



Registrar General's Rants & Raves

CBA-NB Mid-Winter Meeting

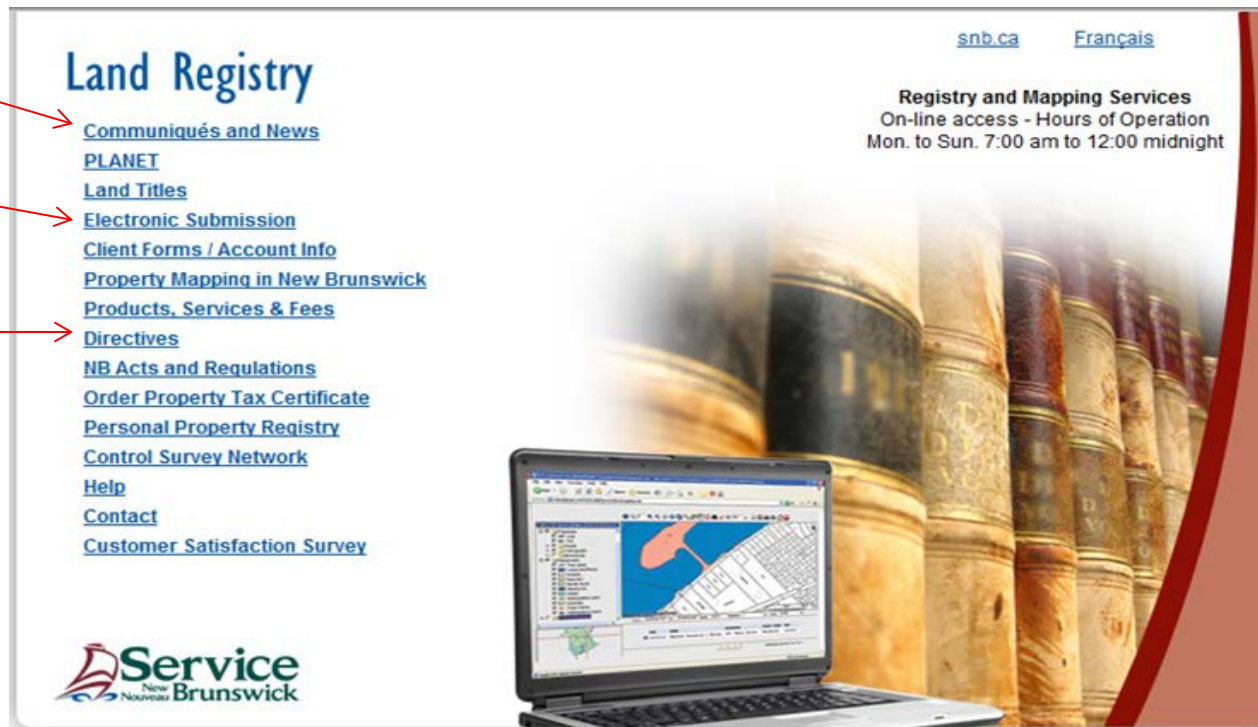
Patrick Windle – Deputy Registrar General of Land Titles

Saturday, February 6, 2015



How to Find Information

<https://www.pwx1.snb.ca/snb7001/e/2000/2400e.asp>



The screenshot shows the 'Land Registry' page of the Service New Brunswick website. It features a list of links on the left, a header with 'snb.ca' and 'Français', and a section for 'Registry and Mapping Services' on the right. A laptop displaying a map is visible in the bottom right corner of the screenshot.

Land Registry

[Communiqués and News](#)

[PLANET](#)

[Land Titles](#)

[Electronic Submission](#)

[Client Forms / Account Info](#)

[Property Mapping in New Brunswick](#)

[Products, Services & Fees](#)

[Directives](#)

[NB Acts and Regulations](#)

[Order Property Tax Certificate](#)

[Personal Property Registry](#)

[Control Survey Network](#)

[Help](#)

[Contact](#)

[Customer Satisfaction Survey](#)

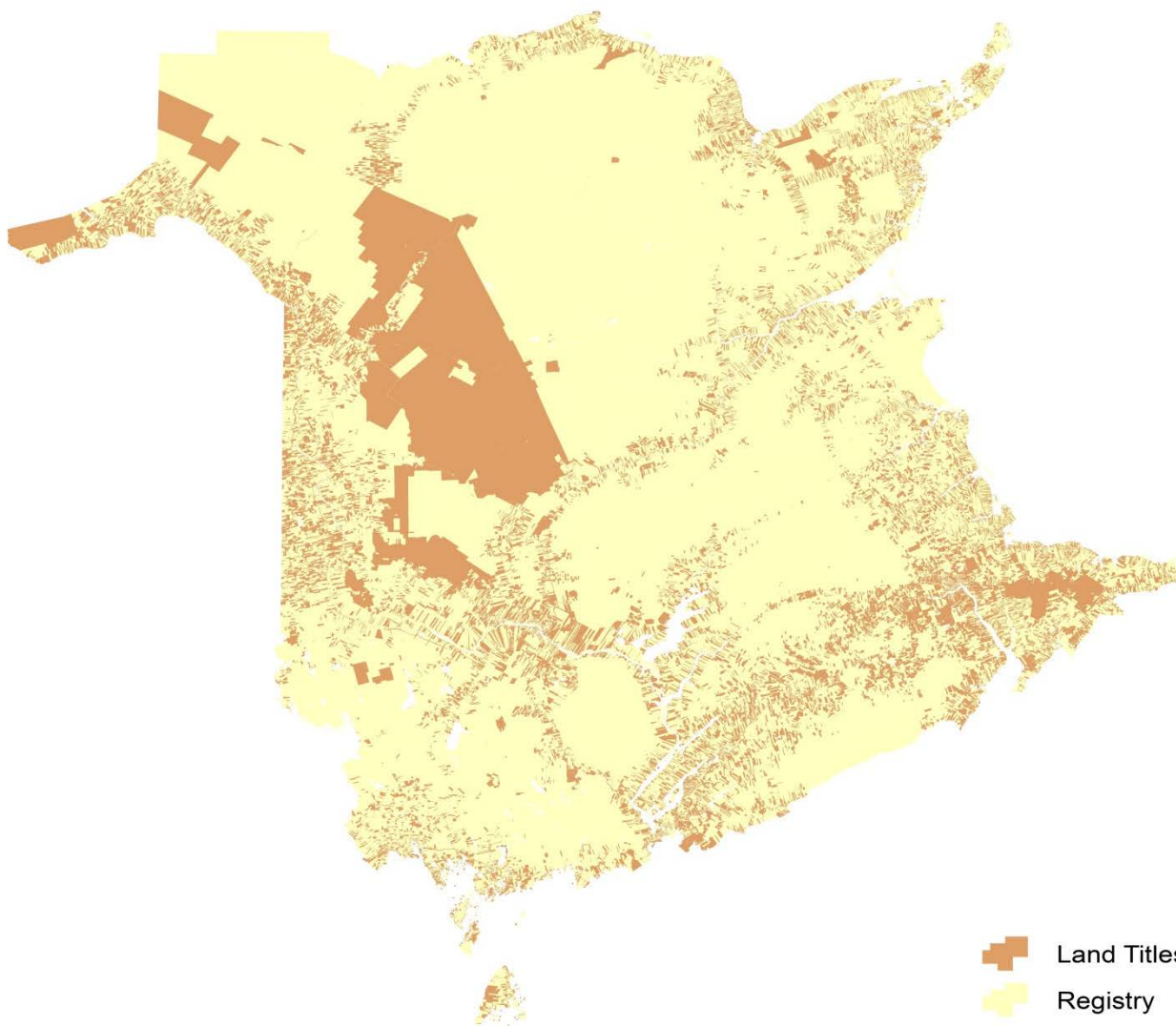
Registry and Mapping Services
On-line access - Hours of Operation
Mon. to Sun. 7:00 am to 12:00 midnight

Service
New
Nouveau
Brunswick

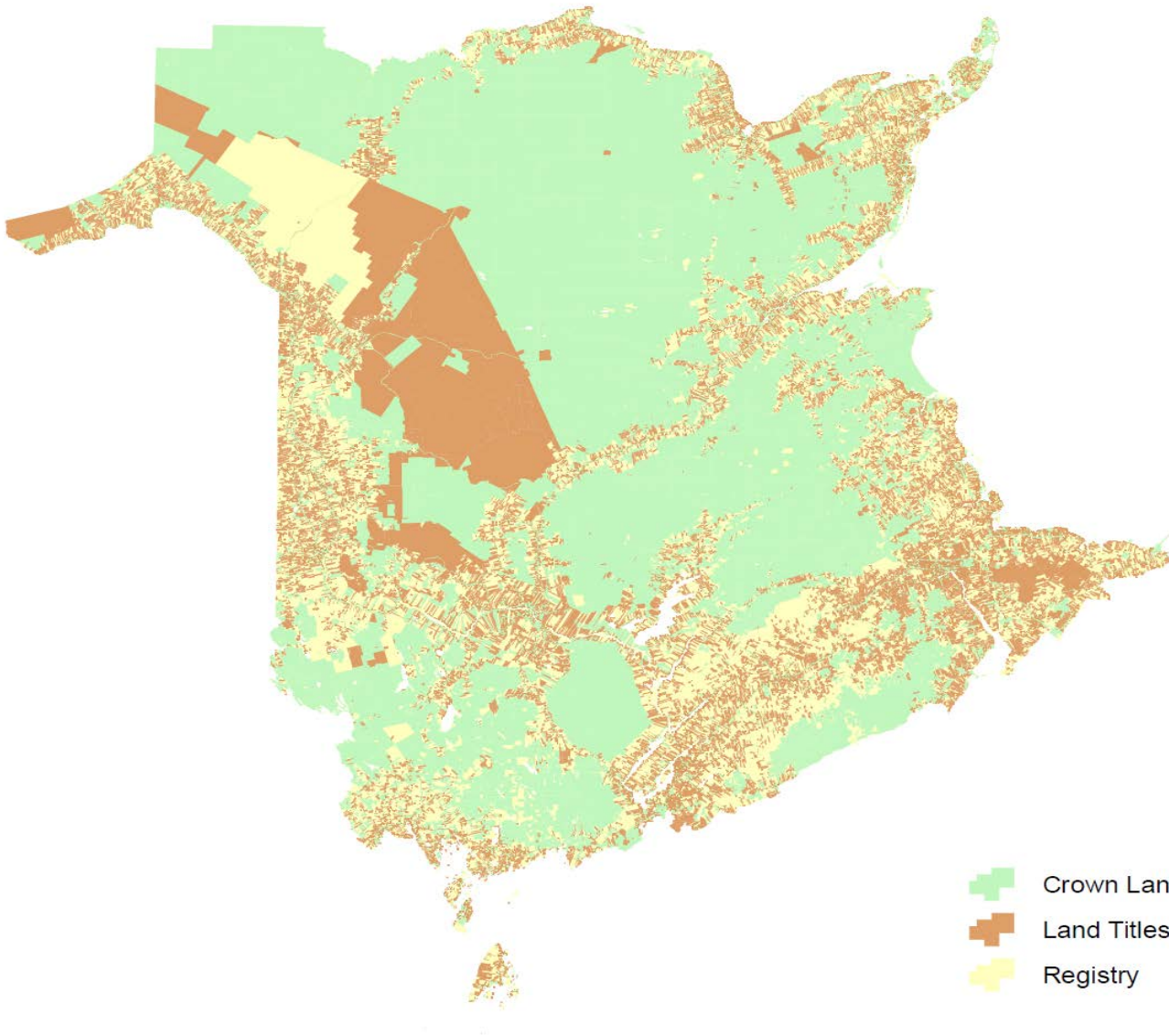
Land Titles Statistics

(as at January 26, 2015)

County	Land Titles	Not Land Titles	Active	LT %
Albert	13,306	5,140	18,669	71.27%
Carleton	10,423	13,986	24,409	42.70%
Charlotte	11,169	15,356	26,526	42.11%
Gloucester	28,794	41,775	70,569	40.80%
Kent	14,238	19,291	33,529	42.46%
Kings	25,229	22,068	47,299	53.34%
Madawaska	12,400	13,782	26,182	47.36%
Northumberland	16,717	27,616	44,333	37.71%
Queens	6,067	9,944	16,011	37.89%
Restigouche	10,536	15,051	25,587	41.18%
Saint John	22,055	14,109	36,164	60.99%
Sunbury	9,026	7,102	16,128	55.96%
Victoria	7,404	10,550	17,954	41.24%
Westmorland	52,972	31,448	84,421	62.75%
York	32,447	25,822	58,270	55.68%
Provincial Totals	272,783	273,040	546,051	49.96%



 Land Titles
 Registry



-  Crown Lands
-  Land Titles
-  Registry

Bankruptcy

- ***Bankruptcy and Land Titles*** News Bulletin, April 23, 2013
 - https://www.pxw1.snb.ca/snb7001/e/PDF/News2013-04_3-E.pdf
- Registration of Bankruptcy and reflecting Trustee as Owner
- Effect on Joint Tenancy
- Removal of Judgments
- Transfer by Trustee
- Transfer of Property back to Bankrupt

Proposals

Removal of Judgments

- *Bankruptcy and Insolvency Act*, Part III, sections 50 – 66.12

Option 1

- register the Certificate of Filing a Proposal
 - Administrator/Trustee added as encumbrance
- register the Certificate of Full Performance of Proposal (BIA Form 46) accompanied by a Certificate of (Legal) Effect signed by a subscribing lawyer directing us to delete the Judgment from the title register
 - remove Administrator/Trustee and Judgment

Proposals

Removal of Judgments

Option 2

- have the owner file an Affidavit of Response pursuant to section 43 of the *Land Titles Act* in which he or she would swear that the judgment is no longer enforceable because of the fact that the Proposal was made and performed (and the particular judgment creditor was bound)
 - Notice goes out to the judgment creditor who then would have 30 days (will be 90 days under new EMJA) to register an order saying that, in fact, the Judgment is still enforceable. If no such order is registered, we would remove the Judgment on the expiry of 40 days (from the registration of the Affidavit of Response)

Proposals

Removal of Judgments

Option 3

- judgment creditor execute either a Withdrawal (Form 36.1) or a Consent to Rectification (Form 49)
 - often impractical

Notice of Security Interest (Fixtures)

- ***Personal Property Security Act*** (S.N.B. 1993, c. P-7.1)

Section 49 - Registration

- Register Form 1 (PPSA) in land registry
- amend, subordinate, renew, discharge by Form 2 (PPSA)
- If there is an expiry date on the NOSI, it can be deleted from the title register pursuant to section 49(9)

Notice of Security Interest (Fixtures)

Section 36 – Priorities

36(2) **Except** as provided in section 30 and **subsections (3), (4) and (9)**, a security interest in goods that **attaches before or when the goods become fixtures** has priority **with respect to the goods** over a claim to the goods made by a **person with an interest in the land**.

36(3) A security interest referred to in subsection (2) is subordinate to the interest of a person who **acquires for value an interest in the land after the goods become fixtures**, including an assignee for value of the interest of a person with an interest in the land at the time the goods become fixtures, if the interest is acquired without fraud and **before notice of the security interest is registered in accordance with section 49**.

Notice of Security Interest (Fixtures)

36(4) A security interest referred to in subsection (2) is **subordinate** to the interest of a person with a **registered mortgage of the land** who, **after the goods become fixtures**,

(a) makes an **advance** under the mortgage, but **only with respect to that advance**,

(b) obtains an **order for sale or foreclosure**, or

(c) **serves a notice of sale on the mortgagor** under a power of sale provided for in the registered mortgage or under section 45 of the Property Act, *[added in 2004]*

without fraud and **before notice of the security interest in the fixtures is registered in accordance with section 49.**

36(9) A security interest in goods that attaches **before, when or after the goods become fixtures** is **subordinate** to the interest of a creditor of the debtor who causes a memorial of **judgment** affecting the land to be registered in the records of the appropriate land registry office or the title register of the appropriate land titles office under the Memorials and Executions Act **before notice of the security interest in the fixtures is registered in accordance with section 49.**

New E-Sub Documents

- Mandatory since September 9, 2013
- Form 23
 - Assignment of Mortgage
 - Assignment of Lease
 - Assignment of Charge
 - Other Assignment
- Form 48 - 48.1
 - Application of Survivor(s)

New E-Sub Documents

- Links to information

E-Submission of New Documents – Lawyers, April 2013

https://www.pxw1.snb.ca/snb7001/e/PDF/News2013-04_2-E.pdf

E-Submission of New Document - Financial Institutions, April 2013

https://www.pxw1.snb.ca/snb7001/e/PDF/News2013-04_1-E.pdf

Information regarding the new e-documents, June 2013

<https://www.pxw1.snb.ca/snb7001/e/PDF/News2013-06-E.pdf>

Overview - Electronic Submission - Land Registry (includes tutorials)

<https://www.pxw1.snb.ca/snb7001/e/2000/2401e.asp>

New E-Sub Documents

- Assignments only relate to absolute assignment of an already registered instrument – not assignment as security
 - Eg. Assignment of Rents, Assignment of Lease by owner to bank
- In the situation where all joint tenant owners become deceased post conversion, the Application of Survivor(s) and Application for Transmission (Form 41) are to be submitted on paper as a package. If the two Forms are submitted together on paper, no exemption will be needed.

Enforcement of Money Judgments Act

Enforcement of Money Judgments Act, SNB 2013, c. 23

An Act Respecting the Enforcement of Money Judgments Act, SNB 2013, c. 32 - consequential amendments to Land Titles Act

- Registration of judgment is effective for 15 years after the date of the judgment – EMJA, section 22(3)
- Can be registered against one of several owners and against leasehold or life interest holders – AREMJA, section 18(1)(c)

Enforcement of Money Judgments Act

- Judgment registered against deceased joint tenant not enforceable against interest of surviving joint tenant, if joint tenancy not severed prior to death – AREMJA, section 18(3)
- Judgment registered against one joint tenant enforceable against that joint tenant's entire interest after other joint tenant dies, if joint tenancy not severed prior to death – AREMJA, section 18(4)
- Time period for obtaining an order extending registration of Judgment under section 43 of LTA increased from 30 to 90 days - AREMJA, section 18(5)(c)

Discharge of Documents Related to Mortgage

- Amendments, Assignments, Assignments of Rent, Postponements
- If mortgage discharged but related instruments are not discharged at the same time, they cannot be discharged via electronic submission afterwards
- Make sure to click on documents to be removed as a result of the discharge of the mortgage, even if the discharge document makes no reference to documents other than the mortgage
- Other alternative is to ask for them to be removed in the “Comments” box – as an effect of the discharge of the mortgage

Conversion Exemptions

In an effort to reduce Red Tape and to streamline the registrations of certain types of instruments or documents, under subsection 2(5) of the *Land Titles Act*, the following circumstances will be deemed to satisfy the Registrar General that an instrument or document should be registered under the *Registry Act*.

The circumstances when a Deed (Form A13, A13.1 & A13.2) may be presented for registration in the Registry System are as follow:

1. Deed where the consideration is below or equal to \$5,000.00.
2. Deed between spouses upon separation.
3. Deed to Mortgagee following a mortgage sale.
4. Deed to Mortgagee from Trustee in Bankruptcy.
5. Deed to Mortgagee from Mortgagor.
6. Deed where, for procedural reasons, a solicitor has undertaken to convert the title of the subject within 30 days of its registration.
7. Deed if the title of the subject property cannot be converted to Land Titles because of title issues.

Process:

- The deed presented **must** have an accompanying covering letter.
- For circumstances 1 to 5, a simple explanation as to which circumstance is being relied upon must be included.
- For circumstance 6, an undertaking to convert within 30 days must be included.
- For circumstance 7, a detailed explanation of the title issues must be included.

Provided the above circumstances and process criteria are met, the deed may be presented for registration at the local Land Registry Office.

The above is also appropriate for a Mortgage (Form A15 & A15.1) where applicable.

PDBA Descriptions - graphics

- Do not describe per graphics, especially with measurements as per the graphical depiction
- Mapping cannot be relied upon
- Consult mapper as to the best method
- You may need the services of a surveyor to draft a new description
- Good historical descriptions (that are not too vague) should not be amended to refer to PIDs/owners

Condos - Registration of financial encumbrances

- A financial encumbrance is not registrable against the common area of a condominium – section 17 of the Condominium Property Act
- Mortgages, Judgments, Mechanics' Liens
- If registered in error, a rectification will remove it from title
- On conversion, mortgages on the whole project will not be reflected as an encumbrance on the common area.

Condos - Mortgage of units under Registry Act

- Form A15 has to be used, as you would have under the Registry Act
- Form 15 Mortgages will be rejected for Condo Units that are not under Land Titles

Transfer Tax Exemptions

- ***Real Property Transfer Tax Act***, section 6, and ***General Regulation***, section 3
- We do not sign the affidavit/COV, you do or your client does
- We will not exercise much discretion in determining whether you are exempt or not
- Feel free to seek an opinion from the Department of Finance
- We are but mere collectors of the tax on behalf of that Department

Deceased Joint Tenants

- On Conversion (AFR)
 - See Directive 3900-002
 - Register the last surviving Joint Tenant's Will (no need to register the first)
 - Reflect the last surviving Joint Tenant with the "Estate" qualifier enabled by the Deed and the Personal Representative (of the last JT) with the "In Trust" qualifier enabled by the Will or Letters – no need to reflect first JT
 - Include a note in the AFR Comment field that the other JT predeceased the last and that proof of death will be included with any subsequent Transfer or the lawyer has it on file

Deceased Joint Tenants

- After Conversion
 - Both Form 41 (Application for Registration of Transmission) and Form 48 (Application of Survivor)
 - Form 41 relating to the last surviving Joint Tenant is registered first
 - Will include proof of death of last JT etc.
 - Will result in last JT with “Estate” and Personal Representative with “In Trust”
 - Form 48 signed by PR of last JT (adapt wording)
 - Attach proof of death of first deceased JT
 - See doc 30913215

Expired Leases under LT

- Section 16 of **General Regulation** of LTA

16 The registrar may delete from the title register the entry of a lease

(a) when a surrender of the lease is registered, or

(b) one month following the expiration of the term of the lease **if the lease does not contain an option for renewal.**

- If lease contains option to renew, cannot be removed by rectification even if the option has expired
- Either register a Surrender (Form 22) or obtain a statutory declaration from the owner/landlord that the lessee abandoned possession of the premises on such and such a date, no lease payments have been made or accepted since and the landlord accepted this and ended the term – essentially a surrender by act or operation of law

Discharging Mortgages

- Land Titles is PID specific

10.3(2) Where land is described in a registered instrument by reference to an approved parcel identifier, the land affected is the **land described in the description associated with that parcel identifier at the time of the registration of the instrument.**

- Discharging a mortgage from a parent parcel does not discharge it from PIDs subdivided from it.
- A discharge must be registered on those subdivided PIDs

Benefits by Prescription

- ***PID Databank Regulation***, section 5 requires reference to either a plan or a document
- No more benefits by prescription in PDB descriptions
- Owner of servient tenement does not participate in determination as to continuous, open and notorious use by owner of dominant tenement

Section 17(2) and (3) of LTA

17(2) Any person who, prior to the date on which the title to land was first registered under this Act, had the use and enjoyment of a right of way or right of access to property and such right of way or right of access is not registered against a parcel of registered land, may apply to the court for relief.

17(3) The court upon consideration of an application pursuant to subsection (2) may grant relief and notwithstanding the generality thereof may

(a) order that the title register be rectified to show the existence of a right of way or right of access;

...

Recent case: ***Delong v Varney***, 2015 NBQB 31 (CanLII)

<http://www.canlii.org/en/nb/nbqb/doc/2015/2015nbqb31/2015nbqb31.html>

Ownership by Will on AFR

- Section 25 of the *Registry Act* allows the registration of a Will
- Section 18 of the *Devolution of Estates Act*

Notwithstanding anything contained in this Act, if a will is recorded in a Registry Office as provided by section 25 of the Registry Act **the recording of the will has the effect of vesting any real estate devised by the will in the person to whom it is devised**, to the extent of the interest so devised therein, but such real estate is subject to the provisions of the Probate Court Act.

- Directive 3900-002 was amended in July 2014 to allow the option of reflecting the beneficiaries under the Will as owners, with no qualifiers, enabled by the Will of the deceased if the certifying lawyer is satisfied that they are, in fact, the owners

Non-Standard Documents

- If there is a prescribed form, use it
- Registry forms vs Land Titles forms
- If you use a prescribed form as a starting point to create a non-standard document, please remove references to the form number and sections of the Act which don't apply
- Land Titles basic requirements
 - Naming Convention names
 - Civic address
 - LT proof of execution
 - No Schedule A description
 - CLE

Certificate of Legal Effect

- Be clear as to the effect of the document on title, namely what will the CRO look like as a result of the registration of the document
- Reflect interest holder, interest type, civic address, what benefit statement is to be added to the description, etc...
- Do not leave it up to staff to interpret

CRO Following Registration

- Please examine the CRO following a registration to make sure that the intended effect is reflected on title
- If mortgage registered and not on title, please advise us immediately and we will put it on immediately

Title Rectifications

- Original Form 49s are to be sent to Serge or Patrick
- No need to send Form 52 – we prepare
- Signature of the person that benefits from the encumbrance is the important one
- If it is a matter that is covered by section 69(a) of the Act, then a Form 49 Consent is not needed - email
 - Encumbrance is removed by operation of law
 - Judgments (5 years), Assignments and Assignments of Rent (after mortgage discharged), Mortgages (merger), Claims for Lien (no *CPL* within 90 days)

Questions?