

M76300

Undersurface Rights and Exceptions and Reservations

THE FOLLOWING INFORMATION IS INTENDED TO GIVE SOME GENERAL BACKGROUND AND IS NOT TO BE REGARDED AS EXHAUSTIVE OR CONCLUSIVE IN ANY WAY.

From time to time questions are raised about undersurface rights which are shown as a charge against a title.

One of the most frequently encountered of these is a charge registered in favour of the Esquimalt and Nanaimo Railway Co. (E & N) under the notation "Exceptions and Reservations".

The exceptions and reservations which the E & N reserved to itself are contained in the original instrument of grant by which a particular parcel of land was conveyed, "granted" from the E & N to a purchaser. (The E & N is now a subsidiary of Canadian Pacific Limited)

There are a number of different forms of grant from the E & N and the substance and rights reserved to itself therein vary. Keeping in mind variations in individual grants, the reservations typically fall into three broad groups.

Firstly, the right to enter upon land and cut and carry away any timber for railway purposes without paying compensation.

Secondly, rights of way for their railway and the right to take such parts of the said land as may be required for the stations and workshops of the said company without paying compensation therefore. (Certain grants, however, do provide for compensation to be paid).

The third group pertains to the reservation of undersurface rights. However, following the enactment of the *Mineral Land Tax Act* in 1973, it is no longer possible to determine the mineral ownership by looking at the E & N grants alone because of a surrender by the E & N to the Crown of minerals as defined by the *Mineral Land Tax Act* under certain lands.

A variety of factors must therefore be considered, including the *Mineral Land Tax Act*, possible forfeiture to the Crown for non-payment of taxes and surrender positions when ascertaining mineral ownership regardless of whether they are endorsed on the Certificate of Title in the name of the Crown, the E & N or that of a private owner's name.

While it is possible to search back to the original grants in the land title office, it is time consuming and expensive. Moreover, as stated before, the grant must be considered in conjunction with other factors some of which are mentioned above.

Therefore, we strongly recommend that a legal or other expert opinion be obtained with regard to mineral ownership. It is outside the authority of the Land Title Office to provide an opinion on such issues.

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