CHAPTER 4

TITLE REGISTRATION AND STRATA PROPERTIES 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 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
- ☑ Explain how a strata development is created
- ☑ Distinguish between the strata corporation and the strata council, and describe the duties of each
- ☑ Describe the financial management of strata corporations
- ☑ Explain how strata bylaws and rules are created and amended
- ☑ Explain how a cooperative development is created and distinguishable from a strata development

INTRODUCTION

In Chapter 3, 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?

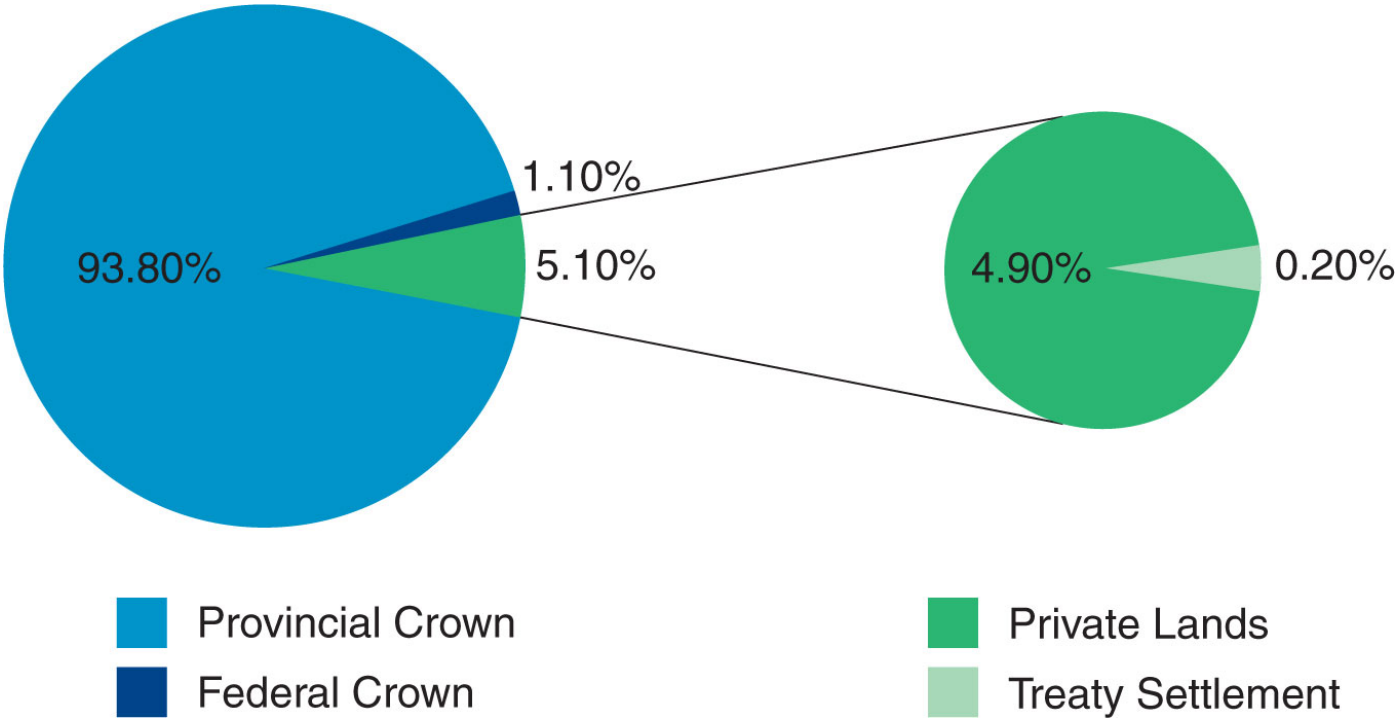
In the first section of this chapter, we discuss the difference between Crown lands, private lands, and treaty settlement lands. In the second section, we

examine the title registration system in British Columbia and consider what mortgage brokers need to understand about the system and the role that searching title plays in providing real estate and mortgage services. In the third part of the chapter we provide an overview of strata properties in British Columbia and discuss their relevance to mortgage brokers and lenders.

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 British Columbia *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. 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.

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 the 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.

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 SCC 44. 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 pro-actively 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. 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 3 years.

subdivision
the division of land into two or more parcels

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. 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. Finally, the creation of a strata (by the filing of a strata plan at the Land Title Office) is another method to subdivide property. Stratas are discussed at the end of this chapter.

TITLE REGISTRATION IN BRITISH COLUMBIA

This portion of the chapter explains how British Columbia came to have its Torrens system of registration, what mortgage brokers should understand about the system, and the role that searching and reviewing title plays in real estate transactions.

Historically: The Common Law Approach

Real property plays a key role in modern economic and social life. Owners want to protect their property and lenders want to ensure that their loans are secured by valid interests 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 which, 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 5 years, Blackacre is sold 3 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:

- the forged deed;
- the deed given in exchange for an illegal act or thing; and

- the deed signed in circumstances where the party can plead *non est factum* (that is not my deed – see Chapter 6: "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 filled 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. 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.

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.

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

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 next, 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*.

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 because 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 4.2). It should be noted that Torrens legislation is not the same in every jurisdiction, so those from other Torrens jurisdictions should not assume that the British Columbia system is identical to others.

indefeasibility
in British Columbia, subject to certain statutory exceptions, the 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 title register

The principle of indefeasibility over-rules 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 in the upcoming 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 4.2.

FIGURE 4.2: Exceptions to the Indefeasibility Principle (*Land Title Act* s.23)

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) (exception 9, see Figure 4.2).

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 Matters

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 (see Figure 4.2) 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 (see Figure 4.2) protects her unregistered lease (less than 3 years).

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 (recall that 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), discussed next, 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

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

The British Columbia Court of Appeal restored Mr. Gill as the registered owner and discharged the mortgage on title, holding that 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 mortgagee had relied on the title in good faith, nevertheless, it 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 4.3 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 4.3: 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 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. Mortgage brokers need to be aware of the fact that the validity of the mortgage security is dependent on whether the mortgagor has a valid interest in the land.

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 she registers it. While registration is not mandatory, B places her interest at risk if she fails 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 Torrrens 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 objects 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.

Example

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 3 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.* 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.

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 claims 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. Nick cannot recover Blackacre from Mac. If the *Land Title Act* had not been passed, Nick 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.

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

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 particulars of a trust created or declared in respect of that land must not 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 any 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.

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.

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. Form A and other prescribed form documents can be accessed 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 one 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. Mortgage brokers 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.

LAND TITLE OFFICES, SEARCHING TITLE AND THE REGISTRATION PROCESS

Mortgage brokers 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 4.1 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

Individuals 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, these individuals would visit the land title office to conduct searches or have title search companies visit the land title office for them. Today, people typically use myLTSA (formerly BC Online) (*www.ltsa.ca*) to conduct title searches. This service allows individuals 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 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 one 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/default.aspx*. 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. The information obtained from a title search is vitally important to the vendor, the purchaser and any licensees or mortgage brokers involved in a sale or financing. The search should be conducted at the earliest opportunity so that the most current information is obtained For example, there may be more than one owner, title may be in the name of an executor, or the property may be in foreclosure with the lender granted conduct of sale (see the chapter on Mortgage Law).

ALERT

In *Chand et.al. v. Sabo Bros. Realty Ltd. et al.*, 1979 AltaSCAD 5 (CanLII), a representative and their 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 [them] 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.

Common Items Appearing on Title

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

Duplicate Certificate of Title. Refer again to the title search at Appendix 4.1. 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.

Occasionally a duplicate certificate of title is lost or destroyed. Section 193 of the *Land Title Act* provides for the issuance of a substitute duplicate certificate of title. This can be a time-consuming process and should be initiated as soon as possible after the discovery of the loss or destruction.

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 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.

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

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.*, 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 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* (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.

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 Mortgage Broker...

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 on 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, mortgage brokers 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, lenders and real estate professionals. If mortgage brokers encounter such properties, they should be sure to bring the matter to the attention of the lender. A section 57 notice may make it more difficult for a property to sell or may depreciate the value of the property, thereby deteriorating the quality of the security offered by a mortgage interest in the property.

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.

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 4.1). 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. 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.

Discharging a Mortgage

Mortgage brokers should be aware that in order to complete a discharge of a mortgage, the discharge must be registered at the land title office. The cost of the filing fees in registering the discharge is usually paid by the borrower and is generally contemplated in the originating mortgage agreement. This cost will form part of the expenses covered by the final payout statement provided by the lender. It should be made clear at this stage in writing as to which party will be responsible for actually registering the discharge of the mortgage at the land title office.

The *Land Title Act* and its Regulations require that the discharge of a mortgage be in a prescribed General Instrument form (Form C). Special attention to detail must be paid to more complex situations where the discharge of the mortgage involves, for example, any of the following:

- registered priority agreements;
- a partial discharge of a mortgage which extends over multiple parcels or strata lots;
- any mortgage that is registered as having been transferred, modified or extended; or
- where there is a registered assignment of rents.

In practice, the discharge of a mortgage is accomplished in part by way of lawyers' undertakings. An undertaking is a solemn promise made by a lawyer to perform a certain act. The Law Society considers a lawyer's undertaking to be a very serious matter and takes the view that a lawyer is bound by their undertaking. A lawyer must therefore never undertake to do anything that is beyond their absolute control at the time the undertaking is given. Consequently, when involved in the discharge of a mortgage, a prudent lawyer will do one of the following:

- obtain the registrable discharge from the lender in advance of closing, on the lawyer's undertaking to release that discharge and submit it for filing in the land title office only against payment to the lender of the specified amount;
- provide the purchaser's lawyer with an undertaking to deliver to the lender the exact amount required in accordance with the payout statement; or,
- have the lender's payout statement addressed directly to the purchaser's lawyer and have the purchaser's lawyer pay all or a portion of the net purchase proceeds directly to the lender or to the vendor's lawyer in the form of a cheque made payable to the lender.

Pursuant to section 249 of the *Land Title Act*, a mortgage or other charge may also be discharged by an order of the Supreme Court in accordance with sections 242-251 of the *Land Title Act*. These provisions deal with, for example, situations where the lender cannot be found and the mortgagor has paid off the mortgage in accordance with its terms or where the lender wrongly refuses to allow the mortgagor to redeem the property.

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, mortgage brokers 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. For this reason, mortgage lenders in British Columbia may be particularly interested in obtaining title insurance. 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.

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 profiles, 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 director then submits the information to the registrar of the site registry. 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 will exist for a commercial rather than residential property. People who already have a working knowledge of electronic on-line access to the land title office should have little difficulty in accessing the site registry. Mortgage brokers may access the registry through BC OnLine. However, the cost of searching the registry can be significantly more expensive than obtaining a certificate of title, through the LTSA.

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 (SGFNLR), 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 mortgage brokers 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 broker 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).

STRATA PROPERTIES (CONDOMINIUMS) AND COOPERATIVES IN BRITISH COLUMBIA

Introduction

In Chapter 3: "What the Purchaser Buys: Estates and Interests in Land", we introduced various estates and interests in land that can be acquired in British Columbia. So far in Chapter 4, you have been introduced to the system of title registration and the title search process. When reviewing the State of Title Certificate for a specific fee simple parcel of property, a lender or mortgage broker may discover that, in the "Description of Land", a strata lot is listed, together with an interest in the common property of a strata plan.

Strata properties, referred to colloquially as "condominiums", have become a popular fixture in British Columbia's real estate market. According to the provincial government's Office of Housing and Construction Standards, there are over half a million residential strata lots and over 29,000 strata corporations in British Columbia.[2] Given the rapid increase in the number of strata

properties in British Columbia, lending against the title of such property is becoming increasingly common; therefore, a basic understanding of strata law is crucial for mortgage brokers.

In this section, we will discuss the increasingly popular strata concept, which permits the division of a residential or commercial building into areas of private and common ownership. This occurs, for example, in residential strata developments, where a buyer acquires fee simple ownership of their apartment in a high-rise tower together with a proportionate interest in common features, such as the tower's recreational facilities. We will also discuss leasehold strata developments, in which a buyer acquires a long term lease over the strata property, instead of fee simple ownership.

The remainder of this chapter will explain the way in which a strata development is created, the roles of the strata corporation and the strata council, the rights and responsibilities of strata owners, strata finances, and the significance of bylaws and rules. Furthermore, strata titles will be compared to cooperative interests.

Historical Background

British Columbia has had strata legislation since 1966. In 2000, the provincial government significantly modified our strata legislation by replacing the former *Condominium Act* with the *Strata Property Act*, SBC 1998, c 43. The *Strata Property Act* retains most of the legal fundamentals contained in previous strata legislation and adds many refinements.

The Strata Concept

The strata concept allows us to subdivide a building, or sometimes land, into separate parts for individual ownership together with co-ownership of *common property*. The terms "*strata*" and "*condominium*" are synonymous. The words refer to the same concept and may be used interchangeably.

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

In a strata development, individuals can own separate parts of the same development but share the use of common property and related expenses. In simple terms, the part of the property that an individual separately owns is called a *strata lot*. Informally, we often call this the strata "unit". 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 whose 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 and is assessed and taxed individually.

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

A strata owner owns the strata lot plus their proportionate share of the common property.

Example

In an apartment-style strata development, the owner purchases fee simple title to their apartment (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. The common property typically includes the apartment building's roof and exterior, the entrance lobby, hallways, elevators and recreational facilities.

Subdividing Buildings, Land and Air Space

As mentioned earlier, the strata concept allows for the *subdivision* of both buildings and land, which also includes air space.

subdivision
the division of land into two or more parcels

When a building subdivision occurs, the building is subdivided into strata lots, while the underlying land typically forms part of the common property of the development. The strata lots are created out of the building, not out of the land.

FIGURE 4.4: Subdividing a Building

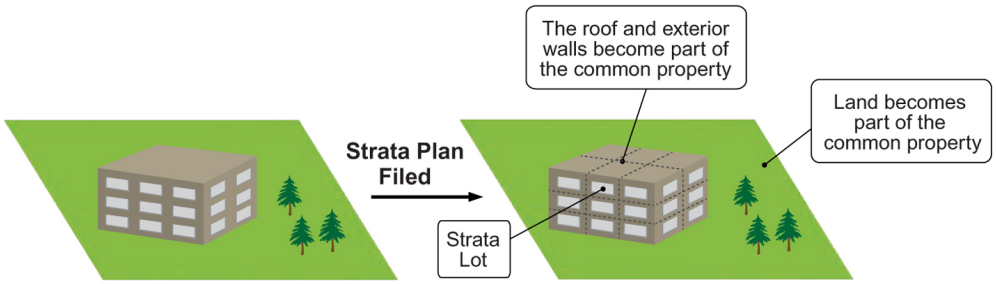


Figure 1A
One parcel of land and a building

Figure 1B
18 strata lots together with common property

A *conversion* refers to a project where the developer owns a building that was previously occupied 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.

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

A developer may also subdivide land into separate parts for individual ownership together with common property. This type of strata development is called a "bare land" strata development. Whether there are buildings on the land does not matter; this is still a bare land strata development because the developer is subdividing the land, not the buildings, into strata lots and common property. 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.

Example

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. 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.

In an air space strata development, the developer creates a strata complex in the air space above a piece of land. The *Land Title Act* permits land owners to treat their air space in the same manner as land by separately registering their title to the space above their land and buildings. This space is called an air space parcel. Virtually every air space development involves construction of a strata building over top of a building owned by the owner (the "remainderman") of the underlying land. In many cases the remainderman is the developer. Air space developments are legally complex and require sophisticated agreements, often called "air space agreements", between the strata corporation and the remainderman to cover topics such as the allocation of certain expenses and access rights to certain shared facilities such as elevators.

Mixed Use Strata Developments

Strata developments can serve many purposes, from residential to commercial or industrial. Developers sometimes create strata developments that share two or more different kinds of uses. Typically, these developments contain residential strata lots together with strata lots designed for other uses, like stores or offices. We call these "mixed use" strata developments. A common example would be a residential apartment building with retail stores (such as coffee shops or grocery stores) occupying the ground level.

Essential Strata Principles

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

1. **A strata is a strata:** the *Strata Property Act*, and therefore, the basic legal fundamentals of a strata, apply to every type of strata development, from a 100 unit residential apartment or industrial warehouse to a 2 unit strata duplex (sometimes referred to as a "townhouse"). However, in some cases, the Act adds special, extra requirements for a particular type of project.
2. **The strata scheme is self-enforcing:** there are no "strata police" who regulate compliance with the strata legislation. Every strata development is self-enforcing. Therefore, the strata corporation (discussed later) is

responsible for compliance with the Act. Despite this, owners can apply to court for an order requiring the strata corporation to comply with the legislation.

3. **Not on First Nations land:** since Indian reserve land constitutes an exclusively federal undertaking, provincial legislation, including the *Strata Property Act*, does not apply on such lands. However, this is subject to a few exceptions created by modern treaties over First Nations lands. Some First Nations in British Columbia have permitted real estate developments on Indian reserve lands. Outwardly, some of these developments may look like strata developments, but beware - they are not. Instead, these projects tend to create strata-like features using contractual provisions in long-term lease agreements.

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 refer to the "owner developer" as the "developer".

Strata Plan

To create a strata development, a developer must first subdivide the property into strata lots together with common property. This is done by depositing a document called a "strata plan" at the Land Title Office. When the developer files the strata plan in the Land Title Office, it has the effect of subdividing each building in the strata plan or, in the case of a bare land strata development, the land, into strata lots and common property. The Registrar of Land Titles then issues a certificate of indefeasible title for each newly created strata lot.

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, among 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 4.2 contains sample excerpts from a strata plan, particularly a plan showing the location of the strata lots and common property, with dimensions, and the Schedule of Unit Entitlement (discussed next).

The strata plan is an essential document for every strata owner or prospective purchaser. Mortgage lenders may also check the registered strata plan, any amendments to it and resolutions affecting the common property. Reviewing the strata plan is a prudent practice to take to verify that the appropriate property is being mortgaged. Mortgage lenders and brokers can search for strata documents on file at the Land Title Office, although typically, a search is conducted through the LTSA (discussed earlier in this chapter).

Schedule of Unit Entitlement

A *Schedule of Unit Entitlement* is a table that sets out each owner's proportionate interest in the common property. Generally speaking, the unit entitlement of each strata lot will reflect its habitable area (in square metres) rounded to the nearest whole number. This Schedule is used for two key purposes:

1. **To determine financial contributions:** by calculating what percentage of the total unit entitlement an individual owns, one can determine the proportion of common expenses, including strata fees and special levies, that each strata lot owner is required to contribute. For example, in the Schedule of Unit Entitlement in Appendix 4.2, Lot 70 owns 16.5% (123/747) of the total unit entitlement. Therefore, the owner of strata lot 70 would have to contribute 16.5% of the total expenses of the strata corporation.
2. **To determine each owner's proportionate, undivided share as a tenant in common of the common property in the strata plan:** collectively, the owners own the common property as tenants in common, with each having a share equal to that owner's proportional share of unit entitlement. Referring again to Appendix 4.2, the owner of strata lot 70 has a 16.5% share in the common property as a tenant in common.

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

Schedule of Voting Rights

A Schedule of Voting Rights sets out the number of votes that each strata lot can exercise at a general meeting. If a strata lot is residential, it normally has only one vote. If a strata plan is amended to combine two or more residential strata lots, or to subdivide a residential strata lot, then a resulting strata lot may have more than one vote or only a fraction of a vote. If that is the case, then a Schedule of Voting Rights must be filed with the strata plan at the Land Title Office.

If a development is either composed of entirely non-residential strata lots or contains both residential and non-residential strata lots, a Schedule of Voting

Rights must be filed. The Act contains rules relating to how to assign votes per unit, depending on the development.

Types of Strata Property

In a strata plan, all of the property 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.

If the developer purchases the land for development, the developer becomes the registered owner in fee simple. When the strata plan is deposited, the Registrar of Land Titles creates an individual fee simple title for each strata lot, which the developer can then sell to prospective buyers.

If the developer wishes to lease land for a strata development, it may only do so from a government body or certain other public authorities. The developer leases the land under a document called a "ground lease" (or "head lease"), and registers their interest as a charge against the land. When the developer deposits the "leasehold strata plan", new fee simple titles are registered in the name of the landlord for each of the strata lots created, and the ground lease is automatically converted into individual strata lot leases for each strata lot. The developer will be registered as a "leasehold tenant". The developer is then able to sell their leasehold interest to prospective buyers, who essentially take an assignment of the developer's interest, as a leasehold tenant, under the strata lot lease with the landlord.

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.

As a Mortgage Broker...

Lenders and mortgage brokers should be aware of the fact that the ground lease may require the lessor to be a signatory to the transfer or mortgage of the strata lot lease. Since the lessor is a public authority, obtaining its signature may take some time.

Common Property

"Common property" is defined in the *Strata Property Act* and, generally speaking, is:

1. any part of a strata plan that is not a strata lot; and
2. a variety of service facilities (such as pipes, wires and cables), depending on their location and use.

Because each owner is a tenant in common of the common property, each owner has the right to use the common property, except to the extent that the owner's use is restricted by the Act, the Regulation or the strata corporation's bylaws or rules. Although the owners own the common property, the strata corporation must manage, repair and maintain it for the benefit of the owners.

There are several ways that a strata corporation can permit an owner to exclusively use common property, as though it belongs only to that owner. The first method is to designate the area as *limited common property* (LCP), which is defined as "common property designated for the exclusive use of the owners of one or more strata lots." The LCP designation attaches to a strata lot and runs with the land. A common example of LCP would be the balcony of a particular strata lot. Alternatively, the strata corporation may agree to permit an owner or tenant to exercise short term exclusive use (also sometimes characterized as a special privilege) over the relevant common property area. In strata plans where parking stalls and storage lockers are common property, strata corporations typically use short term exclusive use arrangements to allocate the use of particular stalls and lockers to individual owners and their tenants.

limited common property
common property designated for the exclusive use of the owners of one or more strata lots

The Strata Corporation

The strata corporation is a legal entity created by the deposit of a strata plan in the Land Title Office. The members of the strata corporation are the owners of

the strata lots located within the strata plan. A strata corporation has the legal capacity of a natural person. Although a strata corporation and a business corporation are both corporations, the similarity effectively ends there; a strata corporation is not the same as a business corporation.

In general terms, the strata corporation must manage, repair, maintain and insure the common property and the strata corporation's common assets. Furthermore, it must enforce its bylaws and rules. The strata corporation also has important record keeping responsibilities and it must allow various persons access to those records. The Act guarantees access to virtually all of the strata corporation's records to an owner, a tenant (who has received the right to inspect and copy the records from the owner) and a person authorized in writing by an owner or tenant. The Act also guarantees certain access rights to a former owner or tenant if the records relate to the period when that person was an owner or tenant.

Purchasers of strata lots are not yet owners, so they are not members of the strata corporation. Therefore, a purchaser will not automatically have a right of direct access to the strata corporation's records. A purchaser can obtain access to the strata corporation's records by several means. First, the purchaser can ask the strata corporation to provide information in an Information Certificate (Form B) or in a Certificate of Payment (Form F). The purchaser usually obtains both certificates. Second, the purchaser can obtain access indirectly via the contract of purchase and sale with the seller (by making the offer subject to the seller obtaining the necessary strata documents for the buyer's review).

Mortgage lenders, as part of their due diligence, in addition to the Form B and Form F, may wish to review the following strata corporation documents for the preceding two years:

- strata council minutes;
- minutes from all annual, extraordinary or special general meetings;
- minutes of the executive and of any general meetings of any section to which the strata lot belongs;
- the budget and financial statements; and
- the bylaws and rules.

How a Strata Corporation is Governed

The Strata Council

Since the strata corporation is an artificial legal person, it can only carry out activities through its members, the strata lot owners. The law recognizes the need for an executive body to generally oversee the strata corporation in the intervals between general meetings of all the members. This executive body is called the *strata council*. In each case, the strata corporation's bylaws determine the number of seats on council. Generally speaking, only strata lot owners are eligible to sit on the council. According to the *Strata Property Act*, the strata council must exercise the powers and perform the duties of the strata corporation, including the enforcement of bylaws and rules.

strata council
an executive body elected by the strata lot owners to carry out the duties of the strata corporation and oversee its affairs. Generally speaking, only strata lot owners are eligible to sit on the council

The Act states that in exercising the powers and performing the duties of the strata corporation, each council member must:

1. act honestly and in good faith with a view to the best interests of the strata corporation; and
2. exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.

After the developer creates the strata corporation by depositing the strata plan, the developer serves as the first strata council. After the developer sells a sufficient number of strata lots, or enough time passes, the developer must effectively hand over supervision of the development to the owners. This occurs at a meeting called the first annual general meeting.

The Members and Voting

The members (owners) of the strata corporation must convene in general meetings to carry out their business. Every year, the strata corporation must hold an annual general meeting of its members. Among other things, the members must elect a new strata council and approve the budget at the annual general meeting. All other general meetings of the members are called special

general meetings, which can be called at any time, provided sufficient notice to the members is given. Individual owners, in certain cases, have the right to demand the strata corporation hold a special general meeting to consider a resolution or other matter. The members can waive holding a general meeting, or waive the notice requirements for a general meeting, if the members follow certain procedures set out in the Act.

Generally speaking, all matters at general meetings are decided by majority vote unless the legislation or the bylaws require a ¾ or unanimous vote. Any eligible voter may appoint a proxy to exercise their vote. The proxy must be in writing and signed by the eligible voter giving it.

As a Mortgage Broker...

Mortgage brokers should be aware that in limited circumstances, a lender with a mortgage over a strata lot may vote in place of the owner. The mortgage document must give the lender the right to vote. The lender must also give the strata corporation at least three days written notice of his or her intention to vote. The lender can only vote in respect of insurance, maintenance, finance or other matters affecting the security of the mortgage.

In order to receive notices of annual or special general meetings, a lender must give a "Mortgagee's Request for Notification" to the strata corporation.

The *Strata Property Act* permits strata corporations to hold annual and special general meetings by telephone or other electronic means, provided that:

1. the notice of the meeting includes instructions for how to attend;
2. all persons attending the meeting must be able to communicate with each other; and
3. the chair of the meeting must be able to identify whether all those attending are eligible voters.

Finances

Every strata corporation must have two separate funds: an operating fund and a *contingency reserve fund* (CRF). All of the owners contribute to the funds through their strata fees.

contingency reserve fund
a fund maintained by a strata corporation for common expenses that usually occur less often than once a year or that do not usually occur. The *Strata Property Act* requires both developers and the strata corporation to make contributions to the fund

The operating fund is for the strata corporation's common expenses that usually occur one or more times each year. Common expenses relate to the common property and common assets of the strata corporation, or in some cases, to limited common property, or to expenses which are otherwise required to meet the corporation's obligations.

The strata corporation must also establish a CRF to pay for common expenses that usually occur less often than once per year, or possibly, not at all. The *Strata Property Act* has a set of rules that determines the minimum contributions to a strata corporation's CRF.

Every owner must pay strata fees to contribute their strata lot's share of the budget, which covers the strata corporation's operating expenses and any contribution to the contingency reserve fund. Recall that the Schedule of Unit Entitlement determines the share payable for each strata lot.

A strata corporation must meet various conditions before it can spend money from the operating fund or the CRF. The strata corporation can only spend funds from the operating fund if the expenditure is consistent with the purpose of the fund, and either the expenditure is authorized in the budget, is approved by a ¾ vote at a general meeting, there is an emergency, or the expense falls within the strata council's unapproved spending authority. The strata corporation can only spend funds from the contingency reserve fund if the expenditure is consistent with the purpose of the fund *and* either the owners have approved it by a ¾ vote or there is an emergency. However, only a majority vote is needed if the expenditure is recommended in the depreciation report (discussed later in this chapter).

Strata corporations may raise money by special levies against the owners. A *special levy* is equivalent to what business partners sometimes describe as a "cash call". For instance, the strata corporation might need a special levy to pay for major repairs if there is not enough money in the CRF, or if the owners otherwise prefer not to deplete the CRF on this expenditure. Generally speaking, to approve the special levy, a ¾ resolution of the members will be required.

special levy
an additional contribution applied against owners by the strata corporation, usually for unexpected expenses. Depending on how the special levy is proportioned between strata lots, approval will require either a ¾ vote or a unanimous vote

As a Mortgage Broker...

Strata corporations possess the ability to borrow money, and might do so, for example, to finance significant capital repairs to the strata property. Strata corporation assets available to secure a loan fall into three broad categories: real property held by the strata corporation (such as a caretaker's suite); liquid assets such as the operating fund and the contingency reserve fund; and accounts receivable. Generally speaking, to do so, the strata corporation must pass a ¾ vote at an annual or special general meeting. While strata corporations are highly unlikely to default, lenders still must be cognizant of the unique nature of the strata corporation's property. Furthermore, if the strata corporation were to default, the owners of strata lots would be liable to repay the debt in accordance with their unit entitlement.

Depreciation Reports

As of December 13, 2011, a strata corporation with five or more strata lots must obtain a depreciation report before December 13, 2013, estimating the repair and replacement cost for major items in the strata corporation and the expected life of those items. After that, depreciation reports must be obtained by a strata corporation every three years. This requirement forces strata corporations to be proactive in repair and maintenance, as well as financial planning. However, before this requirement, some strata corporations were voluntarily obtaining depreciation reports as part of their normal budgeting and forecasting activities.

Aside from a strata corporation, as a whole, benefiting from such a requirement, the individual owners in a strata development will benefit from having increased knowledge of the state of their strata corporation's common property and assets. Furthermore, prospective purchasers will have more detailed information to make a purchasing decision, as the most recent depreciation report of the strata corporation must be included in the Form B (Information Certificate) that purchasers review as part of their due diligence.

As a Mortgage Broker...

Depreciation reports serve as an extremely useful tool in assessing the value of the strata development as a whole and the individual strata lots within it. For example, by reading a depreciation report, a lender might discover that the strata lot that a potential borrower is seeking to purchase will likely be assessed a large special levy in the next year, as the strata complex's roof is nearing the end

of its useful life and is in need of a complete replacement. If the borrower is planning to borrow at the maximum loan-to-value ratio and has no other assets, he or she may have difficulties with paying the upcoming special levy. This may result in the borrower not being able to keep up with his or her mortgage payments. In this case, the lender might think twice about lending to this borrower, or may seek additional financial assurances, perhaps by requiring another person to guarantee the loan.

Collecting Money Due to the Strata Corporation

The corporation's most important responsibility is to manage and maintain the common property and common assets of the corporation for the benefit of the owners. To carry out those responsibilities, it is often necessary for the strata corporation to collect money due to the corporation from owners and, in some cases, from their tenants who, for example, owe unpaid fines. Strata corporations are empowered to sue or arbitrate against an owner or tenant for unpaid monies owing to it. Furthermore, a strata corporation can file a lien in the Land Title Office against a strata lot for money owing to the corporation. The lien can cover the owner's indebtedness for items such as strata fees, special levies or a share of a judgment registered against the strata corporation. However, a strata corporation cannot file a lien for money owing for a fine or for the cost of remedying the owner's contravention of a bylaw or rule.

Once registered, the strata corporation's lien ranks ahead of every other lien or registered charge, except for a few limited exceptions. The lien serves as notice of the strata corporation's claim for the amount owing. In many cases, a lien remains on title until the owner needs to refinance a mortgage or sell the strata lot. In these instances, the owner is effectively forced to deal with the problem because they cannot refinance or sell without discharging the lien from title.

As a Mortgage Broker...

Since liens on a strata lot that are filed by the strata corporation rank ahead of registered mortgages, lenders will, of course, be concerned with borrowers who are delinquent with payments to the strata corporation. You will see in Chapter 7: "Mortgage Law" that lenders will often insert a clause in the mortgage contract requiring borrowers to pay all levies and perform all duties as a strata lot owner and member, including paying all strata fees. Therefore, a failure to observe this clause can result in a default of the mortgage.

Bylaws and Rules

Bylaws serve as the strata corporation's constitution. The bylaws govern the owners' obligations, including the use of their strata lots, the common property and common assets, and the administration of the strata corporation. Every strata corporation must have bylaws, and only the members can amend the bylaws. Strata corporations can use the Standard Bylaws provided in the Act or may amend the Standard Bylaws to create entirely new and custom-made bylaws. Generally speaking, a ¾ resolution is required to amend the bylaws.

Rules are less formal than bylaws and are optional; a strata corporation does not need to have them. Strata councils can pass rules to regulate the use, safety and condition of the common property and common assets. Owners, tenants, occupants and visitors must comply with the strata corporation's bylaws and rules.

A strata corporation must meet various requirements before enforcing its bylaws and rules. First, the strata corporation must receive a complaint. Next, the corporation must give written particulars of the complaint to the relevant owner or tenant, and allow them a reasonable opportunity to answer the complaint, including a hearing if they ask for one. After considering any response, the strata corporation must promptly provide its written decision to the person accused of breaching the bylaw or rule. Once the strata corporation has complied with these requirements, it can enforce the bylaw or rule. The strata corporation can impose fines against owners and tenants to the extent permitted by the bylaws.

Restrictions in the Bylaws or Rules

Bylaws may restrict various activities in a strata lot or on common property. Similarly, rules can restrict the use of common property. Prior to 2022, the *Strata Property Act* permitted a strata corporation to enact bylaws that restricted the ability of strata lot owners to rent their strata lots. Rental restriction bylaws either prohibited the rental of all residential strata lots or limited the number or percentage of strata lots that could be rented or the period of time for which they could be rented. On November 24, 2022, the *Strata Property Act* was amended to prohibit the ability of strata corporations to have rental restriction bylaws. However, bylaws that require one or more persons residing in a strata

lot to have reached a specified age that is not less than 55 years, and bylaws that restrict short-term rentals (e.g., Airbnbs), are still permitted.

Lenders may want to review the bylaws and rules relating to strata property used to grant a mortgage. For instance, some of the most common restrictions are those that restrict pets, the size of an occupant's vehicle, or the age of a person residing in a strata lot to the age of 55 or over. These restrictions could be something to consider if, for example, the borrower was attempting to obtain a loan for the purchase of a strata lot that they intend to rent to others, but the bylaws restrict persons residing in a strata lot to 55 years of age or older.

Repairs

Generally speaking, the responsibility to carry out a repair is divided between the strata corporation and the individual owners of the strata lots, depending on whether the repair in question involves common property, limited common property (LCP), or part of a strata lot.

- **Common Property:** in the case of common property, most bylaws place the sole responsibility for carrying out the repair work on the strata corporation, unless the Regulation specifically provides otherwise. Typically, the owners each contribute their strata lot's share of the cost of the repair work through their strata fees or a special levy.
- **LCP:** in the case of limited common property, most bylaws require the strata corporation to carry out the work for repair and maintenance of the LCP in two cases: first, if the work ordinarily occurs *less often* than once per year, and second, if the work relates to the exterior elements of the building, no matter how often the work ordinarily occurs.
- **Strata Lots:** in the case of individual strata lots, most bylaws require the strata corporation to carry out repair work for most of the exterior elements of the building. A strata corporation will generally only be responsible for damage to an individual strata unit where the damage was caused by the common property (such as a leaking pipe that is designated as common property) *and* the strata corporation failed to act in a reasonable manner in repairing and maintaining the common property.

Cancellation of a Strata Plan and Winding Up of a Strata Corporation

As older strata corporations reach the end of their life cycle, the cost of maintenance, repairs and renovations increase significantly, while the land may have increased significantly in value. In these situations, many strata owners, as a single group, may wish to sell the entire property to a developer. Such properties may be attractive to developers to build a new strata development with more units. This would also increase available housing on the market. To proceed with such a sale, strata owners must cancel the strata plan and wind up the strata corporation, which may be done according to sections 272-289 of the *Strata Property Act*. To terminate a strata corporation, a resolution passed by an 80% vote at an annual or special general meeting, and an order from the British Columbia Supreme Court approving the sale, is required.

Legal Proceedings

The *Strata Property Act* permits a strata corporation to sue persons against whom the corporation has a legal claim, including individual owners. Among other things, a strata corporation may apply to the court for an order compelling an owner, tenant or other person to perform a duty that they are required to perform under the Act, the regulations, the bylaws or the rules, or to stop contravening the Act, the regulations, the bylaws or the rules. In addition, owners, tenants and others can sue a strata corporation. Persons may sue the strata corporation with respect to any matter relating to the common property, common assets, bylaws or rules, or with respect to any act or omission by the corporation.

If a person's lawsuit against the strata corporation succeeds, a judgment against the strata corporation is a judgment against all the owners. Every strata lot owner is liable to pay the judgment in the portions set out in the Schedule of Unit Entitlement.

The *Strata Property Act* permits an owner, a tenant, the mortgagee of a strata lot, or an interested person to sue the strata corporation for an injunction to compel it to perform its duties or otherwise restrain a breach of the Act, the regulations, the bylaws or the rules. The Act also permits an owner, or a tenant, to apply to the court to prevent or remedy a significantly unfair action by the

corporation or the strata council. Alternatively, an owner or tenant can apply to the court to prevent or remedy a significantly unfair exercise of voting rights by a person who holds 50% or more of the votes, including proxies, at a general meeting.

The *Strata Property Act* also permits arbitration among the strata corporation and owners and tenants if certain criteria are met. The Act contains detailed arbitration procedures and includes a requirement for the arbitrator to give written reasons for their decision.

Although a mandatory injunction might be suitable to remedy one or two breaches of duty, the appointment of an administrator would be desirable where the strata corporation is substantially failing to perform its functions. A strata corporation, or an owner, tenant, mortgagee or other person having an interest in a strata lot may apply to the court to appoint an administrator. The court can appoint an administrator for any period of time and on such terms and conditions as to payment as it thinks fit. Among other things, the court can order that the administrator exercise some or all of the powers and duties of the strata corporation.

Strata Titles Compared with Cooperative Corporations

Cooperative ownership is one of the oldest forms of housing property ownership. The modern cooperative, employing a corporation, enables a large number of individuals to participate in cooperative ownership of a single property or complex, called a cooperative association (also commonly known as a 'co-op'). Cooperatives in British Columbia are created under the *Cooperative Association Act*, and were previously created under the *Societies Act* or the *Business Corporations Act*.

Cooperative ownership differs from strata title ownership in that it does not bestow an individual fee simple title to the cooperative owner's unit. Instead, the owner in a cooperative possesses shares in a non-profit corporation. This corporation in turn holds title to the land. The cooperative corporation acquires the fee simple or a long-term lease to the land, including any building on the land. In some instances, especially with government-sponsored cooperatives, the cooperative corporation will construct the necessary building.

The organizers of the cooperative then determine what number of shares in the cooperative corporation will be allocated to each unit. A buyer of shares allocated to a particular unit thereby becomes entitled to lease that from the cooperative association. The right to occupy will be for either a very long specified period of time, or until the buyer, in turn, sells the shares.

The cooperative corporation is the landlord and the shareholders are tenants of the corporate landlord. Since the cooperative owner does not own an estate in land other than their leasehold interest, financing of a cooperative purchase may be more difficult. A buyer can only grant the lender a security interest in their shares under the *Personal Property Security Act* as well as, if not prohibited by the cooperative corporation, a mortgage of their leasehold interest. If the lease is not registered, that can make financing even more difficult. Banks and other lending institutions are less willing to lend on this security, and consequently rates on the loan may be higher.

One way in which the cooperative corporation can indirectly provide financing to buyers is through the use of a mortgage over the cooperative association's real property, being the cooperative's land and buildings. The cooperative association, as the registered owner of the land in fee simple, grants a mortgage over the land to a lender, such as a bank, in return for a loan. The buyer, in purchasing the cooperative association's shares, is making the equivalent to a conventional down-payment. Once installed as a tenant of the cooperative association, the cooperative owner pays monthly rent to the cooperative association. In addition to paying rent, the cooperative owner also pays their proportionate share of the cooperative association's monthly mortgage payment. Over time, as the cooperative association's mortgage is paid off, the value of the cooperative owner's shares will increase, parallelling the increase in the cooperative association's equity in the property. After the cooperative association's mortgage is substantially paid-down or paid off, a buyer who purchases will not have the benefit of this internal financing. Such a buyer will have to make a large investment of equity, or alternatively face the financing problems discussed above.

Both cooperatives and condominiums can involve leasehold land, and where either type of project is on leased land, the owner's interest will be a wasting asset. As the term of the leased land elapses, the value of the owner's

investment will diminish. A right to occupy for 125 years is worth more to a prospective buyer than a right to occupy for 39 years.

Another major difference between cooperatives and condominiums is the rights of owners to sell their interests. With some exceptions, a strata lot owner may not be restricted in any way as to whom they wish to sell the strata lot. The situation with the cooperative owner is very different. Typically, a cooperative association's board of directors (analogous to the strata council) must approve the person who proposes to buy a cooperative owner's shares, and the proposed sale of those shares will be subject to the board's approval. The board has wide discretion in granting approval, and there are many instances in which approval has been refused for reasons totally unrelated to financial ability.

The disclosure requirements in the *Real Estate Development Marketing Act* apply to cooperatives as well as to condominiums. A developer who creates a project involving two or more cooperative interests in a cooperative association must provide each buyer with a disclosure statement, unless otherwise exempted.

In addition, where a building is being converted to a cooperative, any residential tenants who are required to move will be entitled to the protections of the *Residential Tenancy Act*.

FIGURE 4.5: Comparison of Strata Properties and Cooperatives

Strata Properties	Cooperative
• Created by strata plan which is filed in the Land Title Office.	• Created by incorporation of a company or a cooperative association.
• Owner owns fee simple interest in strata lot plus share of common property as tenant in common with other owners (Non-leasehold).	• Company or cooperative association has fee simple interest in building and lands (Non-leasehold). Owner owns shares in the cooperative association or company, and is a tenant of the association or the company, as the case may be, on a long term lease.
• Governed by *Strata Property Act,* the Regulations, the bylaws and rules.	• Governed by the *Cooperative Associations Act* (formerly also *Company Act*and *Society Act*); and possibly also a shareholders' agreement.
• To sell, owner transfers fee simple interest to buyer, who can obtain a mortgage secured by property (Non-leasehold).	• To sell, owner transfers shares and assigns the rights under his or hetheir long term lease. Buyer may have trouble obtaining financing (Non-leasehold).

CONCLUSION

While most jurisdictions in Canada have a title registration system, each jurisdiction contains unique features. This chapter's main objective was to familiarize you with British Columbia's title registration system. The key component in a mortgage is the transfer of an interest in land as collateral or security for a debt or obligation. Therefore, lenders will always conduct some level of due diligence on the property being mortgaged. As such, mortgage brokers need to possess a solid understanding of the title registration system in British Columbia. This chapter also discusses searching title, along with the common items appearing on title. The chapter also explores a number of topics that may require special attention in the lending process, such as contaminated sites and First Nations land. Finally, this chapter introduces the topic of strata property; given the rapid increase in the number of strata properties in British Columbia, lending against the title of such property is becoming increasingly common; therefore, a basic understanding of strata law is crucial for mortgage brokers.

APPENDIX 4.1:
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**	VANCOUVER
	Land Title Office	VANCOUVER
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 1N0
I	**Taxation Authority**	CITY OF VANCOUVER
J	**Description of Land**	
	Parcel Identifier:	001-002-003
	Legal Description:	

LOT 1 DISTRICT LOT 123 GROUP 1 NEW WESTMINSTER DISTRICT PLAN 1234

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

HERETO IS ANNEXED EASEMENT BH44554

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 APPURTENANT 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

Notes to 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.

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 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 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/default.aspx*. 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.
- 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.

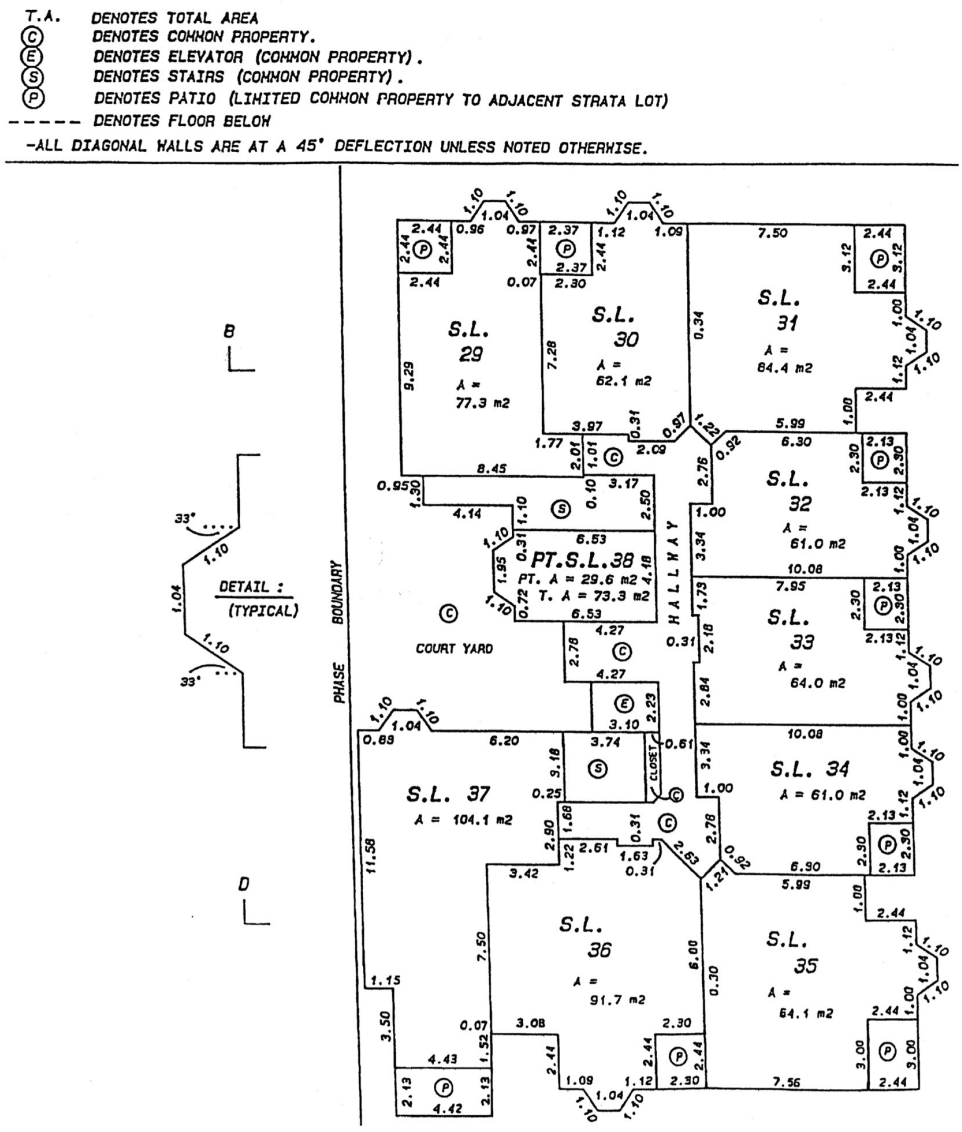
[N] The transfers section notes if any portion of the land included in the legal description has been transferred to another parcel. For example, if a portion of the property had been subdivided and included in a new parcel, a notation would be found here. It should be noted that under new survey and 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.

APPENDIX 4.2

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



PHASE 3 SECOND SHEET SHEET 2 OF 8 SHEETS

STRATA PLAN [redacted]

LOT	SHEET	FORM 1 SCHEDULE OF UNIT ENTITLEMENT	FORM 2 SCHEDULE OF INTEREST UPON DESTRUCTION	FORM 3 SCHEDULE OF VOTING RIGHTS
		UNIT ENTITLEMENT	INTEREST UPON DESTRUCTION	NUMBER OF VOTES
70		123	164900	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

N

OWNER

[redacted]

AUTHORIZED SIGNATORY

[redacted]

AUTHORIZED SIGNATORY

WITNESS

[redacted]

FULL NAME:

[redacted]

OCCUPATION

[redacted]

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.

[redacted]

B.C.L.S.

MORTGAGEE

[redacted]

AUTHORIZED SIGNATORY

[redacted]

AUTHORIZED SIGNATORY

WITNESS

[redacted]

FULL NAME:

[redacted]

OCCUPATION

[redacted]

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.

[redacted]

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 A[redacted].C.
T[redacted]DAY OF[redacted]

MORTGAGEE

[redacted]

AUTHORIZED SIGNATORY

[redacted]

AUTHORIZED SIGNATORY

WITNESS

[redacted]

FULL NAME:

[redacted]

ADDRESS

[redacted]

A COMMISSIONER FOR TAKING AFFIDAVITS FOR BRITISH COLUMBIA

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

SUPERINTENDENT OF REAL ESTATE

MORTGAGEE

[redacted]

AUTHORIZED SIGNATORY

[redacted]

ADDRESS

FULL NA[redacted]

[redacted]

OCCUPATION

APPROVING OFFICER OF A 5 PHASE STRATA LOT

[redacted]

APPROVING OFFICER FOR THE CITY OF KELOWNA

[redacted]

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

2 *www.gov.bc.ca/strata*