

LRO APPEALS PROCESS and OTHER DEVELOPMENTS

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OUTLINE:

APPEALS:

- (1) Legislative and Regulatory Framework;
- (2) The Office of the Registrar General and Land Programs;
- (3) Form of Appeal;
- (3) Types of Appeal/Appeal Trends; and
- (4) Considerations when Making an Appeal.

OTHER DEVELOPMENTS:

- (5) Proactive Dialogue with the Registrar General's Office;
- (6) Non-Appeal Decisions;
- (7) System Improvements; and
- (8) Registrar General's Directive "COVID 19/Original Documentation".

LEGISLATIVE AND REGULATORY FRAMEWORK

Land Registration Act (s. 90):

Appeal to Registrar General

- (1) A person who objects to and is aggrieved by the decision of a registrar respecting the administration of this Act may appeal in writing to the Registrar General.
- (2) An appeal shall be submitted to the Registrar General within thirty days of the decision appealed from.
- (3) The Registrar General shall investigate the decision being appealed and the facts surrounding the decision and may, after consideration of written or oral submissions, confirm the registrar's decision or order the registrar to do any action that the registrar is required or authorized to do under this Act.

LEGISLATIVE AND REGULATORY FRAMEWORK

Land Registration Act (s. 90) (continued):

- (4) The Registrar General's decision must be in writing.
- (5) A decision of the Registrar General pursuant to this Section is final.

LEGISLATIVE AND REGULATORY FRAMEWORK

Land Registration Administration Regulations (s. 32):

Appeals to Registrar General

- (1) To appeal a decision of a registrar under Section 90 of the Act, a person must submit an appeal in writing to the Registrar General in paper format or electronically, following the instructions in Property Online, together with all of the following:
 - (a) the fee prescribed under the Land Registration General Regulations, if any;
 - (b) a copy of the registrar's decision that is being appealed;

LEGISLATIVE AND REGULATORY FRAMEWORK

Land Registration Administration Regulations (s. 32(1) Continued):

- (c) a copy of the documents that are the subject matter of the appeal;
 - (d) a clear statement of the reasons why the registrar's decision is incorrect and any other explanatory information.
- (2) An application for an appeal under this Section must state in bold in the subject line “Appeal of a Registrar’s Decision - PID(s) *(insert PIDs of affected parcel(s))*- County(ies) *(insert name(s) of County/ies where affected parcel(s) are located)*”.

LEGISLATIVE AND REGULATORY FRAMEWORK

Land Registry Client Resource Manual:

Appeal to the Registrar General

Effective May 4, 2009, a person who disagrees with a decision of a registrar, land registration officer or mapper may appeal to the Registrar General by sending an email to RGLandTitles@gov.ns.ca, which must include all of the following:

- a subject line in bold, stating : **Appeal of a Registrar’s Decision- PID(s)** (insert PIDs of affected parcel(s)- County(ies) (insert name(s) of County(ies) where affected parcel(s)are located);
- a copy of the decision that is being appealed (eg. rejection comment);
- a copy of the documents that are the subject matter of the appeal;
- a clear statement of the reasons why the decision is incorrect; and
- any necessary explanatory or supporting information.

In accordance with the regulations, a person who is unable to submit the appeal electronically, may submit all of the above in paper format to the Office of the Registrar General.

OFFICE OF THE REGISTRAR GENERAL AND LAND PROGRAMS

Land Programs:

Land Programs:

- Registrar General's Office:
 - RG and Deputy RGs (Mapping, Registry and Senior)
 - Audit/Quality Assurance
 - Policy Co-ordinators (Mapping and Registry)
- Data Co-ordination
- Land Records Imaging

In Person Services:

- 5 Land Registration Offices
- 5 Regional Registrars, 5 Senior Mappers, 4 GIS Technicians, ~24 Land Registration Officers, 23 Property Mappers

OFFICE OF THE REGISTRAR GENERAL AND LAND PROGRAMS

Data Co-ordination/Land Records Imaging:

- Property Online (Data and Imaging)
- Day to day functionality (in concert with Internal Services)
- Data collection, storage and reporting
- Improvements to scanned documents
- Troubleshooting inquiries (external and internal)
- Managing POL Accounts

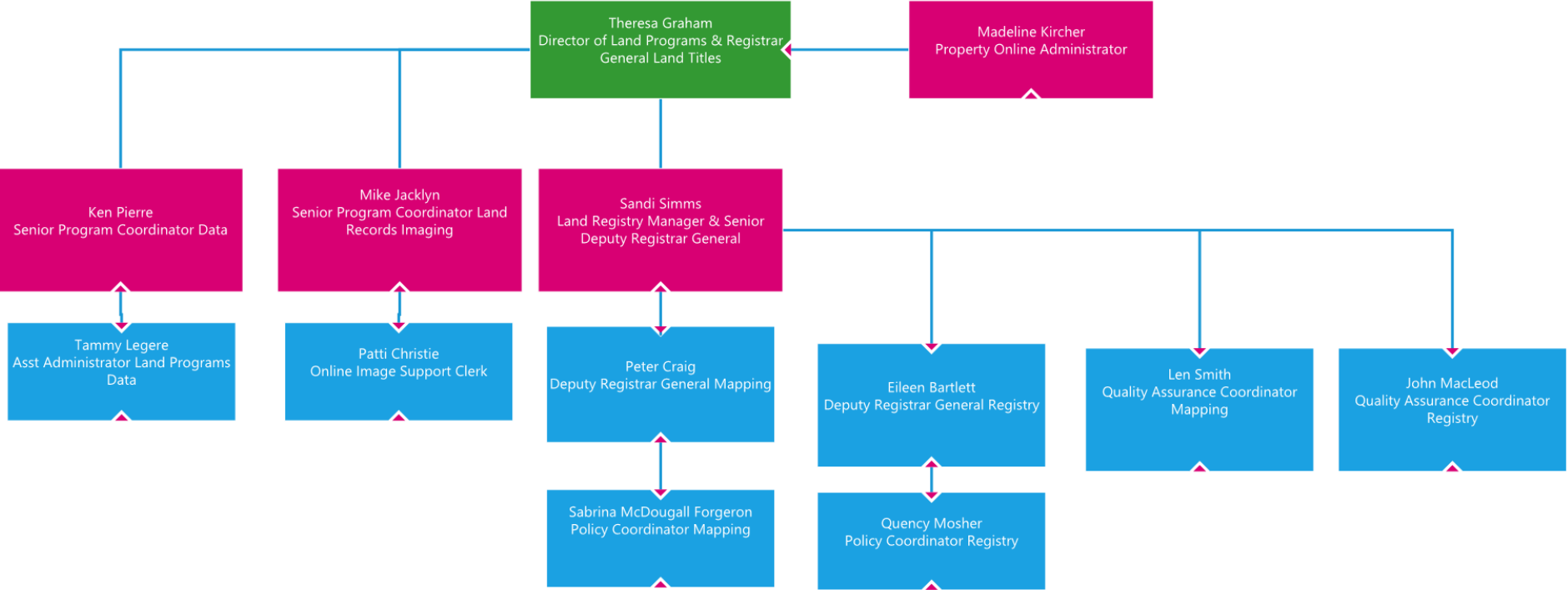
Land Programs:

- Resolving inquiries (external and internal)
- Statutory Appeals
- Training and Audit
- Liaising with stakeholder and interdepartmental groups
- Litigation

OFFICE OF THE REGISTRAR GENERAL AND LAND PROGRAMS

Land Programs Team Registries Division, Program Modernization Branch Service Nova Scotia

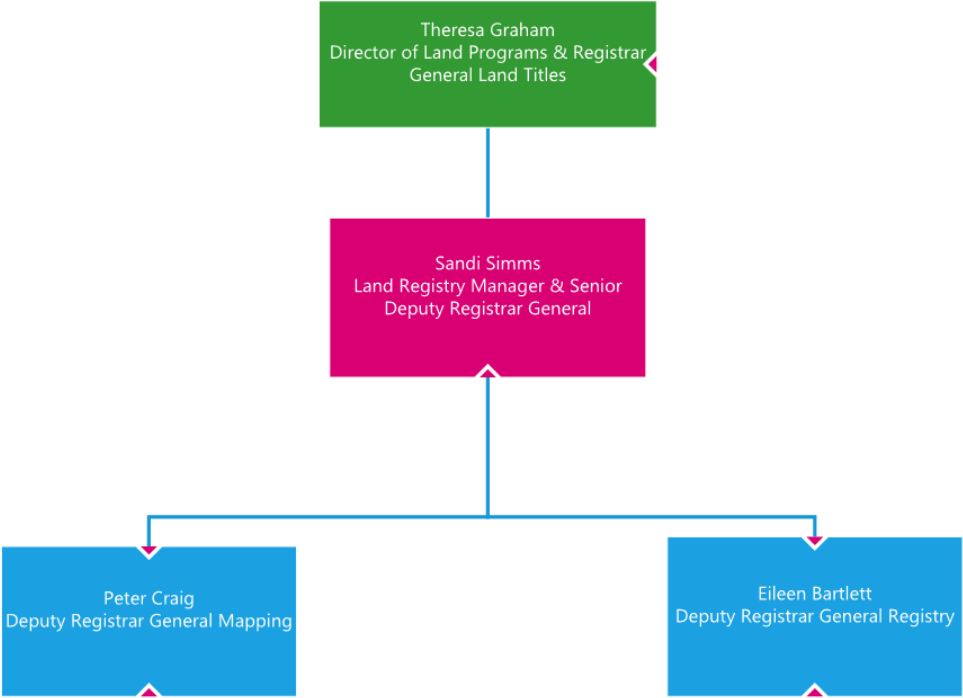
2020 11 04



OFFICE OF THE REGISTRAR GENERAL AND LAND PROGRAMS

Land Programs Team Office of the Registrar General

2020 11 04



FORM OF APPEAL

Formal Requirements:

- Within **30 days** of the Registrar's decision (s. 90(2)LRA)
- In **writing** to the Registrar General (s. 90(1)LRA)
 - **paper** format or **electronically** (s. 32(1) Regulations)
 - **email** to RGLandTitles@gov.ns.ca (Manual)
 - If **unable** to submit the appeal electronically, **may submit in paper format** to the Office of the Registrar General (Manual)
- **Subject line** in bold "Appeal of a Registrar's Decision - PID(s) (*insert PIDs of affected parcel(s)*)- County(ies) (*insert name(s) of County/ies where affected parcel(s) are located*)" (s. 32(2)Regulations)
- **Attachments** to Appeal:
 - Fee (s. 32(1)(a)): there is currently **no fee** to appeal
 - A **copy** of the **registrar's decision** under appeal (s. 32(1)(b)Regulations)
 - **Documents** associated with the appeal (s. 32(1)(c)Regulations)
 - Any necessary **explanatory** or **supporting** information (Manual)

FORM OF APPEAL

Substance of Appeal:

- Must be “by a person who **objects to** and is **aggrieved** by the **decision of a registrar** respecting the administration of this Act”(s. 90(1)LRA)
 - If the appeal comes from an **assistant**, it should be noted that the appeal is made **on behalf** of a particular lawyer and that lawyer should be **copied** on the e-mail
- Require a “**clear statement** of the **reasons** why the registrar’s decision is **incorrect** and **any other explanatory information**” (s. 32(1)(d) Regulations)

Remedies:

- The Registrar General can “**confirm** the registrar’s decision or **order the registrar** to do **any action** that the registrar is **required** or **authorized** to do under this Act” (s. 90(3)LRA)

FORM OF APPEAL

Registrar General and Deputies:

- A Deputy Registrar General may “perform any of the duties and exercise any of powers of the Registrar General as directed by the Registrar General”

Land Registration Act/Registry Act:

- An appeal must be “respecting the administration of **this Act**” (s.90(1)LRA)
 - Rejections of Form 44/Registry Act registrations cannot be appealed pursuant to s. 90

Decisions:

- Decisions of the Registrar General must be communicated in writing (s. 90(4)LRA) and are final (s. 90(5)LRA)

TYPES OF APPEAL/APPEAL TRENDS

Types of Appeal:

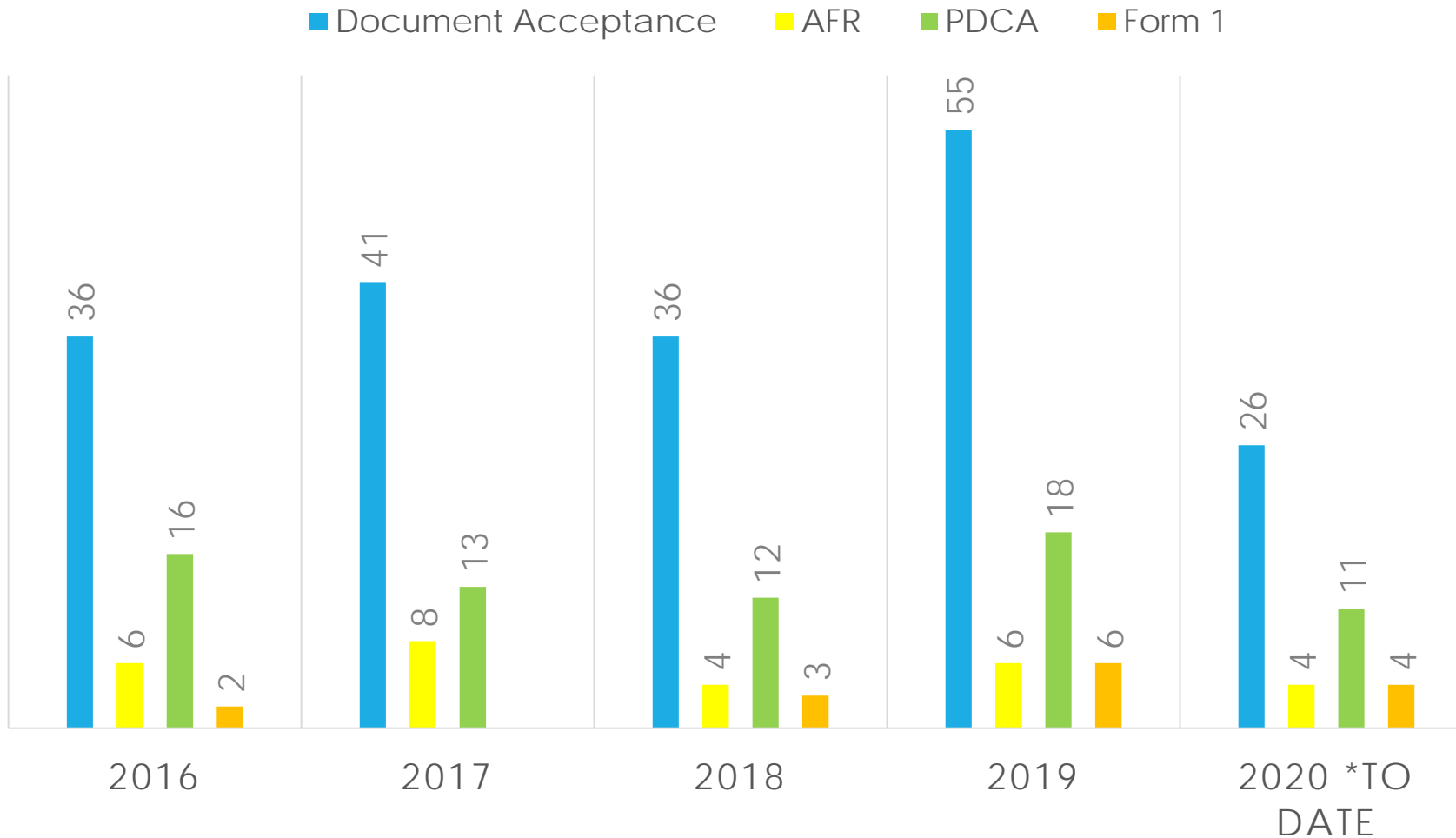
- Form 1: PID Assignments;
- PDCAs
- AFRs
- Document Acceptance

Appeal Trends (s. 90 Appeals Only):

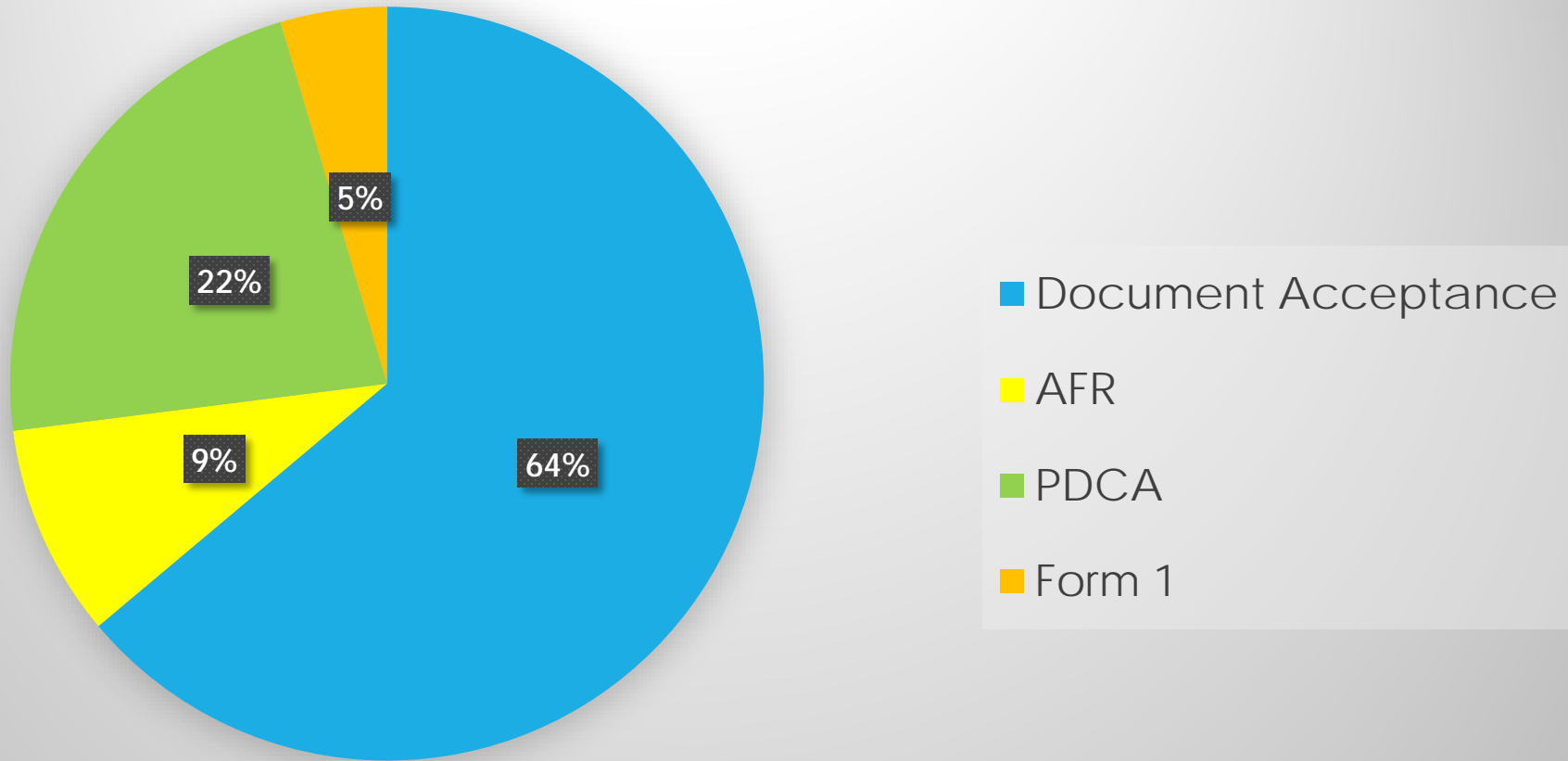
- Approximately 65 per year (a little more than 1/week)
- In excess of 500 appeals since inception of s. 90 (2009)
- Vast majority (over 60%) are document acceptance appeals
- On average, 60/40 split for appeals denied/appeals allowed

Appeal Trends

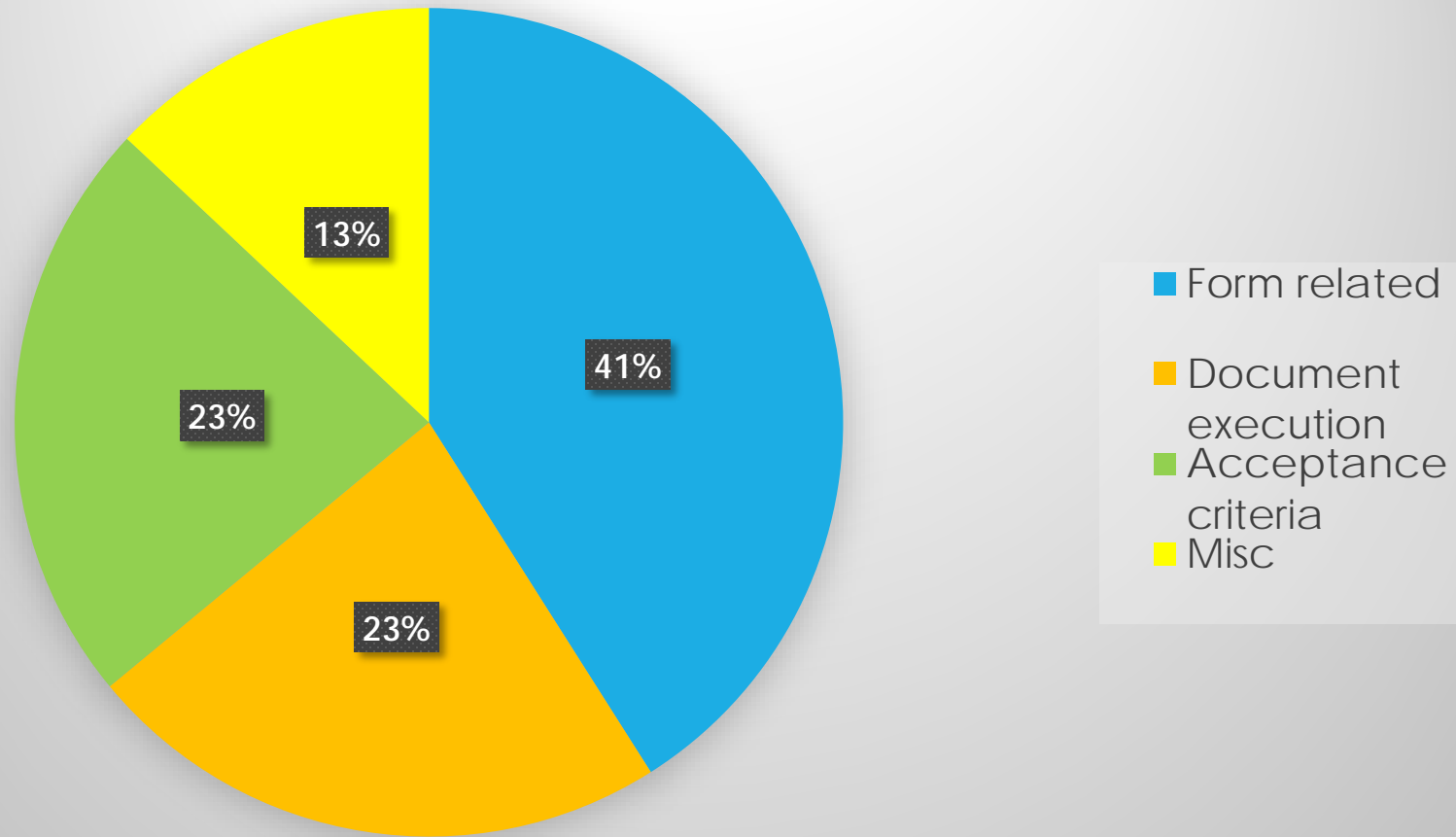
APPEALS UNDER S90 OF LRA



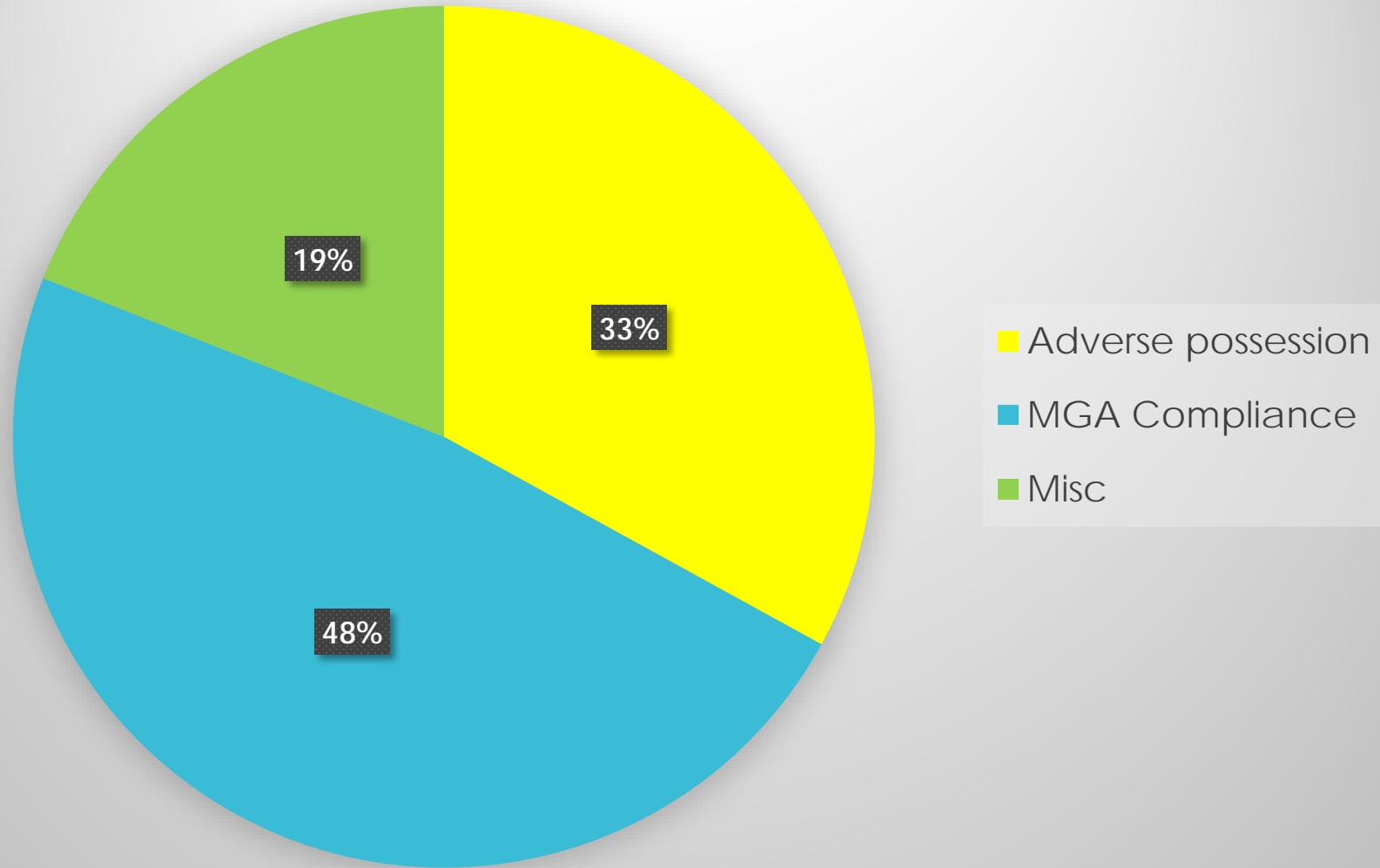
Appeals Average 2016-2019



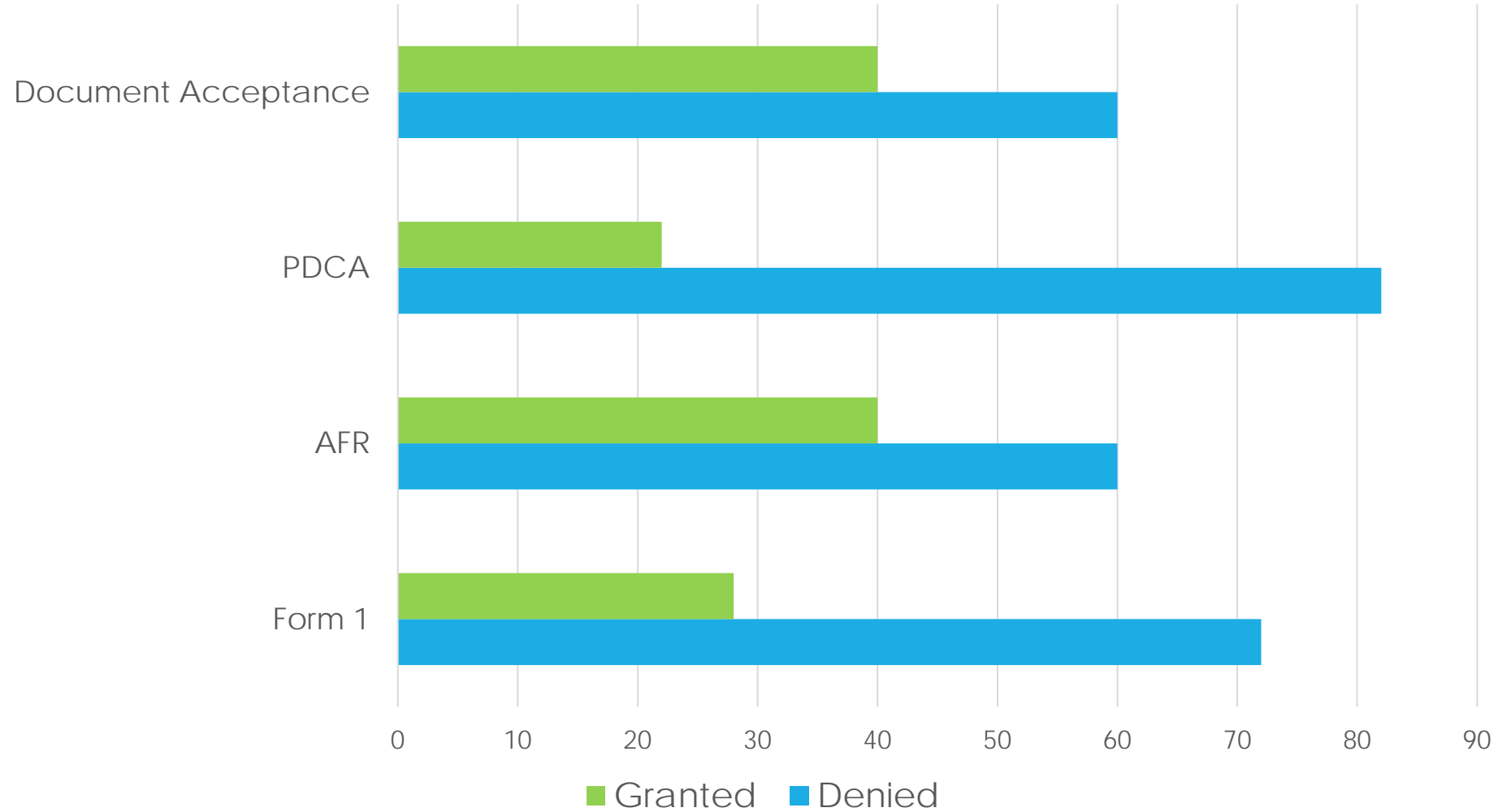
Document Acceptance Appeals



Parcel Description Certification Application Appeals



AVERAGE Percentage of Appeals Denied/Granted 2016-2019



CONSIDERATIONS WHEN MAKING AN APPEAL

Hints and Tips:

- Attach copies of documents referred to, including:
 - The rejection comments received;
 - Decisions or references to authoritative texts;
 - Registered documents or plans; and
 - Legislative requirements

- Include a clear explanation as to why the rejection was unreasonable/incorrect
 - If arguing in the alternative, be clear about that

- Start with the basics, don't assume the RG will "fill in the gaps"
 - Including the legal doctrines you are relying on

- Include relevant references to the Land Registry Client Resource Material (https://linns.gov.ns.ca/LandRegistrationResourceMaterial/Client_Manual_Default.html)

CONSIDERATIONS WHEN MAKING AN APPEAL

Hints and Tips:

- Be careful about putting too much reliance on “precedent” document filings
 - System has changed over time
 - System is not perfect, sometimes things slip through
 - There may be material differences between what is being relied on and what is being asked to be accepted

- Be clear in the remedy you are seeking
 - Usually, to direct the Registrar to accept the document for registration

- The RG’s decision is final
 - “Best foot forward”
 - Complete argument
 - This will form the record if you proceed to judicial review

OTHER DEVELOPMENTS

PROACTIVE DIALOGUE WITH THE REGISTRAR GENERAL'S OFFICE

Dialogue Before Registration:

- Situations that may not fit “in the box”
 - Document acceptance criteria at drafting stage
 - Extra-Canadian executions
- If you are concerned that some explanation is needed to avoid a rejection
- If you need some guidance on procedure in unusual circumstances
- Document acceptance criteria where a third party executes irregularly
 - Stamp in the wrong place
 - Signature irregularity
 - Copy of document
- Remember that the Registry cannot give legal advice, but can discuss process, the manual, and acceptance criteria

PROACTIVE DIALOGUE WITH THE REGISTRAR GENERAL'S OFFICE

Dialogue Before Registration:

- Complex MGA Compliance Issues
 - Subdivision problems involving LR and NON LR parcels
 - Adverse possession MGA compliance issues

- Mapping Issues
 - Resulting in adversely affected LR PIDs
 - LR PIDs severed by another parcel
 - Mapping resulted in incorrect PID / description being migrated

NON-APPEAL DECISIONS

Other Kinds of Decisions:

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

NON-APPEAL DECISIONS

Hints and Tips:

Various PIDs Designation

- Provide reasons why you are making the request
- Specify what factors contribute to you being unable to identify all of the affected PIDs
 - it isn't sufficient to simply say that it is 'impracticable' to determine all of the PIDs, explain why it isn't practicable
- Do not base your reasoning on the fact that other PIDs in the area also used 'Various PIDs' as the regulations may have changed since then and we still need to have your reason for using it.

NON-APPEAL DECISIONS

Hints and Tips:

Substituted Service Applications (Form 9 and 8) Considerations:

- Has the property been granted (beyond 40 year search)? Was it granted by the Crown? Do they need notice?
- Include the name of the last paper title holder and when did they take title?
- What is the latest conveyancing document in the GGI (excluding documentation that is part of the possessory claim)?
- If there is nothing further out of that person, what efforts were made to locate that party (i.e to establish whether or not the person is still alive, if deceased – who are the heirs, etc.)

SYSTEM IMPROVEMENTS

PDCAs in Excess of 32,000 Characters:

- PDCAs in Excess of 32,000 Characters used to fail when submitted electronically, this has been remedied
- If the system detects technical errors in the PDCA, the “returned” description will contain an ellipsis (...) after 32,000 characters

Apparent Owners				
Name	Sub Type	Type	Interest Type	Qualifier
WILLIAM THOMAS CAPSTICK		PERSON/INDIVIDUAL	FEE SIMPLE	

Legal Description:	point marking the E.C. of a second curve in said margin of Lakeview Avenue of which the radius is two hundred two decimal zero nine feet and the Tan. distance is one hundred three decimal seventy one feet; THENCE south westerly following the said curve marking the easterly margin of the said Lakeview Avenue for an arc distance of one hundred and ...
Comments:	

- Ensure that the revised PDCA is complete: <Ctrl A> highlight legal description and delete

SYSTEM IMPROVEMENTS

Instrument Associations:

- Instrument Association “pop up” used to fail when associated instruments exceeded 45, this has been remedied and now groups by documents and historic documents (including book and page)

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

Document	Type	Code
91860479	MORTGAGE	201
92183830	MORTGAGE	201
92183889	MORTGAGE	201
98474191	AMENDMENT (NOT CONDOMINIUM)	222

96850491 ASSIGNMENT OF LEASES AND/OR RENTS 204

Historic Document	Type	Code	Book	Page
9522	MORTGAGE	201	1617	778
12690	AMENDMENT (NOT CONDOMINIUM)	222	2032	114
2342	MORTGAGE	201	2142	585
2343	AMENDMENT (NOT CONDOMINIUM)	222	2142	628
2344	ASSIGNMENT OF LEASES AND/OR RENTS 204	2142	637	
2345	ASSIGNMENT OF LEASES AND/OR RENTS 204	2142	642	
7245	ASSIGNMENT OF LEASES AND/OR RENTS 204	2167	208	
6008	AMENDMENT (NOT CONDOMINIUM)	222	2160	808
12479	MORTGAGE	201	1827	582

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

Cancel Okay

- Position mouse cursor within popup window; right mouse click, choose ‘Select All’; right mouse click, choose ‘Copy’; open a text editor, or word processor and ‘Save’ copied text (IE 11, Firefox)

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)?

Discussion/Questions

THANK YOU!