



# **BILL NO. 156**

*Government Bill*

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*2nd Session, 60th General Assembly  
Nova Scotia  
57 Elizabeth II, 2008*

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## **An Act to Amend Chapter 6 of the Acts of 2001, the Land Registration Act**

CHAPTER 19  
ACTS OF 2008

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR  
MAY 27, 2008**

The Honourable Jamie Muir  
*Minister of Service Nova Scotia and Municipal Relations*

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*Halifax, Nova Scotia  
Printed by Authority of the Speaker of the House of Assembly*

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**An Act to Amend Chapter 6  
of the Acts of 2001,  
the Land Registration Act**

Be it enacted by the Governor and Assembly as follows:

**1** Clause 2(d) of Chapter 6 of the Acts of 2001, the *Land Registration Act*, is amended by striking out “from a failure of the land registration system established by” in the second and third lines and substituting “in accordance with”.

**2** Subsection 3(1) of Chapter 6, as amended by Chapter 19 of the Acts of 2002 and Chapter 38 of the Acts of 2004, is further amended by

(a) adding immediately after clause (a) the following clause:

(aa) “certificate of legal effect” means a certificate prepared and submitted by a qualified lawyer setting out the legal effect of a document in the manner prescribed in the regulations made by the Minister;

(b) striking out clause (d) and substituting the following clause:

(d) “holder” or “interest holder” includes a recorded assignee of the interest holder and an agent empowered to act for the interest holder;

(c) striking out clause (m) and substituting the following clause:

(m) “parcel” means an area of land that may be owned in fee simple absolute, but does not mean a structure, building or part thereof unless the structure, building or part thereof is a unit as defined by the *Condominium Act*;

(d) adding immediately after clause (n) the following clause:

(na) “parcel registered pursuant to this Act” means a parcel for which an application for registration of title pursuant to Section 37 has been accepted by a registrar;

(e) adding immediately after clause (p) the following clause:

(pa) “proceeding” means an action or application;

(f) striking out “solicitor” in the first line of clause (q) and substituting “lawyer”;

(g) striking out “*Barristers and Solicitors*” in the fifth and sixth lines of clause (q) and substituting “*Legal Profession*”;

(h) adding “or “parcel register”” immediately before “means” in the first line of clause (t); and

(i) striking out “on the records of the registrar” in the second line of clause (u) and substituting “in a register”.

**3** Section 5 of Chapter 6 is repealed.

**4 Subsections 10(2) to (4) of Chapter 6 are repealed and the following subsection substituted:**

- (2) Unless restricted by regulations made by the Minister, a person who has paid the appropriate prescribed fee
- (a) may examine;
  - (b) shall be furnished with a copy of;
  - (c) shall be furnished with a copy certified by a registrar of,
- any register and any registered or recorded instruments in the register.

**5 Section 11 of Chapter 6 is repealed and the following Section substituted:**

- 11 (1) A parcel register shall be established for each parcel that is registered pursuant to this Act.
- (2) Where an instrument that results in the subdivision of land is accepted for registration, a new parcel register shall be established for each parcel created or affected by the subdivision.

**6 (1) Section 13 of Chapter 6 is amended by adding immediately after subsection (1) the following subsection:**

- (1A) A parcel register may include such additional information as the Registrar General considers expedient.

**(2) Subsection 13(5) of Chapter 6 is repealed and the following subsection substituted:**

- (5) On subdivision, all interests and qualifications in the parcel register of the parcel to be subdivided shall be placed in the parcel register for each parcel created on subdivision and shall be removed only in accordance with the regulations.

**7 Subsection 14(2) of Chapter 6 is repealed and the following subsections substituted:**

- (2) A document that is registered or recorded in a register shall be assigned an identifier by the registrar.
- (3) Registers shall be maintained so that a document registered or recorded in a register may be viewed or copied by reference to its identifier.

**8 Section 15 of Chapter 6 is repealed.**

**9 Section 18 of Chapter 6 is repealed and the following Section substituted:**

- 18 (1) A document submitted for registration, other than a plan of subdivision or a notice of subdivision, shall be accompanied by a certificate of legal effect certifying the legal effect of the document.

(2) Where prescribed in the regulations, a document submitted for recording shall be accompanied by a certificate of legal effect certifying the legal effect of the document.

(3) A registrar is entitled to rely upon a certificate of legal effect and such other information as prescribed in the regulations.

(4) The qualified lawyer who signed the certificate of legal effect is liable to the Registrar General with respect to any negligent error or omission in the certificate of legal effect if the Registrar General has been required to pay compensation pursuant to this Act as a result of the negligent error or omission in the certificate within ten years after the date of the certificate.

(5) Liability under subsection (4) may be enforced by the Registrar General joining the qualified lawyer in an action brought against the Registrar General for compensation.

**10 Section 19 of Chapter 6 is repealed and the following Section substituted:**

19 Where a document is submitted for registration or recording pursuant to this Act, the legal description for the parcel shall be referred to in the manner prescribed in the regulations.

**11 Sections 19A and 20 of Chapter 6 are repealed and the following Section substituted:**

20 A parcel register is a complete statement of all interests affecting the parcel, as are required to be shown in the qualified lawyer's opinion of title pursuant to Section 37, subject to any subsequent qualifications, revisions of registrations, recordings or cancellation of recordings in accordance with this Act.

**12 Section 23 of Chapter 6 is repealed and the following Section substituted:**

23 (1) A registrar shall not accept for registration or recording a plan of subdivision, instrument of subdivision or notice of subdivision with respect to a parcel that is not registered pursuant to this Act.

(2) Where a plan of subdivision, instrument of subdivision or notice of subdivision that results in the consolidation of lands is submitted for registration, a registrar shall not accept the document unless the parcel from which any land is taken and the parcel to which any land is added are registered pursuant to this Act.

(3) A registrar shall not accept for registration a deed to a parcel that has been approved for consolidation with another parcel unless the deed contains a legal description of the consolidated parcel and the parcel from which any land is taken and the parcel to which any land is added are both registered pursuant to this Act.

**13 Section 26 of Chapter 6 is amended by adding “, if any,” immediately after “court” in the fourth line.**

**14 Subsections 28(1) and (2) of Chapter 6 are repealed and the following subsection substituted:**

(1) Where an instrument discloses that a party to an instrument is a trust, or holds an interest in trust, the party's interest shall be registered or recorded in the name of the trustee or trustees only, followed by a notation that the interest is held in trust.

**15 Sections 33 to 35 of Chapter 6 are repealed and the following Sections substituted:**

33 (1) The Registrar General may correct errors and omissions in a parcel register in the circumstances and in the manner prescribed in regulations made by the Minister.

(2) The Registrar General may amend any information in a register to bring a parcel register into conformity with regulations made by the Minister, as amended from time to time.

34 (1) A person who objects to and is aggrieved by a registration, a recording or other information contained in a parcel register may submit a request in writing to the Registrar General seeking correction of the registration, recording or information objected to.

(2) The Registrar General shall investigate the facts surrounding the person's request and may, after consideration of written or oral submissions,

(a) correct the registration, recording or information as requested in the circumstances and in the manner prescribed in regulations made by the Minister;

(b) deny the person's request in whole or in part; or

(c) direct the person to pursue a remedy available under this Act, including taking a proceeding under this Act, before continuing with the request.

35 (1) A person who objects to and is aggrieved by a registration in a parcel register may commence a proceeding before the court requesting a declaration as to the rights of the parties, an order for correction of the registration and a determination of entitlement to compensation, if any.

(2) Subject to Section 92A, and unless otherwise ordered by the court, the following are parties to any proceeding pursuant to this Section:

(a) all registered owners of the parcel in question

(i) at the time of the registration objected to, and

(ii) at the time that the proceeding is commenced; and

(b) the person aggrieved.

(3) A person commencing a proceeding pursuant to this Section shall provide written notice, at the time the proceeding is commenced, to all interest holders appearing in the parcel register.

(4) The court shall determine the rights of the parties according to law, subject to the following principles:

(a) the person aggrieved may have the registration corrected;

(b) any correction of the registration shall preserve the right to compensation of a person who obtained a registered interest from a registered owner who registered the interest objected to; and

(c) the court may, where it is just and equitable to do so, confirm the registration.

(5) Where the court corrects the registration objected to, but the correction of the registration cannot fully nullify the effects of the registration, or where the court determines that it is just and equitable to confirm the registration, the court shall determine which of the parties suffered loss by reason of the registration and order

(a) that any party who suffered loss be compensated in accordance with subsection (7) and Sections 85 and 86; or

(b) payment of damages by one party to another.

(6) In determining whether it is just and equitable to confirm the registration objected to, the court shall consider

(a) the nature of the ownership and the use of the parcel by the parties;

(b) the circumstances of the registration;

(c) the special characteristics of the parcel and their significance to the parties;

(d) the willingness of any of the parties to receive compensation in lieu of an interest in the parcel;

(e) the ease with which the amount of compensation for a loss may be determined; and

(f) any other circumstances that, in the opinion of the court, are relevant to its determination.

(7) A registered owner is not entitled to compensation or to retention of any of the benefits of a registration made in error unless that owner

(a) believed that the registration was authorized by law;

(b) had no knowledge of the facts that made the registration unauthorized; and

(c) gave consideration for the registered interest or detrimentally relied upon the registration.

**16 (1) Subsection 37(2) of Chapter 6, as amended by Chapter 19 of the Acts of 2002, is further amended by striking out “Section 46” in the first line and substituting “Sections 46 and 46A”.**

**(2) Subsection 37(3) of Chapter 6, as enacted by Chapter 38 of the Acts of 2004, is amended by striking out “A” in the first line and substituting “Subject to Section 46A, a”.**

**(3) Subsection 37(4) of Chapter 6, as amended by Chapter 19 of the Acts of 2002, Chapter 38 of the Acts of 2004 and Chapter 15 of the Acts of 2006, is further amended by**

**(a) striking out clause (b) and substituting the following clause:**

(b) an opinion of title certified by a qualified lawyer;

**and**

**(b) striking out clause (g) and substituting the following clause:**

(g) the parcel identification number assigned to the parcel in the manner prescribed in regulations made by the Minister;

**(4) Subsections 37(5) to (8) of Chapter 6 are repealed and the following subsections substituted:**

(5) Where the application is complete, the registrar shall accept the application for registration and shall index the registered interests in the parcel, together with and subject to any encumbrances, liens, estates, qualifications or other interests against or in respect of the parcel as are specified in the opinion of the qualified lawyer.

(6) Where the application is not complete, the registrar shall reject the application and return it to the applicant.

(7) An application shall include sufficient information concerning the size and location of the parcel as will permit the registrar to assign the parcel identification number for the parcel and create a geographical representation of the parcel in Provincial mapping, showing it in relation to neighbouring parcels with reasonable accuracy.

**(5) Subsection 37(9) of Chapter 6 is repealed and the following subsection substituted:**

(9) The qualified lawyer’s opinion of title required in clause (4)(b) shall be prepared in accordance with the relevant Nova Scotia Barristers’ Society practice standards in effect at the time of the opinion and

(a) shall set out

(i) the interests being registered in the parcel and, subject to Section 40, all encumbrances, liens, estates, qualifications and other interests affecting the parcel, and

(ii) the direct or indirect right of access to the parcel, if any, from a public street, highway or navigable waterway to the parcel,

as appear on the records at the land registration office in the county where the parcel is situated; and



(b) shall be based upon a title search, as evidenced in an abstract of title, that shows a chain of title to the standard required to demonstrate a marketable title pursuant to the *Marketable Titles Act* or to the standard required pursuant to the *Limitation of Actions Act* or any other enactment or the common law, or to such lesser standard as the Registrar General may approve.

**(6) Section 37 of Chapter 6, as amended by Chapter 19 of the Acts of 2002, Chapter 38 of the Acts of 2004 and Chapter 15 of the Acts of 2006, is further amended by adding immediately after subsection (11) the following subsection:**

(11A) Liability under subsection (11) may be enforced by the Registrar General joining the qualified lawyer in an action brought against the Registrar General for compensation.

**(7) Subsection 37(13) of Chapter 6 is repealed and the following subsection substituted:**

(13) Notwithstanding the *Freedom of Information and Protection of Privacy Act*, an abstract of title prepared pursuant to this Section may only be disclosed by the Registrar General to an insurer of the qualified lawyer who prepared it for purposes related to claims, to the Lawyers' Insurance Association of Nova Scotia for purposes related to claims or to the Nova Scotia Barristers' Society for purposes related to professional responsibility or competency.

**17 Chapter 6 is further amended by adding immediately after Section 37 the following Section:**

37A (1) A person seeking to register an interest in a parcel that is registered pursuant to this Act may apply to the registrar of the district in which the affected parcel is situated to have the interest registered pursuant to this Act if

(a) the person who acquired the interest has complied with Part V of the *Municipal Government Act*;

(b) the person from whom the interest is transferred is the owner of the interest;

(c) the interest is transferred by a document effective at law to transfer the interest or by operation of law;

(d) the document submitted to effect the registration of the interest is accompanied by a certificate of legal effect, if required by Section 18; and

(e) the document submitted to effect the registration of the interest includes the parcel identification number for the affected parcel.

(2) An interest is registered when the identifier assigned to the document accepted for registration is entered in the register.

(3) The date and time of registration of an interest is deemed to be the date and time when the document describing the interest was received and indexed by the registrar.

(4) Where an interest has been registered pursuant to this Section, the registrar shall revise the register to show the new owner of the parcel.

**18 Section 40 of Chapter 6 is repealed and the following Section substituted:**

40 For the purpose of this Act, the following interests are not interests that may be included in a parcel register:

- (a) an unreleased security interest in a residential mortgage that is more than forty years old and that has not been amended or supplemented by an instrument registered during the preceding forty years;
- (b) an unreleased dower interest;
- (c) an interest that has escheated to Her Majesty from any person other than the immediate predecessor in title of the applicant pursuant to Section 37;
- (d) a conditional sales agreement or lease with respect to a fixture dated more than ten years prior to the date of the application pursuant to Section 37.

**19 Section 44 of Chapter 6 is repealed and the following Section substituted:**

44 (1) Where a parcel is registered pursuant to this Act, this Act applies to an interest in the parcel, notwithstanding the fact that the instrument evidencing the interest was previously registered pursuant to the *Registry Act*.

(2) An instrument registered pursuant to the *Registry Act* after a parcel is registered pursuant to this Act, is ineffective in relation to the parcel or an interest appearing in the parcel register.

**20 Subsection 52(2B) of Chapter 6, as enacted by Chapter 7 of the Acts of 2003, is amended by**

- (a) striking out “or” at the end of clause (a);
- (b) striking out the period at the end of clause (b) and substituting “; or”; and
- (c) adding the following clause:
  - (c) a lien pursuant to the *Maintenance Enforcement Act* is recorded.

**21 Subsections 61(2) and (3) of Chapter 6 are repealed and the following subsections substituted:**

(2) A registered owner may create, by grant or otherwise, a right of way, restrictive covenant or easement for the benefit of the registered owner and that right-of-way, restrictive covenant or easement may be recorded pursuant to this Act.

(3) Where dominant and servient tenement parcels are registered in the name of the same person, a right of way, restrictive covenant or easement referred to in subsection (2) is not merged by reason of the common ownership.

**22 Chapter 6 is further amended by adding immediately after Section 61 the following Section:**

61A (1) A person may, and is deemed always to have been able to, create, by grant or otherwise, in favour of

- (a) the Crown or a Crown corporation or agency;
- (b) a municipality;
- (c) a public utility,

an easement, without a dominant tenement, for any purpose necessary for the operation and maintenance of the grantee's undertaking, including a right to flood.

(2) To the extent necessary to give effect to subsection (1), the rule requiring an easement to have a dominant and servient tenement is abrogated.

**23 (1) Subsection 63(2) of Chapter 6 is repealed and the following subsection substituted:**

(2) The notice pursuant to subsection (1) shall include an affidavit outlining the basis for the objection and the reason why the recorded interest or judgment should be cancelled.

**(2) Clause 63(3)(c) of Chapter 6 is repealed.**

**(3) Subsection 63(4) of Chapter 6 is amended by**

- (a) adding "General" immediately after "Registrar" in the first line; and**
- (b) striking out clause (a) and substituting the following clause:**

(a) that sixty days has expired after the service of the notice pursuant to subsection (1) on the holder of the interest and, where the interest is a servitude, on the owner of every parcel identified in the recorded document as land to which the benefit of the servitude is annexed;

**24 Subsection 65(5) of Chapter 6 is repealed and the following subsection substituted:**

(5) On the coming into force of this Act, a judgment registered pursuant to the *Registry Act* before that date has the effect of a judgment recorded in the judgment roll pursuant to this Act, with the exception that

- (a) it has effect for twenty years from the date of the judgment and may not be renewed: and
- (b) it is not subject to clause 66(4)(e), subsection 66(5) and Section 67.

**25 Clause 66(4)(e) of Chapter 6 is repealed and the following clause substituted:**

(e) the expiration of five years from the date of the judgment or the date of the recording of the latest renewal of the judgment.

**26 Chapter 6 is further amended by adding immediately after Section 66 the following Section:**

- 66A (1) In subsection (2),
- (a) “given name” includes an initial used in the place of a given name; and
  - (b) an initial and a given name are considered to be commonly used variations of each other only where the initial is the same as the first letter of the given name.
- (2) In this Act, there is a material difference in names where
- (a) the surname of the debtor named in the judgment certificate at the time the judgment is entered is not identical to the name being compared;
  - (b) there is not any given name in one name that is identical to or a commonly used variation of any given name in the other name;
  - (c) one name contains the same number of given names as the other name but one of the given names in one name is not identical to or a commonly used variation of any of the given names in the other name; or
  - (d) one name contains fewer given names than the other name but one of the given names in the name with the fewer given names is not identical to or a commonly used variation of any of the given names in the other name.

**27 Subsection 68(1) of Chapter 6 is amended by striking out “the” the first time it appears in the third line and substituting “a”.**

**28 Subsection 85(1) of Chapter 6 is repealed and the following subsection substituted:**

- (1) Subject to subsection (4), subsection 35(7) and Section 86, a person is entitled to compensation if the person sustains a loss
- (a) due to an error or omission in a parcel register;
  - (b) because the person has an interest referred to in Section 40 and the parcel in which the interest is held has been registered pursuant to this Act free of that interest; or
  - (c) for which the person has obtained an order for compensation pursuant to Section 35.

**29 Section 86 of Chapter 6 is repealed and the following Section substituted:**

- 86 (1) A person is not entitled to compensation for a loss pursuant to subsection 85(1) if the loss was sustained because
- (a) the person caused or effected the error, omission or registration that caused the loss;

(b) the person had actual knowledge of a right to request correction of the error, omission or registration and failed to request a correction within a reasonable time;

(c) the person took an action or failed to take an action either after they had actual knowledge of the error, omission or registration or after the error, omission or registration would have been apparent to a reasonable person;

(d) a recorded interest in the parcel register has lost validity or changed effect due to matters of fact or law subsequent to the recording of the interest;

(e) there is a discrepancy between the legal description or Provincial mapping in the parcel register and the actual location, boundaries or extent of the parcel in question;

(f) an overriding interest was not recorded in the parcel register;

(g) there is an error in a mailing address in the parcel register;

(h) there is an error in information included in the parcel register pursuant to subsection 13(1A); or

(i) there was an interruption in the availability of services at a land registration office or of access to Property Online.

(2) A person's entitlement to compensation for a loss pursuant to subsection 85(1) shall be reduced by the amount of the loss sustained because

(a) the person caused or effected, in whole or in part, the error, omission or registration;

(b) the person failed to request a correction of the error, omission or registration within a reasonable time after the person had actual knowledge of the right to request a correction;

(c) the person failed to submit a claim to the Registrar General for compensation or commence an action for compensation within a reasonable period of time after the person had actual knowledge of a right to submit a claim or commence an action; or

(d) the person took an action or failed to take an action either after the person had actual knowledge of the error, omission or registration or after the error, omission or registration would have been apparent to a reasonable person.

**30 (1) Subsection 87(1) of Chapter 6 is amended by adding "in writing" immediately after "claim" in the second line.**

**(2) Section 87 of Chapter 6 is further amended by adding immediately after subsection (1) the following subsection:**

(1A) The Registrar General shall investigate a person's claim and may, after consideration of written or oral submissions,

- (a) accept the person's claim in whole or in part and determine the amount of compensation owing;
- (b) reject the person's claim in whole or in part; or
- (c) direct the person to pursue a remedy available under this Act, including taking a proceeding under this Act, before continuing with the claim.

**31 Subsection 88(2) of Chapter 6 is amended by adding immediately after clause (b) the following clause:**

- (ba) stay the action and direct the person to pursue a remedy available under this Act, including taking a proceeding under this Act, before continuing the action;

**32 Section 90 of Chapter 6 is repealed and the following Section substituted:**

90 (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.

(4) The Registrar General's decision must be in writing.

(5) A decision of the Registrar General pursuant to this Section is final.

**33 Subsection 92(1) of Chapter 6 is amended by striking out "In any proceeding with respect to an interest" in the first and second lines and substituting "Subject to this Act, in any proceeding with respect to a parcel registered pursuant to this Act".**

**34 Chapter 6 is further amended by adding immediately after Section 92 the following Section:**

92A (1) A person commencing a proceeding affecting a parcel registered pursuant to this Act, or the administration of this Act, shall provide written notice to the Registrar General at the time the proceeding is commenced.

(2) The Registrar General may, at the Registrar General's sole discretion, intervene in or become a party to the proceeding referred to in subsection (1).

**35 Subsection 94(1) of Chapter 6, as amended by Chapter 38 of the Acts of 2004, is further amended by**

**(a) striking out clause (cd) and substituting the following clause:**

(cd) respecting the circumstances and manner in which errors or omissions in a parcel register may be corrected;

**and**

**(b) adding immediately after clause (d) the following clause:**

(da) prescribing restrictions on the ability to examine or copy the contents of a register;

**36 Chapter 6 is further amended by striking out “solicitor”, “solicitor’s” or “solicitors” wherever they appear in Chapter 6, except in the provisions of Chapter 6 amended by this Act, and substituting in each case “lawyer”, “lawyer’s” or “lawyers”, respectively.**

**37 This Act comes into force on such day as the Governor in Council orders and declares by proclamation.**

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