

Draft Regulations

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Land Surveyors Act
(R.S.Q., c. A-23)

Land Surveyors — Standards of practice for location certificates

Notice is hereby given, in accordance with the Regulations Act (R.S.Q., c. R-18.1), that the Bureau of the Ordre des arpenteurs-géomètres du Québec, at a meeting held on 12 and 13 December 2001, adopted the Regulation respecting the standards of practice for location certificates.

The Regulation, the text of which appears below, will be examined by the Office des professions du Québec pursuant to section 95 of the Professional Code. It will then be submitted, with the Office's recommendation, to the Government which, pursuant to the same section, may approve it with or without amendment at the end of 45 days from this publication.

This Regulation replaces the existing Regulation and will provide consistent and updated minimum standards of practice for land surveyors carrying out mandates to draw up location certificates. The preparation of a location certificate entails a number of searches and surveying operations to determine the laws, regulations and by-laws that apply in respect of an immovable and to situate the relative location and verify the boundaries of the immovable. A location certificate is a document kept en minute that consists of a detailed report and plan in which the land surveyor sets out his or her opinion on the current situation and state of the immovable property with respect to ownership titles, the cadastre and the laws, regulations and by-laws that may affect it. This document has become an important addition to private landownership title. Under the Civil Code of Québec, an owner is required to hand over to the buyer any location certificate in his or her possession (a. 1719) and the notary is required to examine it for the purposes of the updating of rights report (a. 3048). In short, the new Regulation reflects the current generally accepted practices in respect of this component of land surveying.

The Regulation clearly sets out in detailed steps the procedure the land surveyor must follow to examine all situations (such as servitudes) and regulations and by-laws (such as zoning by-laws) that may affect the im-

movable property, the location of boundaries on the lot, and the authorized uses. It frequently happens that as a result of a land surveyor's expertise situations that may cause problems in respect of a particular use are brought to the owner's attention.

According to the Ordre des arpenteurs-géomètres du Québec :

1. The Regulation will protect the public by better protecting landownership rights with rules and approved procedures that the land surveyor must comply with in arriving at an opinion on the legal status and physical situation of immovable property that the land surveyor must communicate to the owner, at the owner's request and for a specific purpose, by a document kept en minute. The Regulation will also operate directly on numerous real estate transactions in that the land surveyor must, among other things, personally examine any restrictions under municipal urban planning by-laws.

2. The Regulation will affect individuals, businesses or partnerships only insofar as they are landowners or intend to become landowners or if they are parties to real estate transactions as intermediaries between the parties, as advisors or moneylenders to one or more of the parties or as notaries.

Further information on the proposed Regulation may be obtained by contacting Mr. Luc St-Pierre, Director General and Secretary, Ordre des arpenteurs-géomètres du Québec, 2954, boulevard Laurier, bureau 350, Sainte-foy (Québec) G1V 4T2, telephone: (428) 656-0730; fax: (418) 656-6352.

Any person having comments to make is asked to submit them, before the expiry of the 45-day time limit, to the Chair of the Office des professions du Québec, 800, place D'Youville, 10^e étage, Québec (Québec) G1R 5Z3. Comments will be forwarded by the Office to the Minister responsible for the administration of legislation respecting the professions and they may also be forwarded to the professional order that has adopted the regulation, as well as to interested persons, departments and bodies or agencies.

JEAN-K. SAMSON,
*Chair of the Office
des professions du Québec*

Regulation respecting standards of practice relative to the certificate of location

Land Surveyors Act
(R.S.Q., c. A-23, s. 49)

DIVISION I GENERAL

1. In this Regulation, unless otherwise indicated by the context, “property” means immovable such as a parcel of land with or without a building, superficies, an immovable held in divided co-ownership or a private portion of an immovable held in divided co-ownership.

2. The certificate of location is a document en minute, consisting of a report and a plan, in which the land surveyor gives his opinion on the current situation and state of a property in relation to ownership titles, the cadastre and the laws and by-laws which may affect it. It may not be used or invoked for purposes other than those for which it is intended.

3. The system of measures used to prepare the report and the plan shall be the International System of Units unless the client explicitly requires the use of another system of measures authorized by the Weights and Measures Act (R.S.C., c. W-6). If that is the case, the report and the plan shall mention the system of measures used and, after each measurement taken with that system, the equivalent measurement in the International System of Units shall be given.

DIVISION II OPERATIONS

4. In any survey operation carried out to prepare a certificate of location, a land surveyor shall take all the measurements and make all the calculations required to check the occupation and the boundaries of the property and situate them in relation to one another.

5. In order to establish the boundaries of a property, a land surveyor shall ensure that sufficient territory is covered to support his professional opinion.

6. The results of the survey operations shall be confirmed by an additional source of information duly identified and kept in the record, in particular by using any of the following methods: measurement by repetition, data cross-checking, different tied to fixed positions, searches or a previous or concomitant survey plan.

7. A land surveyor who draws up a certificate of location shall have personally took cognizance of the observations related to subparagraphs 9 and 13 to 17 of section 9 and have validated them.

This validation shall be recorded in a document, other than the field notes, bearing the initials of the land surveyor and kept in the record.

8. A land surveyor drawing up a certificate of location shall be personally aware of municipal by-laws applicable at the time the certificate is prepared and file references to the consulted by-laws in the record.

DIVISION III REPORT

9. Except in the cases referred to in section 10, a land surveyor shall mention in his report that he checked the following elements concerning or affecting the property covered by the certificate of location:

(1) the date of the survey;

(2) the date of the searches at the registry office;

(3) an updated description of the property, which must indicate for each of the cadastral lots or parts thereof forming it, their metes and bounds, their linear measures and their area, as well as the cadastral ties or, failing that, ties to the primitive survey or to an official coordinate system;

(4) a reference to the most recent deed of acquisition registered, so as to identify the parties and to establish a link between the property and the deed;

(5) the cadastral history going back to the coming into force of the original cadastre concerned;

(6) the conformity or lack of conformity between the marks of occupation on the property, the boundaries, measurements and area of the cadastral plan in force, and the boundaries, measurements and area described in the ownership titles; if the territory has been renovated, the land surveyor shall also establish the conformity or lack of conformity between all those elements and the boundaries, measurements, and area appearing on the cadastral plan before being renovated;

(7) any active and passive servitude concerning the property registered in the index of immovables, in the land register and in the latest deed of acquisition;

(8) the boundaries that have been marked with, where applicable, a reference to the registration number of the minutes of boundary determination;

(9) any apparent servitude or charge that should normally be the subject of a servitude and that may affect the property;

(10) any notice of expropriation and any notice of reserve for public purposes registered in the index of immovables or land register against the property;

(11) whether the property is cultural property or located in whole or in part within a protected area or historic district, where the required notice is registered in the index of immovables or in the land register under the Cultural Property Act (R.S.Q., c. B-4), or where a similar provision appears in the municipal zoning by-law;

(12) whether or not the property is located within an agricultural zone the plan of which was approved by Order in Council under the Act respecting the preservation of agricultural land and agricultural activities (R.S.Q., c. P-41);

(13) any apparent, allowed or exercised encroachment;

(14) the buildings, dependencies and structures located on the property, including sheds and swimming pools;

(15) the municipal address;

(16) a brief description of the progress made in the work, in the case of buildings, structures and dependencies under construction;

(17) the number of stories and the type of exterior facing on the buildings and dependencies at the time of the survey;

(18) the zone within the meaning of the municipal zoning by-law;

(19) the conformity or non-conformity of the position of the structures, buildings and dependencies in relation to the boundaries or the property in respect of the municipal zoning by-law in force when the certificate of location is prepared;

(20) whether the property is located in whole or in part within a flood zone mapped out under the Convention entre le gouvernement du Canada et le Gouvernement du Québec relative à la cartographie et à la protection

des plaines d'inondation et au développement durable des ressources en eau signed in 1976, as amended, or whether the property is located in whole or in part within a protective strip of land established by the municipal zoning by-law under the Politique de protection des rives, du littoral et des plaines inondables, made by Décret 1980-87 dated 22 December 1987, as amended;

(21) whether the property is located in whole or in part within a protected zone, a protective strip of land, a flood zone or a risk zone established by the municipal zoning by-law;

(22) whether the property is located in whole or in part within an airport site, established by a regulation made under the Aeronautics Act (R.S.C., c. A-2) and filed in the registry office; and

(23) whether the property has some apparent characteristics of a housing complex within the meaning of section 45 of the Act respecting the Régie du logement (R.S.Q., c. R-8.1).

Where applicable, the land surveyor shall expose or comment on those elements.

The report shall also indicate the place and date of closing of the minute.

10. In the report of a certificate of location concerning only a private portion of an immovable held in divided co-ownership, a land surveyor shall in particular mention that he checked the following elements:

(1) the date of the survey;

(2) the date of the searches at the registry office;

(3) the designation of the property;

(4) a reference to the title of ownership, so as to establish a link between the property examined and the deed of acquisition;

(5) the cadastral history going back to the original lot created for the co-ownership;

(6) the concordance between the cadastral identification and the municipal address;

(7) the conformity or lack of conformity between the occupation, the designation in the titles and the cadastre;

(8) the apparent servitudes or charges that should normally be the subject of a servitude and that may affect the property; and

(9) the active and passive servitudes registered in the land register.

Where applicable, the land surveyor shall expose or comment on those elements.

The report shall also indicate the place and date of closing of the minute.

11. The land surveyor's report shall mention the purpose for which the certificate of location is intended and that it must not be used or invoked for another purpose without written authorization from its author.

The report shall also indicate that it forms an integral part of the certificate of location and shall refer to the plan accompanying it.

12. The report shall be made on legal-size paper.

DIVISION IV PLAN

13. The plan shall include the following :

(1) the graphic representation and the designation of the property ;

(2) the metes and bounds ;

(3) the dimensions and area of the property ;

(4) the dimensions of the structures, buildings and dependencies and the marks of occupation relative to the boundaries of the property ;

(5) the distance between the boundaries of the property, on the one hand, and the buildings, dependencies and structures, on the other hand, including sheds and swimming pools, with a mention that the measurements were taken from the foundations or the exterior facing ;

(6) where possible, an illustration of the elements referred to in subparagraphs 7 to 22 of section 9 ;

(7) an approximate indication of true north by means of an arrow ;

(8) the scale of the plan ; and

(9) the date of the survey.

The plan shall also indicate the place and the date of closing of the minute.

14. For a private portion of an immovable held in co-ownership, the plan shall include the following :

(1) the graphic representation and the designation of the private portion ;

(2) the metes and bounds ;

(3) the dimensions, area and geodesic elevation ;

(4) a sketch of the entire storey of the building or of a portion showing the location of the private portion ;

(5) where possible, an illustration of the elements referred to in subparagraphs 6 to 9 of section 9 ;

(6) the orientation of the plan ;

(7) the scale of the plan ; and

(8) the place and date of closing of the minute.

15. The plan shall mention the purpose for which the certificate of location is intended and that it must not be used or invoked for another purpose without written authorization from its author.

The plan shall also indicate that it forms an integral part of the certificate of localisation and shall refer to the report accompanying it.

16. The plan shall be made on legal-size paper or larger.

DIVISION V TRANSITIONAL

17. This regulation replaces the Regulation respecting standards of practice relative to the certificate of location (R.R.Q, 1981, c. A-23, r.7).

18. This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*.