

# Practice Bulletin No. 01-16

**TITLE:** Subdivision of Air Space Parcels

**ISSUER:** Director of Land Titles

**APPLICATION:** All Land Title Offices

**RELATIONSHIP TO PREVIOUS POLICY:** Initial Statement

**APPROVAL:**

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**FILE NUMBER:** *Land Title Act*

## **Issue**

The Land Title and Survey Authority of British Columbia ("LTSA") is receiving increasingly complex air space plans for registration. While Part 9 (Air Space Titles) of the *Land Title Act* (the "*Act*") permits the subdivision of land into one or more air space parcels, the provisions of Part 9 are not comprehensive, consisting of only 9 sections (see the Appendix to this Practice Bulletin).

Survey plan issues have arisen with respect to the depiction of the requirements for air space plans. Uncertainties have also arisen with respect to the registrar's requirements for air space plans, and in particular with respect to the subdivision of the remainder (Remainder) following the registration of an air space plan.

To address the requests from lawyers and surveyors for clarification of the registrar's requirements with respect to air space plans, this Practice Bulletin will set out with greater certainty the circumstances in which the registrar will permit a subdivision of the Remainder following the registration of an air space plan.

## **Background**

### ***Part 9 requirements***

Section 138 defines an "air space plan" as a plan that (a) is described in its title as an air space plan (b) shows one or more air space parcels consisting of or including air space, and (c) complies with the requirements of s. 144 (see Appendix).

Section 141 (1) provides that an owner in fee simple may, by the deposit of an air space plan, create one or more air space parcels separated by surfaces and obtain indefeasible titles for them.

Section 143 (1) provides that an air space plan must not be accepted for deposit by the registrar unless:

- (a) the title to the land of which the air space parcels are part is registered in the register of indefeasible fees; and
- (b) the land of which the air space parcels are part is shown as a single parcel on a subdivision plan or a reference plan deposited under the *Act*.

Section 143 (2) requires the registrar to examine the application and the air space plan produced in support of it and, if the registrar is satisfied that they are in order and in compliance with the *Act*, the registrar must assign a number to the plan and register new indefeasible titles to the air space parcels.

### ***Section 169 requirements***

It is important to note that pursuant to s. 143(2), the registrar must be satisfied that the application and the air space plan are otherwise in accordance with the *Act*. The registrar's concern on every application is compliance with the provisions of s 169 (1) of the *Act*:

## **“Registration of title**

**169** (1) If an application is made for the registration of indefeasible title to land, the registrar must register the title claimed by the applicant, if the registrar is satisfied that

(a) the boundaries of the land are sufficiently defined by the description or plan on record in the land title office or provided by the applicant, and

(b) a good safe holding and marketable title in fee simple has been established by the applicant.”

In accordance with established land title practice, these are the practice requirements for Air Space applications:

1. The registrar must be satisfied that:
  - (a) the boundaries of the air space parcel and the Remainder are sufficiently defined by the description or plan on record in the land title office or provided by the applicant; and
  - (b) the owner of the air space parcel and the owner of the Remainder have a good, safe holding and marketable title in fee simple to their respective parcels.
2. The registrar must be satisfied that on a subdivision of land by the deposit of an air space plan, both the air space parcel(s) and the Remainder are defined in a manner that will satisfy the requirements of ss. 143, 144 and 169.
3. It must be demonstrated to the registrar that none of the air space parcels and the Remainder encroach upon the other on a subdivision of land by the deposit of an air space plan.

## **Practice**

### ***Subdivision of Remainder***

Once a Remainder is created on the deposit of an air space plan, it comprises a separate legal title. The result of that is that the owner of a Remainder may subdivide the Remainder in compliance with the *Act*, and upon satisfying the registrar that the requirements of ss. 143, 144 and 169 have been met.

In circumstances shown in Figures 1 through 6 below, the owner of a Remainder may:

- (a) create one or more additional air space parcels from the Remainder, by the deposit of a subsequent air space plan pursuant to s. 141 (1);
- (b) subdivide the Remainder by depositing a subdivision plan pursuant to Part 7 of the *Act*;
- (c) dedicate part of the Remainder pursuant to s. 107 of the *Act*, e.g., as road, park or return to Crown; and

- (d) Subdivide the Remainder by depositing a strata plan under Part 14 of the *Strata Property Act*.

The requirements of s. 169 (1) will have been satisfied in connection with either a subdivision or a subsequent air space plan subdivision of a Remainder, provided there is no overlap vertically (i.e., no lying above or below) as a result of the adjacency of the boundaries of the newly subdivided parcel or air space parcel and the boundaries of the initial air space parcel (see example diagrams below), and the plan subdividing the Remainder contains a notation and certification to that effect from the land surveyor preparing the plan (see \* below and Director's Requirements DR 01-11: <https://ltsa.ca/practice-information/director-land-titles-requirements#dr01-11>).

In the below examples, the subdivision of the Remainder creates new parcels that are sufficiently defined for the purposes of s. 169 (1) by filing either a subdivision plan or an air space plan, provided that the requirements of Part 7 and s. 144, respectively, are satisfied.

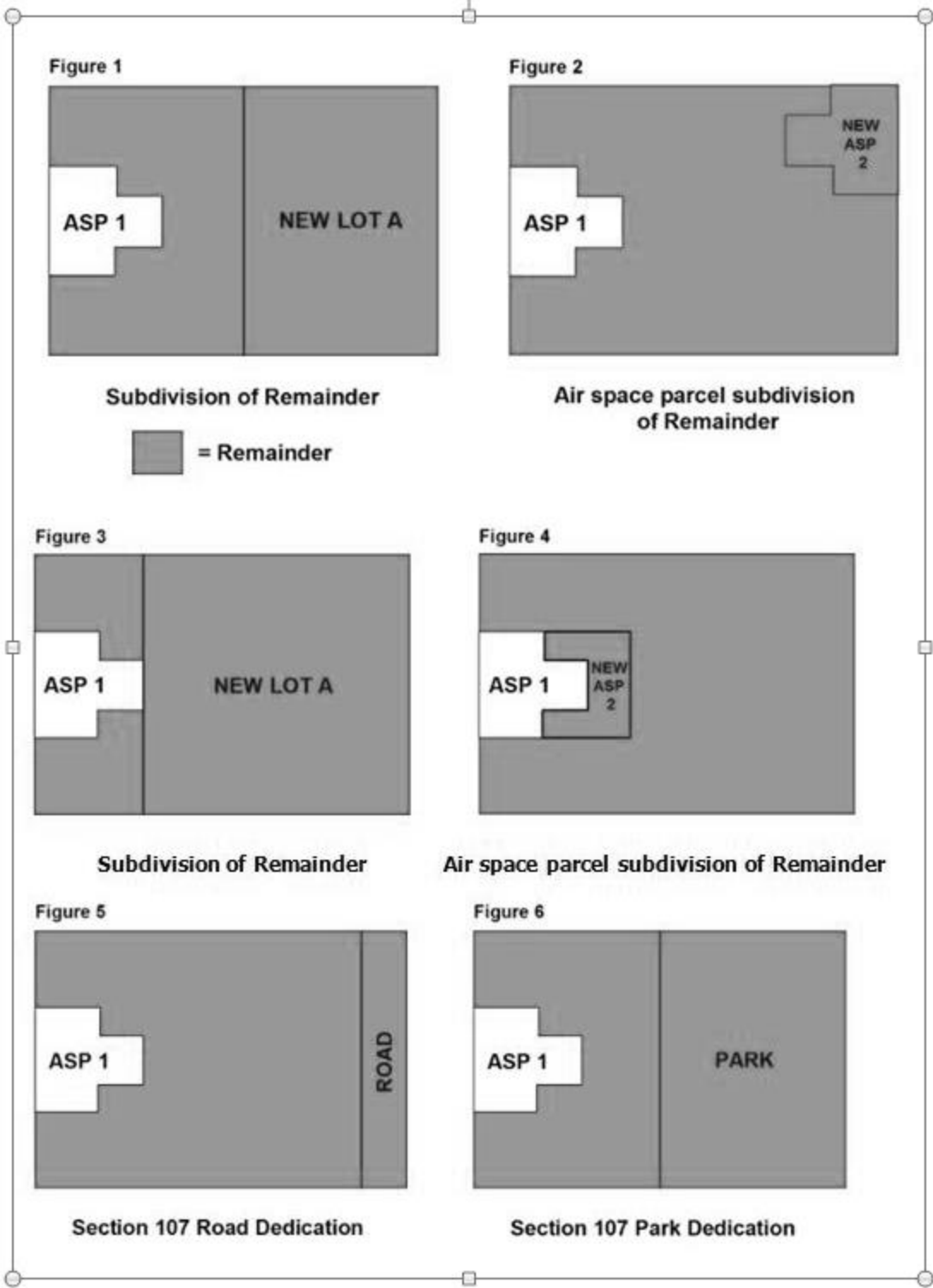
The new Remainder may again be subdivided by filing either a subdivision plan or a further air space plan, on the same basis, as long as there is no overlap vertically as a result of the boundary adjacency with the previously created air space parcels.

#### ***Dedications permitted pursuant to Section 107 of the Act***

Dedications on a Remainder are acceptable as long as there is no overlap vertically as a result of the adjacency of the boundaries between the lands being dedicated with the boundaries of the previously created air space parcels.

#### ***Strata plan permitted***

The Remainder may be subdivided by depositing a strata plan under Part 14 of the *Strata Property Act*. A strata plan is acceptable in these circumstances, i.e., where an air space parcel has been previously subdivided out of the Remainder, without requiring a reference plan under s. 240 (a) of the *Strata Property Act*.



***Subdivisions not permitted***

Other than as set out above, the Remainder may not be subdivided by either a subdivision or by an air space plan or by a dedication pursuant to s. 107 of the *Act* in a manner that involves any overlap vertically with the boundaries of a previously created air space parcel. Specifically, no portion of the new subdivision parcel or air space parcel may be above or below the initial air space parcel(s).

Limiting subdivisions of the Remainder following the registration of an initial air space plan to the circumstances described will provide greater certainty as to what the registrar will find acceptable and in compliance with the requirements of the *Act*, and in particular the requirements of Part 9 and s. 169 (1).

A reference plan pursuant to s. 100(1)(a) of the *Act* will not be permitted on a Remainder if an air space parcel has been previously excepted from the Remainder.

***Requirements for a Plan of the Subdivision of a Remainder***

In an effort to ensure there is no overlap and that the s. 169(1) of the *Act* requirements are met, LTSA staff will confirm that the following requirements (as noted in Director’s Requirements DR 01-11) are provided on a plan of the subdivision of a Remainder:

- the following notation, amended as applicable, on the plan:

*No portion of the parcels or dedications created on this plan overlap vertically, that is, lie above or below, any portion of the Air Space Parcels on Air Space Plan \_\_\_\_\_*

- the following form of certificate\* contained in the electronic Survey Plan Certification form:

*I am a British Columbia land surveyor and certify that no portion of the parcels or dedications created on this plan overlap vertically, that is, lie above or below, any portion of the Air Space Parcels on Air Space Plan \_\_\_\_\_*

This form of certificate is accessed by selecting the “Subdivision of Remainder” field in the electronic Survey Plan Certification (“SPC”) form.

\*Please note: The SPC form is being updated to include this certificate and should be available in the near future. Until the SPC form includes this certificate, the above-noted plan notation is all that will be required. Notice for the requirement of this certificate will be provided, and this Practice Bulletin will be updated, once the SPC form has been updated to include this certificate.

- Where all or a portion of an existing air space parcel is being shown on a new plan that alters a Remainder, the labelled numbers or letters of the existing air space parcel corners shall be repeated on the new plan to provide a clear cross reference to the previously filed air space plan, and a clear distinction between the existing air space corner labels and the new air space parcel corner labels shown on the new plan.

## **APPENDIX**

### **LAND TITLE ACT**

#### **[RSBC 1996] CHAPTER 250**

#### **Part 9 — Air Space Titles**

##### **Definitions**

**138** In this Part:

**"air space parcel"** means a volumetric parcel, whether or not occupied in whole or in part by a building or other structure, shown as such in an air space plan;

**"air space plan"** means a plan that

(a) is described in the title to it as an air space plan,

(b) shows on it one or more air space parcels consisting of or including air space, and

(c) complies with the requirements of section 144;

**"geodetic elevation"** means an elevation derived from a source approved by the Surveyor General.

##### **Air space is land**

**139** Air space constitutes land and lies in grant.

##### **Covenant to grant easements or to convey restrictive covenants not implied**

**140** (1) A grant of an air space parcel does not transfer to the grantee an easement of any kind whatsoever nor does it imply a covenant restrictive of use nor a covenant to convey another portion of the grantor's land.

(2) Unless expressly granted, the title to the air space above the upper limits and below the lower limits of an air space parcel remain in the grantor.

##### **Subdivision of land into air space parcels**

**141** (1) An owner in fee simple whose title is registered under this Act may, by the deposit of an air space plan, create one or more air space parcels separated by surfaces and obtain indefeasible titles for them.

(2) The air space parcel created by the plan devolves and may be transferred, leased, mortgaged or otherwise dealt with in the same manner and form as other land the title to which is registered under this Act.

(3) An air space parcel may be subdivided in accordance with the *Strata Property Act*.

### **Air space parcels in respect of highways**

**142** (1) If the title to all or part of a highway is vested solely in the Crown in right of the Province or in the BC Transportation Financing Authority, the minister charged with the administration of the *Transportation Act* may apply to register the title to all or part of the highway in the Crown in right of the Province or in the BC Transportation and Financing Authority, as the case may be, and, on registration, the government may create air space parcels and deal with them in accordance with this Act but, if the right of possession to a highway is vested, by an enactment, in a municipality, the minister charged with the administration of the *Transportation Act* must obtain the municipality's consent before creating or dealing in air space parcels.

(2) Despite subsection (1), the Lieutenant Governor in Council, on the recommendation of the minister charged with the administration of the *Transportation Act*, may authorize a municipality that has a statutory right of possession to a highway to create air space parcels and to deal with them under this Act.

(3) If the title to all or part of a highway is vested solely in a municipality, the council may, by bylaw, authorize an application to be made for the registration of the municipality's title to all or part of the highway and, on registration, the municipality may create air space parcels and deal with them under this Act.

(4) For the purpose of this section, an indefeasible title may be registered for all or part of a highway.

### **Air space plan**

**143** (1) An air space plan must not be accepted for deposit by the registrar unless

(a) the title to the land of which the air space parcels are part is registered in the register of indefeasible fees, and

(b) the land of which the air space parcels are part is shown as a single parcel on a subdivision plan or a reference plan deposited under this Act.

(2) The registrar must examine the application and the air space plan produced in support of it and, if satisfied that they are in order and in compliance with this Act, must assign to the plan a serial deposit number and register new indefeasible titles to the air space parcels.



## Air space plan

### 144 (1) An air space plan must

- (a) have its side boundary limits consist of vertical or inclined surfaces conforming to or lying within the boundaries of the single parcel referred to in section 143 (1) (b),
- (b) have as its upper and lower limit a horizontal or inclined plane or arc of a circle, or combination of them,
- (c) have a title, identifying the single parcel on the plan referred to in section 143 (1) (b) and indicating that the plan is a subdivision of the whole or part of that parcel,
- (d) have noted on it the geodetic elevation of one corner of the ground surface of the single parcel referred to in section 143 (1) (b) and the geodetic elevation of every corner or angle of the air space parcel,
- (e) include
  - (i) a plot to scale of the single parcel referred to in section 143 (1) (b), and
  - (ii) a 3 dimensional paraline drawing of the air space parcel contained between the planes or arcs and, if the surfaces of the air space parcel are both horizontal and vertical the plan must so state, otherwise all boundaries of the air space parcel must be fully dimensioned for length and direction, and,
- (f) contain a book of reference that
  - (i) allots a parcel letter or number to each air space parcel by reference to the lettered or numbered corners of it as shown on the plan, or as otherwise designated by a rule made under section 385 (5), and
  - (ii) states the cubic contents of each air space parcel.

### (2) An air space plan tendered for deposit must

- (a) be prepared by a British Columbia land surveyor and bear the statement approved by the director,
- (b) be accompanied by whatever number of copies may be required by the registrar for taxing authorities,
- (c) comply with the rules respecting surveys and plans made under section 385 (5) for the purposes of this Part,

(d) be signed and witnessed in the same manner as is required under this Act for a subdivision plan,

(e) comply with subsection (1), and

(f) be approved by the proper approving officer.

### **Taxation**

**145** An estate or interest in an air space parcel, if separately owned, must be separately assessed for taxation for all types of rates, assessments and taxes authorized to be assessed against land and improvements by any Act.

### **Application**

**146** (1) Part 8 applies to an air space plan.

(2) Part 7 does not apply to this Part.