

Subdivision Control under the *Planning Act*¹: What do you need to know?²

The subdivision and part lot control provisions of section 50 of the *Planning Act* (the “section”) are lengthy and complex. Sometimes it can be difficult to sort out the parts that apply to a present-day 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. This article summarizes the parts of the section that apply in the situations most often encountered by real estate practitioners.

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 twenty-one 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 (“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 chart 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. However, the exceptions in the chart below do not apply to partial discharges of mortgages, mortgage foreclosures or powers of sale, which are dealt with later in this article.

Exception	Statutory provision (<i>Planning Act</i> , Section 50 unless otherwise stated)	Comments	Abutting Lands Search Required?
Past and present	(3)(a), (5)(a)		Yes, in order to determine

¹ R.S.O. 1990, c. P.13.

² This article is not a comprehensive guide to section 50 of the *Planning Act* or the conduct of an abutting lands search. Please refer to the *Planning Act* for complete information. For a full analysis of the statute and case law regarding subdivision control under the *Planning Act*, see “The Law of Subdivision Control in Ontario,” 3rd edition, by Sidney Troister, C.Arb., C.S., LSM, Canada Law Book, 2010. Another useful reference is Mr. Troister’s paper “Section 50 of the *Planning Act*: Back to Basics,” presented at the LSUC 10th Annual Real Estate Law Summit, April 10, 2013.

grantors do not/did not own abutting land			that they do not/did not own abutting land.
Property is whole lot or block on a registered plan of subdivision	(3)(a),(4), (5)(a), (14)	Exception does not apply if plan deregistered by municipal by-law. Most deregistration by-laws are for older plans.	No
Property is remaining part of 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	(5)(e)		No
Property is whole condo unit and/or common interest in condominium	<i>Condominium Act, 1998</i> , S.O. 1998, c. 19, S. 9(1)	Section 50, <i>Planning Act</i> does not apply.	No
Part lot control exemption by-law applies to present or past transaction	(7)	Review by-law to ensure it is/was in effect at time of transaction.	If by-law applied to past transaction but is no longer in force, search abutting lands forward from date of that 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 <i>Land Titles Act</i> ³		Most LTCQ titles have the required statement. Compliance with the section is confirmed only up to the date of conversion to LTCQ.	Search abutting lands forward from date of conversion to LTCQ, unless another exception applies more recently. ⁴
<i>Planning Act</i> statements in transfer signed	(22)	All three statements must be signed.	Search abutting lands forward from date of registration of most recent

³ R.S.O. 1990, c. L.5

⁴ E.g., if land converted to LTCQ in 1998 and Transfer with statements signed registered in 2002, search abutting lands forward from date of registration in 2002.

			transfer with statements signed, unless another exception applies more recently.
Consent to current transaction granted	(3)(f), (5)(f), (14), 53(42), 53(43)	Certificate of consent to be given. Consent lapses if transaction not carried out within 2 years from date of certificate, or earlier lapse period if specified.	No
Prior consent to conveyance granted ⁵	(12), (14)	Must be identical to parcel that received consent (cannot be whole of remainder parcel). Prior consent must be to conveyance (i.e., transfer/deed), not mortgage or other transaction. Read consent to confirm it does not stipulate that subsections (3) or (5) apply to subsequent transactions.	No
Where consent granted, property is whole of remainder parcel	(6)	Transaction must occur before consent lapses and remainder parcel must be/have been conveyed before consented parcel. ⁶	Yes; exception applies only to specific transaction, does not have retroactive or future effect.
Grantor retains abutting lands that are a whole lot or block on registered plan of subdivision, and property is whole of remainder parcel	(3)(b), (5)(a)		Yes; exception applies only to specific transaction, does not have retroactive or future effect.

⁵ Subject to case law and comments at pages 265 et al., “The Law of Subdivision Control in Ontario.”

⁶ *1390957 Ontario Ltd. v. Acchione*, 2002 CanLII 23579 (ONCA)

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.

Exception	Statutory provision (<i>Planning Act</i>, Section 50)	Comments
Grantor is federal or provincial government or municipality	(3)(c), (5)(b)	
Party obtaining interest in land is federal or provincial government or municipality	(3)(c), (5)(b)	
Term of lease or right to use is less than 21 years	(3), (5)	Calculation of term includes renewal rights.
Grant of use of part of a building or structure	(9)	For any period of time, including 21 years or more.
Agreement subject to express condition that Section 50 complied with (agreement is valid, but condition does not remedy transfer or other dealing if there is a contravention upon registration)	(21)	Condition standard in Ontario Real Estate Association residential and commercial resale Agreements of Purchase and Sale; in other agreements, used where parties know or suspect that a registered plan or consent is necessary.

Partial Discharges

Mortgages may encumber more than one property. Where this is the case, the mortgagee may wish to grant a partial discharge with respect to part of the lands. Subsections 50(16) and (17) provide that the mortgagee is deemed to convey the land mentioned in the partial discharge (i.e., the prohibition against retaining abutting lands applies), unless the land in the partial discharge is:

- (a) a parcel with a prior consent;
- (b) a whole lot or block on a registered plan of subdivision, unless the plan has been deregistered;
- (c) owned by the federal or provincial government, or a municipality; or
- (d) for the purpose of a utility line, and is being disposed of to the party from whom it was acquired.

Foreclosures and Powers of Sale

Where a mortgage encumbers more than one property and the mortgagee wishes to foreclose or exercise a power of sale against one or more of the properties separately, subsection (18) imposes the prohibition and provides exceptions for:

- (a) whole lots or blocks on registered plans of subdivision (deregistered plans are not excluded, but reliance on this omission is not recommended);

- (b) parcels that do not abut;
- (c) parcels with prior consent, unless the consent stipulated that that subsections (3) or (5) apply to subsequent transactions; or
- (d) the whole of the remainder parcel after consent was granted, unless the consent stipulated that that subsections (3) or (5) apply to subsequent transactions.

A mortgagee who wishes to exercise foreclosure or power of sale but does not come within one of these exceptions must obtain approval from a consent granting authority.

As you can see, section 50 of the *Planning Act* is complex. In the past, the section and its predecessors were referred to as “the lawyer’s bear trap.” Awareness of the applicable subsections and search requirements in different types of transactions will help make sure that your client gets a valid title (and that you avoid a malpractice claim).