

MINISTRY OF FORESTS, LANDS AND NATURAL RESOURCE OPERATIONS

INFORMATION NOTE

Date: October 7, 2015

File: 280-20

CLIFF #: 218154

PREPARED FOR: Honourable Steve Thomson, Minister of Forests, Lands and Natural Resource Operations

ISSUE: Land Title Records and Racist Covenants

BACKGROUND:

Historically, restrictive covenants were registered in the provincial land titles office with provisions that are now considered discriminating and racist. Once registered on the land title register, documents remain permanently available for search. In recognition of the offensive nature of the particular terms, in 1978 Government brought in legislation declaring such discriminatory provisions to be null and void with no legal force. Notwithstanding the legislation, the offending covenants are recorded on title and can be viewed at any time, particularly during real estate transactions.

In May 2015, Bill M225 (the “*Racist Covenants Removal Act*”) was introduced as a Private Member’s Bill (Appendix A). Bill M225 proposes amendments to effectively require the Registrar of Land Titles (the “registrar”) to proactively identify all offending covenants and then “scrub” them from the registry. Subsequent to the Bill being introduced, the Ministry has responded to inquiries from concerned parties, including the “Canadians for Reconciliation Society” and CTV Vancouver, who have requested the status of action to address the covenants.

Ministry staff have completed a preliminary analysis of Bill M225 and investigated potential options, based on a cursory review of other jurisdictions with Torrens-based land title registries (similar to BC’s), consultations with the Land Title and Survey Authority of BC (LTSA) and Ministry of Justice and considered the context within which the issue was originally raised (i.e. by real estate professionals in BC).

DISCUSSION:

The practice of registering discriminating covenants was widespread throughout much of Canada and the United States during the first half of the 20th century. Although the courts and provincial legislation have rendered them legally void and unenforceable, the covenants remain recorded in the land title register. The fact that there were thousands of these covenants registered makes them especially apparent during real estate transactions.

Land Title Act section 222 declares that registered covenants that restrict the sale, ownership, occupation or use of land on account of sex, race, creed, colour, nationality, ancestry or place of origin of a person are void and of no effect. The section applies to any registered covenant that has that effect, whenever and however it was created. Subsections (2) and (3) of s.222 authorize the registrar to amend land title records to reflect the legislated extinguishment of discriminating covenants (see Appendix B). This action may be the result of an application (at no cost) or the registrar’s own initiative. Cancellation is effected by endorsing the title with a remark that the offending parts of the covenant are cancelled, and noting the cancellation on the face of the document that contains the covenant (being part of the historic record of filings in the land title

office). Consistent with the requirements of the *Land Title Act* and established practice, in carrying out the cancellation in the document, the registrar does not erase or render illegible the original words of the cancelled provision(s). The registrar's action of cancellation is essentially redundant, since by operation of s.222(1) the offending covenant is void in any case.

Bill M225 contemplates that the registrar should permanently redact any offending provisions.

s.13,s.14

s.13

A scan of jurisdictions using a Torrens registry system of land titles similar to BC's system reveals that no jurisdictions go beyond the legislative measures that BC already has in place. Manitoba amended its *Law of Property Act* with similar provisions to BC's, while Alberta and Saskatchewan have relied on the Supreme Court of Canada's ruling that racist and discriminating provisions in restrictive covenants are void and unlawful. New South Wales (Australia) has taken a similar approach by relying upon the anti-discrimination laws of the Commonwealth and State, while Singapore's legislation focuses on supporting the right for anyone to alienate land. New Zealand enacted legislation in 1952 that voids any restrictions on property dispositions based on race, colour, etc., and extends the definition of disposition to capture other instruments (such as licenses and mortgages).

None of the jurisdictions considered appear to have enacted legislation to empower the registrar to permanently delete or amend public records on a discretionary basis. Thus all covenants, whether canceled, obsolete or invalid, will remain available for inspection as a public record.

s.13

Attachments:

Appendix A: Bill M225 - the “*Racist Covenants Removal Act*”

Appendix B: Section 222 of the *Land Title Act*

Appendix C: Letter from Minister Steve Thomson

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Reviewed by	Initials	Date
DM	TS	Oct, 20, 2015
ADM	DP	Oct 20, 2015
Exec. Dir.	DW	Oct 14, 2015
Director	MP	Oct 09, 2015

APPENDIX A

BILL M 225 – 2015 LAND TITLE STATUTES (RACIST COVENANTS REMOVAL) AMENDMENT ACT, 2015

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

Land Title Act

1 Section 1 of the Land Title Act, R.S.B.C. 1996, c. 250, is amended by adding the following definition:

"racist content" means discriminatory language in covenants that restrict the sale, ownership, occupation or use of land on account of the sex, race, creed, colour, nationality, ancestry or place of origin of a person;

2 Section 222 of the Act is amended

(a) by repealing subsection (2) and substituting the following:

(2) The registrar, on application, must cancel any covenant with racist content.

(b) by repealing subsection (3) and substituting the following:

(3) If the registrar has notice that a registered restrictive covenant is void under this section, the registrar must, on the registrar's own initiative, cancel the covenant.

Land Title and Survey Authority Act

3 Section 4 (1) of the Land Title and Survey Authority Act, S.B.C. 2004, c. 66, is amended by adding the following paragraph after paragraph (a):

(a.1) the purpose of the Authority to manage, operate and maintain the land title and survey system of British Columbia includes a positive duty to ensure the removal of racist content, as defined in the *Land Title Act*, from this system.

4 Section 20 (2) of the Act is repealed and the following substituted:

- (2) Except in accordance with this section, the directors may not
- (a) increase a fee in a year by an amount that is more than is authorized in the operating agreement,
 - (b) set a fee in respect of a service or other matter for which there was previously no fee, or
 - (c) charge a fee for canceling a covenant with racist content.

Explanatory Note

This Act fulfills the goal of the Apology for Historical Wrongs Legacy to make redress for discriminatory legislation and racist policies from British Columbia's past by requiring the removal from property documents all language that subjected people of Asian, African, Indian and other non-European descent to discrimination and housing segregation through racist covenants. This Act also ensures that the cost of cancelling a covenant with racist content is the responsibility of the Land Title and Survey Authority and not borne by the individual property owner.

APPENDIX B

Section 222 of the *Land Title Act* provides as follows:

- 222 (1) *A covenant that, directly or indirectly, restricts the sale, ownership, occupation or use of land on account of the sex, race, creed, colour, nationality, ancestry or place of origin of a person, however created, whether before or after the coming into force of this section, is void and of no effect.*
- (2) *The registrar, on application, may cancel a covenant referred to in subsection (1) that was registered before October 31, 1979.*
- (3) *If the registrar has notice that a registered restrictive covenant is void under this section, the registrar may, on the registrar's own initiative, cancel the covenant.*

**Information Notes for Minister Thomson to discuss with MLA Tegart
on November 17' 2015**

1. Princeton Ranchers

- a. Forest logging practices and the resulting loss of natural barriers. Ranchers recommend:**
 - i. New program to assist in the maintenance of fences**
 - ii. Deactivate logging roads or install cattle guards**
 - iii. Require logging companies to seed clear cuts with grass as well as tree planting**

Response:

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- b. Better cleanup of cut blocks so that cattle can access without getting hurt**

Response:

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c. Ensure access to water on range for stock

Response:

- s.13

d. Maintenance of weeds on hydro right-of-way (RoW)

Response:

- s.13

2. Merritt Cattlemen

a. Would like to see the Province provide engineering assistance to bring dams up to new standard

Response:

- s.13

b. Would like to see mixed stand logging

Response:

- s.13

c. Drought Management Plan

Response:

- s.13

d. Maintenance of weeds on hydro right-of way (RoW)

Response:

- s.13

e. Maintenance or replacement of fences on Kettle Valley Rail line

Response:

- s.13

MINISTRY OF FORESTS, LANDS AND NATURAL RESOURCE OPERATIONS
INFORMATION NOTE

Date: October 30, 2015

File: 280-30

CLIFF/tracking #: 218444

PREPARED FOR: Honourable Steve Thomson, Minister of Forests, Lands and Natural Resource Operations.

ISSUE: Meeting with Scott Hamilton, MLA, Delta-North, scheduled for November 5, 2015 at 1:15 P.M.

BACKGROUND: MLA Scott Hamilton is expected to raise the following topics.

1. Delta Waterlots (Seven Seas)

The Corporation of Delta (Delta) has an active waterlot tenure which expires January 1, 2017. All tenures on the Lower Fraser River that were transitioned from Port Metro Vancouver in 2014 were given this expiry date so the Province could complete First Nation consultation on the transition.

2. Kyan Project

The Kyan project involves the development of float homes on a Crown waterlot, and development of private upland for residential purposes. A *Land Act* tenure to investigate the feasibility of a float home development on the Crown land waterlot has been offered to the applicant. The actual development of this project is to be authorized by another *Land Act* tenure and a *Water Act* Approval. Provincial approval is also required under the *Dike Maintenance Act* for development on the dike which is located on the privately owned upland. The proponent was unable to accommodate all the proposed housing units on the upland parcel partly due to the presence of wetlands. As a result, eight housing units were proposed on the dike itself and three housing units were proposed on the larger parcel.

With respect to the dike, FLNR and senior staff of Delta have agreed that the Seismic Design Guidelines for Dikes applies to this project as it is a High Consequence Dike and the proposal constitutes a major upgrade. The dike is part of an overall system of dike protection for Delta. A geotechnical assessment by Golder Associates indicates that the dike would not meet soil stability criteria in the seismic design guidelines and it would need to be upgraded. In addition, Delta has adopted a land development policy that requires the upgrade of its dikes to meet with the provincial Climate Change Adaptation Guidelines for Sea Dikes. At this location, the dike would need to be raised to 5.6 m to accommodate sea level rise to 2100. Delta allows dike upgrades to be staged with the dike crest being raised in the first phase from approximately 3.0 m to 4.1 m.

3. Climate Change Adaptation Guidelines and Seismic Design Guidelines for Dikes

The Province adopted Climate Change Adaptation Guidelines and Seismic Design Guidelines for Dikes in 2011. The Climate Change Guidelines address the design of sea dikes that protect low lying lands exposed to coastal flood hazards and expected sea level rise due to climate change. The Seismic Design Guidelines address seismic stability and integrity of the High Consequence Dikes in Southwestern British Columbia and Vancouver Island with the intent to provide flood protection for the densely populated

urban communities and regional infrastructure. Due to the high costs of dike upgrades many of the local governments have decided to use a staged approach for meeting both guidelines.

DISCUSSION:

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SUMMARY:

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Cliff: 218154

OCT 22 2015

Honourable Suzanne Anton
Minister of Justice

Honourable Michael de Jong
Minister of Finance

Dear Honourable Colleagues:

I am writing to request your support with actions to help identify and deal with land title records that refer to discriminating covenants. As you may be aware, although provincial legislation has rendered discriminating covenants void, due to the inherent difficulties in actively locating such covenants in land title records to note their cancellation and the way in which Torrens-based land title systems like British Columbia's operate, the covenants continue to show up in land title records until they are brought to the attention of the registrar for action. This can sometimes lead to the false impression that they still have effect. The fact that there were thousands of these covenants registered makes them especially apparent during real estate transactions.

As a result, in May 2015, Bill M225 (the "*Racist Covenants Removal Act*") was introduced as a Private Member's Bill (Appendix A). Bill M225 proposes amendments to effectively require the Registrar of Land Titles (the "registrar") to proactively identify all offending covenants and then "scrub" them from the registry. Subsequent to the Bill being introduced, the Ministry of Forests, Lands and Natural Resource Operations (FLNR) has responded to inquiries from concerned parties, including the "Canadians for Reconciliation Society" and CTV Vancouver, who have requested the status of action to address the covenants.

In an effort to address this issue, FLNR is proposing a non-legislative process to help identify these covenants so that they may be cancelled by the registrar. Legal and real estate professionals are well-positioned during the course of their work with land title records to note instances where the records refer to void discriminating covenants. Some members of the real estate profession have indicated they would be supportive of action that would make it more apparent that such covenants are no longer valid. Accordingly, I propose the Ministry of Justice/Ministry of Finance request the Law Society of British Columbia, Society of Notaries Public of British Columbia and the British Columbia Real Estate Association raise

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Ministry of Forests, Lands and
Natural Resource Operations

Office of the Minister

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this with their members, through correspondence supported by FLNR staff, and ask that when they come across instances of discriminating covenants they bring them to the attention of the registrar. The registrar may then take steps to cancel them and reflect the cancellations in land title records.

To assist landowners and professional groups, the Land Title and Survey Authority of British Columbia and the Director of Land Titles will re-issue practice information setting out how to bring these artefacts to the attention of the registrar, and what actions the registrar will take to update land title records to make it clear that the covenants are cancelled. The process is straightforward and readily supportable; it does not require an application, and does not require payment of a fee.

Thank you for considering this request.

Sincerely,

A handwritten signature in black ink that reads "Steve Thomson". The signature is written in a cursive, slightly stylized font.

Steve Thomson
Minister

pc: Dave Peterson, ADM, Tenures Competitiveness and Innovation Division