

Subject CONSENT TO ASSIGN, TRANSFER, MORTGAGE OR CHARGE CROWN OR MINISTRY DOCUMENTS		Procedure PL 2.05.01	
Compiled by - Branch Lands & Waters	Section Land Management	Date Issued October 14, 2005	
Replaces Directive Title Same	Number Same	Dated February 11, 1997	Page 1 of 10

1.0 **DEFINITIONS**

In this procedure,

"applicant" means the proposed assignor, transferor, mortgagor, chargor as the case may be;

"deed" includes a deed, transfer, letters patent, Crown lease, Summer Resort Lease, Water Power Lease or Water Power Lease Agreement;

"head-lease" means a lease issued by the Crown;

"joint tenant" means a co-owner of property, identified on a deed as a joint tenant, who, upon the death of the other co-owner automatically becomes the owner of the deceased's interest in the property through survivorship;

"Regulation 688" means Regulation 688, as amended, made under the Land Registration Reform Act;

"sublease" means a lease issued by a Crown lessee to a third party; and

"tenant in common" means a co-owner of property whose real property interest, upon his/her death, becomes part of his/her estate to be disposed of distinct from the interest of the other tenant(s) in common.

2.0 **PROGRAM GUIDELINES**

2.1 **PURPOSE**

To provide procedural guidelines to implement Policy Directive PL 2.05.01.

2.2 **PROCEDURAL FLEXIBILITY**

A high degree of flexibility may be required to match the varied requirements of local Land Registry Offices.

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3.0 PROCEDURE

3.1 Responsibility to Notify Tenant of Document Details

Before or at the time of forwarding a consent approval to the applicant, Area Supervisors must notify the applicant of the following:

- the annual rent/fee to be paid;
- the frequency by which the annual rent/fee may be adjusted (e.g. annually, cyclically);
- contractual obligations specified in the Crown or Ministry document; and
- the expiry date of the document and legal entitlements of renewal/extension (no suggestion should be made of the likelihood of the document being renewed or extended - (let the contract speak for itself).

This may be done by letter, phone call or personal interview.

3.2 CONSENT APPROVAL PROCESS

Area Supervisors are responsible to ensure compliance with the following table.

LEGEND

APL	Algonquin Park Lease
RPL	Rondeau Park Lease
WPL	Water Power Lease
CL	Crown Lease
SRL	Summer Resort Lease
WPLA	Water Power Lease Agreement
LO	Licence of Occupation

AREA SUPERVISORS WILL:	CL, SRL, WPL, WPLA	APL	RPL	LO
a) Have the applicant complete an Application for Crown Land (Form 830).	X	X	X	X
b) In the case of consent to assign etc. to a corporation, require the applicant to provide a corporate search.	X	X	X	X
c) Check to determine if there are any outstanding breaches of the Crown or Ministry document (including rent/fee arrears) and take appropriate action.	X	X	X	X

AREA SUPERVISORS WILL:	CL, SRL, WPL,WPLA	APL	RPL	LO
d) If the lease is registered, review the original copy of the transfer/deed or charge/mortgage (Form 1 and 2 under Regulation 688) in respect of the Crown or Ministry document, to ensure that it correctly describes the lands.	X	X	X	
e) If the lessee requests consent to a sublease review the applicant's copy of the sublease to ensure that the sublease is not conveying a greater interest than that granted by the head-lease.	X	X	X	
f) If a lessee requests consent to a mortgage, ensure that the term of the mortgage does not exceed the term of the lease.	X	X	X	X
g) Collect the applicable assignment fee, including any rent/fee arrears.	X	X	X	X
h) If the application is on behalf of an estate, obtain death certificate, notarial copy of letters probate or letters of administration, and, if applicable Dominion Succession Duty/Estate Tax Release (see P&P PL 2.05.02).	X	X	X	X
i) In respect of a power of sale assignment, refer to Policy Directive PL 2.05.02 Power of Sale Assignments.	X	X	X	
k) If the lease/easement is registered in a Registry Division, complete and execute Form 5* under Regulation 688 entitled "Schedule", indicating that it is consent to an assignment, sublease, or debenture, as the case may be; or	X	X	X	
If the lease or easement is registered in a Land Titles Division, complete and execute Form 5* under Regulation 688 entitled "Schedule", indicating that it is consent to a transfer, sublease, or debenture, as the case may be; or	X	X	X	
If the document is not registered, complete and execute a Short Form of Assignment (Form 870) and complete the jurat indicated in Appendix "A" attached hereto to the back of the Short Form of Assignment, which is to be affixed to the original or certified copy of a licence or Rondeau Park Lease.			X	X
l) Prepare the appropriate requisition and routing to amend Land Index System and Revenue Accounts records.	X	X	X	X

* Form 5 documents may be obtained from most legal stationary suppliers.

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When consent requires a Form 5 (see step k above), Area staff should indicate the following on the Schedule:

- a) a description which corresponds to the description in Box 5 of Form 1 or Form 2, as applicable;
- b) the parties to the Transaction (e.g. a transfer between John Harry Doe and Jane Susan Doe as joint tenants and William James Smith) (obtained from Boxes 8 and 11 on Form 1 or from Boxes 12 and 14 of Form 2); and
- c) the consent of the Crown.

Example

<p><u>DESCRIPTION:</u></p> <p>Parcel 12345, Sudbury East Section - LEASEHOLD, being Summer Resort Location NEJ 123 on Hawthorne Lake, designated as Part 1 on Plan 99R-1234.</p> <p>Transfer between John James Doe and Mary Susan Doe as joint tenants and Mack Construction Company, Ltd.</p> <p><u>CONSENT OF THE CROWN:</u></p> <p>The consent of the Crown to the within transfer is granted.</p> <p>_____</p> <p>Area Supervisor's Name</p> <p>_____ District</p> <p>for and on behalf of the Minister of Natural Resources</p>

When processing consents, Area Supervisors should consider the following.

- 1) Only consents to mortgages and charges or assignments of deceased person's interests need be routed to Legal Services for examination prior to granting consent to the transaction.
- 2) Names of principals should be in the correct form and spelling.
- 3) Transferees, assignees, mortgagees and chargees must be eligible to hold title to Crown land. This rule does not apply in the case of heirs under terms of a will.

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- 4) Use of the term "joint tenants" or "tenants-in-common" should be consistent throughout the documentation and should be used correctly. Ministry staff should use the terminology indicated on the parties' leasehold assignment/transfer.
- 5) Legal Descriptions must be correct and consistent throughout the documentation.
- 6) Assignments/Transfers are normally completed in duplicate, hence an original Form 5 Schedule will be required to be completed and photocopied. The original and photocopy should each be executed with an original signature.
- 7) Not all leases require the Crown to consent to mortgages. If the lease does not require the Ministry to consent, consent is not required.
- 8) Mortgages/Charges are normally completed in triplicate; hence an original Form 5 Schedule will be required to be completed. The original and 2 photocopies should be executed with an original signature.
- 9) Some transactions as permitted under the Land Registration Reform Act may utilize a Document General (Form 4 under Regulation 688).
- 10) The original Form 1, 2 and 4 as appropriate should be returned to the applicant or his/her solicitor along with the required number of Form 5 schedules.
- 11) No credit is to be made for the used fee paid on a terminated land use permit with the exception of tenure upgrades to lease or sale/patent of recreation camp sites. The annual fee is the cost for the permit and applies notwithstanding that a permit is terminated through death or expiry (on transfer).

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3.3 Estate Assignments

Different rules apply in different situations to processing of interests of deceased persons.

In dealing with sales, leases, licences of occupation and land use permits, the Ministry receives numerous applications for assignment of the interests of deceased persons. The documents required to deal with these requests vary with the type of interest held by the deceased.

In instances where an individual has died prior to January 1, 1971, the following additional information will also be required before approving an assignment:

- a) an original or notarized copy of a Dominion Succession Duty release, if the deceased died prior to January 1, 1959; or
- b) an original or notarized copy of the Estate Tax Release, if the deceased died between January 1, 1959 to December 31, 1971, both inclusive.

In the case of an estate, a requisition for assignment (estate) is prepared with the required documents and attachments. The requisition package is used to obtain the concurrence of Legal Services Branch to the assignment, and to update LIS (Land Index System) and Revenue Accounts records. Legal Services Branch may require other information to be submitted.

In addition to the processing requirements identified in sections 3.1 and 3.2 of this directive, the criteria identified in sections 3.3.1 to 3.3.4 will apply, as appropriate.

3.3.1 Estate - Sale

Where sale has been made but letters patent have not been issued, or conditions of the sale are not satisfied at the time of death, all inquiries with respect to the application shall be submitted to Legal Services Branch.

Where sales are complete, letters patent may issue in the name of the deceased. In the absence of prior directions from the deceased, provided an inspection report prepared by the district staff indicates that the conditions of sale have been satisfied. If the deceased has, prior to his or her death directed that letters patent be issued to him or her and another person(s) as a joint tenant(s) or tenant(s) in common, the lease may be so issued.

Section 31 of the Public Lands Act provides that letters patent issued to or in the name of a person who is dead is not therefore void, but title to the land thereby granted vests in the heirs, assigns, devisees or other legal representative of the deceased person according to existing laws.

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3.3.2 Estate - Lease

If the deceased lessee was a joint tenant, a certificate of death or a statutory declaration as to the death of the lessee should be included in the requisition package.

If the deceased lessee was the only lessee or held the lease as a tenant in common, the following documents are to be included in the requisition package:

- a) a notarial copy of Letters Probate or Letters of Administration of the estate of the deceased issued by an Ontario Surrogate Court; and
- b) an assignment from the executor or administrator of the residue of the term of the lease or the part interest in such lease as the case may be.

The following scenario may be encountered when dealing with an application for the assignment or transfer of a lease:

In some cases the improvements on leases or licences of occupation were sold by the deceased person and no assignment of the lease or licence of occupation was ever requested from the Ministry and no transfer or assignment was registered in the Registry Office. The owner of the improvements is now asking that the lease be assigned in his/her name but the term of the lease has expired.

The following procedure should be followed to complete the assignment:

- a) Conduct a title search in the Registry Office.
- b) Renew lease in the name of the registered lessee.
- c) Make sure the Executor or Administrator is registered on title
- d) Review application to transfer and if in order, consent to transfer.
- e) Request registered transfer document from client, attach to requisition and forward as per routing form.

In some instances mortgages and other charges are registered against the lease for which consent to transfer is being requested. Consent to the transfer of the lease shall not be granted unless the lessee has discharged all mortgages or charges registered against it.

3.3.3 Estate - Licence of Occupation

If the deceased licensee was the only licensee or the licence issued to two or more persons (without a right of survivorship), the following documents are to be forwarded to Main Office:

- a) a notarial copy of Letters Probate or Letters of Administration of the estate of the deceased issued by a Surrogate Court of Ontario; and
- b) an assignment from the executor or administrator of the interest of the deceased in the improvements on the land described in the licence.

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3.3.4 Estate - Land Use Permit

A land use permit (LUP) shall be cancelled upon receipt of proof of the death of the permittee. At the discretion of the District Manager, a new permit may be issued to a person who satisfies the Ministry that he is the proper person entitled to the improvements of the deceased. This may be determined by a thorough examination of a probated will or, if the permittee died intestate, the letters of administration, if any.

In most cases, this decision may be made by the District Manager without conferring with Main Office. In unusual cases, the District Manager may seek the advice of Legal Services Branch. In making the decision, the documents to examine are:

- a) a notarial copy of the Letters Probate or Letters of Administration and an assignment from the executor or administrator of the deceased in the improvements on the subject land; or
- b) a statutory declaration of facts pertaining to the estate of the deceased showing that the applicant is the proper person to receive the permit in accordance with the rules of succession, where there is no will or no letters probate or administration. Refer to Appendix "B".

Appendix "B" contains a limited table showing rules of succession to be used in cases where the will or letters of administration do not address the disposition of the deceased permittee's interests. The table can also be used where no will or letters of administration are available. It may be necessary in this case to obtain a statutory declaration from the executor setting out the value of the estate or direction from the entitled beneficiaries to determine which party is entitled to the LUP improvements of the deceased.

4.0 REFERENCES

4.1 Legal References

- Land Registration Reform Act
- Land Registration Reform Act (Regulation 688)
- Public Lands Act

4.2 Directive Cross References

- PL 2.05.01 (POL) Consent to Assign, Transfer, Mortgage or Charge Crown or Ministry Documents

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APPENDIX 'A'

"ADMIT ASSIGNMENT of herein *{insert document type e.g. Licence of Occupation}* Number *{Insert number}* from *{insert NAME 1}* of *{insert place of abode}* (and) *{insert additional name(s) and place(s) of abode and type of estate where held by 2 or more}* to *{insert NAME 1}* of *{insert place of abode here}* (and) *{insert additional name(s) and place(s) of abode and, in the case of a lease, the type of estate where held by 2 or more}*.

 {Area Supervisor's Name}
 {Area}
 {District}
 for and on behalf of the Minister
 of Natural Resources

Examples

- 1) "ADMIT ASSIGNMENT of herein Licence of Occupation Number 0000 from JOHN B. GOOD of the City of Sault Ste. Marie in the District of Algoma to ANNE A. SMITH and MARTIN J. JONES of the Township of The Archipelago in the District of Parry Sound ."
- 2) "ADMIT ASSIGNMENT of herein Rondeau Park Lease Number 0000 from JOHN B. GOOD of the Township of Harrow in the County of Essex to ANNE E. SMITH of the City of London in the County of Middlesex."
- 2) "ADMIT ASSIGNMENT of herein Rondeau Park Lease Number 0000 from ANNE E. SMITH of the City of London in the County of Middlesex to ALLAN B. JACKSON of the City of Windsor in the County of Essex and BRIAN J. JACKSON of the Township of Walden in The Regional Municipality of Sudbury, as tenants in common."
- 3) "ADMIT ASSIGNMENT of herein Rondeau Park Lease Number 0000 from ALLAN B. JACKSON of the City of Windsor in the County of Essex and BRIAN J. JACKSON of the Township of Walden in The Regional Municipality of Sudbury, as tenants in common, to John R. Doe and Jane E. Doe of the Township of Tilbury East in the County of Kent as Joint Tenants."
- 4) "ADMIT ASSIGNMENT of herein Rondeau Park Lease Number 0000 from John R. Doe and Jane E. Doe of the Township of Tilbury East in the County of Kent and Joint Tenants to Charles J. Johnson of the City of East York in The Municipality of Metropolitan Toronto."
- 5) "ADMIT ASSIGNMENT of herein Rondeau Park Lease Number 0000 from Charles J. Johnson of the City of East York in the Municipality of Metropolitan Toronto to Andrew J. Kerr and Heather A. Kerr of the Township of Blandford-Blenheim in the County of Oxford as Joint Tenants."

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APPENDIX 'B'

Part A - Share of Surviving Spouse

Where the intestate is survived by:

- a) spouse and no surviving issue, all to the spouse.
- b) spouse and one child, spouse takes \$75,000 and one-half of the revenue.
- c) spouse and more than one child, spouse takes \$75,000 and one-third of the residue.
- d) spouse and issue of one deceased child, spouse takes \$75,000 and one-half of the residue.
- f) spouse and issue of more than one deceased child, spouse takes \$75,000 and one-third of the residue.
- g) spouse, child and issue of a deceased child or of deceased children, spouse takes \$75,000 and one-third of the residue.

Part B - Shares of Issue

If there is a surviving spouse, the amount to be distributed among the issue of the intestate will be the balance of the estate under whichever rule in Part A above is applicable. If there is no surviving spouse, the entire estate or the part of the estate to which the deceased died intestate will be distributed among the surviving issue. In either case, the amount to be distributed among the issue will be divided as follows:

Where the intestate is survived by:

- a) child and no issue of deceased child, all to the child.
- b) children and no issue of a deceased child, children share equally.
- c) children and issue of a deceased child or of deceased children, divide the distributable amount into as many equal shares as there are surviving children and deceased children who have left issue who survived the intestate. Each surviving child takes one share and one share is allocated to the surviving issue of each deceased child. The share of the surviving issue of each deceased child is divided among them as if it were that child whose intestate estate was being distributed among them.
- d) grandchildren and no issue of a deceased grandchild or of deceased grandchildren, grandchildren share equally.
- e) grandchildren and issue of a deceased grandchild or of deceased grandchildren: Divide the distributable amount into as many equal shares as there is surviving grandchildren and deceased grandchildren who have left issue who have survived the intestate. Each surviving grandchild takes one share and one share is allocated to the surviving issue of each deceased grandchild is divided among them as if it were that grandchild whose intestate estate was being distributed among them.