



NOVA SCOTIA
BARRISTERS' SOCIETY

MEMORANDUM TO COUNCIL

From: Lawrence Rubin

Date: November 10, 2020

Subject: Professional Standards – Real Estate– Standard 3.5 – Judgments

For: **Approval** **Introduction X** **Information**

DATE November 27, 2020	Council	Introduction
	Council	Approval

Recommendation/Motion:

This is the introduction to Council of a revised Standard 3.5 – Judgments – by the Professional Standards (Real Estate) Committee. Following introduction, the standard will be circulated to the membership for review and consultation. The Committee will review any comments received and then present the final form, amended if necessary, to Council for approval.

Executive Summary:

One of the Committee's mandates is to review and update existing standards as appropriate and necessary so that they align with current practice. The Committee determined that the current standard, approved by Council on November 22, 2002, requires updating to align with current practice and legislation. Once Membership comments are received on the substantive changes that serve to align the Standard with current practice, the Committee will review it through an equity lens to determine if any further considerations are required.

Exhibit:

Revised Standard 3.5 – Judgments with rationale for the revisions.

Existing Standards	Proposed Standard	Rationale
<p>STANDARD</p> <p>A lawyer who searches for judgments and identifies a judgment that is recorded against a debtor whose name is not materially different than the name of the owner or the purchaser must determine if the judgment affects the title being examined.¹</p> <p>(a) Land Registered Parcels</p> <p>A lawyer who searches for judgments on parcels that are registered under the <i>Land Registration Act</i> must conduct the search against the names of:</p> <ol style="list-style-type: none"> 1. each Grantee for a period of 20 years prior to the date of search²; and, 2. each registered owner of the parcel at the time of search from the date of the last revision of the registered ownership, including former names of such registered owner if a Form 21 has been filed since the last revision of ownership, as well as each owner removed by virtue of Form 21 since the last revision.² 	<p>STANDARD</p> <p>A lawyer who searches for judgments and identifies a judgment that is recorded against a debtor whose name is not materially different than the name of the owner or the purchaser must determine if the judgment affects the title being examined.¹</p> <p>(a) Non-Land Registered Parcels</p> <p>A lawyer who searches for judgments on parcels that are not registered under the Land Registration Act must conduct the search against the names of:</p> <ol style="list-style-type: none"> 1. each Grantee for a period of twenty years; and, 2. each owner of the parcel during the 20-year period prior to the date of the search, up to and including the registration of the conveyancing document out of that prior owner, and up to and including the date of the search for any current Grantor.² <p>Note: If any parties being searched are a corporation, a lawyer must only search from the date of incorporation forward, even if this is less than the prescribed period. The corporate search must also</p>	<p>The Committee reviewed the current standard as approved by Council on November 17, 2017, and determined that it requires amendment to align with current practice and regulations. The Committee determined that the Standard requires the addition of the final paragraph referencing Form 24 under part (b). In addition, the Committee reordered the Standard to reference non-LRA parcels first and added Practice Notes to better aid the membership in this area.</p>

<p>(b) Non-Land Registered Parcels</p> <p>A lawyer who searches for judgments on parcels that are not registered under the <i>Land Registration Act</i> must conduct the search against the names of:</p> <ol style="list-style-type: none"> 1. each Grantee for a period of twenty years²; and, 2. each owner of the parcel during the 20-year period prior to the date of the search, up to and including the registration of the conveyancing document out of that prior owner, and up to and including the date of the search for any current Grantor². <p>Note: If any parties being searched are a corporation, a lawyer must only search from the date of incorporation forward, even if this is less than the prescribed period. The corporate search must also include each corporation that has been amalgamated with the corporation being searched.</p> <p>FOOTNOTES</p> <p>1. <i>Personal Property Security Act</i>, S.N.S. 1995-96, c. 13. Note that the name standards prescribed under the <i>Personal Property Security Act General Regulations</i>, s. 19-22 are not</p>	<p>include each corporation that has been amalgamated with the corporation being searched.</p> <p>If a lawyer finds a judgment which attaches or may attach to the lands under search, on migration the lawyer must include the judgment in the Application for Registration³ as a recorded instrument⁴.</p> <p>(b) Land Registered Parcels</p> <p>A lawyer who searches for judgments on parcels that are registered under the Land Registration Act must conduct the search against the names of:</p> <ol style="list-style-type: none"> 1. each Grantee for a period of 20 years prior to the date of search⁵; and, 2. each registered owner of the parcel at the time of search from the date of the last revision of the registered ownership, including former names of such registered owner if a Form 21 has been filed since the last revision of ownership, as well as each owner removed by virtue of Form 21 since the last revision⁶. <p>If it is determined that one or more judgments do, or will (being against a purchaser), affect the land registered title(s) under sale, the lawyer registering the Deed must add the judgment(s) to the</p>	
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<p>applicable to searches under the <i>Land Registration Act</i>, <i>Land Registration Act</i>, S.N.S. 2001, c. 6, s. 66(A); <i>Creditors Relief Act</i>, R.S.N.S. 1989, c. 112, ss. 2 and 2A-2D. A judgment may now create a security interest in personal property; <i>Land Registration Act</i>, S.N.S. 2001, c.6, ss.5 and 66(8); <i>Land Registration Administration Regulations</i> made under Section 94 of the <i>Land Registration Act</i>, S.N.S. 2001, s. 26 (5).</p> <p>2. <i>Registry Act</i>, R.S.N.S. 1989, c. 392, s. 20-21, <i>Land Registration Act</i>, S.N.S. 2001, c. 6, ss. 5 and 65-69. Note s. 65 (judgment roll) and s. 66(4)(e) - judgments recorded under the <i>Land Registration Act</i> expire in five years unless renewed.; <i>Land Registration Administration Regulations</i> made under Section 94 of the <i>Land Registration Act</i>, S.N.S. 2001, s. 26 (5).</p>	<p>affected parcel register(s) along with the Deed by way of Form 24⁷, whether or not the purchaser's solicitor has received undertaking(s) that a Certificate of Satisfaction for the outstanding judgment(s) will be filed⁸.</p> <p>PRACTICE NOTES</p> <p>1. The requirements regarding the information judgments must include may be found in the <i>Land Registration Act</i>, S.N.S. 2001, c.6, s.67 and in the <u><i>Land Registry Client Resource Material</i></u> under Judgment Recording Requirements.</p> <p>2. Note that a judgment issued by a Court in a jurisdiction outside Nova Scotia cannot be recorded against title until it has been re-issued by the Supreme Court of Nova Scotia, whether under the <i>Reciprocal Enforcement of Judgments Act</i>, R.S.N.S. 1989, c.388, amended by S.N.S. 2002, c.9, s.60, the <i>Enforcement of Canadian Judgments and Decrees Act</i>, S.N.S. 2001, c.30 as amended by S.N.S. 2005, c.49 or pursuant to some other authority.</p>	
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FOOTNOTES

¹ *Personal Property Security Act*, S.N.S. 1995-96, c. 13. Note that the name standards prescribed under the *Personal Property Security Act General Regulations*, s. 19-22 are not applicable to searches under the *Land Registration Act*. *Land Registration Act*, S.N.S. 2001, c. 6, s. 66(A); *Creditors Relief Act*, R.S.N.S. 1989, c. 112, ss. 2 and 2A-2D. A judgment may now create a security interest in personal property: *Land Registration Act*, S.N.S. 2001, c.6, ss.5 and 66(8); *Land Registration Administration Regulations* made under Section 94 of the *Land Registration Act*, S.N.S. 2001, s. 26 (5).

² *Registry Act*, R.S.N.S. 1989, c. 392, s. 20-21, *Land Registration Act*, S.N.S. 2001, c. 6, ss. 5 and 65-69. Note s. 65 (judgment roll) and s. 66(4)(e) - judgments recorded under the *Land Registration Act* expire in five years unless renewed.; *Land Registration Administration Regulations* made under Section 94 of the *Land Registration Act*, S.N.S. 2001, s. 26 (5).

³ Reg. 23 (1) (h) of the *Land Registration Administration Regulations* made under Section 94 of the *Land Registration Act* S.N.S.2001, c.6.

⁴ If it is uncertain whether or not the judgment is in fact against a prior owner, the lawyer may include a textual qualification to that effect in the Application for Registration.

	<p>⁵ See footnote 2.</p> <p>⁶ See Footnote 2</p> <p>⁷ Note that the requirement to add the judgment to a parcel register does not apply when a Form 21 is filed. (Land Registry Client Resource Material: Notice - Judgment Searches & Form 21)</p> <p>⁸ Land Registration Administration Regulations made under Section 94 of the Land Registration Act, S.N.S. 2001, s. 23 (1) (h). The judgment(s) will automatically be removed from the parcel register(s) when the appropriate Certificate of Satisfaction is filed in the Judgment Roll.</p>	
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