Title Transfer Scams.” *Risk Report*. 36(2). www.reeoic.com/news/risk-report/battling-funds-and-title-transfer-scams

There are various steps that a licensee can take to prevent fraudulent transfers from occurring, including the following:

- Know your client by:
 - verifying a client's identity early in the relationship. Under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the “PCMLTFA”), trading services licensees are required to collect and verify government-issued identification from their clients. Obligations under the PCMLTFA are discussed in greater detail in Chapter 5: “The Professional Liability of Real Estate Licensees”;
 - verifying a client's current land ownership interests through a land title search and by searching the Land Owner Transparency Registry (discussed in Chapter 5), which can confirm or refute a seller's claims about their past and present legal property ownership interests; and
 - asking conversational questions, assessing their knowledge of the property, and scrutinizing their documents for any inconsistencies.
- Establish an Identity Verification Method by:
 - always verifying instructions, whether from a client, lawyer, or another licensee, in person or over the phone using a trusted phone number. Do not respond to or rely on a phone number listed in an instruction email or text, as these communication methods can be hacked; and
 - when a file is opened, establishing a password with the client and recording it in the physical client file. A licensee can then require the client to disclose this password before fulfilling listing, transfer, and payment instructions.

When title is transferred to an innocent buyer, the true owner cannot get the property returned and recourse is limited to title insurance claims, claims against the assurance fund, and claims against professionals involved in the transaction (i.e., licensees, notaries, and lawyers). Real estate professionals play a critical role in preventing title transfer fraud. With their vigilance and compliance with professional standards, they will help protect themselves, their clients, and the overall integrity of the land title system in British Columbia.

LAND TITLE OFFICES, SEARCHING TITLE, AND THE REGISTRATION PROCESS

Licensees should understand how title searches are carried out and how documents are registered at the Land Title Office.

Land Title Offices

There are seven land title districts in the province: Kamloops, Nelson, New Westminster, Prince George, Prince Rupert, Victoria and Vancouver. Administratively, the districts are distributed amongst three land title offices located in New Westminster, Kamloops and Victoria, with each land title office being administered by a registrar. The three land title offices as well as registration responsibilities were transferred to the Land Title and Survey Authority of British Columbia (LTSA) in January 2005, and the LTSA now has responsibility for managing, operating and maintaining the province's land title system. Further information about the LTSA can be found on their website at www.ltsa.ca.

Certificates of Title

A register containing a separate certificate of title for each parcel of real property is maintained in each land title office in the province. Historically, the registrar maintained bound volumes of all original certificates of title. In modern times, the certificates are kept in digital form, but a copy or image can be obtained when doing a search. See Appendix 4.2 for a sample certificate of title and some explanatory notes (which do not form part of the certificate of title). The registered owner of the estate in fee simple appears at the top of the title and any estates or interests less than the fee simple are noted below as “charges”. The abbreviations used for each type of charge are stated on the back of the title.

charge

an estate or interest in land less than a fee simple that can be registered under the *Land Title Act*. Charges include all encumbrances, such as judgements, mortgages, statutory rights of way, easements, covenants, leases, and liens

Searching Title

Licensees listing property for sale, selling property to prospective purchasers, arranging mortgage financing, or acting as property managers must be able to properly read and understand a title search. Historically, licensees would visit the land title office to conduct searches or have title search companies visit the Land Title Office for them. Today, licensees typically use myLTSA (formerly BC Online) (www.ltsa.ca) to conduct title searches. This service allows licensees to conduct title searches from their own computers for a minimal fee per search. Searches can generally be conducted from 6:00 a.m. to 10:50 p.m. Monday through Saturday and from 1:00 p.m. to 10:50 p.m. on Sunday, so there is little excuse for failing to perform a search. Searches can be conducted if the licensee knows the Parcel Identifier ("PID") or legal description of the property. The PID is a permanent parcel identifier assigned by the registrar of land titles when the title for a property is created. The PID is a nine-digit number and never changes once associated with a property, unless the property is later subdivided or consolidated, at which point a new title is created. The PID is generally the best way to obtain a land title search. There are a few methods for determining the PID for a property. One method is by searching the civic address of the property on BC Assessments "eValue BC" website evaluebc.bcassessment.ca. Another method is to look up the property using the civic address on any municipalities' GIS mapping services, if such a system exists in the given municipality. For example, Vancouver's GIS mapping service can be found at vanmapp.vancouver.ca/pubvanmap.net. Another simple method is to look at a property tax statement for the property. The PID is usually noted at the top of the statement. Basically, conducting a title search means obtaining a copy of the certificate of title through myLTSA and reviewing that title. In British Columbia, a licensee who does not review the title of the property to be listed assumes the risk of liability to the purchaser and the vendor, loss of commission, and professional discipline if a complaint is registered with BCFSAs.



ALERT

In *Chand et.al. v. Sabo Bros. Realty Ltd. et al.*, 1979 AltaSCAD 5 (CanLII), a representative and his brokerage were found liable to compensate a purchaser for damages resulting from an unenforceable contract of purchase and sale. The salesperson had not searched the title to the property and the court commented as follows:

I must confess I have little sympathy for an agent who does not take the trouble to go to the Land Title Office and obtain a search of the title of a property listed with him for sale. It is a simple matter to do and I think if agents do not do it they have only themselves to blame. There may be defects in title the owner does not know about (although such was not the case here) and it is an elementary precaution the agent should take for the protection of all persons concerned.

Note: A real estate board in British Columbia will not accept a listing for advertisement on MLS® without a search being provided.

The information obtained from a title search is vitally important to the vendor, the purchaser and the licensee. The search should be conducted at the earliest opportunity so that the licensee obtains important

and current information. For example, the person who has contacted the licensee for a listing may not be the owner or they may be one of several owners. Title might be in the name of an executor, or the property may be "in foreclosure" with the lender granted conduct of sale (see Chapter 15: "Introduction to Mortgage Law"). In addition, there may be a charge affecting the property, the existence of which may put the vendor in breach of their obligation to deliver title in accordance with the contract of purchase and sale.

The standard form contract of purchase and sale currently in common use in British Columbia obligates the seller to deliver title in the following condition:

The Buyer agrees to purchase the Property from the Seller on the following terms and subject to the following conditions:

9. TITLE: Free and clear of all encumbrances except subsisting conditions, provisos, restrictions, exceptions, and reservations, including royalties, contained in the original grant or contained in any other grant or disposition from the Crown, registered or pending restrictive covenants and rights-of-way in favour of utilities and public authorities, existing tenancies set out in Clause 5, if any, and except as otherwise set out herein.

Licensees should explain the effect of this term to their clients, and if necessary, should either amend this provision or, through appropriate clauses, have the purchaser approve the state of title, if there are charges (e.g., easements) that will not be discharged on completion. If the purchaser will not get title on completion in the same condition as described in the contract, the purchaser may claim breach of condition (a fundamental term) and may have the option to terminate the contract. The vendor who loses out on the sale may commence a law suit against the licensee and the brokerage if the vendor resells the property and suffers any loss.



ALERT

Licensees must be extremely careful when checking if title to the land is free and clear of all charges, liens, and interests; if it is not, their client must be made aware of this. Failure to do so can lead to disciplinary proceedings.

In one case (2016 CanLII 90921 (BC REC)), the licensee was acting as a limited dual agent (at a time when dual agency was not permitted) in the sale of a property in Clinton, BC. The contract of purchase and sale provided that the buyers had “read and approved the title search” and that the buyers’ offer was subject to the buyers’ conveyancer doing a search on one of the financial charges listed on title. The licensee did not obtain a title search through her brokerage as she wrongly believed the conveyancer would conduct a title search with respect to all charges, liens, and interests as opposed to limiting the title search to the single financial charge referenced in the contract. The licensee attached an incomplete title search (obtained from the seller) to the contract of purchase and sale. The page of the title search which the licensee did not receive contained seven charges, liens, and interests that limited the buyers’ ability to build on the property. The licensee was aware that the buyers intended to build on the property. According to the buyers, had they been aware of the seven charges, liens, and interests outlined in the omitted page of the title search, they would not have approved the title search and followed through with the purchase.

As a result, the licensee was found guilty of breaching sections 3-3(h) (the duty to use reasonable efforts to discover relevant facts about real estate that the client is considering acquiring - now renumbered as section 30(h)) and 3-4 (the duty to act with reasonable care and skill - now renumbered as section 34) of the *Real Estate Services Rules*. The licensee’s licence was suspended for 14 days and she was ordered to enroll in a remedial education course at her own expense and to pay \$1,500 to cover the Council’s enforcement expenses.

While the majority of properties in British Columbia fall under the provincial land title system, it should be noted that reserve lands, with some exceptions, are registered in Federal Land Registries (Indian Land Registry or First Nation Land Registry). Some First Nations that have negotiated modern treaties or final agreements use the provincial land title system (e.g., Tsawwassen First Nation), while others use their own land title systems. The title searches obtained from the Federal Land Registries are called Parcel Abstract Reports and are outside the scope of this chapter, as are searches obtained from any other land title system. It is important for licensees to recognize that not all properties are registered in the provincial land title system and additional steps may need to be taken in order to obtain a title search for these properties.

Common Items Appearing on Title

The following are some of the more common items that appear on title that licensees should be aware of.

Duplicate Certificate of Title. Refer again to the title search at Appendix 4.2. There is a heading called “Duplicate Indefeasible Title” with the notation “None Outstanding”. Duplicate titles are a holdover from the pre-Torrens land system. Historically, when a land owner wanted to mortgage their property, the owner would have a lawyer draft a deed of mortgage. Alternatively, the owner could simply give their title deeds to the lender, who would hold them as security for the loan. Without the deeds, the property could not be conveyed, thus the lender had some measure of security. If the owner defaulted on the loan, the courts would treat the lender’s security in much the same way as a traditional mortgage interest.

Until 1979, the registrar issued a duplicate certificate of title for each certificate of title created. Since 1979, all duplicate titles in the land title offices have been cancelled and are issued only upon a written request from the registered owner. Owners sometimes deposit the duplicate with a lender as security for a loan, but lenders normally prefer a registered mortgage. Owners sometimes take out their duplicate title when their mortgage has been paid off, as they want a piece of paper that shows that they own the property.

A duplicate certificate of title cannot be issued if title is subject to a mortgage or an agreement for sale. If a duplicate certificate of title is issued and removed from the land title office, the registrar will not register a

transfer, mortgage or long term lease on that title until the duplicate certificate of title is returned to the office. Documents such as short term leases, easements, certificates of pending litigation and claims of builders liens will be registered even when the duplicate title is out of the office.

Licensees should be aware that a missing duplicate certificate of title could jeopardize a sales agreement. When conducting title searches prior to drafting the agreement of purchase and sale, licensees should ensure that no duplicate certificates have been issued.



As a Licensee...

It is important to check whether the duplicate certificate of title has been withdrawn when conducting a title search. If a title search notes that the duplicate is out, licensees should promptly confirm where and by whom it is being held so that the owner can make appropriate arrangements. If the duplicate certificate of title is lost or destroyed, section 193 of the *Land Title Act* provides for the issuance of a substitute. However, this can be a time-consuming process and should be initiated as soon as possible after the discovery of the loss or destruction of the duplicate certificate of title.

If a licensee waits until an offer is presented before inquiring as to the location and holder of the duplicate certificate of title, time delays in recovering or replacing the duplicate may cause the sale to collapse. If a licensee allows a seller to sign a contract without locating the duplicate, the seller may not be able to close on the completion date. The licensee may be liable for any loss resulting from this.

Caveat. A *caveat* is a unique feature of the Torrens system. It is a registered charge against the title to land filed by a person claiming an estate or interest in that land (i.e., the caveator) that prevents all dealings (e.g., transfers, mortgages, etc.) with the land inconsistent with the estate or interest claimed by the caveator. A caveat is intended to warn third parties of the estate or interest claimed by the caveator. A caveat remains on the register for two months and lapses automatically at the end of that time. If the caveator wishes to enforce the interest claimed, they must commence a court action within this two-month period and register a certificate of pending litigation against the certificate of title.

caveat

a registered charge against land filed by a person claiming an estate or interest in that land to prevent all dealings inconsistent with that claim and warn third parties of that claim

If there is a caveat registered against the title to property listed for sale, a proposed sale of the property could be placed in jeopardy. However, if a caveat is wrongfully lodged against a title, the caveator may be liable to pay compensation to any person who sustains damage because of the caveat. Caveats are used for different purposes in some other Torrens jurisdictions.

Certificate of Pending Litigation. A *certificate of pending litigation* (CPL) provides notice to anyone searching title that a court action has been commenced concerning the property. A CPL was formerly called a *lis pendens*, and you may still hear that term from time to time. A CPL must be with respect to an interest in the land, (e.g., an unpaid mortgage). As well, it does not prohibit the filing of any other document. In the past, a CPL prohibited final registration of most documents. Documents would remain pending on the title until the CPL was removed. Today, registration of an indefeasible title or charge may proceed despite a CPL being registered against title. However, this can only occur where the instrument is expressed to be subject to the

certificate of pending litigation

a notice of a pending court action registered against the title to property for the purpose of warning all persons that the title to the property is in litigation and preventing dealings with respect to the property

final outcome of the proceeding or where the applicant elects in writing to register subject to final outcome and authorizes the registrar to register subject to the CPL.

As with a caveat, a CPL may hinder the sale of a property, so the seller should be advised to seek legal advice about the removal of the caveat or CPL. However, CPLs should not be filed by those who simply wish to tie up property and do not have a legitimate basis for their claim. Both the common law and the *Land Title Act* provide a remedy for owners of property against which a CPL has been improperly filed. In *Hundal v. Border Carrier Ltd.*, 2012 BCSC 2196, the plaintiff and the defendant were partners in a failing trucking company. After the parties decided to end their business relationship, the plaintiff registered a CPL against the defendant's house. The defendant countersued, claiming that the CPL prevented him from obtaining mortgage financing to keep the trucking business solvent. The court awarded the defendant \$25,000 in damages, finding that the plaintiff had acted maliciously and had no basis for filing the CPL.

Builders Lien. In British Columbia, a *builders lien* is a claim made under the *Builders Lien Act* (the “BLA”) by a contractor, subcontractor, or worker that has provided labour, services, or materials to an “improvement” but has not been fully paid. Under the BLA, an improvement includes

builders lien

a claim registered against the title to land by a contractor, subcontractor, or worker with respect to a debt arising from labour, services, or materials supplied to that land

...anything made, constructed, erected, built, altered, repaired or added to, in, on or under land, and attached to it or intended to become a part of it, and also includes any clearing, excavating, digging, drilling, tunnelling, filling, grading or ditching of, in, on or under land.

Because contractors, subcontractors, and workers all have lien rights under the BLA, liens can be filed not only by those with whom the owner of the property has contracted directly, but also by those engaged by others in the construction chain (e.g., subcontractors engaged by a general contractor).

In order to secure its lien rights, a lien claimant must file a lien against the subject property by submitting a Form 5 (Claim of Lien) to the Land Title Office within the lien filing period (i.e., within 45 days after certain “trigger dates” specified in the BLA). Although the trigger dates that cause the lien filing period to begin to run are, generally speaking, tied to the completion or termination of the overall project or a particular trade contract, the exact determination of these dates (and the corresponding lien filing deadline) is often a complicated exercise that is based on the provisions of the BLA and the factual circumstances of the particular construction project. Therefore, legal advice should be sought when necessary. It is also important to note that liens may still be filed after ownership of the property is transferred so long as the lien filing deadline has not passed. This means that the purchaser of a property where construction or renovation work has recently taken place may have to contend with liens, even if that purchaser was in no way involved with the construction or renovation project that gave rise to the liens.

Once registered on title, the claim of builders lien will impact the owner’s ability to sell or mortgage the property. A registered builders lien is valid for a period of one year. The lien claimant must begin a lawsuit and file a CPL against title to the property in order to enforce its lien within this one-year period. That said, an owner may elect to shorten this time period by serving a notice on the lien claimant in Form 6 (Notice to Commence an Action), which requires the lien claimant to begin a lawsuit and file a CPL within 21 days after service of the notice. Although a lien will be discharged if the deadline to file a lawsuit and register a CPL is not met, if the lien claimant does meet this deadline, the owner’s title will remain encumbered until the claim is dealt with. There are a number of ways in which an owner may choose to address a lien claim, such as seeking a court-ordered dismissal of the claim, paying money into court to stand in place of the property, or settling the debt with the lien claimant directly. The particular circumstances of each owner, lien claim, and construction project will dictate which strategy is best for the owner to employ in order to clear title while minimizing their total costs.

Judgment. A judgment may be registered against a person’s estate or interest in land. Judgments are noted on the certificate of title like any other charge. The registration of a judgment normally expires automatically after two years if the registration is not renewed by the judgment creditor prior to the expiry date. Upon discovering a judgment as part of the initial title search by the licensee, the licensee should immediately discuss with the owner of the property how the owner proposes to discharge the judgment on sale, and should recommend that the owner seek legal advice.

Section 219 Covenant. Under this section of the *Land Title Act*, the provincial government or a local government may require an owner or developer of property to register on the title a covenant restricting the uses of the land in question. These covenants have been used by the Ministry of Environment and local governments to restrict the use of lands that may be contaminated. The covenants are also used by local governments to control subdivision and what may be built on the land. Unlike restrictive covenants at common law, discussed in the previous chapter, section 219 covenants can be positive or negative in nature.

Notice of Special Waste. Section 392 of the *Land Title Act* provides that a waste management director or approving officer may file on the title of contaminated property a notice specifying the nature of the “special waste” contamination and the estimated period of contamination.



As a Licensee...

In addition to the common items appearing on title that are discussed above, licensees conducting a title search may encounter a notice issued by the municipal council under section 57 of the *Community Charter*. A section 57 notice will appear title under the heading “Legal Notations”. The purpose of this notice is to alert potential purchasers, lenders and charge holders that the property may be unsafe for habitation because it is not in compliance with municipal bylaws and/or provincial building regulations. For example, a failed building inspection or a failure to obtain a construction permit could eventually lead to the issuing of a section 57 notice. However, such a notice is only registered on title as a last resort, typically following multiple failed attempts to persuade the owner(s) to comply with the bylaw or regulation. If a section 57 notice is registered on title, licensees should exercise due diligence and contact the municipal authority for more information about what caused the notice to be issued. Only when the property is fully remediated (i.e., improved to a state that satisfies all bylaws and building regulations) will the notice be removed from title. In recent years, section 57 notices have been used to flag properties that have housed illegal drug operations, including marijuana grow ops. Such properties may produce an array of potential legal issues and liabilities for purchasers, sellers and real estate professionals. Before dealing with such properties, licensees should seek advice from their managing broker or lawyer.

Heritage Designation. A property can be designated as a heritage site by the province under the *Heritage Conservation Act* (“HCA”) or by a local government under the *Local Government Act* (“LGA”). Once designated, the HCA and/or LGA will apply, which generally regulate and prohibit the demolition, relocation, and alteration of both the interior and exterior of the property. Therefore, there are often costly restrictions associated with heritage sites. The designation will appear as a Legal Notation on the Certificate of Title. In addition, the province and many municipalities each have their own heritage registers. However, it is important to note that the HCA applies to a property even if it has not been formally designated as a heritage site. Therefore, searching title may not be determinative. Heritage designations are discussed in more detail in the Local Government Law chapter.

Registration

Historically, originals of required land title office documents were physically tendered for registration at the appropriate land title office, usually by lawyers, notaries, or their land title office agents. Since early 2012, almost all documents are required to be filed electronically. On the completion date, the lawyer or notary will first conduct an online title search to confirm that the title is in the same condition as previously expected. Then the lawyer or notary will affix their electronic signature to an electronic version of the registration documents and will electronically file the documents (e.g., the Form A and Property Transfer Tax form, in the case of a fee simple transfer). The lawyer’s or notary’s signature is certified or “verified” by a certification authority as part of the electronic filing. Within 30 to 60 minutes, the filed transfer will be noted on the existing title as a pending application (see Appendix 4.2). Based on this pending registration, if title is still in the same condition, other than the pending application, the lawyer or notary will attend on payment of the purchase money in accordance with the statements of adjustment (see the Statements of Adjustment chapter). Once the transfer is deposited for registration, the vendor has no further claim to title and the purchaser has no further claim to the deposit. Therefore, the deposit held by the brokerage is converted from stakeholder money to vendor’s money. Furthermore, the *Real Estate Services Act* and the *Real Estate Services Rules* state that money in a brokerage trust account that is intended as remuneration for a licensee may be withdrawn when it has been earned. Money is considered to be earned in a sale of real estate on the date on which the documents effecting the transfer are submitted to the land title office for registration. If authorized by the vendor, the brokerage can then pay itself the commission due from the deposit. Final registration of the transfer may take 7 to 14 days. On completion of final registration, a new certificate of title will be issued in the name of the purchaser.

Title Insurance

The Torrens system was first introduced into Western Canada and Australia in the nineteenth century and into British Columbia in the 1860s. As we have seen, at common law the bona fide purchaser had to bear the risk of fraudulent transactions and void deeds. Under the Torrens system, an innocent purchaser’s acquired interest is protected, while owners who were deprived of their interest in land are compensated by the assurance fund. Arguably, under the Torrens system, the deprived owner, who has a claim under the assurance

fund, and the innocent purchaser, who keeps the land, are both “winners”. At common law, the only “winner” was the rightful owner who kept title to the lands, as the bona fide purchaser would not likely recover any damages from the fraudulent person who transferred under the void deed.

In the United States, the common law rules continue to apply in many areas of the country. In states where the common law rules continue to prevail, innocent purchasers frequently divert their risk by purchasing title insurance. In the case of the forged deed, the rightful owner would normally recover their land, as was the case at common law. However, the purchaser who had bought an owner’s policy of title insurance would have a monetary claim against the insurer for the value of the land. These three systems – common law, Torrens, and title insurance – each deal with the allocation of risk in a different way.

Title insurance is discussed in detail in the Statements of Adjustment chapter. However, licensees should be aware that title insurance has become common in British Columbia, even though British Columbia is a Torrens jurisdiction. There are many reasons for this. First, indefeasibility in British Columbia only extends to the fee simple, not charges. Second, title insurance can provide coverage for many items that are not part of the Torrens system, such as access, zoning and property boundaries. Third, premiums for title insurance tend to be cheaper than survey costs, so lenders now more commonly require borrowers to have more inclusive title insurance rather than a legal lot survey (which show whether buildings on the surveyed land encroach on another property and whether buildings on another property encroach on the surveyed land). Keep in mind that title insurance policies that are required by the lender bank are for the benefit of the lender, not the owner. If an owner wants the benefit of a title insurance policy, they have to pay an additional premium and purchase an owner’s policy.

FIRST NATIONS LAND REGISTRATION

There are two basic registry systems for First Nations lands that have not been the subject of a modern treaty: the Indian Land Registry System (ILRS) and the First Nations Land Registry System (FNLRS). The ILRS consists of documents related to and interests in reserve lands that are administered under the *Indian Act*. The FNLRS is used for the land records of First Nations who operate under their own land code pursuant to the *First Nations Land Management Act*. Several First Nations in British Columbia have their own land code, which replaces the land management provisions of the *Indian Act*. Both registries are maintained in Ottawa and are web-based. A third registry system, the Self-Governing First Nations Land Registration (SGFNL), established in accordance with the terms of First Nations self-government agreements, currently has limited use in British Columbia (e.g., Westbank First Nation).

None of the above registries operates under Torrens legislation, so licensees should exercise caution and, if not familiar with the operation of the registries, seek assistance. It should be noted that there are no standard form documents, so the licensee may encounter unfamiliar forms. As well, there are consent procedures in most transactions involving the Minister and Band Councils, which may affect the timing of transactions.

The three First Nations that have implemented modern treaties have different registration systems. Initially, none of the Nisga’a governed fee simple lands were registered in the British Columbia land title office. The Nisga’a Nation now operate their own land title system, based on Torrens principles. All of the Tsawwassen First Nation lands are in the British Columbia land title office, with special notations on title that need to be reviewed. Some Maa-nulth First Nations lands are in the British Columbia land title office, while others are the subject of separate registries (e.g., the Huu-ay-aht First Nation).

CONTAMINATED SITES

Information about potentially contaminated sites can be obtained through the British Columbia Ministry of Environment’s Site Registry, which is available through BC Online. This database contains records of the provincial government’s site investigations and cleanups, as well as decisions and actions made under the *Environmental Management Act*. The site registry is entirely separate from the land title registration system and does not deal with any title matters. The *Environmental Management Act* requires that site disclosure statements, site investigations, orders, voluntary remediation agreements, decisions of the Environmental Appeal Board and many other types of information be submitted to a director appointed under the Act. The supporting *Contaminated Sites Regulation* provides a supplementary list of the types of information that

must be provided to the director. These include contaminated soil relocation agreements, decisions made by managers respecting whether site investigations will be ordered, remediation plans, approvals in principle and certificates of compliance, and allocation panel opinions.

The registrar of the site registry is required to provide “reasonable public access to information in the site registry”. The site registry allows you to search a specific area for registered sites, and may be an important source of information for buyers and their agents when conducting their due diligence searches. This is especially true if the transaction is commercial in nature, as it is far more likely that a site profile or site disclosure statement will exist for a commercial rather than residential property. Licensees may access the registry through BC OnLine. The cost of searching the registry can be significantly more expensive than obtaining a certificate of title through myLTSAs.

MANUFACTURED HOMES

Introduction

Licensees are authorized to sell a manufactured home if an estate or interest in land is involved in the transaction. Because the ownership, transfer, and granting of charges of manufactured homes are not registered in the land title office, it is important for licensees to have an understanding of the manufactured home registry system under the *Manufactured Home Act*.

A manufactured home is defined in the *Manufactured Home Act* as any structure that is designed, constructed or manufactured to provide residential accommodation and to be moved from one place to another, regardless of whether it has wheels. Persons purchasing manufactured homes can place them on property they already own or they can rent space, called a “pad”, in a manufactured home park on which to place them.

The main purpose of the *Manufactured Home Act* is to set up a central registration system for manufactured homes similar to that already provided for real property. However, this is a registration system, not a Torrens system. Similarities exist in that the registrar must be satisfied that a transfer of ownership in a manufactured home is sufficient to give the purchaser a good safe-holding and marketable title (in other words, that the documents are legally in order). When the registrar is satisfied with the documents and the information contained in the application form, the registrar registers the interest claimed. Failure to register has the same effect as under the *Land Title Act*, in that third parties are not affected by an unregistered transfer. Charges take priority according to the rules contained in the *Personal Property Security Act*. The major differences between the manufactured home registration system and the Torrens system are that the manufactured home system has no title (just registered ownership), no indefeasibility, and no assurance fund. A further difference is that, in some cases, registration is mandatory.

Registration Generally

Manufactured Home Registry: British Columbia’s manufactured home registry is maintained by BC Registry Services. Under the *Manufactured Home Act*, the registrar has a seal of office and is responsible for processing all applications made under the Act. The registry typically only accepts documents submitted electronically through BC OnLine. Using this service, manufacturers, lawyers, notaries, and other service providers may register and transfer titles to manufactured homes. Other users may submit some transactions, such as ordering a transport permit, through BC OnLine, but must use either a qualified supplier or a government agent for other transactions.

Although the registration of a manufactured home is not necessary under the Act, licensees should be aware that the transfer of a manufactured home is not effective, except between the parties to the transfer, unless both the home itself and the transfer are registered (section 7(7)). This section operates in a similar way to section 20 of the *Land Title Act*. Manufacturers, vendors and importers must also register their manufactured homes, as the Act prohibits any person from importing into British Columbia, selling, offering to sell, or moving a manufactured home unless ownership is registered. A previous version of the Act required owners to register their own manufactured homes in certain circumstances. Therefore, prior to listing the manufactured home for sale, licensees should search the registry to ensure that the manufactured home that they are dealing with is properly registered, especially when dealing with homes manufactured before 2004.

The search will also disclose ownership according to the registry, and the licensee should ensure that the person purporting to be the “owner” is the owner according to the registry records.

Upon satisfactory completion of the initial registration, the registrar assigns a manufactured home registration number to the home and issues two decals bearing that number to the owner. This number and the decal are good for the lifetime of the home. Should a decal be lost, stolen, or damaged, a new one can be obtained upon payment of a nominal fee. The owner must affix the decals in specified places on the manufactured home. Failure to affix or keep affixed the decal renders the owner liable for a penalty.

The decal is not the equivalent of a certificate of title but is issued as proof of registration under the Act. When ownership is transferred, the registrar will register the interest of the new owner under the original registration number. The same applies for those registering security interests. Any person, upon paying the necessary fee, can obtain a certificate from the registrar stating the registration number, year, make, and model of the home, its registered location, the name and address of its owner, and the file number of any security interests registered against it, plus other prescribed information. The registrar will also issue a certified copy of any document pertaining to a specific home, or will permit inspection of the document at the registry.



ALERT

The Real Estate Council has warned licensees that they must determine whether the manufactured home has a valid “CSA” sticker as required under section 21 of the *Electrical Safety Regulation* of the *Safety Standards Act*. Licensees cannot offer for sale a manufactured home that does not have a valid CSA sticker, or in the case of an electrical alteration, a silver label:

- 21(1) Subject to subsections (3) and (4), a person must not use electrical equipment in British Columbia, or offer for sale, sell, display or otherwise dispose of electrical equipment for use in British Columbia, unless the electrical equipment displays a label or mark as follows:
- a certification mark;
 - a label or mark of a certification agency that is acceptable to the appropriate provincial safety manager to certify electrical equipment for a specific installation;
 - an approval mark issued under section 10 of the Act;
 - in the case of used manufactured homes, used factory-built structures and used recreational vehicles, a label supplied by the appropriate provincial safety manager.

Licensees should not confuse CSA stickers with Manufactured Home Registration (MHR) stickers. Typically, both stickers can be found on the electrical panel; however, the CSA sticker can also be found near the front door of the manufactured home, whereas the MHR sticker is generally found on the front left corner of the manufactured home. The MHR number is registered by the manufacturer and its purpose is for identification (it is the equivalent to an automobile being issued a VIN number); it is not an indication that the manufactured home is CSA approved.

Forms, Fees and Penalties: All forms must be submitted through BC OnLine. A schedule of fees is provided at the end of the *Manufactured Home Regulation*. The charges levied for many of the transactions with the registrar are specified. The Act provides penalties for certain breaches. For example, a person who moves a home that is not registered, or without a permit, or sells a home that is not registered, is liable to pay a fine of up to \$2,000. An owner who fails to affix or keep affixed a decal is also liable to pay a fine not exceeding \$2,000.

Sundry Provisions: Of prime importance to anyone having any dealings with manufactured homes are section 18(1), which provides that no person may move a manufactured home unless it is registered, and section 15, which requires that a transport permit to do so must be obtained from the registrar. A transport permit will only authorize the movement of the home to a specific location and is only valid for 30 days from the date of issuance. Before issuing a transport permit, the registrar must be satisfied that all taxes on the home have been paid. Section 25 provides details of the circumstances under which the appropriate tax collector must issue a certificate or confirmation to this effect.

If taxes are in arrears, the taxing authority can file a certificate in the Personal Property Registry (discussed later) and the amount unpaid becomes a lien on the home in priority over every other security interest or claim. An owner of a security interest can, to protect that interest, pay the taxes and add that amount to the principal sum owing.

Under the *Manufactured Home Tax Act*, manufactured homes, with a few exceptions, are improvements within the meaning of the *Assessment Act*. If the manufactured home is located within a manufactured home park and the owner of the manufactured home is not the owner of the manufactured home park, then the manufactured home is assessed and taxed in the name of the owner of the manufactured home.

According to officials at the manufactured home registry, a large proportion of manufactured homes are now registered. In the past, where the land on which the home stands had been sold with the home attached, registration may not have been made, presumably because it was considered a fixture. This offers no special problem unless, for some reason, the home must be registered at a later date. In this event, the registrar will require the applicant to trace the history of title to the home before the home can be registered. For this purpose, complete records and documents of transfer should always be kept.

Where a new manufactured home built in British Columbia is offered for sale, it will have been registered at the factory by the manufacturer. When a manufactured home enters the province, all weigh stations have transport applications that must be completed at the time of entry and the ministry will then become involved and follow up the registration to its completion. No manufactured home can be imported into British Columbia until it is registered.

Any person who has commenced, or is a party to, a court proceeding in which an interest is claimed in a manufactured home may file a caution stating the interest claimed. This is registered in the same way as a security interest but is only valid for three months, unless extended by a court. A caution may be withdrawn at any time, although a court may order the person doing so to pay compensation to the owner of the home. A caution is a remedy similar to a caveat in the land title system.

Licensees should also be aware of the *Manufactured Home Park Tenancy Act*, similar to the *Residential Tenancy Act*, which governs the relationship between the owner of the manufactured home park and the owner of the manufactured home who places the home in the park under a lease arrangement.

Assignment of Manufactured Home Pad Tenancy Agreements

When a buyer of a manufactured home wishes to keep that home in the same manufactured home park and to continue to rent the pad on which the home sits, the existing Manufactured Home Site Tenancy Agreement for the pad should be assigned to the buyer.

The principal benefit of assignment is cost certainty. When a tenancy agreement is assigned to the buyer, that agreement continues on the same terms as existed prior to assignment, and the buyer assumes all rights and responsibilities under the original tenancy agreement. As a result, assignment ensures that the rent and any schedule of rent increases remain the same for the new tenant. Given this benefit, proper assignment is important. If assignment does not take place or it is done incorrectly, the buyer will not be able to rent the pad on the same terms as the existing tenancy agreement, the landlord can re-negotiate lease terms with the new tenant and the new tenant may face significant rent increases.

To properly assign a tenancy agreement, the existing tenant (i.e., seller of the manufactured home) must conform with the process set out in the *Manufactured Home Park Tenancy Regulation* ("MHPTR"). Notably, the tenant must obtain prior written consent of the landlord through submission of a standard Request for Consent to Assign a Manufactured Home Site Tenancy Form to their landlord. Upon receipt of the submission, the landlord must reply in writing within 10 days, unless an extension is otherwise agreed upon by both landlord and tenant. If the landlord does not reply in time, the landlord is deemed to consent to the assignment. In reaching a decision, a landlord may withhold consent if it appears to the landlord that the prospective tenant will not be able to comply with the tenancy agreement or park rules. Further grounds on which a landlord may withhold consent are set out in section 48 of the MHPTR. Without landlord consent, there generally cannot be an assignment. However, the Act permits arbitrators to order an assignment if the landlord withdraws consent unreasonably.

Failure to properly assign a manufactured home pad also carries potential implications for the original tenant. Where the landlord does not consent to assignment and the new tenant moves in anyways, the original tenant could be held responsible for the actions of the new tenant. The original tenant would remain liable for any breach of, or obligation under, the existing tenancy agreement. Additionally, the new tenant could be at risk of losing their tenancy. Therefore, where consent is withheld and assignment does not occur, an attempt to subvert the decision of the landlord by occupying the pad under the old tenant's lease is not a satisfactory solution for any party.

Security Interests

Description: Generally speaking, a security interest is an interest in property that secures the payment or performance of an obligation. Where a person wishes to purchase a chattel like a manufactured home and does not have sufficient funds to pay for it, they may want to use the chattel itself as security for the purchase price. There are three methods to accomplish this. First, the seller can transfer ownership of the manufactured home to the buyer, who then gives a security agreement on the home in favour of the seller in exchange for part of the purchase price. The buyer will repay the loan by installments. Second, the buyer can purchase the manufactured home under a conditional sale contract, meaning that legal ownership remains with the seller until the buyer has made all of the payments, after which the seller is legally required to transfer legal ownership to the buyer. It is important to note that on a filing of the conditional sale contract in the Manufactured Home Registry, registered ownership passes to the buyer. Finally, the purchaser may simply borrow the money from a third party and then give a security agreement on the home in favour of a third party in exchange for part of the purchase price. All of these methods of financing result in the creation of security interests governed by the *Personal Property Security Act* (PPSA).

The PPSA provides a simple and effective registration system. Previously, an interested party had to search a number of registries and be aware of several statutes in order to ascertain the status of any security interest. Now interested parties need only make one search in the personal property registry in order to ascertain the status of all security interests.

Registration of Security Interests under the PPSA: Rather than filing the security agreement itself, under the PPSA a lender (“secured party”) registers a “financing statement”, which sets out only certain essential details of the transaction. A financing statement may be registered even before the transaction is complete. There are no filing deadlines or fixed registration terms. Should an individual wish to determine whether a manufactured home is already encumbered, they may search the registry by using either the registration number (or the serial number) of the manufactured home or the debtor’s name.

The PPSA provides few specifics on what must be contained in a financing statement, although one important criterion for validity is that the registration must not be “seriously misleading”. Manufactured homes are “serial numbered goods” for the purpose of the PPSA, and it is vital that, if the manufactured home is described by serial number, the exact serial number appears on the financing statement. For registered manufactured homes, the serial number is the manufactured home registration number. For unregistered or exempt homes, the serial number is the unique number assigned to it by the manufacturer. An incorrect or inexact serial number can adversely affect, or even nullify, the security interest.

Registration under the *Land Title Act*: When a manufactured home becomes affixed to land, steps may be taken in the land title office to protect the interests of the security holder. Where the debtor is in default, the secured party has the right, in some circumstances, to repossess and sell the manufactured home to pay the debt. If the home is affixed to land, the law of real property will govern the ownership of the manufactured home. To preserve its priority under the *Land Title Act*, a secured party must register its interest in the land title office, even though the security interest may have been properly registered prior to the manufactured home becoming affixed. The *Manufactured Home Act* and the PPSA also require the secured party to file notice of its interest in the appropriate land title office in order to preserve its rights.

Chattel or Fixture

The answer to the question as to whether a manufactured home is a *chattel* or a *fixture* is complex. In the previous chapter, the concept of chattels and fixtures was discussed, and all of those principles apply. If a manufactured home is a fixture, then at least some of the legal questions that arise will be resolved by real property law. If not, the PPSA, prior statute law or case law relating to chattels will supply the answer. Case law gives some assistance, but the decisions depend very much upon the particular circumstances of each case. For example, where a home rested on blocks on a concrete base with the wheels and hitch removed, had plywood skirting around the base, and was connected to water, electricity and a septic tank, it was held to be a chattel. On the other hand, where the steel frame had been removed and the home sat upon a concrete basement foundation, it was held to be a fixture. The only conclusion to this difficulty is to stress the necessity of an agreement in writing between all parties as to the status of a manufactured

chattels
articles of personal property (e.g., a car, stereo, television, etc.) as opposed to real property

fixture
a chattel attached to real property; anything which has become so attached to the land as to form, in law, part of the land

home when dealing with the land upon which it rests, or with the home itself. This may be especially important if someone other than the owner of the land occupies the manufactured home. Licensees may wish to ensure that legal advice is sought with respect to this issue.

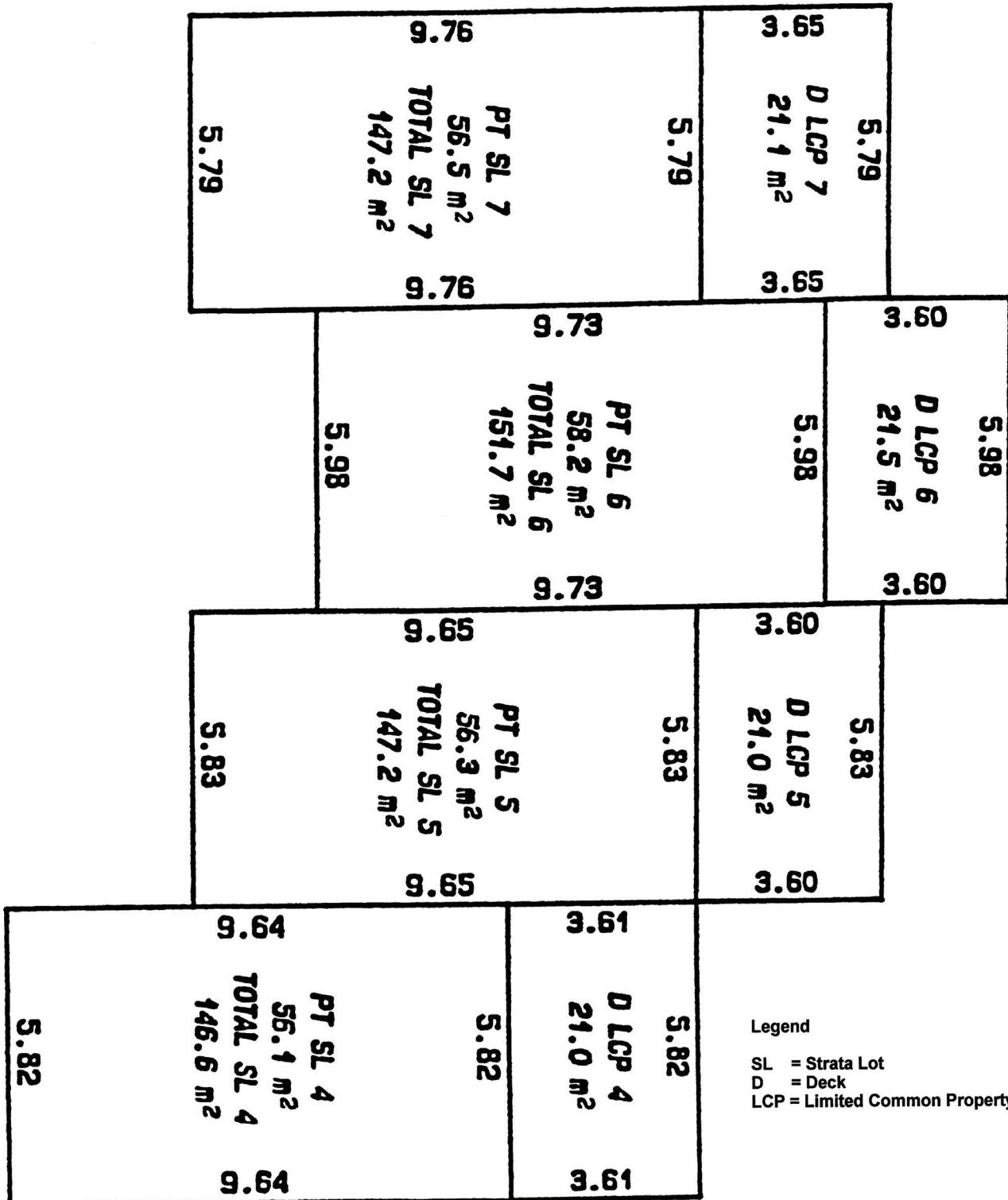


As a Licensee...

Another reason why it is important to determine whether a manufactured home is a fixture or a chattel is because the *Home Buyer Rescission Period Regulation* extends home buyer rescission rights to a buyer of "a manufactured home that is affixed to land." This means that buyers of manufactured homes will enjoy the right to rescind their contract of purchase and sale under the *Property Law Act* provided that the manufactured home is a fixture (as opposed to a chattel). The details of the Home Buyer Rescission Period are discussed in later chapters. Licensees who are unsure about whether the Home Buyer Rescission Period applies to a particular transaction should consult with their managing broker or recommend their clients to seek legal advice.

APPENDIX 4.1

Sample Excerpts From Strata Plans: Sample Strata Plan



Legend

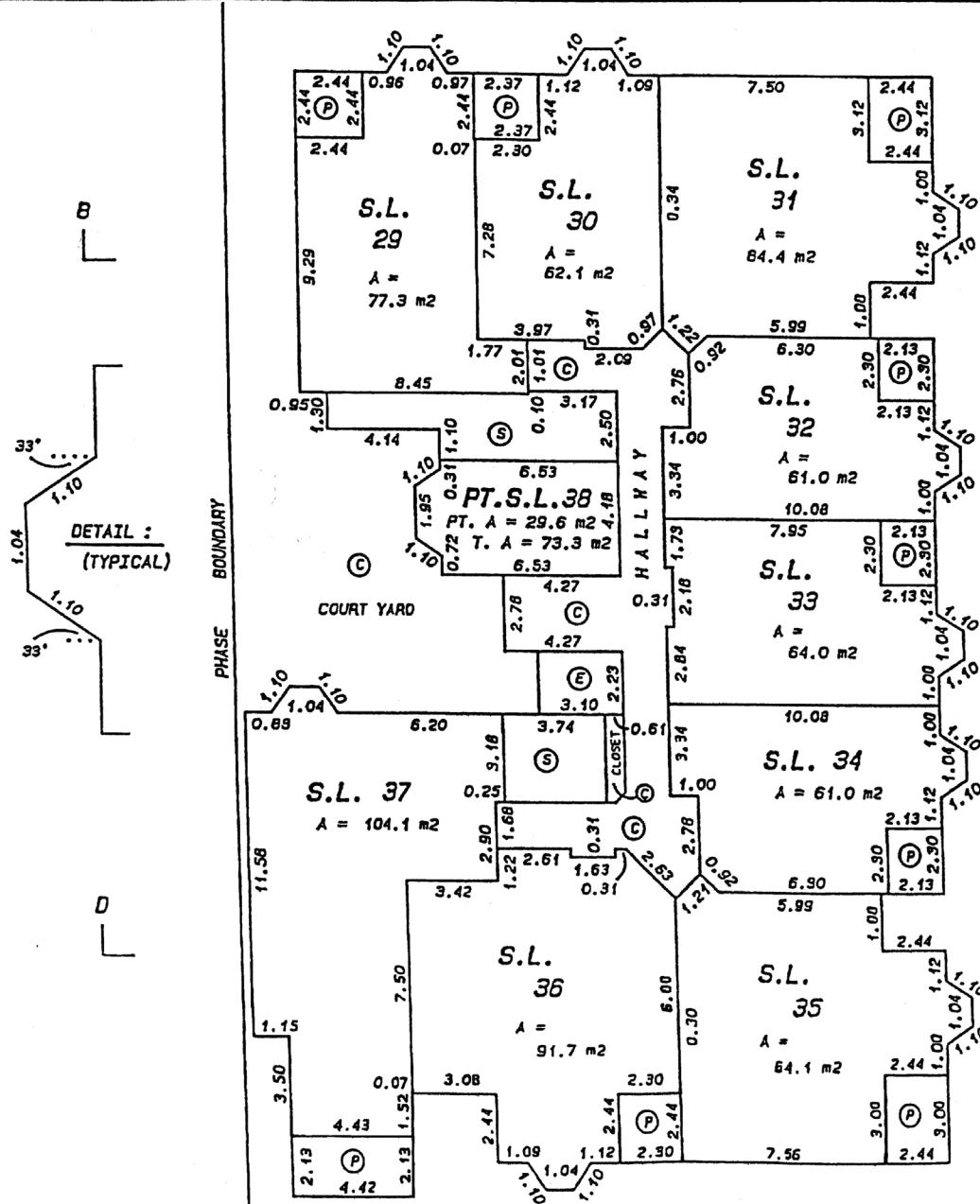
SL = Strata Lot

D = Deck

LCP = Limited Common Property

APPENDIX 4.1, continued**Sample Excerpts From Strata Plans: Sample Strata Plan – Ground Floor**

T.A. DENOTES TOTAL AREA
 (C) DENOTES COMMON PROPERTY.
 (E) DENOTES ELEVATOR (COMMON PROPERTY).
 (S) DENOTES STAIRS (COMMON PROPERTY).
 (P) DENOTES PATIO (LIMITED COMMON PROPERTY TO ADJACENT STRATA LOT)
 ----- DENOTES FLOOR BELOW
 -ALL DIAGONAL WALLS ARE AT A 45° DEFLECTION UNLESS NOTED OTHERWISE.



APPENDIX 4.1, *continued*

Sample Excerpts From Strata Plans: Sample Strata Plan – Upper Floor

T.A. DENOTES TOTAL AREA

(C) DENOTES COMMON PROPERTY.

DENOTES VENT (COMMON PROPERTY) (SEE DETAIL)

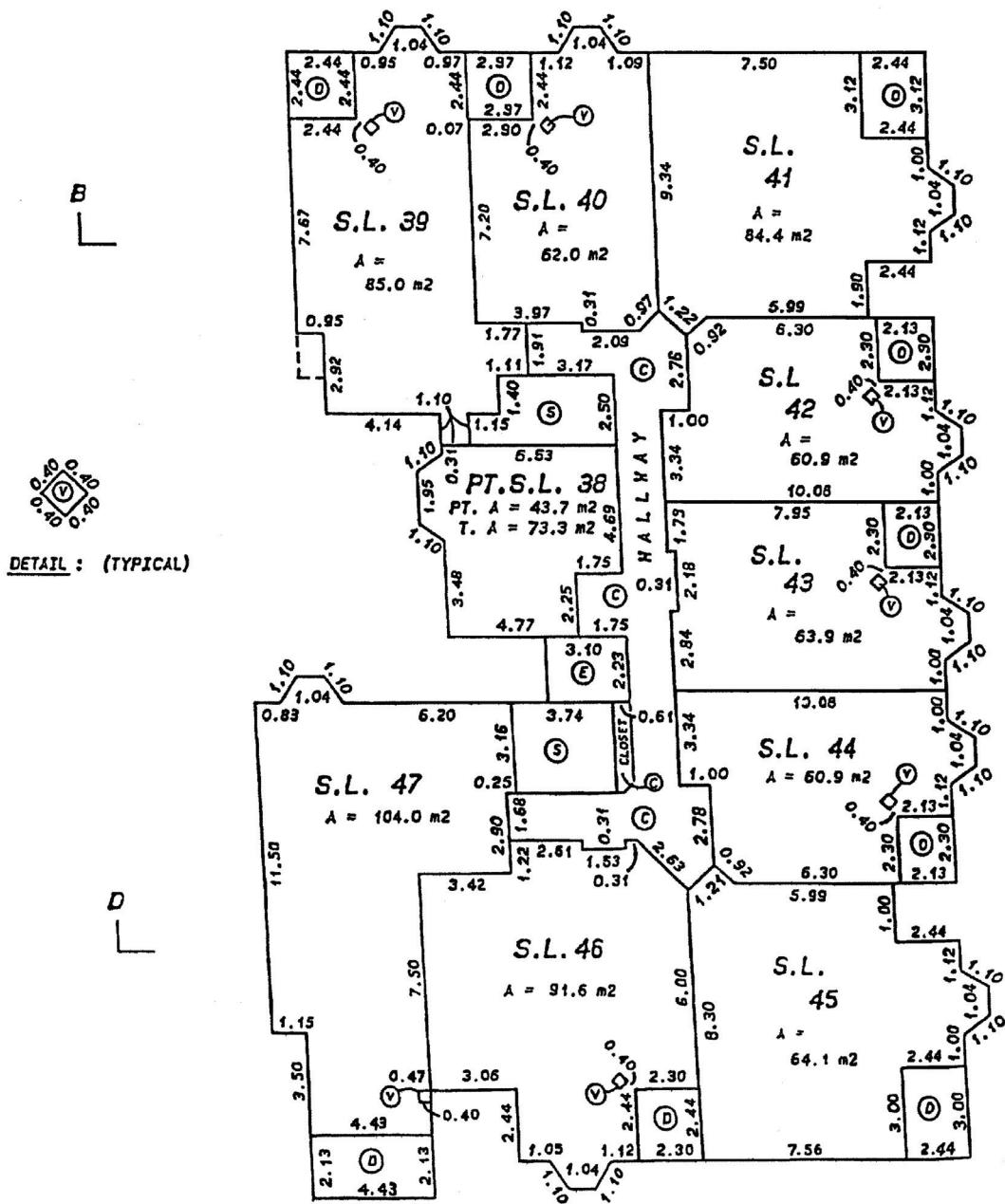
DENOTES ELEVATOR (COMMON PROPERTY).

DENOTES STAIRS (COMMON PROPERTY).

DENOTES DECK (LIMITED COMMON PROPERTY TO ADJACENT STRATA LOT)

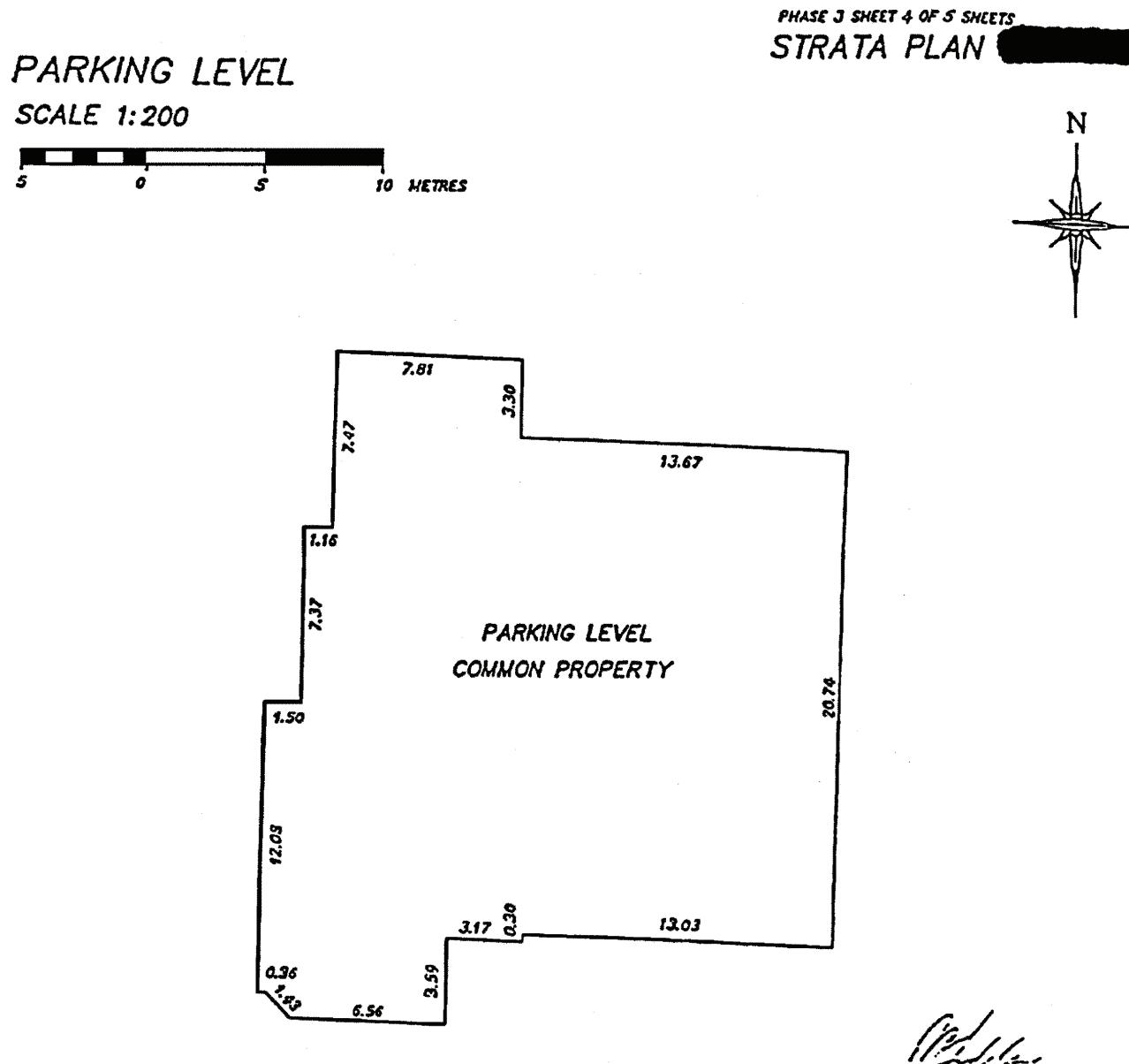
- - - - - DENOTES FLOOR BELOW

-ALL DIAGONAL HALLS ARE AT A 45° DEFLECTION UNLESS NOTED OTHERWISE.



APPENDIX 4.1, continued

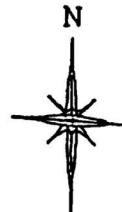
Sample Excerpts From Strata Plans: Sample Strata Plan – Parking Level



APPENDIX 4.1, continued**Sample Excerpts From Strata Plans: Sample Strata Plan – Schedule of Entitlement**

PHASE 3 SECOND SHEET SHEET 2 OF 8 SHEETS
STRATA PLAN

| LOT | SHEET | FORM 1 | | FORM 2 | | FORM 3 | |
|------------------|-------|------------------------------|---------------------------|---------------------------------------|-----------------|---------------------------|-----------------|
| | | SCHEDULE OF UNIT ENTITLEMENT | | SCHEDULE OF INTEREST UPON DESTRUCTION | | SCHEDULE OF VOTING RIGHTS | |
| | | UNIT ENTITLEMENT | INTEREST UPON DESTRUCTION | INTEREST UPON DESTRUCTION | NUMBER OF VOTES | INTEREST UPON DESTRUCTION | NUMBER OF VOTES |
| 70 | | 123 | 164300 | | 1 | | |
| 71 | | 120 | 162900 | | 1 | | |
| 72 | | 123 | 167900 | | 1 | | |
| 73 | | 129 | 172900 | | 1 | | |
| 74 | | 123 | 169900 | | 1 | | |
| 75 | | 129 | 174900 | | 1 | | |
| TOTAL | | 747 | 1013400 | | 6 | | |
| TOTAL PH 1,2 & 3 | | 8675 | 9207582 | | 75 | | |



OWNER
c.d.c.

 AUTHORIZED SIGNATORY

WITNESS

 FULL NAME:

 ADDRESS

I, [REDACTED], BRITISH COLUMBIA LAND SURVEYOR,
 HEREBY CERTIFY THAT THE BUILDING SHOWN IN THIS STRATA
 PLAN HAS NOT, AS OF THE 20TH DAY OF DECEMBER, 1999,
 BEEN PREVIOUSLY OCCUPIED. DATED AT KELOWNA, B.C.
 THIS 20TH DAY OF DECEMBER, 1999.

B.C.L.S.

MORTGAGEE

 AUTHORIZED SIGNATORY

WITNESS

 FULL NAME:

 OCCUPATION

 ADDRESS

I, THE UNDERSIGNED DO SOLEMNLY DECLARE THAT:
 (1) I, THE UNDERSIGNED AM THE DULY AUTHORIZED AGENT
 FOR THE OWNER DEVELOPER.
 (2) THE STRATA PLAN IS FOR RESIDENTIAL USE ONLY.

I MAKE THIS SOLEMN DECLARATION CONSCIENTIOUSLY BELIEVING
 IT TO BE TRUE AND KNOWING THAT IT IS OF THE SAME FORCE
 AND EFFECT AS IF MADE UNDER OATH
 DECLARED BEFORE ME AT [REDACTED] B.C.
 THIS [REDACTED] DAY OF [REDACTED]

MORTGAGEE

 AUTHORIZED SIGNATORY

WITNESS

 FULL NAME:

 ADDRESS

 A COMMISSIONER FOR TAKING
 AFFIDAVITS FOR BRITISH COLUMBIA

ACCEPTED AS TO FORMS 1, 2 AND 3
 THIS [REDACTED] DAY OF [REDACTED]

SUPERINTENDENT OF REAL ESTATE

MORTGAGEE

 AUTHORIZED SIGNATORY

ADDRESS

 FULL NAME:

 OCCUPATION

APPROVING OFFICER OF A 5 PHASE STRATA LOT

 APPROVING OFFICER FOR THE CITY OF KELOWNA

APPENDIX 4.2

Sample Land Title Search

TITLE SEARCH PRINT

File Reference: 1001-001

C Declared Value \$ 900000

A

2017-02-23, 12:50:04

B

Requestor: Amy Black

****CURRENT AND CANCELLED INFORMATION SHOWN****

D Land Title District
Land Title Office

E Title Number CA234567
From Title Number CA123456

F Application Received 2010-06-26

G Application Entered 2010-07-05

H Registered Owner in Fee Simple
Registered Owner/Mailing Address: JOHN JAMES SMITH, BUSINESSMAN
1234 MAIN STREET
VANCOUVER, BC
V0N 1NO

Taxation Authority CITY OF VANCOUVER

J Description of Land
Parcel Identifier: 001-002-003
Legal Description:
LOT 1 DISTRICT LOT 123 GROUP 1 NEW WESTM

K Legal Notations
NOTICE OF INTEREST, BUILDERS LIEN ACT (S.3(2)), SEE BT12121
FILED 2005-01-15

SUBJECT TO THE LIABILITY OF BEING SUBJECT TO AN ORDER UNDER DIVISION
6 OF PART 4 OF THE WILLS, ESTATES AND SUCCESSION ACT, SEE (BA57575)
DATE OF PROBATE, 12-01-10

SUBJECT TO PROVISOS, SEE CROWN GRANT H4343L
PART DERIVED FROM DISTRICT LOT 4567

THIS TITLE MAY BE AFFECTED BY A PERMIT UNDER PART 29 OF THE
MUNICIPAL ACT SEE DF BG888999 EXPIRES N/A

HERE TO IS ANNEXED EASEMENT BH44554

APPENDIX 4.2, continued**Sample Land Title Search****TITLE SEARCH PRINT**

2017-02-23, 12:50:04

File Reference:

Requestor: Your Conveyancer

Declared Value \$ 900000

L Charges, Liens and Interests

Nature: STATUTORY RIGHT OF WAY
 Registration Number: J22444
 Registration Date and Time: 2005-03-09 12:49
 Registered Owner: BRITISH COLUMBIA TELEPHONE COMPANY
 Remarks: PART DERIVED FROM FORMER LOT B PLAN
 5678 INTER ALIA

Nature: EASEMENT
 Registration Number: K66777
 Registration Date and Time: 2005-09-24 15:02
 Remarks: PART IN EXPLANATORY PLAN 88999
 APPURTEGAN TO LOT A PLAN 77555
 INTER ALIA

Nature: COVENANT
 Registration Number: GD343434
 Registration Date and Time: 2005-12-19 14:49
 Registered Owner: CITY OF VANCOUVER
 Remarks: SECTION 219, LAND TITLE ACT
 INTER ALIA

Nature: COVENANT
 Registration Number: BG565656
 Registration Date and Time: 2008-06-03 13:56
 Remarks: MODIFICATION OF GD343434
 INTER ALIA

Nature: MORTGAGE
 Registration Number: CA555666
 Registration Date and Time: 2010-07-15 13:25
 Registered Owner: VANCOUVER CITY SAVINGS CREDIT UNION
Cancelled By: CA444222
Cancelled Date: 2011-07-30

Nature: MORTGAGE
 Registration Number: CA222444
 Registration Date and Time: 2016-07-12 06:34
 Registered Owner: ROYAL BANK OF CANADA

M Duplicate Indefeasible Title

NONE OUTSTANDING

N Transfers

NONE

O Pending Applications

NONE

P Corrections

NONE

APPENDIX 4.2, continued**Sample Land Title Search**

- (A) The top right corner of the title search displays the date and time when the title search was obtained from the land title office. The Sample Land Title Search was obtained at 12:50 p.m. on February 23, 2017.
- (B) Below the date of the search is the name of the person who requested the title search from the land title office. The Sample Land Title Search shows Amy Black was the person who requested the title search.
- (C) The declared value is the purchase price the current registered owner paid for the property. Note that the declared value is not the same as the assessed value for the property, and only indicates the value of the property at a single moment in time. The declared value on the Sample Land Title Search is \$900,000. This is the purchase price paid by John James Smith when he acquired the property in 2010.
- (D) The land title district section notes within which land title district and office the property is located. The Sample Land Title Search notes the land title district and land title office is Vancouver, meaning that the New Westminster land title district office would handle all matters related to this property.
- (E) The title number is the registration number for the transfer document (such as a Form A or Form 17) that was filed at the land title office which registered title to the property in the name of the current owner (John James Smith).

The “From Title Number” section just below it notes the registration number for the transfer document that was filed at the land title office which registered title to the property in the name of the former owner. The registration number noted under the “From Title Number” section allows users to conduct historical searches and determine the trail of transfers for the property.

- (F) The date noted beside “Application Received” indicates the date on which the transfer application was submitted to the land title office. This is the date the current registered owner became the owner of the property.

In British Columbia, there is a delay between the time when an application for registration is received by the land title office and “completion” of registration. Each application must be reviewed by staff, and the timeline for the delay varies based on factors such as: current volumes at the various land title offices, the complexity of the applications, and potential errors (i.e., ‘defects’) that need to be cured or fixed. Despite this delay, the Land Title Act provides that an instrument is deemed to be registered when the application is received by the registrar. In the Sample Land Title Search the transfer application was received on June 26, 2010; therefore, this is the date John James Smith became the owner of the property.

- (G) The date noted beside “Application Entered” is the date when registration of the transfer application was completed and the new title to the property was issued in the name of the new registered owner. In the Sample Land Title Search, the application was entered on July 5, 2010. This means there were 10 days between when the transfer application was submitted (and received by the land title office) and when registration was completed. However, as mentioned previously, the transfer application is deemed to be registered when the application is received by the registrar.

After an application is received by the land title office, an “Examiner of Title” reviews the application for compliance with legal requirements before registration is completed. If a defect is discovered, the land title office will issue a Notice Declining to Register to the person who submitted the application, indicating why the application was defected and what needs to be done to cure the defect. Generally, there is a specified time for correcting the defect, during which the application remains ‘pending’ on title. Once the defect has been cured and re-examined, registration will be completed for the application. Common defects include missing documents or dates, mismatched spelling of names, and missing fields on an application.

- (H) The name and address noted beside “Registered Owner/Mailing Address” is the current registered owner of the property and the registered owner’s mailing address. This address is not the civic address for the property, although it may be the same if the owner lives at that address. The civic address of the property does not appear on the title search.

APPENDIX 4.2, continued**Sample Land Title Search**

If there is more than one owner registered on title, the title search will set out all owners and the nature of the co-ownership. Below is an example of how this section would appear if John James Smith and Selina Chen owned the property as joint tenants:

JOHN JAMES SMITH, BUSINESSMAN

SELINA CHEN, CEO

1234 MAIN STREET

VANCOUVER, BC

V0N 1N0

AS JOINT TENANTS

Below is an example of how this section would appear if John James Smith and Selina Chen owned the property as tenants-in-common, with John owning a 25% undivided interest and Selina owning a 75% undivided interest in the property:

JOHN JAMES SMITH, BUSINESSMAN

1234 MAIN STREET

VANCOUVER, BC

V0N 1N0

AS TO AN UNDIVIDED 25/100 INTEREST

SELINA CHEN, CEO

1234 MAIN STREET

VANCOUVER, BC

V0N 1N0

AS TO AN UNDIVIDED 75/100 INTEREST

If neither “Joint Tenants” nor “Tenants in Common” is set out, the owners are presumed to own the property as tenants-in-common and their interests are presumed to be equal.

In addition to having individual owners, a corporation, trustee, or executor may be a registered owner. When a corporation owns a property, its legal corporate name and incorporation number are listed beside “Registered Owner/Mailing Address”. When a trustee is the registered owner, but is holding the property for a beneficiary, generally the trustee’s name with the words “IN TRUST” beside their name is used. When the registered owner is deceased and the property is transmitted to the executor (if they had a valid will) or to an administrator (if they did not have a will), the executor’s or administrator’s name appears with the words “as executor (or administrator) of the estate of _____ [name of deceased owner]”.

- (I) The municipality or district noted beside “Taxation Authority” identifies who collects property taxes for the property. In rural areas, this section can be extremely important as it can sometimes be hard to determine under whose taxation authority a property falls. This information is important for clients and their legal representatives. Clients may have inquiries they would like to direct to the taxation

APPENDIX 4.2, continued**Sample Land Title Search**

authority, and legal representatives require the information in order to determine tax adjustments and liabilities for the property. The Sample Land Title Search states the taxation authority is the City of Vancouver.

- (J) The description of the land is one of the most important items on a title search. This description is how properties are properly identified and legally described for land title purposes, as the civic address is not listed on the registered title to the property. The description of the land is broken down into two components: the parcel identifier (a “PID” as it is commonly known), and the legal description.

Each property in British Columbia has a legal description that generally provides specific information that will allow people to find the property on a plan registered at the land title office.

The PID is a permanent parcel identifier assigned by the registrar of land titles when the title for a property is created. The PID is a nine-digit number and never changes once associated with a property, unless the property is later subdivided or consolidated, at which point a new title is created. The PID is generally the best way to obtain a land title search. There are a few methods for determining the PID for a property. One method is by searching the civic address of the property on BC Assessment’s website www.bcassessment.ca. Another method is to look up the property using the civic address on any municipalities’ GIS mapping services, if such a system exists in the given municipality. For example, Vancouver’s GIS mapping service can be found at maps.vancouver.ca/portal/apps/sites/#/vanmap. Another simple method is to look at a property tax statement for the property. The PID is usually noted at the top of the statement.

- (K) Legal notations provide information on matters relating to the property other than ownership interests. If a property is subject to any statutory provisions, it would be recorded here. It is very important to review legal notations endorsed against the title to the property, as this information may benefit or negatively affect the property. Some title searches may not contain any legal notations whereas others may have numerous and sometimes very complex legal notations. Based on the fourth notation on the Sample Land Title Search, we know that the property is subject to a permit filed under the Municipal Act (now the Local Government Act).

- (L) All charges, liens, and interests registered against the property will appear in this section (including those which have been cancelled, if requested). Priority is usually determined by the date and time of registration, which are also noted in this section. In this example, there are six charges registered against title to the property. The mortgage in favour of Vancouver City Savings Credit Union has been discharged.

It is important to note that charges, liens, and interests can have a significant positive or negative impact on a property. As such, licensees should be careful to review and understand the charges, liens, and interests registered on title. There are four important fields for each charge, lien, or interest that must be noted on the title search. Below is a brief description of the information in each field:

- Nature: This field notes what type of a charge, lien, or interest is registered. Some examples of different types of charges, liens, or interests that may appear in this field are: mortgages, easements, statutory rights of way, covenants, and builders liens.
- Registration Number: The registration number identifies the registered application number that created the charge against the property. This number can be used to obtain a copy of the charge, lien, or interest from the land title office.

APPENDIX 4.2, *continued***Sample Land Title Search**

- Registration Date and Time: The registration date and time are very important and note when the application was submitted for registration at the land title office. Note the charge, lien, or interest will be shown under the “Pending Applications” section of the title search until registration is completed.
- Registered Owner: The registered owner field identifies the person or entity that is the registered owner of the charge, lien, or interest. For a mortgage, the lender (mortgagee) will be the registered owner of the charge.

In addition to the four basic fields of information, “Remarks” can also be noted to provide additional information about the charge, lien, or interest. The remarks may specify if the charge, lien, or interest is registered over more than one property by using the term “*inter alia*” (Latin for “among other things”). The remarks can also note whether the charge, lien, or interest was originally registered against a property that was later subdivided into smaller lots (i.e. a ‘parent property’) and continued to charge the lands after a subdivision.

If any charges are cancelled, two additional fields will appear under the cancelled charge: “Cancelled By” and “Cancelled Date”. The “Cancelled By” field notes the registration number of the application that discharged or released a charge, lien, or interest. The “Cancelled Date” field confirms when registration of the charge, lien, or interest was cancelled.

- (M) The Sample Land Title Search indicates that no duplicate certificate of title has been issued for the property since John James Smith became the registered owner of the property. If a duplicate of indefeasible title has been withdrawn from the land title office, this section will show the name of the person who withdrew it and the date and time it was withdrawn. If the duplicate certificate of indefeasible title has been returned to the land title office after being withdrawn, this section will show the date it was ‘surrendered’ (returned) to the land title office.
- (N) The transfers section notes if any portion of the land included in the legal description has been transferred to another parcel. For example, if a portion of the property had been subdivided and included in a new parcel, a notation would be found here. It should be noted that under new survey and subdivision requirements, transfers of this kind are fairly rare.
- (O) The pending applications section notes whether any applications have been filed against title to the property for which registration has not been completed. For example, if a builders lien was filed against the property, it would appear as a pending charge until registration was completed. This is an extremely important section because section 37 of the Land Title Act provides that an application will be deemed registered retroactively to the date of application.
- (P) If an error were discovered in the transfer documentation or the land title office staff erred in recording the information, the correction would be noted here.

