

Explanation of Title Charges and Notations

Under the Torrens Land Title system prevailing in BC all charges affecting title must be registered on title (subject to some exceptions outlined in the Land Title Act, some of which are dealt with below). The following is intended as a general guide and a brief explanation of the meaning of the more commonly encountered charges. Every title with non financial charges and notations should be reviewed with a lawyer.

NOTATIONS

On every title search below the description of land you will see the heading *Notations*. Under this heading you find references to documents and legislation that affect title but are not directly charging title. Generally, (but there are certainly exceptions), notations do not adversely affect title. The most common are as follows:

1. *This title may be affected by a permit under Part 29 of the Municipal Act (now Part 26 of the Local Government Act).* This is a reference to the fact that the property is part of an area of property that is governed by a development permit on file at the local municipality. Development permits are commonly used in large developments by the local government to control matters such as landscaping, a design and siting buildings over and above the restrictions contained in the zoning bylaw.
2. *Hereto is annexed easement over lot---* This is a reference to the fact that the property has the benefit of an easement, restrictive covenant or other charge normally over an adjoining property. For instance if a developer wanted to restrict the building height on a property for the neighboring property the developer would register a restrictive covenant on the property being restricted as to building height (“the servient tenement”) and it would be shown as a notation on the property for which it was designed to protect (“the dominant tenement”)
3. *This certificate of title may be affected by the Agricultural Land Commission Act (now Land Reserve Act).* This is a reference to the fact that the property is within the Agricultural Land Reserve Act and subject to the restriction on use and subdivision contained in that Act. Similar notations can be registered for protection of the buildings under the Heritage Conservation Act.
4. *Notice Filed under the Municipal Act (now the Local Government Act).* This is a notation that can affect title. When there is a serious building or fire code violation the local government can file a notation against title giving notice to any buyer that the building or property is subject to a work order or is infringing a bylaw e.g. part or the entire house has been built without building permits.

CHARGES

Below Notations you will find charges that directly affect title. Financial charges are as a part of closing usually cleared from title and some of the more unusual ones are dealt with here. Please note that charges like *crown debts and judgments* are included in the category of financial charges and the seller is contractually obligated to clear these charges on closing and will do so provided there is sufficient equity in the property.

Some common and uncommon charges in rough order of frequency are as follows:

1. *Undersurface Rights*. These can be in favour of Her Majesty the Queen (commonly charge number M76301) or the E and N railway company (commonly M76300) or the Puget Sound Agricultural Society (a colonial subsidiary of the Hudsons Bay Company) and reserve mineral rights and timber cutting rights for right of way construction and maintenance of the railway line. These right are by convention not exercised and hence do not affect title. Also note that occasionally mineral rights and timber rights are registered in favour of private companies and on larger pieces of property in particular these may still be valid and exercisable.
2. *Right of Way or Statutory Right of Way*. A charge that gives a party, usually a municipality or BCHydro, the right to enter and use a portion of the property for services of some description but can also be for public access.
3. *Covenant or Restrictive Covenant*. A charge that restricts the use of the property or a portion of the property. Examples would be preventing building on a floodplain or preventing cutting of trees. Covenants can also be registered that restrict a certain type of use i.e. prevent any commercial use or prevent subdivision or building of more than one residence. A common restrictive covenant registered in the past restricted use by race and these are unenforceable and illegal.
4. *Statutory Building Scheme*. These are usually registered to protect the development of which the property forms a part and can mandate certain building types, restrict commercial usage etc. Each one can widely vary and they can impose additional restriction on use than contained in the local zoning bylaw. Once the developer is out of the picture control over the building scheme passes to all of the owners in the subdivision and they can be cumbersome to enforce. They are often time limited.
5. *Easements*. These charges entitle the owner of another property(ies) to use the property for access, services or other matters. The wording can vary widely and impose different requirements for upkeep and maintenance of easement areas. Easements can be used for a wide variety of issues such as to allow building encroachments or restrict building areas indirectly.
6. *Assignments of Rents*. This is a financial charge that provides the lender the right to collect rents from tenants of the property. It is discharged on closing by the terms of the standard contract of purchase and sale.

7. *Land Use Contract*. This document was used in the 70's to regulate land use much as development permits do today. They are for the most part redundant. 8. *Rights of Entry*. Similar to an easement permitting access by a governing body for certain matters.

9. *Rent Charge*. Can be used by a utility company to require payment of utility charges such as exist with a private water company.

10. *Land Tax Deferment Charge and/or Agreement*. Prevents sale unless outstanding taxes are paid. Please note that as with other governmental financial charges this can take some time to organize a discharge and should be brought to the Sellers lawyer's attention as soon as possible.

11. *Mortgages of Rights of Way*. The Bank of Montreal registered many mortgages of the old BCTel and Hydro Rights of way as security for loans that were given to these companies. These remain on title but do not affect title adversely.

12. *Rights of First Refusal or Options to Purchase or Leases and Subleases*. All of these charges give parties rights with respect to the property that can survive transfer or even prevent a transfer of the property and should be examined closely.

MATTERS NOT REGISTERED ON TITLE

Some important issues that may affect a property but are not registered include:

1. *Protection under local bylaws for trees and buildings*. Heritage trees and tree cutting bylaws can restrict what trees can be cut down on a property. Heritage bylaws can protect the exterior of a house from changes.

2. *Protection for Aboriginal Sites*. Provincial legislation identifies properties and can prevent building on certain properties considered important to First Nations. The Archaeology Branch maintains an online data request facility at:

www.tsa.gov.bc.ca/archaeology/forms/datarequest.htm

3. *Zoning, Subdivision and other local Bylaws*. Bylaws regulate the use of lots and building height size, appearance in some cases and location on a lot.

4. *Fisheries legislation*. Federal and provincial legislation regulates and protects stream and other wetland areas.

5. *Property Law Act*. Sometimes encroachments on a property can become legalized by application to court. Owners should not assume that existing encroachments can be removed easily hence the need for a survey.