



NOVA SCOTIA
BARRISTERS' SOCIETY

MEMORANDUM TO COUNCIL

From: Lawrence Rubin and the Professional Standards (Real Estate) Committee

Date: December 10, 2020

Subject: Professional Standards – Real Estate– Standard 3.15 – Debentures

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

DATE January 22, 2021	Council	Introduction
	Council	Approval

Recommendation/Motion:

This is the introduction to Council of a revised Standard 3.15 – Debentures – 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. The Committee used an equity lens while revising this standard.

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.

Exhibit:

Revised Standard 3.15 - Debentures with rationale for the revisions.

Existing Standard	Proposed Standard	Rationale
<p>3.15 DEBENTURES</p> <p>A lawyer must search the <u>Land Registration Office</u> for debentures which may affect the parcel.</p> <p>A lawyer must examine the terms of a floating charge debenture to determine whether the proposed disposition of an interest in real property is permitted. If the lawyer determines that the proposed disposition is permitted, the lawyer should not require a release unless a notice of crystallization has been recorded,¹ or the lawyer or the client has reason to believe that the floating charge has crystallized.</p> <p>When a lawyer is conducting a search of title of a parcel that has been registered pursuant to the Land Registration Act, the lawyer must examine all fixed charges, and all floating charges for which notice of crystallization has been recorded,² which are contained in debentures recorded against the parcel. The lawyer must obtain and record, in a timely</p>	<p>3.15 DEBENTURES</p> <p>A lawyer must search the Land Registration Office for any debentures which may affect the parcel.</p> <p>When acting on a real property transaction, a lawyer must examine the terms of any floating charge debentures that affect the parcel(s) involved in order to determine whether the proposed transaction is permitted under the terms of the debenture.¹</p> <p>If a notice of crystallization has been recorded or the lawyer or the client has reason to believe that a floating charge has crystallized, then the lawyer will need to ensure that the affected parcels of land are released from the charge.²</p> <p>The lawyer must obtain and record, in a timely fashion, discharges for those charges being released, whether in whole or in part in accordance with the mortgage undertaking(s) given by the lawyer.³</p>	<p>The Committee reviewed the current standard as approved by Council on November 22, 2002, and determined that it required amendments to align with current practice and regulations.</p>

fashion, discharges for those charges being discharged.

FOOTNOTES

1. If the proposed disposition is not permitted, then the lawyer must obtain the holder's written consent to the proposed disposition.

2. **Land Registration Act**, S.N.S. 2001, c. 6, s. 53(3). See also s. 49(1) regarding priorities.

Approved by Council on November 22, 2002

FOOTNOTES

1. If the proposed disposition is not permitted, then the lawyer must obtain the holder's written consent to the proposed disposition, and document the lawyer's advice in writing. See also 1.5 Documentation of Advice and Instruction.

2. *Land Registration Act*, S.N.S. 2001, c. 6, s. 53(3). See also s. 49(1) regarding priorities.

3. Regulations made pursuant to the *Legal Profession Act*, S.N.S. 2004, c.28, ss.8.2.6-8.2.10. See also 2007 Mortgage Payout Protocol available on LIANS website. See also Standard 3.4, Discharge of Mortgages.