

Notations are not defined in the *Land Title Act*, R.S.B.C. 1996, c. 250. Legal notations are endorsed on title and will appear on the title search. While legal notations are for informational purposes, they can have a significant impact on the property. The document giving rise to the notation is filed at the land title office, and rather than being registered as a charge, it is endorsed on title as a legal notation. The *Land Title Act* does use the term “endorse” when dealing with legal notations; however, the words “endorse”, “register”, and “file” are often used interchangeably in practice.

Because notations on title can have the same practical effect as a charge, the lawyer should analyze and report upon these as on other encumbrances.

In most cases legal notations provide information or notice of the matter to which the legal notation relates. Some legal notations have the effect of preventing any dealing with the title without first meeting a particular condition or obtaining consent. Therefore, it is very important to order and review a copy of what was filed to initiate the registration of the notation on title and to read it in light of the appropriate legislation.

Notations may include references to covenants or easements benefitting the land and to the application of certain statutory provisions. If a restrictive covenant or easement has been created over other land for the benefit of a parcel (that is, the parcel is the dominant tenement) or if a parcel benefits from a party wall agreement, the benefit is registered on title as a notation. In addition, many statutes provide for a notation to be made against the title.

Some notations made under statute do not have to be endorsed on the title to affect the title. Thus, if the parcel is located in an agricultural area, the *Agricultural Land Commission Act*, S.B.C. 2002, c. 36, may apply, or if it is next to an airport, the *Aeronautics Act*, R.S.C., 1985, c. A-2, may apply, even without there being a legal notation on the title to that effect. It may be wise to check further than the land title office.

See chapter 68 (Legal Notations and Charges) of the *Land Title Practice Manual*, 3rd ed., vol. 3 (CLEBC, 2007–), for a comprehensive list of legal notations.

4. CHARGES, LIENS, AND INTERESTS [§4.11]

a. Reviewing Charges [§4.12]

Charges, liens, and interests that affect the title to a parcel are listed on the title under a heading of that name. The listing for each charge includes:

- its description;
- the number under which it was registered;
- the date and time of registration;
- the registered owner of the charge; and
- any remarks concerning the charge.

The purchaser’s lawyer should obtain and review copies of all charges and encumbrances on title. Filed or prescribed mortgage or charge terms should be reviewed if the mortgage or charge is to remain on title. The description of a charge is not always either wholly accurate or complete; therefore, the document itself and any applicable plans or documents filed in support should be examined.

The lawyer should examine provisions of a document that creates a lien, charge, encumbrance, or notation on title in order to determine the actual interest created as well as its effect. Registration of a document does not necessarily guarantee its enforceability. (See, for example, s. 221(2) of the *Land Title Act*, which provides that registration of a restrictive covenant is not a

determination by the registrar of its essential nature or enforceability, and s. 26(2) of the *Land Title Act*, which provides that registration of a charge does not constitute a determination by the registrar that the instrument creates an interest in land or that the charge is enforceable.)

Charges created by those with an interest in the parcel of land include assignments of rents, caveats, easements, equitable charges, judgments, leases, life estates, certificates of pending litigation, mining agreements, mortgages, options to lease or to purchase, party wall agreements, *profits à prendre*, restrictive covenants, rights of first refusal, rights-of-way, rights to purchase, subleases, submortgages, and subrights to purchase (although note that subrights to purchase may no longer be registered; see s. 200 of the *Land Title Act*).

Obtain and review copies of notices respecting fixtures or manufactured homes under the *Personal Property Security Act*. The statute under which an encumbrance or notation has been made should also be reviewed to ascertain its effect. For example, a notation under s. 99 of the *Family Law Act*, S.B.C. 2011, c. 25, actually prohibits the registration of a transfer, mortgage, or agreement for sale of the land; it does not merely establish the priority of the interest claimed by the spouse who registers the notation.

Easements over adjacent land should be examined to determine their nature, dimensions, enforceability, and obligations. Rights-of-way should be reviewed to determine their dimensions and obligations.

The lawyer should review the charges in light of the purchase contract. All charges not excepted in the purchase contract must be removed. For example, the following charges must be removed before completion by the vendor unless otherwise agreed between the parties:

- certificates of pending litigation;
- caveats;
- entries under the *Land (Spouse Protection) Act*, R.S.B.C. 1996, c. 246;
- tax sale notices;
- unpaid maintenance fees under the *Strata Property Act*;
- rights of first refusal;
- fixture notices registered against title under the *Personal Property Security Act* and the *Land Title Act* by or on behalf of a secured party who holds a security interest over the fixtures; and
- charges under the *Land Tax Deferral Act*, R.S.B.C. 1996, c. 249 (these may be paid out and discharged using the sale proceeds; the lawyer clearing title must provide the land title office with a copy of the letter paying such sum to the Minister of Finance, which is to be submitted concurrently with the transfer).

In many cases, these charges are dealt with by undertakings to pay; for example, unpaid maintenance fees under the *Strata Property Act* are addressed by undertaking to pay out the strata management company. The lawyer must be in possession of an original Form F—Certificate of Payment or a true copy thereof at the time of registration of the transfer; to obtain a Form F, the vendor must pay outstanding fees or make arrangements to pay them. If a strata lot owner is not current with their payments, most strata corporations will issue the Form F directly to the purchaser's lawyer on appropriate undertakings (for example, to disburse the amount owing to pay off arrears directly from the sale proceeds) as contemplated in s. 115(1)(b) of the *Strata Property Act*. Under s. 6.10 of the Strata Property Regulation (B.C. Reg. 43/2000), the maximum fee chargeable by a strata corporation is \$15. Section 115 of the *Strata Property Act* requires the strata corporation to issue the Form F within one week; however, the Form F is commonly required much sooner, and strata corporations invariably charge significant rush fees over and above the regulated \$15 maximum.

Caveats and certificates of pending litigation do not need to be removed if the purchaser agrees to take title subject to these charges; see the discussion of s. 216(2) at chapter 15 (Land Title Act, Part 14 (ss. 197 to 237)—Charges) of the *Land Title Practice Manual*, 3rd ed. (CLEBC, 2007–).

If it is not possible to use the purchase funds for payout, the vendor should be advised of their obligations well in advance of the completion date so that bridge financing can be arranged, if necessary.

b. Assignment by Charge Holder [§4.13]

The registered charge holder may assign a charge. The assignment of charge must be registered in order to appear on title.

c. Priority [§4.14]

Registered charge holders may enter into an agreement to establish or confirm the priority of their respective charges and, if registered, the priority agreement will be shown on the title. (See s. 28 of the *Property Law Act* as to the priorities of mortgage advances in the absence of a priority agreement.)

d. Certificate of Charge [§4.15]

A registered owner of a charge can apply for the issuance of a certificate of charge evidencing ownership of the charge. A modification, assignment, or discharge of a charge for which a certificate has been issued may not be registered until the certificate is surrendered to the land title office. If a certificate of charge is issued, a notation will be made after the description of the charge in the list of charges, liens, and interests. (See s. 208 of the *Land Title Act*.)

e. Cancellation of Charges [§4.16]

Under s. 246 of the *Land Title Act*, if a charge or notation was registered for a limited time and that time has expired, a person can apply using a *Land Title Act* Form 17 to cancel the charge due to effluxion of time.

Leases may be cancelled in the circumstances described in s. 247 of the *Land Title Act*. Procedures for cancelling a certificate of pending litigation are set out in ss. 252 to 258.

5. DUPLICATE TITLES [§4.17]

If the parcel of land is not subject to a registered mortgage or agreement for sale, a duplicate indefeasible title (also called a “duplicate certificate of title” and a “duplicate title”) may be obtained from the land title office on application in writing by the registered owner. The date of issuance and the person to whom the duplicate title was delivered will be noted on the title. The date on which the duplicate title is returned to the land title office also will be noted. Once a duplicate title is returned, it will be reissued only on a new application in writing by the registered owner. The application is made in *Land Title Act* Form 22 (included in this book). If the duplicate title is deposited at the land title office and has never been issued, the title will bear the notation “None” (see “Appendix—Computerized Certificate of Title” in this chapter).

A duplicate title will not be issued if the title is subject to a registered mortgage or an agreement for sale. The duplicate title must be returned to the land title office and must be cancelled before a transfer, mortgage, or an agreement for sale can be registered, but this does not prevent other charges, such as long-term leases, builders’ liens, or caveats, from being registered. Therefore, if the duplicate title is not in the land title office, its location should be determined