

January 23, 2020

AGRICULTURAL TRANSACTIONS AND LAND TITLES



Farm Land Evidence

- What is farm land?
- *The Farm Land Ownership Act* defines it as:
“**farm land**” means real property that is situated outside a city, town, village (including an unincorporated village) or hamlet and **that is used or reasonably capable of being used for farming**, but excludes:
 - (a) minerals, excepting sand and gravel, contained in real property,
 - (b) real property used for the purpose of extracting, processing, storing, or transporting of minerals, excepting sand and gravel, and
 - (c) real property used by a corporation supplying telecommunications, railway, pipeline or other services prescribed by the board or by regulation where and for so long as the real property is used for the purpose of supplying those services or purposes ancillary thereto;

Farm Land Evidence

- Therefore it is important to not just inquire as to whether land is being used for farming BUT rather whether it is capable of being used for farming
 - If the answer is yes then a proper farm land ownership statement should be selected
 - Some helpful resources to determine the location of land in relation to municipal borders are:
 - Manitoba Property Assessment (outside the City of Winnipeg)
https://web22.gov.mb.ca/mao/public/search_select.aspx
 - Winnipeg Property Assessment (within the City of Winnipeg)
<http://www.winnipegassessment.com/AsmtTax/English/Propertydetails/>
 - ArcGIS
<https://www.arcgis.com/home/webmap/viewer.html>
 - Manitoba Assessment Online Map
<https://web22.gov.mb.ca/MAO/map/index.html>

Fair Market Value

- What is fair market value?
- *TAMTA* defines it as:
 - "**FMV**" and "**fair market value**" mean fair market value, at the time a transfer is tendered for registration, of the land as a whole with respect to which the transfer is tendered for registration
- Value of the whole vs. value of the land affected by the transfer
 - "**land as a whole**" means, in relation to a transfer, the entire piece or parcel of land to which the transfer relates, including all buildings or improvements situated on the piece or parcel of land and does not include a fractional interest in land;
- An example of when the two values would differ is a transfer to add an individual to title

Fair Market Value and Farm Land Evidence

- When reviewing with a client and/or providing either fair market value or farm land evidence on behalf of a client, it is important to keep sections 193 and 194 of *The Real Property Act* in mind
- Failing to inquire or turn your mind to whether the evidence is true and accurate can result in severe penalties for both you and your client, including fines and jail time, as any statement set out in a Land Titles document, in an approved form, signed by a party has the same effect as sworn evidence
 - Failing to do the above can also result in a complaint to The Law Society for breach of the Code of Professional Conduct
 - See 2.1-1, 3.1-2, 3.2-1 and 3.2-7 (this is not an exhaustive list)

Farm Land Transfer Tax Exemption

- Section 113(1) of *The Tax Administration and Miscellaneous Taxes Act* (“*TAMTA*”) sets out a land transfer tax exemption for farm land and section 111(2) confirms the relevant terms have the same definition as in *The Farm Land Ownership Act*

Farm land exemption

[113\(1\)](#) No tax is payable under this Part on a transfer of farm land where

- (a) the farm land will continue to be used for farming; and
- (b) the transferee is
 - (i) a farmer,
 - (ii) a spouse or common-law partner of a farmer,
 - (iii) a farmer and his or her spouse or common-law partner,
 - (iv) a family farm corporation, or
 - (v) a congregation within the meaning of section 143 of the *Income Tax Act* (Canada).

Farm Land Transfer Tax Exemption

- In order to qualify for the farm land exemption there is a three prong test
 - 1). Is the property farm land;
 - 2). Will the farm land continue to be used for farming; and
 - 3). Is the transferee a farmer, a spouse of a farmer, a family farm corporation, or a congregation

Section 143 of the *Income Tax Act* defines congregation as:

congregation means a community, society or body of individuals, whether or not incorporated,

(a) the members of which live and work together,

(b) that adheres to the practices and beliefs of, and operates according to the principles of, the religious organization of which it is a constituent part,

(c) that does not permit any of its members to own any property in their own right, and

(d) that requires its members to devote their working lives to the activities of the congregation;

- An example of a congregation would be a corporation that holds farm land on behalf of a Hutterite Colony provided that corporation is using the land for farming

Farm Land Transfer Tax Exemption

- Examples of when the exemption is not available:
 - If the land is located within a city, town, village or hamlet even if it is being used for farming
 - If the transferee is a retired farmer and/or the spouse of a retired farmer
 - An eligible individual must receive a significant portion of their income from their occupation of farming AND spend a significant portion of their time actively engaged in farming
 - Where the transferee is not going to continue farming
 - Question: Does renting farm land to a third party farmer fall within the definition of “continue to be used for farming”?
 - Land Titles position to date is that the exemption is not available in these circumstance given when you read the definition of **farmer** and **farming** together with the requirement of **continue to be used** the transferee seeking the exemption MUST be actively participating in the continued farming of the land
 - However, we welcome a registration with a notice of protest pursuant to section 116(1) of *TAMTA* as we have not received Finance’s position and as the collector must err on the side of collection

Spousal Land Transfer Tax Exemptions

- When is farm land also non-commercial property?
- Section 111(1) of *TAMTA* sets out that:
 - "**non-commercial property**" means property that
 - (a) is owned by a person, alone or together with his or her spouse or common-law partner and is used by them primarily as their family residence or for their recreational purposes, or
 - (b) is owned by a person, alone or together with his or her former spouse or common-law partner, and was used by them, while they were spouses or common-law partners of each other, primarily as their family residence or for their recreational purposes;
- An example would be an 80 acre acreage outside the City of Winnipeg it is capable of being farmed but provided it's primary purpose is a family residence and they are adding a spouse to title this exemption would apply

Homestead Evidence

- What is homestead property in relation to farm land?
- *The Homesteads Act* defines it as:
 - (b) in the case of a residence outside a city, town or village occupied by the owner and the owner's spouse or common-law partner as their home, the residence and the land on which it is situated, consisting of not more than 320 acres or a half section, subject to the following conditions:
 - (i) if the land exceeds 320 acres in the same section, the 320 shall be comprised of the quarter section on which the residence is situated, together with such other lands in that section as the owner or the owner's personal representative shall designate,
 - (ii) if the land is in more than one section, river lot or parish lot, the homestead shall be comprised of the quarter section, river lot or parish lot on which the residence is situated, together with the other lands in that section or adjacent to or across a road or highway from the section, river lot or parish lot, but if the land so described exceeds 320 acres the owner or the owner's personal representative shall designate 320 acres of the land as the homestead including the quarter section, river lot or parish lot on which the residence is situated,

Homestead Evidence

- It is common to see incorrect homestead evidence in transfers of land and mortgages
 - The owner cannot dispose of any interest in the homestead property unless:
 - The spouse has consented to the disposition
 - The disposition is to the owner's spouse
 - The spouse has given a release and no other person has acquired homestead rights
 - The spouse who has homestead rights is also an owner of the property and is a party to the transfer
 - The court has made an order dispensing with the consent
 - Disposition is defined to include a transfer, devise by will, mortgage, amending agreement, amending agreement to add land, lease for more than three years, easements and most encumbrances

Homestead Evidence

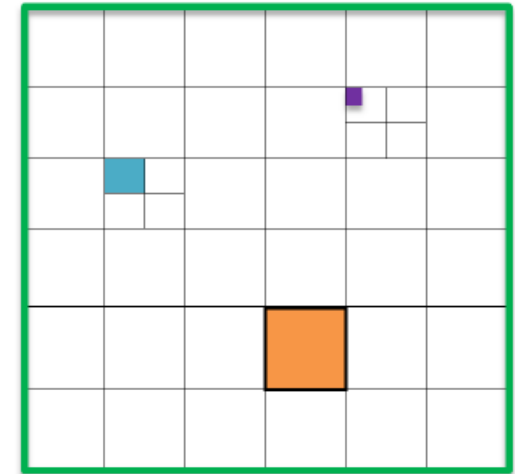
- A change in residence does not result in a change of homestead unless:
 - The spouse releases their homestead rights
 - The spouse consents in writing to a change of homestead (see Form 4 in *The Homesteads Act Regulations*)
 - The homestead property is sold
- Ensure that there is homestead evidence provided by each owner and for each title that is affected by the disposition
- Homestead evidence needs to be consistent within a series

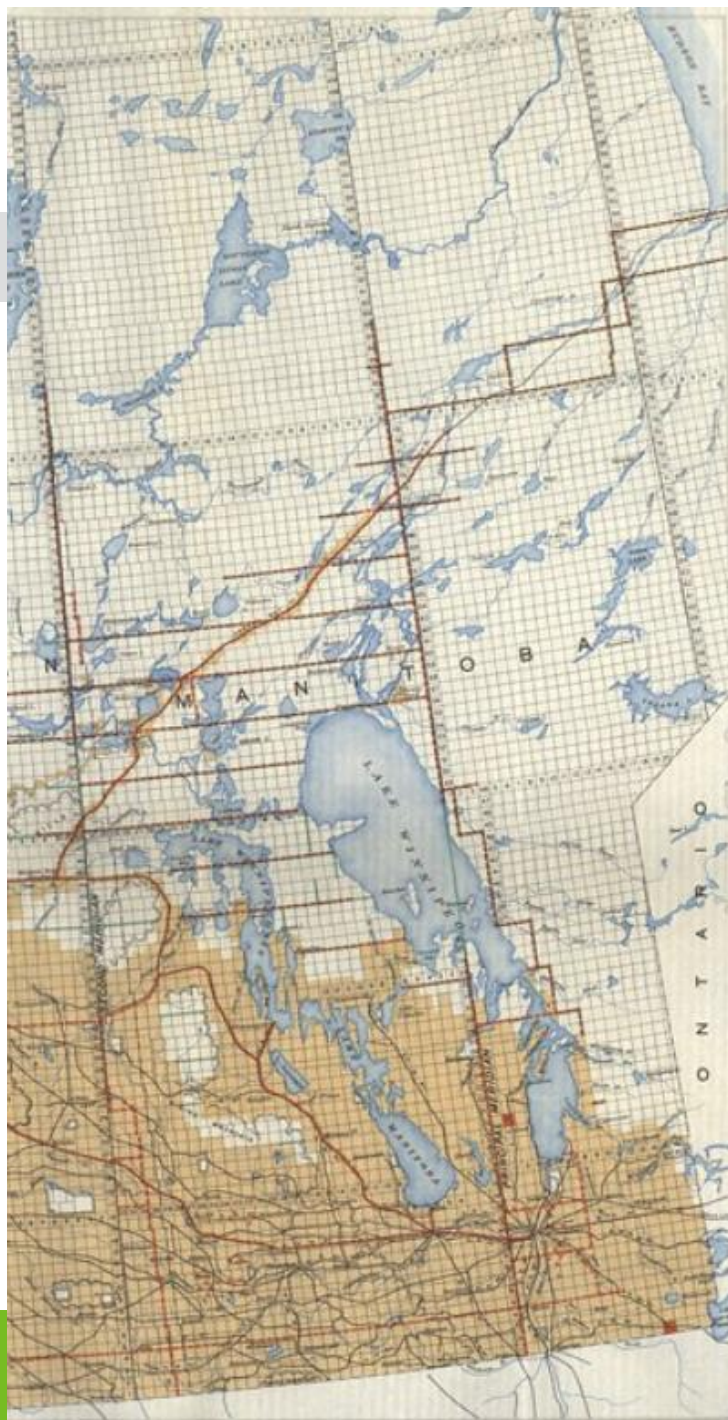
Homestead Evidence

- List all of your documents in the correct order on the RDA when registering a Release of Homestead in series
 - The correct order when there is one spouse or common law partner obtaining the entire interest in the property:
 - Transfer
 - Release of Homestead
 - Mortgage

Dominion Government Survey Land Descriptions

Township	A division of land fixed by a government survey which includes 36 sections of land. Townships start at the American border (township 1) and were numbered going north. Each township is approximately 6 miles by 6 miles square (not including land for roads).
Section	A division of land within a township comprising one square mile or approximately 640 acres. There are 36 sections in each township.
Quarter section	Each section is divided into four quarter sections. Theoretically, these quarter sections are $\frac{1}{2}$ mile by $\frac{1}{2}$ mile (2640 ft. X 2640 ft.) and contain 160 acres.
Legal subdivision	Each quarter section can be divided into four legal subdivisions (16 in total per section). Legal subdivisions are $\frac{1}{4}$ mile by $\frac{1}{4}$ mile (1320 ft. X 1320 ft.) and contain approximately 40 acres.
Range	Ranges are numbered east and west of the Principal meridian; there are 29 ranges west and 24 ranges east until you reach the Second meridian east where the numbering starts again at 1
Township diagram	A township diagram is the map or survey representing a township. The original diagrams were approved and issued out of Ottawa and were not registered and given numbers in a registry or land titles district office.





Subdivisions

- What is a subdivision?
- *The Planning Act* defines it as:

"subdivision" means the division of land by an instrument, including

 - (a) a plan of subdivision, conveyance, deed, mortgage or grant; or
 - (b) an agreement granting or extending a use of or right in land, directly or indirectly or by an entitlement to renewal, for a period of 21 years or more; but not including a lease respecting only floor space in a building.
- *The City of Winnipeg Charter Act* defines it as:

"subdivision" means the division of land by an instrument, including

 - (a) a plan of subdivision, conveyance, deed, mortgage or grant, or
 - (b) an agreement granting or extending a use of or right in land, directly or indirectly or by an entitlement to renewal, for a period of 21 years or more, but not including a lease respecting only floor space in a building;

Subdivisions

- Manitoba Municipal Government defines it as:
 - A subdivision is the division of a parcel of land described on a Certificate of Title. **A subdivision occurs when a single land title is split into two or more parts, property boundaries are rearranged, or a lease, mortgage or other instrument is registered that has the effect of subdividing the parcel...**
- If more than one title is being created out of a single title then there is a subdivision
 - Original Title: LOTS 1 & 2 BLOCK 3 PLAN 4 MLTO
 - Title One: LOT 1 BLOCK 3 PLAN 4 MLTO
 - Title Two: LOT 2 BLOCK 3 PLAN 4 MLTO
 - **SUBDIVISION**
 - Original Title: SW ¼ 1-1-1 WPM
 - Title One: THE WLY 1320' PERP OF SW ¼ 1-1-1 WPM
 - Title Two: THE SW ¼ 1-1-1 WPM EXC: THE WLY 1320' PERP
 - **SUBDIVISION**

Subdivisions

- General Rule: no subdivisions without planning approval
- Section 121(1) of *The Planning Act*:

Approval required for subdivision of land

[121\(1\)](#) A district registrar **may not accept** for registration any instrument that **has the effect, or may have the effect, of subdividing** a parcel of land, including

- (a) a plan of subdivision;
- (b) a plan of survey;
- (c) an order or judgment of a court; and
- (d) a caveat;

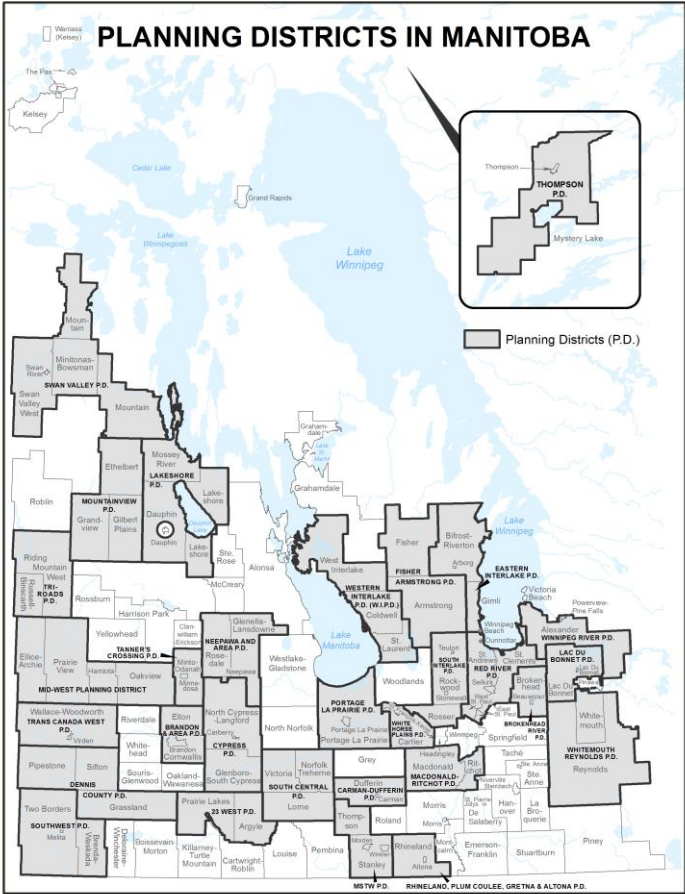
unless the subdivision has been approved by the approving authority.

Subdivisions

- Unplanned Subdivisions
- Land Titles CANNOT accept instruments that MAY have the effect of subdividing including but not limited to:
 - Mortgages
 - Certificates of Judgment
 - Leases (including Memorandum of Leases) where the term plus renewals exceeds 21 years and the leased land is not limited to floor space inside a building
 - Caveats they may have the effect of subdividing, including but not limited to:
 - Agreement for purchase and sale of land
 - Equitable Mortgage
 - Unregistered Transfer of Land
 - Reversionary interest
- This means you have to turn your mind to whether the instrument affects only part of the lands on a Title (and the separate parts could not stand alone without planning approval)

Subdivisions

https://www.gov.mb.ca/mr/contactus/pubs/planning_district_map.pdf



Subdivisions

- The process under *The Planning Act*
 - Registered Owner applies for approval
 - Planning circulates application to interested agencies (Conservation, Highways, Land Titles, MB Hydro, Bell, etc.) and prepares a report
 - The Surveys Department at Land Titles comments at this stage
 - Report is sent to council
 - Council: rejects or approves (with or without conditions)
 - If Council rejects, Planning rejects
 - If Council approves, Planning
 - Can still reject
 - Can approve with conditions or council, and, if it wants, conditions of its own
 - Appeals to Municipal Board available

Subdivisions

- Not all subdivisions require planning approval
- Section 121(2) of *The Planning Act* sets out exceptions to the General Rule

Cases in which approval is not required

[121\(2\)](#) As exceptions to subsection (1), a district registrar may accept an instrument that has the effect, or may have the effect, of subdividing a parcel of land in any of the following circumstances:

- We will review the most common related to farm land transactions

Subdivisions

- The “80 acre rule”
- Section 121(2)(a)(i) of *The Planning Act*

Cases in which approval is not required

[121\(2\)](#) As exceptions to subsection (1), a district registrar may accept an instrument that has the effect, or may have the effect, of subdividing a parcel of land in any of the following circumstances:

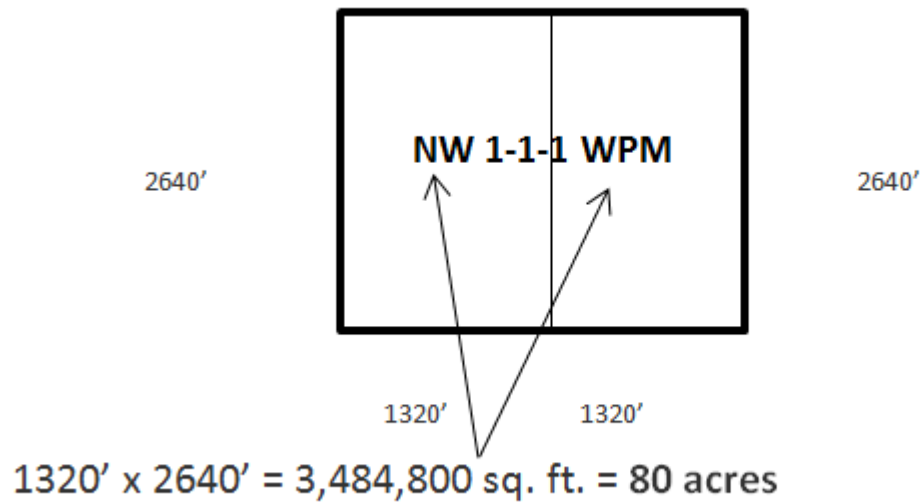
(a) **each parcel** resulting from the subdivision consists of

(i) **at least 80 acres, and** either abuts on a **public road** or is being consolidated with an adjoining parcel that abuts on a public road,

- Test: (1) **Each** parcel is 80 acres AND (2) abuts a public road (on its own or via consolidation)
 - Includes the land being split and the land left behind
 - Land excepted for roads, rights-of-way and drains count towards the 80 acres (see section 121(3) of *The Planning Act*)

Subdivisions

- Section 121(2)(a)(i)



Subdivisions

- Legal Subdivisions
- Section 121(2)(a)(ii) of *The Planning Act*

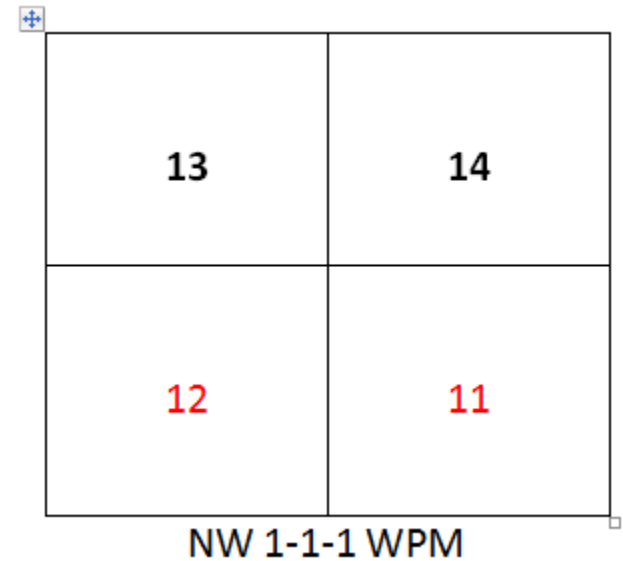
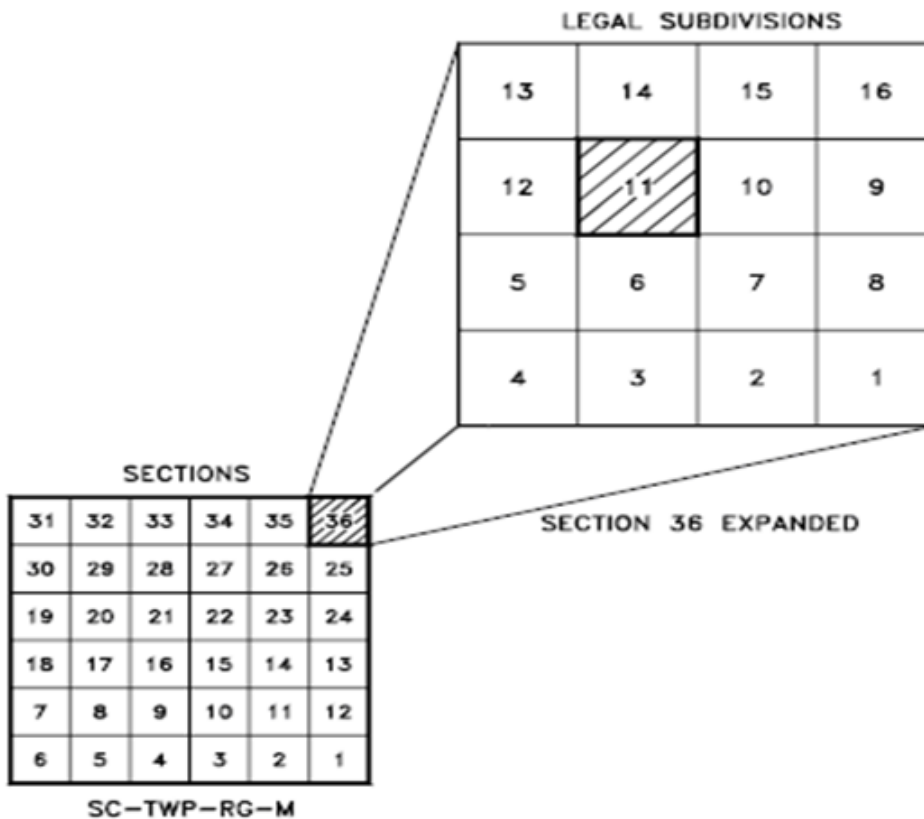
Cases in which approval is not required

[121\(2\)](#) As exceptions to subsection (1), a district registrar may accept an instrument that has the effect, or may have the effect, of subdividing a parcel of land in any of the following circumstances:

- (a) **each parcel** resulting from the subdivision consists of
 - (ii) **two or more legal subdivisions that abut each other, and** either **abut on a public road** or are being consolidated with an adjoining parcel that abuts on a public road,
- Test: (1) **Each** parcel consists of 2 abutting LSDs AND (2) abuts a public road (on its own or via consolidation)
 - Land excepted for roads, rights-of-way and drains count towards the 80 acres (see section 121(3) of *The Planning Act*)

Subdivisions

- Section 121(2)(a)(ii)



Subdivisions

- Equal Split of an Entire $\frac{1}{4}$
- Section 121(2)(a)(iii) of *The Planning Act*

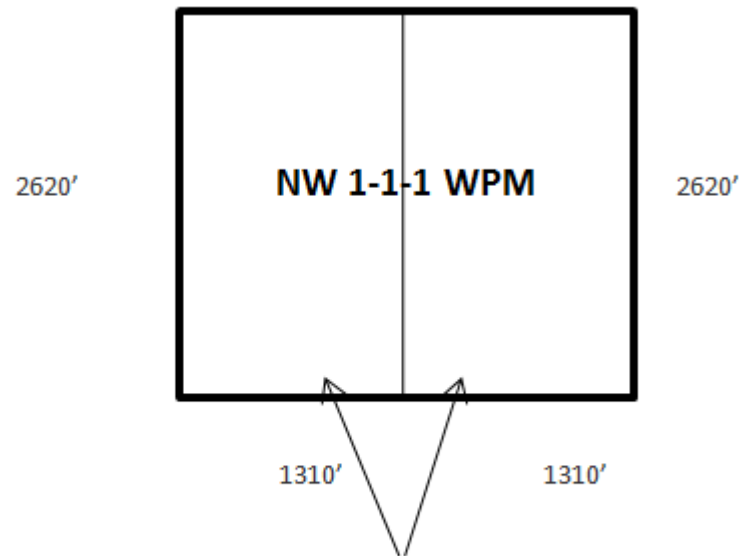
Cases in which approval is not required

[121\(2\)](#) As exceptions to subsection (1), a district registrar may accept an instrument that has the effect, or may have the effect, of subdividing a parcel of land in any of the following circumstances:

- (a) each parcel resulting from the subdivision consists of
 - (iii) a parcel of approximately equal area to the other parcel created by the subdivision of an entire quarter section where the parcels abut each other and either abut on a public road or are being consolidated with an adjoining parcel that abuts on a public road,
- Test: (1) Equal (approximately) split of an entire $\frac{1}{4}$ AND (2) abuts a public road (on its own or via consolidation)
 - Land excepted for roads, rights-of-way and drains count towards the 80 acres (see section 121(3) of *The Planning Act*)

Subdivisions

- Section 121(2)(a)(iii)
- This ensures owners of irregular $\frac{1}{4}$ sections are not penalized as a result of Dominion Government Survey



$$1310' \times 2620' = 3,432,200 \text{ sq. ft.} = 78.9 \text{ acres}$$

Subdivisions

- Whole and Contiguous Part(s)
- Section 121(2)(a)(v) of *The Planning Act*

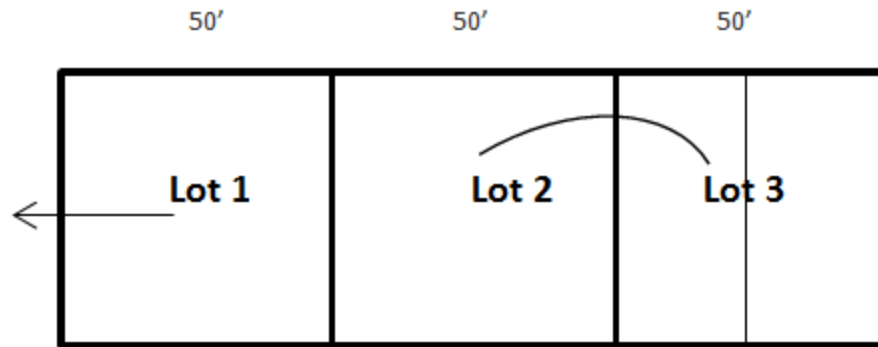
Cases in which approval is not required

[121\(2\)](#) As exceptions to subsection (1), a district registrar may accept an instrument that has the effect, or may have the effect, of subdividing a parcel of land in any of the following circumstances:

- (a) each parcel resulting from the subdivision consists of
- (v) one or more whole lots or blocks and any existing part or parts of a lot or block contiguous thereto in a registered plan of subdivision,
- Test: (1) Each parcel is one or more whole lots or block
AND (2) any existing parts of a lot or block (3)
contiguous IN (4) Plan of Subdivision
 - Plan of Survey/Plan of Special Survey/Special Plot Plan ARE
NOT a Plan of Subdivision

Subdivisions

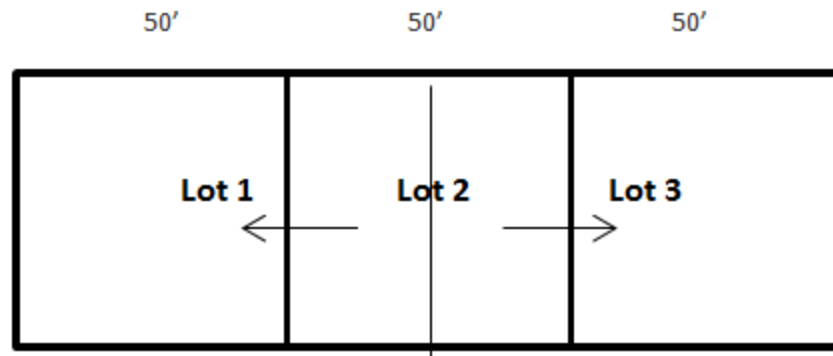
- Section 121(2)(a)(v) Example #1



Current Title	New Title #1	New Title #2	Comments
LOTS 1, 2 AND THE WLY 25 FEET PERP OF LOT 3 BLOCK 1 PLAN 2 BLTO	LOT 1 BLOCK 1 PLAN 2 BLTO	LOT 2 AND THE WLY 25 FEET PERP OF LOT 3 BLOCK 1 PLAN 2 BLTO	<p>Assume Plan of Subdivision</p> <p>Passes all 5 stages.</p> <p>New Title #1 is whole lot on plan of subdivision.</p> <p>New Title #2 is whole lot and existing part of lot contiguous on plan of subdivision.</p>

Subdivisions

- Section 121(2)(a)(v) Example #2



Current Title	New Title #1	New Title #2	Comments
LOTS 1, 2 & 3 BLOCK 1 PLAN 2 BLTO	LOT 1 AND THE WLY 25 FEET PERP OF LOT 2 BLOCK 1 PLAN 2 BLTO	LOT 3 AND THE ELY 25 FEET PERP OF LOT 2 BLOCK 1 PLAN 2 BLTO	Assume Plan of Subdivision. Fails on (3). Not <u>existing</u> parts of a Lot.

Subdivisions

- Things that appear to be non-contiguous may be for planning purposes:

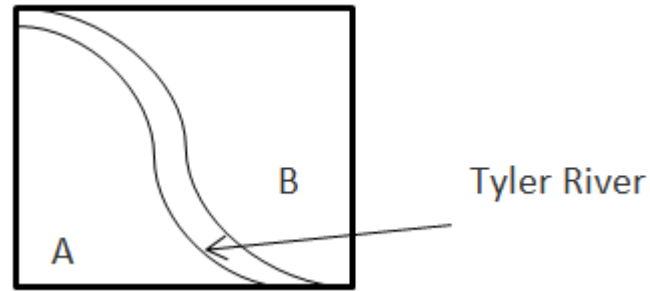
Contiguity of land

[121\(4\)](#) For the purpose of this section, land that is excepted from land described in a certificate of title for a public road — excluding a government road allowance — railway line, transmission or distribution line, river, drain or right of way, or is acquired for any of those purposes, is deemed not to create a break in the contiguity of the land.

- Summary:
 - The following break contiguity: (1) Government Road Allowance
 - The following does not break contiguity: (1) Public Roads other than Government Road Allowances (2) Railway lines (3) Drains (4) Transmission and distribution lines and (5) Rights of Way

Subdivisions

- Section 121(4) Example #1



TITLE:

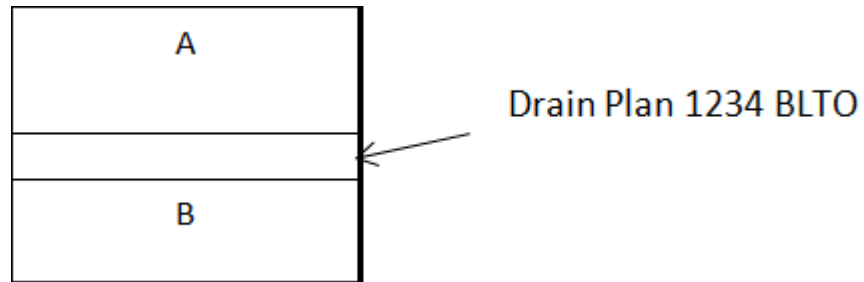
THE NW 1-1-1 WPM

EXC: THE TYLER RIVER

A&B are still contiguous for *Planning Act* purposes.

Subdivisions

- Section 121(4) Example #2



TITLE:

THE NW 1-1-1 WPM

EXC: DRAIN PLAN 1234 BLTO

A&B are still contiguous for *Planning Act* purposes.

Subdivisions

- Closed Roads and Public Reserves
- Section 121(2)(e) of *The Planning Act*

Cases in which approval is not required

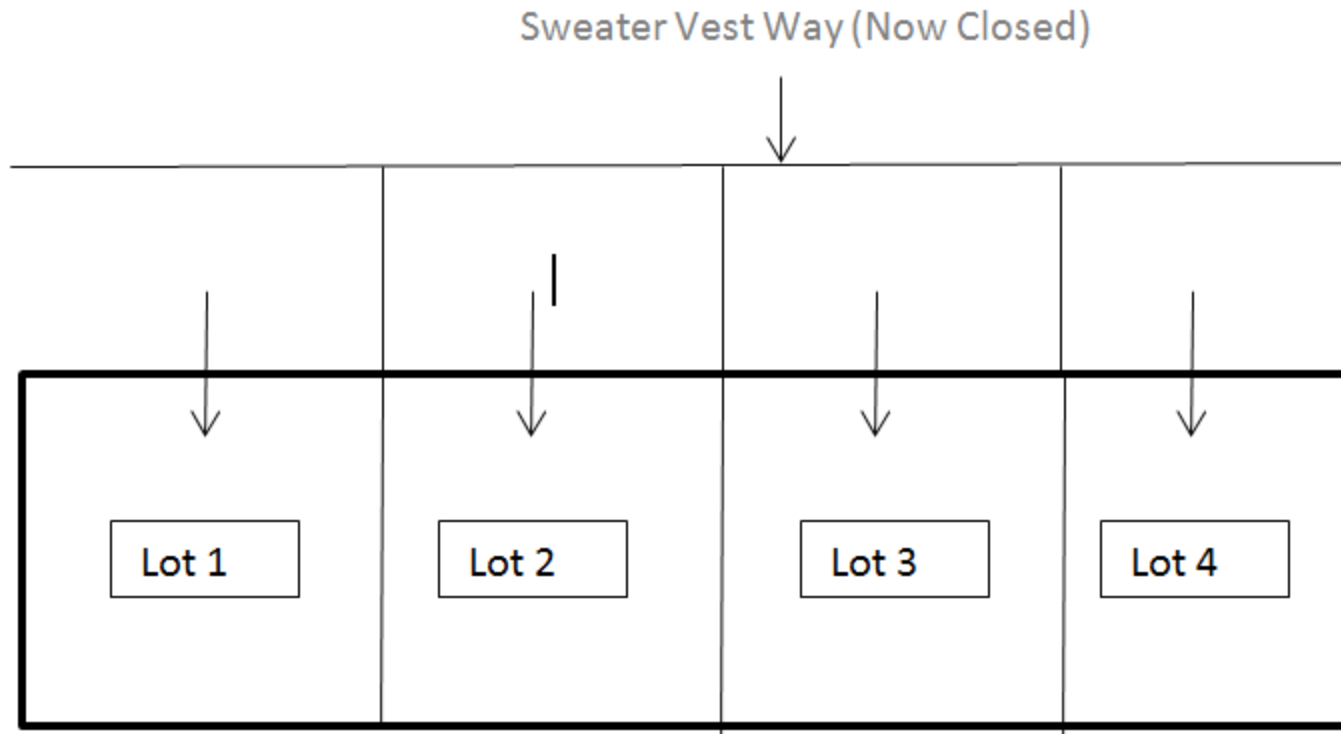
[121\(2\)](#) As exceptions to subsection (1), a district registrar may accept an instrument that has the effect, or may have the effect, of subdividing a parcel of land in any of the following circumstances:

(e) the land was part of a government road allowance, public road or public reserve that has been closed by by-law and is being consolidated with adjacent existing titles;

- Test: (1) Part of: (a) GRA (RPA often required) or (b) Public Road or (c) Public Reserve AND (2) Closed AND (3) Consolidated

Subdivisions

- Section 121(2)(e)



Subdivisions

- When registering a plan of subdivision ensure you list all of your documents in the correct order on the RDA
 - Ensure to consider the affect of each document and which titles are to be targeted by each instrument
 - Include all affected title and instrument numbers for all the instruments your have listed
 - If you are registering a Plan of Subdivision and a Plan of Easement list both plans on the RDA
- Ensure to include the Plan Registration Checklist (one per plan being submitted)
- A helpful resource is The Survey Plan Registration Guide
<https://teranetmanitoba.ca/land-titles/land-titles-training-materials/>

Subdivision

- Encumbrances that have the power to subdivide must be dealt with
 - These encumbrances cannot be carried forward to only part of a newly created parcel. You have three options for dealing with them:
 - Fully discharge the encumbrance
 - Caution: if you discharge a mortgage and re-register on the newly created title due to the priority of advances unless there is an additional/new advance under the mortgage it might not have the priority its registration order would suggest over new/subsequent encumbrances
 - Partially discharge the encumbrance to release the parcel that is not entirely affected
 - Register an Amending Agreement to Add Land to make the portion of the parcel that was not initially affected by the encumbrance

Amending Agreement

- Common errors with Amending Agreements
 - All parties must sign Schedules to amending agreements
 - This is an agreement between the parties to modify their relationship and their respective interests in the affected land
 - Missing Homesteads Act evidence
 - Missing Consents from subsequent encumbrancers
 - This includes encumbrances that are registered against any of the lands already affected by the instrument being amended
 - Consent not required for subsequent encumbrancers unaffected by mortgage sale proceedings (i.e. Easement)
 - Amending Agreements must be double sided when submitted in paper form (i.e. with a plan of subdivision)
 - When adding land only describe the land to be added in Box 5

Caveat

- **Incorrect/incomplete Basis for Claim**
 - Set out a valid interest in land. The Caveat smart form Box 3 provides a click down menu. Before selecting Other ensure you have reviewed all the options available to avoid rejection.
 - We recommend contacting a District Registrar prior to selecting Other as all interests in land that we are aware of have been placed in the drop down menu
 - **The Basis for Claim** Box 4 is the place where the caveator is to describe the document or circumstances that give rise to the interest in land claimed
 - Where the basis for a claim is an agreement it is not sufficient to indicate “see attached” or based upon “an agreement with the registered owner”
 - Provide the names of all relevant parties, the relevant dates (if applicable) and the particulars of the agreement or the circumstances that give rise to the interest in land claimed

Discharge

- Missing or incomplete Box 3
 - Selecting the incorrect type of discharge requirement
 - When to select Full Discharge
 - Only when the intention is to release all the lands and titles affected by the instrument
 - When to select Partial Discharge (ALL)
 - When the intention is to release all of the lands in one or more titles BUT NOT ALL titles affected by the instrument
 - When to select Partial Discharge (PART)
 - When the intention is to release only some of the lands in a title affected by the instrument (BEWARE potential for unplanned subdivision as this will result in rejection)
- Incorrect Evidence of Interest Holder
 - All monies due or to grow due on same
 - This statement applies to the mortgage/encumbrance as a whole NOT just the land being discharged
 - Select “have been paid” when seeking a full discharge
 - Select “have not been paid” when seeking a partial discharge

Easements

- Easements are allowed to be restricted but may not be uncertain
 - The servient land must be certain though it does not need to be all of the land in the servient title
- Easements must be registered over:
 - The entire land described in the title
 - The portion of land set out in an acceptable metes and bounds description
 - A sketch is not acceptable
 - Must be parallel to the existing survey fabric
 - Descriptions that create overlap will be rejected
 - Ensure to include mines and minerals exceptions as applicable
 - A plan of easement

Typographical Errors

- The second most common errors are typographical errors
 - incorrect/incomplete legal descriptions
 - missing encumbrances
 - incorrect/incomplete transferor/transferee
 - Incorrect/incomplete mortgagor/mortgagee
- These errors can be avoided by:
 - reviewing a current Status of Title;
 - proof reading documents prior to execution and registration;
 - copy and pasting information directly from the electronic Status of Title into the LTO forms

Execution and Witnessing of Documents

- The most common errors are incorrect execution and witnessing of documents
 - Ensure the appropriate party is executing the document
 - Ensure the party's name is spelt correctly and includes their full, true, correct legal name
 - If there is a discrepancy between their legal name and the Status of Title then:
 - i) in the event, it is a discrepancy on an evidentiary document (i.e.) Power of Attorney, Death Certificate, etc.) include an identity statement on the signature page
 - ii) in the event, it is a discrepancy between the name on the Status of Title and their correct legal name (i.e.) CT says John Smith and Mortgage to be registered say John Edward Smith) include in series a Request to Correct Name with the appropriate evidentiary proof attached
 - Ensure you are following the witnessing requirements set out in *The Real Property Act* and/or other applicable legislation for documents being prepared and submitted
 - A helpful resource is the Manitoba Land Titles Guide (currently pages 69-73 and Schedule VIII on pages 82-88)