



Coast Realty
GROUP

UNDERSURFACE RIGHTS AND EXCEPTIONS AND RESERVATIONS

Re: Registered Charge on Your Property to be
Purchased – “Exceptions and Reservations No. M76300”

The following information is designed 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 E & N is now a subsidiary of Canadian Pacific Limited. In the 19th century, the Crown (the government) gave large parcels of land on Vancouver Island to the E & N railway and conveyed parcels of this land to purchasers but in so doing have reserved to themselves certain rights. The rights reserved to themselves vary. Keeping in mind these variations, the reservations typically fall into the following three broad groups.

First, 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 land as may be required for the stations and workshops of the company without paying compensation. (Certain grants, however, do provide for compensation to be paid).

The third ground 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 mineral ownership under certain lands 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. A variety of factors must therefore be considered, including, the Mineral Land Tax Act and the 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 Esquimalt and Nanaimo Railway Company 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.