

**A Resource for Farm Businesses:  
Concise Answers to Questions on the *Land Registration Act***

**Prepared for the Nova Scotia Federation of Agriculture  
by  
LJM Environmental Consulting  
in association with  
the Law Office of Heather Hill**

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## **Part I      The Role of the *Land Registration Act***

### **Question 1**

What is the *Land Registration Act*?

The *Land Registration Act* (LRA) is provincial legislation that received Royal Assent in June 2001 as “An Act to Provide for the Registration of Title to Land and to Amend Certain Statutes Respecting Real Property”.

### **Question 2**

What is the most profound impact of this new legislation?

Once a parcel of land has been migrated to the new system the government guarantees ownership of that land. Instead of a lawyer having to search the title of the property back forty plus years, an electronic search quickly reveals registered and recorded interests. In effect, “a curtain is drawn across the past once the parcel is registered under the LRA”.<sup>1</sup>

### **Question 3**

When does the *Land Registration Act* affect me?

The rollout schedule of the new land registration system is as follows:

Colchester County	March 23, 2003
Antigonish, Cumberland and Pictou Counties	December 1, 2003
Annapolis, Digby, Hants and Kings Counties	March 1, 2004
Halifax County	December 1, 2004
Cape Breton, Guysborough, Inverness, Richmond and Victoria Counties	March 1, 2005
Lunenburg, Queens, Shelburne and Yarmouth Counties	March 1, 2005

### **Question 4**

What is the purpose of the *Land Registration Act*?

The LRA is the law that will modernize Nova Scotia’s land registries that were established more than 250 years ago. The present paper system (Registry of Deeds) is in the process of being converted to an electronic system that can then be accessed remotely. The new system is expected to provide certainty in ownership of interests in land, simplify proof of ownership, and facilitate property transfers. The LRA also provides compensation where an individual sustains a loss through registration.

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<sup>1</sup> Education Materials Land Registration Act Education Program

### **Question 5**

Which ownership rights are guaranteed under the *Land Registration Act*?

The system guarantees three types of registered ownership:

- a fee simple estate,
- a life estate and the remainder interests, and
- an interest of Her Majesty, see section 17.

All other interests are recorded which does not guarantee ownership.

### **Question 6**

What is the difference between registered and recorded?

Registration confers ownership whereas recording only confirms priority; there is no government guarantee for recorded interests. Any interest in a parcel of land that is not a fee simple, life estate and remainder, or an interest of Her Majesty, is only recorded. For example: mortgages and other security instruments are recorded and the order of recording determines priority amongst the security holders. Other recorded interests include: those of a trustee, a tax sale recipient, a lessee (not an exhaustive list).

### **Question 7**

Who is a registered owner and what does that mean?

A registered owner is an individual who has gone through the process of registering their interest in a parcel of land under the LRA. Section 20 of the LRA states that the registered owner of a registered interest is guaranteed by the system to be the owner of that interest, subject to such discrepancies in location, boundaries and extent of the parcel.

### **Question 8**

Are boundaries and location guaranteed under the new system?

No, section 21 of the LRA states that boundaries and locations are not guaranteed. What is being guaranteed under the LRA is ownership. After a parcel is registered in the land registration system, the nature of the owner's interest will no longer be subject to dispute.

### **Question 9**

What do I need to have boundaries and locations guaranteed?

In order to have guaranteed boundaries and locations the property owner should have a plan of survey prepared by a Nova Scotia Land Surveyor. A certified plan of survey defines the nature, location and extent of boundaries of real property.

### **Question 10**

What is the benefit to registration and why would I voluntarily register?

Once an interest is registered there is no longer any dispute as to who owns that parcel of land.

Advantages include:

- Avoiding time delays in closing; registration should be done before a sale, thereby simplifying the sale process;
- Adding value to the property, once a property has been migrated a potential buyer knows that ownership is guaranteed, as well as knowing that the cost of registration has been borne by the seller;
- If there are any concerns about someone gaining an interest in a parcel of land through possession, the process of migration extinguishes ripening possessory interests before they mature.

## **Part II The Registration Process**

### **Question 11**

When do I have to register an interest in a parcel of land?

Once the new registration system is in effect in your county, the four triggers for registration are:

1. a transfer of the land for value,
2. a mortgage of the land,
3. a non-family subdivision of the land into three or more lots,
4. certificates of title under the *Quieting Titles Act and Land Titles Clarification Act*; see Section 46 of the LRA.

### **Question 12**

When can I voluntarily register an interest in a parcel of land?

Once the new registration system is in effect in your county an interest may be registered voluntarily.

### **Question 13**

What does not trigger registration?

An interest in a parcel of land does not have to be registered in the new system if:

1. there is a transfer of title between married persons,
2. parcels are acquired by Her Majesty for purposes of road widening, etc.
3. a deed conveys an interest of a predecessor in title to the present owner being used to feed the estoppel or clarify title,
4. there is a transfer of title between persons who are parties to a registered domestic agreement,
5. there is a transfer of title between persons who were formerly married to one another, and the transfer is for the purpose of division of matrimonial assets, or
6. there is a transfer of title from the Nova Scotia Farm Loan Board to a borrower under the *Agriculture and Rural Credit Act*.

### **Question 14**

Does the exemption for the Farm Loan Board apply to Farm Credit Canada?

No

### **Question 15**

What if I want to mortgage my property?

A new mortgage will trigger the requirement for the property to become registered in the new system.

### **Question 16**

What if I have a mortgage with Farm Credit Canada?

Once a property has gone through the registration process the owner of the land is the registered owner and the mortgage holder, such as Farm Credit Canada, is described as a recorded interest. Nothing in the new system changes the rights of the mortgage holder to enforce the terms of the mortgage.

### **Question 17**

What happens when a mortgage is paid off?

The mortgage holder, as a recorded interest, is taken off the system.

### **Question 18**

What is the process of registering my parcel of land?

Registration of land is called "migration"; it is a one-time procedure whereby the parcel of land is moved from the old system into the new system. The first step is to have the parcel description certified through the Parcel Description Certification Application; the second step is to search the historic title of the parcel (as was always done under the old system); in the third step the acting lawyer prepares an Opinion of Title which would certify who owns the property, as well as listing all others who have an interest in the parcel; in the final step the lawyer carries out a sub-search of the parcel and, if satisfied, submits a final Application for Registration (AFR). If the AFR is approved the parcel of land is transferred to the new system.

### **Question 19**

Can I do the registration by myself?

No, an authorized lawyer carries out the process of migration. An "authorized lawyer" is one who has gone through the LRA Education Program. The lawyer who migrates the parcel of land from the old Registry of Deeds system to the new land registration system will certify an opinion of title to the government of Nova Scotia.

### **Question 20**

What will my lawyer require from me in order to carry out the migration of my property from the old system to the new system?

The landowner will work with their lawyer or surveyor to compare the parcel's description with the information contained in the Nova Scotia government's *Property Online* system ([www.nspropertyonline.ca/](http://www.nspropertyonline.ca/)) in order to locate the property on the map. This will help to identify the PID (property description number). Other information useful for your lawyer would include: Notice of Assessment number, deed, mortgages, survey plan, names of those whose properties touch yours, details regarding anyone walking or driving over part of your land, whether you walk or drive over someone else's land, old paths or roads on your land, buildings, fences, etc. that you own but are on someone else's land, any oral or written agreements concerning the use of your land.

### **Question 21**

Is there a simple way to consolidate my lots?

Under section 268a of the *Municipal Government Act* a process for simple consolidation is described. If two or more lots have been in common ownership and have been used together since April 15, 1987, then registering a Statutory Declaration at the Registry of Deeds providing evidence to that common ownership, will be a deemed consolidation of those lots. In those situations subdivision approval is not required.

### **Question 22**

Is a migration part of a sale of property?

No, in the counties where the new system is in place, the migration has to happen first.

### **Question 23**

How long will the migration process take?

Different factors, such as clarity of property description and complexity of back title, will dictate the time frame of the process; therefore it is advisable to allow three weeks for a migration. An individual's lawyer can better say how long the process will take.

## **Part III The Cost to Register**

### **Question 24**

What are the fees for migrating my parcel of property?

The fee for registering or recording a document, including a plan, is \$70.00.

### **Question 25**

What will the legal fee be for migrating my parcel of property?

The lawyer may charge a flat rate or may charge by the hour. A number of factors may affect the cost of migration. If the lawyer has "back title", i.e. the lawyer has previously searched the title of the property there may be a reduction in fees, or if a number of lots have a common root of title then there may be some room to negotiate with the lawyer as to a fee for migration. If several lots can be consolidated into one lot then only one migration has to happen for that one lot.

**Question 26**

Between a buyer and a seller who pays for a migration?

Typically the seller will carry out the migration, as it is the seller who is most familiar with the property. The buyer and seller may agree to split the cost of a migration, or a seller may use the fact of already migrated as an added feature of the property.