

# LAND REGISTRATION UPDATE

Registration, COVID-Related Issues and  
other developments with the Registrar General

LIANS/NSBS Solo and Small Firm Virtual Conference  
November 24, 2021

Theresa Graham  
Registrar General and Director of  
Land Programs

## OUTLINE:

### REGISTRATION:

- (1) Statistics
- (2) AFR Rejection Review
- (3) Textual Qualifications for Tax Deeds
- (4) Clarification on Policy - Corporate Seal
- (5) What's Next?

### COVID RELATED ISSUES:

- (6) Registrar General's Directive "COVID 19/Original Documentation"
- (7) Turn around times/follow up
- (8) Decorum

### OTHER DEVELOPMENTS:

- (9) System Improvements and Challenges

# REGISTRATION

## STATISTICS

### Registration Statistics Three Year :

Type	(Sept) 2019	(Sept) 2020	(Sept) 2021	Increase (20-21)
LR Documents	100,903	102,782	132,975	29.4%
ROD Documents	25,579	22,153	24,565	10.9%
<b>Total Documents</b>	<b>126,482</b>	<b>124,935</b>	<b>157,540</b>	<b>26.1%</b>
Migrations	10,159	9,386	11,336	20.8%
Survey Plans	2,368	2,191	2,911	32.9%

# STATISTICS

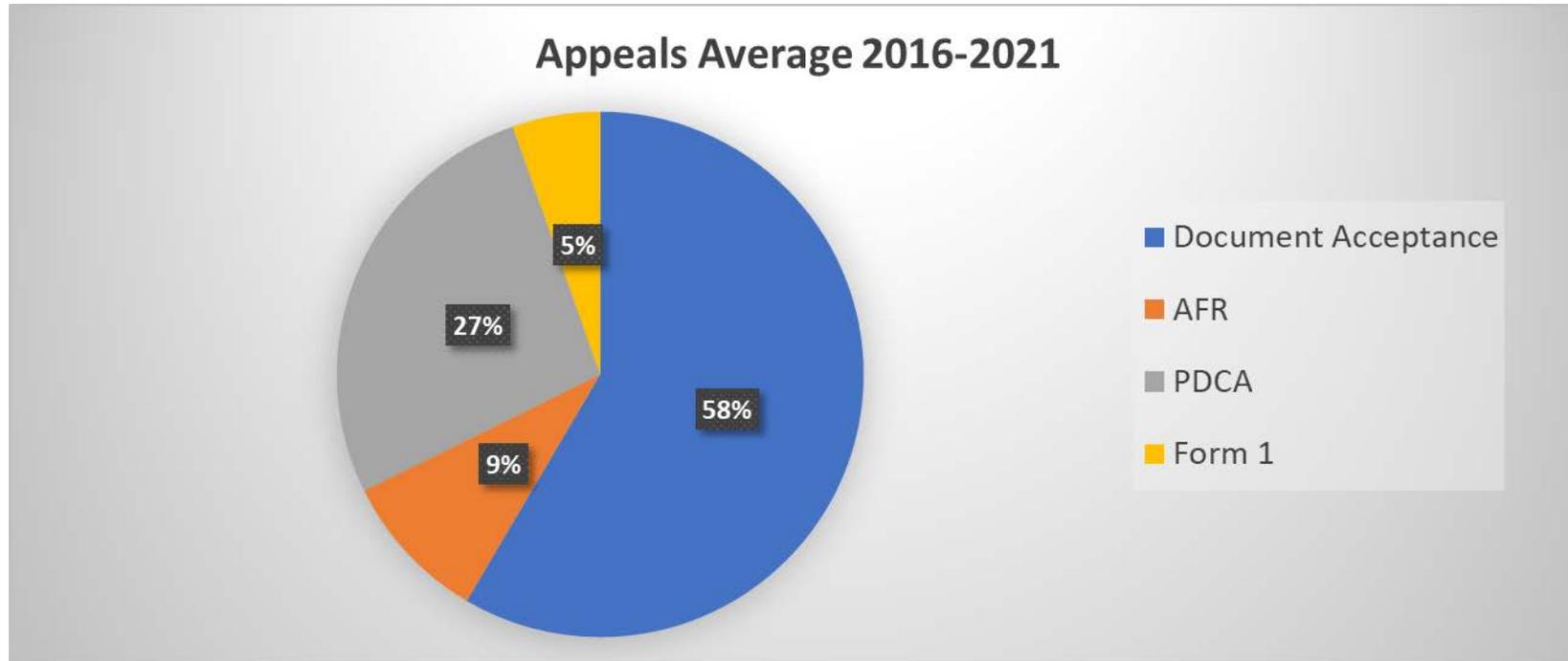
## Appeal Trends (s. 90 Appeals Only):

- Approximately 65 per year (a little more than 1/week)
- In excess of 500 appeals since inception of s. 90 (2009)
- Vast majority are document acceptance appeals
- On average, 60/40 split for appeals denied/appeals allowed

## Does Not Include:

- Reconsideration of or adoption of policy/procedures (Land Registry Client Resource Material)
- Various PIDs Designation
- Stop Order Requests
- Section 60 & 63 Applications
- Substituted Service Applications (Form 9 and 8)
- RG Directions (waiver of Form 9 notice)

# STATISTICS



# STATISTICS

## Appeals 2020:

Total appeals	60	
AFR	5	8%
Document Acceptance	33	55%
PDCA	15	25%
RPA	7	12%

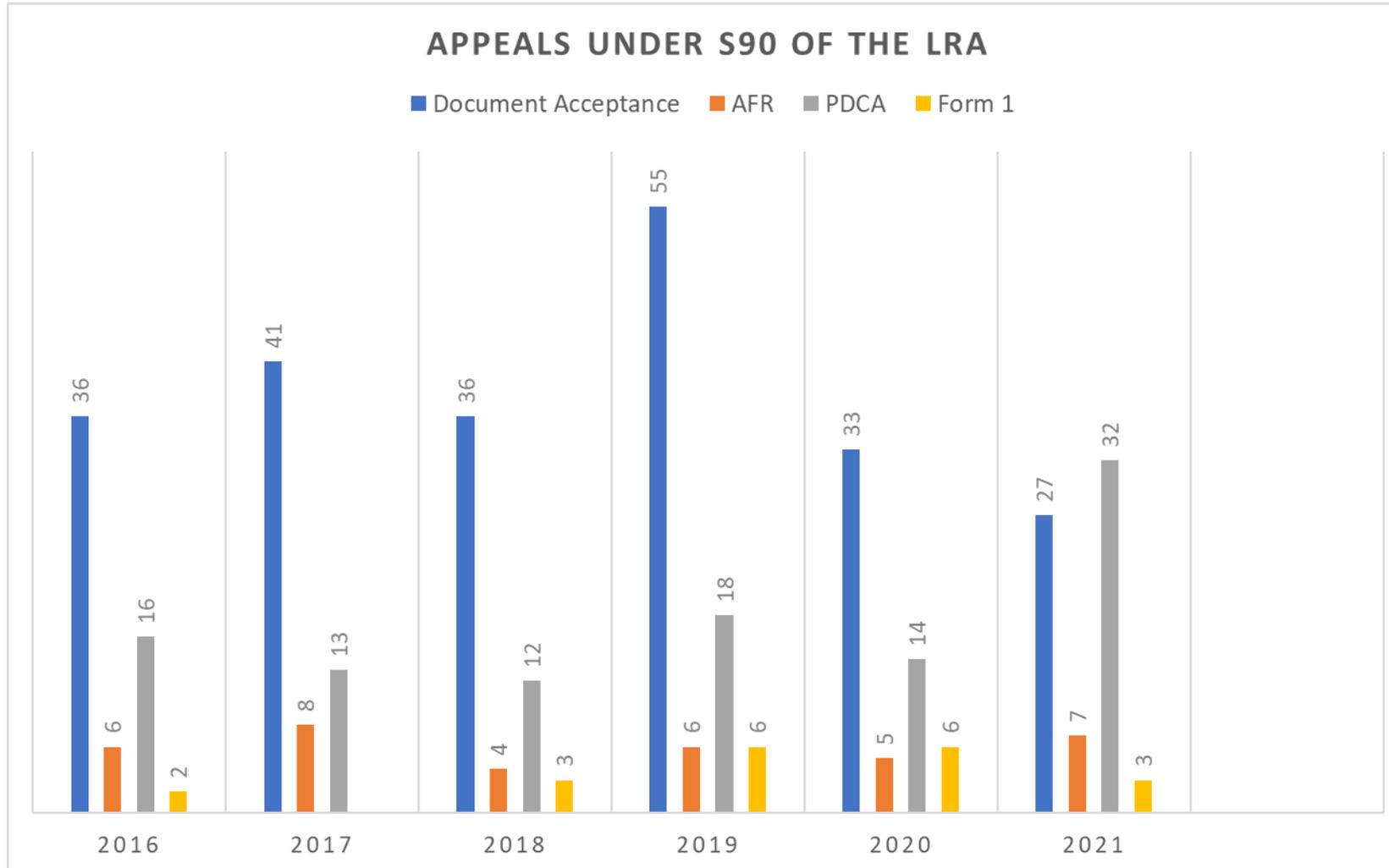
Decisions: 40% denied  
60% granted

## 2021 Appeals (to date):

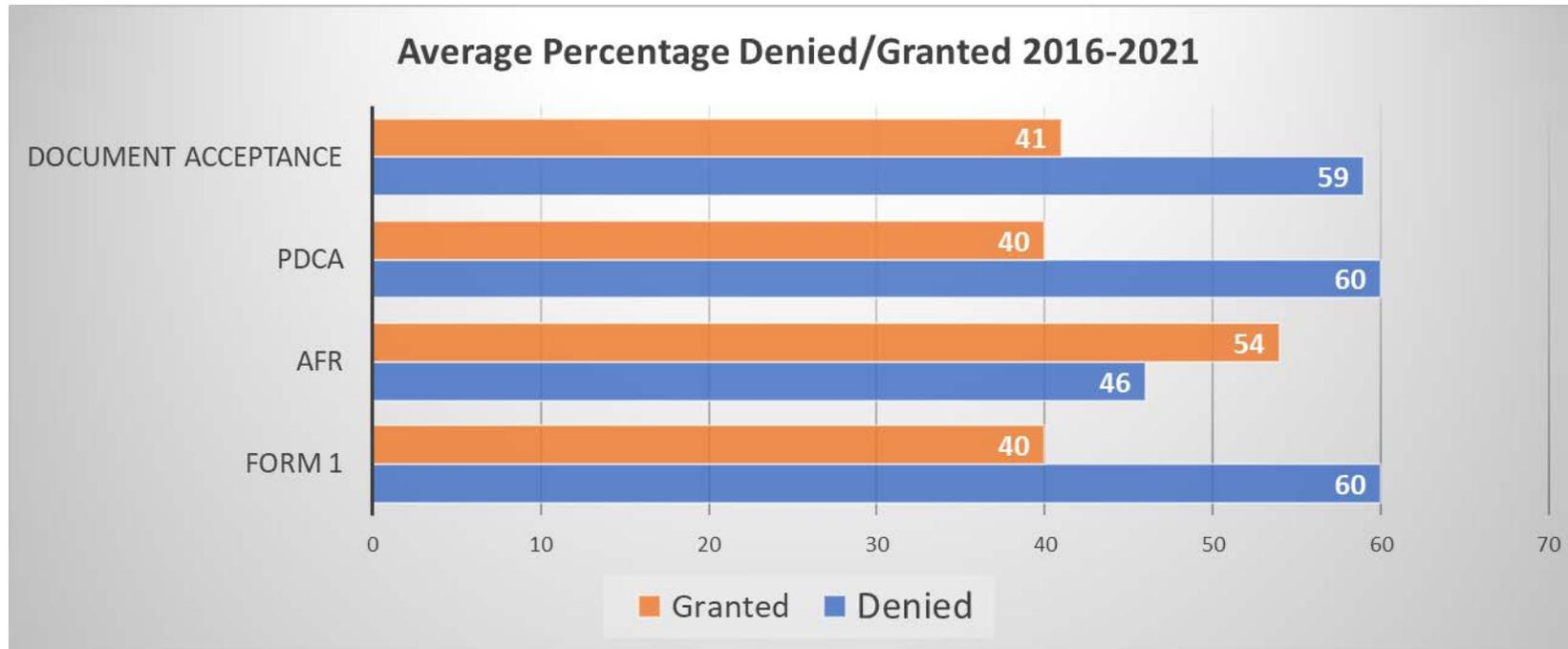
Total to date	70	
AFR	7	10%
Document acceptance	27	39%
PDCA	32	46%
RPA	4	5%

Decisions: 51% denied  
49% granted

# STATISTICS



# STATISTICS



## STATISTICS

### Rejection Statistics Three Year:

Type	2019 (% Rejected)	2020 (% Rejected)	2021 (to date) (% Rejected)	Average (3 year) (% Rejected)
AFR	26.4	25.9	24.8	<b>25.7</b>
PDCA	14.2	14.3	15.2	<b>14.6</b>
ROD Esub	9.6	11.3	11.1	<b>10.7</b>
LR Esub	8.7	8.9	9.5	<b>9.0</b>
LR Paper	6.4	5.0	4.2	<b>5.2</b>
<b>TOTAL</b>	<b>11%</b>	<b>11%</b>	<b>11%</b>	<b>11%</b>

# AFR REJECTION REVIEW

## All Rejections (2020 and 2021 (to August)):

- 2020 2654 rejections
- 2021 2061 rejections (Jan to Aug)

## Grouping:

- Registration Particulars
- Textual Qualifications
- Issues with Benefits and Burdens
- Issues with Interest Holder Names

## AFR REJECTION REVIEW

	2020	2021
Registration Particulars	38%	35%
Textual Qualifications	13%	16%
Issues with Benefits and Burdens	14%	16%
Issues with Interest Holder Names	15%	15%

# AFR REJECTION REVIEW

## FINDINGS:

### Registration particulars:

- Wrong registration dates
- Wrong document numbers
- Wrong book/page numbers

### Textual Qualifications:

- Not indicating the affect of the TQ on the parcel (or whether certifying to or not)
- Tennant in Common interest without indicating the percentage owned by each owner
- Contradicting a benefit or burden showing on the AFR

# AFR REJECTION REVIEW

## FINDINGS:

### Parcel Interest holders:

- Mismatch between POL and AFR registered owners and no comments made
- Misspelling of names
- Names backwards
- First and middle names reversed
- No qualifiers or the wrong qualifier for interest holders

### Benefits and burdens

- Benefit or burden in AFR does not appear in the PDCA or vice versa
- Not acceptable entry for ben/bur - not using entries as per the manual.
- Incorrect interest holder type

# TEXTUAL QUALIFICATIONS FOR TAX DEEDS

## Tax Deed on the AFR and on Revision of a Parcel Register

### POLICY

If a Tax Deed is being used to enable registered owners, the lawyer must be able to certify to marketable title behind the tax deed.

In addition, the tax deed must be registered for at least 6 years, otherwise the validity of the tax sale could be challenged based on the wording in S 6 (2) of the *Marketable Titles Act*, which states as follows;

**6 (2)** A tax deed may not be set aside for any reason whatsoever except during the six years following registration of the tax deed, and thereafter the tax deed is binding and conclusive upon all persons and is not liable to be attacked or impeached at law by any person, and the tax deed conveys an absolute and indefeasible title in fee simple to the land described in the tax deed and is conclusive evidence, with respect to the purchaser and every person claiming through the purchaser, that every requirement for the proper assessment and sale of the land has been met.

The wording of S 6(2) therefore requires a registered tax deed to be 6 years+ a day old before the presumption of regularity exists. Before 6 years, an aggrieved person can allege irregularity in the assessment or tax sale process, where the deed may be set aside.

In this circumstance, the lawyer must add a textual qualification if their parcel is the subject of a tax deed whose registration is less than 6 years old.

The TQ on an AFR should state **either of the following**;

- A tax deed for this parcel was registered on (*insert recording date*) as instrument number (*insert doc #*). Pursuant to subsection 6(2) of the *Marketable Titles Act*, the presumption of regularity for the assessment and tax sale process will be effective on and after (*insert date*). This qualification expires on (*insert expiry date*).

**OR**

- A tax deed dated (*insert date of deed*), for this parcel was registered. Pursuant to subsection 6 (2) of the *Marketable Titles Act*, the presumption of regularity for the assessment and tax sale process will be effective on and after the date of registration of the deed and expires after six years of registration.

# TEXTUAL QUALIFICATIONS FOR TAX DEEDS

The TQ on a Form 24 (revision) should state **either of the following**:

- A tax deed for this parcel was registered in (*insert month of registration*) of (*insert year of registration*). Pursuant to subsection 6(2) of the *Marketable Titles Act*, the presumption of regularity for the assessment and tax sale process will be effective on and after (*insert date*). This qualification expires on (*insert expiry date*).

OR

- A tax deed dated (*insert date of deed*), for this parcel was registered. Pursuant to subsection 6 (2) of the *Marketable Titles Act*, the presumption of regularity for the assessment and tax

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sale process will be effective on and after the date of registration of the deed and expires after six years of registration.

If an AFR is submitted where a tax deed has been recorded less than six years from the date of the AFR or a Form 24 is submitted to register a tax deed, without the applicable TQ being added, then the AFR or Form will have to be rejected and the lawyer advised accordingly.

## Policy:

- Effective: early 2019
- Requires TQ if a parcel is subject of a tax deed whose registration is less than six years
- Appears to be based on s. 6(2) of the *Marketable Titles Act*
- Sample wording
- Similarly worded TQs on parcel registers dating back to 2005

# TEXTUAL QUALIFICATIONS FOR TAX DEEDS

## Appeals:

### **s. 6(2) Marketable Titles Act:**

*A tax deed may not be set aside for any reason whatsoever except during the six years following registration of the tax deed, and thereafter the tax deed is binding and conclusive upon all persons and is not liable to be attacked or impeached at law by any person, and the tax deed conveys an absolute and indefeasible title in fee simple to the land described in the tax deed and is conclusive evidence, with respect to the purchaser and every person claiming through the purchaser, that every requirement for the proper assessment and sale of the land has been met.*

### **s. 156(1) Municipal Government Act:**

*A deed to land sold for taxes is conclusive evidence that the provisions of this Act with reference to the sale of the land described in the deed have been fully complied with and each act and thing necessary for the legal perfection of the sale has been duly performed.*

# TEXTUAL QUALIFICATIONS FOR TAX DEEDS

## Appeals (continued):

- Appears to be a discrepancy between s. 156(1) of the *Municipal Government Act* and s. 6(2) of the *Marketable Titles Act*.
- Some lawyers interpret s. 156(1) of the MGA as a repeal of s. 6(2) of the MTA.

## Policy Change:

- Remove the policy requirement.
- Given the apparent discrepancy, not reasonable to continue to require a textual qualification when a tax deed is being registered as part of an Application for Registration or a revision to the parcel register.
- Open to the lawyer in the exercise of his or her professional discretion to include a similarly worded textual qualification when registering a tax deed (as part of an AFR or a revision to the parcel register).
- Within a lawyer's professional duties to interpret the legal effect of a tax deed less than six years old when certifying title.

# CLARIFICATION ON POLICY CORPORATE SEAL

## Current Policy – Corporate Execution:

- Two ways to register:
  - Corporate Seal Present (plus signed by officer/director with something indicating their title): affidavit of execution not required; or
  - Corporate Seal Not Present (plus signed by officer/director with something indicating their title): affidavit of execution is required.

## Clarification:

- If a corporation is relying on the presence of a corporate seal to negate the requirement for an affidavit of execution, the corporate seal must be legible. If the corporate seal is not legible (or if not signed by an officer or director with something indicating their title), the document will be rejected unless it is also accompanied by an affidavit of execution.

## WHAT'S NEXT?

### Practice Memorandum #1 Foreclosure Procedures:

5.2 Rule 72.15 of the Nova Scotia Civil Procedure Rules, 2008 recognized “simple foreclosure” as an alternative remedy. Recently, mortgagees have chosen that route although it extinguishes the mortgage debt when the mortgagee can no longer accommodate redemption, such as when the mortgagee sells the foreclosed property to an arms-length third person.

5.3 It seems that simple foreclosure is more attractive when the mortgagor is no longer liable on the promise of payment, such as in bankruptcy, or when the very circumstances that caused the default make the cost of obtaining a deficiency judgment wasteful, such as the mortgagor losing employment.

5.4 Rule 72 – Mortgages now provides specific direction on motions for simple foreclosure. This evolved from discussions in chambers between chambers judges and counsel who moved for simple foreclosure.

## WHAT'S NEXT?

### Practice Memorandum #1 Foreclosure Procedures:

5.5 The remedy requires two steps. First, when granting an initial foreclosure order the court sets a deadline for redemption of a mortgaged property. Second, if the deadline passes and the property is not redeemed, the court grants a final foreclosure order that recognizes that rights of redemption are extinguished and the mortgagee owns the property outright.

5.6 Pattern forms for an initial foreclosure order and a final foreclosure order are attached to this Practice Memorandum. Deviations must be brought to the attention of the chambers judge.

### Changes to Policy:

- Will now accept a final foreclosure order to change the Registered Interest Holder (from borrower to lender)
- Currently reviewing policy on foreclosure orders to update and bring into line with the Practice Memorandum

### PDCA Rejection Review:

- To identify common causes of rejection on PDCA submissions

# COVID RELATED ISSUES

# REGISTRAR GENERAL'S DIRECTIVE "COVID 19/ORIGINAL DOCUMENTATION"

## Land Registration Administration Regulations: Document Submission Requirements (s. 5)

- ...
- (3) Subject to subsections (4) and (5), a document that is **submitted non-electronically** for registration or recording must be an **original** of the document or a copy of the document that is certified to be a true copy of the original by a court of competent jurisdiction or a registrar.
  - (4) A document attachment or plan that is submitted non-electronically for registration or recording that is larger than 11 in. x 17 in. must be an **original** of the document and be submitted together with 1 of the following:
    - (a) a **duplicate original** copy;
    - (b) a copy that is certified to be a true copy of the original by a person authorized under the Act to sign a certificate of execution.
  - (5) A **dual-purpose** document that is **submitted non-electronically** for registration or recording must be an **original** of the document and be submitted together with a copy or copies, as applicable, that are certified to be true copies of the original by a person authorized under the Act to sign a certificate of execution.

# REGISTRAR GENERAL'S DIRECTIVE "COVID 19/ORIGINAL DOCUMENTATION"

## Land Registration Administration Regulations: Submitting Documents Electronically (s. 8)

...

(8) Electronic submission of a document is effected by submitting all of the following electronically:

...

(c) a **scanned copy of the duly executed original** document in portable document format, no larger than 4 megabytes (MB);

...

(10) An authorized lawyer or authorized lender who submits a document electronically is required to retain either an **original or true copy** of the executed document and make it available for review by the Registrar General upon request and, if an authorized lawyer, for audit by the Nova Scotia Barristers' Society.

- There are other references to originals throughout the regulations but those tend to be "one signature" documents (e.g. Form 5)

# REGISTRAR GENERAL'S DIRECTIVE "COVID 19/ORIGINAL DOCUMENTATION"

## Directive:

- **Online** with other directives: <https://novascotia.ca/sns/access/land/notices-newsletters.asp>
- Operates during period where Province is asking Nova Scotians to practice **social distancing**
- **Interpreting** "original" to include a document displaying only one "**wet**" signature
- For the purposes of file **retention** and **acceptance** criteria
- Intended to harmonize with **NSBS direction** on non-face-to-face **oath taking** and client identification rules
- Subsequently **Courts of Nova Scotia** offered direction on similar documents
- Does the directive require **revision**? How is it **operating** in practice? Is there more that can be done?
- Would it be welcomed as a **permanent** change (regulatory amendment)?

# REGISTRAR GENERAL'S DIRECTIVE "COVID 19/ORIGINAL DOCUMENTATION"

## Letter September 13, 2021:

*Given the positive feedback we have received regarding the use of this Directive throughout the pandemic and to allow for a smooth transition into Phase 5 of the Province of Nova Scotia's Reopening Plan, the Directive will be extended in order to permanently implement these changes. The permanent adoption of these measures will require consultation with you in the coming months and I look forward to having those discussions with you soon.*

- At the time the letter was issued, appeared as though Province would be transitioning to Phase 5 shortly
- Hasn't happened, but intention is still to make permanent
- Want to enter into consultation
  - Timing
  - Increased volume of transactions
  - Looking to early 2022 as "quieter period"

# TURN AROUND TIMES/FOLLOW UP

## Turn Around Times:

<i>AFR</i>	<i>1 day or less</i>
<i>PDCA</i>	<i>3 days or less</i>
<i>Land Titles Documents</i>	<i>4 days or less</i>
<i>Paper Documents Mail-back</i>	<i>4 days or less</i>
<i>E-submitted Documents (Online)</i>	<i>4 days</i>

- Turn around times have remained largely consistent throughout the pandemic
- Huge effort to maintain timelines
- Following up on documents close to or slightly over usual turn around can lead to longer delays
- E-submitted Rejection Notices now provide an e-mail address for more efficient communication
- Thank you to Land Programs and Registry Staff – above and beyond to meet unprecedented increase in volume

# DECORUM

# OTHER UPDATES

# SYSTEM IMPROVEMENTS AND CHALLENGES

## Operating System:

- Nova Scotia Registries Modernization – announced in 2016
  - Includes Registry of Joint Stock Companies, Vital Statistics, Motor Vehicles, and Land
  - Land: foundational work to be completed first including new operating system
  - Will be on to Modernization soon
- CARIS-Teledyne – exit spring of 2019
  - Years leading up to the exit – difficulty with even operational improvements
  - Groundwork to gain familiarity with code
  - Now in the care of the Nova Scotia Digital Service
- May 8-9, 2021 – New Operating System Installed
  - Necessary for continued functioning of Property Online
  - Allowed for some operational improvements
  - Groundwork necessary for modernization

# SYSTEM IMPROVEMENTS AND CHALLENGES

## Operational Improvements:

- POL Instrument Association – “table style” allows for more content
  - Previously, if there were too many instruments, the pop-up would be not viewable (except in the GGI)
  - If Document and book/page references are available – now all are visible

This instrument has been associated with the following document(s):

<b>Historic Document</b>	<b>Type</b>	<b>Code</b>	<b>Book</b>	<b>Page</b>
32650	AGREEMENT RE USE OF LAND	406	6852	60
51094	AMENDMENT (NOT CONDOMINIUM)	222	7538	57
46012	MORTGAGE	201	6919	1063
28729	DEBENTURE	202	7403	1180

You must review the associated documents to determine their effect on the instrument that you are about to view.

Cancel Okay

# SYSTEM IMPROVEMENTS AND CHALLENGES

## Operational Improvements:

- POL Query (Street Name) – can use apostrophe (') in the text field
- Form 45E – Now viewable (in “Non-Enabling” section of the parcel register)
- “Request Already Submitted” – pop up message for long running queries
- Valid Date Format (YYYY-MM-DD)
- Large Parcel Description – Allows descriptions of greater than 32,000 characters
  - Reduces Turnaround Times
  - Previously “long” descriptions had to be e-mailed to LRO
- Affidavit Sale Price – now allows for values exceeding \$100,000,000

# SYSTEM IMPROVEMENTS AND CHALLENGES

## Challenges/What's on the Horizon:

- Property Online Fees
  - Last increases 2013 (\$96.74/\$19.35) and 2015 (\$99.65/\$19.93)
- Stabilization following Operating System installation – largely stabilized now
- Slated foundational pieces (2022)
  - add to system stabilization
  - retire aging hardware
  - Lay the foundation for system modernization
- Modernization
  - Consultation with Stakeholders
  - What parts of Property Online should be modernized
  - Priority for each piece

# Discussion/Questions

# THANK YOU!