

# Land Court

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## Scope Note

This chapter provides an overview of the Land Court and applicable law and procedures. The history, jurisdiction, departments, and functions of the court are all included. The chapter describes the procedure for land registration and confirmation. It provides advice on determining when these avenues are worthwhile and on dealing with registered land generally. Also addressed are other actions that can or must be brought in the Land Court, including a summary of procedures for litigating title cases. Exhibits include several Land Court forms and sample conference notices.

## § 14.1 INTRODUCTION

To maintain an effective real estate title practice in Massachusetts, a lawyer must have an understanding of the Land Court and of the law and procedures that apply to real property that has had its title registered and confirmed under the provisions of the Land Registration Act, G.L. c. 185. Under Chapter 185, the Land Court has exclusive original jurisdiction over actions brought to register and confirm title. Once the registration process is complete, the Land Court, pursuant to Chapter 185, retains oversight and control over many matters affecting the title to registered land, including the process by which documents presented to be filed for registration are accepted in the land registration districts of the Land Court. Familiarity with the jurisdiction and organization of the Land Court and with the guidelines and procedures for dealing with registered land is an important skill needed by a Massachusetts real estate practitioner.

### § 14.1.1 The Land Court's Jurisdiction

#### (a) *Brief History of the Land Court and the Development of Its Jurisdiction*

The Land Court was established in 1898. 1898 Mass. Acts c. 562. The Land Registration Act became effective on October 1, 1898, and the court opened for the first

time on October 14, 1898. The court's initial jurisdiction was limited to title registration cases under the new Land Registration Act, G.L. c. 185.

The central purpose of this enactment was to settle title to a defined, surveyed parcel of land, using an in rem procedure. The Land Registration Act was built on a legislative model originally enacted in Australia, which in turn followed procedures used to register titles to ships. Because the leading progenitor of this system was Sir Robert Torrens, registrar-general of deeds and later a member of the South Australian Parliament, the system he developed became known as the Torrens System, a name that is used to this day to describe the land registration system in Massachusetts and elsewhere.

In a series of amendments to G.L. c. 185, § 1—the court's jurisdictional statute—the court changed its name twice (first to the “court of land registration,” 1900 Mass. Acts c. 354, and then to its present-day name, the “Land Court,” 1904 Mass. Acts c. 448) and acquired jurisdiction over additional types of matters. In 1904, the court was given jurisdiction over writs of entry, actions to require trying of title, to determine the validity of encumbrances, and to discharge certain mortgages. 1904 Mass. Acts c. 448. Later enactments gave the Land Court authority to do the following:

- determine the boundaries of tidal flats, 1906 Mass. Acts c. 50;
- determine the existence and extent of a party's authority to convey real estate, 1906 Mass. Acts c. 344;
- determine the enforceability of equitable restrictions, 1915 Mass. Acts c. 112;
- foreclose tax titles, 1915 Mass. Acts c. 237; and
- determine county, municipal, and district boundaries, 1919 Mass. Acts c. 262.

In 1931, the Land Court was given concurrent jurisdiction with the Supreme Judicial Court and the Superior Court over suits in equity to quiet or establish title to land or to remove a cloud from title. 1931 Mass. Acts c. 387. In the same year, confirmation of land titles without registration was authorized. 1931 Mass. Acts c. 457. Until 1934, this was the world of the Land Court, and its jurisdiction largely was limited to specific matters directly involving land titles.

The Land Court also has jurisdiction over certain matters not expressly enumerated in G.L. c. 185, § 1, most notably pursuant to the state law implementing the Servicemembers Civil Relief Act, for authority to foreclose a mortgage. 1943 Mass. Acts c. 57.

A significant expansion of the Land Court's jurisdiction occurred in the mid-1930s when, in a two-year period (1934–35), jurisdiction was conferred on the court to include the following:

- concurrent with the Superior Court, all cases and matters cognizable under the general principles of equity jurisprudence where any right, title, or interest in land is involved, except actions for specific performance of contracts (1934 Mass. Acts c. 67) (the legislature has lifted this exception; see § 14.1.1(b), below);

- concurrent with the Superior Court, certain actions of a special nature under G.L. c. 214, § 3 (1935 Mass. Acts c. 318);
- suits to redeem land taken for taxes (1935 Mass. Acts c. 318; G.L. c.185, § 1);
- suits involving fraudulently conveyed real estate (1935 Mass. Acts c. 318); and
- a grant of exclusive jurisdiction over actions in the nature of declaratory relief under G.L. c. 240, § 14A, to determine the validity and extent of municipal zoning ordinances, bylaws, and regulations, unaffected by the fact that no permit or license may have been applied for, or that no plans or drawings may have been prepared. The court may make binding determinations of right under this statute, “whether any consequential judgment or relief is or could be claimed or not.”

*See generally O'Donnell v. O'Donnell*, 74 Mass. App. Ct. 409 (2009) (discussing Land Court's jurisdiction).

The next significant addition to the court's jurisdiction came in 1975 when the General Court enacted the Zoning Act, 1975 Mass. Acts c. 808; G.L. c. 40A et seq., and provided for appeals from a board of appeal or any special permit granting authority to be taken either to the Superior Court, or to the Land Court under G.L. c. 240, § 14A (except in Hampden County, where the Housing Court would have jurisdiction in place of the Land Court). 1975 Mass. Acts c. 808. The 1975 Zoning Act also eliminated the jurisdiction of the District Courts to hear zoning appeals.

The G.L. c. 240, § 14A jurisdiction, added in 1934, was the first occasion for the Land Court to be involved in matters of zoning. *See Kitras v. Zoning Adm'r of Aquinnah*, 453 Mass. 245 (2009) (discussing statutory purpose). The exclusive jurisdiction given to the Land Court in these proceedings was broad. Adopted at a time when zoning law was still in its formative years, G.L. c. 240, § 14A was intended to provide landowners with a judicial determination, by a court experienced in balancing competing property interests, of how much and how far municipal zoning could lawfully control their land and its proposed development. The new statute was designed to address the uncertainty particular zoning regulations might place on a given piece of land by providing a judicial determination without the need for property owners to seek permits or carry out improvements. The statute is useful to a prospective purchaser desiring to learn if a contemplated use will be subject to zoning restrictions. It may not be used, however, as an alternate route to review the decisions of local zoning boards or grants or denials of permits. *Whitinsville Ret. Soc'y, Inc. v. Town of Northbridge*, 394 Mass. 757 (1985).

In court reorganization legislation in 1978, the District Courts regained jurisdiction of zoning appeals and references to Land Court jurisdiction were deleted from G.L. c. 40A, § 17. 1978 Mass. Acts c. 478, § 32. In 1982, the Land Court was again given jurisdiction to hear G.L. c. 40A, § 17 appeals, but without reference to G.L. c. 240, § 14A. 1982 Mass. Acts c. 533. The new law, through an amendment to G.L. c. 41, § 81BB, also purported to give the court jurisdiction to review any decision or failure to act by a board of appeal or planning board under the subdivision control law.

In 1987, the legislature amended the Land Court's primary jurisdiction statute, G.L. c. 185, § 1, explicitly to include zoning appeals under G.L. c. 40A, § 17, and appeals under the subdivision control law, G.L. c. 41, § 81BB. 1987 Mass. Acts c. 421. Note that because G.L. c. 40A does not apply in Boston, direct zoning appeals in the capital city of the Commonwealth do not lie within the Land Court's jurisdiction.

In 1986, the Land Court's exclusive jurisdiction to hear complaints affecting title to registered land (except in divorce and marital relations cases) was made explicit by the passage of G.L. c. 185, § 1(a½). 1986 Mass. Acts c. 463. This clarifies the issue raised in cases such as *Tetrault v. Bruscoe*, 398 Mass. 454 (1986), concerning the latitude available to a court other than the Land Court to use equitable powers to establish rights—such as an abutting owner's prescriptive easement—in land previously registered pursuant to G.L. c. 185. An Appeals Court decision has construed G.L. c. 185, § 1(a½) to mean that while a judge of a court other than the Land Court “may order discontinuance of trespass on registered land, that judge may not fashion a judgment which has the effect of imposing an encumbrance on the registered title.” *Feinzig v. Ficksman*, 42 Mass. App. Ct. 113, 115–16 (1997).

In summary, since 1934 what has taken place is a significant history of piecemeal absorption by the Land Court of additional subject matter jurisdiction in land use and related matters. The adjudicatory work of the court in recent years has expanded well beyond cases that emphasize title-related matters, as increasing numbers of complaints dealing with zoning and other land use issues have been filed.

### **(b) *Additional Concurrent Jurisdiction: 2002 Mass. Acts c. 393***

In 2002, the legislature expanded the Land Court's jurisdiction in a number of significant respects. Chapter 393 of the Acts and Resolves of Massachusetts took effect January 1, 2003 and gave concurrent jurisdiction to the Land Court in the following areas:

#### **Petitions for Partition Under G.L. c. 241**

Jurisdiction over these cases is now concurrent with the probate courts. These actions involve suits by co-owners of real estate who desire to end their common undivided ownership. Co-owners generally have the right, under G.L. c. 241, to partition, either by division of the land on the ground (if the land can be divided advantageously) or by sale at public auction, after which the net proceeds are distributed to the owners in accordance with their ownership interests. Land Court Rule 13, effective July 1, 2005 (see discussion in § 14.3.6(c), below), provides that the Massachusetts Rules of Civil Procedure apply to partition proceedings in the Land Court.

#### **Specific Performance of Contracts**

The Land Court long had jurisdiction generally over equity cases “where any right, title or interest in land is involved.” G.L. c. 185, § 1(k). There was, however, one notable exclusion: actions for specific performance of contracts. This exclusion has existed since this general grant of equitable jurisdiction was first made in 1934. The 2002 legislation did away with this exclusion and gave the Land Court concurrent



jurisdiction to hear cases in which a party seeks specific performance of a real estate contract.

### **Expansion of Zoning Act and Subdivision Control Law Jurisdiction**

The Superior Court and the Land Court have jurisdiction to enforce the provisions of the Zoning Act and to restrain violations of the Zoning Act and zoning ordinances and bylaws, as provided for in G.L. c. 40A, § 7. The Land Court is able, if necessary, to enforce zoning laws directly, and to pass on the merits of defenses to enforcement actions that are based on the statutes of limitation contained in G.L. c. 40A, § 7. *See Kitras v. Zoning Adm'r of Aquinnah*, 453 Mass. 245 (2009); *Gallivan v. Zoning Bd. of Appeals of Wellesley*, 71 Mass App. Ct. 850 (2008).

Appeals may be taken to the Land Court Department, the Superior Court department in which the land concerned is situated. (Hampden County is unique as to where appeals can be filed; see G.L. c. 40A, § 17.)

Section 81B now gives the Land Court jurisdiction, concurrently with the Superior Court, to enforce and restrain violations of G.L. c. 41, §§ 81A–81J. These sections govern the municipal planning powers and duties of local planning boards. They deal with the formulation and regulation of municipal master plans and official maps.

Section 81Y prevents construction of ways and the issuance of building permits without there having been appropriate compliance with the subdivision control law. The Superior Court and the Land Court now have concurrent equitable jurisdiction under Section 81Y to address subdivision control law violations.

### **Certiorari and Mandamus**

The Land Court has concurrent jurisdiction over certiorari and mandamus actions, brought pursuant to G.L. c. 249, §§ 4 and 5 “where any right, title, or interest in land is involved” or that arise under or involve the subdivision control law, the Zoning Act, or municipal zoning or subdivision ordinances, bylaws, or regulations. *See Walpole Country Club v. Bd. of Health of Sharon*, 72 Mass. App. Ct. 913 (2008) (discussing statutory purpose). At least in part, these provisions deal with the issue raised in *Stefanick v. Planning Board of Uxbridge*, 39 Mass. App. Ct. 418 (1995), which held that judicial review of a planning board’s decision that subdivision control approval was not required is in the nature of certiorari. Amendments adopted in 2002 gave the Land Court jurisdiction to hear these types of actions and authority to determine other real estate and land use cases in which mandamus or certiorari are the appropriate method of judicial review, as in the case of certain actions involving municipal permitting officials. Unless the case meets the requirements of the permit session, however (see discussion below), the Land Court will not review appeals from decisions of a local conservation commission under a local wetlands bylaw or an appeal from a Board of Health determination under Title 5. All cases brought pursuant to G.L. c. 249, § 4 are decided on a certified administrative record and are subject to Land Court Standing Order 2-06 on processing claims for judicial review on an administrative record.

## Unlawful Entry on Commonwealth Lands

The Land Court, concurrently with the Superior Court, now has jurisdiction under G.L. c. 245, § 1 in cases brought by the Commonwealth to recover lands belonging to the Commonwealth unlawfully held or entered upon by any person.

### (c) *The Permit Session*

In 2006, the legislature enacted 2006 Mass. Acts c. 205, “An Act Relative to Streamlining and Expediting the Permitting Process in the Commonwealth.” Effective August 2, 2006, the statute included provisions expanding the size and jurisdiction of the Land Court, adding a seventh justice to the Land Court’s bench and creating a separate session known as the permit session. The Land Court was given original jurisdiction, concurrent with the Superior Court, over a wide range of permit-related litigation concerning the use or development of real property in cases where “the underlying project or development involves either 25 or more dwelling units or the construction or alteration of 25,000 square feet or more of gross floor area or both,” sometimes referred to as “major development appeals.” The permit session legislation is codified in a new statutory section, G.L. c. 185, § 3A.

Provided the project meets the statute’s minimum size threshold, the Land Court may now hear appeals of such permits, orders and certificates arising under G.L. c. 21, G.L. c. 30, §§ 61–62H, G.L. c. 30A, 40A, 40C, 40R, 41, 43D, 91, 131, 131A, 249, §§ 4 and 5, and 1956 Mass. Acts c. 655 (Boston zoning), claims under G.L. c. 231, § 6F for malicious prosecution and abuse of process and intentional or negligent interference with advantageous contractual relations arising out of a permit or approval concerning the use or development of real property, or any local bylaw or ordinance. In addition, the court has jurisdiction over complaints seeking equitable or declaratory relief designed to secure or protect the issuance of any municipal, regional, or state permit or approval concerning the use or development of real property or challenging the interpretation or application of any municipal, regional, or state rule, regulation, statute, law, bylaw, or ordinance concerning any permit or approval.

Cases may be filed in the permit session. Cases filed in other departments may be transferred to the Land Court permit session by order of the chief justice of the trial court. If, however, in a permit session case a jury trial is available and claimed in timely fashion, the case must be transferred from the Land Court’s permit session to the Superior Court Department. Under current practice, the Land Court’s chief justice also transfers appropriate cases to the Land Court permit session from the regular session of the Land Court. The permit session legislation also provides that the Land Court hold sessions of the permit session in several designated counties and in “other counties as the chief justice of the Land Court Department shall from time to time designate.” Finally, the legislation establishes aggressive time standards and contains provisions promoting mediation of disputes heard in the new session.

In *Skawski v. Greenfield Investors Property Development LLC*, 473 Mass. 580 (2016), the Supreme Judicial Court interpreted Section 3A as granting concurrent exclusive jurisdiction to the Superior Court and Land Court for major development

permit appeals and impliedly repealing the grant of concurrent jurisdiction to certain Housing Courts for appeals relating to permits meeting the Section 3A thresholds. See also *Buccaneer Development, Inc. v. Zoning Board of Appeals of Lenox*, 83 Mass. App. Ct. 40 (2012), where the Appeals Court concluded that the legislature, in passing the permit session law, repealed, implicitly, longstanding concurrent Housing Court jurisdiction over zoning appeals for cases commenced, and qualified to be heard, in the permit session. Even though the case had been tried to judgment in the Housing Court, the Appeals Court vacated the judgment and remanded the case to the Housing Court, which was directed to allow the plaintiff's motion to remand to the permit session. Ultimately, following the remand, the chief justice of the Trial Court, acting under G.L. c. 211B, § 9, administratively assigned the presiding Housing Court justice to hear the matter in the permit session sitting as a justice of the Land Court, nunc pro tunc, thereby alleviating the jurisdictional defect. See *Buccaneer Dev., Inc. v. Zoning Bd. of Appeals of Lenox*, 87 Mass. App. Ct. 871 (2015).

### § 14.1.2 Summary of Jurisdiction

Practitioners can find the most comprehensive current catalog of the Land Court's jurisdiction, following the expansions by 2002 Mass. Acts c. 393 and 2006 Mass. Acts c. 205, in G.L. c. 185, §§ 1 and 3A. Practitioners must recognize, however, that G.L. c. 185, §§ 1 and 3A are not complete as there are other types of actions heard regularly (and in some instances exclusively) in the Land Court. These include, most notably, the following:

- **Servicemembers cases.** The court has jurisdiction, concurrent with the Superior Court, over proceedings to determine a homeowner's military status and eligibility for protections under the federal law known as the Servicemembers Civil Relief Act (SCRA) prior to a mortgage foreclosure. See 50 U.S.C. § 3901 et seq.; 1943 Mass. Acts c. 57, *as amended through* 1998 Mass. Acts c. 142.
- **Declaratory judgment.** The Land Court hears actions for declaratory judgment on matters within the Land Court's "respective jurisdiction," pursuant to the declaratory judgment statute, G.L. c. 231A.
- **Civil actions to enforce restrictions.** Under G.L. c. 240, §§ 10A–10C, the Land Court, concurrently with the Superior Court, has jurisdiction over civil actions to determine the nature, extent, and enforceability of certain restrictions running with the land.

The court does not have jurisdiction over cases seeking monetary damages but may, in certain instances, award damages where such damages are "ancillary to claims related to any right, title or interest in land." *Ritter v. Bergmann*, 72 Mass. App. Ct. 296, 301–02 (2008); *Essex Co. v. Goldman*, 357 Mass. 427 (1970).

### § 14.1.3 Departments and Functions

The Land Court Department of the Massachusetts Trial Court, see G.L. c. 211B, § 1; G.L. c. 185, § 1, consists of seven justices, one of whom is appointed by the chief justice of the Trial Court to serve as the chief justice of the Land Court Department.

The Land Court, however, is much more than a trial court, with jurisdiction over broad real estate–related litigation matters (see § 14.1.2, above), although its role in this regard is of obvious importance to the real estate practitioner. The Land Court also serves as the overseer of the Torrens System of registered land in Massachusetts and for this reason it has specialized departments and functions unlike those found in any other Massachusetts court.

### **(a)     *Survey Division***

The Land Court has its own survey division, which was known as the engineering department until publication of the 2006 *Manual of Instructions for the Survey of Lands and Preparation of Plans*. The chief surveyor for the court supervises this division under the overall authority of the justices. The survey division reviews plans presented to the court by plaintiffs with complaints for registration and prepares the court's official plans following registration. The survey division produces the official court plan showing land as it is first adjudicated by the court and then produces official court plans that are required to show subsequent divisions and other changes in boundaries.

### **Preparing and Filing Plans for Registration and the Judgment or Decree Plan**

When filing a new registration case, plaintiff's counsel submits the plaintiff's plan and two prints to the Land Court in Boston. Plaintiff's counsel needs to present only one print for property located in Suffolk County. Prior to submission to the Land Court, plaintiff's counsel should confirm that a registered land surveyor prepared the plan in accordance with the 2006 *Manual of Instructions for the Survey of Lands and Preparation of Plans*. The Land Court's survey division will review the plan before accepting it for filing to confirm that the plan satisfies the requirements set out in the manual.

Depending on whether the title is reported as good for registration and the results of any contested registration (see § 14.2.4(g), below), the judge to whom the case is assigned will enter judgment, allowing the registration to proceed. The survey division will then review the papers, abstract, and plan to prepare a Land Court plan in accordance with the order of the judge adjudicating the registration case. The Land Court plan will reconcile the plaintiff's plan with land already registered, ensuring that bounds are set to satisfy its requirements. After the survey division has prepared the Land Court plan, a judgment is prepared according to the order of the judge reviewing the registration case and the Land Court plan prepared by the survey division. Once the judgment is approved by the judge reviewing the registration case, the accounting department reviews the original deposit, receipts, and expenditures for the registration case and requests additional funds from the plaintiff, if necessary.

Following initial registration, the survey division continues to play an important role by reviewing, approving, and producing subsequent plans, such as those required when registered land is subdivided. See § 14.4.4, below.

**(b) *Title Examination Department***

Under G.L. c. 185, § 12, the chief justice of the Land Court may appoint one or more examiners of title who are attorneys at law. The chief justice may also appoint a chief title examiner who performs all the duties of an examiner of title and such other duties in connection with the work of the court as the chief justice of the Land Court or any associate justice may assign. In the event of the absence or disability of both the recorder and deputy recorder, or a vacancy in both positions, the chief title examiner under the title of deputy recorder performs all of the official duties of the recorder. G.L. c. 185, § 12.

In addition to the chief title examiner, the Land Court has appointed several other attorney title examiners (formerly known as administrative attorneys), who are full-time employees of the Land Court, to perform the duties of, and to assist, the chief title examiner.

In addition to the attorney title examiners who are employed by and work exclusively for the Land Court under the supervision of the chief title examiner, members of the bar, at the discretion of the Land Court, may be qualified and appointed by the court to serve as independent title examiners in individual tax foreclosure, registration, and other types of cases. These title examiners are independent members of the bar and are paid by the parties, although they are not engaged to represent any party. These appointments are known as “fee-generating appointments.”

An independent Land Court title examiner is a disinterested attorney who has been recognized by the court as qualified to conduct case-related title examinations; they must have been a member of the Massachusetts bar in good standing for at least three years and must demonstrate to the court that they have had prior experience examining titles. An attorney may apply to the court to be qualified as a Land Court title examiner by sending to the chief justice of the Land Court an application form and a resume that outlines their educational background, year of admission to the Massachusetts bar, and experience, together with two letters of recommendation from attorneys who are familiar with the quality of the attorney’s work and a sample abstract of title. See Land Court Guidelines on Registered Land, No. 26 (May 1, 2000, revised Feb. 27, 2009), available on the Land Court’s website at <https://www.mass.gov/guides/land-court-registered-land-resources>.

**(c) *Attorneys’ Roles in Registration Cases*****Plaintiff’s Attorney**

The plaintiff’s attorney prepares the complaint for registration, based on a title examination and review of the plans and instruments of record. At the time the complaint is filed, the plaintiff’s attorney also must file and date the assessor’s certificate, which depicts a sketch of the subject property and notes each abutting or adjoining owner. The sketch may be drawn by either the surveyor or plaintiff’s counsel, but must be certified by the assessor in the city or town where the land lies. If the subject

property is in two cities or towns, both assessors must certify, on either one certificate or two separate certificates.

### **Independent Title Examiner**

Upon the filing of a registration or confirmation case, a justice will appoint an independent Land Court examiner ex parte from a list of approved examiners to review title to the property in question. The Land Court expects the appointed examiner to conduct a fifty-year examination of record title, including all necessary probate records.

In preparing the report to the Land Court, the independent examiner should do the following:

- report to the court all pertinent information the record title discloses (if in doubt, the examiner should include abstracted instruments in the abstract and allow the court to decide whether they are pertinent);
- include the grantor's and grantee's city or town of residence for all abstracted instruments to alert the court to which public records the examiner has checked and to whom the examiner has given notice of the pending registration or confirmation;
- use chalk sketches to plot different chains of title;
- use family trees where probates form parts of the chain of title;
- refer to the instruments abstracted by sheet number;
- include the examiner's comments to the court with regard to any irregularities in any instrument;
- number the opinion sheet;
- number the narrative on plain memorandum sheets as follows: 1A, 1B, 1C, and so forth;
- number the first sheet of each abstracted instrument;
- produce only one report sheet for the entire abstract, regardless of the number of chains of title involved;
- cross-reference the abstract and the report;
- fold and mount photocopied plans on cardboard paper;
- list missing heirs, lack of probates, or anyone who has any possible interest in the property on the rear of the opinion sheet;
- update, if necessary, the assessors' certificate, noting any transfers of adjoining land so the notice may be given at the time of citation;
- return to the court the completed assessor's certificate;
- return to the court the examiner's reference to examine title, duly signed;

- return to the court the examiner's abstract of title, together with a signed opinion sheet and narrative report; and
- file with the court a statement of payment under oath pursuant to SJC Rule 1:07(7) to ensure that the examiner has been paid or will be approved for payment by the court.

### **The Land Court Title Examiner**

Each justice of the Land Court consults with the court's attorney title examiners, one of whom reviews each registration and confirmation abstract on behalf of the justice. The Land Court attorney title examiner reviews all filings for each registration or confirmation case, including the appointed examiner's abstract, the plaintiff's complaint, the plaintiff's plan, and any and all filings for adjoining registrations, and, in conjunction with the justice assigned to the case, determines who must receive notice of the citation.

### **Tax Foreclosure Cases**

If title to the property in question is based on a low-value tax foreclosure, the examiner must conduct a full examination of record title to the property. If title to the property in question is based on a full-value tax foreclosure, the examiner may rely on the Land Court decree in the tax case, as long as the examiner confirms that the property and area to be registered are the same. In abstracting a foreclosed tax title, the examiner should, among other things, supply the court with the following:

- the deed into the equity owner from whom the property was taken, including a metes-and-bounds description of the property;
- the tax deed or taking;
- the notice of intention to foreclose;
- the disposal (final) decree; and
- a copy of any and all restrictions and easements in back title to the property.

### **Condominium Registrations**

For a condominium on registered land, the developer must file their master deed with the court for review. The master deed must be in complete compliance with the condominium statute, G.L. c. 183A. Once the assigned Land Court title examiner has reviewed the master deed, the examiner will submit the master deed to a justice for review and approval. Upon the justice's approval, the developer may file the master deed for the condominium.

#### **(d) *Recorder's Office***

Under G.L. c. 185, § 6, the governor, with the advice and consent of the council, appoints a recorder of the Land Court responsible for the internal administration of the court, including personnel, staff services, and record keeping. The recorder attends

sessions of the court, keeps a docket of all causes, and affixes the seal of the court to all processes or papers requiring it. Subject to certain conditions, the recorder may appoint deputy recorders, a first assistant clerk, and an assistant clerk of the Land Court Department and may designate two employees, having the title of deputy assistant clerk, who shall, under the recorder's direction, perform the duties of clerk of court. The recorder has the same powers as a clerk-magistrate in the Superior Court Department of the Trial Court insofar as such powers relate to civil matters; however, the recorder also has the authority to hear and rule on petitions for tax foreclosure and for redemption from tax titles pursuant to G.L. c. 60. Any deputy recorder appointed under G.L. c. 185, § 6, who is designated for the purpose by the chief justice of the Land Court by a writing filed in the recorder's office, shall in case of the absence, sickness, or disability of the recorder, or if a vacancy exists in the office of the recorder, perform all of the official duties of the recorder.

Either the recorder or the deputy recorder

- signs all judgments;
- hears tax cases (every Thursday at 10:00 a.m. and 2:00 p.m.); and
- together with the chief title examiner, approves the first deed out of each unit of a registered land condominium, unless the standard form of unit deed is being used (see § 14.4.7, Condominiums, below, and Land Court Guidelines on Registered Land, No. 9 (May 1, 2000, revised Feb. 27, 2009), "Condominiums: First Unit Deeds.").

See **Exhibit 14A** for a checklist for reviewing registered land condominiums.

Under G.L. c. 185, § 10, the register of deeds in each registry district is an assistant recorder of the Land Court who administers the registered land in their district under the general direction of the recorder. Under G.L. c. 185, § 10A, the assistant recorder in any registry district may, with the approval of the chief justice of the Land Court, appoint one or more technical assistants who perform duties the court may from time to time assign to them.

### **(e) *Judges and Clerks***

Under G.L. c. 211B, § 2, as last amended, effective August 2, 2006, the Land Court consists of seven associate justices. As provided under G.L. c. 211B, § 1, the justice designated as the chief justice for the Land Court, in addition to their judicial powers and duties, shall be the administrative head of the Land Court Department for a term of five years. The chief justice is eligible for reappointment to serve additional five-year terms. In addition to the session clerks, who are responsible for managing the calendar and docket for each justice, subject to appropriation, the justices are also assisted by law clerks who provide assistance with research, writing, and judicial business. In addition, the Land Court now has the assistance of a full-time research attorney. Throughout the year, the Land Court justices and the recorder or chief title examiner may also host student interns to assist with research, writing, and other assigned duties.



**Practice Note**

The Land Court's website is helpful and current; see <https://www.mass.gov/orgs/land-court>. It contains all Land Court forms, the Land Court rules and standing orders, a list of court contacts including the name and contact information of the session clerk for each judge, a list of fees, and the Land Court Registered Land Guidelines and Survey Manual of Instructions. The court's litigation dockets may also be accessed through a link on the site (<https://www.masscourts.org>) and images of documents filed in the cases (after 2019) are available for attorneys and the public to view.

A recent and helpful addition to the website is a series of resource pages organized topically, containing explanatory descriptions, FAQs, outlines, and flowcharts for several different Land Court case types. The following resource topics are currently available:

- Land Court registered land resources (<https://www.mass.gov/guides/land-court-registered-land-resources>). This page contains the Registered Land Guidelines, a current compilation of registered land memos from the chief title examiner, the 2006 *Manual of Instructions for the Survey of Lands and Preparation of Plans*, and other helpful registered land resources, forms, and court standing orders. Many of the chief title examiner memos were revised and updated during the COVID-19 pandemic to address eFiling of certain cases for which eFiling is not available. See, e.g., Procedures for Processing of Subsequent Cases, Condominium Documents and Document Approvals (Aug. 3, 2021, superseding and replacing earlier memo).
- Land Court tax lien foreclosure resources (<https://www.mass.gov/land-court-tax-lien-foreclosure-cases-resources>). This page contains a detailed informational outline about tax lien foreclosure cases in the Land Court, a set of FAQs, links to guidance from the Supreme Judicial Court about tax lien foreclosure case procedures, and a simplified tax lien foreclosure process flowchart.
- Land Court servicemembers resources (<https://www.mass.gov/land-court-servicemembers-cases-resources>). This page contains information about the federal Servicemembers Civil Relief Act and a detailed set of FAQs explaining the servicemembers case process in the Land Court.

## **§ 14.2 REGISTRATION, CONFIRMATION, AND OTHER TITLE LITIGATION IN THE LAND COURT**

### **§ 14.2.1 Statutory Authority for Registration**

The land registration system in Massachusetts is based on the Australian Torrens System and is designed to make title to land “certain and indefeasible.” *Deacy v. Berberian*, 344 Mass. 321, 328 (1962). General Laws Chapter 185, § 1(a) gives the Land Court exclusive original jurisdiction over complaints for confirmation and registration and complaints for confirmation without registration of title to land. Proceedings under the statute are proceedings in rem against the land and operate directly

on the land and vest and establish title thereto. The process of land registration was declared constitutional in *Tyler v. Judges of the Court of Registration*, 179 U.S. 405 (1900).

### § 14.2.2 Why Register Land?

Land registration provides certainty for owners of land and makes title to that land indefeasible by prescriptive claims based on use. Easements or rights of way by necessity may not be implied over registered land. G.L. c. 185, § 53. The mere filing of a complaint for registration and the giving of statutory notice serves to interrupt the adverse possession of one claiming title to the land sought to be registered. *McMullen v. Porch*, 286 Mass. 383, 388–89 (1934). Although registration does not “cure” a title defect, if sufficient facts supporting a plaintiff’s claim to title are presented to the court, either by uncontested complaint and supporting documentation, affidavit, or at trial, the court will adjudicate title and enter a judgment of registration, the effect of which is to render the title defect or cloud on title irrelevant. Anyone seeking to examine the state of the title after the date on which a judgment of registration is entered is not required to look behind the registration.

Historically, land registration complaints have been brought in cases where there is a dispute as to a boundary or an indefinite description in the deeds in the chain of title, where there is a missing fractional interest in the plaintiff’s record title, or where there is an undischarged encumbrance of record. Usually, the impetus for registration comes from either uncertainty as to the boundaries or description of the land claimed, which may have erupted into an active boundary dispute, or uncertainty as to ownership interests, which may manifest itself in competing chains of title for the same parcel. In cases where a boundary dispute is the basis for the complaint, the success of the case may rest on the testimony of the surveyor. In these cases, the plaintiff’s attorney should work closely with the surveyor to understand and develop the evidence that will be presented. In cases where the issue in dispute is the ownership interest of the plaintiff, the assistance of a knowledgeable title examiner is essential.

As noted in § 14.2.7, below, land registration and confirmation are not the only methods for resolving defects or clouds in a chain of title. A lawyer representing an owner of land with title problems should carefully explore all available options before determining which approach best suits the client’s needs.

### § 14.2.3 Registration Versus Confirmation

General Laws Chapter 185, § 56A provides that complaints for confirmation of title without registration shall be governed by the provisions of Chapter 185 that are applicable to complaints and proceedings for confirmation and registration. The process for confirmation with registration is accordingly identical to that of confirmation without registration. Unlike titles that are registered and confirmed, titles that are confirmed without registration remain on the unregistered (recorded) land side of the registry, and persons holding such title are not entitled to recover from the assurance fund. In a case where the court enters a judgment confirming title without registration,

a copy of the judgment is recorded in the appropriate district of the registry of deeds and “the owner of such land, as determined by such judgment, shall hold the title thereto free from all encumbrances” except those statutory encumbrances specified in G.L. c. 185, § 46 that survive both confirmation and registration. See, however, *Town of Sandwich v. Panciocco*, 48 Mass. App. Ct. 556, 559–62 (2000), where the Appeals Court held that the decree plan in a registration case prevails over a confirmation plan in the event of an inconsistency between the plans. Titles confirmed but not registered enjoy no prospective protection against loss of rights to third parties by adverse possession or prescriptive use.

Because the title to land confirmed without registration remains on the unregistered (recorded) side of the registry, the fees paid for recording title documents are somewhat lower and the provisions of G.L. c. 185, §§ 51 and 65, relating to the subdivision of registered land, do not apply. On the other hand, as noted above, the landowner is not entitled to the protection of the assurance fund, as described in G.L. c. 185, §§ 99–107.

### § 14.2.4 Procedure

**Exhibit 14B** sets forth the Land Court’s outline on registration/confirmation only. The steps in the registration process are more fully elaborated in the following sections.

#### (a) *Filing the Complaint and Plan*

The process of registration of title begins with the filing of a complaint for registration in the Land Court by “persons who claim, singly or collectively, to own the legal estate or easements or rights in land held and possessed in fee simple.” G.L. c. 185, § 26. The complaint must be filed with a plan of the land that is the subject of the registration complaint and “all original muniments of title” within the plaintiff’s control. G.L. c. 185, § 33. The Land Court has published a 2006 *Manual of Instructions for the Survey of Land and Preparation of Plans* setting forth detailed requirements for plans accompanying complaints for original registration. In preparing the complaint for registration, it is essential that the attorney for the plaintiff establish and maintain a working relationship with the surveyor drafting the plan and provide as much information as possible to the surveyor. Although the registration process requires the court to refer the title to an independent Land Court examiner who will prepare a detailed abstract and opinion of title, a lawyer representing a plaintiff in a registration case very likely has had a title examination done and has a title report. Providing the report to the surveyor, as well as advising the surveyor of any known boundary disputes or discrepancies in description, will help the process run smoothly.

#### (b) *Contents of Complaint for Registration*

The Land Court form of complaint for registration is set forth in **Exhibit 14C**. The complaint must contain a description of the land, the name and address of the plaintiff, and the names and addresses of adjoining “owners and occupants, if known; and if not known, it shall state what search has been made to find them.” G.L. c. 185,

§ 28. This requirement is generally fulfilled by filing a Land Court form of certificate endorsed by the local assessors. See **Exhibit 14D**. The complaint should set forth any easements or other appurtenant rights claimed, and, if the complaint describes the land to be registered as having a boundary on a public way, “it shall state whether or not the plaintiff claims any and what land within the limits of the way, and whether the plaintiff desires to have the line of the way determined.” G.L. c. 185, § 29.

### (c) *Land Court Title Examiner and Examiner’s Report*

“Immediately after” the filing of a complaint for registration, the Land Court refers the matter to a Land Court title examiner. G.L. c. 185, § 37. Rule 1:07 of the Supreme Judicial Court Rules mandates that appointments of title examiners be made “in successive order” from a list maintained by the court. In the event an appointment is made out of order, the judge or other person making the appointment must provide “a brief written statement of reasons for not following the list.”

The examiner appointed by the court searches the title and investigates “all facts stated in the complaint, or otherwise brought to his notice” and files a report, “concluding with a certificate of his opinion on the title.” The Land Court has a format certificate of opinion (see **Exhibit 14E**), which requires the title examiner to state whether the plaintiff has “a good title as alleged, and proper for registration.” Note that the Land Court also has its own forms for abstracts of most instruments of record.

### (d) *Notice and Advertising*

Within fourteen days of the notice of the filing of the title examiner’s report, the recorder publishes notice of the filing of a complaint for registration in a newspaper in the district in which the land lies. G.L. c. 185, § 38. The notice includes the name of the plaintiff, the names of any parties known to have an adverse interest, and the adjoining owners and occupants as far as they are known. The notice also contains a description of the land and specifies a return day, not less than twenty nor more than sixty days after the notice, by which any party wishing to object must file an appearance and answer under oath “setting forth clearly and specifically” the nature of the objection and defense. The recorder is also required to post a copy of the complaint on the land in question and to provide notice by registered mail to any person named in the notice. G.L. c. 185, § 39.

If the complaint seeks to have the court determine the line of a public way, the mayor, a selectman, or one of the county commissioners, as applicable, must receive notice by registered mail. If the land borders on a river, navigable stream or shore, an arm of the sea, or a great pond, or if it otherwise appears that the Commonwealth may have a claim adverse to that of the plaintiff, notice is also given to the attorney general. G.L. c. 185, § 39.

**(e) *Order and Effect of General Default***

If no one appears and answers on or before the return day, the court may order that a general default be recorded and may enter judgment “confirming title of the plaintiff and ordering registration thereof.” G.L. c. 185, § 42.

**(f) *Titles Found “Not Good for Registration”***

The plaintiff may withdraw a complaint within fourteen days of the filing of the examiner’s report with the recorder in the event that the examiner determines that the title is “not good for registration.” The plaintiff may also proceed to prove title before the court, or to establish a claim based on adverse possession.

**(g) *Trial of Contested Cases***

If the Land Court title examiner reports a title to a particular parcel as “not good for registration,” the complaint for registration will fail, unless the plaintiff chooses to prove title at trial or proceed on a theory of adverse possession. Even when the title is reported back as “good for registration,” once any appearance is filed, the registration becomes “contested,” and the Land Court treats the matter as it would any other contested dispute or case.

**Practice Note**

Original registration and confirmation cases are subject to the Land Court’s individual calendar “single judge” procedure, Standing Order 1-04 (time standards), and the Land Court rules (all discussed below). In general, the time standards in a registration proceeding run from the time the case has gone to citation.

The parties may conduct discovery, and the development of the facts becomes important, expensive, and time-consuming, as with any other litigation. Registration cases, particularly those involving adverse possession claims or boundary disputes, can be particularly fact intensive. Frequently, it is necessary to prepare and call expert witnesses such as surveyors and title examiners.

The Land Court encourages the use of stipulations and urges parties to try only matters that are truly in dispute. For example, if no one disputes the chain of title and the dispute is focused instead on the location of a particular boundary, the court will encourage stipulation as to the title examiner’s report and the documents contained therein. The parties are then free to use the evidence admitted through stipulation in developing the contested evidence through the presentations of witnesses and other documentary evidence.

**(h) *Judgment of Registration and Confirmation***

If the court, after hearing, finds that the plaintiff’s title is proper for registration, a judgment of confirmation and registration is entered “which shall bind the land and quiet title thereto.” Such a judgment is conclusive against all persons and may not be

opened except upon a claim of fraud brought within one year after entry of judgment. G.L. c. 185, § 45. Note, however, that in a case where the court found untrue statements in a petition for registration with respect to the acreage registered, the one-year limitation did not bar an action for reconveyance of the land that was wrongly included in the registration. *Kozdras v. LandVest Props., Inc.*, 382 Mass. 34, 43–45 (1980).

### (i) *Certificate and Plan*

Once judgment is entered, the court forwards the case to the survey division for the drafting of the “decree plan” (now “judgment plan”) in accordance with the judgment. The judgment and plan are forwarded to the assistant recorder for the county in which the land lies, who records the entry of the judgment as the original certificate of title for the case. G.L. c. 185, § 48.

## § 14.2.5 Assurance Fund

At the time of registration, one-tenth of 1 percent of the assessed value of the land is paid into an assurance fund, which is kept and invested by the recorder of the Land Court. A person who, without negligence, sustains loss or damage “by reason of any error, omission, mistake or misdescription” in a certificate of title may bring an action in the Superior Court for compensation from the fund. G.L. c. 185, §§ 99–103; *Overly v. Treasurer & Receiver Gen.*, 344 Mass. 188, 194–95 (1962).

## § 14.2.6 Effect of Registration

An owner of registered land holds the land free from all encumbrances except those noted on the certificate and those enumerated in G.L. c. 185, § 46, which include the following:

- encumbrances not required to be recorded;
- leases for less than seven years;
- highway layouts (unless the certificate states that the boundary of such a way has been determined);
- local, state, and federal taxes; and
- betterments.

If there are facts disclosed on the certificate that would prompt a reasonably prudent purchaser to look further, or if a purchaser has actual knowledge of a prior unregistered interest, the purchaser takes subject to the interest even if it is not noted as an encumbrance on the certificate of title. *Jackson v. Knott*, 418 Mass. 704, 711 (1994); *Feldman v. Souza*, 27 Mass. App. Ct. 1142 (1989). Note also that while a plaintiff in a registration case may seek to register an appurtenant easement, in which case it would be noted on the certificate, failure to make such a claim will not result in loss of the easement. It is not appurtenant easements, but easements to which the land is subject, that the statute requires to be set forth on the certificate. G.L. c. 185, § 47; *Dubinsky v. Cama*, 261 Mass. 47, 56–57 (1927).

## § 14.2.7 Nonregistration Solutions to Title Problems

The registration and confirmation procedure is not the only means to resolve title issues and boundary disputes. Two of the more frequently employed alternatives, actions to try title and actions to quiet title, are discussed below.

### (a) *Actions to Try Title*

Pursuant to G.L. c. 185, § 1(d), the Land Court has exclusive original jurisdiction over complaints to require actions to try title to real estate under G.L. c. 240, §§ 1–5. A complaint to compel a supposed adverse claimant to try title can be brought by any person in possession of land with either a fee interest or “an unexpired term of not less than ten years” and anyone claiming an easement in the land of another. G.L. c. 240, § 1. The complaint names possible adverse claimants, who could be lienholders, persons claiming through adverse use, persons claiming under defective sheriff’s sales or executions, or any one of a number of other types of claimants. The statute specifically provides that a complaint will not fail for its failure to name specifically the possible adverse claimants, and that such parties may be described generally “as the heirs of A B or the like.”

If the adverse claimants are residents of the Commonwealth, they are served in accordance with the Massachusetts Rules of Civil Procedure. If they are nonresidents or unknown, the court orders notice by publication. If the parties so notified do not appear, the court “shall enter a decree that they be forever barred from having or enforcing any such claim adversely to the petitioner, his heirs or assigns, in the land described, and may require them to execute, within such time as the court orders, a conveyance, release or acquittance duly relinquishing the same.” G.L. c. 240, § 2. A party whose right is barred without actual notice has five years to bring an action for the value of their interest, and the court may require the giving of a bond by the petitioner in the original action in order to secure a fund to respond to the second action. G.L. c. 240, §§ 2, 4. Note that a complaint to require actions to try title may not be maintained against the Commonwealth. G.L. c. 240, § 5.

For a thorough and helpful discussion of the try title statute, comparing and contrasting it with other title-clearing causes of action, see *Bevilacqua v. Rodriguez*, 460 Mass. 762, 766–70 (2011). As noted by the court in *Bevilacqua*, the first try title statute was enacted in 1851. Prior to that statute, a claimant had limited options for trying title to land, chief among which was the writ of entry to remove a person alleged to be in possession of lands wrongfully. The court noted that an action to quiet title is an in rem action requiring a plaintiff to not merely “demonstrate better title than the defendants possess,” but to establish “sufficient title to succeed in its action.” *Bevilacqua v. Rodriguez*, 460 Mass. at 768 n.4 (citing *Sheriff’s Meadow Found., Inc. v. Bay-Courte Edgartown, Inc.*, 401 Mass. 267, 269 (1987)). An action to try title, on the other hand, “may defeat the specified adverse claims through a default or by showing title that is merely superior to that of the respondent.” *Bevilacqua v. Rodriguez*, 460 Mass. at 768 n.4.

**(b)     *Actions to Quiet Title***

General Laws Chapter 240, §§ 6–10 provide a similar remedy to try title actions through actions to quiet title. The Superior Court, Land Court, and Supreme Judicial Court have concurrent jurisdiction over actions that seek “to quiet or establish the title to land situated in the commonwealth or to remove a cloud from the title there-to.” The statute specifically contemplates that the action will seek “to determine the claims or rights of persons unascertained, not in being, unknown or out of the commonwealth, or who cannot be actually served with process and made personally amenable to the judgment of the court.” G.L. c. 240, § 6. The court is empowered to appoint a guardian ad litem in the event that persons served do not appear. G.L. c. 240, § 8. The plaintiff is required to pay the fee of the guardian ad litem. G.L. c. 240, § 9. Actions to quiet title are considered in rem proceedings. The statute specifically provides that “a judgment establishing or declaring the validity, nature or extent of the plaintiff’s title may be entered, and shall operate directly on the land and have the force of a release made by or on behalf of all defendants of all claims inconsistent with the title established or declared thereby.” G.L. c. 240, § 10.

**(c)     *Declaratory Judgment Actions Pursuant to G.L. c. 231A***

Where there is an actual controversy among specific parties claiming adverse title interests, as in the case of a dispute over boundaries or competing chains of title, a declaratory judgment action is a commonly utilized vehicle for resolving such disputes. The statute requires an actual controversy and seeks a declaration from the court as to the true owner of the property or the location of a boundary. Declaratory judgment complaints are often coupled with requests for injunctive relief and claims seeking to establish title through adverse possession.

## **§ 14.3     OTHER ACTIONS THAT CAN OR MUST BE BROUGHT IN THE LAND COURT; RULES AND PROCEDURES FOR LITIGATION IN THE LAND COURT**

### **§ 14.3.1   Validity of Mortgages and Other Encumbrances**

The Land Court has exclusive original jurisdiction over actions to determine the validity of encumbrances burdening real estate or to discharge a mortgage on real estate. G.L. c. 185, § 1(e), (f).

Complaints to determine the validity of encumbrances are brought pursuant to G.L. c. 240, §§ 11–14 to determine the validity of “any condition, restriction, reservation, stipulation or agreement made or imposed more than thirty years prior” to the bringing of the complaint. The judgment of the court determines the validity, nature, or extent of any such condition or other encumbrance and has the same effect as a release of the encumbrance. G.L. c. 240, § 14.



An owner of land may similarly bring a complaint to discharge a mortgage “not properly or legally discharged of record” where twenty years have elapsed after the time set forth in the mortgage for performance or twenty years after the date of a mortgage given to secure the mortgagee against a contingent liability. G.L. c. 240, § 15.

### § 14.3.2 Complaints Affecting Title to Registered Land

The Land Court has exclusive original jurisdiction to hear complaints affecting title to registered land. G.L. c. 185, § 1(a½).

### § 14.3.3 Tax Title and Low-Value Tax Takings

The Land Court has exclusive original jurisdiction over proceedings for foreclosure of and for redemption from tax title under G.L. c. 60, § 65. After the complaint is filed, the Land Court refers the matter to a Land Court title examiner to determine the identity of persons whose interest would be cut off by the foreclosure and notifies the parties so identified. G.L. c. 60, § 66. If no party answers, or if redemption is not permitted, the court enters a judgment barring rights of redemption, which may not be vacated or modified after a one-year period, unless a denial of due process is proven. G.L. c. 60, § 69A; *see also Town of Brewster v. Sherwood Forest Realty, Inc.*, 56 Mass. App. Ct. 905, 906 (2002).

General Laws Chapter 60, § 79 sets forth a simplified, nonjudicial procedure for municipalities to foreclose tax titles where the commissioner of revenue has determined that the value of the parcel is insufficient to meet the taxes. The commissioner files an “affidavit of low value” (currently, less than \$15,000) and, provided a treasurer’s deed to a purchaser is recorded within the statutory time period following a sale at public auction, the purchaser’s title is absolute upon recording.

Because of doubts raised by practitioners and decisional law relative to the constitutionality of the low-value procedure, the legislature enacted G.L. c. 60, § 80B, which establishes a procedure for affirming low-value tax title in the Land Court. The statute sets forth detailed requirements for notice to persons who would have an interest in the land but for the tax taking, and parallels, in most respects, the procedures established for foreclosure of tax titles. In 1986, the legislature enacted G.L. c. 60, § 80C, intended to be a twenty-year statute of repose on all claims alleging “defects, irregularities, or omissions” in low-value tax takings. The Real Estate Bar Association for Massachusetts (REBA), formerly the Massachusetts Conveyancers Association, has adopted a title standard reflecting the intent of this statute, which confirms the validity of tax titles more than twenty years old, provided the owner and property are adequately described in the instrument of taking. REBA Title Standard No. 4.

### § 14.3.4 Servicemembers Civil Relief Act

The most commonly used mortgage foreclosure methods in Massachusetts—foreclosure pursuant to a power of sale in the mortgage and foreclosure by entry—are nonjudicial in nature. Nevertheless, in Massachusetts, a foreclosing mortgagee is

required to comply with a court procedure to establish that no one with an interest in the property is in the military service. 1943 Mass. Acts c. 57, *amended by* 1945 Mass. Acts c. 120, 1959 Mass. Acts c. 105, 1982 Mass. Acts c. 127, 1990 Mass. Acts c. 496, 1998 Mass. Acts c. 142.

The Land Court has a form of complaint to determine whether the owner of the property is in the military service and therefore is protected, as provided in the act, and generally will expedite the Servicemembers Civil Relief Act (SCRA) procedure. Note that the Land Court requires all servicemember complaints filed after March 1, 2013 to be accompanied by a mortgagee's affidavit (see **Exhibit 14F**). In the affidavit, the plaintiff must attest to being (1) the mortgagee holding both the mortgage and the note, (2) the mortgagee acting on behalf of the current note holder, or (3) acting on behalf of the holder of the mortgage and the note.

Only the record owner of the property need be named in a proceeding under the Servicemembers Civil Relief Act. No proceeding is required if the record owner is a corporation, limited partnership, business trust with transferable shares, or a general partnership whose partners, insofar as appears of record, are in the preceding categories. A record judgment shall forever bar the persons named in the complaint from complaining that the foreclosure is invalid under the SCRA and no further approval by the Land Court of foreclosure documents is required. 1990 Mass. Acts c. 496.

In *HSBC Bank USA, N.A. v. Matt*, 464 Mass. 193 (2013), the Supreme Judicial Court reiterated the longstanding principle that “[s]ervicemembers proceedings occur independently of the actual foreclosure itself and of any judicial proceedings determinative of the general validity of the foreclosure.” *HSBC Bank USA, N.A. v. Matt*, 464 Mass. at 196 (quoting *Beaton v. Land Ct.*, 367 Mass. 385, 390 (1975)). *Matt* reminds as well that a defendant who does not assert protections of the Servicemembers Act may not appear and be heard in the Servicemembers proceeding, and that the court should not accept filings from a defendant who fails to invoke those protections. *HSBC Bank USA, N.A. v. Matt*, 464 Mass. at 199. Nevertheless, a plaintiff must establish standing in a Servicemembers proceeding, and the court may inquire sua sponte if a question of standing becomes apparent. *HSBC Bank USA, N.A. v. Matt*, 464 Mass. at 199–200. Following *Matt*, the Land Court has revised the forms of complaint and accompanying affidavit required at the outset of a Servicemembers case, and plaintiffs should use the latest forms, available from the court and on its website.

### § 14.3.5 Other Actions

The Land Court also has exclusive original jurisdiction of complaints to determine the boundaries of flats under G.L. c. 240, § 19 and to determine county, city, town, or district boundaries under G.L. c. 42, § 12. The Land Court has original jurisdiction concurrent with the Supreme Judicial Court and Superior Court over many additional matters “where any right, title and interest in land is involved.” G.L. c. 185, § 1(h), (j), (k)–(p).

A relatively recent addition to the Land Court docket are cases seeking to relocate easements of record. Usually brought by the owner of the servient estate, these cases

are brought pursuant to the Supreme Judicial Court's adoption of Section 4.8(3) of the Restatement (Third) of Property (Servitudes). In *MPM Builders v. Dwyer*, 442 Mass. 87 (2004), a case that originated in the Land Court, the Supreme Judicial Court allowed for relocation of easements under certain conditions.

In 2014, in *Martin v. Simmons Properties*, 467 Mass. 1 (2014), the Supreme Judicial Court clarified that the new rule also applied to registered land. Note that where the easement in question burdens registered land, the Land Court has exclusive original jurisdiction pursuant to G.L. c. 185, § 1(a½), and the case would likely be brought as an S petition case. See § 14.4.6, below, for further discussion of S petitions.

### Practice Note

The *MPM Builders* court counseled that the best practice is for the dominant and servient estate owners to attempt to agree to any alterations or relocation of an easement. If an agreement cannot be reached, the servient estate owner may seek a declaration from the court that the proposed changes to the easement meet the criteria of Section 4.8(3) of the Restatement (Third) of Property (Servitudes). The servient owner should not resort to “self-help”—i.e., moving forward with relocation or alteration—without court approval in the form of a declaratory judgment.

## § 14.3.6 Litigation Procedure in the Land Court

Although a full explanation of the procedure for litigating contested cases in the Land Court is beyond the scope of this chapter, practitioners need to have a basic understanding of how cases are handled by the court and how they progress from the filing of a complaint to final resolution. Because of several changes to the court's procedures and rules, even a seemingly simple title-clearing action may require participation in case-management events and attention to time standards deadlines.

### Practice Note

Counsel should familiarize themselves with the latest rules, standing orders, and procedures—all of which are available on the Land Court website—to make certain their cases are handled in an appropriate and efficient manner.

### (a) *Single-Judge Case Assignment*

To promote better case management, the Land Court has adopted a system in which most cases are assigned to one of the court's seven justices soon after filing. Certain categories of cases are excluded from the individual case system, notably cases filed under the Servicemembers Civil Relief Act and “S” (subsequent to registration) cases. Tax-lien foreclosure proceedings are assigned to the recorder or deputy recorder, and are ordinarily heard in the dedicated sessions on Thursdays at 10:00 a.m. and 2:00 p.m.

The guiding principle of the individual calendar system is that one judge becomes familiar with a given case, conducts a case management conference early in the life of the case, and manages and controls the case throughout its time at the Land Court,

hearing all motions and presiding at trial. The single-judge model requires counsel to schedule motions for hearing before the judge to whom the case is assigned.

Dispositive motions are scheduled for hearing by the court through the presiding judge's sessions clerk (see Land Court Rule 4). The parties may also request a hearing on a nondispositive motion, and if the court determines to conduct a hearing, it will be scheduled by the court through the presiding judge's sessions clerk (see Land Court Rules 5 and 6).

Unless the court has ordered otherwise, a motion that is not considered "dispositive" need not be acted on by the court unless a hearing has been requested. The court may act on certain motion papers without a hearing, or may decide on its own to set a particular motion for hearing, but the burden is on the parties to request a hearing for nondispositive motions.

The current sessions clerk assignments are available from the recorder's office and on the court's website; see <https://www.mass.gov/lists/land-court-contacts>. When scheduling and similar issues arise, counsel should communicate with the sessions clerk for the particular judge to whom the case is assigned.

### Practice Note

The most expeditious way to request a hearing on nondispositive motions is to email a copy of the motion that includes the request to the sessions clerk with a copy to all counsel with suggested available dates that are agreeable to all counsel and parties. An original of the motion and the request must be filed in the recorder's office. The court frequently will notify the parties by email of a date by which oppositions must be filed. Note that routine assented-to motions—e.g., for extensions of time to the tracking order—will be acted upon expeditiously by the court when transmitted to the sessions clerk as noted above. Also note the specific requirements of Land Court Rules 7 and 8 with regard to discovery motions—the sessions clerk will reject discovery motions that fail to comply with these rules.

Most individually assigned cases are called for a case-management conference within about three months of filing. The Land Court requires preparation for this conference and the submission of a detailed joint case-management statement covering specific items. A sample form of case-management order is included as **Exhibit 14G**. It is the plaintiff's responsibility to serve the court's case-management order on the other parties, and also to coordinate the drafting of the joint written statement (due in advance of the conference) with the other parties. See **Exhibit 14H** for a sample pretrial conference notice and order.

### (b) *Time Standards*

Land Court Standing Order 1-04, effective October 4, 2004, provides time standards for many of the contested cases the court hears. Cases filed under the Servicemembers Civil Relief Act are not covered by this order. The order establishes two standard

track designations, the “A” (average) track and the “F” (fast) track. There also is the opportunity to seek assignment to a special accelerated “X” track. Consistent with the system of individual judge assignment and case management, the justice to whom a case is assigned ordinarily holds a conference soon after the initiation of the action to establish particular dates and time periods for milestone events in the life of the case. (In original registration and confirmation cases, the management event may be held following the issuance of citation.) There are presumptive dates for the A and F tracks, which may be lengthened or shortened in appropriate cases.

### **Practice Note**

Counsel should review the tracking orders applicable to their cases without delay to understand the timeframes governing such activities as discovery, the filing of motions, and preparation for trial.

### **(c) Rules**

The Land Court maintains a set of rules, currently numbered 1 through 14; they are available on the court’s website at <https://www.mass.gov/land-court-rules-and-standing-orders>.

Practitioners should study carefully Rules 4 and 5, which regulate the procedure for preparing, filing, and having the court hear and decide dispositive and nondispositive motions. These rules have provisions regarding the types and particulars of motion papers, briefs, appendices, and other submissions that the court will accept. The court can refuse noncompliant papers. The general outline of the required submissions will be familiar to counsel acquainted with Superior Court motion practice, although the Land Court has not adopted the procedure of Superior Court Rule 9A(b), which requires a moving party to receive other parties’ oppositions and cross-motions and then file them along with the motion.

Rules 7 and 8 govern the procedure for discovery disputes and motions. Parties must confer before discovery motions are filed, and motions lacking the certification of prior conference are subject to denial. Discovery motions must follow a specified list of requirements and be accompanied by a brief.

Rule 10 deals with agreements for judgment that parties submit to settle their disputes. If the agreement for judgment is “for a sum certain or that all relief shall be denied” (*see* Mass. R. Civ. P. 58(a)), it may be filed without a judge’s approval and still will constitute the judgment of the court. All other agreements for judgment do not operate as the judgment of the court unless they are approved or endorsed by a judge, typically on the parties’ joint motion. A judge may decline to approve such an agreement for judgment. This usually happens because the agreement contains provisions that are at odds with any possible judgment that could have followed the decision of the case by the court. Such situations include those where the judgment’s terms run counter to law or the obvious facts of the case, afford relief that lies outside the Land Court’s subject matter jurisdiction, or purport to affect rights of non-parties, or purport to adjudicate matters not raised in the complaint or counterclaims. An agreement for judgment also might not be approved if it contains provisions that

lack clarity or might inappropriately require the court, using its contempt powers, to frequently police the terms of the agreement. If the court does not approve an agreement for judgment, the agreement still may be filed by the parties—effectively ending the litigation—but it will not operate as the court’s judgment.

Rule 11 requires pleadings to “include, prominently in the case caption immediately following or underneath the case number, the surname or initials of” the judge to whom a case has been assigned.

Rule 13 provides that both the Land Court’s rules and the Massachusetts Rules of Civil Procedure apply to partition proceedings.

Rule 14 sets forth a process by which the parties can waive any right to detailed findings of fact and request a binding summary decision following a bench trial. The rule requires the parties stipulate to the process and waive rights under Mass. R. Civ. P. 52(a) to separate detailed findings of fact and rulings of law. The procedure is discretionary with the court and is particularly suited to cases where the factual and legal issues are limited and well defined.

#### **(d) *Limited Assistance Representation (LAR)***

The Trial Court has adopted Trial Court Rule XVI: Uniform Rule on Limited Assistance Representation, effective February 1, 2019, which permits limited assistance representation (LAR), or the unbundling of legal services, in the Land Court. LAR allows an attorney to represent a party in a noncriminal action for discrete, limited purposes, if the limitation is reasonable under the circumstances and the client gives informed consent. Essentially, LAR allows litigants the opportunity to hire a qualified attorney for specific limited case events, such as preparing for a case management conference or defending a dispositive motion. Attorneys seeking to qualify and appear as LAR attorneys must complete an approved training program as provided for in the Uniform Protocol for Limited Assistance Representation Training in the Massachusetts Trial Court. An attorney must certify that they are LAR-qualified on the court-approved notice of limited appearance. All related LAR forms, as well as information sheets and brochures, are available on the Trial Court website. The Land Court’s standard case management conference notice and order also requires the plaintiff to send the LAR information sheet to the defendants, unless they are already represented by counsel.

### **§ 14.4 DEALING WITH REGISTERED LAND**

The Land Court is a court unlike any other in the Commonwealth. It fulfills a dual role, serving both as a trial court in matters where real estate interests are involved and as the overseer of the registries of deeds and the Torrens land registration system that exists in all counties. Real estate practitioners must conform to the Land Court’s guidelines and rules when filing transactional documents. Often this requires dealing with the court and its staff in Boston and obtaining approvals before documents are allowed to be filed. There is commendable logic in this procedure; it rests on the

premise that every time a registered land document is filed and noted on the certificate of title the Land Court has issued, an act that is judicial in nature has taken place. The case of *Doyle v. Commonwealth*, 444 Mass. 686 (2005), reaffirmed the role and authority of the court in supervising assistant registers under the statutory scheme created by G.L. c. 185. In *Doyle*, the holder of a transfer certificate of title for land shown as part of a paper street on a Land Court plan appealed a Land Court judge's entry of a judgment determining that the transfer certificate was invalid. The judge had determined sua sponte that the transfer certificate had been issued erroneously and was defective on its face where the plan referenced on the certificate did not show the land in question as a separate lot or depict east or west boundaries for the locus, and where no judicial authorization for the issuance of a certificate for such land appeared. Responding to the certificate holder's claim that the legislative intent of G.L. c. 185 was to make title to registered land "certain and indefeasible," the Supreme Judicial Court held that the integrity of the registration system demanded an interpretation of G.L. c. 185 that authorized Land Court judges to rule on the validity of a transfer certificate issued in error. *Doyle v. Commonwealth*, 444 Mass. at 696.

With few exceptions, executed documents in transactions affecting title to registered land must be presented for filing to the registered land "desk" or department in each registry of deeds. Registered land documents are said to be "filed" or "registered" rather than "recorded" with the appropriate land registration district of the Land Court. The documents must meet the requisite standards or they will not be accepted for filing and notation on the certificate of title (see discussion of the Land Court Guidelines on Registered Land in § 14.4.2, below). Although the Registration Act makes clear that registered landowners may deal with their land "as fully as if it had not been registered," G.L. c. 185, § 57, the same statute establishes that "no deed, mortgage or other voluntary instrument, except a will and a lease for a term not exceeding seven years" will take effect as a conveyance without being registered.

These instruments (even though they might be perfectly effective as to recorded land between the parties upon execution and delivery) only operate, as to registered land, "as a contract between the parties, and as evidence of authority to the Recorder . . . to make registration." G.L. c. 185, § 57. Because "the act of registration only shall be the operative act to convey or affect the land," G.L. c. 185, § 57, the need to satisfy the requirements of the Land Court and its registration districts and actually get the document "registered" (i.e., accepted, filed, and noted on the certificate of title) is paramount.

The Registration Act originally contemplated issuance of "owners' duplicate certificates of title" to be held by owners and to be presented with any "voluntary" document to be filed, but the owner's duplicate certificate has been abolished. 1996 Mass. Acts c. 481, § 4. The only official certificate of title is the one issued by and maintained in the land registration district, where it is kept in sequential "books of registration."

Of course, some matters need not be filed or noted on the certificate of title to be effective and to encumber the title. These matters are enumerated in G.L. c. 185, § 46, and largely include certain liens in favor of government authorities for taxes,

certain public and private ways, the boundaries of which are not adjudicated, and leases for seven years or less.

Practitioners need to verify that all land involved in a given transaction is identified and described in the operative conveyancing papers. Registered or unregistered pieces intended to be conveyed are sometimes omitted from a transaction because they were overlooked. This can occur when a small piece of registered land is not included with the larger “recorded” or “unregistered” parcel. Practitioners should check their locus descriptions against other sources, including tax assessment records and maps, recorded subdivision and other back-title plans, and unrecorded surveys. The Land Court’s survey division maintains indices of registered land plans by locality, and while these records should not be relied on conclusively, it makes sense to check them as well.

When a locus contains both registered and unregistered land, two steps are involved in the recording of the documents—they must be filed for registration to affect the registered land and recorded to affect the recorded land. Two sets of fees need to be paid (registered land has its own schedule of filing fees), although typically the deed excise conveyance tax is paid only once, at the first counter, usually the registered land desk.

Prior to 2017, registries across Massachusetts were required to retain all original documents filed in the registered land department, thereby making it impossible to e-record such documents. However, with the passage of 2016 Mass. Acts c. 404 and its amendments to G.L. c. 185, § 63, this requirement was overturned, making it possible to e-record registered land documents. *See* <https://malegislature.gov/Laws/SessionLaws/Acts/2016/Chapter404>.

If filing a registered land document in person, parties with a single set of documents present them at the Land Court desk first, and after they are filed there, registry personnel “walk” the documents to the recorded land counter, where they will be recorded. It is also possible to have two counterpart sets of documents, one to be filed for registration, the other to be recorded. Registered land documents are assigned permanent sequential document numbers; and when filed in person, originals are retained by the land registration district. With the addition of electronic recording capabilities for registered land documents in some registries, practices may vary. Practitioners should consult with and review the requirements published by the local registries before proceeding with electronic filing.

It is essential that any document presented for registration have a proper “Land Court” description of the particular parcels of registered land the document will affect. In general, this means that there must be a separately described parcel of registered land that matches an approved lot of registered land shown on a Land Court plan prepared by the Land Court’s survey division. This topic is dealt with at some length in the Land Court Guidelines on Registered Land (see § 14.4.2, below). In general, if the registered land is not either already a separately designated lot on a Land Court–drawn plan (and described with reference to that plan) or described with Land Court plan designations stamped as approved by the Land Court’s survey division, the document will



not be accepted for registration. See § 14.4.4, below, concerning subdivisions and descriptions of registered land.

When all of the land described in a certificate of title is conveyed in fee, the deed is noted on the then outstanding certificate of title, which is then cancelled, and a new certificate of title is issued in the name of the new owner. If less than all the land on a certificate of title is conveyed in fee, the outstanding title remains extant as to the unconveyed land. As to the conveyed land, the outstanding certificate is partially cancelled and a new certificate describing the land conveyed is produced in the new owner's name.

### § 14.4.1 Guidelines

The process of having a document accepted for registration requires that it pass muster with the personnel at the registered land desk in the registry of deeds. In some instances, either because registry district officials require guidance in a particular case or because the Land Court, by general policy, requires centralized approval of certain types of transactions by its Boston staff, matters require approval by the Land Court in Boston prior to filing. This approval comes in most instances from the chief title examiner or one of the other title examiners. In some instances, the Land Court's title examination staff will be unable to give independent approval and will need to refer a matter to a Land Court justice for their approval. In many cases, this approval process will proceed without the need for bringing a formal court action. In some instances, a pleading must be filed, most often an "S" (for "subsequent" or "supplemental") petition (also called an "S case").

To increase the number of occasions when registered land documents can be accepted at the registered land desks in the registries of deeds, and to clarify the requirements for getting registered land documents approved, if necessary, and filed for registration, the Land Court promulgated, effective May 1, 2000, a set of fifty-four guidelines on registered land. These guidelines were intended to update and replace the periodic, ad hoc guidance, written and oral, that the Land Court had over many years disseminated to its internal title examination staff and to registered land desk personnel in the registries of deeds.

Effective February 27, 2009, the Land Court issued a revised and expanded set of guidelines. A number of those promulgated in 2000 were updated, one was deleted, and ten new guidelines (numbers 55 to 64) were added. The revised set of guidelines appears on the court's website (see <https://www.mass.gov/guides/land-court-registered-land-resources>).

Note that the guidelines do not remain static, even without a formal revision or republication by the Land Court. Over time, the guidelines and corresponding forms have been supplemented and updated to respond to changing legal requirements and decisional case law, revised statutes and new legislation, and updated practices and procedures (e.g., the addition of eFiling or electronic recording). These updates and revisions are typically captured in formal memoranda issued to the registries by the Land Court chief title examiner, and published on the Land Court website by date of

issuance and topic. To ensure you are referencing the latest guidance and forms, practitioners should always check with the Land Court's website.

### § 14.4.2 Selected Guidelines

Whenever dealing with registered land, and preparing and presenting documents for registration, counsel should review the latest version of the guidelines to ascertain if there is one that is relevant and should also review the chief title examiner memorandum on the court's website as points in the guidelines are sometimes clarified or updated in those memoranda.

Several of the guidelines are worthy of specific mention.

#### (a) *Administrative Agent for Multiple Lenders (Indefinite References) (Guideline No. 3)*

Land Court documents need to be free from so-called indefinite references, i.e., references to off-record papers that are necessary to understand the import of the filed instrument. *See* G.L. c. 184, § 25. This issue comes to a head in numerous contexts, some of which are the subject of explicit guidelines (see, e.g., Land Court Guidelines on Registered Land, No. 59, "Indefinite References" (Feb. 27, 2009), No. 27, "Leases and Notices of Lease" (May 1, 2000, revised Feb. 27, 2009), and Land Court Guidelines on Registered Land, Nos. 51–53 (May 1, 2000), concerning trusts and transactions involving trustees). Land Court Guideline No. 3 (May 1, 2000) deals with one limited aspect of the indefinite reference problem—the situation of one lender designated to serve as an agent for undisclosed lenders, generally pursuant to a credit agreement that was not presented for registration.

To facilitate this practice, Land Court Guideline No. 3 requires certifications by the named mortgagee agent, in a prescribed form, as to the agent's authority to act regarding the mortgaged interest. This approach reduces concern about the need for consent from unnamed lenders when the agent, acting in the name of all the lenders, later takes actions such as foreclosing, modifying, or partially releasing the mortgage.

#### (b) *Alteration of Documents (Guideline No. 4)*

This guideline, issued May 1, 2000, deals exhaustively with a wide range of changes to documents presented for registration. The former practice was largely to refuse filing if any alteration appeared on the document. The guideline divides changes into the following four categories:

- Changes obviously made with the consent of the parties (including changes initiated by the parties) are not considered alterations, and may be accepted.
- Changes that are primarily corrections or ministerial are acceptable; a nonexclusive list is provided.
- Changes that go beyond simple corrections but do not fundamentally alter the document's substance may be accepted at the discretion of the counter personnel,

who may elect to defer to the Land Court's Boston staff, or who may require an affidavit as outlined in the guideline.

- Changes that are presumed to be substantive require approval from the chief title examiner or an order of the court.

**(c) *Attorney's Proposed Form of Certificate (Guideline No. 7)***

Guideline No. 7, issued May 1, 2000, introduces the opportunity for counsel to propose the form of owner's certificate the land registration district will issue. Analogous to submission of a proposed form of judgment for consideration by a court, this guideline should be consulted, and its opportunity considered, when there is a complicated new certificate of title the district must prepare. The lawyers involved in the transaction, who are presumably the most familiar with the title, can help the district personnel by suggesting the format of the new certificate. The district can accept or reject the suggested form of certificate, but may be grateful for the lawyers' input.

**(d) *Effect of Death on Registered Land Titles (Guideline No. 14)***

Guideline No. 14, issued May 1, 2000 and revised February 27, 2009, lays out the rules to follow when one or more of the registered owners has died. There are several methods possible, depending on how title was held, who has died, and the transactional needs, if any, of the current interest holders. Note that on October 13, 2012, the Land Court announced via a chief title examiner's memorandum that it will change Guideline No. 14 to incorporate the Massachusetts Uniform Probate Code (MUPC), which became effective on January 2, 2012. On October 31, 2019, the chief title examiner issued a comprehensive memorandum on Guideline 14 that supersedes the October 13, 2012 memorandum and sets forth four methods for dealing with registered land titles after the death of the certificate holder. This memorandum should be consulted in relation to addressing any after-death title issues, including the method requiring that an after-death complaint be filed with the Land Court.

Additionally, when an after-death complaint with the court must be filed to address the title to the property, the practitioner should be aware of Land Court Standing Order 1-21, which permits the court to dismiss without prejudice prematurely filed complaints. A complaint is prematurely filed if it is filed with the Land Court before the entry of judgment in an appropriate probate proceeding has become final, with either no appeal having been taken within the applicable time limit, or any appeal taken having resulted in the entry of judgment pursuant to the rescript of the Supreme Judicial Court or Appeals Court.

**(e) *Descriptions in Deeds and Certificates of Title: Exception Deeds; Conveyances of Portions of Land (Guideline No. 18)***

Guideline No. 18, issued May 1, 2000 and revised February 27, 2009, addresses a debate that has raged for years. Exception deeds are, in general, no longer allowed.

Under this guideline, a deed or mortgage may only be accepted for filing if it conveys a lot or lots on a Land Court plan. The former practice of describing the land in a deed as being the “remainder” of the land described on a Land Court plan is largely prohibited. Certificates of title are not to issue, describing for the first time, land in this fashion. If the land to be conveyed is not shown as a separate lot on a Land Court plan, a plan of the lot to be conveyed must be approved by the Land Court’s survey division. It is not required that the formal subdivision plan also show the remainder of the registered land, although a reference plan is required to be filed showing the relationship of the various registered parcels to each other. With certain exceptions, the remainder parcel cannot be conveyed unless and until the court issues an approved plan.

There is an exception from this rule for leases and easements. A lease or easement describing a portion of a lot shown on an exhibit plan that is attached to the document should be accepted for filing. There also is an exception for remainder parcels resulting from eminent domain takings.

As revised in 2009, the guideline now permits, as a discretionary matter, the court or the chief title examiner to issue an order (or grant an approval) permitting the filing of deeds of remainder parcels; there must be a showing that it would be a substantial burden to comply with the new plan requirement. Examples of this might arise, for instance, in cases involving transfers or conveyances to family members or related entities.

The registry districts are authorized by this guideline to use lot numbers on Land Court plans when writing up certificates of title instead of metes and bounds descriptions.

**(f) *Delayed Filing for Registration (Guideline No. 17)***

This guideline, issued May 1, 2000, provides that deeds go stale if not filed within a year of execution, unless reacknowledged or unless appropriate affidavits are presented to the chief title examiner. If the grantor has died, a subsequent petition will be required to obtain court approval.

**(g) *Expired and Obsolete Encumbrances (Guideline No. 21)***

Guideline No. 21, issued May 1, 2000, directs the districts to note as “expired” a number of matters on the memorandum of encumbrances that have become of no force and effect either by the passage of time or operation of law. (See § 14.4.6, below.)

**(h) *Homestead (Guideline No. 25)***

This guideline has been superseded by Chapter 395 of the Acts of 2010, effective March 16, 2011, which revised G.L. c. 188, the Homestead Statute, in its entirety. The Land Court will accept for filing any “purported homestead” document in compliance with the statute. *See* Memorandum from Chief Title Examiner Edmund A. Williams to All Registry Districts Registered Land Division (Mar. 16, 2011) (New

Homestead Law (Chapter 188)), available at <https://www.mass.gov/doc/new-homestead-law-chapter-188/download>.

**(i) *Various Entity Documents—Limited Liability Companies and Partnerships, Limited Partnerships (Guideline Nos. 29–33)***

A general proposition of registered land practice is that the authority of proper signatories of a legal entity must be shown in recordable form before the district will accept the document executed by that entity. The rules for limited liability companies (LLCs), limited liability partnerships (LLPs), and limited partnerships are laid out in Land Court Guidelines on Registered Land, Nos. 29–33 (issued May 1, 2000). In most every case, a certificate from a secretary of state or similar public officer is required to establish these facts. Practitioners must anticipate the need for these certificates, which can take time to procure, because lack of the required certificate (or delivery of one that is out-of-date, generally more than sixty days old) will delay registration.

**(j) *Massachusetts Estate, Inheritance, and Corporate Excise Taxes (Guideline No. 35)***

In this guideline, issued May 1, 2000 and revised February 27, 2009, registry personnel are informed that they need not inquire about these liens in favor of the Commonwealth or about releases of them. The certificate of title will not provide any protection in this regard, and the practitioner will need to investigate independently. This is entirely consistent with G.L. c. 185, § 46.

**(k) *Mortgages: Amendments (Guideline No. 37)***

This guideline, originally issued May 1, 2000 and revised February 27, 2009, deals with amendments to mortgage instruments. The general rule is that amendments to mortgages require execution and acknowledgement by both parties to the mortgage. In limited circumstances, however, this guideline, as revised in 2009, authorizes, as to mortgages of land improved with only one to four family residential buildings, certain changes of “relatively minor significance or [of a] routine nature,” as described in the guideline, to be registered if set out in an amendatory document signed by the mortgagor and accompanied by a written affirmation of assent by counsel for the current mortgage holder. A form of the mortgagee’s attorney’s certification is supplied with the guideline.

This guideline emphasizes that this procedure is not the norm—and that “[o]rdinarily, ‘confirmatory’ documents are not accepted for filing by the registry districts, as such a document implies a failure or defect in the original registration of the document sought to be ‘confirmed.’” Unless the change to the mortgage falls within one of the eight enumerated categories, a fully executed amendment must be registered.

When a mortgage is amended to add additional land, a formal amendment is required, and this guideline furnishes the requirements for doing so, including that there must be an actual grant of the additional land to the mortgage holder. If the new

land is recorded, rather than registered, the guideline requires a Land Court examiner's title report in the form prescribed.

**(l) *Mortgages: Discharges and Assignments; Collateral Security Documents (Guideline No. 39)***

This guideline, issued May 1, 2000, settles when the district will (and will not) treat as discharged collateral documents, such as a conditional assignment of leases and rents, when the related mortgage is discharged. The mortgage discharge documents must show that the underlying obligation has been satisfied.

**(m) *Trust Transactions (Guideline Nos. 51–53)***

These guidelines, issued May 1, 2000 and revised February 27, 2009, lay out the rules for conveyances to and from trustees of a variety of types of trust. The guidelines address when and where the trust instruments and trustee status and appointment papers must be registered and recorded, what certifications must be filed by trustees, and particular requirements, including additional affirmations to be filed, in cases where a fiduciary attempts to convey for nominal consideration. The 2009 revisions incorporate the provisions of G.L. c. 184, § 35, allowing for use of a trustee certificate.

**(n) *Approval by the Chief Title Examiner (Guideline No. 55)***

This guideline, issued February 27, 2009, presents many of the most common examples of documents which must be approved in advance of registration by the court's chief title examiner, or their designee, at the court in Boston, prior to acceptance for registration by the district. The types of supporting materials the title examiners will require for their review are indicated. The list of categories of documents requiring prior approval includes fiduciary deeds, bankruptcy instruments, pension-fund mortgage documents, exception deeds as treated in Guideline No. 18, partition documents, and certain papers involving succession of trustees of a title-holding trust. In most cases, provision of the listed supporting materials will allow prompt approval by the court's title examiners, although some doubtful cases will require presentation of the question to the court.

**(o) *Bank Mergers (Guideline No. 56)***

Issued February 27, 2009, this guideline assists with registration of mortgage discharges, assignments and partial releases in cases in which there have been certain types of changes in the name of a mortgagee entity. Relying on G.L. c. 183, § 55, the guideline allows these kinds of instruments to be registered without a separate certificate as to change in name, based on the recitation of a merger, consolidation, amendment, conversion, or acquisition of assets which caused a change in the name of identity of the entity executing the document. Unregistered assignment problems, however, cannot be resolved in this manner. The guideline further addresses other ways of proving the succession of mortgage bank interests, including allowing, in some cases, approval by the court's chief title examiner of these kinds of documents

based on reliable official internet information about bank mergers and successions submitted with an attorney's certificate.

**(p) *Condominiums: Approval of Condominium Documents***  
***(Guideline 57)***

As earlier mentioned, condominium documents affecting registered land receive scrutiny from the court before they may be filed for registration. A judge's approval, indicated on the condominium document itself, is a prerequisite to acceptance of the instrument by the district. This new guideline, issued February 27, 2009, lays out in clear detail the requirements the court now uses to review and approve condominium documents and plans. Master deeds and the accompanying plans require approval, as do any amendments to them. In general, condominium trust declarations, bylaws, and rules do not.

The guideline sets forth the papers which must be submitted to the court to allow it to review the condominium documents. The guideline is specific about what the master deed and plans must (and must not) contain. The list of requirements is clear and thorough, and should facilitate the preparation and submission of master deeds and plans for approval. Counsel should share this guideline with the surveyors, engineers, or architects preparing condominium plans, so they know what certifications and measurements will be necessary.

The court's approval, however, as the guideline makes clear, is limited in scope. "The Court reviews these documents for compliance with the elemental statutory requirements discussed . . . [in the guideline] and will approve a master deed if it satisfies the limited express requirements of G.L. Chap. 183A, including those set forth in Section 8, necessary for the establishment of a condominium and the valid submission of the registered land to the provisions of Chapter 183A. The Court's review is limited to this purpose. . . ." As the guideline cautions, "[a]pproval does not mean that the court considers any other provisions contained in the documents to be lawful or enforceable, in whole or in part." Thus, the guideline warns that a variety of provisions of the proffered condominium document will not be evaluated, including those regarding phasing and retained developer rights and interests, governance and financial provisions, rights, and remedies of the declarant and condominium association, sections dealing with common liens and expenses, etc. Practitioners should realize that the limited approval given by the court does not in any way mean that these many parts of the document have any validity at all. If, for example, the master deed contains ineffective phasing language, the court's approval of the document will not in any manner commit the court to approving a later proposed phasing amendment consistent with the provisions of the previously approved master deed. Those who draft master deeds need to review this guideline closely to understand the many aspects of the document which are not being passed upon by the court.

This guideline also lays out the general procedure to be followed to have land withdrawn from the provisions of G.L. c. 185 based on a proposed condominium declaration. This topic is treated more expansively in Guideline Nos. 63 and 64.

**(q) *Indefinite References (Guideline No. 59)***

Offering clarification of longstanding court practice, this guideline, issued February 27, 2009, relying on G.L. c. 184, § 25, the “indefinite reference statute,” permits reference in a mortgage or similar instrument to a promissory note, security agreement, construction agreement, construction loan-agreement, option agreement, or purchase and sale agreement for which the registered mortgage document is given as security, even though the agreement referred to is not registered with the mortgage. The guideline also authorizes registration of certain types of instruments which, in effect, are references to unrecorded documents, because doing so is contemplated by a statute. Examples are notices of lease, notices of assignment of leases, and certain mechanics lien statutory notices.

**(r) *Mortgages Affecting Appurtenant Easements (Guideline No. 60)***

This February 27, 2009 guideline provides that when a certificate of title includes on its face an appurtenant easement for the benefit of registered land, a mortgage, registered or recorded against the title of the servient estate, should not be noted on the certificate of title of the dominant estate. When the title to the registered land described in a certificate of title is subject to an easement for the benefit of recorded land, a mortgage recorded against the title of the dominant estate should not be noted on the certificate of title of the servient estate.

**(s) *Mortgages: Discharge Notations for Expired Mortgages (G.L. c. 260, § 33) (Guideline No. 61)***

Issued February 27, 2009, this guideline, consistent with the provisions of G.L. c. 260, § 33, provides a method for obtaining discharge of registered mortgages noted on certificates of title where there has elapsed either five years after the stated maturity date for the secured obligation, or thirty-five years after the registration of a mortgage where no term is stated. The guideline includes a form to be used to request the discharge.

**(t) *Trusts: Expired (Guideline No. 62)***

This February 27, 2009 guideline gives a general discussion of the possible ways to deal with a variety of situations where the term of a trust, holding an interest in registered land, has come to an end, including by passage of time or the death of certain persons. Because these issues tend to be fact-intensive, there is not a single manner in which the court will deal with these questions, but this guideline provides an overview of several likely approaches the court will take to deal with trusts whose terms appear to have terminated.



**(u) *Voluntary Withdrawal (G.L. c. 185, § 52) (Guideline No. 63) and Withdrawal from Registration (G.L. c. 183A, § 16) (Guideline No. 64)***

These guidelines, added on February 27, 2009, provide the comprehensive roadmap to be followed where a registered land owner seeks to remove land from the operation of G.L. c. 185, for any of several reasons authorized by the relevant statutes. The statutory provisions, generally very specific, are laid out in the guidelines, as are the internal procedures and forms the court will require be used to obtain its approval of the withdrawal. As these guidelines make clear, certain of the recognized reasons for withdrawal apply to private owners, others are available only to public entities, and yet others arise only when there are condominium documents being recorded or registered. These guidelines supply all the specifics. As the statutory grounds for withdrawal have been amended since the publication of this guideline, practitioners should reference the Land Court website to ensure they are using the latest court complaint forms and notices and following the court's checklist for voluntary withdrawal from the registered land system, as applicable.

### **§ 14.4.3 Matters Not Covered by Guidelines**

There are other matters that will affect documents presented for registration that are not the subject of explicit guidelines. These include corporate documents, “confirmatory” instruments, and attorney affidavits.

**(a) *Corporate Documents***

No guideline expressly deals with documents signed on behalf of a corporation, either foreign or domestic. A corporate document will nevertheless require either proof of authority and incumbency of the corporate signatories (in the form of a recordable certificate of the corporate clerk or secretary or their assistant) or execution by the requisite combination of president or vice president and treasurer or assistant treasurer (to establish authority, statutorily). G.L. c. 155, § 8; G.L. c. 156B, § 115; G.L. c. 180, § 10A. This requirement is strictly enforced. If it is not followed, corporate documents will be turned away, unless a statutory exception applies, as, for example, in the case of mechanic's lien papers, G.L. c. 254, § 30. *See generally Nat'l Lumber Co. v. Lombardi*, 64 Mass. App. Ct. 490 (2005).

**(b) *“Confirmatory” Instruments***

There is a binary view of the nature of the Torrens System. The concept is that a given instrument either does or does not affect a registered land title; it either is or is not accepted and noted on the certificate of title. If it is registered, the document must have been effective to change the title. For this reason, the longstanding practice has been not to accept, at the registered land counters, subsequent documents that are simply “confirmatory” of previously registered documents. The later documents must be styled and in substance serve as actual amendments before they can be registered. That is, they must truly alter the title, as reflected on the latest version of the

certificate of title, and not merely clarify an arguable ambiguity or ratify an earlier action already noted on the certificate.

### (c) *Attorney Affidavits*

With only one exception, affidavits under G.L. c. 183, § 5B, which, with respect to unregistered land, provide a mechanism for recording a wide range of information “relevant to the title” and “of benefit and assistance in clarifying the chain of such title,” are not accepted for filing regarding registered land. There is one limited exception to this prohibition due to a change in decisional case law. *See Bank of Am., N.A. v. Casey*, 474 Mass. 556 (2016). Accordingly, the registries may accept a Section 5B affidavit in the limited circumstance where the names of the signatories are omitted from the notary public’s certificate of acknowledgment in a deed or mortgage. Any cases of doubt will be referred to the Land Court title examination department in Boston. See the chief title examiner memorandum dated February 7, 2017, available on the court’s website: <https://www.mass.gov/memorandum/memo-mgl-ch-183-ss-5b-affidavits-notary-publics-acknowledgment-certificate>.

## § 14.4.4 Subsequent Divisions of Registered Land

### (a) *Subsequent Division Plans*

Once land has been registered, any subsequent division of the land requires approval by the Land Court’s survey division of the new plan, which must comply with the requirements set forth in the court’s 2006 *Manual of Instructions for the Survey of Lands and Preparation of Plans: December 16, 2019* (see <https://www.mass.gov/doc/land-court-2006-manual-of-instructions-for-the-survey-of-lands-and-preparation-of-plans/download>). G.L. c. 185, § 51. The original registration plan, as drawn by the court, is always designated with the case number and the letter “A.” Subsequent divisions are referenced by successive letters in the alphabet. Lots on the subdivision plan must be numbered (they may be renumbered by the court). Note that if an owner wishes to convey or retain the fee under a way, it must be assigned a lot number and completely dimensioned as a lot under current Land Court guidelines. Current Land Court practice also requires that any “remaining land” or remainder parcel resulting from conveyance of a lot or lots from the original registered parcel be fully depicted on a plan with an assigned lot number before such land may be conveyed. *See* G.L. c. 185, § 65. “Notation deeds” or “exception deeds” of registered land generally will not be accepted, with some possible exceptions. Land Court Guidelines on Registered Land, No. 18(B) (May 1, 2000, revised Feb. 27, 2009).

### (b) *Deed Descriptions*

As with original registration plans, the Land Court will issue a new plan showing any subsequent division of registered land and that plan will be forwarded to the appropriate assistant recorder for filing. To avoid delay in the recording of a lot or lots created by the new plan pending receipt of the plan by the local assistant recorder’s

office, the engineer for the court will, upon request, endorse deed descriptions that refer to the lots on the new plan and authorize their filing.

### § 14.4.5 Examining Title to Registered Land

One of the leading reasons title to land is registered is to settle issues lurking in the back title and to simplify title examination from the moment of registration forward. The judgment, subject to statutory exceptions, binds the land and quiets its title, and is conclusive against all persons. G.L. c. 185, § 45.

In most respects, registered land title examination is simpler and raises fewer risks for the examiner than if the title had not been registered. The familiar examiner's tasks of locating an acceptable starting point and then "scheduling forward" are made easier, though not entirely eliminated, in large part because much of the work already has been accomplished by the examination performed by the official title examiner under the Land Court's supervision, prior to the registration judgment. The "judgment calls" the reviewing conveyancer may have to make on most issues concerning the description and back title to the locus will, in all likelihood, have been resolved by adjudication in the registration process.

Examining title to registered land does, however, present its own difficulties and idiosyncrasies. As in the case of an unregistered title, the examiner should be provided with a title reference. In the case of registered land, however, the title reference will be a certificate of title number. The certificates of title are bound in books that are filed in the registered land section of each registry, much as the record books are filed in the unregistered land section.

A current certificate of title will list the owners of the property, their tenancy, a description of the property with reference to a Land Court plan, and all outstanding encumbrances with the exception of possible bankruptcies, federal tax liens, and Massachusetts tax liens. *See* G.L. c. 185, § 46. *See also* the discussion in § 14.2.4, above. The certificate of title will also include a reference to the prior certificate of title and the date the current owner's title became effective. Attached to the certificate of title will be the memorandum of encumbrances, which should list all outstanding encumbrances that were filed after the original registration.

The current certificate of title should be official—i.e., signed at the bottom by the assistant recorder. If not, it is not necessarily reliable, and the examination should commence with the last signed certificate of title. As each encumbrance noted on the memorandum is discharged by notation, the encumbrance will not be carried forward onto the certificate. If an encumbrance is discharged, there is normally no need to check it. There should be no need to check any encumbrances noted as discharged on prior memoranda.

With the exception of the encumbrances noted above that are by law excluded from the preclusive effect of the registration judgment, and those noted on daily sheets (that cover the time period, generally posted at the registered land section, since the

last official notations were made to certificates of title), all outstanding encumbrances should be shown on the current certificate of title and memorandum of encumbrances.

To complete the examination, the examiner needs to make a list of all the owners of record back to the time of the issuance of the original certificate of title. All these owners should then be checked on the unregistered side for federal tax liens, Massachusetts tax liens, and bankruptcies during the appropriate periods of time.

The registered land section does not require that a waiver of corporate excise tax lien be recorded if the conveyance of property is all, or substantially all, of the assets of a corporate grantor owned in the Commonwealth of Massachusetts. *See* Land Court Guidelines on Registered Land, No. 35 (May 1, 2000). Prudent examiners will determine whether any corporations have conveyed the title within three years of their examination ending date.

Massachusetts estate taxes and federal estate taxes are not affected by the registration system, and liens for them are not listed on certificate of title. Examiners cannot assume the absence of a notation on a certificate means that no tax liens exist. Land Court Guidelines on Registered Land, No. 35 (May 1, 2000, revised Feb. 27, 2009). Therefore, if owners die within ten years of an examination, examiners will want to review each of the certificates from that period of time to determine whether the necessary tax releases have been filed with the registry district or with the appropriate probate case.

Municipal liens also need to be addressed, by obtaining the appropriate collector's certificate, as in the case of the unregistered land.

Instruments that appear on the face of the certificate of title or on the memorandum of encumbrances sheet and are not shown to be discharged, should be obtained from the land registration district (where they are retained in original), reviewed, and abstracted. In some instances, a certificate of title will refer (usually on its face) to earlier unregistered instruments recorded in the registry of deeds, and these also will need to be considered.

The relevant Land Court plan depicting the locus also needs to be consulted and checked for consistency with the transactional documents and the client's expectations. If there is inconsistency, the Land Court plan generally will prevail over competing plans. Some boundaries, such as abutting ways and water courses, may not have been adjudicated by the Land Court and will need to be addressed in the conventional way.

#### **§ 14.4.6 S Petitions, S Cases, and SBQ Cases**

Substantive changes to registered land certificates require action by the court, which issues a judicial order authorizing the assistant recorder to make the alteration.

The Land Registration Act contemplates that changes will inevitably need to be made to certificates of title and provides a mechanism for obtaining the necessary

court order. G.L. c. 185, § 114 et seq. In the vast majority of cases, these orders are obtained routinely by the filing of a so-called S case (also referred to as an SBQ case) with the court. The Land Court's title examination staff typically serve as the conduit for obtaining the necessary judicial action. The S case is filed and titled in the original registration case, G.L. c. 185, § 115, meaning that it has a docket number based on the original registration docket, but with distinctive "SBQ" abbreviation that is based on the month and year in which the S petition is filed, e.g., "15 SBQ 12345 09-001" where "15" is the year of filing, "12345" is the original registration docket number, "09" is the month of filing (September), and "001" is the case sequence number within the month of September.

Many S cases are effectively addressed by the Land Court *ex parte*, because they seek an alteration of the certificate that is routine, ministerial, obvious, and not at all likely to affect the interests of other parties. In some cases, the Land Court will require service of notice to others and set a return date for those parties to appear and object. Counsel can help propel their clients' S cases to prompt resolution by approaching potentially interested parties, even in advance of filing, and persuading them to give written consent. In some cases, S cases involve contested litigation, and in such cases a Land Court judge will be assigned to the case and will conduct the litigation similar to other Land Court case types.

There is no limit to the types of matters that may be the subject of an S case, although there are several familiar subjects the Land Court staff sees often, some of which are so common that the court has prepared forms of S cases to be employed. These include the forms for

- changing certificates of title after death (see Guideline No. 14);
- expunging obsolete mortgages (see Guideline No. 61); and
- voluntary withdrawal of land from the registration system.

These forms are available on the Land Court website.

Due to the changes brought about by the court system's response to the COVID-19 pandemic, the Land Court's title examination department instituted procedures for the acceptance and processing of registered land cases and other matters through remote and electronic methods. These procedures have been laid out in a chief title examiner memorandum dated August 3, 2021, "Procedures for the Processing of Subsequent Cases, Condominium Documents & Document Approvals," available at <https://www.mass.gov/memorandum/procedures-for-the-processing-of-subsequent-cases-condominium-documents-document-approvals>. Practitioners should consult this guidance for the submission of S cases to the court so long as it remains in effect.

Generally, S cases need to lay out the relevant, demonstrable record title and off-record facts to support the requested order for alteration of the current certificate. The S case should append a certified, current, and complete copy of the outstanding certificate of title, and of any record title documents necessary to understand and support the allegations of the S case. The S petition itself must be verified, and supporting statements are best if in the form of affidavits. A well-prepared S petition should

clearly request the specific relief sought and the petitioner's basis for being entitled to the requested change. If the S petition concerns nonroutine matters, it may be wise to request review of the problem (and of a *draft* of the S case) by a member of the court's title examination staff. The court's title examiners will review S cases and suggest changes or additional supporting documents before bringing the papers to a Land Court judge for action. Counsel should also consult carefully the Land Court Guidelines on Registered Land before proceeding to prepare an S case. Many of the guidelines aim to simplify the process of "cleaning up" certificates of title, and do so by delegating authority to (or even directing) the land registration districts to take action previously dealt with by S case. As possible support for a request that matters be removed from a certificate of title, without the formality of an S case filing, counsel should consider, for example,

- Guideline No. 4 ("Attachments");
- Guideline No. 20 ("Executions");
- Guideline No. 21 ("Expired and Obsolete Encumbrances");
- Guideline No. 27 ("Leases and Notices of Lease");
- Guideline No. 36 ("Mechanics Liens");
- Guideline No. 39 ("Mortgages, Discharges and Assignments; Collateral Security Documents");
- Guideline No. 54 ("UCC Financing Statements");
- Guideline No. 55 ("Approval by the Chief Title Examiner");
- Guideline No. 56 ("Bank Mergers");
- Guideline No. 61 ("Mortgages: Discharge Notations for Expired Mortgages" (G.L. c. 260, § 33)); and
- Guideline No. 61 ("Trusts: Expired").

### § 14.4.7 Condominiums

The Land Court reviews the creation of a condominium when registered land is involved. Both the organic documents of the proposed condominium and the site and floor plans must be submitted for court approval.

The developer files their master deed with the chief title examiner's office. The master deed must comply with G.L. c. 183A. The master deed is reviewed by the court's chief title examination staff and, if acceptable, approved by a judge.

In February 2009, the court issued Guideline No. 57, discussed above, which comprehensively sets forth the requirements and procedures of the court concerning its review and approval of condominium documents affecting registered land.

Currently, the review of condominium documents is conducted by the Land Court's title examination staff; an individual title examiner will be assigned to review the draft papers and will do so according to Guideline No. 57.

Typically, the title examiner will offer comments on the submission and may ask the filer to submit executed documents to expedite review. After those comments are incorporated in revised documents, the papers are presented by the title examiner to a judge, for their review or approval. Once the judge approves the documents, the master deed may be filed for registration. All master deeds and amendments to the master deed require a judge's approval, but neither condominium trusts nor changes to condominium trust require a judge's signature for registration. Land Court Guidelines on Registered Land, Nos. 12 and 57.

The master deed is presented with the owner's duplicate certificate of title to the registered land section of the county involved. The outstanding certificate will be canceled if all the land is involved and a master condominium certificate will be prepared. The master condominium certificate is similar to the ordinary transfer certificate of title except that it contains a statement to the effect that "it is further certified that said land has been submitted to the provisions of G.L. c. 183A. The condominium created thereby contains X units."

The condominium owner files with the master deed a site plan and floor plans (floor plans are required but filing of the site plan is optional if there are no exclusive-use areas outside the building) of the land included in the master deed. The site plan is, in many respects, like any other registration plan, although it shows the location of the building. The Land Court's survey division no longer prepares condominium plans for filing, but the court does review them as part of the Land Court's approval process. *See* Land Court Guidelines on Registered Land, No. 12 (May 1, 2000).

The master condominium certificate contains notations of those documents that affect the condominium as a whole, such as

- amendments to master deed,
- documents related to the amendment of the declaration of trust,
- trustee's certificates regarding appointment of trustees,
- Section 6d certificates,
- institution of phases,
- distribution easements (public utilities),
- easements affecting the whole premises,
- planning board documents,
- blanket mortgages, and
- deeds out of each unit.

The master condominium certificate need *not* contain

- unit mortgages,
- partial releases affecting a particular unit, or
- assignments of unit mortgages.

The memoranda of unit ownership will contain notations of those matters that concern only the unit involved, including

- unit mortgages and
- all instruments relating to the particular unit, including partial releases of blanket mortgages.

The unit ownership memoranda need *not* contain

- easements affecting the whole condominium premises,
- distribution easements, or
- amendments to the master deed.

The memoranda of unit ownership incorporate by reference all amendments and easements that affect the entire condominium, and each unit owner, as a result, has sufficient notice of these matters.

If registered land is subject to a mortgage at the time a condominium master deed is filed, the master deed can be accepted without discharging or subordinating the mortgage, which will continue to be noted on the master condominium certificate of title. *See* Land Court Guidelines on Registered Land, No. 11 (May 1, 2000). This represented a change in prior practice.

All condominium documents are numbered in the way that all registered documents are numbered. A master condominium certificate will issue and be numbered C1, C2, C3, and so forth. Each condominium is to be kept in a separate record book. The master certificate remains at the registered land section. The reason is that when all units are conveyed, there is no land left in it. The master certificate may be amended after all units are out.

Originally, a double entry system was set up. Each document was noted on the master certificate and on the unit certificate involved. The double entry system has been abandoned, and the entry is made on the unit certificate only.

Until recently, the first deed out of each unit was in each case approved by the deputy recorder or the chief title examiner. Land Court Guideline No. 9, however, has relaxed this requirement; it provides for a standard form of unit deed. If the standard form is used, the registration districts may take the first unit deed without prior Land Court approval. The unit deed no longer must have attached the plans required by G.L. c. 183, § 9 with the “as built” certification. Mass. Acts c. 13, § 2.

After registration of a unit deed, a memorandum of unit ownership is issued by the local registry district. It is numbered with the prefix of the particular condominium and a serial number, i.e., C21, C22, C21-1, C21-2, and so on. The unit owner is entitled to a memorandum of unit ownership; from then on, the condominium unit owner is treated like any other registered land owner.



### § 14.4.8 Withdrawal from Registration

The Land Registration Act generally disfavored removing land from the registration system. The statute provided that “the land shall be and forever remain registered land.” G.L. c. 185, § 52. There were two limited exceptions: first, the acquisition of registered land by the Commonwealth and political subdivisions provided a basis for withdrawal if the public entity requested. Second, the condominium statute, G.L. c. 183A, § 16, provided a basis for withdrawal where the condominium land contained a mix of registered and unregistered land, so all the land subject to the master deed would become unregistered.

Chapter 413 of the Acts of 2000 amended G.L. c. 185, § 52 by providing owners of registered land with additional grounds for withdrawing land voluntarily from the provisions of Chapter 185. The statute now provides for the filing with the Land Court of a “notice of voluntary withdrawal” signed by all of the registered owners. This notice does not get filed in the registration district (and the land thus is not withdrawn from the registration system) until a Land Court judge approves the notice. General Laws Chapter 185, § 52 was again amended by 2014 Mass. Acts c. 287, § 82, which added further grounds for voluntary withdrawal and amended those previously added in 2000.

Under the current statute, in the following cases the judge “shall” approve the notice:

- if the registered land is less than all of the total area of a single parcel (or multiple contiguous parcels) in common ownership;
- if the registered land is less than 10 percent of the land originally described in a certificate of title, the balance having been conveyed;
- if the land has been submitted to condominium or time-share status, or if the owners demonstrate satisfactorily to the court that they shall create interests that satisfy the requirements of Chapter 183A or 183B; or
- if the registered land is improved with an occupied building not used or occupied as, and not designed or intended for use or occupancy as, a one-to-four-family residential dwelling.

There is an additional “catch-all” statutory basis for withdrawal: demonstration of other good cause, including but not limited to economic hardship, which may include the burdens and expenses of further dividing the registered land into lots for separate conveyance. The facts necessary to show good cause are left to the Land Court judge to decide, on the particular facts.

The statute provides that lessees and mortgagees are to receive notice of the requested withdrawal, but they must show good cause for any objection to be sustained. Other interest holders (of easements or restrictions) are not required to be notified.

The statute also clarifies the state of title of the land following withdrawal. It has a character similar to “confirmed” land under G.L. c. 185, § 56A, and is free of liens and encumbrances except those mentioned in G.L. c. 185, § 46 or that have been

noted on the certificate of title before the approved withdrawal notice is filed in the registry district.

The Land Court has updated checklists and forms comprehensively explaining the procedures for voluntary withdrawal on its website.

*Judge Piper acknowledges and thanks his former colleague in private practice, MaryAnn Peterson Canary, Esq. (who has served as a law clerk in the Land Court, as well), for her considerable assistance in writing this chapter.*

*This chapter is based in part on portions of the following publications: Bethany A. Bartlett, “The Land Court,” Chapter 31 in Crocker’s Notes on Common Forms (MCLE, Inc. 10th ed. 2013); Gordon H. Piper & Edward J. Smith, “New Concurrent Jurisdiction Proposed for the Land Court,” Landplanner Magazine, Winter 1996–97, at 17; Joel A. Stein, “Mechanics of Title Examination in Massachusetts,” Appendix A in Crocker’s Notes on Common Forms (MCLE, Inc. 10th ed. 2013); Philip D. Stevenson (article on Land Court Guideline No. 18 written for Massachusetts Conveyancers Association seminar); and Joel A. Stein, Edmund Williams, and Gordon H. Piper (materials entitled “New Revised Registered land Guidelines” written for the Real Estate Bar Association for Massachusetts Spring Conference, May 4, 2009).*

## **EXHIBIT 14A—Checklist for Reviewing Registered Land Condominiums**

### Reviewing Registered Land Condominiums

#### **I. THE FOLLOWING MUST BE SUBMITTED TO THE COURT FOR REVIEW:**

##### *A. Master Deed*

- should be an executed copy; but may submit a draft

##### *B. Condominiums Trust or By-laws*

- if the organization of unit owners is a trust, the trust document should contain the by-laws of the organization; if the organization is an unincorporated association or a corporation a set of by-laws is required; these also should be executed

##### *C. Certificate of Title*

- an attested copy of the owner/declarant's certificate of title is required; if the declarant of the condominium has only recently acquired the property and no new certificate has yet been written, an attested copy of the cancelled certificate and an attested copy of the deed into the owner/declarant is required

##### *D. Trustee's Certificate*

- If the declarant is a nominee trust, the trustee(s) must execute a certificate stating that they have been directed by the beneficiaries of the trust to submit the property to the provisions of G.L. Chapter 183A; the original is returned with the condominium documents

##### *E. Site Plan*

- the site plan should contain and show the following:

##### **1. Plan Title**

- a. condominium name
- b. phase designation
- c. locality
- d. surveyors name
- e. full business address

- f. telephone number
  - g. date
  - h. Land Court Plan Numbers
- 2. Buildings
  - a. completely dimensioned on exterior to the nearest 0.1' or 1"
  - b. connected to lot or phase lines to the nearest 0.1' or 1"
  - c. all units designated
  - d. number of stories designated
- 3. Exclusive Use Easements
  - a. fully dimensioned to the nearest 0.1' or 1"
- 4. North Arrow
- 5. Scale
- 6. "As-Built" Certification
  - "I certify that this plan fully and accurately depicts the layout, location unit number(s) and dimensions of the units numbered \_\_\_\_ through \_\_\_\_ inclusive, in building [name] as built"
  - a. signed and sealed by a professional land surveyor
  - b. dated

F. *Floor Plans*

- a set of floor plans must be filed with condominium documents
- 1. As-Built Certification
  - "I certify that this plan fully and accurately depicts the layout, location unit number(s) and dimensions of the units numbered \_\_\_\_ through \_\_\_\_ inclusive, in building (name), as built."
  - The certification must appear on each sheet of the floor plans and must be dated, signed and sealed by the engineer, architect or surveyor who prepared them.

II. MASTER DEED REQUIREMENTS (G.L. CHAPTER 183A, § 8))

The Master Deed should contain the following:

A. *Submission Statement*

B. *Description of Land*

C. *Description of Each Building*

1. number of stories
2. number of units
3. principal materials

D. *Unit Designation*

1. location of each
2. approximate area
3. number of rooms
4. immediate common area

E. *Description of Common Areas*

1. proportionate interests

F. *Floor Plans*

G. *Purpose of Building(s)*

1. purpose of units
2. restrictions on use

H. *Method of Amending Master Deed*

I. *Name of Corporation, Trust or Association*

1. statement that by-laws were enacted
2. names and addresses of trustees or board

III. TRUST

A. *Statutory Powers of Trust Pursuant to G.L. Chapter 183A, § 10(b)*

B. *By-laws—Statutory Requirements Pursuant to G.L. Chapter 183A, § 11*

C. *The “Takeover Event”*

- The Court requires that all trust documents contain a clause which provides for the “takeover event”, that is, the point at which the trustees appointed by (the declarant must resign in favor of those elected by unit owners other than the declarant.

#### IV. RULES AND REGULATIONS

- Master Deed usually contains a provision that in addition to the Master Deed and by-laws, the unit owners will be subject to administrative rules and regulations, adopted by the trustees/managers. The rules and regulations are attached to the by-laws and incorporated therein by reference.
- The Court has taken the position that rules and regulations may govern only use of the common areas, not use or conduct in the units themselves. (*Johnson v. Keith*, 368 Mass. 316, 331 N.E.2d 879 (1975)).

## **EXHIBIT 14B—Land Court’s Outline on Registration/Confirmation Only**

### **A. Outline on Registration/Confirmation Only**

G.L., Chapter 185, Sec. 1(a)

#### **I. PREPARATION**

- (a) Plan of locus drawn to Land Court specifications by Land Court authorized surveyor (linen and two prints);
- (b) Drafting of Complaint
  - Drafting of Pink Copy
  - Drafting of Notice of Complaint
  - Completion of Assessor’s Certificate

Provide portion of assessor’s map if available showing locus;

- (c) Deposit Check payable to “Land Court.”
  - (1) Registration \$775.00 plus 1/10th of 1 percent of assessed value.
  - (2) Confirmation only—\$775.00.

#### **II. THE FILING AT LAND COURT**

- (a) Survey Division—plan checked;
- (b) Legal Department—complaint checked and case number assigned;
- (c) Record notice of filing at local registry of deeds.

#### **III. REPORT AND ABSTRACT OF TITLE**

- (a) Prepared by Land Court Examiner and filed with the Court.

#### **IV. SERVICE AND NOTICE (All Done by Court)**

- (a) Publication—3 successive weeks—local newspaper;
- (b) Certified Mail—return receipt requested to interested parties;
- (c) Posting—by deputy sheriff on locus.

#### **V. RETURN DAY**

- (a) Clear Case—assigned to Judge for reading;

- (b) Contested Case—may be marked for hearing or settled parties.

## VI. ORDER FOR JUDGMENT

- (a) Affidavits or proof as requested by Judge;
- (b) Case to Survey Division for drafting of decree plan.

## VII. PREPARATION OF JUDGMENT AND FINAL CHECK WITH JUDGE

## VIII. CLOSEOUT

- (a) Attorney notified by receiving copy of decree, copy of plan, request for money needed—other legal documents (i.e., white military affidavit—Land Court Form No. LCA-4 and General Default—Land Court Form No. LCM-1) original mortgage and certified copy.

## XI. FUNCTION OF LOCAL REGISTRY

- (a) Attested copy of judgment, plan, mortgages, filing fees are sent for final rundown—if record clear, land becomes registered and certificate of title will issue to owner(s) from local registered land district. If anything found on record, papers are returned to Land Court and update requested, so that decree can be updated. In confirmation, judgment is recorded and land remains on the recorded side.



**EXHIBIT 14C—Land Court Form of Complaint  
for Registration**

**USE THIS COPY AND FILE WITH ORIGINAL COMPLAINT  
Commonwealth of Massachusetts**

TO THE HONORABLE THE JUSTICES OF THE LAND COURT:

The undersigned plaintiff\* hereby applies to have the land herein described brought under the operation and provisions of Chapter 185 of the General Laws, and to have title therein registered and confirmed. And the plaintiff declares:  
(1) That the plaintiff is the owner in fee simple of a certain parcel of land with buildings thereon situated in \_\_\_\_\_ in the County of \_\_\_\_\_ and the Commonwealth of Massachusetts, more particularly described as follows: (A brief bounding description of the land claimed according to the plan filed herewith, naming the present adjoining owners in their relative location, irrespective of former deed descriptions, is required.)

COPY

(2) The plaintiff claims as appurtenant to the above-described land rights or easements as follows:

\* The term “plaintiff” includes both the singular and plural thereof.

(3) That said land at the last assessment for taxation was assessed at \$ \_\_\_\_\_  
and the buildings at \_\_\_\_\_ \$ \_\_\_\_\_  
\_\_\_\_\_ total assessment, \$ \_\_\_\_\_

(4) The plaintiff does not know of any mortgage or encumbrance affecting said land or of any other person having an estate or interest therein, legal or equitable, in possession, remainder, reversion or expectancy other than as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(5) That the plaintiff obtained title by deed from \_\_\_\_\_

dated \_\_\_\_\_ and recorded in the \_\_\_\_\_

Registry of Deeds for the county of \_\_\_\_\_ Book \_\_\_\_\_ Page \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\*(6) That said land is subject to the following recorded lease or leases or notices thereof: \_\_\_\_\_

\_\_\_\_\_ Book \_\_\_\_\_ Page \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\*(7) That the names in full and addresses so far as known to the plaintiff of the owners of all lands adjoining said land are as follows:

[Name] \_\_\_\_\_ [Post Office Address] \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\* “Et ux,” “et al,” “heirs” or “devisees” of a party are not acceptable designations; individual names and addresses must be obtained.

Except where the facts are within the personal knowledge of the plaintiff, the owners of adjoining lands are to be taken from the Assessors’ Book for the last assessment for taxes and brought down of record to the date of filing the complaint.

(8) That the plaintiff claims to own in fee simple the land within the limits of the highway or public way to the middle line thereof by which the land described in paragraph (1) is bounded, subject to the right of the public to use the same and desires to have the line of said public way determined. (Strike out if not claiming.)

\*(9) That the plaintiff claims to own in fee simple the land within the limits of the private way to the middle line thereof by which said land is bounded, subject to the easement therein of the adjoining owners and desires to have the line of said private way determined. (Strike out if not claiming.)

(10) That the plaintiff shall be deemed to have elected to proceed notwithstanding an adverse report of the Examiner under the provisions of G. L. 185 § 37 unless the plaintiff files a withdrawal in writing within 15 days after being notified by the Recorder of the filing of the Examiner's adverse report.

For a Plaintiff not a Resident of the Commonwealth:

(11) That the plaintiff, not being a resident of the Commonwealth, appoints as his agent under the provisions of G. L. 185, § 35 the party named below and hereby agrees that the service of any legal process in proceedings under or growing out of this complaint shall be of the same legal effect if made on said agent as if made on the plaintiff within the Commonwealth.

Agent: \_\_\_\_\_ Address: \_\_\_\_\_

(12) That the full name, residence and post office address of the plaintiff is as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_ in the year 19 \_\_\_\_\_

(If the plaintiff is a non resident, the complaint must \_\_\_\_\_  
be signed by each plaintiff under oath. \_\_\_\_\_

If the plaintiff is a resident, the complaint may be \_\_\_\_\_  
signed by the plaintiff, or his attorney, under oath.) \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

ss. \_\_\_\_\_ 19 \_\_\_\_\_

Then personally appeared the above-named \_\_\_\_\_

known to me to be the signer of the foregoing complaint, and made oath that the statements made therein as far as made of \_\_\_\_\_ own knowledge are true, and so far as made upon information and belief that \_\_\_\_\_ believe them to be true.

Before me, \_\_\_\_\_

Notary Public

\* See Chap. 185 § 29 of General Laws.

No. \_\_\_\_\_

\_\_\_\_\_  
PLAINTIFF

**COMPLAINT**

Dated \_\_\_\_\_

For plaintiff,

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT 14D—Land Court Form of Certificate to Be  
Endorsed by Local Assessors**

**COMMONWEALTH OF MASSACHUSETTS**

**LAND COURT**

**DEPARTMENT OF THE TRIAL COURT**

**Assessor’s Certificate of Adjoining Owners and Examiner’s Report**

**No.**

**Plaintiff**

(Fill in this space with rough sketch of  
land described in this complaint, and write against  
boundary lines the names of adjoining owners in their  
relative positions.)

This is to certify that at the time of the last assessment for taxation made by the  
city / town of \_\_\_\_\_  
the names of the parties assessed as adjoining owners to the parcel of land shown above were as above  
written, except as follows:

Dated

\_\_\_\_\_ *Assessor*

I find no change in the names of the adjoining owners as given on the sheet annexed hereto, from an examination in the Registry of Deeds since January 1, 20\_\_\_\_\_, except

20

*Land Court Examiner*








## EXHIBIT 14F—Mortgagee's Affidavit

Note: The online fill-in form is available at: <https://www.mass.gov/doc/mortgagees-affidavit/download>.

<b>COMMONWEALTH OF MASSACHUSETTS LAND COURT DEPARTMENT OF THE TRIAL COURT</b>		<a href="#">Click to Print Form</a>
<b>MORTGAGEE'S AFFIDAVIT</b>		FOR LAND COURT USE ONLY PLACE CASE NO. LABEL HERE
Defendant(s)/Mortgagor(s): _____ _____		
Property Address: _____ _____ _____		
1. The undersigned makes oath and says that it is (check one):		
<input type="checkbox"/> The Mortgagee of the Mortgage which is the subject of this proceeding, in that it is the person or entity currently holding both the subject Mortgage and the note; <b>or</b>		
<input type="checkbox"/> The Mortgagee of the Mortgage which is the subject of this proceeding, in that it is the person or entity currently holding the subject Mortgage and is acting on behalf of the current holder of the note; <b>or</b>		
<input type="checkbox"/> Acting on behalf of the person(s) or entity(ies) currently holding the subject Mortgage and the note.		
<b>AND</b>		
2. The undersigned further makes oath and says that (check one):		
<input type="checkbox"/> Notice(s) to Defendant(s)/Mortgagor(s) has/have been given in compliance with Massachusetts General Laws, Chapter 244, Section 35A, as amended (COPY OF NOTICE ATTACHED); <b>or</b>		
<input type="checkbox"/> No notice has been given because no notice is required under Massachusetts General Laws, Chapter 244, Section 35A, as amended.		
Signed under the pains and penalties of perjury on _____, <div style="text-align: right; margin-right: 50px;">(Date)</div>		
<div style="text-align: right;">           Plaintiff(s): _____            By: _____            Name: _____            Title: _____         </div>		
		<a href="#">Click to Reset Form</a>

# EXHIBIT 14G—Sample Case Management Conference Notice and Order

[SEAL]

<b>CASE MANAGEMENT CONFERENCE NOTICE AND ORDER</b> (4 pages)	DOCKET NUMBER XX MISC XXXXXX	Commonwealth of Massachusetts Land Court Department of the Trial Court 
CASE NAME  _____, Plaintiff(s) v. _____, Defendant(s)		
NOTICE AND ORDER ISSUED TO Plaintiff Address	COURT ADDRESS & PHONE NUMBER Land Court Department Three Pemberton Square Room 507 Boston, MA 02108  (617) 788-7470	
<p>An initial Status Conference shall be held before <b>JUDGE</b> in accordance with Land Court Department Standing Order No. 1-04 as follows:</p> <p style="text-align: center;"><b>Date:</b> MM/DD/YYYY <b>Time:</b> HH:MM AM/PM</p> <p style="text-align: center;"><b>Note:</b> This event will be held <u>by Telephone Conference / Videoconference / In-person.</u></p> <p>The Court considers attendance of the senior attorneys ultimately responsible for the case to be of utmost importance, and both they and all individuals representing themselves without an attorney are required to attend the Conference. <b>The Plaintiff(s) (through counsel if represented, or individually if proceeding without an attorney) is/are responsible for forwarding a copy of this Case Management Conference Notice and Order, and a Limited Assistance Representation (LAR) Information Sheet (available at : <a href="https://www.mass.gov/doc/limited-assistance-representation-lar-information-sheet/download">https://www.mass.gov/doc/limited-assistance-representation-lar-information-sheet/download</a>), to all other Parties in the case or their attorneys, if known, including those who have not yet filed an answer or appearance with the Court, well in advance of the Case Management Conference.</b></p> <p><b>Obligation of Counsel to Confer.</b> Unless otherwise ordered by the Court, the Parties (through their counsel if they are represented, and on their own behalf if they do not have counsel) shall confer no later than fourteen (14) days before the date of the Case Management Conference for the purpose of preparing the mandatory written Joint Statement described below. It is the responsibility of the Plaintiff(s) to initiate the conference and to ensure the timely completion and filing of the Joint Statement.</p>		
DATE ISSUED:	RECORDER: Deborah J. Patterson	


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[SEAL]

<b>CASE MANAGEMENT CONFERENCE NOTICE AND ORDER</b> (4 pages)	DOCKET NUMBER XX MISC XXXXXX	Commonwealth of Massachusetts Land Court Department of the Trial Court 
<p><b>Required Joint Statement.</b> Unless otherwise ordered by the Court, the Parties are required to file, no later than five (5) business days before the Case Management Conference, an original and a duplicate copy of a written Joint Statement. The Joint Statement shall include:</p> <ol style="list-style-type: none"> <li><b>Case Description.</b> A brief description of the case, its issues, and the Parties' respective positions on those issues. In cases where geographical facts are important (e.g., boundary disputes, easement disputes, subdivision appeals, special permit or variance appeals), a sketch plan illustrating those facts should be attached to the Joint Statement.</li> <li><b>Identification of Parties.</b> A complete list of parties to the case. For each individual party, provide a statement of that party's preferred pronoun (e.g., he, she, they, etc.) and preferred honorific (e.g., Mr., Mrs., Dr., etc.). For any party that is a non-governmental corporate entity, provide a statement in compliance with Supreme Court Rule 1:21.</li> <li><b>List of Related Cases.</b> A list of all related cases, whether in this or any other court or tribunal, and whether currently pending or concluded. For each such case, the list shall contain the case name, parties, court, docket number, status, and a short description of its facts, issues and relationship to this action. If any of the Parties contemplates a request for consolidation, transfer to another court, or special assignment of a trial court justice, the Joint Statement must address this. If there are no related cases, the Joint Statement should so note.</li> <li><b>Discovery Plan.</b> A joint discovery plan which proposes a schedule for the time and length of all discovery events. The discovery plan must include a deadline for designation of any expert witnesses, and for disclosure of their expected testimony. The discovery plan shall either be consistent with the initial Track Designation given the case or, if the Parties propose a different schedule, one that allows the Parties to complete discovery on the modified schedule. If any Party seeks an amendment to the Track Designation, or an extension or modification to any of the applicable tracking order dates, a request for such amendment, extension or modification may be included in the Joint Statement, and the Court may make the requested amendment, modification or extension, on its own motion, for good reasons and as the interests of justice require.</li> <li><b>Motion Schedule.</b> A proposed schedule for the filing of dispositive or other pre-trial motions, identifying with specificity the types of motion(s) anticipated and the party(ies) expected to bring them. If the Parties' proposed motion schedule would exceed any of the applicable tracking order deadlines, the Joint Statement shall so indicate, and shall include a request for permission to exceed the deadline(s), setting forth detailed reasons for the request.</li> <li><b>Alternative Dispute Resolution Statement.</b> A statement of the Parties' willingness to participate in mediation (settlement negotiations assisted by a neutral person) or other methods of alternative dispute resolution. The statement must describe and give the status of any alternative dispute resolution which the Parties have attempted, scheduled, or proposed to each other, but shall not describe the content of such settlement proposals or negotiations.</li> <li><b>Third Parties.</b> A brief statement (with reasons) identifying anyone not already in the case but whom any Party intends to join or believes should be made a party.</li> </ol>		
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<b>CASE MANAGEMENT CONFERENCE NOTICE AND ORDER</b> (4 pages)	DOCKET NUMBER XX MISC XXXXXX	Commonwealth of Massachusetts Land Court Department of the Trial Court 
<p>8. <b>Additional Notices.</b> A brief statement (with reasons) of any additional notices, including by publication or recording, which any Party believes should be given to interested parties, such as the Attorney General, potential interveners, unknown heirs, or lienholders.</p> <p>9. <b>Other Matters.</b> A list of other matters which any Party proposes for discussion at the Case Management Conference.</p> <p>10. <b>Certifications.</b> A certification from plaintiff/plaintiff's counsel that the Limited Assistance Representation (LAR) Information Sheet (available at: <a href="https://www.mass.gov/doc/limited-assistance-representation-lar-information-sheet/download">https://www.mass.gov/doc/limited-assistance-representation-lar-information-sheet/download</a>) was served on Defendant(s) with this Notice and a certification from Counsel for Defendant(s), pursuant to Rule 5 of SJC Rule 1:18, that they provided their clients with information about court-connected dispute resolution services and discussed with them the advantages and disadvantages of the various methods of dispute resolution.</p> <p style="text-align: center;"><b>NOTES</b></p> <p>The Court strongly encourages all Parties to have counsel or Limited Assistance Representation (LAR) counsel, represent them at the Case Management Conference and throughout the case.</p> <p>The Court considers attendance of the senior attorneys ultimately responsible for the case to be of utmost importance, and both they and all individuals representing themselves without an attorney are required to attend the Case Management Conference.</p> <p>Any Party (whether through counsel or acting without an attorney) who fails to attend the Case Management Conference, or who does not in good faith participate in the Conference or in the preparation of the Joint Statement, shall be subject to sanctions including (if the Court deems it appropriate) dismissal of that Party's claims or entry of judgment against that Party.</p> <p>If any Party believes they will need either the services of an interpreter, or an assisted hearing device, at the Case Management Conference, they must make arrangements with the Assigned Judge's Sessions Clerk named below no later than one week before the above scheduled Case Management Conference date.</p> <p>Questions should be directed to the below-named Sessions Clerk:</p> <p style="text-align: right;">Sessions Clerk: NAME E-mail Address: _____@jud.state.ma.us Telephone No.: (617) 788-XXXX</p> <p><b>SO ORDERED.</b></p> <p>By the Court: JUDGE</p> <p style="text-align: right;"><b>Attest:</b></p>		
DATE ISSUED:		RECORDER: Deborah J. Patterson

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**CASE MANAGEMENT CONFERENCE  
NOTICE AND ORDER**  
(4 pages)

DOCKET NUMBER

XX MISC XXXXXX

Commonwealth of Massachusetts  
Land Court  
Department of the Trial Court

cc: OTHER PARTIES

DATE ISSUED:

RECORDER: Deborah J. Patterson

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# EXHIBIT 14H—Sample Pre-Trial Conference Notice and Order

[SEAL]

<b>PRE-TRIAL CONFERENCE NOTICE AND ORDER</b> (4 pages)	DOCKET NUMBER XX MISC XXXXXX	Commonwealth of Massachusetts Land Court Department of The Trial Court 
CASE NAME  _____, Plaintiff(s) v. _____, Defendant(s)		
NOTICE AND ORDER ISSUED TO Party Address	COURT ADDRESS & PHONE NUMBER Land Court Three Pemberton Square Room 507 Boston, MA 02108 (617)788-7470	
<p>Counsel or self-represented parties addressed above (Parties) shall appear at the Land Court for a Pre-trial Conference before <b>JUDGE</b> as follows:</p> <p style="text-align: center;"> <b>Date:</b> MM/DD/YYYY  <b>Time:</b> HH:MM AM/PM         </p> <p><b>Failure to appear at the Pre-trial Conference may result in dismissal or default judgment unless the absence is excused in advance by the Court.</b></p> <p>For the purposes of conducting the trial of this case in an orderly manner and conserving the resources of the Court and all Parties, the Parties through their counsel, or individually if appearing <i>pro-se</i>, must be prepared at the Pre-trial Conference to discuss the specific topics addressed in the required Joint Pre-trial Memorandum and all other matters within the scope of Mass. R. Civ. P. 16.</p> <p>Prior to the Pre-trial Conference, the Parties shall discuss: (1) the issues presented by the case, and (2) whether ADR may be an appropriate route to narrow the issues or resolve the case. If the case has not been earlier concluded as reflected by an appropriate docket entry, the Parties must jointly prepare and file a Joint Pre-trial Memorandum, which shall be mailed or delivered so as to reach the Court and all Parties no later than seven (7) days before the Pre-trial Conference date set forth above. <b>THE JOINT PRE-TRIAL MEMORANDUM MUST BE FILED IN DUPLICATE, WITH THE NON-ORIGINAL CLEARLY MARKED "COPY" OR "DUPLICATE".</b></p>		
DATE ISSUED:	RECORDER: Deborah J. Patterson	

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**PRE-TRIAL CONFERENCE  
NOTICE AND ORDER**  
(4 pages)

DOCKET NUMBER

XX MISC XXXXXX

Commonwealth of Massachusetts  
Land Court  
Department of The Trial Court



**Required Joint Pre-trial Memorandum**

A Joint Pre-trial Memorandum, adhering to the following outline is required.

**1. Legal Issues, Claims and Defenses**

Outline the legal issues presented in the case, and the Parties' respective positions on those issues. Address every claim and defense previously asserted in the case, including each affirmative defense listed in an answer or other responsive pleading, which is being preserved for trial. Any case law on particular issues to which any Party wishes to direct the Court's attention may be listed by that Party issue by issue, along with a short parenthetical indicating the point for which the case is cited.

**Note:** Any claim or defense that is not explicitly listed in the Pre-trial Memorandum, along with a brief explanation of its factual and legal basis, may be deemed waived.

**2. Factual Issues**

(a) Statement of agreed facts;

(b) Statement of contested facts with a short explanation of the Parties' respective positions on those facts.

**3. Witnesses**

(a) For each Party, provide the name, address, preferred honorific (e.g., Mr., Ms., Dr.), and preferred pronoun (e.g., he, she, they) of each fact witness whose testimony will be offered, and a brief statement of their expected testimony.

(b) For each Party, provide the name, address, preferred honorific, preferred pronoun, and area of expertise of each expert witness whose testimony will be offered, and a brief statement of each expert witness' expected testimony. Also state whether there will be objection to the qualification of that witness to give any aspect of the expected testimony, and the basis for such objection.

**4. Exhibits**

(a) List of agreed exhibits, with identifying information (such as title, date, author, recording information);

(b) List of contested exhibits, identifying the Party(ies) seeking to introduce that exhibit and the Party(ies) objecting to it, along with a brief explanation of the basis of the objection (e.g., "lack of relevance," "hearsay," "lack of foundation").

**Note:** The Parties are encouraged to cooperate so that record keepers need not be called unless otherwise necessary.

**5. Discovery Status**

Specify discovery matters which are outstanding and the anticipated schedule for their completion. If there are any existing or anticipated issues related to outstanding discovery, identify each Party's respective position as to such issue(s) and whether any Party intends to file a related motion.

DATE ISSUED:

RECORDER: Deborah J. Patterson

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[SEAL]

**PRE-TRIAL CONFERENCE  
NOTICE AND ORDER**  
(4 pages)

DOCKET NUMBER

XX MISC XXXXXX

Commonwealth of Massachusetts  
Land Court  
Department of The Trial Court



It is the responsibility of the Plaintiff to prepare and circulate the first draft of the Joint Pre-trial Memorandum to all other Parties well in advance of the date the Joint Memorandum is due. If any Party fails to receive cooperation in the timely preparation of the Joint Memorandum, that Party should immediately contact the Sessions Clerk listed below, in writing (copying all other Parties), to seek instructions from the Court. Separate Pre-trial Memoranda will not be accepted by the Court except under extraordinary circumstances, and only with advance approval.

**Note:** The purpose of the Joint Pre-trial Memorandum is to narrow the issues for trial and to put the case in a posture that is ready for a firm trial date. The Court expects Parties to spend time and effort working through issues that reasonably should be agreed to by all Parties. The Judge assigned to this case will review the Memorandum prior to the Conference, and a complete Joint Pre-trial Memorandum is essential before further proceedings (i.e., trial dates) will be scheduled. The Parties should be aware that if the Joint Pre-trial Memorandum is not received in the Court at least seven (7) days in advance of the scheduled Pre-trial Conference, or if the Judge reviews the Joint Pre-trial Memorandum and finds that it does not meet the requirements set forth in this notice, the Judge may cancel the Conference, or require the Parties to appear in Court on the date scheduled for the Pre-trial Conference in order to complete the required Joint Pre-trial Memorandum.

☐ IF THIS BOX IS CHECKED, PLEASE SEE ENCLOSED ADDENDUM FOR ADDITIONAL INSTRUCTIONS.

If you believe you will need the services of an interpreter, a hearing assistance device, or any other accommodation, please contact the Sessions Clerk listed below to make the necessary arrangements no later than one week before your scheduled court appearance.

Questions should be directed to the below-named Sessions Clerk:

Sessions Clerk: NAME AND CONTACT INFO

**SO ORDERED.**

By the Court: JUDGE

Attest:

DATE ISSUED:

RECORDER: Deborah J. Patterson

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<b>PRE-TRIAL CONFERENCE NOTICE AND ORDER</b> (4 pages)		DOCKET NUMBER XX MISC XXXXXX	Commonwealth of Massachusetts Land Court Department of The Trial Court
cc: OTHER PARTIES			
DATE ISSUED:		RECORDER: Deborah J. Patterson	
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