

Bulletin No. **2000-6***Land Titles Act*Ministry of Consumer
and Commercial Relations

Date: December 20, 2000

Registration Division

To: All Land Registrars

ESTATE DOCUMENTS

The *Red Tape Reduction Act, 2000*, which was proclaimed December 6, 2000, amended sections 123 and 124 of the *Land Titles Act* which are the sections that deal with applications for survivorship and transmission applications. The amendment revokes the requirement to produce evidence in the prescribed manner and substitutes it with the requirement to register evidence specified by the Director of Titles. This will allow estate documents to be registered in a non-electronic format using statements made by a solicitor instead of filing evidence.

Pursuant to sections 123 and 124, it is hereby specified that evidence in the following manner must be registered:

I. SECTION 123 – SURVIVORSHIP APPLICATION

- 1) **The current requirements for an application for survivorship i.e. completion of Forms 42 and 43 of Regulation 690.**

OR

2) Use of the following statements:

- i. The applicant(s) held the property as (a) joint tenant(s) with the deceased, or
- ii. The applicant held the charge on joint account with right of survivorship with the deceased.
- iii. By right of survivorship, the applicant(s) is(are) entitled to be the owner(s), as a surviving joint tenant(s).
- iv. The date of death was (insert date).

Family Law Act Statements:

- v. Section 26(1) of the *Family Law Act* provides that if a spouse dies owning an interest in a family residence as a joint tenant with a third party (and not their spouse), joint tenancy is deemed to have been severed immediately prior to the time of death. As a result, if the death occurred on or after March 1st, 1986, the application for survivorship must be supported by one of the following statements:

- The deceased and (insert name), a(the) surviving joint tenant, were spouses of each other when the deceased died.
- The deceased was not a spouse at the time of death.
- The property was not a matrimonial home within the meaning of the *Family Law Act* of the deceased at the time of death.

The above statements are consistent with those required for the electronic registration of an application for survivorship and can only be made by a solicitor. The solicitor must sign these statements.

II. SECTION 124 – TRANSMISSION APPLICATION

1) **The current requirements for a transmission application pursuant to section 36(2) of Regulation 690 which provides for:**

An application in Form 40 or Form 41 which is to include the required evidence pertaining to:

- i. dower rights;
- ii. spousal rights under the *Family Law Act*;
- iii. the sex of the deceased;
- iv. debts of the estate;
- v. the heirs of the deceased; and
- vi. such other matters as the Director of Titles may specify.

OR

2) **Use of the following statements:**

(a) Transmission by Personal Representative:

A transmission application by an estate trustee (with or without a will), executor or administrator must contain the following information in the form of a statement:

- i. The applicant is entitled to be the owner by law, as estate trustee, executor or administrator of the estate of the deceased owner.
- ii. Name and date of death of registered owner.
One of the following:
- iii. The applicant is appointed as Estate Trustee with a will by (*enter name of Court*), under (*enter File number*), dated (*enter date*) which is still in full force and effect, or
- iv. The applicant is appointed as Estate Trustee without a will by (*enter name of Court*), under (*enter File number*), dated (*enter date*) which is still in full force and effect, or
- v. No application was made for a certificate of appointment of an Estate Trustee, as the total value of the estate of the deceased owner is not more than \$50,000.
- vi. Documentation regarding the death of (*enter the deceased's name*) which is sufficient to deal with this transaction, is attached to registration number (*enter registration number*).

Note: Statement (vi) is to be used where the documentation has been registered in the Registry Division of a land registry office and the property has subsequently been converted to Land Titles Converted Qualified. (See Section III below)

If no application for a certificate of appointment was made, a covenant to indemnify the Land Titles Assurance Fund is required to be filed with the office of the Director of Titles using the prescribed form 54 from Regulation 690.

AND

- vii. The property is subject to the debts of the deceased, or
- viii. The debts of the deceased are paid in full.

b) Transmission by Devisee/Heir at Law:

A transmission application by a devisee or heir-at-law must contain the following information in the form of a statement:

- i. The name and date of death of the owner.
- ii. The applicant(s) is entitled to be the owner, as Devisee or Heir-at-Law.
- iii. The interest of the deceased is now vested in all the beneficiaries of the estate of the deceased owner under the provisions of the *Estates Administration Act*, the *Succession Law Reform Act* and the *Family Law Act*.
- iv. The property is subject to the debts of the deceased, or
- v. The debts of the deceased are paid in full.
- vi. Title to the land is not subject to spousal rights under the *Family Law Act*, or
- vii. Title to the land is subject to spousal rights of the spouse (enter applicable name)

c) Transfer by Personal Representative:

A transfer by an estate trustee (with or without a will), executor or administrator must contain the following information in the form of a statement:

- i. A statement that the transferor is entitled to transfer the land affected by the document under the terms of the will, if any, the *Estates Administration Act* and the *Succession Law Reform Act*, or
- ii. This transfer is authorized by (enter name of Court), under (enter File number) dated (enter date) which is still in full force and effect.
- iii. Title to the land is not subject to spousal rights under the *Family Law Act* with respect to the deceased, or
- iv. Title to the land is subject to spousal rights of the spouse of (enter applicable Name).
- v. The transferor has obtained the consent of all required parties, or
- vi. No consents are required for this transfer.

Solicitors are responsible for ensuring that the provisions of the *Estates Administration Act* and the *Succession Law Reform Act* have been met and therefore it is not necessary to state the purpose of the transfer, e.g. for the purpose of paying debts or distributing the estate.

If it is necessary to obtain consents of any beneficiaries, the name(s) of the beneficiaries must be set out in the application since a search for executions is required for any beneficiary.

Spousal Status

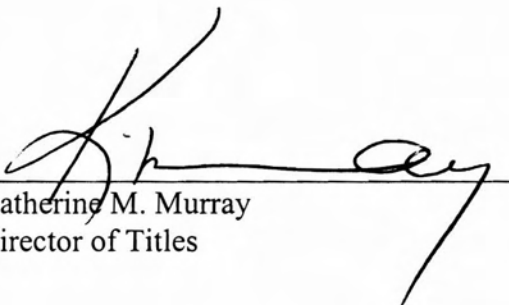
The above statements are consistent with those required for the electronic registration of a transmission application or transfer by a personal representative or devisee/heir-at-law and can only be made by a solicitor. The solicitor must sign the statements.

III. FIRST DEALINGS AFTER PROPERTY CONVERTED TO LAND TITLES

The following procedures may be used for transmission applications for the first dealing after the property has been converted to the Land Titles system where no application for a certificate of appointment of estate trustee has been applied for. Land Registrars are authorized to exempt the requirement of a certificate of appointment of estate trustee and the following must be included in the supporting affidavit by the applicant, or by way of statements from a solicitor:

- i. the property is a Ministry conversion from Registry to Land Titles;
- ii. the transaction is the first dealing after the conversion of the property;
- iii. the value of the estate is (enter value of estate);
- iv. the same evidence as under the *Registry Act* with regard to the execution of the will and proof of death. If an affidavit of execution cannot be provided, a statement or affidavit made by someone who knew the deceased's handwriting may be used in lieu of the affidavit of execution. This should be someone of good standing within the community and must be someone who can state that they knew the handwriting of the testator. For example, a bank manager, an employer, or those individuals who can attest to an application for a passport. It cannot be a family member, a beneficiary or someone who can benefit from the estate;
- v. that the will is the last will and that a certificate of appointment of estate trustee was not applied for; and,
- vi. that the testator was of the age of majority at the time of the execution of the will, and that the will has not been revoked by the marriage of the testator or otherwise. (This is the current requirement in the Land Titles Procedural Guide (page 35,165) for situations where a certificate has not been applied for).

In all cases a covenant to indemnify the Land Titles Assurance Fund must be provided.


Katherine M. Murray
Director of Titles