



### EDITORIAL

The new Section 78a of The Registry Act which was enacted by Section 31 of The Registry Amendment Act, 1972, (Bill 210) came into force on April 1, 1973.

In most instances where new boundaries are created by the conveyance or mortgage of a part of a holding, this section will require a plan of survey defining the boundaries thereof to be deposited as a "Reference Plan" in the proper Land Registry Office.

The application of this new section is, in effect, identical to Section 167 of The Land Titles Act.

Subsection 2 of the said Section 78a provides authority to the Land Registrar to grant relief, "having regard to the circumstances" other than those specifically exempted by subsection 1.

In instances where only one new boundary is involved in the creation of a parcel the Land Registrar may decide that a written description will be acceptable. For example, "All that part of Lot 3 according to Plan 400, registered ---- (etc.) ---- lying to the west of a line described as follows: (Commencing ---- etc. ----)."

A number of queries have been made to the Legal Surveys Branch regarding the type of acceptable description where the new boundary being created is, in part, the common dividing line between two semi-detached dwellings.

It should first be emphasized that if a plan of survey has been or will be required for other purposes, e.g. condition precedent to granting of consent under Section 29 of The Planning Act, or construction or mortgage approval, then the plan of survey should be converted to a Reference Plan. If, however, no plan of survey will be required for any other purpose, then the Land Registrar may consider the acceptance of a written description where only one new boundary is involved.

In a number of instances proposed descriptions for splits of lots have been tendered for registration under The Registry Act to a Land Registrar. Some of these have defined the common boundary as being a straight line throughout, following the centre line of the common wall and its production to intersect the front and rear boundaries of the lot at indeterminate locations with respect to lot corners. Others have qualified this same line further by giving fixed distances from the intersections of this line with front and rear limits, to two lot angles. Although the former is not ambiguous, no clear definition is possible, while the latter is obviously ambiguous, unless previously verified and proven by proper survey. Even then, the double qualification; production of centre line and 2 fixed distances, creates an automatic ambiguity.

Normally, the writing of descriptions cannot be governed by absolute rules. The type of description will depend on a variety of circumstances. The important thing is that the parcel be so described as to identify it without ambiguity and any possible doubt. This is especially true when the boundaries are in part unsurveyed. It must then be so described that all surveyors who may subsequently be required to lay out the boundaries will find identical lines (within the reasonable limits of accuracy). A surveyor who is drafting the description must be able to express what he wishes to say in sentences that will admit of only one interpretation; he must have a clear conception of what he has to describe and of the exact meaning of the words used as may be interpreted judiciously..

Where the description required is one where the line being created is that which in part follows along the centre line of a partition wall, certain principles can be established. (See figure on page 7)

Firstly, the extremities of the centre line of wall assume to some degree the nature of fixed positions (monuments) for as long as the building stands (points 'C' and 'D').

Secondly, the extremities of the whole line (points 'A' and 'B') must be fixed in position from either the eastern or western angles of the lot as absolute distances. In the example shown, they are fixed from the easterly angles.

Thirdly, the whole line is composed of three parts, namely: 'B' to 'D', from the fixed point on the front of the lot to the southern extremity of the centre line of wall; 'D' to 'C', along the centre line of wall; and 'C' to 'A' from the northern extremity of the centre line of wall to the fixed point in the rear lot line.

The description of this limit is: "COMMENCING at a point in the southern limit of the said lot distant 40 feet westerly thereon from the southeastern angle of the said lot; THENCE northerly to and along the centre line of the partition wall between the dwellings standing in 1973 on the said lot and continuing to a point in the northerly limit of the said lot distant 40 feet westerly thereon from the northeastern angle of said lot."

While the foregoing description cannot be considered as having the same value as a proper plan of survey, it is without ambiguity and not difficult to later lay out in actual survey, (providing the building remains in existence).

A number of other forms of writing this type of description exist and are quite often used such as:

1. production of the centre line of wall in opposite directions to intersect the front and rear boundaries, and
2. the lines exterior to the wall are laid down either parallel to one of the lot limits or on a stated course.

In both cases the location of the new line being created is not known with any definiteness with relation to the lot limits. These are indefinite forms and more difficult to transcribe in subsequent actual survey. Consequently, it is suggested that the description given in the example aforesaid is preferable to the others encountered.

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