



NOVA SCOTIA
BARRISTERS' SOCIETY

MEMORANDUM TO COUNCIL

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

Date: March 26, 2021

Subject: Professional Standards (Real Estate) 3.7 – Tax Deeds

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

DATE	Council	Introduction
March 26, 2021		
	Council	Approval

Recommendation/Motion:

This is the introduction to Council of revised standard 3.7 – Tax Deeds – 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. An equity lens was applied while revising this standard.

Executive Summary:

After annual review, the Committee determined that the current standard, approved by Council on November 22, 2002, required updating to align with current practice and legislation. The original Standard was written states when a lawyer “may” certify title when a tax deed is the root. The revised Standard states that lawyers “must not” certify title to land described in a tax deed unless certain things have occurred. The revised Standard also advises when a parcel subject to a tax deed can be migrated under the LRA.

Exhibit:

Revised Standard 3.7 – Tax Deeds with rationale for the revisions.

Existing Standard	Proposed Standard	Rationale
<p>STANDARD</p> <p>A lawyer may certify title which has a tax deed as the root of title, after referencing the applicable legislation¹ and common law.²</p> <p>FOOTNOTES</p> <p>1. <i>Marketable Titles Act</i>, S.N.S. 1995-96, c. 9, s. 6, <i>Land Registration Act</i>, S.N.S. 2001, c. 6, s. 31</p> <p>2. Effect of a tax deed - See the <i>Plaintiffs' Pre-Trial Memorandum</i> in <i>Stuart Dow and Sherri Dow v. Allan Zinck and Allan Young</i> (S.H. No. 118046), July 23, 1996, published with permission in <i>Real Estate '99 Conference</i> (C.L.E.S.N.S., March 1999)</p> <p>ADDITIONAL RESOURCES</p> <ul style="list-style-type: none"> • Lands affected - <i>MacNeil v. Nova Scotia (Attorney General) et al.</i>, (2000) 183 N.S.R. (2d) 119, per Cromwell J.A. (N.S.C.A.) • Setting aside - <i>Desmond v. Guysborough (Municipality)</i>, (2000) 186 N.S.R. (2d) 	<p>STANDARD</p> <p>A lawyer must not certify title to land described in a tax deed until either six years have passed since the date the tax deed was registered or the lawyer has examined an abstract of title for the lands and determined that there is a good root of title.¹ Alternatively, a lawyer may certify title to the lands based on such other enquiries or documentation as may be required to determine that good and marketable title exists pursuant to the <u><i>Marketable Titles Act</i></u>, <u><i>the Real Property Limitations Act</i></u> or the common law.</p> <p>A lawyer may migrate a parcel using a tax deed as the root of title only if six years have passed since the tax deed was registered, subject to any qualifications that may apply under the applicable legislation or the common law.</p> <p>FOOTNOTES</p> <p>1. <u>Refer to Standard 3.1 – General Principals of Title Review</u></p> <p>ADDITIONAL RESOURCES</p>	<p>After annual review, the Committee determined that the current standard, approved by Council on November 22, 2002, required updating to align with current practice and legislation. The original Standard was written states when a lawyer “may” certify title when a tax deed is the root. The revised Standard states that lawyers “must not” certify title to land described in a tax deed unless certain things have occurred. The revised Standard also advises when a parcel subject to a tax deed can be migrated under the LRA.</p>

123, per MacLellan J. (N.S.S.C.)	• Setting aside - <i>Desmond v. Guysborough Municipality</i> , (2000) 186 N.S.R. (2d) 123, per MacLellan J. (N.S.S.C.)	
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