

Existing Standard	Proposed Standard	Rationale
<p><u>Standard 1.3 - Opinion Of Title And Certificate Of Legal Effect</u></p> <p><u>Non LRA parcels (not being migrated)</u></p> <p>For a parcel or an interest in a parcel not registered under the <i>Land Registration Act</i> a lawyer may give an opinion that the title is marketable¹ if, after examining the abstract of title, the lawyer is satisfied that title to the parcel is marketable in accordance with legislation, common law and equity.</p> <p>A lawyer who provides an opinion of title must explain any qualifications to the opinion to the client and confirm the explanation of the qualifications with the client prior to closing.² The lawyer must confirm the client's instructions prior to closing.³</p> <p><u>LRA Parcels</u></p> <p>APPLICATION FOR REGISTRATION</p> <p>For a parcel or an interest in a parcel being registered under the <i>Land Registration Act</i> a lawyer may give an opinion that the title is marketable⁴ if, after examining the abstract of title, the lawyer is satisfied that title to the parcel is marketable in accordance with legislation, common law and equity.⁵</p> <p>A lawyer who qualifies⁶ an opinion of title to the registrar in a migration of a parcel under the <i>Land Registration Act</i> must, after examining the abstract of title on which the opinion is based and considering the qualifications, document the qualifications in the opinion.⁷</p> <p>A lawyer who completes an application for final registration of a title under the <i>Land Registration Act</i>, must ensure that all the documents required under the Act to be filed at the appropriate land registration office⁸ or retained by the lawyer as part of the registration⁹ are complete¹⁰, executed¹¹, and in all respects in final form¹² and shall compile and maintain all foundation documents which a reasonably competent lawyer would rely upon to support the opinion of title.¹³</p>	<p><u>Standard 1.3 - Opinion Of Title And Certificate Of Legal Effect</u></p> <p><u>Non LRA parcels (not being migrated)</u></p> <p>For a parcel or an interest in a parcel not registered under the <i>Land Registration Act</i> a lawyer may give an opinion that the title is marketable¹ if, after examining the abstract of title, the lawyer is satisfied that title to the parcel is marketable in accordance with legislation, common law and equity.</p> <p>A lawyer who provides an opinion of title must explain any qualifications to the opinion to the client and confirm the explanation of the qualifications with the client prior to closing.² The lawyer must confirm the client's instructions prior to closing.³</p> <p><u>LRA Parcels</u></p> <p>APPLICATION FOR REGISTRATION</p> <p>For a parcel or an interest in a parcel being registered under the <i>Land Registration Act</i> a lawyer may give an opinion that the title is marketable⁴ if, after examining the abstract of title, the lawyer is satisfied that title to the parcel is marketable in accordance with legislation, common law and equity.⁵</p> <p>A lawyer who qualifies⁶ an opinion of title to the registrar in a migration of a parcel under the <i>Land Registration Act</i> must, after examining the abstract of title on which the opinion is based and considering the qualifications, document the qualifications in the opinion.⁷</p> <p>A lawyer who completes an application for final registration of a title under the <i>Land Registration Act</i>, must ensure that all the documents required under the Act to be filed at the appropriate land registration office⁸ or retained by the lawyer as part of the registration⁹ are complete¹⁰, executed¹¹, and in all respects in final form¹² and shall compile and maintain all foundation documents which a reasonably competent lawyer would rely upon to support the opinion of title.¹³</p>	<p><u>Rationale for Proposed Revision of Standard 1.3 - Opinion Of Title And Certificate Of Legal Effect</u></p> <p>The Committee is recommending a revision to the final part of this standard, entitled "Revisions and Recordings of parcels under the <i>Land Registration Act</i>." The purpose of the revision is to clarify a lawyer's search obligations on recording and on revision, particularly when said revision impacts priority of documents on title. The amendments also bring to lawyers' attention their obligations to review non-LR and LR documents in process, the plan index and the Power of Attorney Roll (in particular circumstances).</p> <p>A Practice Note explaining the necessity of searching the Plan Index has also been added for clarification.</p>

Parcel Registered Under Land Registration Act

A lawyer who provides an opinion or a certificate of legal effect for a parcel or an interest in a parcel registered under the Land Registration Act, must examine the parcel register and conduct all necessary searches in order to determine the registered ownership and interests pertaining to the parcel.

A lawyer who provides an opinion of title must explain all interests in the parcel, qualifications and limitations on the opinion to the client and confirm the explanation of the qualifications with the client prior to closing.¹⁴ The lawyer must confirm the client's instructions prior to closing.¹⁵

Revisions and Recordings of parcels under the *Land Registration Act*

A lawyer who applies to revise a parcel register must examine:

- a. the parcel register;
- b. the enabling documents in the parcel register;¹⁶
- c. the judgment roll;¹⁷ and

- d. any document to accompany the certificate of legal effect, and be satisfied that the registration or recording which purports to change the parcel register is effective.

Additional Resources:

Parcel Registered Under Land Registration Act

A lawyer who provides an opinion or a certificate of legal effect for a parcel or an interest in a parcel registered under the Land Registration Act, must examine the parcel register and conduct all necessary searches in order to determine the registered ownership and interests pertaining to the parcel.

A lawyer who provides an opinion of title must explain all interests in the parcel, qualifications and limitations on the opinion to the client and confirm the explanation of the qualifications with the client prior to closing.¹⁴ The lawyer must confirm the client's instructions prior to closing.¹⁵

Revisions and Recordings of parcels under the *Land Registration Act*

A lawyer who applies to revise a parcel register or to effect a recording in circumstances where it is necessary to establish priority of a registered or recorded interest must examine:

- a. the parcel register;
- b. the enabling documents in the parcel register;¹⁶
- c. the judgment roll;¹⁷
- d. Non-LR Documents in Process;
- e. Plan Index;
- f. Plans in Process;
- g. By PID for LR-Documents in Process;
- h. Power of Attorney Roll (if the document enabling the revision or recording is signed pursuant to a Power of Attorney which is not recorded in the parcel register); and
- i. any document to accompany the certificate of legal effect, and be satisfied that the registration or recording which purports to change the parcel register is effective.

Additional Resources:

A lawyer must accompany an application to register a parcel pursuant to the Land Registration Act with an opinion of title certified by a qualified lawyer, disclosing to the Registrar General the interests being registered in the parcel and, subject to section 40, all encumbrances, liens, estates, qualifications and other interests affecting the parcel and the direct or indirect right of access to the parcel, if any. See Land Registration Act, S.N.S., s. 37(9)(a).

1. Sheriff's Deeds: See Standard 3.8 – Judicial Sales; Standard 3.7 Tax Deeds
2. C. Walker, QC, "Abstracts and the Land Registration System" in Land
3. Registration Act Education Program, LRA Education Materials
4. C. Walker, QC, "Certifying Title and Qualifying Title under the Land Registration Act" in Land Registration Act Education Program, LRA Education Materials
5. Ian MacLean, "Searching Land Registered Parcels", CBA Professional Development Conference, January 8, 2010.
6. Section 13.3 of the Legal Profession Act Regulations provides for audit of foundation documents by LRA Auditors.

¹ Marketable Titles Act, S.N.S. 1995-96, c. 9, s. 4

² See Standard 1.5 - Documentation

³ See Footnote #2

⁴ Land Registration Act, S.N.S., s. 37(9)(b), Marketable Titles Act, S.N.S. 1995-96, c. 9, s. 4

⁵ Nova Scotia (Attorney General) v. Brill, 2010 NSCA 69. Title to a parcel may be registered pursuant to the Land Registration Act even though title cannot be certified as marketable. Land Registration Act, S.N.S., s. 37(9)(b) and Land Registration Administration Regulations, s. 11 and definition of textual qualification in s. 2(1).

⁶ Land Registration Act, S.N.S., s. 37(9)(a) and Land Registration Administration Regulations, s. 11 and definition of textual qualification in s. 2(1)

⁷ See Footnote #2

⁸ Land Registration Act, s. 37(4)(ba), (f), and (g) and s. 37(5) and Land Registration Administration Regulations, s. 10(2)(b) and 10(3)(a)

⁹ Land Registration Administration Regulations, s.10(6)

¹⁰ Land Registration Act, s. 37(5) and Land Registration Administration Regulations, s. 10(6)

¹¹ Land Registration Administration Regulations, s. 4(8)

¹² Land Registration Administration Regulations, s. 10(2)(b)

¹³ Legal Profession Act Regulations, s. 1.1.1 (ma) and 8.2.3.1

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¹³ Legal Profession Act Regulations, s. 1.1.1 (ma) and 8.2.3.1

¹⁴ See Footnote #2

¹⁴ See Footnote #2
¹⁵ See Footnote #2
¹⁶ *Land Registration Act*, subs.13(3).
¹⁷ Regulation 23(1)(h), Standard 3.5 & 4.3.

¹⁵ See Footnote #2
¹⁶ *Land Registration Act*, subs.13(3).
¹⁷ Regulation 23(1)(h), Standard 3.5 & 4.3.

Practice Note

The necessity of searching the Plan Index is explained in a November 19, 2015 email from Janice M. McNenly (Deputy Registrar General):

“One cannot rely on “Property Details” to disclose that there is a plan that may impact the configuration or even PID numbers currently appearing for a lot under search. There is a 5 day turnaround time for the mapper to process a subdivision or consolidation plan so the fact that one does not appear in the “Details” view would not be at all conclusive evidence that a plan has not been filed. In addition, there are other documents recorded in the plan index including boundary line agreements, development agreements and retracement plans to name but a few that are not held to the 5 day turnaround time to be processed. We have seen situations where a lawyer released a mortgage and only named the “parent PID” when a plan had been recorded that created a number of infants to which the mortgage was appropriately inherited. It is imperative that a search of the plan index as well as “plans in process” be included.”