

PRACTICE REVIEW REPORT 2010

INSTRUCTIONS

- (A) In this form:
 - (i) all references to the “Rules” are references to the *General Rules* of the Law Society of New Brunswick;
 - (ii) all references to the “Act” or the “Regulations” are references to the *Land Titles Act*, S.N.B. 1981, c.L-1.1, s.11 as amended and the regulations promulgated thereunder from time to time; and
 - (iii) all references to “Standards” are references to the *Standards for the Practice of Real Property Law* as defined by the Law Society of New Brunswick.
- (B) This report must be filed with the Society within twenty days of the Practice Review.
- (C) If space is insufficient, attach schedules detailing the additional information as requested.
- (D) Part A, and any schedule thereto, is to be signed and dated by the Member at the time of the Practice Review.
- (E) Part B is to be completed by the Inspector.

PART A

Part A is to be completed by the Member and delivered to the Inspector at the time of the Practice Review.

1. Name of Member and date of admission to the New Brunswick Bar:

2. Name under which practice is conducted:

3. Indicate appropriate style of practice:
____ Sole practitioner
____ Firm/Partnership
____ Association/Apparent Partnership
____ Other (specify) _____
4. Mailing Address: _____
Postal Code: _____ Telephone: _____
E-mail address: _____
Facsimile: _____

Circle the appropriate response where applicable and provide written explanations where requested. For Sections 5 through 19, if space is insufficient, attach a schedule with each page signed and dated.

5. Do you personally conduct the title searches for your real property transactions?
Always Usually Sometimes Rarely Never
6. If you do not personally conduct the real property title search, who conducts the search?
A Full-time Employee A Title Search Company An Independent Title Searcher Lawyer/Law Student
Please provide name of the individual or company if not full-time employee: _____

7. How long have you used the services of this title searcher? _____

8. Do you use the services of this title searcher exclusively? Yes No
If not, please explain: _____

9. Have you provided the title searchers engaged to perform title searches on your behalf with a copy of the Standards?
Yes No
10. If the answer to question 9 is no, have you reviewed the Standards with the title searcher?

11. Does the material provided by the title searcher include:
- | | | |
|--|-----|----|
| (i) Notes of all pertinent transactions in the chain of title? | Yes | No |
| (ii) Copies of all pertinent transactions in the chain of title? | Yes | No |
- If "NO", please provide explanation of what is provided:
-
-
-
- | | | |
|--|-----|----|
| (iii) Copies or excerpts of all pertinent plans? | Yes | No |
| (iv) Worksheets of the grantor/grantee indices checked? | Yes | No |
| (v) Sketches of all metes and bounds descriptions in the chain of title? | Yes | No |
12. Does the title searcher perform any ancillary or secondary searches? Please Explain.
-
-
-
13. Explain the method you use to access, reference or maintain title searches in your practice: i.e. are the title searches kept in the transaction file or separately. If they are kept separately, are the title searches accessible under an indexing system?
-
-
-
14. Do you personally perform sub-searches on closing, and if not who does?
- I do them. Performed by full-time employee. Performed by title searcher. Lawyer/Law Student
- If the sub-search is performed by a title searcher, is this the same title searcher employed to perform the primary chain of title search?
- Yes No
- If no, what is the name of the individual or company: _____
15. Do you have a standard checklist for real property transactions that you use in your practice?
- Yes No
- Explain how the checklist is employed.
-
-
-
16. If you do not personally perform the title searches, do you personally review all title searches for your property transactions? Explain how and when this is done.
-
-
-
17. Do you personally make the on-line submission for a PID Database Application?
- Yes No

If not, please explain how this is done and by whom.

18. Do you personally prepare the Form 1 Application for First Registration of Title?

Yes No

If not, please explain how this is done and by whom.

19. Do you personally prepare the on-line submission of the Application for First Registration of Title?

Yes No

If not, please explain how this is done and by whom.

20. Name any designated ESUB Creators in your office.

21. Explain the measures taken to ensure the strict confidentiality of the ESUB Password assigned to you as ESUB Lawyer Submitter.

22. What amount of excess liability insurance do you carry?

I _____
(Member under Practice Review)

do hereby certify that the foregoing information is true and correct to the best of my knowledge and the information available, and I will disclose to the Inspector all files, records and transactions of this law practice involving real property.

I further authorise and direct irrevocably that the Inspector immediately report in writing to the Law Society of New Brunswick any apparent breach of the Standards existing at the time of the Practice Review. I hereby expressly waive any confidentiality that may attach to such information as is in the possession of the Inspector.

Signature _____ Date _____

PART B
Part B is to be completed by the Inspector AFTER Part A has been fully completed by the Member.

I, _____ report that:
(Name of Inspector)

1. I have reviewed and am familiar with the requirements of Rules respecting Practice Reviews and I am familiar with the Standards respecting real property transactions in the Province of New Brunswick.

2. I have reviewed the files, records and transactions of the Member referencing:

PID Number

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____

3. To the best of my knowledge, I have been provided with all of the Member's files, records and transactions relating to the transactions under review.

4. I have reviewed the Instructions to Inspectors and for the purpose of this report have followed at least the minimum requirements of those guidelines.

5. As part of this review, I have completed the Inspector's Questionnaire, appended as Exhibit A to this report.

6. I have reviewed the Member's completed Part A prior to completion of this Part B.

7. Based on my review of the records relating to the enumerated transactions, during the review period:

(a) the Member has/has not kept and maintained such files, records and documents in connection with the real property transactions reviewed as are required by the Standards;

(b) if a Subscriber, the Member has/has not complied with the terms of the Subscription Agreement in all material respects; and

(c) no material contravention by the Member (including a non-Subscriber) under the Standards or the Subscription Agreement is apparent, except:

(If space is insufficient, attach a schedule of exceptions on your letterhead, signed and dated on each page.)

Check the appropriate box or boxes below:

8. In my view, based on my inspection of the enumerated files, the Member's practice:
- is in substantial compliance with the Standards and the Subscription Agreement;
 - is not in substantial compliance with the Standards and the Subscription Agreement;
 - poses a threat to the integrity of the Land Titles System

Name of Inspector: _____

Mailing Address: _____

Postal Code: _____ Telephone: _____

Date this report signed: _____

Signature of Inspector: _____

INSPECTOR'S QUESTIONNAIRE - EXHIBIT A

Name of Member: _____

Date of Inspection: _____

PID Number: _____

QUESTIONS	YES	NO	N/A	Comment
1. For each transaction examined is there evidence of a title search that:				
(a) is arranged in chronological order?				
(b) begins with good root of title?				
(c) shows clearly the date of completion of the search?				
(d) covers a period of at least 40 years?				
(e) searches each Grantor in the chain and (any Spouse) forward from the date of execution of his title document?				
(f) includes the type of instrument (deed, mortgage, etc.)?				
(g) notes all variations in the legal description?				
(h) confirms access to the property either by public street or highway or by right-of-way?				
(i) if the subject property depends upon a right-of-way over private property, has the title been searched to confirm that the right-of-way cannot be lost as a result of foreclosure of a mortgage registered prior to the granting of the right-of-way?				
(j) contains copies of any relevant Grant Maps?				
2. Have all exceptions contained in title documents in the chain of title been checked to verify that they do not impact on subject property?				
3. Does each transaction listed in the search have:				
(a) type of instrument?				
(b) book and page references and registration number?				
(c) registration date and date of execution?				
(d) names of parties?				
(e) signatures?				
(f) indications of unusual elements (restrictive covenants, recitals etc.)?				
(g) interest conveyed and words of limitation and whether joint tenancy or tenants in common?				
(h) indications of marital status?				

QUESTIONS	YES	NO	N/A	Comment
(i) a report or summary of each document in the chain or a copy of each pertinent document in the chain of title included in the file?				
4. Does the search contain sketches of all changes in the metes and bounds description in the chain of title?				
5. Is there a copy of all relevant plans in the file?				
6. If a conveyance is by a trustee in bankruptcy, has the assignment or receiving order been registered?				
(a) Where necessary, has the consent of the inspector(s) been granted?				
(b) Does the deed from the trustee confirm the method of administration and the appointment of inspector(s)?				
(c) Have deeds from receivers or managers and the party holding the debenture security been executed by all of those three parties?				
7. For all mortgages or encumbrances noted in the chain of title is there:				
(a) conclusive evidence of discharge (i.e. copy of discharge or note that the discharge has been reviewed and confirmed)?				
(b) if the discharge is registered within the last 20 years, has the mortgage been searched forward for assignments (non-conventional lenders only)?				
8. For all mortgagees deeds in the chain is there:				
(a) a statement that the sale was conducted pursuant to s.44 of the <i>Property Act</i> ?				
(b) evidence the mortgagee was searched from the date of execution for assignments, postponement and subordination agreements?				
(c) if the deed is from a receiver or manager has the deed been executed by the receiver or manager and also by the party holding the debenture security?				
9. If the chain of title contains a tax deed, was a full forty year search conducted to ascertain the continuance of certain right-of-ways and easements not extinguished by the tax deed sale?				
10. For all trust deeds in the chain, in the event that the beneficiaries are named in the deed, is there a statutory declaration or affidavit that the terms of the trust have been complied with? (<i>Registry Act</i>). See also subsection 58(2) of the <i>Land Titles Act</i> .				
11. If there is a quieting in the chain, is there a copy of the Certificate of Title noting the exceptions or encumbrances preserved in the Certificate?				

QUESTIONS	YES	NO	N/A	Comment
12. Have any recitals as to Probate been checked and confirmed?				
13. Have recitals less than 30 years old been verified?				
14. For each person who has owned the subject property in the last twenty (20) years:				
(a) has a judgement search for five (5) consecutive years been performed?				
(b) if the person owned the property for a period of less than five (5) years, have they been searched backwards as grantor to make up the five (5) year period?				
15. Where an instrument is executed under a power of attorney, is there evidence that the power of attorney has been registered?				
16. If a corporation was created by an amalgamation with other corporations, have all corporate names been searched for judgments back as grantor for five (5) years from the present date?				
17. If property is conveyed by a guardian or committee is there evidence that certified copies of the appointment and the appointee's authorization to sell have been registered?				
18. Is there a copy of the PLANET report with the search?				
19. Has the Member checked:				
(a) the property taxes and obtained a property tax certificate and is there a special notation to file if the property is registered under the FLIP program?				
(b) the water, sewerage and local improvement assessments?				
(c) that fire insurance for the correct property, amount and mortgagee has been obtained?				
(d) the water test for rural properties (if applicable)?				
(e) that all undertakings have been fulfilled:				
(i) by the solicitor for the vendor?				
(ii) by the solicitor for the purchaser?				
(f) that there has been confirmation obtained of proof of payment of rent where there are leases?				
20. Is there a Building Location Certificate (Survey) or Title Insurance on file?				
21. If the Member acted for more than one client in a transaction, has each party signed a "conflict letter"?				
CONVERSION TO LAND TITLES				
22. If a PID Databank Application (PDA) is sought does the Member's file include:				
(a) the current digital map (PLANET)?				

QUESTIONS	YES	NO	N/A	Comment
(b) a current property information report (PLANET)?				
(c) a title search in accordance with these standards?				
(d) evidence of the title search being completed and/or reviewed by the Member?				
(e) a property description prepared in accordance with the PID Databank Regulation 2000-40 <i>Land Titles Act</i> from the information revealed in the title search?				
(f) has the Subscribing Member kept a copy of the electronic PDA submission?				
(g) any adjudicators' ruling obtained by the submitting Member with respect to the PDA?				
23. If the Member is a Non-Subscriber and is submitting the PDA in paper form, has the Member retained a lawyer's certificate that:				
(a) the description complies with the PID Databank Regulation?				
(b) a transfer of the entirety of the parcel would not contravene the <i>Community Planning Act</i> ?				
24. Has the Member kept on file copies of all applicable documents in s. 22 and 23 of this Inspector's Questionnaire – Exhibit A?				
25. For each Application For First Registration of Title (AFR) submitted by the Member in the transactions under review, does the file contain:				
(a) the digital property map (PLANET), dated current with the AFR?				
(b) the real property report (PLANET), dated current with the AFR?				
(c) a title search in accordance with these standards?				
(d) evidence of the title search being completed and/or reviewed by the Member?				
(e) current PID Databank description?				
(f) prescribed evidence of the identity of each party in the AFR confirmed in accordance with the Naming Conventions Regulations (<i>Land Titles Act</i> - Regulation 2000-39)?				
(g) if a name in an instrument varies from the name shown for identification purposes, has the Member retained satisfactory evidence documenting the variance?				
(h) a copy of the AFR Worksheets (for Subscribers)?				
(i) (For Non-Subscribers) original signed Form 1 (AFR) and Form 3 (Certificate of Title)?				

QUESTIONS	YES	NO	N/A	Comment
(j) evidence of delivery to the owner (or to one of the owners on behalf of all) or to the owner's lawyer a completed and signed Form 1 (or, for Subscribers, the electronic printout)?				
(k) Affidavit of Applicant (Form 2) with signed Form 1 (or electronic printout) attached and duly sworn by the owner?				
(l) any adjudicators report obtained by the submitting Member in respect of the AFR?				
(m) the Certificate of Registered Ownership issued in respect of the AFR?				
26. If the parcel subject of the transaction has been converted to Land Titles, in addition to the off-title investigations prescribed in the Standards, does Member's file contain:				
(a) a copy of the current CRO for each applicable PID?				
(b) the current PID Databank Description for each parcel?				
(c) copies or reports of all encumbrances (except those to be retired on closing) revealed on the CRO?				
(d) if the parcel is described by reference to a plan, a copy of the plan?				
(e) a copy of the Member's Certificate of Effect filed with any Land Titles document?				
27. If the transaction was conducted pursuant to the <i>Registry Act</i> , does the Member's file contain:				
(a) a copy of the Member's request for exemption?				
(b) evidence that the Member has included the PID number on all registered documents?				
28. Are the transactional documents registered on a timely basis?				
ELECTRONIC SUBMISSION This section applies only to instruments designated by subsection 17.1(1) of the <i>Land Titles Act</i> to be filed only electronically referred to herein as "ESUB instruments"				
29. If the Member is the authenticator of an ESUB instrument, does the Member's file contain:				
(a) a printed version of the instrument in electronic format as authenticated?				
(b) the original instrument in paper format duly executed together with the original affidavit of execution, certificate of execution or affidavit of corporate execution, or if the instrument is executed under power of attorney a statutory declaration, that accompanies the instrument?				

QUESTIONS	YES	NO	N/A	Comment
(c) an original duly executed marital property affidavit (where required under the <i>Land Titles Act</i>) that accompanies the instrument?				
30. If the Member is the authenticator of an ESUB instrument:				
(a) is the paper copy of the instrument in prescribed form?				
(b) does the electronic instrument that is authenticated contain every material provision and particular found in the original instrument in paper format?				
(c) where the instrument in paper format has been witnessed by someone other than the Member is there anything apparent on the face of the instrument that provides a reason to believe that: (i) the person who certified as to the due execution of the instrument was not lawfully entitled to do so or the person who took the affidavit of the witness was not lawfully entitled to do so? (ii) the instrument was signed or witnessed by a person who is not the person who is purported to have signed or witnessed the instrument?				
31. If the Member is the submitter of the ESUB instrument, does the member's file contain:				
(a) a copy of the duly executed marital property affidavit (where required under the <i>Land Titles Act</i>) that accompanies the instrument?				
(b) in the case of a Transfer , the original duly executed Affidavit of Value?				
32. If the Member has filed an ESUB instrument in paper format does the member's file contain:				
(a) a copy of any exemption received from the Registrar General pursuant to paragraph 17.1 (6) (c) of the <i>Land Titles Act</i> ?				
(b) documented reasons for not submitting the ESUB instrument electronically?				
RULES ON CASH TRANSACTIONS				
33. If the member has accepted cash in this transaction, was the amount less than \$7,500?				
RULES ON CLIENT IDENTIFICATION				
34. Has the member verified client identity in accordance with the <i>Rules on Client Identification</i> ?				

INSTRUCTIONS TO INSPECTORS

I INTRODUCTION

The Practice Review Report is the means by which the Law Society may determine whether or not

- a) the Member is practicing in accordance with the Standards; and whether,
- b) the Member is conducting his or her practice in accordance with the terms of the Subscription Agreement.

The minimum standards of review are described in Part IV of these instructions. If additional tests or other procedures are considered necessary in order to report on the matters described above, such additional tests and procedures should be appended to the Inspector's Questionnaire with reasons and procedures for conducting such tests, plus comments on the results of each additional test. Where it is apparent that the Member has rendered a decision without observing, in all material respects, the Standards, conclusive evidence supporting the Member's decision must be produced (i.e. an affidavit or statutory declaration) to justify the exception. The Inspector is, nonetheless, expected to note and report on the exception.

Further, it is expected that an Inspector will be knowledgeable as to the practice of real property law in the Province of New Brunswick beyond the standard of a general practitioner. Familiarity with all applicable standards, legislation and regulations is assumed.

It is recognized that certain questions in the Inspector's Questionnaire will not necessarily apply depending on the relative complexity of the transaction. In those circumstances it is permissible for the Inspector to mark such questions as "N/A" (non-applicable).

II FORM

The Practice Review Report, or a computer-generated reproduction as supplied by the Law Society, must be used when reporting to the Law Society. If the space on the form for disclosing exceptions is insufficient, a reference should be made to accompanying pages where those remarks are submitted on the Inspector's letterhead with each page signed and dated by the Inspector.

III. SUBSCRIBERS AND NON-SUBSCRIBERS

Only Subscribers are required to comply with the Subscription Agreement, which will not form a part of the standards otherwise applicable to a particular Member.

Non-Subscribers are not required to:

- a) deliver to Service New Brunswick a Certificate of Effect with instruments tendered for registration;
- b) include PID number(s) on instruments tendered for registration under the *Registry Act*;

- c) register all PDAs and AFRs on-line through web based applications; or
- d) include residential property tax credit applications with application instruments tendered for registration.

IV MINIMUM STANDARDS

The scope of the Inspector's review with respect to the specified transactions will depend partly upon the Inspector's professional judgment but must include the following:

- a) comprehension of all of these Instructions and the Standards which are reproduced as part of this form;
- b) Member's Part A duly completed, and retain a copy;
- c) note the dates upon which field work was conducted;
- d) review the list of the Member's submitted AFR's provided by the Society;
- e) select a minimum of three (3) transactions or files and compare the supporting documents in these files with the Standards to ensure compliance with the Standards.

VI. EXCEPTIONS

The Inspector should NOT exercise his or her usual professional judgment in determining the materiality of any exceptions discovered. The Inspector's responsibility is to report to the Law Society ALL exceptions discovered in the course of the Practice Review. The Law Society will evaluate the exceptions and determine what action, if any, is appropriate under the circumstance.

Types of exceptions that might arise:

- a) chain of title of less than 40 years;
- b) reliable root of title;
- c) missing documents or copies thereof;
- d) reliance on inappropriate or incomplete information; and
- e) lack of supporting evidence.

Note that these are examples only and by no means close the class of possible exceptions.

Where differences of opinion exist between the Inspector and the Member, the Member will have the option of writing to the Law Society on the subject. It is expected that any difference of opinion will have been discussed and, where possible, resolved prior to completing the report; however, a plausible explanation for an exception to the Standards does not absolve the Inspector from reporting Member's lack of compliance.