Massachusetts Land Court

Rules of Court Disclaimer

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Annotated Laws of Massachusetts: Court Rules, LexisNexis, annual.
Massachusetts General Laws Annotated, v.43A-43C, West Group, updated annually with pocket parts.
Massachusetts Rules of Court, West Group, annual.
The Rules, Lawyers Weekly Publications, loose-leaf.

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Rules of the Land Court

Effective July 1, 2005
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Rule 1. Applicability of Rules

The following rules apply to all cases pending on the effective date of these rules, unless ordered by the court in a particular case.

Rule 2. Fees and Deposits

Parties to any action, at such times and in such amounts as are ordered by the court or required by statute, shall pay or deposit those sums into court for application to the fees and expenses payable under applicable statutes or by order of the court.

In addition, a plaintiff who files a complaint for registration or confirmation shall make a deposit for the assurance fund required under G. L. 185, § 99, to be applied to that fund.

Deposits paid into court shall be held in the custody of the recorder who, if practicable, shall return any surplus which remains at the conclusion of the case to the party who paid the surplus. Otherwise, the surplus shall be delivered to the state treasurer.

Rule 3. Exhibits

Unless a longer time is required under Mass. R. A. P. 9(c), exhibits offered as evidence and chalks shall be retained by the recorder for three years after the trial or hearing at which they were used, subject to an order of confiscation or destruction, unless sooner delivered to the parties or counsel by whom they were presented or introduced. Unless otherwise ordered, jointly submitted exhibits will be considered to belong to the plaintiff.

If in doubt as to the party or counsel entitled to delivery, the recorder may require an agreement of parties or counsel or an order of the court before delivery. After the expiration of three years from such trial or hearing, the recorder may destroy or discard such exhibits after giving thirty days' notice to the parties, if practicable.

Rule 4. Motions Under Mass. R. Civ. P. 12(b)(1), 12(b)(6), 12(c) or 56.

A party moving under Mass. R. Civ. P. 12(b)(1), 12(b)(6), 12(c) or 56, or opposing such a motion, shall file with the motion or opposition a brief containing: (1) a statement of the issue or issues presented, (2) a statement of the legal elements, with citations to supporting law, of each claim upon which judgment is sought or opposed, (3) an argument in summary form, and (4) a short conclusion stating precisely the relief or order sought; otherwise the court may decline to act on the motion or consider the opposition, as the case may be.

Each motion under Rules 12(b)(1) or 56 shall be accompanied by a concise statement, in consecutive numbered paragraphs, of the material facts upon which the moving party relies, with page or paragraph references to supporting pleadings, depositions, answers to interrogatories, admissions and affidavits. If the motion is brought under Rule 56, the material facts in the statement must be those as to which the moving party contends there is no genuine issue to be tried.

Each opposition to a motion under Rules 12(b)(1) or 56 shall include: (1) a response, using the same paragraph numbers, to the moving party's statement of facts, and (2) in consecutive numbered paragraphs, a concise statement of any additional material facts which the opposing party deems relevant and necessary to the motion. Any response other than "admitted" to a statement of fact made by the moving party, and any statement of additional material fact, must include page or paragraph references to supporting pleadings, depositions, answers to interrogatories, admissions and affidavits, or else the facts described by the moving party as undisputed shall be deemed to have been admitted.

The statements filed by the moving party and the opposing party shall each be accompanied by an appendix, appropriately indexed, composed of: (1) all cited portions of the documents or other

materials referenced in those statements, and (2) copies of all legal and other authorities cited in the briefs with the exception of the Massachusetts
General Laws and cases reported in the official Massachusetts Reports, the
Massachusetts Appeals Court Reports, or the Land Court Reporter. The opposing party's appendix need not duplicate any materials contained in the moving party's appendix so long as the cross-referencing is clear. The court need not look in the record or take judicial notice beyond the materials brought to its attention by the parties.
A copy of the motion, brief and (in the case of Rule 12(b)(1) and 56 motions) the statement of material facts and the appendix containing copies of supporting materials, shall be served upon all other parties and filed with the court within the time limits set forth in Land Court Standing Order No. 1-04, if applicable.[1] Cross-motions must follow the same procedures and timeframes as motions, and must likewise be served and filed in accordance with Standing Order 1-04, if applicable. Responses to motions or cross motions, including any controverting statements and the materials supporting those statements (including any counter or Rule 56(e) affidavits), must be served upon all other parties and filed with the court within thirty (30) days after service of the motion or cross-motion. A hearing date shall be set by the court. Reply briefs, affidavits and other materials in support of the reply (if any) must be served on the parties and filed with the court no later than ten (10) days prior to the date the court first set for hearing; any rescheduling of the hearing date shall not change this deadline. Affidavits and other materials in support of the reply which, in the opinion of the court, are not responsive to the opposition or cross-motion, may be stricken. An opposing party's failure to file a cross-motion shall not preclude the court from granting dispositive relief to the opposing party if such relief is appropriate (see Rule 56(c)). Extensions or other modifications of the dates set forth above may be ordered by the court on its own motion for good reason and as the interests of justice require, or upon motion and for good cause shown.
The court need not act on any motion or cross-motion unless the parties have complied with the requirements of this rule and may deny any such motion or cross-motion which fails to comply.
Rule 5. All Other Motions
All motions not covered by Rule 4 must be filed with the court and marked by the moving party for hearing on at least seven (7) days' notice (the number of days to be calculated as provided in Mass. R. Civ. P. 6(a)) at such dates and times for the hearing of motions as shall be established and published by the court from time to time. It is the responsibility of the moving party to determine whether a motion must be heard by a particular judge and, if so, the motion must be marked for hearing before that judge at an appropriate date and time. The motion shall contain a statement of reasons, including supporting authorities, why the motion should be granted and a statement of the precise relief sought; otherwise the court may deny or decline to act on the motion. Unless the court, in its discretion, grants permission, all affidavits and other materials in support of the motion must be filed and served with the motion. Oppositions to such motions, and all materials in support of that opposition along with any cross-motions (including motions to strike), must be served and filed with the court so they are received by all other parties and by the court no later than noon one (1) business day prior to the date marked for the motion's hearing. Any papers not served and filed with the motion or opposition and in timely fashion may be filed only with leave of court.
Rule 6. Matters Which May Not Require Oral Argument

The court in its discretion may decide matters on submitted papers without oral argument, but only after having received written statements of reasons in support and opposition from all interested parties, or having given those parties fair opportunity to submit written statements.

Rule 7. Settlement of Discovery Disputes

The parties shall confer in advance of filing any motion under Mass. R. Civ. P. 26 or 37 in a good faith effort to narrow areas of disagreement to the fullest possible extent. The party who intends to file the motion shall be responsible for initiating the conference. All such motions shall contain a certificate stating that the conference required by this rule was held, together with the date and time of the conference and the names of all participating parties. Motions unaccompanied by such certificate may be denied without prejudice to renewal when accompanied by the required certificate.

Rule 8. Motions for Discovery Orders

All motions arising out of a party's response (or non-response) to an interrogatory, request for admission, deposition question, or arising out of a party's response to, or asserted failure to comply with, a request for production of documents, shall be accompanied by a brief. With respect to each interrogatory, deposition question, or request at issue, the brief shall set forth separately and in the following order: (1) the text of the interrogatory, deposition question, or request, (2) the opponent's response, and (3) an argument. Alternatively, the text of the interrogatory, deposition question or request and the opponent's response may be contained in an appendix to the brief.

Rule 9. Motions for Reconsideration

Motions for reconsideration, and all briefs and affidavits or other supporting materials filed by the moving party in support thereof, shall be filed with the court and served on all parties. The words "MOTION FOR RECONSIDERATION" shall appear clearly in the title to the motion. Upon filing, the recorder shall transmit the motion and supporting papers to the judge who decided the original motion or matter. No response to the motion for reconsideration shall be required, and no hearing shall be marked or scheduled, unless the judge so requests, and the judge may deny the motion without the need of such a response or hearing. No motion to reconsider shall be granted without giving the opposing party an opportunity to respond.

Rule 10. Agreements for Judgment

A written agreement for judgment for a sum certain or that all relief shall be denied shall be accepted by the recorder for filing, and upon filing shall constitute the judgment of the court for all purposes as provided in Mass. R. Civ. P. 58(a). Any other agreement for judgment (including, without limitation, those for declaratory or injunctive relief, requiring the parties to enter into agreements or perform any acts, or ordering any official or board to take any action), whether or not accepted for filing by the recorder, shall not constitute the judgment of the court unless and until the court, either on its own motion or on motion of one or more parties, endorses or otherwise approves the agreement for judgment. Motions for approval of agreements for judgment may be decided by the court without hearing, but the court may in its discretion order a hearing.

Rule 11. Identification of Judge on Court Filings

After a party receives written notice from the recorder that a case has been assigned to one of the judges of the court, or otherwise becomes aware of such a notice, all pleadings thereafter filed in that case shall include, prominently in the case caption immediately following or underneath the case number, the surname or initials of that judge.

Rule 12. Forms

The use of the court's forms in the case of complaints for registration, confirmation, tax foreclosure, or pursuant to the Servicemembers' Relief Act, is mandatory. The use of such other forms as the court may publish from time to time is not mandatory; however, those forms should be consulted, where appropriate, for guidance as to the content of alternative submissions.
Rule 13. Rules Applicable to Partition Proceedings
The Rules of Civil Procedure, and these Rules, shall apply to all partition proceedings.

[1] Standing Order No. 1-04 applies to certain cases filed on or after October 4, 2004.

Standing Orders

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STANDING ORDER NO. 1-97

NOTICE UNDER G.L. c. 185, § 39
Whenever the plaintiff in a complaint for registration of title or for confirmation of title without registration requests to have the line of a public way determined, the Recorder is hereby ordered to give notice of the complaint by mailing a certified letter, including a copy of the complaint, to the mayor of the city or to one of the selectmen of the town or towns where the land lies, or, if the way is a highway, to one of the county commissioners of the county or counties where the land lies.
Whenever the land involved in a complaint for registration of title or for confirmation of title without registration borders on a river, navigable stream or shore, or on an arm of the sea where a river or harbor line has been established, or on a great pond, or if it otherwise appears from the complaint or the proceedings that the commonwealth may have a claim adverse to that of the plaintiff, notice shall be given by the Recorder by mailing a certified letter, including a copy of the complaint, to the attorney general.
Effective: February 1, 1997

STANDING ORDER NO. 1-04

Time Standards
A. General Considerations
To "secure the just, speedy and inexpensive determination of every action," as required by Mass. R. Civ. P. 1, the Land Court Department ("Court") hereby adopts these time standards and procedures relating to an individual calendar system as a Standing Order of the Court ("Standing Order" or "Order"), superceding Standing Order 2-88, adopted May 1, 1988. This Order is intended to provide the Court with recognized goals for the management and timely disposition of cases. The Order also preserves some discretion in the judges of the Court to schedule individual cases according to the particular needs of the parties or the public.
An integral part of case management and judicial supervision is an individual calendar system, which the Court hereby adopts as set forth below. Generally within three months from entry date, all appropriate cases will be examined by the judge assigned to the case and appropriate orders may be entered notwithstanding any previously assigned presumptive tracking schedule.
Accordingly:
1. All miscellaneous, tax foreclosure, registration, confirmation, and contested "S" cases ("Cases") filed in the Court on or after the effective date of this Order, shall be subject to the provisions of this

Standing Order. Cases filed under the Servicemembers Civil Relief Act under chapter 57 of the Acts of 1943, as amended, are not subject to this Standing Order.
2. Cases entered prior to the effective date of this Order shall be incorporated into this Order, when appropriate.
3. The timing for the completion of various steps of litigation will be calculated from the date of filing of the Complaint, except for original registration and confirmation cases (see E(1) below).
4. At or shortly after the time of filing of the Complaint or other initial pleading, each case (other than tax foreclosure cases) shall be assigned to one of the judges. All tax foreclosure cases shall be assigned to the Recorder.
5. The Court shall schedule case management conferences and pre-trial conferences on its own, or as reasonably requested by the parties, consistent with this Order.
B. Individual Calendar System
In its operation the Court shall use an individual calendar system. The basic elements of the system are: a single judge, assigned to a case from beginning to end, who participates with the lawyers and pro se litigants in the management of the case as it proceeds to resolution. Ordinarily, the judge assigned to the case will hold all hearings and preside at the trial of the case. In case of an emergency, circumstances may require that another judge handle a hearing if the assigned judge is unavailable. Except in tax foreclosure cases, as soon as practicable after a Complaint is filed and served, the assigned judge shall schedule and conduct a Case Management Conference. At the conference, the case shall be reviewed and, if appropriate, a case-specific tracking order shall be established.
The Court has historically set firm dates for trial, and the Court will continue to do so under this Order. The fact that cases are assigned firm trial dates dictates a strict approach to continuances. When the Court has given the parties an exclusive trial date which the parties themselves have participated in selecting, any change threatens not only to affect all parties to that particular case, but also to leave the judge without a case for trial on that date. Accordingly, no continuances will be given without leave of the Court, for good cause shown. The assent of all parties will not constitute per se good cause.
C. Track Designation
1. At time of filing, all Cases shall be assigned to one of the following tracks: fourteen (14) months to trial (Tax or “T” Track); sixteen (16) months to trial (Fast or “F” Track); or thirty-one (31) months to trial (Average or “A” Track).
2. Initial designation to a particular track shall be determined by the main cause of action indicated by the plaintiff on the civil action cover sheet.
3. For good cause shown, a party may request that a case be assigned to a track other than the track in which the main cause of action falls or to a special accelerated track (the “X” Track). The request shall be made by filing a motion with the Court prior to (or in exceptional circumstances, after) the Case Management Conference.
4. At any time, the judge to whom the action has been assigned may, at his or her discretion, and after the parties have had a chance to be heard, change the track which governs the case.
5. Parties must first file their cases in the “A”, “F”, or “T” Track. To be considered for reassignment to the “X” Track, any party may file a motion if they wish to be considered for the “X” Track. Such motion shall be filed jointly or contain a certification that the motion has been discussed with all other parties. Once filed with the Court, the case is then sent to the judge assigned to the case for review and a hearing for determination as to whether the case properly may be accommodated in the “X” Track. Because assignment to the “X” Track will require a significantly higher level of judicial resources, “X” Track designation will be made infrequently, and only when the case’s prompt disposition will serve a demonstrated public interest, different in kind from most “F” Track cases. The need for special case management is the touchstone of the “X” Track. Every motion for “X” Track consideration shall include a proposed schedule of events and counsel’s certification that the schedule is realistic.
6. Amendments to the designation or tracking order of a case, or an extension or other modification of any of the tracking order dates, may be ordered by the Court on its own motion, for good reasons and as the interests of justice require, but otherwise may be requested and granted only upon motion and for good cause shown. A motion to amend or modify the tracking order shall be in writing and set forth in detail the facts upon which the moving party relies in support of said motion. Motions to continue a trial are strictly disfavored. Hearings on motions under this paragraph shall only be held if deemed necessary by the assigned or emergency judge.
D. Notification to Parties

While the Court will endeavor to provide notice, the ultimate responsibility for obtaining information from the Court about the track designation of the case and the corresponding tracking order shall rest with each party. Notification shall occur as follows:

1. At or shortly after the time of filing of the Complaint, the plaintiff(s) will be provided with a judge designation and a general Track Assignment and Scheduling Notice ("Track Assignment"), which shall reflect the assigned judge, the assigned track, and the initial presumptive tracking order. All cases filed shall be accompanied by a self-addressed stamped envelope, which shall be used by the Court to mail the Track Assignment to the plaintiff. It is then the responsibility of the plaintiff to mail or deliver the Track Assignment to all parties, which shall be accomplished within ten (10) days after the plaintiff's receipt of the Track Assignment. The plaintiff has the continuing responsibility as the case progresses to mail or deliver the Track Assignment to all subsequently added parties.
2. It shall be the obligation of the plaintiff to effectuate service of the Complaint on the defendant(s) in a timely fashion so that all parties have adequate time to prepare for the Case Management Conference. Approximately one month prior to the scheduling of the Case Management Conference, a specific date shall be sent by the Court to all parties. The date established for the Case Management Conference does not preclude the earlier filing of a motion, or the marking for earlier hearing of a motion, where appropriate. Discovery and all other aspects of the case may proceed amongst the parties, in accordance with applicable rules and the initial presumptive tracking order, pending the Case Management Conference.
3. All documents and motions filed with the Court within designated time standards under this Order shall contain a certification on the signature page that they are being served within the designated time or by leave of the judge to whom the matter has been assigned.
4. All pleadings and appearances submitted by counsel of record shall be accompanied by counsel's Board of Bar Overseers (BBO) Number. The BBO Number shall appear immediately after counsel's name. It is the responsibility of all counsel of record to ensure that the BBO has their correct and current address.

E. Assignment to Tracks

At filing, all Cases shall be assigned to a track according to the following chart. Assignment to a track indicates the maximum amount of time in which a case should be completed. Some cases may be completed before the maximum time period of the track. All cases transferred to the Court from other courts shall be assigned to a track at the time of transfer.

1. Average ("A") Track: All cases not otherwise assigned to the Fast Track or Tax Track. Original registration and confirmation cases under G. L. c. 185 are included within the "A" Track commencing on the date when the citation issues.
2. Fast ("F") Track :

a. All cases afforded priority by statute, including G. L. c. 40A, §17; c. 40B; and c. 41, §81BB.
b. Specific performance under G. L. c. 185, §(1)(k).
c. Partition under G. L. c. 241.

3. Tax ("T") Track: All cases filed under G. L. c. 60, § 65.
4. Accelerated ("X") Track: Upon motion and by leave of the assigned judge.

F. Track Assignment and Scheduling Notice

The Court will issue a Track Assignment for each appropriate case, in accordance with the provisions of this Order. A later notice issued by the assigned judge will reflect the specific date for the Case Management Conference. A specific tracking order shall be established at the Case Management Conference. A specific trial date shall be established at the pre-trial conference. The Court may require the parties to file written status reports on or before major milestone dates as set forth below.

The following steps and limitations shall be mandatory except upon special written waiver or modification, for good cause shown and supported by appropriate documentation, granted by the judge to whom the matter has been assigned. Failure to comply with this Order may result in the imposition of any available sanctions, including, but not limited to, the entry of judgments of dismissal or default. Documents filed outside the established time limitations without such a waiver shall not be considered or acted upon by the Court, even if filed by agreement between the parties, unless the Court in its discretion otherwise allows.

The initial presumptive tracking order shall be as follows:

(i) After Designation to Average ("A") Track:

1. Three months (90 days):

- Service completed on all parties. (If a party who has been served has not timely filed a response to the Complaint, that party shall be defaulted by the Court).
- If service is not made upon any defendant, the action shall be dismissed without prejudice as to

that defendant.

- Case Management Conference held (all pro se parties shall appear in person and all other parties shall be represented by counsel with decision-making authority and parties may be defaulted or nonsuited if they do not appear). The Court reserves the right to require all parties to appear at the Case Management Conference. All counsel attending are required to be fully familiar with the case and have complete authority regarding all aspects of the conduct of the litigation. A discovery schedule shall be discussed and implemented. If any party has not received notice of the Case Management Conference by the ninetieth (90th) day following the filing of the Complaint, that party shall request in writing that the Court proceed to schedule the Case Management Conference.
- If not held earlier, an early intervention event shall be held pursuant to Supreme Judicial Court Uniform Rules on Dispute Resolution, Rule 1:18, at which the case may be assigned for alternative dispute resolution screening.

2. Sixteen months (480 days):

- All discovery requests served and answered, and all depositions completed.
- All requests for admissions served and answered.

3. Eighteen months (540 days):

- Dispositive motions (filed under Mass. R. Civ. P. 12(b)(1); 12(b)(6); 12(c); and 56) ("Dispositive Motions") filed and served (including supporting memoranda and affidavits).

4. Nineteen months (570 days):

- Dispositive Motions responses filed.

5. Twenty months (600 days):

- Dispositive Motions reply briefs filed ten (10) days prior to hearing.
- Dispositive Motions heard.

6. Twenty-seven months (810 days):

- Case assigned for pre-trial conference and joint pre-trial memorandum must be filed. Parties not filing a joint pre-trial memorandum may be sanctioned.

7. Twenty-eight months (840 days):

- Pre-trial conference held (mandatory attendance or party may be sanctioned).
- Firm trial date, generally within the next three months, set.

8. Thirty-one months (930 days):

- Trial held.

9. Thirty-three months (990 days):

- Transcripts filed with the Court and all parties.

10. Thirty-four months (1020 days):

- Post-trial briefs filed with the Court within thirty (30) days of receipt of transcript.

(ii) After Designation to Fast ("F") Track:

1. Three months (90) days:

- Service completed on all parties. (If a party who has been served has not timely filed a response to the Complaint, that party shall be defaulted by the Court).
- If service is not made upon any defendant, the action shall be dismissed without prejudice as to that defendant.
- Case Management Conference held (all pro se parties shall appear in person and all other parties shall be represented by counsel with decision-making authority and parties may be defaulted or nonsuited if they do not appear). The court reserves the right to require all parties to appear at the Case Management Conference. All counsel attending are required to be fully familiar with the case and have complete authority regarding all aspects of the conduct of the litigation. A discovery schedule shall be discussed and implemented. If any party has not received notice of the Case Management Conference by the ninetieth day following the filing of the Complaint, that party shall request in writing that the Court proceed to schedule the Case Management Conference.
- If not held earlier, an early intervention event shall be held pursuant to Supreme Judicial Court Uniform Rules on Dispute Resolution, Rule 1:18, at which the case may be assigned for alternative dispute resolution screening.

2. Six months (180 days):

- All discovery requests served and answered, and all depositions completed.
- All requests for admissions served and answered.

3. Seven months (210 days):

- Dispositive Motions filed and served (including supporting memoranda and affidavits).

4. Eight months (240 days):

- Dispositive Motions responses filed.

5. Nine months (270 days):
- Dispositive Motions reply briefs filed ten (10) days prior to hearing.
- Dispositive Motions heard.

6. Thirteen months (390 days):
- Case assigned for pre-trial conference and a joint pre-trial memorandum must be filed. Parties not filing a joint pre-trial memorandum may be sanctioned.

7. Fourteen months (420 days):
- Pre-trial conference held (mandatory attendance or party may be sanctioned).
- Firm trial date, generally within the next two months, set.

8. Sixteen months (480 days):
- Trial held.

9. Eighteen months (540 days):
- Transcripts filed with the Court and all parties.

10. Nineteen months (570 days):
- Post-trial briefs filed with the Court within thirty (30) days of receipt of transcript.

(iii) After Designation to Tax ("T") Track:

1. Three months (90 days):
- Title report completed and submitted to Land Court examiner (reference to examiner automatically revoked for failure to submit report with reference assigned to another examiner). Title report should include names and addresses of all interested persons, including condominium trustees.

2. Four months (120 days):
- Title report docketed and reviewed.
- Citation issued or request for additional information sent by the Court to plaintiff's counsel. (Failure to provide additional information within time specified by the Court may result in dismissal).

3. Five months (150 days):
- Return day. Pleadings closed unless special notice issued.

4. Six months (180 days):
- Military affidavit and motion for general default submitted.
- Request made for additional service.
- Request made for hearing in any contested case.

5. Seven months (210 days):
- Special notice issued where required.
- Finding entered after hearing.

6. Eight months (240 days):
- Return day on special notices. Pleadings close.

7. Nine months (270 days):
- Military affidavit and motion for general default submitted in cases with completed special notice.
- Hearing request in contested cases with special notice.

8. Ten months (300 days):
- If terms of redemption established in Finding are not satisfied, motion for judgment submitted and marked for hearing.
- Finding entered in any contested case with special notice.

9. Eleven months (330 days):
- Motion for judgment heard and allowed if finding unsatisfied.

10. Twelve months (360 days):
- Final judgment entered after allowance of motion for judgment.

11. Thirteen months (390 days):
- If terms of redemption established in Finding in any contested case with special notice are not satisfied, motion for judgment submitted and marked for hearing.

12. Fourteen months (420 days):
- Motion for judgment heard and allowed if finding unsatisfied in contested case with special notice.
- Final judgment entered after allowance of motion for judgment in contested cases with special notice.

G. Decisions

Trial decisions should be decided within one hundred twenty (120) days from the date cases are taken under advisement.*

* Section G shall apply to all cases taken under advisement on or after October 1, 2005.

Effective Date: October 4, 2004

STANDING ORDER NO. 1-06

ELECTRONIC RECORDATION OF PROCEEDINGS

(1) All Land Court courtroom proceedings shall be recorded by a digital audio recording system known as CourtSmart. Said recording shall take place whether or not a court stenographer is present in the courtroom.

(2) A copy of the original recording or any portion thereof may be requested by counsel or by litigants. The copy shall consist of a compact disc of the original recording, or such portion thereof as is requested, which copy shall be produced pursuant to such process and procedure as is prescribed by the Chief Justice for Administration and Management of the Trial Court (CJAM). The request for a compact disc of an original proceeding shall be filed with the Recorder of the Land Court. Such request shall be on the form prescribed from time to time by the CJAM, and available at the Land Court. A copy of the request shall be sent to the opposing party or opposing party's counsel by the party requesting the copy. The cost of the compact disc, which shall be prepaid, shall be determined by the CJAM, as set forth in the Uniform Schedule of Fees for the Trial Court, adopted pursuant to G.L. c. 262, § 4B. G.L. c. 261, §§ 27A through 27G, shall be deemed applicable to requests by or on behalf of parties determined to be indigent and the cost of a compact disc shall be deemed an "extra cost" as defined in § 27A.

This Standing Order 1-06 supersedes Standing Order 1-88, dated February 1, 1988.

STANDING ORDER NO. 2-06

Processing and hearing of claims for judicial review of matters on the administrative record

1. Claims filed in the Land Court seeking judicial review of administrative agency or other proceedings on the administrative record pursuant to the standards set forth in G.L. c. 30A, § 14, G.L. c. 249, § 4, or similar statutes, whether joined with a claim for declaratory relief under G.L. c. 231A, or any other claim, shall be heard in accordance with the following procedures.[1]

2. The administrative agency or other body whose proceedings are to be judicially reviewed in this manner (the agency) shall, by way of answer to such claims, file the original or certified copy of the record of the proceeding under review (the record) within ninety (90) days after service upon it of the Complaint. Such record "shall consist of (a) the entire proceedings, or (b) such portions thereof as the agency and the parties may stipulate, or (c) a statement of the case agreed to by the agency and the parties." G.L. c. 30A, § 14(4). Upon service of the Complaint, the agency shall notify all parties of procedures for acquiring a transcript of the hearing testimony. The agency shall also inform the parties of their obligation to provide a transcript, or the stipulated portions thereof, to the court if alleging that the agency's decision is not supported by substantial evidence or is arbitrary or capricious, or is an abuse of discretion. A request for a copy of the transcript must be made by a party within thirty (30) days after service of the Complaint, and such transcript, or the stipulated portions thereof, shall be made a part of the record. Any party seeking to challenge the agency's decision as not supported by substantial evidence or as arbitrary or capricious, or an abuse of discretion, shall have an affirmative obligation to obtain a copy of the transcript, or the stipulated portions thereof, in support of its position, and to ensure that it is timely included in the record submitted to the court. The court may assess the expense of preparing the record, including the cost of the transcript, as part of the costs of the case. G. L. c. 30A, § 14(4). Additionally, "the court may, regardless of the outcome of the case, assess any one unreasonably refusing to stipulate to limit the record, for the additional expenses of preparation caused by such refusal." G. L. c. 30A, § 14(4). The court may require or permit subsequent corrections or additions to the record when deemed desirable. G. L. c. 30A, § 14(4). The time for filing the record may be shortened or enlarged, for good cause shown, upon allowance of an appropriate motion.

3. The following motions raising preliminary matters must be served on the parties and filed with the court not later than twenty (20) days after service of the record:

(a) Motions authorized by Mass. R. Civ. P. 12(b) or 12(e).

(b) Motion for leave to present testimony of alleged irregularities in procedure before the agency, not shown in the record (G.L. c. 30A, § 14(5)).

(c) Motion for leave to present additional evidence (G.L. c. 30A, § 14(6)).

Any party failing to serve and file such a motion within the prescribed time limit, or within any court-ordered extension, shall be deemed to have waived any such motion (unless related to jurisdiction)

and the case shall proceed solely on the basis of the record. Responses to such motions shall be served and filed not later than seven (7) days after service of the motion (the number of days to be calculated as provided in Mass. R. Civ. P. 6(a)), and the court, in its discretion, may either schedule the motion for hearing or decide it on the submitted papers. If the motion specified in (c) is allowed, all further proceedings shall be stayed until the agency has complied with the provisions of G.L. c. 30A, § 14(6).
4. A claim for judicial review on the administrative record shall be resolved through a motion for judgment on the pleadings, Mass. R. Civ. P. 12(c), unless the court's decision on any motion specified in part 3 above has made such a resolution inappropriate. All Rule 12(c) motions and supporting memoranda shall be served and filed within thirty (30) days of the service of the record or of the court's decision on any motion specified in part 3 above, whichever is later. The responses to such motions shall be served and filed within thirty (30) days after service of the motion and memorandum. The court may grant an extension of time for good cause shown. Memoranda shall include specific page citations to matters in the record.
5. The Recorder or her/his designee will schedule a hearing date after receiving the motion materials. No pre-trial conference will be held, and no pre-trial memorandum filed, unless specifically ordered by the court. No testimony or other evidence shall be presented at the hearing, and the review shall be confined to the record. A party may waive oral argument and submit on the brief by filing a written notice. Failure to appear at the time and place scheduled for hearing shall also be deemed such a waiver. Such waiver by a party shall not affect the right of any other party to appear and present oral argument.

Footnote.
If the Complaint also raises claims subject to de novo or other type of review, those claims shall be addressed and resolved in the manner required by the applicable statute and the Massachusetts Rules of Civil Procedure.

Manual of Instructions for the Survey of Lands and Preparation of Plans to be filed in the Land Court

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Introduction

This manual is issued for the information and guidance of land surveyors preparing surveys and plans to be filed in the Land Court. It is intended as a guide to the minimum requirements for what is commonly referred to in this commonwealth as a "Land Court Survey". It is not intended as a text for surveyors nor as a standard for all property line surveys.

Compliance with these instructions is mandatory, and no survey or plan will be accepted for filing unless these requirements have been fulfilled to the satisfaction of the Land Court's Survey Division. The surveyor should consider his or her work as being performed for the Court, and these instructions are paramount to any given by a client or client's attorney.

This manual will be known as the "Instructions of 2006" and will be effective as of January 2, 2006. The Instructions of 2006 supersede all previous instructions and may be amended from time to time by the Court.

The Instructions of 2006 were developed through the hard work of a dedicated committee led by co-chairs Associate Justice Leon J. Lombardi and Antonio D. Cavaco, PLS. During its existence, the other members of the committee included: Carlton A. Brown, PLS; Mary Ann T. Corcoran, PLS; Michael P. Healy, Esq., David W. Humphrey, PLS; Diane C. Tillotson, Esq.; and, as representatives of the Court, George T. Capelianis, Chief Engineer; Thomas C. Pontbriand, Acting Deputy Engineer; and Charles B. Forbush, formerly Surveying Engineer. The Court is grateful to Judge Lombardi, Mr. Cavaco, and to the private lawyers and surveyors as well as the Land Court employees whose diligent work and enormous commitment of time and effort led to the adoption of these updated instructions.

Adopted by the Court: September 23, 2005
Karyn F. Scheier, Chief Justice
Deborah J. Patterson, Recorder
George T. Capelianis, Chief Engineer

Land Court Manual of Instructions
Introduction

1.1 Registration and Confirmation

The jurisdiction of the Massachusetts Land Court is found in the multiple subsections of Section 1 of Chapter 185 of the Massachusetts General Laws. (References to the Massachusetts General Laws will hereafter appear as "G.L. c. ___, §___.") Subsection 1 (a) confers exclusive jurisdiction on the Court to try complaints for the confirmation and registration of title to land and complaints for confirmation without registration. G. L. c. 185, §§ 26-31 sets forth the requirements for a complaint for registration, and §§ 26A and 56A pertain to confirmations. Pursuant to G. L. c. 185, § 33, the plaintiff is required to file a plan of land with the complaint. Because the plan is a result of a survey, both will be considered together throughout this Manual. Therefore, instructions as to either a plan or a survey must be interpreted as possibly applying to both. Section 33 also provides that the Court may "require a further survey be made for the purpose of determining boundaries and may order durable monuments to be set, and referred to in the complaint, by amendments." The Land Court follows Massachusetts statutes, common law, and established rules of construction regarding the interpretation of deeds and other instruments affecting real property interests.

1.2. Duty of the Land Surveyor

This manual sets forth the requirements of the Land Court, as administered through its Survey Division (formerly known as the Engineering Department), for the preparation of plans accompanying complaints for the original registration and confirmation of title to land as well as plans for subsequent division of those lands, and, finally, plans to be registered with condominium documents where a condominium is created on registered land. Although paid by a private client, usually the plaintiff, the surveyor who undertakes the preparation of a plan for the Land Court owes his[1] primary obligation to the Court; his certification is made to the Court and it is the Court's instruction that must be followed. While the lines of ownership are matters to be determined by the Court after consideration of the record title, plans, and other evidence that may be introduced, the surveyor is required to study the instruments of record affecting the land, and to indicate upon his plan the existing lines of ownership to the best of his knowledge. In addition, and upon specific instruction from the client, the surveyor may add to the plan those lines that represent a client's claim~~s~~ of title. The surveyor should label these additional lines as "Lines Claimed by Plaintiff." The surveyor also has a duty to disclose conflicting information, inconsistencies and discrepancies encountered in researching and preparing a Land Court plan. Conflicts between existing record data and information discovered in the field, as well as discrepancies and conflicts in abutting owner deed descriptions, plans of record, and data from other sources, such as assessor's records, must be disclosed in writing to the Survey Division.

[1] The words "his" or "her" shall be construed to include both genders.

1.3. Use of Plans

All plans on file with the Land Court are public records. Each time a surveyor files a plan in accordance with this Manual, the surveyor (a) consents to the Court's use of such plan for all purposes, including its permitting any member of the public to copy plans for a nominal fee and (b) releases the Land Court and its employees from liability for any unauthorized use of a plan filed with the Court.

1.4. The Surveyor and the Plaintiff's Attorney

Communication between the plaintiff's attorney and the surveyor is critical to an effective and accurate presentation of a case for registration or confirmation. The plaintiff's attorney needs information that the surveyor has in order to complete the complaint for registration, e.g., a

description of the land, whether it bounds on a public or private way, whether easements or other appurtenant rights are claimed and other similar matters. The work of the surveyor, on the other hand, will be aided by the title information in the file of plaintiff's attorney. Although the Land Court examiner is not appointed until after the complaint and plan have been filed pursuant to G.L. c. 185, §37, the attorney for the plaintiff will most likely have a fairly complete title examination within her file.

1.5. Overview of Procedure

Both registration and confirmation are proceedings that seek the Court's adjudication of the plaintiff's title and of the location of boundaries of the registered or confirmed parcel of land. Once the plaintiff files a complaint, a plan ("the Filed Plan"), and other required documentation, together with the statutory filing fee, an approved Land Court examiner performs a title examination. Following the submission of the examiner's report, the Court issues a citation for publication, posting and mailing to all interested parties. If any answers or objections to the complaint are filed by the return day, the issues raised by those contesting parties must be addressed and resolved. If the parties are unable to settle their differences, contested issues will be ultimately decided by the Court after trial. If the plaintiff ultimately prevails, the case will be treated as uncontested. All uncontested cases are referred to a judge and staff title examiner for review. Upon satisfactory review and compliance with any additional requirements, the Court issues an order for judgment. The case is then sent to Survey Division to have a plan drawn in accordance with the order for judgment ("the Judgment Plan"). The Land Court Plan number, made up of the case number plus a letter indicating the particular plan, appears in the upper right hand corner of all approved plans of registered land. The Judgment Plan is given the letter "A." Each Division Plan thereafter follows sequence "B", "C", etc. Once the Judgment Plan is completed, the Court issues a judgment. Following final accounting, the Court transmits a copy of the judgment and Judgment Plan, together with other relevant documents, to the appropriate Registry of Deeds for filing. In a registration case, the local Registry assigns a certificate number and, in due course, issues the certificate of title. The registered owners of the land described on the certificate hold title to the registered parcel of land free from all encumbrances except those: (1) appearing on the face of the certificate, (2) noted on the page of the certificate labeled Memorandum of Encumbrances, and (3) enumerated in G. L. c. 185, § 46. The boundaries of the registered parcel of land are definitively located on the ground as shown on the Judgment Plan. All subsequently filed instruments affecting the registered land are noted by the assistant recorder on the Memorandum of Encumbrances. Upon the filing of a deed conveying the registered parcel of land, the assistant recorder cancels the outstanding certificate and issues a new certificate in the name of the grantee or grantees appearing in the deed. In a confirmation case, the Court issues a judgment and Judgment Plan that guarantees title and boundary location of the confirmed parcel of land as of the date of the order for judgment. No certificate is issued in a confirmation case; accordingly, title to the property remains on the unregistered or recorded side of the Registry of Deeds.

2. REQUIREMENTS FOR LAND COURT PLANS

2.1. Requirements For All Surveys

2.1.1. STANDARD

All surveys shall be performed by or under the direct supervision of a Professional Land Surveyor in accordance with the Rules and Regulations of the Massachusetts Board of

Registration of Professional Engineers and Land Surveyors set forth at part 250 of the Code of Massachusetts Regulations (hereafter "250 CMR").

2.1.2. RESEARCH

2.1.2.1.Property Research. The surveyor must search the public records and the record title of the property in question to obtain information concerning property descriptions and boundaries. At a minimum, the surveyor should examine records in the assessor's office and the Registry of Deeds back to a point where the description is consistent with that presented for registration. Deed descriptions of all abutting properties shall also be examined to determine whether the descriptions are consistent with that of locus. The surveyor must also review the plan index at the Registry of Deeds and examine plans of locus and abutting properties. If a full title search is not available, the surveyor must run the title forward to identify and locate easements, restrictions, agreements and other encumbrances that burden locus. Appurtenant rights and instruments creating a benefit or a conditional benefit, such as a G.L. c. 91 (Chapter 91) license, must also be examined. (For research related to division plans see § 2.3.1)

2.1.2.2.Streets and Ways Research.

Before commencing any survey in the field, the data for the lines of streets and ways, whether public or private, must be ascertained and the initial points obtained must be made a part of the field survey and must also be shown on the Filed Plan. In addition to the Registry of Deeds, the data fixing the lines of such ways may be found in the offices of the planning boards, boards of survey, boards of public works, highway commissioners, county commissioners, park commissioners, city or town clerks, state, county, city and town engineers, the Massachusetts Highway Department and the Metropolitan District Commission.

2.1.2.3.Municipal Boundary Research. The city and town boundary atlases, published by the Commissioners on the Topographical Survey in 1888 and subsequent years, contain a compilation of all acts incorporating cities and towns, the definition of the city and town lines and data for the preservation of all city and town corners as of those dates. (Note: The geodetic coordinates of the city and town corners and triangulation points in these atlases are not based on the Massachusetts Coordinate System).

2.1.2.4.Adjoining or Nearby Registered Land

2.1.2.4.1. Other Registered Land. The surveyor must ascertain in advance of the survey whether any adjoining property or any property in the immediate vicinity has been registered. If so, the Judgment Plans of those registered lands, and, in the case of an abutting parcel, the outstanding certificate of title, must be examined. The boundary lines of such adjoining parcels, having been previously determined by the Court, must be recognized. For this reason, all monuments of the earlier abutting registration on the common boundary line must be included in the field survey of the new plan. The relative location of other nearby cases, within 500 feet of locus, must be determined.

2.1.2.4.2. Discrepancies Reported and Reconciled. All irregularities or discrepancies in the earlier data that are disclosed by the new survey must be reported to the Survey Division and reconciled with new survey prior to plan preparation. (See § 3.2 Inconsistent Surveys).

2.1.2.4.3. Registered Land Indices at Court. To the extent possible, the locations of titles previously before the Court are indicated upon the atlases in the office of the Survey Division by an outline in color and by a case number lettered thereon. These atlases are accessible to the public. In addition, a card file "locality" index, arranged by City or Town, Street Name, and Case Number, and a "plaintiffs" card file index are available.

2.1.2.4.4. 'Parcel' Taking Plans. Most plans filed at the Court showing takings for highway systems prepared by the Massachusetts Department of Public Works (now MassHighway) are compiled plans. These plans show eminent domain takings of areas labeled "parcels." The information

contained therein should be considered approximate only. For assistance, consult with the Survey Division (See § 2.1.4.3.9.).

2.1.3. FIELD SURVEYS

2.1.3.1.Required Fieldwork

2.1.3.1.1. Purpose of Survey. The purpose of the survey is to show the premises and create a record such that the boundaries, easements, and associated rights as later determined by the Court, can be retraced on the ground from the data shown on the plan or filed therewith. The fieldwork shall be performed so as to obtain complete information for computing and plotting the survey with appropriate checks on each part of the work.

2.1.3.1.2. On-The-Ground Survey. All plans must be the result of an actual survey performed on the ground. The survey and plan must be made by, or under the direct supervision of, the surveyor whose signature, certification, and seal appear on the face of the plan. In all cases, the plan must show the actual facts existing on the ground, in full detail, on the date of the survey. The surveyor serves as the eyes of the Court for all registered land. The survey must have been performed, or updated, within six months of the date the Land Court accepts the Filed Plan.

2.1.3.1.3. Closed Field Traverse. The survey must be predicated upon a closed field traverse of appropriate precision running around the property, either upon the boundary lines, or upon traverse lines from which the boundary lines are located, or upon a combination of both. All traverse lines shall be run within a reasonable distance of the property lines being located.

2.1.3.1.4. Field Location. All observable features that may have a bearing on the determination of property boundary lines or title lines shall be directly located from the closed field traverse. Such features to be located may include boundary monuments, walls, fences, buildings, water bodies, limits of occupation, roads, cart paths, encroachments, and easements.

2.1.3.1.5. Evidence Within 10 Feet. All evidence of occupation and possession within 10 feet of the property boundary lines and easements shall be located. This includes all buildings, fences, and monumentation.

2.1.3.1.6. Buildings. When a building or structure to which the property lines or traverse lines are referenced is located, a precise description of the particular point located must be made. "Corner board up 0.7 feet," "10th brick up," and "top of foundation" are suitable descriptions and should be noted in the field notes and on the plan. When actual ties are measured from buildings to traverse points or monuments, similar notations should be made.

2.1.3.2.Water Boundaries.

2.1.3.2.1. Water Boundary Locations. For surveys of properties bordering on tide waters, lakes, ponds, rivers, streams, or brooks, that portion of the water lines used for determining boundary or easement lines shall be located from traverse lines that form a part of the closed field traverse. The water lines shall be shown on the plan as correctly as the scale permits. Where watercourses pass through the property, the survey shall include the location and direction of flow of the stream at all places within the property lines.

2.1.3.2.2. Limits of Water Bodies. The mean high water mark of all tidal waters and the low water mark of any lake, pond, or river and the middle line and side lines of any stream or brook are the only water lines ordinarily required. Where title instruments indicate other water lines are determinative or where a contest with respect to the location of any water line is anticipated, additional data concerning the water levels or courses may be required. Examples include contour lines near old dams, the top or bottom of a riverbank, the middle of the channel of a river or tidal stream, the thread of a brook, or the edge of a marsh or upland. The location of the low water mark or 100-rod line is necessary when lines over flats or foreshore are to be determined.

2.1.3.2.3. Contour Lines. Where contour lines are used, they must be related to a fixed datum and be referenced to a permanent benchmark(s) shown on the plan.

2.1.3.2.4. Flats and Foreshore. When determination of flats and foreshore is important, all physical record features that limit and lie within or adjacent to the flats (including, but not limited to, licenses, harbor lines, bulkhead lines, pier lines, filled areas, beaches, rambles, marsh, bogs, mean high water mark, mean low water mark, extreme low water mark, 100-rod line, channels that contain fresh flowing water at low tide, all structures within the flats, jetties, seawalls and groins) shall be located. The surveyor should contact the Land Court Surveyor prior to the completion of surveys for the determination of boundaries of flats or lines over the foreshore.

2.1.3.3.Survey Instruments

2.1.3.3.1. Instrumentation. All surveys shall be performed with survey grade instruments (i.e. surveyor's transits, theodolites, total stations, surveyor's levels, steel tapes, electronic distance measuring instruments (EDMs), etc.) suitable for property line surveys and shall be maintained in good working condition and periodically calibrated.

2.1.3.3.2. Maintenance All equipment used to conduct the surveys described herein, including all field equipment and computer hardware and software, shall be maintained in good working order. Maintenance shall include periodic cleaning, adjustment, calibration and testing to verify the accuracy and reliability of measurements.

2.1.3.3.3. Calibration. All linear measurements shall be taken with a properly calibrated measuring device. A record of the calibration results shall be maintained for future reference. (See 250 CMR). The Survey Division may request a review or a copy of said record. (See § 2.1.3.4.7.)

2.1.3.3.4. Alternative Survey Instruments. The Land Court acknowledges that new surveying and positioning instruments are constantly being invented and perfected, global positioning satellite systems (GPS) being one example. In general, these innovative instruments can be used for Land Court surveys when they have been proven sufficiently accurate and reliable to be accepted into the land surveying community at large. Their results should yield positional accuracy results equivalent to, or better than, the methods specified above. Redundant measurements shall be made to confirm the location of all points used for determining boundary lines. The surveyor shall consult with the Surveyor of the Court before using any new techniques or instrumentation for a Land Court survey.

2.1.3.4.Measurements

2.1.3.4.1. Angle Precision. The least count of the vernier or other dividing device of the survey instrument shall be 30 seconds or less. Survey angles shall be measured, by repetition if necessary, to the nearest 10 seconds or less.

2.1.3.4.2. Angle Accuracy. All angles should be measured by repetition or otherwise to obtain the survey precision desired. Short sights should be avoided by setting supplemental backsights and/or foresights at appropriate distances from the instrument.

2.1.3.4.3. Angular Error of Closure. The angular error of closure disclosed by the summation of the unadjusted field angles, when expressed in seconds, should not exceed 18 times the square root of the number of angles.

2.1.3.4.4. Angle Adjustments. As the angular "error of closure" of a survey is dependent in part upon the field conditions affecting the measured angles, the surveyor, with his knowledge of the probable accuracy obtained, should exercise his judgment as to whether any angular error should be distributed proportionately or applied to the angles between short lines, or put in those angles where the readings were made under difficult circumstances.

2.1.3.4.5. Distance Measurements. All linear measurements must be made with a steel tape with minimum graduations of feet, tenths, and hundredths of a foot, or with electronic distance measuring instruments (EDMs) displaying, at a minimum, in feet, tenths and hundredths of a foot with a specified precision of (+/- 5 mm + 5 ppm) or better. All distances that are a part of or used in any way to determine the property lines must be measured to the nearest 1/100 of a foot, or better.

2.1.3.4.6. Taped Distances and Corrections. When a tape is used under conditions that are not standard for that tape or when the tape itself is somewhat in error, appropriate corrections must be

applied. A spring balance or a tension handle shall be used for consistent measuring. A tape thermometer shall be used to apply the proper temperature correction. In measuring over uneven ground, the measurement of a slope distance with the corresponding vertical angle or the use of a hand level or tape level is recommended.

2.1.3.4.7. Electronic Measurements. When using EDM instruments, suitable checks include the use of calibrated NGS certified baselines or comparison to a standardized, calibrated steel tape. When calibrated baselines are used, copies of the calibration records for the instrument or instruments used, preceding and subsequent to the survey, signed and sealed by the responsible surveyor, must be submitted with the Filed Plan. For comparison to a standardized steel tape, one traverse line over 450 feet must be measured with both EDM and standardized steel tape. This 450-foot line should be a part of the closed field traverse or an extension of one of the traverse lines and notation must be made on the plan to indicate the results of both measurements. When it is not practical to measure a 450-foot line in the closed field traverse, a temporary comparison baseline over 450 feet long can be established using the same equipment and certified by the surveyor.

2.1.3.4.8. Checking Location Measurements. Some method of checking the measurements from the traverse lines to the property corners, street line monuments or other such critical points should be used. For instance, if an angle and distance is used to locate a point, then a station and offset to the traverse line, or a second angle and distance from another traverse line point, should be taken. The secondary measurements will make possible the verification of the primary measurements through computation.

2.1.3.4.9. Leveling. Where leveling is required, a standard surveyor's leveling rod, graduated in feet, tenths, and hundredths of a foot may be used. Trigonometric leveling techniques may be used when deemed appropriate and suitably accurate by the surveyor. In either case, leveling shall be conducted with suitable redundancy for checking purposes and preferably with closed loops.

2.1.3.5.Monumentation

2.1.3.5.1. Monuments. Monuments may be either natural or artificial. A natural monument includes features such as trees, lakes, boulders, ledges, or the like. An artificial monument (or bound) is a man-made feature meant to perpetuate the location of a point, line or boundary, such as fences, stone walls, posts, stakes, stone monuments, or other physical objects placed in the ground intended to be boundary marks. Generally, natural monuments take precedence over those that are artificial.

2.1.3.5.2. Permanent Monument. A permanent monument is a monument that can reasonably be expected to remain stable for at least 20 years. It shall be made of durable material and of such nature so as to resist displacement or erosion. Stone or concrete monuments may be considered permanent monuments when they are at least 5 inches square on top and at least 3 feet long if set flush with the surface of the ground, otherwise longer. The bottom of the bound should always reach below the frost line. Drill holes, lead plugs, and disks set in ledge or large, stable rocks are usually permanent monuments. Iron pipes over 3 feet long may be considered permanent monuments when

a. a 3" diameter or larger pipe has a flange on the bottom and has been filled with concrete; or

b. when a pipe is set solidly in concrete.

Generally, monuments marking or referencing property lines and property corners, unless otherwise permitted herein, shall be permanent monuments.

2.1.3.5.3. Semi-Permanent Monument. Semi-permanent monuments are durable monuments that remain stable for several years. Although many iron pipes remain undisturbed for years, most are easily dislodged or removed. For this reason the Court views almost all iron pipes as semi-permanent. Semi-permanent monuments include metal rods and pipes at least 3 feet long and spikes or large nails driven into solid pavement.

2.1.3.5.4. Particular Point on Monument. If the monument is stone or concrete, a drill hole or a cross cut should be placed in its top indicating the particular point of location. If it is not possible to make a

definite point, the dimensional relation of the survey point or the property corner to some face and corner of the bound should be given.
2.1.3.5.5. Physical Identification of Monuments Property line points falling upon boulders or ledges should be monumented using a drill hole, a bolt of enduring metal, or a disk engraved with the name and/or registration number of the surveyor.
2.1.3.5.6. Description of Monuments. The physical size and condition of each monument shown on the plan must be noted. An official "Land Court Monument" should be noted as being an "L.C.B." when the letters "LCB" or "Land Court" have been cast in the top.
2.1.3.5.7. Status of Monuments. The status of monuments must be noted on the plan. Full written descriptions of monuments are encouraged.
2.1.3.5.7.1. When abbreviations are used one of the following notations shall be used:
a. A “found” monument (“FD”) is a monument that was found and accurately located.
b. A “set” monument (“S”) is a monument that was set by the surveyor as part of the current project.
c. A “disturbed” monument (“D”) is a monument that was found and located by the surveyor but does not appear to be in its original location. A stone monument leaning or laying on the ground next to a hole are examples of “disturbed” monuments. The locations of these monuments should be considered suspect (if not erroneous) unless proven otherwise.
d. A “found-not-located” monument (“FNL”) is a monument that was observed in the field but not accurately located.
e. A “not found” monument (“NF”) is a monument that was known to exist in the past but could not be recovered after a physical search of its purported location.
f. A “record” monument (“R”) is a physical monument that is referenced in instruments of record such as deeds and plans. A physical monument that was known to exist in the past based on recorded information but whose existence was not confirmed in the field is called a record monument. The term can also be applied to a non-physical monument such as abutter’s property, street layout, contour or coordinate.
2.1.3.5.7.2. The date that the surveyor determined the status of a monument must be noted on the plan. (For instance, Stone Monument: (S) 05/04/1990; (FD) 07/15/1995; (FD) 02/12/1997; (D) 06/12/1999; (NF) 09/10/2002.)
2.1.3.5.8. Traverse Points. Traverse points (or stations) should be permanent or semi-permanent points. Durable stakes with tacks or nails can be used for traverse points. Sufficient ties or other identification should fix such points so that they can be recovered to check any portion of the work before the survey is finished or to simplify the setting of such monuments as the Court may request.
2.1.3.5.9. Stone Walls. Because stone walls often mark property lines or evidence of property lines, they are important monuments to be located. The surveyor should take care to locate enough of the actual wall so that any lot calculations will be sufficiently accurate. Measurement intervals shall be controlled by the extent to which the wall deviates from a straight line. The locations of very crooked walls, or sections thereof, shall therefore require a greater number of locations than would relatively straight walls. In general, enough angle points should be located along the stone wall such that straight lines between adjacent points do not fall outside the width of the stone wall. In cases where the wall face, not the wall centerline, controls the location of a boundary, locations shall be made to the wall face. Drill holes, or permanent monuments shall be set along the length of the wall at intervals not exceeding 350 feet. (See also § 3.2.4. Stone Walls).
2.1.3.5.10. Lot Corners. Wherever physically possible, at least one corner on all lots shall be monumented with a permanent monument. The Survey Division may require more than one corner to be monumented. The surveyor should consult with the Survey Division to determine which corners are to be monumented or to request a waiver of this requirement.
2.1.3.5.11. Monuments Every 350 Feet. Wherever physically possible, permanent or semi-permanent monuments shall be located no more than 350 feet apart along the perimeter of the property lines.

Three ties to each monument should be measured and shown on the plan or on an accompanying print or sketch.
2.1.3.5.12. Monuments at Water Boundaries. Where lines fixing the limit of registration run to a water boundary of any kind, permanent or semi-permanent monuments must be found or set at some point on those lines near the water boundary.
2.1.3.5.13. Monuments on Original Complaint Registrations. Monuments required on Original Registration Plans must be set in accordance with the order for judgment before the Judgment Plan is prepared.
2.1.3.5.14. Monuments on Subsequent Divisions. Monuments required on Subsequent Division Plans must be set before the Survey Division approves the Plan and it is filed with the Court.
2.1.3.5.15. Monumenting Definitive Subdivisions. For Definitive Subdivisions, the number, type and location of monuments required for filing shall be determined at the pre-filing review.
2.1.3.5.16. Subsequent Notification of Monuments Set. After Judgment or after a Division Plan has been filed or sent to the Registry of Deeds and after streets and lots have been monumented, notification shall be sent to the Survey Division, along with a plan showing the type and location of monuments set, so that they may be made a part of the record. The surveyor shall also include a statement certifying that the monuments have been set.
2.1.3.5.17. Elevation Monuments. Monuments with elevations (benchmarks) are required in those cases where the property lines are fixed as following a contour or tied to an elevation. The elevations shall, if reasonably practicable, be related to some established base such as NGVD29 or NAVD88. The elevations of a sufficient number of monuments shall be determined so that in the event some are destroyed others nearby may be utilized.
2.1.3.6. Municipal Boundaries. Municipal boundaries (including town, city, county, Registry of Deeds district and state lines) that cross or form a part of locus, or are referenced in a deed description must be shown with complete dimensions. The monuments fixing these boundaries must be located as part of the Land Court survey. Generally, municipal boundaries run straight from angle point to angle point.
2.1.3.6.1. Road Stones. Although G.L. c. 42, §4 requires the erection of road stones where highways intersect town and city boundaries, these road stones should not be considered as being correctly placed on the municipal boundary unless found to be so by survey. Road stones on or near locus shall be located as part of the survey.

2.1.4. SURVEY ANALYSIS AND COMPUTATION

2.1.4.1.Computations
2.1.4.1.1. Rectangular Coordinates Mandatory. Rectangular coordinates shall be used in all cases. For new registrations where the area of the parcel to be surveyed is 100 acres or more, the rectangular coordinate system shall be based on the Massachusetts Coordinate System using survey techniques that will result in a degree of precision consistent with this manual. A copy of the field notes documenting such methods shall be submitted with the plan.
2.1.4.1.2. Property Line Directions. Property line directions shall be specified by the use of either bearings or azimuths.
1. If the area of the parcel to be surveyed is 100 acres or more:
a. For new registrations, the property line directions shall be based on the Massachusetts Coordinate System (see § 2.1.4.1.1).
b. For existing registrations, the property line directions shall be those already established. However, the survey shall also be tied into the Massachusetts Coordinate System as specified in §2.1.4.1.1. The difference in the directions between the two systems shall be noted on the plan.
2. If the area of the parcel to be surveyed is less than 100 acres:

a. For new registrations in which:
i. a common boundary line is shared with an existing registered parcel, the property line directions of the existing registered parcel shall be used.
ii. only one existing judgment plan is located within 500 feet of locus, the property line directions of the said existing judgment plan shall be used.
iii. more than one existing judgment plan is located within 500 feet of locus, the property line directions of one of the existing judgment plans shall be used. The difference between the property line directions of the other judgment plans shall be noted on the locus plan.
iv. none of the above apply, then the property line directions shall be either true North, grid North or magnetic North.
b. For existing registrations, the property line directions shall be those already established.
c. It is suggested in all cases that the survey be tied into the Massachusetts Coordinate System as specified in § 2.1.4.1.1 and the difference between the Massachusetts Coordinate System and the locus system be noted on the plan.
2.1.4.1.3. Closed Field Traverse Analysis. Before the angles have been adjusted, all closed field traverses shall yield a minimum precision of 1 part in 15,000. Closed field traverses shall be adjusted by an appropriate method, e.g. compass rule or least squares.
2.1.4.1.4. Review of Closed Field Traverse Measurements. If the precision ratio is not within the prescribed limits, a review of the fieldwork should be made and questionable angles and/or distances remeasured.
2.1.4.1.5. Adjustment of Closed Field Traverse. Land surveyors shall exercise their professional judgment as to whether an error should be distributed proportionately or applied to some particular part of the closed field traverse.
2.1.4.1.6. Supplementary Calculations. The locations of the property corners, the application of any record deed dimensions and the computation of any new lot lines shall be mathematically tied to a closed field traverse.
2.1.4.1.7. Form of Traverse Tables. Traverse tables showing unadjusted and adjusted data may be printed on separate sheets 8 ½ inches by 11 inches in size, or may be drafted on the plan itself. The tables shall identify the person performing the computations, the plaintiff and the case/plan number, the date of the computation, bearings, distances and coordinates and area in square feet and acres, all signed and sealed by the responsible surveyor.
2.1.4.1.8. Supplemental Supporting Data. Computation tables showing property line closures shall be filed with every plan. Where irregular lines, such as water lines, make this impossible, a combination of property lines and tie lines shall be filed. Where a development of streets and lots is involved, closure tables for the perimeter of locus, each block of lots, each lot and the streets must also be filed. Such closure calculations shall be generated by using the bearings and distances of tangent lines, bearings of radial lines and/or chords of non-tangent curves that are actually drafted on the plan and not by simply inversing by coordinates. Computation tables must also show a check of curve data (delta angle, radius and arc length). A coordinate list of all property corners, monuments found and closed field traverse corners with a legible copy of the worksheet showing the location of each coordinate shall be submitted. All such data shall be signed and sealed by the responsible surveyor.
2.1.4.2.Boundary Determination. Generally accepted rules of construction for the interpretation of deeds and other instruments conveying title should be followed when determining property lines for registered land.
2.1.4.2.1. Order of Importance. In general, descriptive elements referenced in deeds ("calls") when confirmed by an on the ground survey, are given weight in the order set forth below:
a. Senior rights (a superior right or claim such as a prior conveyance)
b. Natural monuments (streams, boulders, etc.)
c. Artificial monuments (stone monuments, drill holes, pipes, buildings, etc.)

d. Record monuments (non-physical monuments), including abutter's boundaries and layouts of streets and ways
e. Bearings (courses)
f. Distances
g. Massachusetts Coordinate System coordinates (G.L. c. 97, § 17)
h. Area
2.1.4.2.2. General Rules of Construction. The order of importance listed above must be applied consistent with the basic principles for interpreting deeds and determining property lines. The following is a partial list of these principles.
a. The intent of the grantor, as expressed in the deed, must be ascertained, whenever possible.
b. The deed should be construed as a whole instrument, with meaning given to each part.
c. Reference to another instrument or plan incorporates that document into the description in its entirety.
d. Obvious errors in the description are to be ignored.
e. A specific description controls over a general description.
f. The words "more or less" diminish the value of a call.
2.1.4.3.Streets and Ways
2.1.4.3.1. Definition of Way. The word "way" as used herein includes all highways, boulevards, avenues, roads, streets, paper streets, traveled ways, cart paths, etc., whether public or private, constructed or not, in use or not, existing physically on the ground or legally of record.
2.1.4.3.2. Bounded on a Way. At common law the word "by" has been interpreted as including the fee in the way abutting a parcel, and the words "by the line of" and other similar phrases have been interpreted as excluding the fee in a way abutting a parcel. The common law principle was codified by G. L. c. 183, § 58 (the so-called Derelict Fee Statute), which creates a rebuttable presumption as to the fee in a way, water course or monument abutting a parcel. The statute applies to all instruments executed on or after January 1, 1972 and to instruments executed prior to that date on the recorded land side. The statute does not apply to registered land instruments executed prior to January 1, 1972 where the land has been registered or confirmed before that date.
2.1.4.3.3. Status and Width. The legal status (public or private) and the width (fixed or variable) of all ways must be determined.
2.1.4.3.4. Public Street Line Law. When the lines of the ways in cities and towns are not well defined on the ground, recourse may be had to the provisions of G.L. c. 86, § 2.
2.1.4.3.5. Public and Private Portions of Way. When a way is partially public and partially private, the line separating the public portion and the private portion of the way must be located and tied to locus.
2.1.4.3.6. Ways Dividing Land Into Lots. Where any public way or any well constructed and defined private way runs through locus, the land on either side thereof shall be considered separate lots when required by the local planning board as a condition of approval or endorsement. When not so required by the planning board, a plan may be filed showing a single lot crossed by a way depicted by dashed lines where the landowner holds title to the fee of the way as well as the land on each side of that way.
2.1.4.3.7. Denying Legality of Ways. If the legal existence of a way upon or crossing locus and rights of any party thereto are being denied in the complaint filed with the Court, then said way may be labeled "approximate location" and its location plotted upon the plan from the best information available. The exact location will be required if the Court determines that locus is subject to the existence of the way.
2.1.4.3.8. Way to be Bounded. In the absence of satisfactory existing monuments to fix ways upon the ground, the surveyor must place enough permanent monuments to hold the lines connecting private and public ways. When locus bounds on a private way, and that private way originates in a

public way that has been monumented, the survey shall be extended to include public way monuments within 500 feet of locus.

2.1.4.3.9. Post-Judgment Plan Street Line Alterations. When a street line affecting registered land being subdivided has been altered by an eminent domain taking or otherwise since the issuance of the last Judgment Plan, the new street line will lie either within or beyond the registered locus. (See § 2.1.2.4.4)

a. When the new street line lies within locus, the new street shall be located as monumented and the lot dimensioned to the sideline of the new street. The old street line should either be shown with dashed lines and the mathematical relationship between the old and new street lines given, or the mathematical relationship between the old and new street lines must be provided on a worksheet or on the Filed Plan itself.

b. When the new street line lies outside of locus, within or beyond the old street, and the registered lot owner does not own any of the former street, the old street line shall be used for dimensioning.

c. When the new street line lies outside of locus, within or beyond the old street, and ownership permits,

1. the lot may be dimensioned to the sideline of the new street and an S-Petition filed to eliminate the old street; or

2. the old street may be used for dimensioning.

d. The old and new streets should be labeled in a way that differentiates them. (For example, the new street could be called "Center Street" and the old street called "Old Center Street").

2.1.4.3.10. Determination of Lines of Private Way. Upon request of the plaintiff, the exact location of the whole of a private way, or a part thereof, may be determined by the Court, as with a claim of appurtenant rights over the private way from locus to the public way. All of the lines to be so determined must be fixed by survey and mathematics in the same manner as the property lines of locus.

2.1.4.3.11. Legal Determination of Approximate Location of Private Way. Upon request of the plaintiff, the Court may determine the approximate location of a private way extending from locus to a public way. If so, then all lines thereof must be approximately located and the location plotted to scale on the plan filed with the Court. In some instances, maps, atlases or other surveys of public record may show such approximate locations. If so, said data may be adopted provided the source of the information is indicated on the plan.

2.1.4.4.Railroads

2.1.4.4.1. Location of Railroad. When locus bounds on or is intersected by a railroad, the sidelines of the railroad shall be accurately determined.

2.1.4.4.2. Data Controlling Railroad Lines. The data for railroad lines may be obtained from the engineering departments of the respective railroad corporations or the Massachusetts Bay Transportation Authority. The plan being prepared should be submitted to the engineering department having jurisdiction for its review before being filed with the Court.

2.1.4.4.3. Location of Monuments. The monuments establishing the baseline or sideline of a railroad shall be located from the closed field traverse lines.

2.1.4.4.4. Fixing the Side Line. The sideline location of the railroad may be fixed from the base line thus surveyed by using the base line stations and offsets as shown on the railroad location plans or valuation plans.

2.1.4.5.Abutting or Nearby Registered Land

2.1.4.5.1. Plan to Identify Prior Registrations. Where registered land abuts locus, the number of the Land Court Case, the name of the present owner of such abutting registered land, and the number of the outstanding Certificate of Title shall be placed on the plan.

2.1.4.5.2. Plan to Identify Prior Confirmations. Where confirmed land abuts locus, the number of the Land Court Case, the name of the present owner of such abutting confirmed land, and the original

book and page reference of the recorded judgment of confirmation shall be placed on the plan. Instructions from the Survey Division should be sought whenever a survey seeks to alter the boundaries of a prior confirmation plan.

2.1.4.6.Water Boundaries

2.1.4.6.1. Great or Private Ponds. All ponds and lakes shall be determined to be either "Great Ponds" or private ponds. The limit of private ownership of land abutting Great Ponds extends to the low water mark in its natural state.

2.1.4.6.2. Determination of Boundaries of Flats. For surveys performed in conjunction with complaints filed under G.L. c. 240, §§ 19 through 26 for the settlement of boundaries and determination of the lines and boundaries within or over the flats or foreshore, supplemental data may be necessary. A conference with the Survey Division should be arranged prior to the preparation of any plan for the determination of boundaries of flats or lines over the foreshore.

2.1.4.7.Town, County, State and Registry of Deeds District Lines

2.1.4.7.1. Changes. Since the publication of the city and town boundary atlases in the early twentieth century, many changes in city and town lines have been made by acts of the Legislature, which should be consulted where applicable.

2.1.4.7.2. County and Registry of Deeds District Lines. Selected city and town boundaries and associated data also define county, state and Registry of Deeds district lines. When they are also Registry of Deeds district lines, city or town lines shall be precisely located and dimensioned as property lines. If locus lies on both sides thereof, said line shall be made the division line between separately dimensioned parcels on each side of it. In such situations a Land Court Plan of each parcel is filed in the Registry of Deeds district in which that parcel is situated.

2.1.5. DRAFTING REQUIREMENTS FOR ALL PLANS

2.1.5.1.Media. Every plan presented pursuant to these instructions shall be on non-erasable media of durable material (anticipated life span exceeding 100 years under normal storage conditions) that readily accepts permanent black ink and upon which alterations of the plan are readily discernible. Such media must be widely available in roll stock and 24 inch by 36 inch sheet formats. In addition, if a DXF file, DWG drawing, PDF file or some other computer digital format approved by the Chief Surveyor is available, it should accompany the plan for filing. The Survey Division should be consulted relative to choice of media.

2.1.5.2.Plan Sheet Size. Plan sheet sizes shall be 18 inches by 24 inches or 24 inches by 36 inches.

2.1.5.3.Parcel Highlight. The inside of the perimeter of each parcel or group of contiguous parcels or lots shall be highlighted with green tint.

2.1.5.4.Plan Title. The plan title must state the name of the city or town in which the land is located, the street address, the name and full business address of the surveying firm, corporation or partnership that prepared the plan including zip code, telephone number with area code, the name of the responsible surveyor, and if not an employee of the surveying firm, corporation, or partnership, then the full business address, including zip code and telephone number with area code, of the responsible surveyor, and the date of the plan.

2.1.5.5.Border. There shall be a border on each plan sheet located at least 3/4 inches from each edge of the plan, and no numbers or letters shall be placed in the border.

2.1.5.6.Plan Sheet Orientation. The property shall be oriented upon the plan so that the north point heads in a general way toward the top of the sheet. It is preferable that it head directly up the sheet or up and to the left somewhat.

2.1.5.7.Lettering. All plans should be lettered so that they may be read from the bottom and right side only. The lettering of the property line dimensions, the abutting owners, and the street should be large enough to be appropriately prominent.

2.1.5.8.Scales. The plan scale, in feet to an inch, must be such as to clearly show all necessary data. Scales of 5, 10, 20, 30, 40, 50, 60, 80, 100, 120, 150, 160 and 200 are suggested. A bar scale must also be shown.
2.1.5.9.North Point. The north point must be consistent with the bearing or azimuth system used.
2.1.5.10. Key Sheet. A Key Sheet is required if there is more than one sheet to a plan. The size and plan date for each sheet, including the Key Sheet, must be the same. The Key Sheet must show, at a minimum, the perimeter of the lot(s), lot numbers, street names, abutters, adjoining registered land, easements, north point and sheet reference for lot detail data.
2.1.5.11. Multiple Sheets. All sheets except the Key Sheet shall be drafted at the same scale and contain identical information in the title block.
2.1.5.12. Locus Map. A locus map shall be shown on the plan (if more than one sheet, it shall be shown on the Key Sheet).
2.1.5.13. Legend. All plans must have a legend. Plan symbols, line types and abbreviations shall be defined in the legend. Typical abbreviations such as "c.b.": corner board, "br": brick, "st. fdn.": stone foundation, "d.h.": drillhole, "spk. in bulkhead," "I.P.": iron pipe, "I.R.": iron rod, etc. can be defined here.
2.1.5.14. Use of Monuments Marking Ways - Monument Identification. All monuments defining ways must be identified in the legend by the type of monument and the type of survey point located on it. (See § 2.1.3.5.7.)
2.1.5.15. Monuments Noted on Plan. The status of monuments as described in § 2.1.3.5.7 and those monuments that are "held" shall be so labeled on the Plan.
2.1.5.16. Site Location with Respect to Public Streets. The plan should show the nearest intersecting streets between which locus lies, and/or give the approximate distances from locus to those streets.
2.1.5.17. Lot Dimensions. Complete dimensions (directions, distances and areas) must be shown for each lot. If a boundary line is an irregular line, the area may be scaled. Tie courses shall be used to complete mathematical lot closures. There may be any number of lots to a sheet, but each lot must be completely shown to scale and fully dimensioned on a single sheet. A lot that cannot be fully shown on one sheet must be shown on the Key Sheet with the overall perimeter distances. The detailed dimensions of such a lot can be shown on the individual sheets.
2.1.5.18. Foreshortening and Distortion Prohibited. The perimeter of each lot must be plotted to scale. It must not be foreshortened or distorted. Although there may be more than one sheet to a plan, and any convenient number of lots to a sheet, the complete perimeter of each lot shall be on one sheet. Complicated details may be plotted at a larger scale on a detail sketch that is either put on the plan sheet with the locus perimeter or upon another plan sheet.
2.1.5.19. Lot Numbering. Lots created on Land Court Plans are numbered consecutively. On subsequent plans the surveyor may either continue the Land Court numbering or designate the lots differently (letters, assessor parcels, etc.).
The Survey Division, when necessary, will change the surveyor's lot designation and assign the consecutive lot numbers when the Division Plan is filed. If the owner intends to separately convey the fee in the way (e.g. to a homeowner's association or municipality), the way must be fully dimensioned and shown as a separate lot. Where the plan filed with an original complaint covers more than one lot, each lot shall be given consecutive Arabic numerals, beginning with the number 1. Any Division Plans in the same case shall extend this numbering system. Call the Survey Division if there is any doubt as to which number to begin with on any particular Division Plan. The Survey Division will assign Lot numbers when the Division Plan is filed.
2.1.5.20. Ways to be Shown. Any way abutting locus that exists either in the record title or upon the ground must be shown on the plan. The latest street lines established by any public authority must be shown.

2.1.5.21. Public or Private Ways. The status of a way and its name must be shown on the plan as: "Morse (Public) Street" or "Morse (Private) Street." The plan must indicate which governmental agency created the public way, for example, "Town Highway, "City Highway" or "State Highway" or "Metropolitan District Commission."
2.1.5.22. Street Widths. Street widths and the initial points controlling street lines, as well as sufficient monuments for the purpose of fixing locus therefrom must be shown. If the width is indefinite and varied, the surveyor must show the width as "variable" and utilize her best judgment to locate approximately the sideline of the way opposite locus, based on the physical facts on the ground such as walls, fences, etc., or some record information.
2.1.5.23. Street Dimensions. The complete dimensions of all ways, including all curve functions (delta angle, radius, and arc length) and sufficient data to tie together opposite corner curves and street angles, especially at intersections, shall be shown. Non-tangent curves shall be labeled as such with both radial bearings shown.
2.1.5.24. Limit of Public Way. If relevant, the line separating the public and private portion of the way must be shown.
2.1.5.25. Claimed Appurtenant Rights. All claimed appurtenant rights must be shown with no foreshortening permitted. All claimed appurtenant rights shall be adequately dimensioned to allow its location to be reproduced on the ground.
2.1.5.26. Line and Point Descriptions. Every plan must plainly indicate the manner in which the corner, property line or reference point is marked upon the ground. Certain lines must be described by a notation as well as indicated by drafting techniques. Expressions like "line through middle of (thickness of wall) brick wall," "line between walls of brick buildings" and "face of brick wall on line" are typical of such notations.
2.1.5.27. Physical Evidence of Title. All fences, walls, ridges, monuments, etc., whether permanent or semi-permanent, natural or man-made, that may be considered by the Court as evidence of the boundary line must be shown. Monuments held shall be labeled as such on the plan.
2.1.5.28. Record Easements. All record easements located on locus, including "paper" easements where there is no physical evidence of construction or use, must be shown and identified by appropriate recording information (book and page, document number, etc.)
2.1.5.29. Proposed Easements. The surveyor may show the layout of proposed easements, such as proposed drainage and utility easements, by using the word "proposed" or the symbol "**P**" immediately following the name of the easement and providing the following notation on the plan: " **P** denotes easement not created by grant or reservation as of the date of this plan". (Examples: "Drainage Easement **P** " or "Utility Easement #10 **P** ").
2.1.5.30. Precision, Linear Error of Closure, Directional Error of Closure and Accuracy. Each plan must clearly note the precision, linear error of closure, directional error of closure of the unadjusted field survey traverse, and accuracy of the EDM.
2.1.5.31. Measurement Identification. On all lines measured with EDM, the distances on the plan shall be noted (EDM). On all lines measured with standardized tape, the distances on the plan shall be noted (T).
2.1.5.32. Label Topography. When difficult terrain conditions are encountered, notations on the plan such as "heavily wooded," "swamps," "underwater," "precipice", etc., are helpful to the Court.
2.1.5.33. Buildings. All buildings within 10 feet of locus or within 10 feet of interior easement lines, and all buildings useful to establish property lines or interior easement lines must be shown. Where available, street address numbers shall be shown for such buildings. See § 2.1.3.1.6.
2.1.5.34. Water Courses and Water Lines. All record and existing watercourses and water lines useful in establishing boundary and easement lines must be shown. Other data to be included are the name of the water course, if available, the direction of flow, date of field location, or if a record location, a

plan reference and plan date or date of survey, if known. All tidal waters shall be designated as "tidal" and direction of ebb and flow (flood) shall be shown.
2.1.5.35. Established Control. When the survey ties into existing control data (i.e. Mass. State Plane Coordinates, NAVD, or World Datum) the plan must contain a description of the control points used and the value of the Combined Scale Factor.

2.1.6. CERTIFICATIONS

2.1.6.1.Seal of Land Surveyor. Each plan must be stamped with the seal of the surveyor who certifies that the plan was made in accordance with these Land Court Instructions. The surveyor's registration number must clearly be shown on the seal or must be clearly shown on the plan near the seal. The seal is required under G.L. c. 112 §§ 81D-81T.
2.1.6.2.Out of State Land Surveyor. When the responsible surveyor is not registered in the Commonwealth of Massachusetts, but is registered in another state, submitted plans may be accepted provided a proper temporary permit allowing the surveyor to practice surveying within the Commonwealth of Massachusetts is obtained from the Board of Registration of Professional Engineers and Land Surveyors and a copy is submitted with the plan.
2.1.6.3. Monuments on Prior Plans/Subsequent Plans Certification. Monuments used to control prior plans and monuments set for subsequent plans must be certified as to their existence and condition as of the date of the survey. The person certifying must be the surveyor whose name appears in the title, or the surveyor in charge of, and professionally responsible for, the survey if the plan is made by a firm, corporation, partnership or association. The form of the certificate for all plans is:
I certify that as of the date of this survey, the monuments controlling prior plans are in the ground as shown and described hereon. I further certify that any additional monuments shown hereon have been set in accordance with the Land Court Instructions of 2006 as of the date of this survey.
2.1.6.4.Certification of Compliance. Each plan must be certified as having been made in accordance with these Instructions. The person certifying must be the surveyor whose name appears in the title, or the surveyor in charge of, and professionally responsible for, the survey, if the plan is made by a firm, corporation, partnership or association. The form of the certificate for all plans is:
I certify that this plan was drawn from an actual survey made on the ground in accordance with the Land Court Instructions of 2006 on or between __[date]__ and __[date]__ [Signature of Professional Land Surveyor and date of signature]
2.1.6.5.Up-Date Certification. Each plan must be dated within six months of the date of filing or contain the following certificate which must be dated within six months of filing:
I certify that the conditions on the ground are the same now as at the time of the original survey ___[date]____ with the exception of _____. [Signature of Professional Land Surveyor and date of signature]
2.1.6.6.Regulation Of New Subdivision Certification. Plans showing a redivision of lots fronting on streets or ways previously created by a division plan approved under the Subdivision Control Law as described in G.L. c. 41, § 81O must have the following certification:
I hereby certify that the lots shown on this plan have frontage on a public way (or ways) that was (were) shown on a previous plan <insert description> approved in accordance with the Subdivision Control Law, of at least such distance, if any, as is then required by ordinance or by-law of said city or town for erection of a building on such lot, and if no distance is so required, has such frontage of at least twenty feet.
2.1.6.7.No New Lines Certification. For land located in cities and towns that have accepted the subdivision control law, the certification allowed by G.L. c. 41, § 81X (commonly known as "No New Lines" or "81X") may be placed on the plan in the following form:

I hereby certify that the property lines shown on this plan are the lines dividing existing ownerships, and the lines of the streets and ways shown are those of public or private streets or ways already established, and that no new lines for division of existing ownership or for new ways are shown.
[Signature of Professional Land Surveyor and date of signature]
2.1.6.7.1.On Original Filed Plan. A plan bearing an § 81X certification will be accepted without Planning Board endorsement for original registration or confirmation provided that the plan shows only one parcel and that the plaintiff is not an abutter. In cases where a plaintiff is an abutter to the parcel shown on the plan, additional evidence will be required to determine whether there has been compliance with the subdivision control law.
2.1.6.7.2.Subsequent Submissions. A plan bearing an 81X certification will be accepted as a subsequent submission for registered land provided the plan shows one lot created from the merger of 2 or more registered lots or shows the land remaining not previously shown as a separate lot.

2.2. Special Requirements for Original Registrations and Confirmations

In addition to the matters described above in § 2.1, all Filed Plans must show:
2.2.1. PHYSICAL EVIDENCE.
In the case of a plan that accompanies an original complaint, lines shall be marked with physical objects enabling abutting owners and other interested parties to ascertain the locations of the lines of ownership claimed by the plaintiff. The surveyor must mark every line upon the ground with natural or man-made objects located sufficiently close to enable interested parties to identify the claimed property lines without having to employ another surveyor.
2.2.2. PHYSICAL EVIDENCE OF USE.
Evidence of use that exists on locus such as dirt or gravel roads, paths, utility lines, cultivated areas, wells, or other similar features must be shown regardless of whether the record title provides a basis for such use.
2.2.3. ABUTTING OWNERS.
All abutters, as ascertained from the latest city or town assessor's records, and the property lines between them as compiled, must be shown, including those on the opposite side of a private road at locus. Abutters on both sides along the full length of any way over which claimed appurtenant rights are claimed must be shown.
2.2.4. ALL WAYS TO BE SHOWN.
In addition to those ways which must be shown pursuant to § 2.1.5.20. , any way *over* locus that exists either in the record title or upon the ground must be shown on the Filed Plan.

2.3. Special Requirements For Subsequent Divisions of Registered Land

In addition to the requirements outlined in § 2.1, all Division Plans must comply with the requirements of this section. If in the course of preparing a Division Plan inconsistencies are found with existing judgment plans, an S-Petition may be required. (See § 3.1.)
2.3.1. SUBSEQUENT SURVEYS RESEARCH.
The surveyor shall research and obtain copies of the following documents when preparing subsequent Division Plans:
a. The current Certificate of Title for the property being surveyed including the encumbrance pages. An attested copy of the Certificate of Title must be delivered to the Survey Division when submitting the new survey plan.
b. The approved Judgment Plans and any Division Plans as filed at the Registries of Deeds.
c. Filed Plans from which the approved Judgment Plans were prepared. Data on the Filed Plans that supports the data on the Judgment Plan may be used for establishing a satisfactory connection to prior data.

The surveyor should research and obtain copies of the following items:
d. When necessary, the surveyor may need to research and obtain copies of the correspondence files on record at the Survey Division.
e. When necessary, the surveyor may need to research and obtain copies of data outside the Land Court files. This should be relied upon only after the above sources have been exhausted. Such data might consist of unregistered surveys, field notes of both private and public surveys, public street line data, evidence of occupation, and the opinions of landowners.

2.3.2. PRIOR DECREED MONUMENTS.

The surveyor must search for and locate all fences, walls, monuments, offsets to structures and other monuments recognized by the Court on prior plans as determining boundary line locations.

2.3.3. RECORD EASEMENTS.

Easements recognized on prior locus Land Court Plans and easements subsequently granted or imposed as disclosed by the outstanding certificate of title and title rundown must be shown. (For instruction on proposed easements, see § 2.1.5.29, Proposed Easements.)

2.3.4. CART PATHS AND OTHER PHYSICAL EVIDENCE OF USE.

Unless shown on an existing locus Land Court Plan, the outstanding certificate of title or the memorandum of encumbrances as updated by a title rundown, cart paths and other physical evidence of use such as overhead wires or alteration of the natural topography shall not be shown or noted on Division Plans.

2.3.5. CERTIFICATE LINES.

When the plan shows new lots created from land comprised of more than one certificate of title, dashed lines indicating the ownership from each certificate must be shown where the certificate lines run through lots. These lines must be labeled with their corresponding certificate numbers.

2.3.6. ABUTTING LAND.

Abutting land that was shown on a prior Land Court division plan must reference the Land Court Plan Number and the lot number shown on said plan. Abutting land that is remaining undivided land of the registered owner shall be labeled as such with the owner's name and Certificate Number.

2.3.7. REMAINING LAND.

The Survey Division should be consulted for the court's policy regarding the transfer or registration or instruments pertaining to remaining land.

2.3.8. LATEST STREET LINES.

The surveyor shall show the latest street lines established by any public authority as disclosed by an examination of the certificate of title, together with the initial points determining the location thereof and sufficient other monuments on said lines to enable the new lots and any new streets to be fixed therefrom upon the ground at any time in the reasonably foreseeable future.

2.3.9. ASSIGNED LOT NUMBERS TO WAYS.

If the plaintiff or owner wishes to convey or retain the fee under a way, or any portion thereof, or if the municipality requires a certificate of title for the way, then it must be assigned a lot number and be completely dimensioned as a lot. All the data necessary for identifying and describing the way shall be included.

2.3.10. INCONSISTENT SURVEY.

When discrepancies between field measurements and record data are found, see § 3.2 Inconsistent Surveys, before preparing final plan.

2.3.11. SUB-TITLE.

In addition to the usual title box information, it is required that a sub-title in the following form be lettered on the plan:
a. Being A Division of Lot(s) _____
b. Shown on Land Court Plan(s) _____

c. Creating (number) Lots

2.3.12. RELOCATION OF EASEMENTS, ETC. BY S-PETITION.

All watercourses, ways and other easements shown on Land Court Plans must be shown on subsequent plans unless relocation or elimination thereof has been approved by an Order of Court after an S-Petition. Any new facts supporting such petition, such as the piping or relocation of watercourses, ways, or easements, must be shown as they exist on the ground on the date of the survey.

2.3.13. MUNICIPAL ENDORSEMENTS AND CERTIFICATIONS.

See § 4.6 for forms of certifications referenced in this section.

2.3.13.1. Planning Board Endorsement. Except as provided in § 2.1.6.7, every plan of land in a municipality that has adopted the Subdivision Control Law must bear the endorsement of the Planning Board. This endorsement may be either that the plan does not require Planning Board approval or that the definitive subdivision plan has been approved. A Planning Board may approve a definitive plan with conditions. Plans endorsed or approved in conjunction with a comprehensive permit issued pursuant to G.L. c. 40B, §§ 21-23, may be acted upon by the Board of Appeals established under G.L. c. 40A, § 12. For a listing of the cities and towns that have not adopted the Subdivision Control Law, see § 4.5.

2.3.13.2. City or Town Clerk's Certification. All approved definitive subdivision plans must also bear the endorsement of the town or city clerk that there has been no appeal taken within the 20 days after receipt and recording of notice of approval of the plan from the planning board. See suggested form in these Instructions. For statutory authority, see G.L. c. 41, § 81V.

2.3.13.3. Approval Not Required - Unconditional. Note that there is no provision in the law for the imposition of a condition where the endorsement is "approval under the subdivision control law not required."

2.3.13.4. Planning Board Conditions. If a definitive subdivision plan is approved upon any conditions, those conditions must be set forth on letter or legal size paper, also referring specifically to the plan upon which the conditions were endorsed. See suggested form in § 4.6. If this is done before the case has gone to judgment, it is recommended that the statement of planning board conditions be recorded along with a copy of the plan so that the record thereof may be made a part of the report of the Land Court Title Examiner. If the plan is a Division Plan of registered land, then the original conditions of Planning Board approval must be submitted to the Survey Division with the plan. The Survey Division will cause the conditions to be noted on the outstanding certificates of title that are affected. Note: If approved upon conditions, the endorsement on plan must state "approved subject to conditions.

2.3.13.5. Authority to Sign for Planning Board. If one or more individuals endorses the plan for the majority of the planning board under the authority of G. L. c. 41, § 81P, the authority to do so must be in writing signed by a majority of the planning board and on file at the Land Court in Boston.

2.3.13.6. City of Boston. All plans consisting of land in whole or in part within the City of Boston submitted for filing in the Land Court must bear the endorsement of the collector-treasurer of the City of Boston, that in accordance with Chapter 190 of the Acts of 1982, the imposed excise has been paid or is not due.

2.3.13.7. Municipal Lien Certificates. All plans submitted for filing that are approved under the Subdivision Control Law must be accompanied by a current Municipal Lien Certificate (MLC) indicating that all taxes, assessments and charges have been paid in full. A method of identifying the parcel must be provided if the MLC does not refer to the Land Court case number and lot. When lots are designated by assessor’s parcel, a copy of the assessor’s map will usually suffice. Reference on the MLC to the owner’s name is not adequate to identify the parcel. See G. L. c. 60, § 23.

2.4. Special Regulations for Condominiums

2.4.1. PROCEDURE

In general, condominiums in Massachusetts are governed by the provisions of G.L. c.183A. The Land Court examines and approves all documents and plans for condominiums on registered land. The site plan, together with the floor plans and condominium documents, are reviewed by the Land Court Legal Division. After the condominium has been allowed by a Judge of the Court (evidenced by the judge's signature on the face page of the Master Deed), the condominium and plans may be filed at the proper registry. Except for modifications to Class I Condominiums, described below, the Survey Division no longer prepares condominium plans for filing at the local registry.

2.4.2. CLASSES OF CONDOMINIUMS

The Land Court divides condominiums into two classes depending on whether the Master Deed was approved before or after September 15, 1986. Class I condominiums are those condominiums where the Master Deed was reviewed, approved and "allowed for filing" prior to September 15, 1986. The Survey Division will continue to prepare modification plans for filing at the local Registry of Deeds for changes to Class I plans. Class II condominiums are those condominiums where the Master Deed was reviewed, approved and "allowed for filing" on or after September 15, 1986. The Survey Division will not prepare modification plans for changes to Class II plans.

2.4.3. MASTER DEED LAND DESCRIPTION

All condominiums (Class I or Class II) must consist of land that can be identified in the Master Deed by reference to existing lot(s) on a plan(s) filed with the Court.

2.4.4. VARIATIONS IN DESCRIPTIONS

A condominium is established on an existing lot; the lot dimensions should accordingly be precisely as shown on the plan that authorizes a certificate to issue for that lot. If the measured dimensions do not agree with the record dimensions but are within the allowable error of closure consistent with §2.1.4.1.3, the plan should show both dimensions, labeling record dimensions "(R)" and measured dimensions "(M)." Descriptions should use record dimensions and not new measured dimensions.

2.4.5. SITE PLANS

A site plan showing lot lines and buildings as described in this section is required for all condominiums created on registered land.

2.4.5.1. Title Block. The title block must contain the condominium name, phase designation, location, land court plan number, date and the surveyor's name, full address and telephone number.

2.4.5.2.Buildings. All buildings, dimensioned on the exterior to the nearest 0.1 foot, and building material, unit designations and number of stories shall be shown. The distance between a building and the lot or phase lines shall be shown to the nearest 0.1 foot.

2.4.5.3. Easements and Common Area. The site plan shall show all record easements and shall show Common Area, Limited Common Area and Exclusive Use Easements created by the Master Deed or amendment to the Master Deed that relate to the land (rather than the building) dimensioned to the nearest .1 foot.

2.4.5.4.North Arrow and Scale. The site plan shall contain a north arrow and scale.

2.4.5.5.As-Built Certification. The site plan must be signed, sealed and dated by the professional land surveyor who prepared the plan and must contain a certification that the plan fully and accurately depicts the location and dimensions of the buildings, as built, and fully lists the units contained therein.

2.4.5.6. Plan Material. Class I Site Plans must be prepared on a material consistent with these Instructions. Class II Site Plans shall be prepared on a material and in such form as will be acceptable for filing, with the Master Deed or subsequent amendments, in the Registered Land Section of the local Registry of Deeds.

2.4.6. FLOOR PLANS

As required by G.L. 183A, §8(f), a set of floor plans must be filed with the condominium documents. Each sheet of the floor plans must be dated, signed and sealed by the engineer, architect or surveyor who prepared the plans and contain the certification that the plans fully and accurately depict the layout, location, unit number and dimensions of the units as built.

3. SELECTED ISSUES

3.1. S-Petitions

In cases where an existing registration plan or certificate must be altered to reflect inconsistencies between monuments and dimensions of record, accretions, erosions, eminent domain takings, or elimination of easements or ways or where an insufficient number of undisturbed record monuments causes doubt concerning the proper location of the boundaries of an existing registered parcel, a so-called "S-Petition" should be filed with the Land Court pursuant to G.L. c. 185, §115. The surveyor should work with the attorney for the certificate holder to provide the information the attorney will need in order to file the petition. The petition should be filed with a Division Plan showing the corrected data or eliminating the way or easement and should name all parties having an interest. The Court will require a title examination to confirm the identity of interested parties. The Court will consider the S-Petition, and, if allowed, enter an order approving the new plan and amending the certificate, if necessary. The Order is filed with the Division Plan at the appropriate registry district.

3.2. Inconsistent Surveys

If a new survey has a boundary line which is common to a prior registration, and some discrepancy between the new field work and the old registration plan data or an insufficient number of undisturbed record monuments causes doubt concerning the proper location of the common line, the matter should be referred to the Survey Division for instructions.

3.2.1. BOUNDARY LINES MUST BE MAINTAINED

Boundary lines determined by the Court and fixed on the ground in relation to verified monumentation of record, existing or retraceable, must be maintained.

3.2.1.1.Slight Variations. Record dimensions shall be used when the new measurements between undisturbed monuments previously recognized on Land Court Plans agree within the allowable errors applicable in prior surveys.

3.2.1.2.Some Errors. Subject to review by the Court, changes may be made when the new measurements explain an already recognized or obvious error in the old work.

3.2.2. FIELD SURVEY TO RECOGNIZE PREVIOUSLY OR ADJOINING REGISTERED LAND

Whenever locus abuts land previously registered or is a division of land previously registered, it is imperative that monuments on the earlier Land Court Plan be located and verified by the new survey. The lines determined by the earlier case must be maintained. Because the physical monuments shown on the prior plans are presumed to mark the property lines, it is necessary to look for and tie into all monuments of record affecting locus.

3.2.3. FILED PLANS

All plans made by the Court and sent to the various registries are based on a plan filed in the Court. These Filed Plans should be consulted in most cases when dealing with registered land. Some of the earlier plans prepared by the Court were prepared for the sole purpose of issuing certificates of title. These plans do not show the actual property lines but only show the total distances needed to prepare a bounding description. Many times walls, monuments, ditches, pipes, and other physical monuments are shown but not dimensioned. Invariably, the Filed Plan will have the property lines and monuments dimensioned so they can be reproduced.

3.2.4. STONE WALLS

The Court recognizes that many stone walls shown on Judgment Plans are intended to mark the property lines unless clearly shown otherwise. This is true whether the plan merely depicts the stone

wall as on earlier plans or identifies the wall with bearings and distances, drill holes, etc. In general, when surveying land bounded by a wall, the surveyor must hold the wall. If the record math does not fit the wall, undisturbed record monuments such as the wall itself or drill holes previously set in the wall cannot simply be offset. The surveyor should avail himself of all information available in the Survey Division regarding the location of the wall. Specifically, the Filed Plan and correspondence file should be reviewed. Sometimes all available information is used to recreate the old wall as part of the review process. The surveyor should not hesitate to request a meeting with the Legal and Survey Divisions of the Land Court. (See also § 2.1.3.5.9 Stone Walls).

3.2.5. MONUMENTS DO NOT FIT RECORD MATH

When a discrepancy exists between the record math and record monuments, a worksheet should be prepared showing the relationship of the monuments to the record location (Usually the monuments are shown offset perpendicularly from the property lines.). In determining whether to hold record monuments, the Court needs to review all pertinent data and its effect on abutting land. After consultation with the Survey and Legal Divisions, a judge decides what additional steps, if any, must be taken prior to the preparation of the final plan.

3.2.6. INSUFFICIENT NUMBER OF UNDISTURBED RECORD MONUMENTS

For existing registered land, if it is determined that enough record monuments have been disturbed or destroyed to cause doubt concerning the proper location of the boundaries of the parcels, an S-Petition (§ 3.1) may be required. In such cases a meeting with the Survey Division must be scheduled.

3.2.7. PLAN APPROVAL REQUEST TO JUDGE FOR REVIEW

When a plan is prepared that differs from record (holds monuments and changes dimensions or holds dimensions and references monuments)**,** the plan is presented to a judge for review. The judge reviews the plan and determines whether the change requires an S-Petition. If an S-Petition is not required, the judge initials the plan approval request that has been signed by the owner or the owner's attorney allowing the plan to be filed and used without filing a petition.

3.3. Eminent Domain Takings

3.3.1. REGISTRATION OF TAKING

When registered land is taken under G. L. c. 79, § 4, the authority purporting to exercise its right of eminent domain is entitled to have the instrument showing the exercise of such right accepted for filing and noted on the owner's original certificate of title. A new certificate of title will not issue to the authority however, until the steps hereafter set forth are taken.

3.3.2. PROCURING CERTIFICATE BY S-PETITION

The authority making the taking shall present an S-Petition to the Chief Title Examiner requesting that one or more certificates of title be issued.

a. Entire Lot Taken. If the entirety of a registered lot of land has been taken, an S-Petition shall be filed requesting the issuance of a new certificate of title in the name of the taking authority. No plan is required in this instance.

b. Portion of Lot Taken. If only a portion of a registered lot of land has been taken, then a Division Plan must be filed together with an S-Petition requesting approval of the plan and issuance of new certificates of title. Any such Division Plan shall show as a separate lot the land remaining in the registered owner after the taking.

3.3.3. PARCEL NUMBERING

On plans showing fee takings by eminent domain, parcels shall be designated by their taking parcel number as shown on the taking documents and shall be prefaced with the word "parcel". This numbering system differs from the conventional Land Court lot numbering sequence.

3.4. Withdrawal From Registration

Following judgment and the issuance of a certificate of title, land remains registered in perpetuity unless withdrawn from the Land Registration system as provided by either G. L. c. 185, § 52, or G.L. c. 183A, § 16. One basis for withdrawal under G. L. c. 185, § 52 is the acquisition of an entire parcel of registered land by the commonwealth, a political subdivision, or a public authority. The other four grounds for withdrawal set forth in § 52 are: (a) that the registered land constitutes less than 50 per cent of the total area of a single parcel or of 2 or more contiguous parcels in common ownership; (b) that the registered land consists of less than 10 per cent of the portion of the land area to which an original certificate of title pertains, the rest of the land area to which such certificate pertains having been conveyed since the original registration; (c) that the owners of the registered land have submitted the land to the provisions of the condominium statute (G. L. c. 183A) or the Real Estate Time-Share Act (G. L. c. 183B); or (d) that the Court finds other good cause for withdrawal. Where land being submitted to the condominium statute consists of both registered and recorded land, the registered land may be withdrawn pursuant to G.L. c. 183A, § 16.

4. APPENDICES

4.1. Checklist for Original Registration

Before an Original Complaint may be filed with the Recorder, the plan that accompanies it must be endorsed by the Survey Division with the notation "May Be Filed". Such an endorsement will be refused unless the plan:

a. Is on media as specified in § 2.1.5.1. upon which is affixed original signatures.
b. Is stamped with the seal of the surveyor who certifies the plan.
c. Is dated within 6 months of filing or has "up date" certificate on it.
d. Is endorsed with the proper Planning Board Endorsement (Note that if "Approved", then the Town Clerk's Certificate is also necessary on the plan) or has surveyors Certificate in accordance with G.L. c. 41, § 81X
e. Shows North Point heading up the sheet.
f. Is tinted green around the inside of the property lines claimed.
g. Shows directions and distances for all lines.
h. Shows the area of locus.
i. Shows the widths of all streets.
j. Shows all streets as being either "public" or "private".
k. Shows the monuments controlling street lines, railroad lines and the property lines claimed.
l. Shows the full names of all abutting owners, including those on the opposite sides of any private streets at locus.
m. Is endorsed with or accompanied by appropriate traverse tables on transit lines and appropriate traverse tables on property lines.
n. Is endorsed with the precision, the linear error of closure, and the directional error of closure.
o. Shows all physical and record features affecting locus.

4.2. Checklist for Division Plans

The Survey Division will refuse to accept a proposed Division Plan for filing unless there is presented:

a. An attested Registry of Deeds copy of outstanding Certificate of Title;
b. The Statutory filing fee
c. A plan which shows all items in § 4.1 and in particular or in addition thereto:
1. Is endorsed with the proper Planning Board Endorsement (Note that if "Approved", then the Town Clerk's Certificate is also necessary and if "Approved Upon Condition", then it must be accompanied by the Statement setting forth the Planning Board Conditions).
2. Shows complete dimensions for every lot.

3. Shows the new lots tied into at least three monuments that were recognized on prior Land Court Plans.
4. Shows sufficient perimeter monuments and backbone monuments to control new lines.
5. Is endorsed with or accompanied by appropriate traverse tables around blocks of lots, individual lots, interior streets or ways and exterior perimeter.
6. Is accompanied by an explanation of variations from the record data and of any corrective steps applied.
d. Municipal Lien Certificate

4.3. Checklist for Condominium Plans

The Land Court will refuse to approve a set of condominium documents unless there is presented:
a. Site Plan. The site plan should contain and show the following:
1. Plan Title
i. Condominium name
ii. Phase designation
iii. Locality
iv. Surveyor's name, full business address, and telephone number
v. Date
vi. Land Court Plan Number
2. Buildings
i. Completely dimensioned on exterior to the nearest 0.1 feet.
ii. Connected to lot or phase lines to the nearest 0.1 feet.
iii. All units designated
iv. Number of stories designated
3. Exclusive Use Easements. Fully dimensioned to the nearest 0.1 feet.
4. Utility Easements
5. Limited Common Areas
6. Common Areas
7. North Arrow
8. Scale
9. "As-Built" Certification. The As-Built Certification must be signed, sealed and dated by the professional land surveyor who prepared the site plan. (See § 2.4.5.5.)
b. Floor Plans. A set of floor plans must be filed with the condominium documents. Each sheet of the floor plans must be dated, signed and sealed by the engineer, architect, or surveyor who prepared those plans and must contain an "As Built" Certification.

4.4. Other Relevant Surveying Standards

For surveying techniques and other survey standards, the surveyor should consult the Board of Registration of Professional Engineers and Land Surveyors, Procedural and Technical Standards for the Practice of Land Surveying - 250 CMR Cadastral, Original and Retracement Surveys and Supplemental Standards, and any of the latest current college texts on surveying, or any of the pamphlets by such professional organizations as the American Congress on Surveying and Mapping, the American Society of Civil Engineers or the Massachusetts Association of Land Surveyors and Civil Engineers.

4.5. Municipalities That Have Not Adopted the Subdivision Control Law as of April 2005

Municipality	Registry District
Arlington	Middlesex South
Belmont	Middlesex South
Boston	Suffolk
Cambridge	Middlesex South

Cheshire	Berkshire North
Clarksburg	Berkshire North
Conway	Franklin
Gosnold	Dukes
Holland	Hampden
Royalston	Worcester
Somerville	Middlesex South
Tolland	Hampden
Washington	Berkshire Middle
Watertown	Middlesex South
Wendell	Franklin

4.6. Practice Concerning Planning Board Endorsements

1. The endorsement "Approval under the Subdivision Control Law Not Required" should be unqualified. The law provides that the reason for such an endorsement may be stated. Such a reason may start with the word "Since" or the word "Because" or some similar expression but should never be preceded by a word such as "If", "But", or "Provided". The latter three words imply a condition or qualification which is not authorized under law. Furthermore, a notation pointing out that the lots do not conform to zoning requirements must be worded so that it is definite that they do not qualify the endorsement to the effect that Planning Board Approval is Not Required. It would be better to omit altogether such zoning notes.
2. The endorsement "Approved under the Subdivision Control Law" even though unqualified, must be dated so that it can be readily determined that the six months period during which the endorsement may be accepted has not been exceeded.
3. The endorsement "Approved under the Subdivision Control Law" must be accompanied by another endorsement upon the plan by the Town Clerk in the form shown as Form I.
4. The endorsement "Approved under the Subdivision Control Law Upon Conditions Stated" upon a plan of land that has already been registered must be accompanied by a statement of the Planning Board Conditions in the form shown as Form II. The certificate of the Town Clerk must also be endorsed on the plan in the form shown as Form I. Whenever a plan of registered land is subject to a condition or covenant, said condition or covenant must be in a separate document which is referred to on the plan. Such a document would ordinarily be attached to a "Statement of Planning Board Conditions" (FORM II), the form of which is set forth below.
5. The endorsement "Approved under the Subdivision Control Law Upon Conditions Stated" upon a plan of <u>land to be registered</u> may be accompanied by a statement of Planning Board Conditions in the form shown as Form II, or, if the conditions have already been recorded, a notation of the book and page of such recording should be referred to in the endorsement upon the plan. The certificate of the Town Clerk must also be endorsed on the plan in the form shown as Form I.
6. If the Planning Board endorsement is dated more than six months prior to the presentation of the plan for filing, then an additional endorsement by either the Planning Board or the Town Clerk stating that the approval has not been modified, amended or rescinded nor the plan changed must also be upon the plan in the form shown on Form III. Note that this should not be worded that the Approval is <u>re-affirmed</u> or that the plan is <u>re-approved</u>.
7. Where the Planning Board fails to act upon a plan within the time limit prescribed by the law the certificate which shall be issued by the Town Clerk should be in the form shown as Form IV. This certificate may be endorsed upon the plan or set forth on a separate sheet which is to be placed on record with the plan.

8. The Recorder of the Land Court, whose office is in Boston, must be notified of any delegation of authority to sign plans or other certificates. This notification must be over the signatures of a majority of the Board.

FORM I

(a) Clerk's Certification on an approved plan:

Date: _____

I, _____, Clerk of the City or Town of _____, hereby certify that the notice of approval of this plan by the Planning Board has been received and recorded at this office and no notice of appeal was received during the twenty days next after such receipt and recording of said notice.

_____

City or Town Clerk

(b) Clerk's Certification on a plan referring to a Recorded Certificate:

Date: _____

I, _____, Clerk of the City or Town of _____ hereby certify that the certificate required under G.L. c. 41, § 81X is recorded in the _____ Registry of Deeds in Book ____, Page ____.

_____

City or Town Clerk

(c) Clerk's Certification on a plan referring to a Registered Certificate:

Date: _____

I, _____, Clerk of the City or Town of _____ hereby certify that the certificate required under G.L. c. 41, § 81X is recorded in the _____ Registry District of _____ County as Document No. _____ (or in Book ____, Page ____).

_____

City or Town Clerk

FORM II

STATEMENT OF CONDITIONS OF PLANNING BOARD APPROVAL

City/Town Planning Board

The undersigned, being (an authorized agent of or a majority of the) Planning Board of the above named city/town, hereby certify that the conditions set forth below were imposed at the time of its approval of a subdivision plan entitled _____ drawn by _____, Surveyor, dated _____, 20__.

CONDITIONS: (Set forth the conditions imposed or refer to an attachment sheet as showing them)

_____

Authorized Agent or Majority

FORM III

CERTIFICATE OF NO CHANGE

City/Town of _____ Date: _____

The undersigned, being the Clerk of the above-mentioned City/Town, being the majority of, authorized agent of, the Planning Board of the above-mentioned City/Town, hereby certify that the approval of this plan has not been modified, amended or rescinded, nor the plan changed.

_____

(City or Town Clerk)

(Majority) or

(Authorized Agent)

FORM IV

"FAILURE TO ACT" Certificate re: Planning Board Endorsement

a. For plans submitted pursuant to G.L. c. 41, § 81P:

Date: _____

I, _____, Clerk of the City or Town of _____ hereby certify that the plan of land on name of street, drawn by _____, Surveyor, and dated _____, 20__, was submitted to the Planning Board on date, 20__, and the Board has failed to act upon the said plan within the twenty-one days thereafter and, therefore, the plan is deemed not to require approval under the Subdivision Control Law.

_____

City or Town Clerk

b. Plans submitted for Approval:

Date: _____

I, _____, Clerk of the City or Town of _____ hereby certify that the subdivision plan of land on name of street, drawn by _____, Surveyor, and dated _____, was submitted to the Planning Board for Approval on date, 20__, and that the Board has failed to take final action thereon within the "Time Prescribed" days thereafter, and that no appeal has been taken during the next succeeding twenty days, and, therefore, the plan is deemed to be Approved.

_____

City or Town Clerk

* "Time Prescribed" is either "ninety" (90) days or "one hundred thirty-five" (135) days after submission of the definitive plan. The statutory "Time Prescribed" period can be extended by agreement between the applicant and the Planning Board. Notice of such extension should be filed by the Planning Board with the City or Town Clerk. If the statutory period is thus extended the Clerk's Certificate should include the statement that the time was so extended by a notice filed with the Clerk by the Planning Board and should definitely state that the Planning Board failed to act within the extended period. (See G.L. c. 41, §§ 81U, 81V)

FORM V

STATEMENT OF CONDITIONS OF ZONING BOARD OF APPEALS APPROVAL

City / Town Zoning Board of Appeals

The undersigned, being the required number of affirmative votes of the Zoning Board of Appeals of the above named city / town, hereby certify that the conditions set forth below were imposed at the time of its approval under the authority of G.L. c. 40B of a subdivision plan entitled _____ drawn by _____ _____, Surveyor, dated _____, 20___.

CONDITIONS: (Set forth the conditions imposed or refer to an attachment sheet as showing them)

_____

Zoning Board of Appeals

4.7. Glossary

1. 100-rod Line. The maximum seaward extent of a riparian owner's rights in tidal flats as decreed by the Colonial Ordinances 1641-1647 being the lesser of low water or 100 rods (100 rods = 1,650 feet). (See § 2.1.3.2.4.).

2. Approval Not Required Plan. A plan, also known as a Form A plan, depicting the division of a tract of land into two or more lots which does not meet the definition of subdivision in G. L. c. 41, §

81L, and which is presented to a planning board for its endorsement under G. L. c. 41, § 81P, that approval under the subdivision control law is not required. (See § 2.1.6.6.).
3. Assistant Recorders. The registers of deeds for their respective counties or registry districts, in the performance of their duties pertaining to registered land pursuant to G. L. c. 185, § 10.
4. Certificate Lines. The common boundary line between abutting parcels of land described in two outstanding Certificates of Title. (See § 2.3.5.).
5. Certificate of Title. The document issued by the assistant recorder of the Land Court that describes a parcel of land, confirms the ownership thereof, and lists the encumbrances thereof. A certificate of title is conclusive as to one's estate in registered land. (See § 1.4.).
6. Closed Field Traverse. A series of survey field measurements forming a complete loop, beginning and ending on the same point. This method allows for a degree of error detection when analyzing the survey results. (See § 2.1.3.1.3. and § 2.1.4.1.3.).
7. Compass Rule. The correction to be applied to a given latitude (departure) for any side is to the whole error in latitudes (departures) as the length of that side is to the perimeter of the traverse, the correction being applied so as to reduce the whole error to zero. The compass rule is used when it is assumed that the closing errors are as much due to errors in observed angles as to errors in measured distances. (See § 2.1.4.1.3.).
8. Complaint. The pleading filed at the Land Court commencing an action and seeking a specific form of relief. In the context of the registered land, a complaint either seeks to register and confirm title to a parcel of land or seeks confirmation without registration. (See § 1.1.).
9. Confirmation. The legal proceeding whereby the Land Court adjudicates the ownership and location of land as of a certain time and date. (See § 1.1.).
10. Confirmation Plan. The plan issued by the Court at the time a judgment issues in a confirmation case and is recorded on the unregistered side at the Registry of Deeds.
11. Complaint Plan. See Filed Plan.
12. Decree Plan. See Judgment Plan.
13. Definitive Subdivision. A division of land requiring approval under the provisions of G. L. c. 41, §§ 81K to 81GG (See § 2.1.3.5.15.).
14. Delta Angle. The central angle subtended by a circular curve.
15. Directional Error of Closure. The calculated direction of the unadjusted linear error of closure from the ending position to the beginning position of the unadjusted closed field traverse. (See § 2.1.5.30.).
16. Division Plan. A plan showing either the division of a lot of registered land into two or more parcels, irrespective of whether the plan requires planning board approval or endorsement or a revision to the perimeter of a registered parcel. (See § 1.4.).
17. Filed Plan. The plan, prepared by a Surveyor, submitted at the time a complaint or request for a division approval is filed in the Land Court. Also called surveyor's plan, linen plan, petitioners plan or complaint plan. (See § 1.5, and § 3.2.3.).
18. Flats. A level area alternately covered and left bare by tidal waters. (See § 2.1.3.2.4)
19. Form A Plan. See Approval Not Required Plan.
20. Foreshore. The sloping portion of a beach lying between the tidal high water and low water marks. (See § 2.1.3.2.4.).
21. G.L. References to chapters (c.) and sections (§) of the Massachusetts General Laws appearing as "G.L. c. ___, §___".
22. Great Pond. A pond containing more than 10 acres of area in its natural state that was not conveyed to a private citizen prior to 1647 as established by the Colonial Ordinances 1641-1647. (See § 2.1.4.6.1.).

23. Judgment Plan. The plan issued by the Court at the time a judgment issues in a registration case and is recorded in the Land Court section at the Registry of Deeds. This plan is also known as the "A" plan or a Decree Plan. (See § 1.4.).
24. Least Squares Adjustment. A statistically rigorous method of adjusting observations the end result of which minimizes the sum of the squares of the individual observation's corrections (residuals). (See § 2.1.4.1.3.).
25. Linear Error of Closure. The square root of the sum of the squares of the error in latitude (or "cosines") and the error in departures (or "sines"). (See § 2.1.5.30.).
26. Linen. The cloth medium formerly used exclusively on which plans were prepared for submission to the Land Court.
27. Linen Plan. See Filed Plan.
28. Locus. The parcel or lot of land that is at issue in a particular case. (See § 2.1.2.1.).
29. Massachusetts Coordinate System. Coordinates based on the Massachusetts State Plane Coordinate System as defined in G.L. c. 97, §§ 8 to 13. (See § 2.1.4.1.1.).
30. Monument. A physical object or intangible entity marking or defining a property line or corner. (See § 2.1.3.5.1.).
31. Monument, Artificial. A physical object that has been placed to mark a boundary line or corner. Examples of artificial monuments include stakes, pipes, stone markers, fences, and buildings. (See § 2.1.3.5.1).
32. Monuments, Natural. Naturally occurring objects, such as streams, trees, rock outcrops, and hills, that mark boundary lines or corners. (See § 2.1.3.5.1.).
33. NAVD88. The North American Vertical Datum of 1988. NAVD88 is the vertical control datum established in 1991 by the minimum-constraint adjustment of the Canadian-Mexican-U.S. leveling observations. It held fixed the height of the primary tidal benchmark, referenced to the new International Great Lakes Datum of 1985 local mean sea level height value, at Father Point/Rimouski, Quebec, Canada. Additional tidal benchmark elevations were not used due to the demonstrated variations in sea surface topography; i.e., the fact that mean sea level is not the same equipotential surface at all tidal benchmarks. (See § 2.1.3.5.17.).
34. NGS. The National Geodetic Survey division of National Oceanographic and Atmospheric Administration under the United States Department of Commerce. (See § 2.1.3.4.7.).
35. NGVD29. The National Geodetic Vertical Datum of 1929 (before May 10, 1973 called the "Sea Level Datum of 1929"). A vertical control datum established for vertical control in the United States by the general adjustment of 1929. Mean sea level was held fixed at the sites of 26 tide gauges, 21 in the United States and 5 in Canada. The datum was defined by the observed heights of mean sea level at the 26 tide gauges and by the set of elevations of all benchmarks resulting from the adjustment. A total of 106,724 km of leveling was involved, constituting 246 closed circuits and 25 circuits at sea level. (The datum was not mean sea level, the geoid, or any other equipotential surface. Therefore it was renamed, in 1973, the National Geodetic Vertical Datum of 1929.) (See § 2.1.3.5.17.).
36. Order for Judgment. An order issued by a Land Court judge directing a judgment to issue in a registration or confirmation case and specifying such matters, if any, to be included concerning the title of the property being registered or confirmed.
37. Petitioner. The term formerly used for the party who filed a petition in the Land Court. See Plaintiff.
38. Petitioner's Plan. See Filed Plan.
39. Plaintiff. The party who commences an action by filing a complaint. (See § 1.1.).
40. Plan. There are four basic types of plans used in the context of the Land Court. They include the Filed Plan, the Judgment Plan, the Division Plan, and the Confirmation Plan.
41. Precision Ratio. The ratio indicating the precision of the closed field traverse calculated in the form of a representative fraction with the figure "1" as the numerator. (See § 2.1.4.1.3.).

42. Recorder. The person who has the responsibility for the internal administration of the Land Court and exercises the same powers as a clerk-magistrate in the Superior Court. (See § 4.1.).
43. Remaining Land. Land remaining after a parcel has been partially divided by lots, takings, or otherwise.
44. Registered Land. Land whose title has been registered under G.L. c. 185. Land that has been issued a Land Court judgment adjudicating the ownership and location thereof.
45. Registry of Deeds. One of the 23 Registries of Deeds located in the 14 counties of Massachusetts. For those counties with more than one Registry of Deeds, see G.L. c. 36, § 1, listing the cities and towns covered by each district office. In the context of registered land, the local Registry District of the Land Court in which the land lies and where plans, deeds, and other instruments must be filed pertaining to such land. See G.L. c. 36, § 12.
46. Senior Rights. A right predicated upon a prior conveyance of a parcel of land. (See § 2.1.4.2.1.a.).
47. S-Petition. A subsequent petition (actually a subsequent complaint) made to the Land Court to resolve, change, or modify some aspect of the original judgment. S-petitions can be made for survey or title matters. (See § 3.1 Subdivision. See Definitive Subdivision. (See § 2.1.4.3.9.).
48. Subsequent Division. All divisions of registered land following the issuance of the original judgment (decree). (See § 1.2 and § 2.3.).
49. Surveyor. A Professional Land Surveyor as defined in G.L. c. 112, § 81D. (See § 2.1.1.).
50. Surveyor's Plan. See Filed Plan.
51. Unadjusted. The mathematical condition of a closed traverse before the angles have been balanced and before any other adjustment has been made. (See § 2.1.3.4.3.).
52. Way. A highway, boulevard, avenue, road, street, paper street, traveled way, cart path etc., whether public or private, constructed or not, in use or not, existing physically on the ground or predicated upon a recorded instrument. (See § 2.1.2.2. and § 2.1.4.3.).

4.8 Standard Abbreviations
CMR Code of Massachusetts Regulations
G. L. Massachusetts General Laws
GPS Global positioning satellites
EDM Electronic distance measuring instruments
MLC Municipal Lien Certificate
mm millimeter
ppm parts per million
c. chapter
NGS The National Geodetic Survey division of National Oceanographic and Atmospheric Administration under the United States Department of Commerce.

Land Court Guidelines on Registered Land, February 27, 2009

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1. Acknowledgments: Requirements

(May 1, 2000, Revised February 29, 2009)

An acknowledgment should be dated; however, the date of the acknowledgment may be either before or after the date of execution appearing on the instrument (regardless of length of time). The name of the notary or other official before whom the acknowledgment has been made should be legible. It is suggested that the name of the notary or other official taking the acknowledgment be typed or printed below the signature line for such notary or other official. The date that a notary public's commission expires should be indicated beneath the name of the notary public.

The following documents must be acknowledged in order to be recorded:

1.) Deeds (excepting conveyances from the United States) - see G.L. Chapter 183 § 29. Included in this category, based on the broad definition of deed, are easement deeds, mortgage deeds, deeds of trust, release deeds found in boundary line agreements, leases, notices of leases, options to purchase, options to lease, assignments of mortgages, collateral assignments of mortgages and collateral assignments of leases.

2.) Purchase and Sale Agreements; see G.L. Chapter 54 § 17A.

3.) Discharges and Partial Releases pursuant to G.L. Chapter 183 § 54, 54B and 54C.

4.) Powers of Attorney; see G.L. Chapter 183 § 32.

5.) Homesteads and releases of same; see G.L. Chapter 188.

6.) Receipts of federal revenue collectors for succession taxes; see G.L. Chapter 36 § 16.

7.) Subdivision Covenant Releases and Clerk's Certificates; see G.L. Chapter 41 § 81u.

8.) Tax redemptions; see G.L. Chapter 60 § 62.

9.) Incorporation certificates re Roman Catholic Church; see G.L. Chapter 68 § 44.

10.) Liens for failure to reimburse the Commonwealth of Massachusetts for removal of wharfs or piers; see G.L. Chapter 91 § 49B.

11.) Veteran's agent liens and discharges or satisfactions thereof; see G.L. Chapter 115 § 5A.

12.) Dissolutions of attachments by plaintiff, or his executor, administrator or attorney of record; see G.L. Chapter 223 § 132.

13.) Notices or other instruments required or required or permitted to be recorded by G.L. Chapter 254; see G.L. Chapter 254 § 30.

14.) Release of Notice of Contract.

15.) Planning Board Release.

16.) Declaration of Trust.

17.) Resignation of Trustee.

18.) Release of Damages (General Releases).

Instruments not on this list do not require acknowledgments in order to be registered.

The forms of certificates of acknowledgment and jurat, as well as the forms of official seals and stamps, set forth in Executive Order Revised No. 455 (03-13) 2004, extracts of which are attached, are acceptable for registration by the court's registration districts.

Registration districts of the Land Court should not refuse to register documents either (a) because they bear official notarial seals and stamps which are not in the form, or do not contain the content, required by said Executive Order, or (b) because they do not contain the form of certificate of acknowledgment or jurat set forth in said Executive Order, provided, however, that those documents would have been acceptable for registration before the promulgation of Executive Order No. 455.

In case of any doubt as to the form of certificate of acknowledgment or jurat being used, district personnel should contact the Chief Title Examiner in Boston or his or her designee.

EXTRACTS FROM
EXECUTIVE ORDER REVISED No. 455 (03-13)
"Standards of Conduct for Notaries Public"
Section 5(c).
"A notary shall keep an official notarial seal or stamp that is the exclusive property of the notary, which may not be used by any other person.
(1) A notary public shall obtain a new seal or stamp if the notary public renews his or her commission, receives a new commission, or changes his or her name.
(2) The notarial seal or stamp shall include: the notary public's name exactly as indicated on the commission; the words "notary public," "Commonwealth of Massachusetts" or "Massachusetts", and "my commission expires on [commission expiration date]" or "commission expires on [commission expiration date]" or "commission expires [commission expiration date]"; and a facsimile of the great seal of the Commonwealth of Massachusetts.
(3) Each new notarial seal that uses ink shall, after the date of this Executive Order, use black ink.
(4) A notary public may satisfy the requirements of this section by using a stamp and a seal that together include all of the information required by this section."
Section 5(d).
"A notary shall take the **acknowledgment** of the signature or mark of persons acknowledging for themselves or in any representative capacity by using substantially the following form:
On this _____ date of _____, 20____, before me, the undersigned notary public, personally appeared _____ (name of document signer), provided to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he)(she) signed it voluntarily for its stated purpose.
(as partner for _____, a partnership)
(as _____ for _____, a corporation)
(as attorney in fact for _____, the principal)
(as _____ for _____, (a) (the) _____)
_____ (official signature and seal of notary)"
Section 5(e).
"A notary shall use a **jurat** certificate in substantially the following form in notarizing a signature or mark on an affidavit or other sworn or affirmed written declaration:
On this _____ date of _____, 20____, before me, the undersigned notary public, personally appeared _____ (name of document signer), proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of (his)(her) knowledge and belief.
_____ (official signature and seal of notary)"

2. Acknowledgments Outside The United States
(May 1, 2000)
When a deed or other written instrument is acknowledged outside of the United States, it may be made

a) Before a notary public or justice of the peace provided that the identity and office of the notary public or justice of the peace are authenticated by a certificate described in G.L. c. 183, § 33, sometimes called an “apostille”, issued by the competent authority of the country from which the document emanates. A model of an apostille is attached. The apostille need not be in English.
or
b) Before a commissioner appointed by the governor of the Commonwealth of Massachusetts pursuant to G.L. c. 222.
or
c) Before an ambassador, minister, consul, vice consul, charge d’affaires or consular officer or agent of the United Stated accredited to the country where the acknowledgment is made, provided that it is certified by him/her under his/her seal of office. G.L.. c. 183, § 30 (b) and (c) and § 33.

Model of certificate
APOSTILLE
1. Country:
This public document
2. has been signed by
3. acting in the capacity of
4. bears the seal/stamp of
Certified
5. at
6
7. by
8. N*.
9. Seal/stamp:
10. Signature:

3. Administrative Agent for Multiple Lenders
(May 1, 2000)
This Guideline relates to mortgages in which the mortgagee is stated to be an agent for several lenders whose identity is not disclosed in the mortgage. Typically the loan is being made to the borrower pursuant to a Credit Agreement which is not of record.
These mortgages can be dealt with in a fashion similar to the requirements for nominee trusts, that is, the names of the lenders need not be disclosed so long as there are the requisite indicia of authority for the agent to act with respect to the mortgage, just as the beneficiaries of a nominee trust need not be identified.
The mortgage must be presented with a certificate from the bank or other entity acting as agent; alternatively, the statements required for a certificate may be made part of or appended to the mortgage, if the agent also executes the mortgage.
The certificate must refer to the Credit Agreement or other comparable governing document, set forth the authority of the agent as to the execution of documents including amendments, and any time limits on the authority of the agent. A form of certificate is attached.
These mortgages, when presented with a certification in a form substantially similar to the attached certificate, will not require prior Land Court approval before being accepted for registration.

CERTIFICATE OF AGENT

The undersigned, _____Bank as administrative agent for itself and other lenders under the terms and provisions of a certain _____ Agreement (the Credit Agreement) dated as of _____, hereby certifies as follows:

1. The Credit Agreement referenced in the mortgage is in full force and effect and has not been amended, modified, terminated or revoked.

2. The undersigned has been duly appointed Agent and is duly serving on the date hereof as the sole Agent under the Credit Agreement, and has not resigned or been removed.

3. Pursuant to the provisions of the Credit Agreement, the Agent has the following powers:

a. Hold the mortgage and any other collateral security instruments upon such terms and conditions as the Agent deems acceptable.

b. Execute, acknowledge and deliver any and all documents which are necessary or appropriate in connection with the granting, amendment or modification of the mortgage.

c. Execute, acknowledge and deliver any partial releases, discharges, assignments, etc., which may be necessary or appropriate with respect to the mortgage.

4. The representations of the Agent contained in this certificate are true as of the date hereof.

5. Any person dealing with the mortgage may rely fully and without further inquiry on a certificate signed by the Agent as to the authority of the Agent to act as Agent for other lenders under the Credit Agreement. This certificate shall further be conclusive evidence of every person relying thereon that at the time of the execution and delivery of the mortgage, the Credit Agreement was in full force and effect.

6. The terms and provisions of the mortgage may be amended by instrument duly executed by the mortgagor and the Agent, which amendment will become effective on the recording or filing of same.

In witness whereof, the undersigned has hereunto signed his name, as such Agent, this _____ day of _____.

_____ Bank, as Agent

By: _____

Name: _____

Title: _____

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. [date]

Then personally appeared the above-named _____, and acknowledged that _____is the _____ of the above-named _____ Bank, as Agent, and that _____executed the Certificate on behalf of said bank.

_____

, Notary Public

My commission expires:

4. Alteration of Documents

(May 1, 2000)

A. Certain changes are not “alterations” and are acceptable.

An alteration is a change which on its face appears likely to have been made after the instrument was executed, such as a handwritten change or a whiteout. However, if the document shows that the change was made intentionally by the parties to the instrument, or with their approval, it

should not legally be considered as an alteration. Thus changes to an instrument which have the handwritten initials of the parties alongside the change are not considered alterations for the purpose of this guideline and may be accepted for filing without other documentation.

B. Three categories of alterations.

Alterations of instruments can be separated into three categories:

Category 1.

The first category consists of changes and insertions of information which are either obviously required or are of a ministerial or clarifying nature. Examples of this category include, but are not limited to, the following:

(1) the insertion of the address of the property in the margin of a deed or on a discharge of a mortgage;

(2) the insertion or correction of an erroneous reference to either the date or the record reference (but not both) to a mortgage in the case of an assignment, partial release, or discharge of such mortgage;

(3) the insertion of the grantor's Certificate of Title number in a deed;

(4) the insertion of the Certificate of Title number indicating where a Land Court plan is filed when the plan is already referenced by a Land Court plan number;

(5) the deletion or addition of a middle or first initial of an individual;

(6) the addition of another name of a party as a result of change of marital status;

(7) the correction of a minor variation from the correct name of a corporation, limited partnership, limited liability company or other entity, such as the omission or addition of "The" or the interchange of "Corporation" for "Corp";

(8) changing "for no monetary consideration paid" to "for consideration paid of one dollar" or "love and affection" (or words of similar import) in a deed;

(9) the correction of obvious misspellings or the addition of prefixes or suffixes;

(10) the insertion of "formerly known as" or "f/k/a" or "also known as" or "a/k/a" or "successor to" followed by a name of a person or entity, when the change is plainly made for the purpose of clarification;

(11) changes in the form of tenancy in the grantee clause of a deed, provided the alteration does not negate the decision regarding survivorship rights reflected by the unaltered deed. This Category 1 includes insertion of a form of tenancy where none is specified, and changing a joint tenancy to tenancy by the entireties, or vice versa, which may be accepted without further inquiry. If the deed indicates a change from a joint tenancy or tenancy by the entireties to a tenancy in common, or vice versa, all grantees must initial the change; if they do not, but instead supply the affidavit called for under Category 2 (signed by all grantees) the change will be treated as a Category 2 alteration; otherwise the change will be treated as a Category 3 alteration;

(12) the insertion of the official, corporate or similar office or title of a signatory; or

(13) the addition of Book and Page or instrument numbers of recorded or filed instruments otherwise accurately described in the instrument presented for filing.

Alterations of an instrument in this first category may be accepted, without further documentation and without Court approval, unless in the judgment of the registry personnel there is something unusual about the alteration which requires further inquiry in which case the requirements for the second category may be considered. Alterations of a grantee's name, except as described above, do not belong in this category.

Category 2.

The second category consists of alterations which do not belong in the first category or the third category but which do not separately or in the aggregate change the substance of the instrument. Handwritten changes may be considered in this category in the discretion of registry personnel. A change in the grantee clause of deed which changes the form of tenancy from one with a right of survivorship to one without survivorship, or vice versa, falls into this Category 2, requiring an affidavit of all of the grantees, unless all grantees have initialed the change; otherwise the change will be treated as a Category 3 alteration. Other types of alterations in this second category may only be accepted for filing when accompanied by the affidavit of an attorney, or of a grantor in the instrument, stating in substance that the alteration(s) were made to conform to the intention of the parties to the instrument. Suggested forms of affidavit are attached to this guideline. Changes to the names of the grantees in a deed (except as described above as belonging in the first category) belong in the third category.

Category 3.

The third category consists of changes in the name(s) of the grantee(s) in a deed (except as permitted under Category 1) or other alterations which change the substance of the instrument, such as the addition or deletion of parcels of land. Changes to documents issued by a court, such as an order authorizing the filing of an attachment or a lis pendens, are in this category, unless clearly ministerial. Changes in this third category shall not be accepted for filing without an order of the Court or approval of the Court's Chief Title Examiner or his or her designee.

AFFIDAVIT OF ATTORNEY

The undersigned, an attorney at law, make the following statements of my own personal knowledge:

1. I am the attorney for _____, the grantor(s)/grantee(s)/mortgagee(s) [select one] named in the deed/mortgage [select one] to which this affidavit is attached. I participated in the preparation of said deed/mortgage/participated in the closing of the transaction of which such deed/mortgage is a part/advised the grantor(s)/grantee(s)/mortgagee as to the execution and delivery of such deed/mortgage [select appropriate facts].

2. Subsequent to the preparation of such deed/mortgage, the following changes to the deed/mortgage were made at the time of delivery of the deed/mortgage/in the process of preparing to record the deed/mortgage [select appropriate facts]:

a) _____

b) _____

c) _____

3. All such changes were made with the consent and approval of the grantor(s)/grantee(s)/mortgagee [select appropriate facts] in order to conform the deed/mortgage to their intentions.

Signed under the pains and penalties of perjury this _____ day of _____, 2000.

_____

Print name

BBO # _____

May 1, 2001

AFFIDAVIT OF GRANTOR

The undersigned make the following statements of my own personal knowledge:

1. I am [one of] the grantor(s)/mortgagor(s) [select one] named in the deed/mortgage [select one] to which this affidavit is attached.
2. Subsequent to the preparation of such deed/mortgage, the following changes to the deed/mortgage were made at the time of delivery of the deed/mortgage/in the process of preparing to record the deed/mortgage [select appropriate facts]:
a) _____
b) _____
c) _____
3. All such changes were made with the consent and approval of the undersigned/all of the grantors /all of the mortgagors [select appropriate facts] in order to conform the deed/mortgage to my/their intentions.
Signed under the pains and penalties of perjury this _____ day of _____, 2000.
_____
Print name

5. Approval by the Engineering Department
(May 1, 2000)
When there is a new subdivision of a registered land parcel pending in the Engineering Department of the Land Court and that subdivision plan has not yet been received at the registry district for entry, no instruments may be accepted for registration against that plan until the said instruments have been first stamped for approval by the Land Court. The only exception to this policy is that once the first deed out of any lot on the subdivision has been approved by the Land Court Engineering Department and thereafter registered, no further instruments as to that particular lot need be further approved.

6. Attachments
(May 1, 2000, Revised February 27, 2009)
Writs of attachment from courts within the Superior and District Court Departments are issued on approved forms which carry the signature or facsimile signature of the clerk of the court and the seal of the court. Attachments from courts within the Probate and Family Court Department are issued either on probate court forms which carry the signature of the judge or the seal of the court, or on a form which carries the name of the judge, the amount approved, and the signature or facsimile signature of the register of probate. Writs of attachments also may be accepted from this court or courts in other departments of the Trial Court if they carry the signature of the judge or the signature or the facsimile signature of the clerk of the court, and the seal of the court.
A writ of attachment may be registered only by a deputy sheriff or, if authorized by the issuing court, a special officer (such authority should be made part of, and registered with, the attachment). The document will be a copy of the original as issued by the court. It must be attested as a true copy by the deputy sheriff/special officer, and the seal of the court must appear on the copy. Alternatively, the deputy sheriff/special officer may write “seal” in the place where the seal normally appears. The deputy sheriff’s/special officer’s return must refer to the current outstanding certificate of title number of the land being attached and the return must bear the officer’s signature.
The deputy sheriff/special officer may only attach the interest and no more than the interest authorized by the court issuing the attachment. The names of the persons or entities noted on the face of the attachment must match the name or names on record as one or more of the owners

shown on the current certificate. If the person or entity named on the attachment is not one of the a named owners in the certificate, it must be clear from the certificate and the memorandum of encumbrances that the party named in the attachment has an interest in the property described in the certificate which is susceptible to an attachment, i.e. the party is a named mortgagee on the certificate, a named beneficiary of a trust, a named lessee, etc. Or, the attachment must state on its face that it is against the interest of "A" standing in the name of "B", where "B" is the holder of an ownership or other interest shown by the certificate. If the return is faulty in regard to any of the above it must be corrected before the attachment can be received for registration.
An attachment on which no execution has been registered will expire six years from the date of registration and may be dropped from the certificate, including upon request of an interested party, unless a document bringing the attachment forward has been registered within that period (See G.L. c. 223, §114A). An attachment may be brought forward by the plaintiff's attorney or by the sheriff.
An attachment may be discharged by a signed and acknowledged release from the plaintiff or by the plaintiff's executor, administrator or attorney of record (the plaintiff's attorney need not be the same one named on the attachment but must be a current attorney of record as established from current court pleadings, docket, or court clerk's certificate). An attachment also may be released by a certificate from the clerk of court in which the action was pending that the attachment has been dissolved or that the action has finally been determined in favor of the Defendant.
For additional provisions concerning attachments, please see Guideline 20, Executions.

7. Attorney's Proposed Form of New Certificate
(May 1, 2000)

MASSACHUSETTS LAND COURT PROPOSED FORM OF OWNER'S CERTIFICATE OF TITLE

(Instructions)
This form may be used to suggest to the Land Registration District the form of new owner's certificate of title the District will issue (or of notations to be made to the memoranda of encumbrance for an existing certificate of title) following registration of documents.
Use of the form is optional, but is encouraged if the title involved or the documents presented are complex. Any person interested in the title to land affected by a certificate of title may submit this form directly or through counsel. More than one party may submit this form.
Joint submission of the same form is encouraged, but parties may submit differing versions.
This form should be submitted at the time the documents are registered; when this form is submitted later, it is possible that it may not be taken into account before the District completes its work on the certificate. Parties are encouraged to provide copies of this form to other parties involved in the transaction and to retain copies of this form and the relevant documents in the event questions arise while the District is working on the certificate.
This form is intended only to suggest to the District what action it should take in preparing a new certificate of title or notation(s). In doing its work, the District will use its own best judgment, following applicable law and court guidelines, and may accept, reject, or modify the suggestions made in this form. Nothing in this form will in any way alter or affect the registered documents themselves. This form is not intended as a substitute for a supplemental petition to the Land Court to amend or correct a certificate of title. So-called "S-Petitions" will continue to be required in appropriate cases. Use of this form does not relieve proponents of documents of the need to establish authority or to obtain prior Land Court approvals.

_____[_____] Land Registration District

1. ***List all Certificates of Title outstanding at time documents are registered:***

Number Registration Book/Page

_____ _____

_____ _____

(Attach Xerox copies)

2. ***List all new Certificate(s) of Title assigned at time of registration:***

Number Registration Book/Page

_____ _____

_____ _____

3. ***Street Address(es) of Property:***

4. ***Party or Parties Submitting this Form:***

Name: _____ Counsel's Name: _____

Address: _____ Firm: _____

_____ Address: _____

Phone No.:_____ Phone No.: _____

Fax No.: _____ Fax No.: _____

Grantor _____ Grantee _____ Mortgagor _____ Mortgagee _____ Other _____

Name: _____ Counsel Name: _____

Address: _____ Firm: _____

_____ Address: _____

Phone No.:_____ Phone No.: _____

Fax No.: _____ Fax No.: _____

Grantor _____ Grantee _____ Mortgagor _____ Mortgagee _____ Other _____

5. ***List all documents being filed for registration (list in order of Document Nos.):***

Document No.

Type of Document

Parties(Name and Description)

Date of Document

Date andTime of Registration

Noted on Certificate of Title No.

Affects

Parcel(s)

6. ***Set forth proposed form of New (or Modified) Transfer Certificate(s) of Title (Prepare one for each certificate of title number):***

[Note: Modification of an existing Transfer Certificate of Title (or Issuance of a New Transfer Certificate of Title to reflect modification of an existing Transfer Certificate of Title) may be appropriate (a) as a result of the filing of additional documents, or (b) where matters have been terminated or expired by passage of time or operation of law (see Land Court Guideline 21). The reasons for such a request should be stated clearly in this form]

A. Owner: Name(s): _____

Description: _____

Address: _____
Comments: _____

B. Description of Land Subject to Certificate:

_____
_____
_____
_____

Comments:

_____
_____
_____
_____

C. Suggested form of language, to appear on face of certificate (provide only if new certificate is being issued or if certificate is being amended by order of court):

i. The land is subject to:

_____
_____
_____
_____

if less than all land described in certificate is affected, specify and explain:
Comments:

_____
_____
_____

ii. The land has the benefit of:

_____
_____
_____

if less than all land described in certificate is affected, specify and explain:
Comments:

_____
_____
_____

iii. Other:

_____
_____
_____

Comments:

_____
_____

D. ***Suggested form of Memoranda of Encumbrances (list in order and with specific language requested). Provide comments (and supply copies of relevant documents with pertinent provisions highlighted) to explain or clarify request).***

i.
Document No.: _____
Type of Instrument: _____
Running in Favor of: _____
Terms/Description: _____
Date of Document: _____
Date and Time of Registration: _____
Parcel or Parcels Affected (if less than all): _____
Additional Explanatory Notation Requested: _____
Discharge: _____
Comments: _____
_____
_____

ii.
Document No.: _____
Type of Instrument: _____
Running in Favor of: _____
Terms/Description: _____
Date of Document: _____
Date and Time of Registration: _____
Parcel or Parcels Affected (if less than all): _____
Additional Explanatory Notation Requested: _____
_____
Discharge: _____
Comments: _____
_____
_____

iii.
Document No.: _____
Type of Instrument: _____
Running in Favor of: _____
Terms/Description: _____
Date of Document: _____
Date and Time of Registration: _____
Parcel or Parcels Affected (if less than all): _____
Additional Explanatory Notation Requested: _____
_____
Discharge: _____
Comments: _____
_____
_____

iv.
Document No.: _____
Type of Instrument: _____
Running in Favor of: _____

Terms/Description:_____
Date of Document: _____
Date and Time of Registration: _____
Parcel or Parcels Affected (if less than all): _____
Additional Explanatory Notation Requested: _____
_____
Discharge: _____
Comments: _____
_____
_____

v.
Document No.: _____
Type of Instrument: _____
Running in Favor of:_____
Terms/Description: _____
Date of Document: _____
Date and Time of Registration: _____
Parcel or Parcels Affected (if less than all): _____
Additional Explanatory Notation Requested: _____
_____
Discharge: _____
Comments: _____
_____
_____

vi.
Document No.: _____
Type of Instrument: _____
Running in Favor of: _____
Terms/Description: _____
Date of Document: _____
Date and Time of Registration: _____
Parcel or Parcels Affected (if less than all): _____
Additional Explanatory Notation Requested: _____
_____
Discharge: _____
Comments: _____
_____

E. Other comments and requested action concerning certificate:

_____
_____
_____
Dated: _____
_____
Name:

Title:
Telephone Number:
Signature of party submitting form
(or of counsel)

8. Condominiums: Acts by the Organization of Unit Owners
(May 1, 2000)
1. Registry districts may accept for filing documents granting, modifying or amending easements through, over and under the common areas and facilities of the condominium which are executed by the organization of unit owners acting by and through its governing body, provided that the document contains a recital of compliance with the notice and consent provisions of G.L. c. 183A, § 5(b)(2)(i).
2. Registry districts may accept for filing documents granting to, or designating for, any unit owner the right to use any limited common area and facility of the condominium, whether exclusively or in common with other unit owners, which are executed by the organization of unit owners acting by and through its governing body, provided that the document contains a recital of compliance with the notice and consent provisions of G.L. c. 183A, § 5(b)(2)(ii).
3. The extension, revival or grant of rights to develop the condominium, including the right to add additional units or land to the condominium, or withdrawal of common areas from the condominium, G.L. c. 183A, § 5(b)(2)(iii), requires the approval of a Judge of the Land Court.
4. Registry districts may accept for filing documents selling, conveying, leasing or mortgaging any rights or interests to develop the condominium, after approval by the Land Court of the establishment of such rights as set forth in paragraph 3. above, which are executed by the organization of unit owners acting by and through its governing body.

9. Condominiums: First Unit Deeds
(May 1, 2000, Revised February 27, 2009)
A form of Condominium Unit Deed is attached. They are also available at the Land Court in Boston.
If the first units out are conveyed using this form, or are similar to this form, and contain the same statutorily-required items, listed below, registry personnel may accept the unit deed(s) without prior Land Court approval. All other first unit deeds require prior land court approval.
Statutory Requirements. Each unit deed must satisfy the requirements of G. L. c. 183A, § 9, which requires that unit deeds include:
(a) An indication that the deed relates to a condominium and is subject to the provisions of Chapter 183A. If the unit is in a leasehold condominium, the name of the condominium shall contain the word "Lease" or "Leasehold" and each unit deed must indicate that the unit is in a leasehold condominium.
(b) Either a description of the land on which the building containing the unit is located or the post office address of the property and, in either case, the book, page and *date of recording* of the master deed. (Note the statute requires the date of recording, not the date of the instrument. This is important, because under G. L. c. 183A, §§ 2, 16, the condominium is deemed formed on the date the master deed is recorded.)
(c) The unit designation of the unit in the master deed and any other data necessary for the unit's proper identification.
(d) A statement of the use for which the unit is intended and the restrictions, if any, on its use.

(e) The undivided interest appertaining to the unit in the common areas and facilities.
(f) As an optional matter, any further provisions which the grantor and grantee may deem desirable to set forth, consistent with the master deed and Chapter 183A.
Unit Plans Not Required. A unit plan no longer is required to be registered with any unit deed, including the first unit deed. St. 2008, chap. 13, § 2.

The subsequent sale of units is to be handled in the usual manner. Attorneys may wish to use their own deed or they may use the Land Court form.

THE COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT
CONDOMINIUM UNIT DEED
GRANTOR:
(number and street, town or city) For consideration of
GRANTS TO:
of
Commonwealth of Massachusetts, with quitclaim covenants, Unit No. _____of
_____Condominium created by
Master Deed dated _____ and filed on _____ with _____
Registry District of _____ County of the Land Court as Document No. _____noted on Certificate of Title No._____
The Post Office Address of the Condominium is:

The unit is conveyed subject to and with the benefit of the obligations, restrictions, rights and liabilities contained in G.L. c. 183A, the Master Deed and the By-Laws filed therewith.
The Condominium and each of the units is intended for residential purposes and other uses permitted by the applicable Zoning Ordinances and as set forth in the Master Deed.

The undivided percentage interest of the unit conveyed hereunder in the common areas and facilities is _____%.
Witness hand and seal this day of , 20 .
_____ _____
_____ _____
COMMONWEALTH OF MASSACHUSETTS
ss. Date_____
Personally appeared the above-named _____and acknowledged the foregoing instrument to be his free act and deed before me.
_____
Notary Public
My Commission expires: _____

10. Condominiums: Foreclosure of Lien for Common Expenses
(May 1, 2000, Revised February 27, 2009)
By statute, a condominium organization of unit owners has a lien for unpaid common expenses. G. L. c. 183A, §6. Such lien is prior to all other liens and encumbrances on a unit except:
1. Liens and encumbrances recorded before the recording of the Master Deed;

2. A first mortgage on the unit recorded before the date on which the assessment sought be enforced became delinquent, except there is a priority over such a first mortgage to the extent of (a) common expense assessments, based on the duly adopted condominium budget, which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien and also (b) any costs and reasonable attorneys' fees incurred in the action to enforce the lien; and
3. Liens for real estate taxes and other municipal assessments or charges against the unit.
To enforce priority for the common expense lien over a prior recorded first mortgage, as described in 2 above, either a lawsuit brought by the organization of unit owners must be commenced or an agreement in writing must be entered into by the first mortgagee, as provided by G. L. c. 183A §6(c).
The lien is enforced in the manner provided in G. L. c. 254, §§ 5 and 5A. Enforcement is by a civil action brought by the organization of unit owners in either the local Superior Court or the local District Court. The complaint must name as a defendant or “party-in-interest” all persons with an interest in the unit. G. L. c. 254, §5. An attested copy of the complaint, containing a sufficient description of the unit and a statement of the amount due, must be recorded at the local registry of deeds or registry district of the Land Court within thirty (30) days of the commencement of the action. Id. Failure to do so results in dissolution of the lien. Id.
The Court establishes the amount of the lien and enters an order authorizing the sale of the unit. G. L. c. 254, §5A. The Court also establishes the priority of the respective liens on the unit for purposes of the lien-enforcement sale of the unit. (Such priorities should be consistent with the priorities noted on the Memorandum of Encumbrances for the unit.)
The organization of unit owners must publish, using the form set out in G. L. c. 254, §5A, once in each of three (3) successive weeks, the first publication to appear not less than 21 days before the date of the sale, in a newspaper published in the town where the property lies, or if no newspaper is published in such town, in a newspaper published in the county where the property lies. G. L. c. 254, §5A. The unit owner organization, or its attorney, may (it is not required by statute) cause a copy of the notice and an affidavit, stating that the requirements of the Court order and the statute have been complied with, to be recorded at the proper registry. The Land Court requires such a filing and notation on the certificate of title for the unit.
A sale of the unit conveys it subject to, and with the benefit of, all restrictions, easements, improvements, outstanding tax title(s), municipal or other public taxes, assessments and the first mortgage of record, recorded prior to the complaint, except that the sale is free of the first mortgage, if, as of the date of the sale, there are unpaid common expense assessments, costs, or reasonable attorneys’ fees the lien for which is given priority over the first mortgage under 2, above.
The following instruments should be registered and noted on the appropriate Memorandum of Encumbrances:
1. An attested copy of the complaint containing a sufficient description of the unit and a statement of the amount due;
2. An attested copy of the order of the court that establishes the amount of the lien and the respective priority of the liens on the Unit, identifies the portion thereof entitled to priority over any first mortgage, and authorizes the sale and sets forth the terms of the sale.
3. A copy of the notice and an affidavit, stating that the requirements of the court order and the statute have been complied with; and

4. The deed given pursuant to the judicially ordered sale, conveying the property in accordance with the statute and the court order.
No new certificate of title, however, should be issued based on the above referenced instruments. If an attorney should request a new certificate of title based on the foreclosure, he/she should be advised to file a Supplemental Petition at the Land Court in Boston.
CAVEAT: If a subsequent 6(d) Certificate indicates there are no unpaid assessments outstanding, a complaint which was previously registered should be dropped upon conveyance of the unit, or a notation may be registered in accordance with Guideline 21, Expired and Obsolete Encumbrances.

11. Condominiums: Prior Undischarged Mortgages
(May 1, 2000)
If registered land is subject to a mortgage at the time a condominium Master Deed is filed, the Master Deed may be accepted for filing without a discharge, subordination agreement, partial release or consent by the mortgagee. In such case the mortgage must be noted on the Master Condominium Certificate of Title and noted (on the encumbrance sheet) on the Memorandum of Unit Ownership resulting from a unit deed.
A “Subordination Agreement” or “Consent to the Condominium Regime” or similar instrument is to be noted on the Master Condominium Certificate of Title and may, but need not be, noted on any Memorandum of Unit Ownership.
If a subordination agreement or consent by the mortgagee is filed without a discharge or partial release of the mortgage, the mortgage must still be noted (on the encumbrance sheet) on the Memorandum of Unit Ownership resulting from a unit deed as set forth in the first paragraph above, until such time as the mortgage is discharged or partially released.
NOTE that this is a change in practice. Until August 1999, the court would approve Master Deeds subject to a prior unsubordinated mortgage, but would not approve unit deeds until the mortgage was discharged or subordinated to the Master Deed. Attorneys are cautioned to review the Master Condominium Certificate of Title as well as the relevant Memorandum of Unit Ownership.

12. Condominiums: Plans and Amendments
(May 1, 2000)
The Land Court Engineers no longer prepare condominium plans for filing at the local registry. Instead, the site plan (which has heretofore been filed with the Engineering Department) along with the floor plans and condominium documents will be reviewed by the Land Court Legal Department. The condominium will then be allowed by a Land Court Judge as evidenced by the Judge's signature on the face page of the Master Deed. After the condominium is allowed the condominium documents and plans should be filed at the proper registry.
All amendments to the Master Deed must also be allowed by a Judge. Amendments to the condominium trust do not need Land Court approval.

13. Conservation Commission or DEP Plans
(May 1, 2000)
G.L. c. 131, § 40 provides that a final order, determination or notification of a conservation commission or the department of environmental protection may require the recording of a plan which:
1. shows location of the proposed work;

2. is prepared by a registered professional engineer or land surveyor; and
3. is in recordable form.
The registry district should accept these plans for registration and should treat these plans in the same manner, and subject to the same requirements for registration, as easement plans.
The plan should be reduced to the same size as the order, determination or notification.

14. Death: The Effect of Death upon Registered Land Titles
(May 1, 2000, Revised February 27, 2009)
The purpose of this guideline is to assist attorneys in dealing with title to registered land upon the death of a registered owner. Upon such a death, there are three possible avenues of approach.
THE METHODS OUTLINED ARE, GENERALLY SPEAKING, MUTUALLY EXCLUSIVE.
1. BY WAY OF A LICENSE TO SELL.
This method is usually utilized when the death is fairly recent and when a sale of the real estate is contemplated.
The advantage of this method is that the sale is free of debts of the deceased, costs of administration, legacies and Massachusetts estate taxes.
For details, see Method # 3.
2. BY WAY OF A SALE UNDER THE POWER IN A WILL.
This method is utilized when a sale is contemplated.
Under this method, the sale is free of debts of the deceased, costs of administration and legacies.
For details, see Method # 4.
3. BY WAY OF PETITION FOR A NEW CERTIFICATE AFTER DEATH OF A REGISTERED OWNER.
This method is usually utilized when no sale is imminent. The heirs-at-law or the devisees in the will are entitled to a Certificate of Title in their names.
For details, see Method # 1 and Method # 2.
If Land Court form LCP-2 is presented, an Order of Court will issue. If a deed under a license is presented, the deed is approved. No petition is necessary.
This guideline is not intended to be exhaustive and addresses only the most common situations.
With any method, an attested copy of the outstanding Certificate of Title must be presented.

METHOD # 1—DEATH OF ONE TENANT BY THE ENTIRETY OR DEATH OF ANY NUMBER OF JOINT TENANTS BUT THE LAST
Because title to land passes in such situations by operation of law to the surviving co-tenant(s) by right of survivorship, it is unnecessary for the surviving owner(s) to obtain a new certificate of title in order to deal with the property. It is necessary, however, that evidence of the death be noted on the encumbrance sheet of the outstanding Certificate of Title. There should be registered the following:
1. Certified copy of death certificate of deceased owner.
2. If deceased was a tenant by the entirety, an Affidavit of No Divorce. Attached is a form which may be used.
Once the above-mentioned documents are registered, the surviving owner(s) may deal with the property freely without Land Court approval.
However, if the surviving owner(s) requests a certificate of title in his/her name, an "S" petition must be filed at the Land Court Department along with the statutory filing fee, the material referred to in the previous paragraph and an attested copy of the outstanding Certificate of Title.
There is no form for such a petition; the surviving owner must simply recite under oath the

circumstances, request the cancellation of the outstanding certificate and the issuance of a new certificate in his/her name.

METHOD # 2—PETITION FOR LAND COURT ORDER

This method is used to obtain a new Certificate of Title after the death of a person in whose name alone a Certificate of Title stands, after the death of both tenants by the entirety, after the death of any tenant in common and after the death of the last joint tenant.

1. Land Court Form LCP-*2* must be completed and filed at the Land Court along with the statutory filing fee. Note that the petition has two signature sections. The petitioners (heirs or devisees of the deceased owner) may sign the first section of the petition or their attorney may sign for them. The statement in the last paragraph of the petition *must* be signed by the executor or administrator of the estate and the signature must be notarized.
2. An attested copy of the outstanding Certificate of Title must be filed with the petition.
3. Supporting documentation will vary depending upon how title to the property was held:

(a) *Tenancy by the Entirety/Joint Tenancy—all co-tenants deceased*

(i) *as to first to die,* file a death certificate. In addition, an Affidavit of No Divorce must be filed where the owners were tenants by the entirety. (Where there were more than *two* joint tenants, these documents must be filed for each joint tenant to die but the last).

(ii) *as to the surviving tenant by the entirety or last joint tenant to die*, file either an abstract of the probate proceedings prepared by a Land Court Examiner, *or,* attested Probate Court copies of the Probate petition, citation, decree, bond, will (and any codicils thereto), inventory, if any, and docket. Attorneys *may not* attest these documents.

(b) *Tenancy in Common—for each tenant in common who has died,* file all of the material set out in the immediately preceding paragraph 3(a)(ii). If there are surviving tenants in common, each should assent to the petition by signing it to indicate that they are aware that the old certificate is to be canceled and a new one issued in their names and the names of the new tenant(s) in common.

(c) *Certificate Standing in the Name of One Person*—again, file either an abstract of the probate proceedings, prepared by a Land Court Examiner, *or*, attested Probate Court copies of all probate papers in the estate of the deceased and the Probate Court docket.

4. The result of this procedure will be an attested Order of the Land Court which must be registered at the Land Registration Office at the proper Registry of Deeds. In due course, a new Certificate of Title will be drawn in accordance with the Order.

NOTE:

DEBTS

As to decedents dying before January 1, 1990 the new Certificate of Title will issue subject to debts in the estate of the deceased owner, *unless* one full year has elapsed from the date upon which the bond in the estate was allowed.

As to decedents dying on or after January 1, 1990 claims of creditors are barred at one year from the date of decedent's death.

TAXES

Estate and inheritance taxes are not required to be noted on certificates, G.L. c. 185, § 46. See also Guideline 35.

LEGACIES

Unless there is a specific devise of the real property, if a will directs the payment of legacies, the Land Court requires evidence of their payment unless six years have elapsed from the date of death.

DEVISE TO TRUST

If property is devised to the trustees of a testamentary trust, attested copies of the trustees' appointment and bond must be included with the probate papers.

If real property is devised to the trustees of an *inter vivos* trust which is not on record, the original trust instrument and any amendment(s) thereto or a certificate pursuant to G. L. ch. 184, § 35 must be presented at the Land Court.

The Court Order will issue to the trustees, and the trust will be registered and noted on the new certificate issued.

METHOD # 3—SALE UNDER DECREE (LICENSE) OF PROBATE COURT

This method and Method # 4 are alternatives to Method # 2 and are used when an immediate sale is contemplated. One of the advantages of obtaining a Probate Court decree of sale is that the property will be sold free of debts of the deceased, costs of administration, legacies and Massachusetts estate taxes, a tax release being a prerequisite for obtaining the decree from the Probate Court.

1. *The original or an attested copy of the Decree of the Probate Court* must be presented at the Land Court together with *an attested copy of the Probate Court docket*; the decree must be no more than one year old.
2. *An attested copy of the outstanding Certificate of Title* must be filed.
3. *A fully executed deed* must be presented. The grantor clause should state as follows: "I, _____ Executor/Administrator of the estate of _____ holder of a Decree of the Probate Court of _____ County dated _____, by power conferred by said Decree".

The date must be the date the decree issued. The deed must conform in all respects to the decree, thus, the consideration must be equal to or more than the amount specified in the decree. It should be executed on or after the date of the decree.

Likewise, the description of the property in the deed must conform to the description in the decree. There are several Probate Courts whose decrees do not describe the property. If the decree is obtained from one of these courts, the petition filed to obtain the decree must be presented at Land Court. In addition, if the fiduciary is the grantee in the deed, the decree of the Probate Court must state that the fiduciary is permitted to take title.

4. If everything is in order, the deed under the decree will be endorsed "Approved for Registration" and signed by Land Court personnel.

METHOD # 4—DEED UNDER POWER OF SALE IN WILL

The advantage of a sale pursuant to a Power of Sale in the will is that the property is sold free of debts of the deceased, costs of administration and legacies.

1. *An attested Probate Court copy of the will* must be presented at the Land Court. To use this method, the Power of Sale in the will must be unequivocal. The clause containing the power should be marked.
2. Along with the will, file an attested Probate copy of the *Executor's appointment*, together with *an attested copy of the Probate Court docket. The certificate of appointment* should be no more than 60 days old.

3. *An attested copy of the outstanding Certificate of Title* must be filed.
4. *The fully executed deed* of the Executor must be filed. The grantor clause should state clearly that the Executor is selling pursuant to the power conferred by the will of the deceased owner. The consideration in the deed *must* be other than nominal.

AFFIDAVIT OF NO DIVORCE
I, _____, Attorney for _____, being the surviving owner of the premises described in Land Court Certificate of Title No. _____, depose and say that his wife/her husband, _____, died at _____ on _____, and at that time there had been no divorce.
_____
Attorney for
Subscribed and sworn to before me this _____ day of _____, 1999
_____
Notary Public

15. Deeds: Execution and Acknowledgment of Deed under Power of Attorney
(May 1, 2000)
Although, as indicated below, there is some leeway in the way a deed in such an instance can be signed, there is little flexibility as to how the granting clause should be drafted.
When a sealed instrument is executed by an agent or attorney, for the principal, the strict technical rule of the Common Law, which has never been relaxed in England or in this Commonwealth, requires that it be executed in the name of the principal in order to make it his deed" *Abbey v. Chase*, 6 Cush. 54. As stated in Crocker's Notes on Common Forms, Little Brown & Company (Seventh Edition, 1955), § 351, where A.B. is the principal, a deed beginning "I, C.D.," or "I, C.D. as attorney for A.B." is an improper form as to the granting clause, and will be ineffective as the deed of the principal. The deed should be drafted by reciting in the granting clause the principal's name only, as though there was no power of attorney.
As far as the execution of the instrument, the signature should be as noted below. We'll assume that Mary Doe is the principal and that John Doe is her attorney in fact under a power of attorney:
/s/ Mary Doe
by John Doe her Attorney in Fact
under Power of Attorney,
recorded with (Registry of Deeds)
Book---, Page---
In this instance John will actually sign Mary's name. Although the above form is the preferred one, the signature "John Doe for Mary Doe" would seem to be satisfactory. See *Mussey v. Scott*, 7 Cush. 215.
The acknowledgment, like the deed, should be that of the principal (albeit through the act of the agent), as follows:
Then personally appeared the aforementioned John Doe and acknowledged the foregoing instrument to be the free act and deed of Mary Doe.

16. Deeds: Nominal Consideration
(May 1, 2000)

Deeds and other instruments of conveyance may be accepted for registration when they recite that they are given “for nominal consideration”, “for no consideration”, “for consideration of [any amount of dollars less than $100]”, “in consideration of love and affection”, “as a gift”, or any other similar words which communicate that the conveyance is made for nominal consideration. Deeds of a Trustee given for nominal consideration must nevertheless comply with Guideline 53: Trusts: Trustee’s Deed for Nominal Consideration.

17. Delayed Filing for Registration

(May 1, 2000)

No deed, mortgage or other instrument transferring an interest in real estate may be filed after one year from the date of its execution unless it (a) is accompanied by the affidavit of an attorney or a person having personal knowledge of the facts and stating whether the grantor and the grantee under the deed are still living or (b) has been re-acknowledged by all grantors within one year prior to the date of the delayed filing.

If the grantor has died, the document may not be accepted for filing without an order of the Court. The attorney should be advised to file a Supplemental Petition. An affidavit will be required confirming that the instrument was delivered to the grantee or an agent of the grantee during the grantor's lifetime. Assent of the heirs or notice to the heirs may be required.

If the grantee has died, the instrument will be accepted for registration but no certificate will issue in the name of the deceased; the heirs or devisees may thereafter petition for a new certificate after death, upon completion of applicable probate proceedings, or otherwise in accordance with Guideline 14: Deeds: The Effect of Death upon Registered Land Titles.

18. Descriptions in Deeds and Certificates of Title; Exception Deeds; Conveyances of Portions of Land

(May 1, 2000, Revised February 27, 2009)

A. Except as otherwise provided in this Guideline, or ordered or approved by the court or its Chief Title Examiner, a description of the land in a certificate of title shall describe the land as a lot or lots shown on an approved Land Court Plan. A description incorporating by reference the lot number on a Land Court Plan, together with a reference to the certificate with which the plan is filed, may substitute for a metes and bounds or bounding description when the certificate of title is prepared.

B. Except as otherwise provided in this Guideline, or ordered or approved by the court or its Chief Title Examiner, a deed of registered land will be accepted for filing only if it conveys a lot or lots shown on a Land Court Plan.

"Notation deeds" or "exception deeds" of registered land only will be accepted where the existing certificate of title is one in which the property already is described as the remainder of the land described on a plan, excepting and excluding therefrom a lot or lots on a more recent plan. The creation of new certificates of title describing, for the first time, land as the remainder of the land shown on a Land Court Plan, is not permitted absent a specific order of the court, which will be granted rarely, and only upon the showing of extreme hardship and exceptional circumstances, above and beyond the costs, delay, and inconvenience which may attend the preparation of a new plan for all the land then covered by the certificate.

If the existing certificate of title is one in which the property already is described as the remainder of the land described on a plan, excepting and excluding therefrom a lot or lots on a more recent plan, then additional exceptions of land from that already described will not be permitted and the following procedures are to be employed:

These procedures apply to any conveyance of a portion of the land held under a certificate of title, and to any conveyance of all or any portion of the remainder parcel resulting from any such conveyance ("remainder parcel"). The following procedures reflect a change from prior practice:

1. Before conveyance of any lot or lots constituting less than all of the land described in a certificate of title as a separately-conveyable lot, the owner shall file a plan of such lot or lots to be conveyed. The plan shall require the court's approval, and shall accurately depict the boundaries and monuments describing such lot as required by the court's surveying standards. The deed shall convey the lot by reference to its identification on the approved plan. A new certificate will issue for the lot conveyed, and the deed will be noted on the certificate of title for the original larger parcel, stating that the certificate of title is canceled as to the lot conveyed.
2. No deed of a remainder parcel will be accepted for registration unless and until a plan of the remainder parcel is filed as approved by the court. Such plan shall include a lot designation for the remaining land. Any deed conveying the remainder parcel should convey the remainder parcel by reference to its identification on the approved filed plan.
3. Lots may be conveyed out of a remainder parcel, without a new plan of the full remainder parcel in the following circumstances: A plan of the lot to be conveyed is required. In such cases, the owner also shall file with the court's surveying department a "reference plan" showing the lot(s) to be conveyed in relation to (i) all lots previously conveyed from the land originally described under the certificate of title, and (ii) the land remaining after the proposed conveyance. Such "reference plan" may be compiled from the plan(s) of the lot(s) conveyed out from the original tract, together with the plan originally filed with the certificate of title to the original tract. The "reference plan" shall be for information and illustration purposes only to facilitate review of the plan of the lot(s) to be conveyed. The deed then may be filed together with an order of the Court approving the new plan of the lot being conveyed, and instructing the Registry District that no instrument of conveyance of the remainder parcel shall be accepted for registration thereafter without a further order.
4. Instruments conveying a mortgage interest in land are subject to the same procedures described above. Accordingly, a mortgage will be accepted for filing only if the lot described in the mortgage is shown on a Land Court Plan. If a portion of such land is conveyed after the mortgage is filed, a foreclosure deed of the remainder parcel may be accepted for filing. However, no certificate will issue for the remainder parcel, and no further conveyance of the remainder parcel may occur, until a plan of the remainder parcel is filed.
5. The Court or the Chief Title Examiner may, in their discretion, issue an order or grant an approval permitting the filing of deeds of remainder parcels upon a showing by the owner of the remainder parcel that it would be a substantial burden on the owner to comply with the requirement for a new plan of the remainder parcel and that the registration of the remainder deed will not result in substantial harm to the grantee or others interested in the title. Examples of this would include, but not be limited to, transfers or conveyances to family members or related entities, for estate planning purposes, or conveyances to state or municipal authorities or to public interest groups for preservation purposes. In such instances, permission shall be granted by an order or approval that instructs the Registry District that no further instrument of conveyance of the remainder parcel shall be accepted for registration thereafter without a further order of the Court or approval by the Chief Title Examiner
6. A conveyance of a remainder parcel which was created by, or exists following, an eminent domain taking does not require prior Land Court approval.

C. A lease, notice of lease, or easement describing a portion of a lot shown on a plan attached thereto as an exhibit should not be rejected for filing on the basis that the land shown on the attached plan is not a lot shown on a Land Court Plan. Such a document may be accompanied by a sketch plan indicating the extent, limit, or location of the portion of the lot subject to lease or easement, although the district does have discretion to refuse registration of a sketch plan, absent approval by the Court or the Chief Title Examiner, if the district concludes that the sketch plan as presented lacks reasonable legibility or clarity.

Note to Practitioners

Attorneys for grantees and mortgagees should check prior certificates of title to examine whether the land has adequate access and utility line easements appurtenant thereto.

19. Easements, Restrictions, Covenants and Other Rights Granted or Reserved in a Deed

(May 1, 2000)

If a deed grants the fee of one lot (Lot "A") to a person and the same deed grants or otherwise creates rights, such as an easement or restriction, for the benefit of the grantee of Lot A over another parcel of registered land (Lot “B”) owned by the same grantor, registry personnel should check the outstanding certificate of title to verify that the grantor does in fact own Lot B and the deed creating the rights must be noted on the encumbrance sheet of Lot B. Said deed should be noted on the Memorandum of Encumbrances attached to the certificate of title covering Lot B as a deed of Lot A with restriction or a deed of Lot A with easement (or other appropriate notation). The same deed should be noted as an appurtenant right on the face of the certificate of title to be made up for Lot A.

If the owner of Lots A and B (both registered) conveys Lot A, retains Lot B and reserves an easement or other rights over the granted land (Lot A) for the benefit of Lot B, such reservation should be noted as an encumbrance on the Memorandum of Encumbrances of the new certificate of title in the name of the grantee of Lot A and should be noted on the Memorandum of Encumbrances attached to the certificate of title for Lot B as a deed of Lot A with easement, covenant or restriction. When making up the next certificate of title for Lot B, registry personnel should include on the face of the new certificate, the appurtenant right (easement, restriction or covenant) created for the benefit of Lot B in the deed of Lot A. However, this appurtenant right should only be included on the face of the certificate of title to issue if all the mortgagees of Lot A subordinated their interests as mortgagee or consented to the easement, covenant or restriction.

If the Owner of Lot A grants to the owner of Lot B (both registered) an easement, covenant or restriction for the benefit of Lot B, such grant should be noted as an encumbrance on the Memorandum of Encumbrances for Lot A and should also be noted on the Memorandum of Encumbrances for Lot B. When the next certificate of title is made up for Lot B, this appurtenant right should be included on the face of the new certificate of title to issue as long as the mortgagees of Lot A subordinated their interests as mortgagee or consented to the easement, covenant or restriction set forth in the grant to Lot B.

A grant of easement, restriction or covenant from the owner of an unregistered parcel to the owner of a registered parcel which easement, restriction or covenant runs over or burdens unregistered land, should be accepted for filing and noted on the Memorandum of Encumbrances as easement, restriction or other identifying notation. Said appurtenant right should not be noted on the face of the next certificate of title to be issued without the filing of a Supplemental Petition.

A deed which grants a fee to Lot A and an easement over the same locus to Lot C is a nullity as far as the easement is concerned if the owner of Lot C is a stranger to the title (that is, neither grantor nor grantee). The easement must be created by a separate instrument.
Note to practitioners: We encourage attorneys who are preparing deeds that include restrictions, easements, covenants or similar matters to highlight the rights created or reserved in the deed and to entitle the instrument "Deed With Restriction", "Deed With Easement" or other appropriate caption. This will help registry personnel to enter the instrument on the Memorandum of Encumbrances.
See also Guideline No. 7, Attorney's Proposed Form of New Certificate.

20. Executions
(May 1, 2000, Revised February 27, 2009)
Executions may be deposited by a deputy sheriff or, if authorized by the issuing court, a special officer (such authority should be made part of the execution).
If the land has been attached previously, for the execution to relate back to the date of the attachment, the execution must be levied on within thirty (30) days after the issuance of the execution following the final judgment; a copy of the execution, with the officer's memorandum, must be deposited with the Registry District within forty (40) days after the issuance of the execution. (G.L. c. 223, s. 59 and G.L. c. 236, s. 4)
These periods are sixty (60) days and seventy (70) days respectively (i) for property attached in Nantucket if the judgment entered elsewhere, or (ii) if the judgment is rendered in Nantucket and the property is elsewhere. (G.L. c. 223, s. 59 and G.L. c. 236, s. 4)
To have an attachment removed from a certificate of title where these time limits are exceeded, approval of the Chief Title Examiner is required, and, in his or her discretion, an order of the court may be required to be obtained on petition.
G.L. c. 236, s. 4 provides that an officer having an execution where there was no previous attachment may make a taking of the defendant's land by depositing a copy of the execution at the registry district with a memorandum that the land has been so taken.
All executions on record will expire in six years unless brought forward (as per M.G.L c. 236, s. 49A) or enforced within six years after the deposit. Executions are brought forward in the registry district in the manner, provided for in G.L. c. 223, s. 114A, for bringing forward attachments of real estate.
If it is clear to the District, or upon the request of any interested party, the execution may be then marked discharged or expired. Upon a subsequent conveyance and the issuance of a new certificate, the execution will be dropped. Any doubtful questions will be referred to the Chief Title Examiner.
The Registry District personnel should make certain that the premises described in the execution are the same premises as are covered by the certificate of title; the debtor in the execution must be the holder of the certificate of title or of an interest under said certificate. One cannot execute on property of "A" standing in the name of "B" unless the execution issued by the court which granted the judgment so provides.
A creditor of either husband or wife, whose principal residence is held in a post 1980 tenancy by the entirety (G.L. c. 209, s. 1) may attach, but may not levy on the execution.
A certificate issued by the clerk of the court where the execution issued, marked "satisfied in full," is usually obtained to clear the record title of a cloud created by an unexpired execution. An execution also may be released by an instrument executed by the deputy sheriff making the seizure or by the execution creditor. The release may not be executed by the creditor's attorney.

21. Expired and Obsolete Encumbrances

(May 1, 2000)

Various matters shown on a certificate of title's memorandum of encumbrances may expire or become of no force and effect by passage of time and/or by operation of law.

Examples include:

- attachments and executions which have not timely been carried forward;
- restrictions and conditions which expire by statute and have not been removed of record;
- restrictions which have expired by their terms;
- leases (and notices of lease) the terms of which, taking into account all available extensions, have all passed;
- UCC-1 financing statements which have not been continued within the statutory period;
- municipal betterments and assessments.

In such cases, the District should enter, directly on the memorandum of the relevant encumbrance, an appropriate notation such as "Expired by Statute" or "Expired by its Own Terms" to reflect that the listed encumbrance is no longer in force and effect. The notation should be made in a manner similar to that used to indicate the discharge of a mortgage following filing of an appropriate mortgage discharge.

These notations should be made by the Districts on their own or upon request of an interested party. These notations should be made by the Districts without further approval from the Court if there is no issue about the expiration of the encumbrances. Doubtful questions may of course be referred to the Court's Chief Title Examiner or his or her designee.

22. Faxed Instruments

(May 1, 2000)

A faxed instrument produced on plain paper bearing original signature is acceptable for registration provided it is legible in its entirety. A faxed instrument produced on thermal paper, even with an original signature, is **never** acceptable for registration.

A faxed instrument without an original signature is equivalent to a photocopy and therefore unacceptable for registration.

23. Federal Deposit Insurance Corporation

(May 1, 2000, Deleted February 27, 2009)

24. Fees In Streets

(May 1, 2000)

No new certificate of title may issue for the fee in a street unless a plan has been filed showing the street as a lot.

25. Homestead

(May 1, 2000, Revised February 27, 2009)

1. Estates of homestead may be acquired pursuant to G.L. c. 188, § 1, and, by persons 62 years of age or older, or by disabled persons, pursuant to G.L. c. 188, § 1A. A claim of homestead must be in the deed or a later instrument in writing, signed, sealed and acknowledged.

It should contain a statement that the person claiming the homestead occupies or intends to occupy such property as his or her principal residence.

2. A declaration of an estate of homestead to be acquired under Section 1 of the statute may be accepted for registration with the understanding that the court, by accepting the document, is not

adjudicating the validity or effectiveness of the filing, which may be determined at a future date by a court of competent jurisdiction. A declaration of homestead will be accepted for filing and will be noted as a “Purported Homestead.” Subject to the further caveat that the court’s acceptance of a declaration of homestead will not constitute the court’s determination of the validity or effect of the filing:

a.) Only one party who holds title as tenant by the entirety may file a declaration of homestead under Section 1 of the statute for the benefit of his or her family;

b.) All parties who hold title as tenants in common may file declarations of homestead;

c.) No party who holds title as trustee as to any interest, may file a declaration of homestead as to the interest held as trustee;

d.) All parties who hold title as joint tenants may file declarations of homestead; and

e.) Life tenants may file declarations of homestead..

The Court will not prohibit multiple filings of homestead declarations, with the understanding that multiple filings by parties who are related may not be valid or effective, and that the acceptance of said filings by the Court is not a judgment on the validity of said filings or the impact of the filing of subsequent declarations on the validity of the initial filing.

3. The amount of an estate of homestead acquired under Section 1 has been increased by the legislature; it is now $500,000.00.

4. A section 1 homestead estate is acquired for the benefit of the declarant's family. The word “family” is defined as a parent and child or children, a husband and wife and their children, if any, or a sole owner.

5. Under Section 1A of the statute, the principal residence, including real property or manufactured home, of a person 62 years of age or older, regardless of marital status, or of a disabled person, is protected to the extent of $500,000 per qualified person who declares the homestead. The Section 1A homestead estate is available to each individual who has an ownership interest in the property and qualifies by reason of age or disability.

6. A disabled person is an individual who has any medically determinable permanent physical or mental impairment, which would meet the disability requirements for supplemental social security income under the U.S. code. Such persons must file with any claim of homestead:

(a) An original or certified copy of a disability award letter issued by the United States Social Security Administration; or

(b) A letter signed by a physician licensed in Massachusetts certifying that the claimant meets the disability requirements of the United States Code.

7. As the Social Security Administration will not issue certified copies of the award letter, claimants are limited to a physician’s letter or the original award. Claimants should be advised that original documents are not returned from the Registry District.

8. There are several obligations of the owner which are exempt from the protection afforded by the Homestead Act, see sections 1 and 1A.

9. Termination

a. Both the regular and the elderly or disabled homestead can be terminated by

• a conveyance of the property subject to homestead signed by the owner and the owner’s spouse without a specific reservation of homestead;

• a signed, sealed and acknowledged release by the owner and the owner’s spouse filed in the appropriate Registry District;

• the acquisition of a new estate or claim of homestead; and

• the abandonment of a residence.

The elderly or disabled homestead is also terminated by:
• a sale or transfer of real property or manufactured home, or the declarant's interest therein, during the declarant's lifetime;
• the death of the surviving declarant;
• a deed conveying the homestead property signed by the declarant;
• a signed, sealed and acknowledged release of a homestead in real property by the declarant filed in the appropriate Registry District; and
• a signed, sealed and acknowledged release of the claim of homestead in a manufactured home filed with the appropriate city of town clerk's office.
b. Execution of a mortgage with mortgage covenants subordinates any homestead interest to the mortgage lien, Atlantic Savings Bank v. Metropolitan Bank and
Trust Company, 9 Mass. App. Ct. 286 (1980), provided both spouses are mortgagors or otherwise joined in the mortgage.
c. Homestead is a matter of fact and proof claimant has claimed homestead elsewhere, has abandoned the residence, or has never used the property as a principal place of residence will be sufficient cause to strike from the encumbrance sheet. This can be accomplished by a Supplemental Petition.
10. Problem Period - Where Minor Children Are Involved - December 5, 1977 Though August 30, 1979.
Homesteads created between December 5, 1977 and October 18, 1978, can be released only by the guardian of the property of minor unmarried children of the homesteader by the license of the probate court, unless the instruments creating the homestead specifically reserved the right to release the interests to the children. Between October 18,1978 and August 30, 1979, parents could release the right for their children, but they had to indicate clearly that they were doing so. After August 30, 1979, a homestead can be terminated by simply executing a deed of the premises.

26. Land Court Examiner Qualifications

(May 1, 2000)

All candidates for appointment as a Land Court examiner should meet the following minimum qualifications:
1. Must be a member of the Massachusetts Bar:
a. Must be admitted for three years; or
b. Demonstrate sufficient equivalent experience in title matters (i.e. experience as a title examiner prior to admission to the bar).
2. Should submit to the Court a letter requesting appointment. This should enclose with the request two letters of recommendation from members of the bar who are familiar with the candidate's work and experience.
3. Submit an abstract of title with narrative report on any property which has been researched and written by the candidate.

27. Leases and Notices of Lease

(May 1, 2000, Revised February 27, 2009)

A lease should be accepted for registration if the lease is signed by both the lessor and the lessee and is acknowledged by the lessor or one of several parties constituting the lessor. A notice of lease should be accepted for registration if it complies with the requirements of G.L. c. 183, §

4; namely, an instrument in writing executed by all persons who are parties to the lease of which notice is given and acknowledged by the lessor or one of several parties constituting the lessor containing
the date of execution thereof,
a description, in the form contained in such lease, of the premises demised,
the term of the lease,
with the date of commencement of such term
and all rights of extension or renewal.
A lease or notice of lease meeting these requirements shall be accepted for registration whether the original term of the lease is more or less than seven (7) years.
An amendment of a notice of lease may be accepted for registration if it is signed by both the lessor and the lessee and is acknowledged by the lessor or one of several parties constituting the lessor, provided that the notice of lease previously was filed for registration, or is being filed for registration simultaneously with the amendment. A notice of an amended lease may be accepted for registration if it complies with the requirements of G.L. c. 183, § 4 set forth in the first paragraph above. An amendment of a lease may be accepted for registration if it is signed by both the lessor and the lessee and is acknowledged by the lessor or one of several parties constituting the lessor, provided that the lease previously was filed for registration, or is being filed for registration simultaneously with the amendment.
A lease or notice of lease of less than all of the land described in the certificate of title may describe the leased premises in words or by reference to an attached plan or drawing which need not be approved by the Land Court Engineering Department.
Where the commencement date of a lease term is uncertain from the face of the document, a subsequent estoppel certificate or agreement stating the commencement date, properly acknowledged, may be registered to establish the commencement date.
If the term of a lease (including all extensions) has expired on its face, the registry should enter, adjacent to the document number of the lease or notice of lease on the Memorandum of Encumbrances of the relevant certificate, an appropriate notation such as “Expired by its Own Terms,” without need for the filing of a Supplemental Petition.

28. Life Estate Deeds

(May 1, 2000)

An example of a life estate deed is where one or more grantors convey real estate to one or more grantees (the "remaindermen") reserving (a) the right to use and occupy the real estate and (b) sometimes other rights such as the right to sell or mortgage, during the lives of the grantors (the "life tenants").
The certificate of title should issue in the names of the grantees/remaindermen in whatever relationship is stated in the life estate deed, e.g., joint tenants or tenants-in-common, immediately followed by a recitation of the rights reserved by the grantors/life tenants exactly as it appears in the life estate deed, e.g., subject to the rights of _____and _____ to use and occupy the premises for and during their lives as reserved in Document No._____ .
If the grantors/life tenants reserve additional powers with or without notice to the grantees/remaindermen, these should be recited in the certificate of title, e.g.,
“Subject to the rights, powers and interests reserved to _____ and _____ in Document No. _____, any of which may be exercised without notice to, or assent from, the above named owners or their assigns.”

If the grantors/life tenants holding the retained rights exercise them, no notice to or assent from the grantees/remaindermen or their assigns need be given or obtained unless, of course, called for by the deed reserving such rights.
A typical "no notice" provision in a deed would be “No notice to, or assent by, the grantees herein or their assigns shall be necessary in connection with any exercise of the rights retained by the grantors herein.”.

29. Limited Liability Companies and Partnerships: Formation, Consolidation & Merger
(May 1, 2000)
Chapter 281 of the Acts of 1995 went into effect on January 1, 1996, and authorized the creation of limited liability partnerships (G.L. c. 108A, § 45) and limited liability companies (G.L. c. 156C).
A. CONVERSION OF AN EXISTING PARTNERSHIP TO A LIMITED LIABILITY PARTNERSHIP.
If there is a certificate of title in the name of a general partnership, the filing of a certified copy from the Secretary of State of the certificate of registration pursuant to G.L. c. 108A § 45 registering the partnership as a Limited Liability Partnership, together with a certificate executed by a person authorized to execute and deliver recordable instruments pursuant to the certificate of registration and specifying that the partnership is converting to a limited liability partnership, shall be sufficient to cause the issuance of a new certificate of title in the name of the Limited Liability Partnership.
B. INABILITY TO CONVERT TO A LIMITED LIABILITY COMPANY.
There is no correlative statutory authorization to covert an existing entity to a Limited Liability Company under G.L. c. 156C, as each Limited Liability Company is a new legal entity. However, nothing in this Guideline shall prevent a Limited Liability Company from participating in a merger, consolidation or reorganization pursuant to G.L. 156C, § 61 or 64.
C. MERGER, CONSOLIDATION AND REORGANIZATION OF LIMITED LIABILITY COMPANIES.
If there is a certificate of title in the name of a Limited Liability Company, the filing of a certified copy from the Secretary of State of the certificate of consolidation or merger pursuant to G.L. c. 156C, § 61 shall be sufficient to cause the issuance of a new certificate of title in the name of the surviving or resulting Limited Liability Company or other entity. The certified copy must be examined to see if it provides for an effective date later than the date the certificate of consolidation or merger was filed with the Secretary of State; if there is such a later effective date, issuance of the new certificate shall not occur until that date. If issuance of a new certificate of title is requested as a result of a reorganization under G.L. c. 156C, § 64, the matter shall be referred to the Court.
D. FORMATION OF A LIMITED LIABILITY COMPANY.
In order to form a limited liability company one or more authorized persons must execute a Certificate of Organization, which shall be filed in the Office of the Secretary of State. This certificate shall set forth (1) the name of the limited liability company; (2) the address of the office in the Commonwealth; (3) the name and address of the resident agent for service of process; (4) if the limited liability company is to have a specific date of dissolution, the latest date on which the limited liability company is to dissolve; (5) if the limited liability company has managers at the time of its formation, the name and address of each manager; (6) the name of any other person in addition to any manager who is authorized to execute any documents to be filed with the Office of the State Secretary and at least one such person shall be named if there

are no managers; (7) the general character of the limited liability company's business; (8) if desired, the names of one or more persons authorized to execute, acknowledge, deliver and record any recordable instrument purporting to affect an interest in real property, whether to be recorded with a registry of deeds or a district office of the land court.
E. FOREIGN LIMITED LIABILITY COMPANIES.
Every foreign limited liability company doing business in the Commonwealth shall submit to the Secretary of State, within ten days after it commences doing business in the Commonwealth, an application for registration as a foreign limited liability company, which shall be signed and sworn to by an authorized person. This application for registration sets forth essentially the same information required for a domestic limited liability company.
See Guideline 30 regarding transfers by limited liability companies and Guideline 31 regarding transfers by limited liability partnerships.

30. Limited Liability Company Documents
(May 1, 2000)
Instruments to be filed on behalf of a limited liability company may be accepted by the local registries without prior approval of the Court in accordance with this Guideline.
A deed, mortgage, or other instrument of transfer transferring an interest in real estate from a limited liability company created under G.L. c. 156C ("LLC") must be
(1) accompanied by
(a) (i) the certificate of organization of a domestic LLC or the application for registration of a foreign LLC and
(ii) a certificate of the Secretary of State's office, dated within 60 days of the date presented for filing, that there have been no amendments or a certificate that there have been amendments and accompanied by copies of the amendments to date
or
(b) a good standing certificate under G.L. c. 156C, § 68 dated within 60 days of the date presented for filing
or
(c) a certification under G.L. c. 156C, § 67 by someone whose authority is established under (a) or (b) above, of the authority of some other person to act,
and
(2) executed by
(a) any Manager or person authorized to execute, acknowledge, deliver and record instruments affecting interests in real property as appearing on the certificate of organization of a domestic LLC or on the application for registration of a foreign LLC (hereinafter "an authorized person")
or
(b) any Manager or authorized person appearing on a good standing certificate under G.L. c. 156C, § 68
or
(c) a person named on the certificate of any Manager or an authorized person as being authorized to execute real estate instruments.

31. Limited Liability Partnership Documents
(May 1, 2000)
Registered limited liability partnerships were created pursuant to G.L. c. 108A, § 45.

Pursuant to G.L. c. 108A, § 46, the name of every registered limited liability partnership must end with the words "registered limited liability partnership", "limited liability partnership" or the abbreviation "L.L.P." or "LLP". Therefore, any naming of the partnership within the document should include one of these references.

Instruments to be filed on behalf of a limited liability partnership may be accepted by the local registries without prior approval of the Court in accordance with this Guideline.

A deed, mortgage, or other instrument of transfer transferring an interest in real estate from a limited liability partnership created under G.L. c. 108A ("LLP") must be

(1) accompanied by

(a) (i) the registration statement of the LLP

and

(ii) a certificate of the Secretary of State's office, dated within 60 days of the date presented for filing, that there have been no amendments or a certificate that there have been amendments and accompanied by copies of the amendments to date

or

(b) a good standing certificate under G.L. c. 108A, § 49 dated within 60 days of the date presented for filing

and

(2) executed by

(a) any partner authorized to execute, acknowledge, deliver and record instruments affecting interests in real property as appearing on the registration statement of the LLP (hereinafter "an authorized partner")

or

(b) any authorized partner appearing on a good standing certificate under G.L. c. 108A, § 49.

32. Limited Partnership: Consolidation or Merger

(May 1, 2000)

G.L. c. 109, § 16A provides that a domestic limited partnership may merge or consolidate with or into one or more domestic partnerships or other business entities.

A certificate of consolidation or merger must be filed with the Secretary of State by the resulting or surviving limited partnership or business entity. The consolidation or merger shall be effective upon the date of filing of the certificate of consolidation or merger with the Secretary of State unless otherwise provided in the certificate.

The certificate of consolidation or merger acts as a certificate of cancellation for a domestic limited partnership and as a certificate of withdrawal for a foreign limited partnership which are not the resulting or surviving entity in the consolidation or merger.

The certificate of consolidation or merger attested by the Secretary of State or otherwise showing his acceptance should be presented as would the certificate of formation of limited partnership when registering any documents involving a merged or consolidated limited partnership.

Notice to Practitioners

Unless otherwise provided in the partnership agreement the consolidation or merger must be approved by each domestic limited partnership which is to consolidate or merge, by all general partners and by the limited partners or if there is more than one class or group of limited partners, then by each class or group of limited partners, in either case, by partners who own more than fifty percent of the then current percentage or other interest in the profits of the domestic limited partnership owned by all of the limited partners or by the limited partners in each class or group, as appropriate.

33. Limited Partnership: Filing Requirements

(May 1, 2000)

No Land Court approval to accept documents for registration is required if the following are presented:

1. Executed documents to be filed;
2. "Long Form" certificate of formation of limited partnership, not over 60 days old and bearing the Seal of The Commonwealth, from the Secretary of State attesting the name(s) of the general partner(s) and certifying that the limited partnership has not filed a Certificate of Cancellation (or if the limited partnership is a foreign limited partnership, that its application for registration has not been canceled and that it has not filed a Certificate of Withdrawal).

As to a foreign limited partnership organized in any of the other 49 states, if it is not registered with our Secretary of State you may accept an original certificate (not over 60 days old) of legal existence from the Secretary of State of the jurisdiction in which the foreign limited partnership is organized, stating the name of the foreign limited partnership, the names of its general partners and the fact that the foreign limited partnership has not filed a Certificate of Cancellation.

Any filings not meeting the above requirements (and a filing by a limited partnership of another country) must be approved by the Land Court.

NOTE: If any partner signing the document(s) is a corporation, the usual requirements for corporate execution of documents apply to the corporation's execution of the document(s), except that there need not be any concern as whether the conveyance constitutes all or substantially all the assets of the corporation (since the assets being conveyed are those of the limited partnership, not those of the corporate partner).

If any partner signing the document is another limited partnership, the above must be satisfied as to that limited partnership as well.

Unless there is something contrary in the Secretary of State's certificate, § 9 and 10 of G.L. c. 108A (made applicable to limited partnerships by § 24 of G.L. c. 109), allow registration of an instrument executed in the name of a limited partnership by any one general partner.

The "Long Form" certificate should not be given a separate document number. It should be attached to (one of) the instrument(s) being registered. It can serve as the basis of subsequent registrations, provided they occur within 60 days of the date of the certificate.

34. Lis Pendens

(May 1, 2000, Revised February 27, 2009)

A "notice of lis pendens" is a memorandum which is filed at a Registry District to alert persons examining title to a specific piece of land that the land or the building thereon is the subject of pending litigation in some court, G.L. c. 185, § 86. The statute refers to the filing of a memorandum "like that described in" G.L. c. 184, § 15, and also requires that the memorandum contain a reference to the certificate of title number and the book and page where the certificate of title is maintained in the book of registrations.

G.L. c. 184, § 15 in turn sets forth certain requirements as to what information must be contained in the memorandum. This includes: the names of the parties to the proceeding, the court in which it is pending, the date of the complaint, the town where the property is located, and a description of the property sufficiently accurate for identification. A notice of lis pendens may be accepted for registration only if it contains the required information and bears the endorsement of a justice of the court in which the action is pending on a finding by that justice that the subject matter of the action constitutes a claim of a right to title to real property or the use or occupation thereof or

the building thereon. In some instances, the signature of the justice making the required finding is endorsed directly on the memorandum of lis pendens; in other cases, the signature of the judge is endorsed on a separate finding appended to the memorandum. In some courts, an original of the judge's endorsement is provided for registration; in other courts, a copy of the endorsed finding, certified by the court clerk, issues. All are acceptable for registration, but a memorandum without an endorsed finding should not be registered.

The notice of lis pendens also must be accompanied by an affidavit stating that the plaintiff or plaintiff's attorney has, by certified mail, served notice of the court's allowance of the motion for judicial endorsement on all parties to the action. This affidavit should accompany the endorsed notice of lis pendens when it is registered.

The memorandum of lis pendens may be dissolved by one of several methods:

1. The filing of a notice of voluntary dissolution duly executed by the party who executed (or on whose behalf was executed) the memorandum of lis pendens, by that party's successor in interest, or by an attorney of record for either of those parties; or
2. The filing of an attested copy of an allowed special motion to dismiss, or of any order or judgment dismissing, the underlying action, or of an order dissolving the memorandum of lis pendens, in each such case without a timely appeal having been filed (or, if an appeal had been filed, by final resolution of all appeals upholding the allowance, order or judgment). A clerk's certificate from the trial court will be necessary to establish the absence of a timely appeal or the favorable resolution of any appeal, and should be registered along with the attested copy of the allowance, order, or judgment; or
3. The filing of a clerk's certificate from the court in which the action is pending that the action has been fully and finally concluded by notice of voluntary dismissal, stipulation of dismissal or agreement for judgment.

Once dissolved, the lis pendens will not be carried forward to subsequent certificates.

35. Massachusetts Estate, Inheritance and Corporate Excise Taxes

(May 1, 2000, Revised February 27, 2009)

Registry personnel are not required to inquire as to releases of Massachusetts estate, inheritance and corporate excise tax liens or the possible existence of such liens. Such liens are not to be noted on certificates of title. Likewise, attorneys should not assume that such taxes have been paid simply because there is no notation as to tax liens on the certificate of title. See G.L. c. 185, § 46, which excepts such liens from the coverage of a certificate of title. "Seventh, liens existing in favor of the commonwealth for unpaid taxes arising or existing under the laws of the commonwealth." Nevertheless, releases or waivers of tax liens should be accepted for filing.

36. Mechanics Liens

(May 1, 2000, Revised February 27, 2009)

The Legislature enacted major revisions to Massachusetts General Laws, Chapter 254, the Mechanics Lien Law, effective February 7, 1997 (Chapter 364, Acts of 1996).

The revision made substantial changes to the procedures for creating and enforcing liens.

It also expanded the time frame for filing.

I. PERSONAL LABOR (Section One Lien)

Under prior law, a person performing "personal labor" in the erection, alteration, repair or removal of a building or structure on land or improvement or alteration to real property, had a lien on the land for not more than eighteen days of work actually performed during the forty days next prior to filing of a statement of account under Section 8, G.L. c. 254, § 1. This lien does not

apply to labor performed pursuant to a written contract. The lien rights governing that type of work are covered by the provisions of Sections 2 and 4. Chapter 364 expanded the time frame for the personal labor lien to thirty days of work. Thus, under the revised law, a person performing personal labor has a lien for thirty days of labor performed during the ninety day period next prior to the filing of a statement of account under Section 8.

II. GENERAL CONTRACTORS (Section Two Liens)

A person who performs work or provides materials for the construction or alteration of improvements on land pursuant to a written contract with the owner of the land (as a general rule, such a person would be considered to be a general contractor), has a lien on the land upon the recording of a notice of contract at the appropriate Registry of Deeds, G.L. c. 254, § 2. Under the prior law, the person claiming a lien under Section 2 was required to record the notice of contract prior to the contractually agreed upon completion date. If the notice of contract was recorded after the completion date, there was no lien. **Blount Bros. Corp.** v. **Lafayette Place Associates**, 399 Mass. 632, 506 N.E.2d 499 (1987).

Under the revised law, a general contractor may file or record a notice of contract at any time after the execution of a written contract whether or not the date for performance of the contract had passed and whether or not the work under such contract had been performed. The law now provides that the notice of contract must be filed or recorded not later than the earliest of:

1. Sixty days after filing or recording of a notice of completion;
2. Ninety days after filing or recording of a notice of termination; or
3. Ninety days after such person last performed or furnished labor and/or materials.

G.L. c. 254, § 2. Upon the recording or filing of the notice of contract, the lien attaches.

If a notice of contract is presented for registration, you should not reject it as an untimely filing unless it is obvious on the face of the notice that it is untimely.

Sections 2A and 2B of the revised lien law introduce two new forms: notice of substantial completion and notice of termination. Section 4 adds yet a third new form: notice of identification, which however, is not recorded or registered.

Under Section 2A of the revised lien law, "upon or after notice of substantial completion of any contract subject to the provisions of section 2 of this chapter (contracts between a contractor and the owner of land), the owner and contractor shall execute and file or record in the appropriate registry of deeds a notice of substantial completion".

<u>Notice of Termination</u>:

Under Section 2B of the revised lien law, if a general contract has been terminated by one or both of the parties, the owner shall execute and file or record a notice of termination in the appropriate registry of deeds. In such a case, the revised lien law provides a ninety day period in which subcontractors of that general contractor or lower tier subcontractors must file a notice of contract in order to preserve their rights.

III. SUBCONTRACTOR (Section Four Liens)

Under the revised lien law, a subcontractor may record the notice of contract at any time after execution of the written contract whether or not the date for performance stated in such written contract has passed and whether or not the work under such contract has been performed.

The lien rights of subcontractors will no longer be tied into the contractually agreed upon completion date. However, the notice of contract by a subcontractor must be recorded no later than the earliest of:

1. Sixty days after the filing or recording of the notice of substantial completion;
2. Ninety days after filing or recording of a notice of termination; or

3. Ninety days after the last day a general contractor or anyone claiming by, through or under him performed or furnished labor or materials.
Again, if a notice of contract is presented for registration, you should not reject it as an untimely filing unless it is obvious on the face of the notice that it is untimely.
The new form of notice of contract will look substantially different from the old form.
The new notice of contract will contain information concerning the contract price, agreed change orders, pending change orders, disputed claims and payments received. However, the lien created by recording this notice of contract secures the payment of all labor and material "regardless of the amount stated in the notice of contract".
The most important changes as far as registry personnel are concerned are:
1. You no longer will have the termination date in the notice of contract; and
2. You have two additional new papers that will be filed:
Notice of Substantial Completion
Notice of Termination
3. Once the Notice of Substantial Completion is recorded the time periods begin to run. All notices of contract (whether they be by the general contractor, subcontractor or sub-subcontractors) must be recorded within sixty days after the recording of the Notice of Substantial Completion (although they can be recorded prior to that time). Likewise, Statements of Account must be recorded within ninety days after the recording of the Notice of Substantial Completion (although they can be recorded before that time). (Note that the time period for recording the Statement of Account runs from the recording of the Notice of Substantial completion and not from the time of the recording of the Notice of Contract).
Also, suit must be commenced within ninety days after the filing of the Statement of Account and an attested copy of the complaint must be recorded within thirty days thereafter. Failure to register the Statement of Account or the attested copy of the complaint (and note them on the certificate of title) within the required time period will permit the notice of contract and statement of account to be dropped from the certificate of title; if a new certificate is being prepared after transfer, and the attested copy of the complaint has not been filed for registration timely, the notice of contract and the statement of account should not be carried over to the new certificate.
4. If the project is not completed, but rather is terminated, a different instrument will appear of record. This is called a "Notice of Termination".
Once the Notice of Termination is recorded the time periods being to run. All notices of contract (whether they be by the general contractor, subcontractor or sub-subcontractors) must be recorded within ninety days after the recording of the Notice of Termination (although they can be recorded before that time). Likewise, Statements of Account must be recorded within one hundred and twenty days after the recording of the Notice of Termination (although they can be recorded before that time). Note that the time period for recording the Statement of Account runs from the recording of the Notice of Termination and not from the time of the recording of the Notice of Contract). Also, suit must be commenced within ninety days after the filing of the Statement of Account and an attested copy of the complaint is recorded within thirty days thereafter.
If the various documents described above are not filed within the time periods set forth above, the lien is dissolved by statute. If it is clear from the filed documents that the time periods have not been met, the Notice of Contract and other related documents which may have been filed should be dropped from the current certificate, in the manner indicated in Guideline 21.

Expired and Obsolete Encumbrances, and should not be carried forward onto the new certificate of title for the property following a transfer.
Also, as in the case of other liens, a release of the lien (G.L. c. 254, § 10) will dispose of the lien. A Section 2 lien can be disposed of, at least partially, in another way under the new statute. This is accomplished by utilizing what is called a "Partial Waiver and Subordination of Lien". (Section 32. The statute does not require the recording or registration of that document.).
G.L. ch. 254, § 30 has a listing of all those persons who can sign notices or other instruments required or permitted to be filed or recorded under the Mechanics Lien Law, Chapter 254 by various entities. This statute eliminates the necessity of votes in most cases when registering the documents described earlier in this Guideline. The statute provides that a notice under Chapter 254, duly acknowledged, and executed by a person purporting to hold one of a list of specified positions, shall be binding upon the entity and shall be entitled to be recorded or filed. According to this statute, no vote of the entity affirming such authority shall be required to permit recording or filing. The statutory provisions apply to instruments executed prior to, on, or after the effective date of the Act. The statute refers to persons purporting to hold various offices of an "entity;" the statute is not limited to corporations, but includes other entities such as a limited partnership, a limited liability company and a limited liability partnership. Because of the statutory language, proof of a person's incumbency in office is not required to accept their signature on behalf of the entity. The persons listed in this statute are:
"a person purporting to hold the position of president, vice president, treasurer, clerk, secretary, or any assistant to the foregoing, principal, partner, proprietor, trustee, attorney or other similar position, of the entity entitled to record or file such instruments on behalf of such entity acting in its own capacity or as a general partner or co-venturer, or as assignee, agent or authorized representative"
The statute also provides that a certificate of the acknowledgment or other proof of due execution shall be endorsed upon or annexed to the instrument, and filed or recorded with it.

37. Mortgages: Amendments

(May 1, 2000, Revised February 27, 2009)

I. A District may accept for filing, without consultation with the Court, "amended mortgages"; this term includes amendments to particular provisions of the mortgage as well as "amended and restated mortgages."
Ordinarily, "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." If a document is defective so that it fails to transfer title or otherwise accomplish the purpose of the document, it ought not have been accepted for registration in the first place. If the previously registered document contains errors, they should be corrected by a duly executed and registered amendment. If the meaning of a registered document is uncertain or dubious, an S Petition and review by the court, in an appropriate proceeding, may be required to settle the uncertainty.
The court recognizes, however, that the exigencies of the secondary mortgage market sometimes require that a previously registered mortgage be amended and clarified in instances in which the mortgage is otherwise valid and sufficient. In most instances, such an instrument will act to amend the provisions of the earlier registered mortgage and thus will require execution by both the mortgagor and the mortgagee. However, some items requiring change are, in the case of residential mortgages, of such relatively minor significance or routine nature that an amendatory mortgage instrument, duly executed by the mortgagor(s) and current registered owner(s), may be

accepted by the court's Registration Districts without formal execution on behalf of the mortgage holder. Instead, the amendatory mortgage, duly executed on behalf of the mortgagor(s), will be accepted for registration based on the written affirmation by the mortgage holder's counsel that the mortgage holder consents to the changes to the mortgage, and affirms the registration of the amendatory mortgage document, and its notation on the owner's certificate of title.

This method only may be used where the mortgagee's attorney's affirmation states that the property covered by the mortgage contains a one to four family residential building and no other improvements. This method is available only where the changes are limited to one or more of a specific category of changes, and the mortgagee's attorney's affirmation so certifies. Those matters are as follows:

1. Incorrect recitation of the loan amount as set forth in the original promissory note (this does not include any increase or decrease in the amount originally loaned as set forth in the original promissory note);
2. Incorrect maturity date, first payment date or last payment date;
3. Incorrect street address, including zip code;
4. Modifications of the margin or base rate calculations for variable rate loans;
5. The addition of one or more conventional secondary market form(s) of riders to the mortgage, omitted from the mortgage as originally registered, and which have been executed by the mortgagor;
6. Defect in the execution or acknowledgment clause of the original mortgage by the mortgagor (this does not include changes in the identity of the mortgagor(s));
7. Scrivener's errors of a nature that fall within category one of Land Court Guideline 4 entitled "Alteration of Documents"; or
8. Addition of an omitted, or correction of a misstated, mortgage identification number, FHA or VA loan number, or similar lender-required or lender-designated loan or transaction identification number.

In all instances, the amendatory mortgage shall be captioned and identified as amendatory, rather than confirmatory. The districts will continue to deny registration to documents which, in name and substance, are confirmatory mortgage instruments.

The amendatory mortgage will be accepted whether it takes the form of an amendment targeted to a particular change in the original mortgage, or is an amendment and restatement, at length, of the original mortgage. In either case, the amendatory mortgage shall contain a specific reference to the original mortgage by date and document number and shall contain a statement of the terms or provisions that are being amended, so that the registry district may verify compliance with the requirements of this guideline.

The acceptance of an amendatory mortgage pursuant to this guideline will not cause the amendment to operate retroactively to the registration of the original mortgage. No change in the priority of the encumbrances on the memorandum of encumbrances is intended when an amendment is filed pursuant to this guideline. The amendatory document should be noted on the memorandum at the date and time it is registered; a notation referring to the amendment document should be added to the notation of the original mortgage.

Before an amendment without formal execution by the mortgagee is accepted, a fully executed affirmation by lender's counsel in substantially the form attached should be presented.

The affirmation should be registered along with the amendatory document.

With the exception of the aforementioned changes in numbers 1 through 8 above all amendments to mortgages (and similar security instruments) must be executed and acknowledged by both the

mortgagor (or the mortgagor's successor as owner of the land) and the mortgagee (or the mortgagee's successor as holder of the mortgage).
No affirmation by lender's counsel is required when an amendatory mortgage that has been duly executed by the holder of the mortgage is presented for registration. This guideline does not apply in that case.

ATTORNEY'S CERTIFICATE
For Amendatory Mortgages
(One to Four Family Residential)
1. I, _____, am an attorney-at-law duly authorized to practice in the Commonwealth of Massachusetts. My office address is: _____. My BBO number is _____. I certify and affirm as follows:
2. I give this certificate in connection with the registration of a document ("Amendatory Mortgage") dated _____, 20__ executed by _____, owner(s) of the premises at _____ (street address). These premises are improved only with a one to four-family residential building.
3. These premises are the subject of a mortgage ("Original Mortgage") from _____ to _____ dated _____ filed with the _____ Registration District of the Land Court as Document No. _____, noted on Certificate of Title No. _____.
4. I am counsel for _____, ("Current Holder") the current registered holder of the Original Mortgage, by whom I am authorized to make the these certifications and affirmations.
3. The purpose of this Amendatory Mortgage is to amend in the following particulars the Original Mortgage (check all that apply):
1. ____Incorrect recitation of the loan amount as set forth in the original promissory note (this does not include any increase or decrease in the amount originally loaned as set forth in the original promissory note);
2. ____Incorrect maturity date, first payment date or last payment date;
3. ____Incorrect street address, including zip code;
4. ____Modifications of the margin or base rate calculations for variable rate loans;
5. ____The addition of one or more conventional secondary market form(s) of riders to the mortgage, omitted from the mortgage as originally registered, and which have been executed by the mortgagor;
6. ____Defect in the execution or acknowledgment clause of the original mortgage by the mortgagor (this does not include changes in the identity of the mortgagor(s));
7. ____Scrivener's errors of a nature that fall within category one of Land Court Guideline 4 entitled "Alteration of Documents"; or
8. ____Addition of an omitted, or correction of a misstated, mortgage identification number, FHA or VA loan number, or similar lender-required or lender-designated loan or transaction identification number.
There are no other material provisions of the Original Mortgage which are altered or amended by the Amendatory Mortgage. Although the Amendatory Mortgage has not been executed by the Current Holder, as counsel for Current Holder I certify and affirm that the Current Holder consents to and approves the execution and filing for registration of the Amendatory Mortgage in the accompanying form.

Certified and affirmed by the undersigned on _____, 20__.
_____

II. An amended mortgage may also add new land to the land already subject to the mortgage. This is permitted (and such amendments may be accepted by the District without consultation with the Court) provided:
1. the amended mortgage (in some form of words) grants a mortgage of the additional land (it is insufficient merely to amend an exhibit containing the description of the land originally subject to the mortgage); and
2. the amended mortgage is noted on each certificate of title on which the original mortgage was noted and remains outstanding; and
3. the original mortgage is noted on each certificate of title for each additional parcel covered by the amendment (as to these additional parcels not previously subject to the mortgage, the original mortgage and the amendment are both noted and take effect as of the date the amendment is registered).
The notation made by the District on the memoranda of encumbrance when a mortgage amendment adds additional land should indicate which parcel(s) have become subject to the mortgage.
In the case where the original Mortgage covers recorded land only, the amended mortgage must be accompanied by a Land Court Examiner's Report similar in form to that attached hereto noting that the examiner has checked title to the recorded mortgage and the filed report includes certified copies of the original mortgage and any amendments, assignments, or discharges of the same. If there have been amendments or assignments of record, the current record holder(s) of the mortgage must join in the amendment sought to be registered before it can be filed.
This guideline applies as well to amendments of other security instruments, such as conditional or collateral assignments of leases and rents.

LAND COURT TITLE EXAMINER'S REPORT
Regarding the Amendment of a Mortgage that originally affected Recorded Land only
To the Honorable Judges of the Land Court:
Re: Land Court Case No. _____
Mortgage from _____ to _____, dated _____,
Recorded with the _____ Registry of Deeds ("Registry")
on _____, _____, in
Book _____, Page _____ .
I am a member in good standing of the Massachusetts bar and a duly appointed Land Court Title Examiner.
I have examined title from the date of the recording of the above-referenced Mortgage at the Registry, through the close of business on _____. For the time covered by my rundown, I find the Mortgage is not discharged of record, and has been:
1. ____ (a) Assigned to _____, by instrument dated _____ and recorded with _____ Deeds, Book _____, Page _____, a certified copy of which is attached to this Report; or
_____(b) Not assigned of record.
2. _____ (a) Amended by instrument dated _____, and recorded with _____ Deeds, Book _____, Page _____, a certified copy of which is attached to this Report; or

_____ (b) Not amended of record.
CERTIFIED as of _____, _____.
_____
Land Court Title Examiner
Name, Address, Phone, BBO
Number

38. Mortgages: Discharges, Partial Releases and Assignments; Persons Signing
(May 1, 2000, Revised February 27, 2009)

1. G.L. c. 183, § 54B, effective as of October 1, 2006, has a listing of all those persons who can sign discharges, assignments, partial releases, subordination, non-disturbance, recognition and attornment agreements. It eliminates the necessity of votes in most cases when registering discharges, assignments and partial releases of mortgages. It applies to instruments executed prior to or on or after the effective date of the Act. Since the statute refers to persons purporting to hold various offices of an "entity", the statute is not limited to corporations, but includes other entities such as a limited partnership, a limited liability company and a limited liability partnership. The statute reads in pertinent part as follows:

"A deed of release or written acknowledgment of payment or satisfaction of the debt thereby secured, or a release, partial release or assignment of mortgage, or an instrument of subordination, non-disturbance, recognition, or attornment by the holder of a mortgage...executed before a notary public, justice of the peace or other officer entitled by law to acknowledge instruments, whether executed within or without the commonwealth, by a person purporting to hold the position of president, vice president, treasurer, clerk, secretary, cashier, loan representative, principal, investment, mortgage or other officer, agent, asset manager, or other similar office or position, including assistant to any such office or position, of the entity holding record title thereto on behalf of such entity acting in its own capacity or as a general partner or co-venturer of the entity holding record title, shall be binding upon such entity and shall be entitled to be recorded or filed, and no vote of the entity affirming such authority shall be required to permit recording of filing."

2. Assignments and discharges executed by fiduciaries of deceased mortgagees may be accepted for registration if accompanied by a certificate of appointment of fiduciary which is no more than six (6) months old.

3. Regarding ancillary documents, such as conditional assignments of rents, refer to Guideline Number 39, Mortgages: Discharges and Assignments; Collateral Security Documents.

4. An affidavit by a Massachusetts attorney which complies with the requirement of G.L. ch. 183, § 55(g) constitutes a discharge of a mortgage and a release of the lien on the mortgaged premises. All of such affidavits must be approved at the Land Court in Boston before being accepted for registration.

5. There are a great many instances wherein there are minor errors in the names of parties assigning or discharging mortgages. There are cases where Corp. is used rather than Corporation, where Inc. is either omitted or included incorrectly, where N.A. or F.A. is omitted from a bank title.

Minor errors may be corrected on the document when not inconsistent with Guideline Number 4, Alteration of Documents.

In other cases, in the interest of eliminating the need for supplemental petitions and subsequent Court orders to correct the record, the following procedure is now advised:

The persons presenting such assignments or discharges should be instructed to present such instruments to the Land Court in Boston, for approval. They should present: 1.) The face sheet of the original mortgage, and 2.) The assignment or discharge. There should also be presented some proof of the correct name.
The Land Court registration districts should not decline to accept for filing a form of partial release because it does not include the phrase “release to _____ all interest acquired under said mortgage.”

39. Mortgages: Discharges and Assignments; Collateral Security Documents
(May 1, 2000)
If there is noted on a certificate of title a mortgage and a conditional assignment of leases and rents (or similar accompanying financing documents such as an assignment of project documents, assignment of purchase and sale agreements, etc.) which assignment contains no express language evidencing an intent that it not be released upon the discharge of the mortgage, and a discharge of the mortgage is registered containing the words "and the note and claim thereby secured" or "acknowledges satisfaction thereof" or "acknowledges satisfaction of the same" or substantially similar language, you should drop the mortgage and all the ancillary documents when a new certificate is written. If the discharge of the mortgage does not contain a recital or other evidence that the underlying obligation has been satisfied, you must carry forward the assignment of leases and rents and/or other accompanying financing documents.
If an assignment of a mortgage includes the words "assigns said mortgage and the note and claim secured thereby", said assignment will also include the rights of the mortgagee in and to the ancillary financing documents.
You are also referred to Guideline 38, "Mortgages: Discharges, Partial Releases and Assignments; Persons Signing".

40. Mortgages and Assignments: Addresses
(May 1, 2000)
Every mortgage and assignment of mortgage presented for record shall contain or have endorsed on it the residence and post office address of the mortgagee or assignee, if said mortgagee or assignee is a natural person, or a business address of said mortgagee or assignee if not a natural person. G.L.. c. 183, § 6C. The endorsement shall be recorded as part of the mortgage or assignment. However, while failure to comply will not affect the validity of any mortgage or assignment, no Register of Deeds shall accept a mortgage or assignment unless it is in compliance with these requirements.

41. Mortgages: Foreclosures
(May 1, 2000)
The Soldiers’ and Sailors’ Civil Relief Act of 1940 has been affected by Chapter 496 of the Acts of 1990 and by Chapter 142 of the Acts of 1998.
The passage of the above acts has brought about the following changes in our procedure.
1. There is no longer the necessity for bringing an action to establish compliance with the Soldiers’ and Sailors’ Civil Relief Act of 1940, as amended, if the record ownership is held by the following:
a. A corporation - either domestic or foreign.
b. A limited partnership, limited liability partnership or limited liability company - either domestic or foreign.

c. A trust under a written declaration, the beneficial interest under which is divided into transferable certificates of participation or shares - sometimes referred to as a Business Trust.
d. A general partnership or joint venture of which all the general partners appear of record to be one or more of the foregoing types of entities.
In these cases, when the record owner in the certificate of title is one of the above entities and you are presented with the entry, the deed, and the Affidavit of Sale, you should proceed as follows: Check such instruments carefully according to the check list enclosed.
If in proper form then: Register and note such documents on the outstanding certificate(s) of title and issue a new certificate of title based upon the foreclosure deed.
CAVEAT: This only applies to mortgage foreclosures initiated after January 1, 1991. There is no Court involvement. The only review of documents will be made at the registry counter.
2. In all other cases, i.e., record owner is an individual or a trust without transferable shares, etc., registry personnel should proceed as follows:
A judgment by the Court that no person is entitled to the benefits of the Soldiers' and Sailors' Relief Act of 1940, as amended, should be registered and noted before or simultaneously with the acceptance of foreclosure papers.
There will be no Court approval of the documents presented under the new statute. We will rely on the District's careful use of the checklist.
Register and note the documents on the outstanding certificate(s) of title, and then issue a new certificate of title based on the foreclosure deed.
Attached with this memo is the checklist to be used by counter personnel in taking for record foreclosure documents.

CERTIFICATE OF TITLE NO._____
FORECLOSURE OR MORTGAGE UNDER POWER OF SALE in registered Document No. _____ as appearing in Foreclosure Deed and Affidavit, being Document No. _____ to which this sheet is annexed.
_____ 1. Are Grantor and affiant the same party described as mortgagee in original mortgage, or an assignee of said party under assignment or assignments duly registered and endorsed on Certificate of Title No. _____ (being the present outstanding certificate)?
_____2. Is the description in the Foreclosure Deed, the Notice of Sale and the original mortgage the same, or substantially the same, as in said certificate?
_____3. Does the Affidavit allege a default which, so far as appears of record, may under the terms of the original mortgage, then exist, and indicate a sale at public auction to the highest bidder?
_____4. Is the notice printed in a newspaper published or having a general circulation in the town or city where the land lies?
_____5. Is the notice published in accordance with the requirements in the original mortgage?
_____6. Are authority to sell, the Notice of Sale and the Deed subject to the same encumbrances, if any, as stated in the original mortgage? (In answering the question, a statement that the sale is to be made subject to any unpaid taxes and tax title or similar language, may be disregarded.
_____7. Is the place of sale appearing in the notice authorized by the original mortgage, and does the Affidavit show that sale was made at the time and place advertised, at public auction? (If more than one lot covered by said mortgage, does publication state on which lot sale is to take place?)

_____8. Was the first date of publication 21 days before the day of sale, and was the notice published once a week for at least 3 successive weeks?
_____9. Is there a statement to the effect that notice of sale was sent registered mail to the owner or owners of record of the equity of redemption as of thirty days prior to the date of sale to the last address of the owner or owners of the equity of redemption and to any person of record as of thirty days prior to the date of sale holding an interest in the property junior to the mortgage being foreclosed? If there is a statement in the Affidavit that notice was not given to the owner or owners of record of the equity of redemption or to all persons of record as of thirty days prior to the date of sale holding an interest in the property junior to the mortgage, the Affidavit should be accompanied by a waiver from said owner or said persons holding an interest in the property who did not receive notice. The Affidavit should include the following language:
"I also complied with Ch. 244, § 14 of Massachusetts General Laws, as amended, by mailing the required notices certified mail, return receipt requested, with the exception of the Commonwealth of Massachusetts (Department of Revenue) and Aetna Insurance Company whose assents to the sale and waivers of the notice are attached hereto as Appendices B and C respectively."
_____10. If the highest bid has been assigned, the Foreclosure Deed should run to the assignee of the Assignment of Bid. The Affidavit of Sale should include the following language:
"I sold the mortgaged premises at _____ by
_____, an auctioneer, to XYZ Bank (above named) for Fifty Thousand and 00/100 ($50,000.00) Dollars bid by XYZ Bank, being the highest bid made therefor at said auction, which bid was later assigned to John Small, as is evidenced by the Assignment of Bid to be recorded herewith."
An Assignment of Bid should be filed with the Affidavit. Said Assignment of Bid should run from the original high bidder to the assignee.
CHECKED BY _____ DATE _____

42. Mortgage Electronic Registration Systems ("MERS")
(May 1, 2000, Revised February 27, 2009)
MERS is a national electronic registry for tracking servicing rights and beneficial ownership interests in mortgage loans; it also acts as the mortgagee of record and, as such, is the nominee for both the servicer and the beneficial owners of mortgage loans in the public land records. MERS becomes mortgagee of record in one of two ways: the first is by an assignment from a lender or servicer to MERS; the second is by being the mortgagee of record as nominee in the original security instrument when the loan is closed.
In either case the holder of the mortgage on the encumbrance sheet will be listed as Mortgage Electronic Registration System, Inc., without any reference to the institution for which MERS is holding the mortgage, whether or not the original mortgage or any subsequently filed instrument affecting the mortgage makes reference to the party for whose benefit MERS is holding the mortgage.
Registry districts should not (without approval from Boston) accept a mortgage running to MERS which does not contain language substantially the same as the language set forth below. An assignment of a mortgage to MERS does not require similar language.
Language to be included in MERS mortgages
"Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument; but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assign), has the right: to exercise any or all of

those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing or canceling this Security Instrument."

A discharge properly executed by MERS, with or without reference to any party for whose benefit MERS is holding the mortgage, shall be accepted for filing. A discharge executed only by the underlying lender for whose benefit MERS is holding the mortgage shall not be accepted for filing without approval from the court's Chief Title Examiner or order of the court.

43. Orders of Conditions

(May 1, 2000)

The Department of Environmental Protection and the Conservation Commission of a City or Town occasionally will issue a Certificate of Partial Compliance.

Registry personnel must review Certificates of Partial Compliance carefully to determine whether or not the Certificate affects specific lots only. In that case, the Partial Certificate of Compliance should be listed on the encumbrance sheet with the notation as to what lots are affected. A Partial Certificate of Compliance which affects only specific lots should be carried forward onto the Memorandum of Encumbrances when a new Certificate is made up for one of those lots.

If the Partial Certificate of Compliance affects a particular condition or conditions of the original Order, it should be noted on the Memorandum of Encumbrances as a Partial Certificate of Compliance and should be carried forward onto the next Memorandum of Encumbrances for all of the lots affected by the original Order.

An Order of Conditions normally includes conditions which continue beyond completion of the work and issuance of a Certificate of Compliance. Accordingly, Orders of Conditions, Partial Certificates of Compliance, Extensions and Certificates of Compliance should be carried forward onto new Certificates and should not be dropped without an Order of the Court.

44. Purchase and Sale Agreements

(May 1, 2000)

A purchase and sale agreement or any extension of a purchase and sale agreement may be accepted for registration if the agreement or extension is acknowledged by the parties agreeing to sell or one of them.

If it is contended that a registered purchase and sale agreement is no longer in force and effect, whether by operation of G.L. c. 184, § 17A or otherwise, the court should be consulted as to any action necessary to establish that fact of record; provided, that a release executed by the person or persons identified as the buyer in the purchase and sale agreement may, without notice to the court, be accepted for registration.

45. Registered and Recorded Instruments

(May 1, 2000)

After the registration of an instrument which affects both registered and recorded land, before the instrument is presented for recording it should be photocopied by registry personnel at registry expense to enable registration staff to work from the copy until the original document is returned to them after recording. A notation should be made on the original document that the original papers are to be returned to the Registry District after recording. The attorney or the examiner doing the recording should understand that the Registry District will retain the original papers

after filing and if duplicate originals are needed, either certified copies should be requested or duplicate originals must be provided at the time of recording and filing.
This guideline need not be applied when one complete set of duplicate originals are presented by the registrant or in registries where the same staff perform both registration and recording.

46. Sheriff's Deeds
(May 1, 2000)
Sheriff's Deeds are "notation" deeds, that is, they are to be noted on the current certificate of title, and no certificate may issue thereon except by an Order of Court. G.L. c. 185, § 85. A petition to the Court is required (see suggested form following). In cases where the grantee conveys back to the equity owner within the one year redemption period, the equity owner is free to convey under the existing certificate.

THE COMMONWEALTH OF MASSACHUSETTS
LAND COURT
PETITION FOR NEW CERTIFICATE OF TITLE
AFTER SHERIFF SALE
Case No.
Upon the petition of _____
representing that Certificate of Title No. _____ issued by the Registry District of
_____ County stands in the name(s) of _____
_____; and
further representing that petitioner made a special attachment on
_____ by Document No. _____ noted on Certificate of Title No.
_____. A judgment in said action was entered on _____ and by virtue of said execution, the deputy sheriff levied upon and sold all right, title and interest of said
_____ in said Certificate of Title as Document No.
_____; and further representing that the time within which to redeem said premises from the said levy and sale has expired; and praying for a new certificate of title.
Signed under pains and penalties of perjury,
_____

47. Street Address
(May 1, 2000)
G.L. c. 185, § 61A requires...
All documents registered in the Land Court shall, when applicable, set forth in the margin the street address of the property affected by such document; provided, however, that failure to include such address shall not affect the validity of the document or the recording thereof.
You should require that the attorney endorse the street address on the margin of the document. The address provided may be noted on the certificate of title as the "purported" address of the property because municipalities change street names and numbers

48. Tax Takings
(May 1, 2000)
To establish its lien for taxes upon real estate, a city of town must register an instrument of taking or a collector's deed to itself or a private purchaser. Takings have to a large extent replaced collector's deeds.

The Department of Revenue has prescribed the forms cities and town should use when taking or selling land for nonpayment of taxes. All of the information requested by the form for a taking or a collector's deed should be provided.

Instruments of taking and collector's deeds are not valid unless registered within sixty (60) days after the taking or the date of the collector's deed. If a city or town has established the lien by registering an instrument of taking, the municipal treasurer may assign any such tax title by registering the approved form within sixty (60) days of the date of its execution. The form should be complete as to all requested information.

Should any person having an interest in land being sold for nonpayment of taxes pay to the municipal treasurer prior to foreclosure the amount of the corresponding tax title account, a completed instrument of redemption of the approved type is to be registered.

49. Tax Titles: Foreclosure of Tax Titles

(May 1, 2000, Revised February 27, 2009)

To foreclose all rights of redemption on land acquired by sale or taking for taxes, the holder of the tax title to such land must file a complaint in the Land Court. As soon as possible after this filing, the plaintiff must complete and register a notice of filing complaint form; particular care should be taken to inspect this form for the case number and the date of filing.

The name of the equity owner, the date of the tax taking or collector's deed, the document number assigned to such tax taking or deed, and the number of the outstanding certificate of title on which it is noted should all be recited in this form exactly as these are listed on the relevant certificate of title and encumbrance sheet. Once a final judgment in a tax lien case is noted on a particular certificate of title, nothing subsequent may be accepted for registration with respect to that certificate until the Land Court has issued an order canceling the certificate and directing a new one to be prepared. The only exception would be if the Land Court has already issued a vacation of the final judgment.

The holder of title to land found by the Commissioner of Revenue to be of low value may establish such title by filing a complaint in the Land Court, a so-called Chapter 60, Section 80B proceeding. Title to low value land is held through a deed executed by the municipal treasurer and registered within fifteen (15) days after execution if to a purchaser who was the highest bidder at a public auction of the land or within sixty (60) days after sale to a city or town. As with a complaint for foreclosure of rights or redemption, the plaintiff in low value case (Chapter 80B) must complete and register as soon after filing the complaint as possible a notice of filing complaint form. The very same items must be checked on this form as with the equivalent foreclosure form. The only difference is that the low value form has to include the date, document number, and certificate of title number for the treasurer's deed. Upon registration of a final judgment in a low value proceeding no later instrument may be registered with respect to the particular certificate of title until an order issued from the Land Court for cancellation of this certificate.

No deed conveying property acquired by a city or town by tax title foreclosure or through the low value process is valid and acceptable for registration unless it contains a recitation that the municipal board or officer granting the deed has received a particular statement from each grantee. In this statement (the exact language is in G.L. c.60, § 77B), each grantee must swear under the pains and penalties of perjury that neither he nor she nor any other person gaining equity in the property has ever been convicted of arson or fire insurance fraud or is delinquent in the payment of real estate taxes to the grantor city or town.

A recitation by the board or officer that the required statement has been received by the board or officer will suffice; the text of the statement need not be given. If it is given, the statement must be checked carefully against the statute.
An additional statutory requirement for deeds out of cities of town conveying foreclosed tax title or low value land is that they must be registered within fifteen (15) days after execution.
Additional statutory requirements in the case of a sale by a city or town are set forth in Guideline 58.

COMMONWEALTH OF MASSACHUSETTS
LAND COURT
PETITION FOR NEW CERTIFICATE OF TITLE
AFTER LOW VALUE SALE
Case No.
_____ respectfully represents _____,
married to _____, of _____
in the County of _____ and said Commonwealth that he/she is the holder of certain deeds given by the Town of _____ in the County of _____ and said Commonwealth to the petitioner dated _____ and entered as Document No. _____ respectively noted on Certificate of Title No. _____ issued from _____ the sale under which has been duly determined by the Tax Commissioner for the Commonwealth of Massachusetts, to be a sale under the provisions of G.L. (Ter.Ed.) Chapter 60, Section 79, and any amendments thereto: that the original deed for nonpayment of taxes was entered as Document No. _____ respectively, Certificate No. _____.
Wherefore your petitioner prays that said Certificate of Title No. _____ be canceled and a new certificate be issued to him/her as owner pursuant to law.
Subscribed and sworn to before me,
_____

50. Tenancies by the Entirety
(May 1, 2000, Revised February 27, 2009)
Establishing Tenancy by the Entirety
When presented with a deed or other document to be registered which refers to, or establishes or conveys title in or to two individuals "as tenants by the entirety," (or which uses any similar form of words intended to create, establish, or refer to title in those individuals as tenants by the entirety), registration districts of the Land Court should not--as a prerequisite to registration-inquire, conduct investigation or require production of proof in any form concerning the marital status of the two individuals, or their qualification or entitlement to be married to each other. This is so without regard to whether the two individuals are or are not (or appear from their names to be or not be) either of the same sex or of the opposite sex. A document referring to, establishing, or conveying title in or to two individuals may, but to be registered need not, contain words reciting the marriage of the two individuals to each other.
Following registration of a deed or other instrument which conveys title to, or establishes title in, two individuals as tenants by the entirety, if fee ownership of registered land is changed as a result, the new transfer certificate of title should issue in their names, with the recitation on the face of the new transfer certificate that they hold their title as "tenants by the entirety." If fee ownership does not change as a result, the appropriate notation on the memoranda of

encumbrances should be made, again with the recitation that the two individuals hold their title "as tenants by the entirety." The proper form for these recitations and notations on certificates of title is "A and B, as tenants by the entirety" without references such as "husband and wife," "married to each other," or similar language.

The registration of any document running in favor of two individuals "as tenants by the entirety," and the issuance by the districts of, or the making by the districts of notation on, any certificate referring to two individuals as "tenants by the entirety," does not preclude subsequent challenge to their right or ability to hold their title as tenants by the entirety, in an appropriate judicial proceeding brought in the Land Court or other court of competent jurisdiction.

Additional Characteristics of Tenants by the Entirety

Marital status is important only in cases of tenancy by the entirety. Spouses may assign mortgages to each other (See G.L. ch. 209, § 2), may mortgage to one another (G.L. c. 209, § 3) and otherwise may transfer their interest in the property to each other.

The interest of a tenant by the entirety can be mortgaged without the consent of the non debtor spouse. In the event of a foreclosure, the mortgagee acquires the property subject to rights of survivorship of the non debtor spouse. (Coraccio v. Lowell Five Cents Savings Bank, 415 Mass. 145). Accordingly, in such circumstances the foreclosure documents should be noted on the memorandum of encumbrances of the certificate of title in the name of the husband and wife, and no new certificate will issue.

A new tenancy by the entirety was created by Chapter 727 of the Acts of 1979, amending G.L. c. 209, § 1 (effective February 11, 1980). This law does not affect pre-existing tenancies by the entirety. However, under G.L. c. 209, § 1A, tenants by the entirety holding real property under a deed dated prior to February 11, 1980 may elect in a writing identifying the real estate by Book and Page wherein the deed is filed, to have the property treated pursuant to the provisions governing separate and marital property. The election must be executed by the grantees named as tenants by the entirety on the deed and the writing must be duly notarized and filed at the appropriate Registry District . Registry Districts should file and note such election on the Memoranda of Encumbrances of the certificate of title.

Chapter 400 of the Acts of 1989 amended G.L. c. 36 by inserting a new c. 32A as follows:

"Section 32A. Whenever the register, in any communication, document or writing intended for use outside the registry, identifies a husband and wife, he shall use the name of both husband and wife and shall not use a legal phrase as a substitute for either name.

"This will be effective January 10, 1990."

51. Trusts: Conveyances to Trustees

(May 1, 2000, Revised February 27, 2009)

Deeds, mortgages and other instruments that convey title to a trustee or trustees may be accepted for registration only when accompanied by the trust instrument or a certificate pursuant to G.L. c. 184 §35, except:

(a) if the trust instrument or certificate is recorded or filed for registration in another registry district or registration district in the Commonwealth, an attested copy of the trust instrument or certificate may be presented as an alternative to the original trust instrument, together with a certificate by an attorney, or given under oath by the trustee, certifying that the instrument or certificate of which the attested copy is provided is current, in force, and not the subject of any recorded amendment; or

(b) if the trust instrument or certificate is recorded or filed for registration in the same registry district, the filed document (or the recorded land record of it) may be shown as an alternative to the original trust instrument.
The instrument of conveyance must have as grantees, mortgagees or other benefitted parties one or more trustees who are shown of record by the trust instrument or certificate to be trustees of the trust. If necessary, this showing may be made (a) by appropriate filed or recorded appointments and/or resignations of trustees, (b) by filed or recorded amendments to the trust instruments, or (c) by a certificate given by a trustee of record, provided the trust instrument allows reliance on such a certificate and the requirements for reliance set out in the trust instrument have been met, or the certificate is executed in conformance with the provisions of G.L. c. 184 §35.
The provisions of this guideline do not apply to any trust operating under a written instrument or declaration of trust, the beneficial interest under which is divided into transferable certificates of participation or shares.

52. Trusts: Conveyances by Trustees

(May 1, 2000, Revised February 27, 2009)

A. Nominee Trust Conveyances - Trust in Same Registry District

Conveyances by Trustees of a nominee trust are acceptable if
(1) the instrument of conveyance is authorized by the terms of the registered or recorded (previously or simultaneously) trust instrument or certificate given pursuant to G.L. c. 184 §35, and (a) a Trustee's Certificate in substantially the form appended hereto as Exhibit A or Exhibit B is submitted, or (b) the instrument of conveyance itself contains all such matters required to be set forth in a Trustee's Certificate;
or
(2) Land Court approval has been obtained.

B. Nominee Trust Conveyances - Trust in Different Registry District or recorded in Registry of Deeds

Conveyances by Trustees of a nominees trust are acceptable if
(1) the instrument of conveyance is authorized by the terms of the registered or recorded (previously or simultaneously) trust instrument and (a) attested copies of the trust declaration, or of a certificate pursuant to G.L. c. 184 §35, and all amendments thereto and all trustee resignations and appointments are submitted (as established by a certificate by an attorney, or given under oath by the trustee, certifying that the instrument or certificate of which the attested copy is provided is current, in force, and not the subject of any recorded amendment), and (b)(i) a Trustee's Certificate in substantially the form attached hereto as Exhibit A or Exhibit B is submitted, or (ii) the instrument of conveyance itself contains all such matters required to be set forth in a Trustee's Certificate, and with respect to a Trust for which only a Certificate pursuant to G.L. c. 184 §35 has been recorded, it is subscribed and sworn to under the pains and penalties of perjury
or
(2) Land Court approval has been obtained (this requires the fully executed instrument and a Land Court Examiners Report on the contents and status of the trust).
CAVEAT: Certificates pursuant to G.L. c 184 § 35, once recorded or registered in connection with, and establishing authority for, a particular transaction, may not be used for subsequent transactions at a later date unless: (a) the earlier certificate establishes that the termination of the trust has not occurred as of the date of the later transaction, or (b) the earlier certificate provides

that any party interested in title to the locus may rely on the continuing existence of the trust until the recording of a certificate or document establishing the termination of the trust.

CAVEAT: A trustee certificate as contained in attached Exhibit A cannot be used alone to demonstrate authority of a trustee to convey, in cases where the trust instrument is not of record and a certificate pursuant to G.L. c. 184, § 35 instead has been recorded or registered, unless the recorded or registered G.L. c. 184, § 35 certificate authorizes any party interested in title to the locus to rely on such a trustee certificate.

C. Trust Conveyances Other Than Nominee Trusts- Trust in Same Registry District

Trust conveyances are acceptable if the instrument is authorized by the terms of the trust.
In these cases no separate Trustee's Certificate is required.

D. Trust Conveyances Other Than Nominee Trusts- Trust in Different Registry District or recorded in Registry of Deeds

Trust conveyances are acceptable if

(1) the instrument of conveyance is authorized by the terms of the trust and (a) attested copies of the trust declaration (or, instead, provided the trust is not a testamentary one, of a recorded or registered certificate pursuant to G.L. c. 184, §35) and all amendments thereto and all trustee resignations and appointments are submitted (as established by a certificate by an attorney, or given under oath by the trustee, certifying that the instrument or certificate of which the attested copy is provided is current, in force, and not the subject of any recorded amendment) and (b)(i) a Trustee's Certificate in substantially the form attached hereto as Exhibit C is submitted, or (ii) the instrument itself contains all such matters required to be set forth in a Trustee's Certificate

or

(2) Land Court approval has been obtained (this requires the fully executed instrument and a Land Court Examiners Report on the contents and status of the trust).

EXHIBIT A

Form of Trustee Certificate for Nominee Trust

[NAME OF TRUST]

TRUSTEE CERTIFICATE

The undersigned hereby certifies as follows:

1. _____ [is/are all of the] Trustee(s) of _____ u/d/t dated and recorded with the _____ [County] District Registry of Deeds [Land Court Registration District] at Book , Page , [or registered as Document Number _____ as noted on [Transfer] Certificate of Title No. ___], as amended by_____ , dated and recorded with the _____ County District Registry of Deeds [Land Court Records] at Book , Page , [or registered as Document Number _____ as noted on [Transfer] Certificate of Title No.] "Trust".

2. The trust is in full force and effect and has not been amended or modified, except as provided above, and has not been revoked as of the date hereof.

3. The undersigned has [have] full power and authority and has [have] been directed by the beneficiaries of the Trust to enter into a sale/purchase/mortgage loan transaction with respect to certain premises situated at ____ , County, Massachusetts ("Premises"), and in connection therewith to execute and deliver , on behalf of the Trust, any and all documents with respect to said transaction, including, but not limited to, a deed by the undersigned conveying the Premises to_____ in full consideration of the sum of $_____ [a promissory note of the undersigned in the amount of $_____ payable to , and as security therefor, a mortgage of the Premises to said lender], together with any other agreements, assignments,

certificates, affidavits, settlement statements and documents as may be necessary or desirable in effectuating said transaction.
Executed as a sealed instrument this _____day of _____ , 20__.

_____
Trustee and not individually

EXHIBIT B
Form of Certificate where Certificate of Trust has been filed

TRUSTEES' CERTIFICATE

PURSUANT TO G. L. C. 184, §35
NAME OF TRUST
DATED
I, **NAME OF TRUSTEE**, Trustee of **NAME OF TRUST** under **INDENTURE/AGREEMENT/DECLARATION** of Trust dated **DATE**, recorded with the _____ County District Registry of Deeds [Land Court Records] at Book ___, Page ___, [or registered as Document Number _____ as noted on [Transfer] Certificate of Title No.], as amended by , dated and recorded with the _____ County District Registry of Deeds [Land Registration District] at Book , Page , [or registered as Document Number _____ as noted on [Transfer] Certificate of Title No.] (the "Trust"), certify as follows:
1. [**NAME OF TRUSTEE(S)] IS/ARE** the current trustee(s) of the Trust. The trust is in full force and effect and has not been amended or modified, except as provided above, and has not been revoked as of the date hereof.
2. The undersigned has [have] full power and authority [**Insert where Trust is a Nominee Trust:** and has [have] been directed by the beneficiaries of the Trust] to enter into a sale/purchase/mortgage loan transaction with respect to certain premises situated at_____ , _____County, Massachusetts ("Premises"), and in connection therewith to execute and deliver, on behalf of the Trust, any and all documents with respect to said transaction, including, but not limited to, a deed by the undersigned conveying the Premises to _____ in full consideration of the sum of $_____ [a promissory note of the undersigned in the amount of $_____ payable to , and as security therefor, a mortgage of the Premises to said lender], together with any other agreements, assignments, certificates, affidavits, settlement statements and documents as may be necessary or desirable in effectuating said transaction; and
3. There are no facts which constitute conditions precedent to acts by the trustees or which are in any other manner germane to affairs of the Trust.
[NOTE: for the Certificate to be used for future transactions, there should be added to the above format more general provisions, and either a specific expiration date or formula, or an explicit statement that all interested in title may rely on the continuing existence of the Trust until a further certificate is recorded or registered establishing the expiration or termination of the Trust. There should be added to the above, if the trust so provides, a provision that one may, in the future, rely on a Certificate as set forth in Exhibit A to establish the facts set forth therein.]
EXECUTED, as a sealed instrument on _____, 20__.

_____
NAME OF TRUSTEE, Trustee
7.COMMONWEALTH OF MASSACHUSETTS

_____, ss. _____, 20__
Sworn to under the pains and penalties of perjury by the above-named **TRUSTEE**, as Trustee, before me,

_____
Notary Public
My commission expires:

EXHIBIT C
Form of Trustee Certificate for Trusts Other than Nominee Trusts
[NAME OF TRUST]
TRUSTEE CERTIFICATE
The undersigned hereby certifies as follows:
1. _____ [is/are all of the] Trustee(s) of _____ u/d/t dated and recorded with the _____ County District Registry of Deeds [Land Court Records] at Book , Page , [or registered as Document Number _____ as noted on [Transfer] Certificate of Title No.], as amended by , dated and recorded with the _____ County District Registry of Deeds [Land Court Records] at Book , Page , [or registered as Document Number _____ as noted on [Transfer] Certificate of Title No.] "Trust".
2. The trust is in full force and effect and has not been amended or modified, except as provided above, and has not been revoked as of the date hereof.
Executed as a sealed instrument under the pains and penalties of perjury this ___ day of _____ , 20__.

_____
Trustee and not individually

53. Trusts: Trustee's Deed for Nominal Consideration
(May 1, 2000, Revised February 27, 2009)
A trustee's deed containing a recitation of nominal consideration may be accepted for registration without prior Land Court approval when accompanied by a trustee's certificate, if authorized by the trust, or a certificate pursuant to G.L. c. 184 §35, signed by at least one of the trustees, certifying that all the beneficiaries who are natural persons are of full age and are competent and that all of the beneficiaries have assented to the conveyance for nominal consideration (See the attached sample certificate.)
The requirements of this guideline address only the issue of a deed reciting nominal consideration; the requirements of other guidelines relating generally to instruments executed by trustees also must be satisfied.
I, _____ Trustee of_____ under a Declaration of Trust dated_____ and registered as_____ hereby certify that:
1. Said Trust is in full force and effect.
2. All the beneficiaries of said trust who are natural persons, if any, are of full age.
3. All the beneficiaries of said trust who are natural persons, if any, are competent.
4. All the beneficiaries of said trust have consented to the transfer of the property to_____ for nominal consideration.
Signed under the penalties of perjury.

Signed:_____
Dated:_____
[Add Oath]

54. UCC Financing Statements
(May 1, 2000, Revised February 27, 2009)
Pursuant to G.L. c. 106, § 9-502, UCC financing statements filed against registered land should indicate that the financing statement is to be filed in the Registration District. Statements should contain a description of the real estate including a lot number on a Land Court Plan and the current certificate of title, and, if the debtor is not also the owner, must show the name of the registered owner(s) as set forth in the certificate of title. The UCC financing statement must describe the collateral and also show the names of both the debtor and secured party or its representative. The statement need not be signed by the secured party. If the statement is filed simultaneously with related loan documents (such as a mortgage, assignment of leases, or similar documents) as part of the same transaction, and those related documents have been signed by the debtor listed on the proffered UCC financing statement, it need not be signed by the debtor. If the UCC financing statement is unsigned by the debtor and filed unaccompanied by other loan documents, it will be filed by the district, and noted on the certificate of title with the marginal notation on the memorandum of encumbrances: "Unsigned, no proof of authorization supplied." This marginal notation may be removed (or dispensed with in the first instance) by obtaining approval from the court's Chief Title Examiner or an order of the court, upon presentation of satisfactory evidence that the filing of the UCC Statement was duly authorized by the debtor.
G.L. ch. 106, § 9-521, sets forth the form of an initial financing statement in a form, and containing the information required, to be acceptable for filing.
G.L ch. 106, § 9-512 provides that all ancillary documents such as assignments, continuation statements, terminations, etc., subsequent to the original financing statement must refer to the document number of the original. Such ancillary documents need not be signed by the secured party or by the debtor. If an assignment or termination statement is filed simultaneously with related documents (such as an assignment or discharge of a mortgage or assignment of leases and rents) as part of the same transaction, and those related documents have been signed by the secured party listed on the proffered UCC assignment or termination statement, it need not be signed by the secured party. If the UCC assignment or termination statement is unsigned by the secured party and filed unaccompanied by other assignment or discharge documents, it will be filed by the district, and noted on the certificate of title with the marginal notation on the memorandum of encumbrances: "Unsigned, no proof of authorization supplied," and the certificate of title (and any subsequent certificates which issue upon it) will continue to carry the notation of the unassigned or unterminated UCC financing statement, indicated as being affected by the subsequent assignment or termination statement, which in turn will be noted as not having been signed by the secured party. An assignment or termination statement unsigned by the secured party and unaccompanied by the filing of other assignment or discharge documents may be noted without caveat or qualification (and any such caveat or qualification may be removed from a certificate) by obtaining approval from the court's Chief Title Examiner or an order of the court, upon presentation of satisfactory evidence that the filing of the assignment or termination statement was duly authorized by the secured party.
Sections 9-502 and 9-515 of chapter 106 provide that if a financing statement is filed as part of a mortgage it is unnecessary during the life of the mortgage to file continuation statements for the financing statement. All other financing statements are effective for five years from the date of

filing only, unless a continuation statement is filed within six months prior to the expiration of said five year term.

55. Approval by the Chief Title Examiner
(Added February 27, 2009)
In many instances, including many set forth in these Guidelines, the prior approval of the Land Court's Chief Title Examiner or his or her designee, or an order of the court, will be required before a given document may be accepted by the court's Land Registration Districts. Listed below are a number, though by no means all, of the types of documents which require prior court approval, and the particulars of the submissions that ought to be made to the Chief Title Examiner to solicit approval.
ITEMS TO BE SUBMITTED IN CONNECTION WITH ALL APPROVAL REQUESTS:
An attested copy of the outstanding certificate of title, or a copy of the last prepared certificate and an attested copy of the deed into the current record owner should accompany all documents which are presented for approval. In all instances any applicable appeal period must have passed.
PARTICULAR TYPES OF DOCUMENTS REQUIRING APPROVAL FOR REGISTRATION:
1. ***FIDUCIARY DEEDS***: Executors, Administrators, Guardians, Conservators
A **SALE UNDER DECREE OF PROBATE COURT**
1. Decree of Sale will be issued by the Probate Court within one year of the death of the testator (G. L. Chapter 202, Section 19), or upon application of Guardian or Conservator.
Attorney should present to the Land Court:
1. Decree of Sale;
2. Attested copy of the Owner's Certificate of Title;
3. The fully executed deed;
4. Attested copy of the Probate and Family Court docket sheet.
The Grantor Clause should state as follows:
I, Executor/Administrator/Guardian/Conservator of the Estate of _____ holder of a decree of the Probate Court of _____ County, dated _____, by power conferred by said decree.
(The deed must conform in all respects to the decree.)
B **EXECUTOR'S DEED UNDER POWER OF SALE IN THE WILL**
Attorney should present to the Land Court:
1. An attested Probate Court copy of the will; (to use this method, the power of sale in the will must be unequivocal.)
2. An attested Probate copy of the Executor's Appointment;
3. The attested copy of the Owner's Certificate of Title;
4. The fully executed deed;
(The grantor clause should clearly state that the Executor is selling pursuant to the power conferred by the will of the deceased owner.)
5. Attested copy of the Probate and Family Court docket sheet.
C **OTHER PROBATE DECREES**
1. Any deed executed pursuant to an order of the Probate Court (Special Master, Estate Plan, etc.) must be approved at Land Court before registration.
2. An attested copy of the Order authorizing the sale or the allowed motion should accompany the deed;
3. Attested copy of the Probate and Family Court docket sheet.
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NOTE: For a more detailed treatment of Fiduciary Deeds see Land Court Guideline 14;
Death: The effect of death upon registered land titles.

2. ***BANKRUPTCY INSTRUMENTS***

All instruments executed by a Trustee in Bankruptcy or a debtor in possession must be approved by the Land Court.

A **BANKRUPTCY CODE TRANSFERS**

Attorney should present to the Land Court:

1. Attested copy of the Owner's Certificate of Title;
2. Fully executed instrument for approval; and

a. Certified copy of Bankruptcy Court Order approving sale pursuant to Notice of Intended Sale and Motion To Approve Sale (all such pleadings shall conform to all applicable local rules);

b. Bankruptcy Court Clerk's Certificate or a report by a Land Court Title Examiner that an examination of the docket in the case indicates the following:

i. the case was commenced by the filing of a petition;

ii. the appointment of a trustee, if the conveyance is by a trustee;

iii. that on a particular date, the trustee, debtor or debtor-in-possession filed a Notice of Intended Sale and Motion To Approve Sale (all such pleadings shall conform to all applicable local rules);

iv. that notice was given to all parties in interest and a Certificate of Service has been filed with the Bankruptcy Court;

v. that no objections to the sale were filed and that no hearing was requested.

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NOTE: An attested copy of the docket may be provided if it conclusively establishes i - v, however, in cases where order includes a provision trust sale is free and clear of all liens, an affidavit of service showing parties notified must accompany docket.

B **MOTION TO AVOID JUDICIAL LIEN**

Attorney should present to the Land Court:

1. Certified copy of motion which includes certificate of service;
2. Certified copy of order in debtors motion;
3. Copy of certificate of title which shows liens specified; and
4. Copy of docket showing there was no appeal.

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NOTE: If affidavit and docket not provided, motion will be approved but both motion and lien(s) will be carried forward on new certificate of title.

3. ***PENSION FUNDS*** (as mortgagee)

Attorney should present to the Land Court:

1. Original document or a certified copy of same;
2. A copy will be retained here by the Court and from that point on we will approve documents if Trustee files a certificate attesting:

a. A true and attested copy of this fund is on file with the Land Court in Boston;

b. There have been no changes in said instrument since the date of filing with the Court;

c. Or the attorney may produce the original document each time approval is necessary;

3. If the Pension Fund is a trust, a trust certificate pursuant to G.L. ch. 184, §35 may be used instead.

4. ***EXCEPTION DEEDS AS PERMITTED PURSUANT TO GUIDELINE 18***

5. ***PARTITION BY SALE INVOLVING REGISTERED LAND***

A commissioner having a warrant for sale in a partition proceeding must comply with the warrant. The transaction must subsequently be approved by the court that issued the warrant.

Attorney should present to the Land Court:

1. Executed deed, copy of certificate of title and copy of registered notice of partition;
2. A commissioner's deed of registered land must be approved by the Chief Title Examiner or his designee before registration and will contain the caveat that "it derives from a partition G.L. ch. 185, §92." This notation will appear on the new certificate of title and will be carried forward from certificate to certificate until someone files as petition to remove it; and
3. The S-petition shall provide evidence that the warrant was returned and the transaction approved by the issuing court.

6. ***SUCCESSOR TRUSTEES/REMOVAL OF TRUSTEES***

1. In all instances involving a nominee trust and in other cases upon referral from a Registry District, the appointment and acceptance of successor trustees, removal of trustee or any other action by the beneficiaries shall be approved by the Chief Title Examiner prior to registration.
2. In cases involving a nominee trust, where the trust calls for the beneficiaries to appoint a successor, evidence of the identity of the beneficiary will be required along with the certificate of appointment.
3. In cases where the trust allows for a certificate by a trustee to be registered to evidence a change of trustees, the court will determine who is eligible to execute said certificate.
4. Death certificates and acceptances of trustees are required to be registered along with any appointment or certificate.
5. In cases where there is a surviving trustee of record, a certificate pursuant to G.L. ch. 184, §35 may be substituted for the above procedures, along with the appropriate collateral documents.

56. Bank Mergers

(Added February 27, 2009)

Pursuant to G.L. ch. 183 § 55(i) a mortgage discharge, assignment or partial release may be accepted for registration if there is contained in the document a recitation as to any merger, consolidation, amendment, conversion or acquisition of assets causing a change in name or identity of the entity executing the document without further documentation. Such a recitation does not and cannot cure a situation involving an unregistered assignment.

The use of the phrase "formerly known as" shall be interpreted as a name change unless there is reason to believe it is being used for another purpose. The registry districts will contact the Chief Title Examiner or his or her designee whenever a question regarding this phrase arises.

If there is no recital in the document, or the document is not covered by the statute, as an alternative method of proving the succession of bank interests, a certificate of a Massachusetts attorney may be submitted to and approved by the Chief Title Examiner or his or her designee. The certificate should identify the registered documents and/or certificate(s) of title to be affected by the proffered new documents, the names and identities of the lender entities involved, the complete line of merger, acquisition and changes of name to show an unbroken line connecting the record title holder to the party to the proffered instrument.

The Court recognizes the increasing availability of reliable, verifiable information that may be obtained on the Internet and in particular the information that may be obtained with respect to bank mergers, acquisitions and changes of names that may be available on the FDIC Institution Directory currently located at http://www3.fdic.gov/idasp/main.asp, the National Credit Union Association, http://www.ncua.gov, and the Office of the Comptroller of the Currency, http://www.occ.treas.gov. A certification by a member in good standing of the bar of Massachusetts which sufficiently sets forth a chain of succession of a bank and/or name change(s), and which has attached to it copies printed currently from the web site of the governing regulatory body for such institution may be submitted to the Chief Title Examiner or his or her designee, and, if approved, may be registered and filed with the Registry District with the proffered document, in the same manner and with the same effect as a Certificate from the Comptroller of the Currency.

57. Condominiums: Approval of Condominium Documents

(Added February 27, 2009)

1. Introduction

When is Land Court Approval Required? Prior to filing in the Registry Districts, the Land Court must approve a master deed, and related instruments and plans, creating a condominium where all or any part of the land being submitted to G. L. c. 183A is registered land. Amendments to master deeds and the related instruments and plans also require prior approval by the Court in Boston. No original or amended master deed or related condominium instrument or plan should be registered by the registry district of the Court unless the master deed or master deed amendment has been approved. Approval is indicated by the dated signature of a Justice of the Land Court on the first page of the master deed and master deed amendment. Subsequent pages of the master deed and master deed amendment ordinarily bear the initials of the Justice who approved the document. Neither the condominium trust instrument or by-laws, nor amendments to them, require a Justice's signature to be registered.

This Guideline describes the documents that must be submitted for approval or as part of the approval process. Any document submitted for final approval pursuant to this guideline must be fully executed before the Court will review it formally and grant approval. It is possible, however, to obtain preliminary staff review of near-final draft condominium documents which have not been fully executed.

For approval requirements in cases where the condominium is to be withdrawn from registration, please see Section 7 herein.

Extent of Review. The Court reviews these documents for compliance with the elemental statutory requirements discussed below 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 and, therefore, any approval granted by the Court simply means that the master deed satisfies the minimum statutory requirements of Chap. 183A and that, upon filing for registration, such master deed will create a validly formed condominium under G. L. c.183A.

Limited Nature of the Court's Approval. Approval does *not* mean that the court considers any other provisions contained in the documents to be lawful or enforceable, in whole or in part. The court does not address in its review and approval, by way of a few examples only, any provisions having to do with rights and procedures regarding phasing or other retained developer rights and interests; the governance and finances of the condominium and the rights of unit

owners among themselves; the rights and remedies of a declarant or the organization of unit owners; the computation, assessment, or enforcement of liens or charges, including common expense charges; any rights, rules or regulations governing the use of units or common elements; etc. If a master deed purports to establish rights and procedures concerning future phases or development of the site, the court's approval does not address those issues, which will be considered by the court only in the context of a later presented master deed amendment addressing the phasing or further development, and which may at that time be disapproved notwithstanding that the amendment is consistent with a procedure laid out in the original master deed.

Likewise, the Court's approval of a master deed does not constitute an approval of any plan filed with such master deed nor does it mean that the filing of any such plan constitutes an amendment or modification of a prior registered plan issued or approved by the Land Court. Nothing done by the Court in the approval of condominium documents for registration alters, amends, or controls the duly approved Land Court Plans which the Court has issued with respect to the property on which the condominium exists.

Approval does not mean that the Court has determined that either the declarant or any other signatory has the requisite title or authority to submit the land to Chap. 183A or that the condominium complies with, and does not violate, any restrictions or other encumbrances contained or referenced in the certificate of title or in the back title of the land being submitted to Chap. 183A. Notwithstanding the Court's approval of a condominium document pursuant to this Guideline, determinations regarding the title and authority of the declarant or other parties to execute condominium documents will be made at the local registration office, not by the Court in Boston, in the same manner as determinations of proper title and authority are made for any conveyance of an interest in registered land.

2. Instruments to be Submitted to Court for Review.

The Land Court will only approve fully executed documents, but either executed or near final unexecuted documents may be submitted initially to obtain preliminary staff comment regarding issues which may preclude formal approval. Counsel are urged to revise documents in response to staff comment prior to their presentation to a Justice of the Court for formal review.

Counsel are reminded that review and approval of condominium documents by the Court may require time, particularly if revisions are indicated before approval can be sought formally and obtained, and that submissions to the Court should be made sufficiently in advance to accommodate closing dates.

The following are required:

A. Master Deed.

B. Condominium 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.

Must be executed.

C. Certificate of Title.

A copy of the owner/declarant's certificate of title, with the full memorandum of encumbrances, must be provided to the Land Court for review. The certificate must be current within thirty (30) days of the day it is provided to the Land Court, and must be known to be up-to-date by the person providing it, to the best of his or her knowledge. If the owner(s) of the land being submitted to Chap. 183A has only recently acquired the property and no new certificate has yet

been prepared, a copy of the cancelled certificate of the prior owner and a copy of the deed into the current owner is required.

D. Site Plan.

A site plan prepared, signed and sealed by a professional land surveyor must be submitted whenever the condominium is to include any easements or limited or exclusive common areas outside of a building of the condominium property. (The Land Court recommends that site plans be submitted for all condominiums, but site plans are only required when the condominium is to include any easements or limited or exclusive common areas outside of a condominium building.) It is recommended that, in addition, a copy of any Land Court plan upon which the site plan is based also be submitted as part of this process. (Any variation between the submitted site plan and said Land Court plan should be shown on the site plan.)

E. Floor Plans.

A set of floor plans for each building of the condominium fully and accurately depicting the layout, location, unit number and dimensions of the units, as built at the time of the master deed, must be submitted for approval of the master deed or amendment. The floor plans also must state the name of the building or that it has no name, and must bear the verified statement of a registered architect, registered professional engineer, or registered land surveyor, certifying that such plans fully and accurately depict the layout, location, unit number and dimensions of the units as built, all as provided by G. L. c. 183A, § 8(f).

3. Master Deed Requirements.

The scope and effect of the Land Court's approval of a master deed is limited, as explained above. In accordance with G. L. c. 183A, § 8 each master deed must contain the following:

(a) A statement to the effect that the owner or lessee proposes to create a condominium to be governed by G. L. c. 183A, as required by G. L. c. 183A, § 2.

(b) A description of the land on which the building or buildings and improvements are located. Said description must include a reference to a lot or lots on current
Land Court approved plan or plans, and a reference to current valid certificate or certificates of title.

(c) A description of each building stating:

1. the number of stories,
2. the number of units if there is more than one; and
3. the principal materials of which it is constructed.

(d) The unit designation of each unit, and a statement of its

1. location;
2. approximate area;
3. number of rooms;
4. immediate common area to which it has access; and
5. any other data necessary for its proper identification.

(e) A description of the common areas and facilities and the proportionate interest of each unit in the common areas and facilities.

(f) A set of the floor plans of the building or buildings (discussed more fully below).

(g) A statement of the purposes for which the building and each of the units are intended and the restrictions, if any, as to their use.

(h) The method by which the master deed may be amended.

(i) The name and mailing address of the corporation, trust or association which has been formed and through which the unit owners will manage and regulate the condominium, together with a

statement that such corporation, trust or association has enacted by-laws pursuant to G. L. c. 183A.
If a trust or unincorporated association is named, the master deed also shall set forth the names of the trustees or managing board.
(j) The name of the lessor of each lease that is submitted to the provisions of G. L. c. 183A and the recording data for each such lease or notice thereof. (G. L. c. 183A, § 8A contains additional requirements for a leasehold condominium that also must be satisfied if a leasehold condominium is comprised in part or in whole of registered land. In addition, pursuant to G. L. c. 183A, § 9(a), if the condominium relates to a lease which has been submitted to Chapter 183A, the name of the condominium must contain the word “Lease” or “Leasehold.”)
Notwithstanding the foregoing, if the proposed condominium constitutes a "commercial condominium" under G. L. c. 183A, § 21, then the master deed need not contain a statement of the number of rooms in any unit designed for purposes other than dwelling and may contain such other provisions as are set out in said Section 21. However, the Court still requires a site plan where it would otherwise be required of a non-commercial condominium.
4. Requirements for By-Laws.
The Land Court’s approval of condominium by-laws is limited to verifying that the by-laws match the referencing information in the Master Deed pursuant to G. L. c. 183A, § 8(i). The Court does not check to determine whether the statutory requirements for by-laws contained in G. L. c. 183A, §§ 10 and 11 have been satisfied, because those provisions do not go to title. It is the responsibility of counsel for the declarant to ensure that the by-laws comply with all provisions of G. L. c. 183A, including, for example, §§ 10 and 11. Accordingly, any approval granted by the Court simply means that the Master Deed satisfies the minimum statutory requirements of Chap. 183A and that the references in the Master Deed to the by-laws match up. The Court does not review or pass on rules and regulations.
5. Site Plan Requirements**.**
The site plan must contain and show the following (although not necessarily in the order stated):
(a) Plan Title containing:
1. condominium name;
2. phase designation (if any);
3. locality;
4. surveyor's: name; full business address and telephone number; date; and
5. Land Court plan and lot number**(s)**;
(b) All Buildings, indicating:
1. complete exterior dimensions to the nearest 0.1' or 1”;
2. distance to lot or phase lines to the nearest 0.1' or 1”;
3. unit designations; and
4. number of stories;
(c) Exclusive or Limited Use Easements
1. located accurately on the parcel, in a clear and certain measured location on the lot, and fully dimensioned to the nearest 0.1 or 1”.
(d) North Arrow
(e) Scale
(f) "As-Built" Certification:
"I certify that this plan fully and accurately depicts the location and dimensions of the buildings as built and fully lists the units contained therein, and further fully and accurately depicts,

locates, and provides the dimensions of all limited or exclusive use common areas and facilities of the condominium outside of any building."
1. signed and sealed by a professional land surveyor;
2. dated.
6. Floor Plans.
A set of floor plans must be filed with a master deed. The floor plans must:
(a) show the
1. layout,
2. location,
3. unit numbers, and
4. dimensions of the units to the nearest 0.1 foot or inch,
5. individual rooms (need not be dimensioned)(non-habitable spaces need not be shown separately).
(b) state the name of the building or that it has no name; and
(c) bear the verified statement of a registered architect, registered professional engineer, or registered land surveyor, certifying that the plans fully and accurately depict the layout, location, unit number and dimensions of the units as built. This "As-Built" Certification, required by G. L. c. 183A, § 8(f), 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. It should provide:
"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."
7. Withdrawal From Registration.
In some instances, the owner of registered land on which a condominium is proposed may seek to have the land withdrawn from the provisions of the Registration Act, G.L. c. 185. The owner's ability to withdraw, and the procedure to be followed, depends on the basis for withdrawal which the owner is able to demonstrate in a particular case.
If only a portion of the land being submitted to condominium status under G.L. Chap. 183A is registered land, the owner of the land being submitted to Chap. 183A need not seek Land Court approval of the master deed and related documents *if*, pursuant to G. L. c. 183A, § 16, the owner: (a) has recorded a master deed covering the whole of the land (including the registered land) in the appropriate registry of deeds, on the recorded side of the Registry; and (b) thereafter files a complaint to withdraw the registered land from the provisions of G. L. c. 185 pursuant to the provisions of G. L. c. 183A, § 16.
If all of the land being submitted to Chap. 183A is registered land, its owner may elect to withdraw the land from the provisions of Chap. 185 by employing the provisions of G.L. c. 185, § 52, by filing a complaint for withdrawal under that statutory section. In this case, the owner must seek, a basic review of the master deed which is far more limited than the review that would be required absent a complaint for withdrawal from the registration system. This review will be limited to examination of the master deed and condominium floor plans to ensure they satisfy the statutory requirements of G. L. c. 183A, §8. A site plan need not be submitted. If the master deed passes that basic review, the court then also may approve the complaint for withdrawal of the land from registration. The owner will file the master deed with the appropriate land registration office simultaneously with the court's approval of the request to withdraw the land from registration removing the land from the operation of the Torrens system. In these cases, the Court's approval of the master deed after this limited review is provisional,

conditioned on the condominium land being removed from G. L. c. 185, pursuant to the provisions of G. L. c. 185, § 52, no later than the time the master deed goes to record.
Owners of registered land who wish to consider the removal of land from the registration system in connection with the establishment of a condominium are urged to contact the court's title examination staff for helpful guidance, information, and forms.
Please see Guidelines 63 & 64 for a more detailed description of the requirements for withdrawing a condominium from registration.

58. Conveyances by Cities and Towns
(Added February 27, 2009)
The grant of easement or a deed from a city or town should be accompanied by a municipal clerk's certificate which recites and/or gives evidence of the authority by which the grant or deed is being made. Doubtful questions should be referred to the Chief Title Examiner for approval.
G.L. c. 44, § 63A provides that whenever a city or town sells any real estate, the board or officer executing the deed shall, as a condition precedent to the power to deliver the deed, receive from the grantee a payment in lieu of real estate taxes. The statute also provides that a recitation in the deed of full compliance with the provisions of the statute shall be conclusive evidence of such fact. Therefore every deed from a city or town should contain such a recitation.
Any deed from a city or town not containing such a recitation must be approved by the Court or the Chief Title Examiner or his or her designee.

59. Indefinite References
(Added February 27, 2009)
The provisions of G. L. c.184, §25, the "indefinite reference" statute, protect titles from being or becoming subject to various types of interests which are not set forth in recorded or registered instruments.
But this statute, by its terms, does "not apply to a reference to an instrument in a notice or statement permitted by law to be recorded instead of such instrument." For this reason, Registry Districts should not treat as indefinite references, and should not on that ground refuse to accept, documents which are notices or statements permitted by law to be recorded instead of, or in the place of, another instrument. Examples of these notices or statements include notices of lease, notices of assignment of leases, and notices of contract and of substantial completion under the mechanic's lien statutes.
The indefinite reference statute also does not apply to a reference to the secured obligation in a mortgage or other instrument appearing of record to be given as security. It is permissible to refer--in a mortgage, collateral assignment of leases and rents, or similar registered instrument--to a promissory note, security agreement, construction agreement, construction loan agreement, option agreement, purchase and sale agreement, or similar agreement for which the mortgage or other registered document is given as security, even though the agreement referred to is not registered with the mortgage.
As to the provisions of the indefinite reference statute that deal with a conveyance to a party as trustee where there is no recorded trust instrument, see Land Court Guideline No. 51, Trusts: Conveyances to Trustees.

60. Mortgages Affecting Appurtenant Easements
(Added February 27, 2009)

When a Certificate of Title includes on its face an appurtenant easement for the benefit of the registered land described in the Certificate, 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 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.

61. Mortgages: Discharge Notations for Expired Mortgages (G. L. ch. 260, § 33)
(Added February 27, 2009)
Any mortgage of registered land which does not set out any term or maturity date of the obligation secured, expires 35 years after the date of registration of the mortgage. Any mortgage of registered land in which a term or maturity date for the secured obligation is stated, expires 5 years after the stated term or maturity date.
However, in either case, if there has been registered an extension, acknowledgment or affidavit that the mortgage has not been satisfied, the period shall continue until 5 years shall have elapsed during which there is not registered any further extension of the mortgage, or acknowledgment or affidavit that the mortgage is not satisfied.
Pursuant to M.G. L. c. 260, § 33:
Upon the expiration of the period provided herein, the mortgage shall be considered discharged for all purposes without the necessity of further action by the owner of the equity of redemption or any other persons having an interest in the mortgaged property and, in the case of registered land, upon the payment of the fee for the recording of a discharge, the mortgage shall be marked as discharged on the relevant memorandum of encumbrances in the same manner as for any other mortgage duly discharged. (emphasis added)
Upon written request, registries will discharge mortgages which meet the above criteria.
The attached form is to be filled out and, upon the payment of a fee equal to that required for the registration of a discharge, a document number will be assigned to the form and a discharge notation entered on the Certificate of Title. The notation will make reference to M.G. L. c. 260, § 33.

REQUEST FOR A DISCHARGE NOTATION
PURSUANT TO G. L. ch. 260 § 33
Property Address: _____
Mortgage Document No.: _____
Date of Registration: _____
Noted on Certif. of Title No.: _____
Original Mortgagor: _____
Original Mortgagee: _____
Assignee(s), if any: _____
(Document No.)
☐ Stated Term or Maturity Date Which Is: _____
☐ No Stated Term

_____
/s/
Name: _____
Address: _____

Phone: _____
Date**:** _____

62. Trusts: Expired

Added February 27, 2009

The term of a trust can end for numerous reasons, including on a specified date certain, after expiration of a term of years, following the death of one or more persons, etc. If it appears that the term of a trust has ended, the districts should not accept documents for filing with respect to that trust and the person desiring to file the documents should be advised that the documents must be approved by the court. Depending on the circumstances, approval may require an order of the court following the filing of a Supplemental Petition; in other cases, an approval by the Chief Title Examiner will suffice. Which will be required will depend on the complexity of the trust and the factual situation.

Even though the term of a trust may have ended, the trustee(s) still may have the power to convey the trust property. For instance, the trust instrument might provide that upon the death of certain persons the trustees are directed to sell the real estate assets in the trust so as to be able to distribute money, rather than tangible property, to the beneficiaries. Or the trust instrument may require the trustee(s) to convey the trust property to the remainder beneficiaries to settle the record title, and the identity of the remainder beneficiaries may be readily apparent. In such circumstances, and similar situations, if less than one year has elapsed since the expiration of the trust, the proponent of the document to be filed should present the facts to the Chief Title Examiner, accompanied by a certificate in accordance with the provisions of G.L. c. 184, § 35, stating that the trustee(s) executing the proffered document are authorized to do so. There will be other circumstances where a Supplemental Petition is not required, because an analysis of the trust instrument and the facts is straightforward.

There are far too many different factual patterns to describe them all in this guideline.

Because gaining the approval of the Chief Title Examiner normally is quicker and less expensive than preparing and filing a Supplemental Petition with the Court, the proponent of the document normally should seek Chief Title Examiner approval in the first instance. However, if the trust instrument requires the approval of the beneficiaries of the trust or there is to be a deed of the trust property to the beneficiaries, and in either case the identity of the beneficiaries cannot be determined, a Supplemental Petition to the Court will almost certainly be required.

63. Voluntary Withdrawal (G. L. ch. 185, § 52)

(Added February 27, 2009)

Land may be withdrawn from registration voluntarily by private owners who qualify under the governing statute, G. L. c. 185, §52, and by a public entity.

A. Registered Land owners, other than public entities, who qualify under the statute may have their land withdrawn from registration when the following procedures are followed:

1. Submit a complaint, signed by either the registered owners or their lawyer, accompanied by an executed “Notice of Withdrawal”, on the designated Land Court form. The notice must be signed by all of the owners and should contain an Exhibit A. The basic form of complaint is available from the Land Court, but must be augmented with allegations and exhibits, as necessary (see Items 7, 8, and 9 below.). A form of the complaint and notice are attached hereto.
2. Filing fee is $50.00.
3. File an attested copy of certificate of title or an attested copy of the deed(s) into the current owner and a copy of the most recent prior certificate of title.

4. If (a) the registered land constitutes less than 50 per cent of the total area of a single parcel or of two or more contiguous parcels in common ownership, or (b) the registered land consists of less than 10 per cent of the land area shown on the decree plan to which the original certificate of title pertains, the rest of the land area to which such certificate pertains having been conveyed since the original registration under Chapter 185, then in either case, plaintiffs must submit proof that their situation falls within the applicable clause--by attaching to the complaint relevant plans and deeds, which support the allegations in the complaint. There will be a review by the court's Engineering Department of all complaints filed under Clauses (a) and (b).
(The Court may require a certificate from a registered engineer or land surveyor to verify land area percentages.)
5. In those cases where Plaintiffs allege they have submitted the land to the provisions of Chapters 183A or 183B, or have created interests in the land to which Chapter 183B is applicable pursuant to § 3 of Chapter 760 of the Acts of 1987 (Clause c), Plaintiffs must submit proof of the facts alleged.
6. When withdrawal is sought for other good cause, under Clause (d), the complaint must set forth with specificity the grounds upon which the Court is asked to find "good cause."
7. Title examination by a Land Court Examiner is required. The Court will appoint an examiner pursuant to SJC Rule 1:07. (Any request for a non-sequential appointment in accordance with the SJC Rule must be made at the time of filing the complaint.) When the Court appoints an examiner, it will send the Notice of Appointment to plaintiffs' attorney, who is responsible for sending the Notice of Appointment to the examiner, together with a copy of the complaint.
8. The title examination should run from the date of the outstanding certificate of title and list all of the owners, mortgagees, and lessees, with an address for each.
9. Notice to all mortgagees and lessees of record is required. If plaintiffs do not submit the assents of all mortgagees and lessees, a citation will issue. Upon receipt of assents from all those entitled to notice, or their default, the case will be treated as an ex-parte matter, and presented to the Court for its consideration. If any party notified files an opposition to the complaint, the case will be treated as a contested case, to be resolved according to the penultimate sentence of § 52.
10. Upon the filing of the Notice of Voluntary Withdrawal endorsed by a Justice of the Court with the appropriate registry district, the land described in the Notice shall be deemed withdrawn and shall become unregistered land, and the owners shall hold title thereto at the time of such filing "free of all liens and encumbrances, including adverse possession and prescriptive rights, except those set forth or referred to in § 46 and those noted on the certificate of title or filed for registration before the filing of the notice of Voluntary Withdrawal, as though a Judgment of Confirmation without registration had been recorded under § 56A."
11. The Chief Title Examiner and Engineering Department will receive from the local registry district verification of the filing of the Notice of Withdrawal, with the document number and date of filing.
12. Plaintiffs' counsel should be aware that he or she may want to record a copy of the Notice of Withdrawal on the unregistered side of the Registry to provide a starting point for the title on the unregistered side.

B. Land owned by the Commonwealth or any agency, department, board, commission or authority of the Commonwealth or any political subdivision thereof or any authority of any such political subdivision

1. A complaint shall be filed by the public entity which has acquired the registered land.

This complaint is to be drafted by the plaintiff and is not the complaint referred to in the previous section dealing with privately owned land.
2. Filing fee is $50.00.
3. Title examination by a Land Court Examiner is required. The Court will appoint an examiner pursuant to SJC Rule 1:07. (Any request for a non sequential appointment in accordance with the Rule must be made at the time of filing the complaint.) When the Court appoints an examiner, it will send the Notice of Appointment to plaintiffs' attorney, who is responsible for sending the Notice of Appointment to the examiner, together with a copy of the complaint.
4. The title examination should run from the date of the outstanding certificate of title and list all of the owners, mortgagees, and lessees, with an address for each.
5. Notice to all mortgagees and lessees of record is required. If plaintiffs do not submit the assents of all mortgagees and lessees, a citation will issue. Upon receipt of assents from all those entitled to notice, or their default, the case will be treated as an ex-parte matter, and presented to the Court for its consideration. If any party notified files an opposition to the complaint, the case will be treated as a contested case, to be resolved according to the penultimate sentence of § 52.
6. A court order will issue for the withdrawal of the land from the provisions of Chapter 185.

COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT
Case No. _____

COMPLAINT FOR VOLUNTARY WITHDRAWAL OF LAND FROM THE REGISTRATION SYSTEM UNDER G. L. c. 185, § 52

Plaintiffs are all of the owners of the fee simple estate in all of a parcel of land that has been registered under G. L. Chapter185, and wish to withdraw the land from the provisions of that Chapter.
Plaintiffs therefore seek endorsement of the Court approving the withdrawal, under § 52 of that Chapter, as amended by Chapter 413 of the Acts of 2000.
Plaintiffs submit with this complaint their executed Notice of Voluntary Withdrawal. The land to be withdrawn is described on Certificate of Title No._____, in Book _____, at Page _____, issued from the _____Registry District of _____County and is shown on Land Court Plan No. as follows:
__ all the land described in the certificate of title
__ part of the land described in the certificate of title, namely:

Plaintiffs seek withdrawal under the following clause in the fourth paragraph of § 52:
__ (a) The registered land constitutes less than 50 per cent of the total area of a single parcel or of two or more contiguous parcels in common ownership.
__ (b) The registered land consists of less than 10 per cent of the portion of the land area to which an original certificate of title pertains, the rest of the land area to which such certificate pertains having been conveyed since the original registration under Chapter 185.
__ (c) The owners of the registered land have submitted the land to the provisions of Chapter 183A or 183B or have created interests in the land to which Chapter 183B is applicable pursuant to § 3 of Chapter 760 of the Acts of 1987.
__ (d) Other good cause for withdrawal, as follows: _____
_____

NOTE-
PROOF OF PLAINTIFFS' ENTITLEMENT TO WITHDRAW LAND FROM THE REGISTRATION SYSTEM UNDER CLAUSES (a)-(c), INCLUSIVE, MUST ACCOMPANY THE COMPLAINT AND BE INCORPORATED THEREIN. IF PLAINTIFFS ARE FILING

UNDER CLAUSE (d), THEY SHOULD SET FORTH WITH SPECIFICITY WITHIN THE COMPLAINT THE NATURE OF THE GOOD CAUSE FOR WITHDRAWAL.
FROM THE OFFICE OF: Signed under the pains and penalties of perjury,

_____
(Signatures of owners or their attorney)
Dated:

NOTICE OF VOLUNTARY WITHDRAWAL OF LAND FROM THE REGISTRATION SYSTEM

Case No. _____
The undersigned, being all of the owners of the fee simple estate in all of a parcel of land that has been registered under G. L. Chapter 185, hereby withdraw the land from the provisions of § 52 of that Chapter, as amended by Chapter 413 of the Acts of 2000.
The land withdrawn is described in Certificate of Title No._____ in Book, at Page _____, at Page _____ , issued from the _____ Registry District of _____ County, shown on Land Court Plan No. as follows:
_____ all of the land described in the certificate of title
_____ part of the land described in the certificate of title, namely: _____
_____
_____
The street address (if any) of the land is: _____
_____
The description of the land in the form contained in the certificate of title is attached hereto as Exhibit A.
Signed this _____ day of _____, 20_____ .
Signature(s) of Owner(s): (please sign name, then print it below)
_____ _____
_____
(Address)
_____ _____
_____
(Address)
COMMONWEALTH OF MASSACHUSETTS
_____ , ss _____
Date
Then personally appeared the above named _____ and acknowledged the foregoing instrument to be _____ free act and deed, before me
_____ Notary Public
My Commission expires :
_____
(See reverse side)

EXHIBIT A
[Insert Locus Description Here]

COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT
Pursuant to G. L. Chapter 185, § 52 , as amended by Chapter 413 of the Acts of 2000, the Voluntary Withdrawal from the registration system of the land herein described is approved, subject to all registered rights outstanding as of the date hereof.
_____

Justice
Dated:

64. Withdrawal From Registration (G. L. ch. 183A, § 16)
(Added February 27, 2009)
If land on which a condominium is declared has a title which is both registered and unregistered, the registered portion may be withdrawn from the provisions of Chapter 185 pursuant to G. L. c. 183A § 16.
In a withdrawal pursuant to G. L. Chapter 183A, § 16, the condominium documents are not reviewed and allowed by the Land Court. The Master Deed, Condominium Trust or Association document, site plans and floor plans are recorded on the unregistered side of the Registry of Deeds. The petition and notice referred to below are filed and registered as soon as practicable after the recording of the condominium documents.
Preliminary action to be taken by petitioner prior to recording of Master Deed and Condominium Plan
1. In preparing the Master Deed, be sure it describes the registered land as it appears on outstanding certificate as “Parcel 1" followed by the recorded land parcel - “Parcel 2". It is wise to list after the registered land parcel all outstanding registered interests (i.e., rights of way, easements, mortgages, etc.) from the certificate of title.
2. Obtain a certified copy of the outstanding certificate(s) to submit with complaint.
3. Prepare a print of condominium site plan showing location of the registered land (delineated in red) and the existing buildings and proposed buildings, to submit with complaint.
Complaint to withdraw under Chapter 183A, § 16
1. Draft and file with the court in Boston an original complaint to withdraw, which must be signed by the owner (usually the declarant in the Master Deed) or the owner’s attorney, under oath and acknowledged. If signer is a corporation, a vote is needed authorizing the officer to sign if it is not signed by President and Treasurer. A proper authority document should accompany any other complaint.
Complaint should state that the Master Deed has been recorded (attach an attested copy of the recorded Master Deed as an exhibit). The assents of all outstanding mortgagees and lessees on the certificate of title should also be attached as exhibits. An assent cannot be conditional. A copy of the condominium plan should also be an exhibit. The filing fee is $50.00 and the complaint is treated as an "S" Petition.
2. Prepare "Notice of Intention to Withdraw from Registration under G.L. C. 183A § 16".
This may be signed by the attorney. Once this is on record assents from future buyers of units and mortgagees will not be required. Once your petition is filed with the Court, register your notice on the outstanding certificate. A sample notice is attached hereto.
NOTE: This is not the Notice of Withdrawal form which is used in a G.L. C. 185 § 52 proceeding.
3. The Court will order a title examination by a Land Court Title Examiner. This report is to disclose the mortgagees and lessees that have an interest in the land being withdrawn from registration. The recording of the Master Deed and Condominium trust as well as deeds of units, mortgages, etc. must be noted. Abstract of title should run up to the date of recording of the notice of "Intention to Withdraw from Registration" under Chapter 183A, § 16.
Notice
1. Assents of holders of mortgages and leases.

2. For those that refuse to assent, the Court will issue a citation with a return date. Notice will be sent via certified mail, return receipt requested.

Decree of Court

1. When the necessary papers have been submitted and checked, an order is prepared which is then presented to a Justice to have allowed.
2. The attorney receives the court order which is then to be registered and noted on the outstanding Certificate of Title. The property is then withdrawn from registration.

CASE NO. _____
COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT
TO ALL WHOM IT MAY CONCERN:

_____
_____
_____

hereby give notice that, on the _____ day of _____ 20 ____, _____ filed a complaint in said Court to have the title to certain land therein described withdrawn from the provisions of Chapter 185 pursuant to Chapter 183A § 16 of the General Laws. Said land is situated in _____ in the County of _____ and said Commonwealth, and bounded and described as follows:

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____