

LAND TITLES CONVERSION PILOT PROJECT MIDDLESEX EAST - LONDON

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AN INTRODUCTION TO LAND TITLES CONVERSION PROJECT

The province of Ontario maintains two large active systems of registration of land - the Registry system and the Land Titles system.

The major legal difference between the systems is that in the Land Titles system, the government provides a statement with respect to ownership of and interests in land.

In land titles, the title is guaranteed; in registry, only the fact that the documents are properly recorded is guaranteed. Except for this feature, both systems operate legally in much the same way for users.

In both systems the government provides a repository for documents and plans affecting land. Both systems provide notice whether or not the records are searched and this therefore serves as the incentive to register; the time and order of registration determines the priority of the document.

The difference between the actual records in Ontario is significant: land titles records are parcelized (i.e. organized by land ownership); registry records are maintained by geographical entity (i.e. subdivision or concession lots) so that records relating to many owners are often intermingled. Most users of the Registration system agree that the Land Titles system is clearly superior to the Registry system in terms of ease of use and safeguarding legal interests in land.

Ontario has been gradually moving towards one system of land registration - namely; the Land Titles system.

Since 1973, new subdivisions and condominiums have been required to be registered in the Land Titles system, where it is available. Land titles is presently available in 35 of the 65 land registry offices.

The Registration system is considering the acceleration of the conversion to one system through an administrative conversion to land titles simultaneous with the automation of the land registration records.

POLARIS (Province of Ontario Land Registra tion and Information System)

A province-wide program of automating the land registration records has commenced. POLARIS is comprised of a title index and a property mapping database. In order to improve convenience to users, during the automation process, registry properties are recorded on a parcel ownership basis as is done in the Land Titles system. However, a parcelized Registry system does not provide the government guarantee of title offered in the present Land Titles system. As the searching necessary to reorganize the records and load the data into the automated system involves doing much of the work required for land titles conversion, a pilot project is under way at the Middlesex East (London) land registry office to test the administrative conversion from registry to land titles simultaneous with automation. The first designation of converted properties will be done in this office on December 11, 1989, involving approximately 10,500 properties in total, including approximately 6,000 converted properties.

LAND TITLES CONVERSION PROCESS

A search process was developed that would account for all claims outstanding during the forty-year search period and establish the owner of the parcel. Under this process, at least 10 years or the last three deeds, whichever is the greater, are searched to establish ownership. In addition, interests and claims recorded on the parcel index for the 40 year search period are carried forward to the automated parcel register created. The abbreviated search process assumes that any errors or omissions prior to the deeds searched would have been previously detected by at least one of the law firms conducting the 40-year search necessary to properly transfer title.

In addition, the record created by the registration system

and any loss caused as a result of error or omission, if any occurs, will be compensated through the Land Titles Assurance Fund. It is important to note that this search process does not involve applications by individual owners supported by modern surveys. Individual notification is not given and no hearings are held to resolve any disputes as to extent of title. Therefore, the boundaries of the land included in the application are not fixed at the time of first registration. As a result, it is necessary to define the title statement given by the government differently than under the existing first applications conversion process. Title qualifications in addition to those set out in section 47 of the Land Titles Act are used and some section 47 qualifications are modified.

Since subdivisions and condominiums require absolute title, the existing first application procedures will continue to apply even if the land involved has been administratively converted to land titles.

If a title related problem that can not be resolved is uncovered during the search process, the property will not be converted to land titles. It will be automated and maintained in the Registry system.

Any property that is not converted initially may be converted at a later date, without a formal first application, as soon as the missing title evidence is supplied.

TITLE ISSUED UNDER THE LAND TITLES CONVERSION PROJECT

Any title issued pursuant to the Land Titles Act is subject to the Land Titles Act is subject to the qualifications set out in section 47 whether or not the parcel register indicates it. To effect a mass administrative conversion from a Registry system to a Land Titles system, it was necessary to determine what were appropriate risks to be borne by the Registration system. Through an analysis of the risk factors, it was determined that the title for all properties is-

sued under the administrative conversion will be given qualifications which differ slightly from the normal Land Titles qualifications.

The parcel register will indicate whether it has been issued pursuant to either the existing application process or the administrative conversion, or whether the property is being maintained in Registry. A parcel register issued under the administrative conversion will show "L.T.C.Q." in the "Estate/Qualifier" field, which stands for "Land Titles Conversion Qualified". All other land titles parcels will show "L.T.". In the rare instance that we were unable to administratively convert the property, the parcel issued will be a registry parcel and an "R" will be shown on the printout.

1. SECTION 47 QUALIFIERS WHICH DO NOT APPLY

The following section 47 qualifications do not apply to the first title issued:

- right of the spouse of the registered owner to dower or rights under Family Law Act
- section 49 of the Planning Act
- provincial succession duties
- escheats or forfeiture to the crown (e.g. as a result of corporate dissolution)
- writs of execution not registered on title
- Railway Act interests

On subsequent transfers, the section 47 qualifications concerning the Planning Act, escheats or forfeitures to the Crown, and Railway Act interests from the time of conversion apply. Succession duty and dower are no longer applicable. The status of writs and spousal rights under the Family Law Act will be updated on each transfer/charge under existing procedures. The Registration system is willing to guarantee that there are no outstanding problems in any of these areas for the first title under the land titles conversion project and will assume any associated risk. Exhaustive test searching has determined that the actual risk assumed is negligible. In fact, out of hundreds of searches, not a single interest has been found that might result in a claim against the Assurance Fund. Briefly, the following considerations led to these decisions:

(i) Dower and Spousal Rights

In 1978, the Dower Act was repealed. The ten year limitation period for wives with a claim under the Act to take action has expired. In addition, solicitors will have searched for spousal rights created since 1978 under the new Family Law Act and its predecessor legislation.

(ii) Planning Act

Due to legislation, there can be no Planning Act problems prior to 1967. In the search procedure used, whole blocks of properties are searched at the same time and therefore any Planning Act problems occurring since 1967 should come to light.

(iii) Corporate Status Searches

A corporation must be in existence in order to hold land. Otherwise any land it owns, escheats (i.e. is forfeited) to the crown. In the administrative conversion, no search is made to ascertain if a company existed at the time it dealt with the property being converted because there is little chance that this defect will have been missed in the previous searches made by solicitors who were acting for clients dealing with the land. In any event, the Land Registration system should be in a position to obtain relief from forfeiture where required.

(iv) Writs of Execution

Writs of execution are searched against the last registered owner only. Solicitors for purchasers will have searched the owners for the past 40 years on each conveyance and therefore, there is little or no chance that a writ of execution will have been missed.

(v) Railway Interests

There are certain railway claims that can be filed in Ottawa which are neither registered on title nor searched in the administrative conversion. Because these claims must be owned and not abandoned by the railway company, the owner will normally have notice of any such interest.

2. ADDITIONAL QUALIFIERS

The following qualifications, in addition to the normal section 47 qualifications, apply to the first title issued in the administration conversion:

- mature claims for adverse possession, prescription, misdescription or boundaries settled by convention
- any lease to which section 65(2) of the Registry Act applied at the date of the first registration under the Land Titles Act

It must be emphasized that these are risks that the owner has already assumed in the Registry system and are merely being carried forward to the land titles record.

(i) Adverse Possession

When owners apply for conversion to the Land Titles system, evidence is sub-

mitted that no person is in possession of the land other than the recorded owner or a lessee. This is done because a person in occupation for a sufficient length of time (i.e. an adverse possession) cannot be dispossessed. In the administrative conversion process, no such evidence is available and therefore the title must be made subject to mature claims for adverse possession through the granting of a qualified title. It is not proposed that adverse possession be recognised after the administrative conversion to land titles. An administrative process will be developed and if necessary, the Land Titles Act amended, to facilitate the resolution of disputes concerning mature claims for adverse possession once the pilot project has been completed.

(ii) Leases to which section 65(2) of the Registry Act apply

Under the Registry Act, unregistered leases for a term of up to 7 years are protected. The Land Titles Act only protects unregistered leases of a duration of 3 years or less. Therefore, on a one time basis, the existing leases under the Registry Act will be protected. Once the administrative conversion has occurred, the normal rules of section 47(2) of the Land Titles Act apply.

(iii) Additional Qualifiers

Additional qualifiers may be added on an as required basis to deal with specific problems that may arise on an individual parcel. It is not anticipated that this will happen frequently.

3. CONFLICTING DESCRIPTIONS

Problems with boundaries, encroachments and conflicting descriptions are more common than actual title related problems. The most common is conflicting descriptions in deeds of adjoining properties.

The search conducted in the automation of land records and in the administrative conversion will often uncover such conflicts. Since the situation is so common, all printouts of the parcel register contain a note to advise parties searching that they should search for inconsistencies in the descriptions. In some cases, where ownership has been established but an instrument appears to create a significant overlap, the parcel may be made subject to the rights, if any, under that instrument. In the case of properties where there are serious conflicts in descriptions that involve overlapping descriptions for major portions of the parcels, conversion will not proceed and the parcel is entered in the automated system as a Registry parcel.

4. AUTOMATED PARCEL REGISTER PRINTOUT

a) Universal Qualifiers and Note

As a result, the following qualifiers and note will appear on all parcel registers issued in the administrative conversion:

(i) Universal Qualifiers

Subject, on first registration under the Land Titles Act, to:

- Subsection 47(1) of the Land Titles Act, except paragraph 6, paragraph 12, Provincial Succession Duties and Escheats or Forfeiture to the Crown.
- The rights of any person who would, but for the Land Titles Act, be entitled to the land or any part of it through length of adverse possession, prescription, misdescription or boundaries settled by convention.
- Any lease to which subsection 65(2) of the Registry Act applies.

(ii) Universal Note

Adjoining properties should be investigated to ascertain descriptive inconsistencies, if any, with description represented for this property.

(b) Optional Qualifiers

The following qualifiers will be added, if applicable:

- Subject to execution(s) [number(s)], if enforceable.
- Subject to spousal rights in [instrument number(s)].
- Subject to the rights of the owner(s) of adjoining parcels, if any, under [instrument number(s)].

DOCUMENT PROCESSING

In the automated system, the individual parcels of land are indexed by their Property Identification Number or "P.I.N.".

The P.I.N. must be indicated on all documents and plans registered or deposited once the property has been automated.

Land registry office employees will make every reasonable effort to facilitate the searching and registration of documents in the automated area.

SUMMARY

The Registration system believes that converting registry properties to land titles simultaneous with the ongoing POLARIS automation will result in major benefits to users of the system. We are confident that given your continued support and cooperation, these benefits can be achieved quickly and with minimal disruption to your work and ours.

Please feel free to contact us with any suggestions or questions regarding this initiative. The people who should be contacted are:

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