

Subdivision control under the *Planning Act*: What do you need to know?

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The subdivision and part lot control provisions of section 50 of the *Planning Act* are lengthy and complex. It can be difficult to sort out the parts that apply to a transaction, or the extent of the abutting lands search that is needed to confirm that no contravention occurred in the past. The consequences of contravention are dire: if a transfer, mortgage or other dealing with land does not comply with the section or a predecessor, it does not create or convey an interest in land. Because of this, the section is a significant source of malpractice claims.

The basic prohibition in section 50 is straightforward: a party may not deal with real property in Ontario where he, she or it retains abutting lands, unless the transaction falls within an exception. Subsection 50(3) imposes the prohibition where no registered plan of subdivision is in place; subsection 50(5) does the same where the land is part of a lot on a registered plan of subdivision. The prohibition applies to transfers, mortgages, leases, grants of easement, grants by will and all other dealings that have the effect of granting the use of or right in land for more than 21 years. All real estate transactions should therefore be approached with the presumption that a search of the title to lands that have (or previously had) a boundary in common with the subject property (an “abutting lands search”) should be done, to determine whether:

- a) the present grantor owns abutting lands, and therefore cannot give a valid interest in the property to the lawyer’s client; or

- b) any past dealings with the property contravened the section, resulting in the present grantor not having a valid title.

Exceptions

Section 50 contains several exceptions. Below is a list of those that are most commonly applicable to transactions where the lawyer represents the purchaser, mortgage lender or other party acquiring an interest in the land.

- Past and present grantors do not/did not own abutting land
- Property is a whole lot or block on a registered plan of subdivision
- Property is the remaining part of a whole lot or block on registered plan of subdivision, the other part of which was acquired by a body that has the right to acquire land by expropriation
- Property is a whole condominium unit and/or common interest in condominium
- Part lot control exemption by-law applies to present or past transaction
- Land converted to Land Titles Conversion Qualified (“LTCQ”), if title states that the land is not subject on first registration in LTCQ to subparagraph 44(1)(11) of the *Land Titles Act*
- *Planning Act* statements in transfer signed
- Consent to current transaction granted
- Prior consent to conveyance granted
- Where consent granted, property is whole of remainder parcel

- Grantor retains abutting lands that are a whole lot or block on registered plan of subdivision, and property is whole of remainder parcel

The following types of transaction are exempt from the application of the section. However, unless one of the exceptions above applies, you may wish to do an abutting lands search to confirm that past dealings with the property did not contravene the section, resulting in the granting party not having a valid title.

- Grantor is a federal or provincial government or municipality
- Party obtaining interest in land is a federal or provincial government or municipality
- Term of lease or right to use is less than 21 years
- Grant of use of part of a building or structure
- Agreement is subject to an express condition that Section 50 has been complied with (agreement is valid, but condition does not remedy transfer or other dealing if there is a contravention upon registration)

Section 50 has a vibrant history and the exceptions and exemptions set out above are not necessarily as simple as they look. For further commentary and tables with details on the exceptions and exemptions, please visit practicepro.ca/SubdivisionControl to see our full article. ■

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