

## **LAND TITLES GUIDE**

**Revision 60 – May 28, 2014**

Winnipeg Land Titles Office  
276 Portage Avenue  
Winnipeg, Manitoba  
R3C 0B6

Phone: (204) 945-2042  
Fax: (204) 948-2140

Morden Land Titles Office  
351 Stephen Street  
Morden, Manitoba  
R6M 1V1

Phone: (204) 822-2920  
Fax: (204) 822-2928

Neepawa Land Titles Office  
329 Hamilton Street  
Neepawa, Manitoba  
R0J 1H0

Phone: (204) 476-7040  
Fax: (204) 476-7049

Brandon Land Titles Office  
705 Princess Avenue  
Brandon, Manitoba  
R7A 0P4

Phone: (204) 726-6279  
Fax: (204) 726-6553

Portage Land Titles Office  
25 Tupper Street North  
Portage la Prairie, Manitoba  
R1N 3K1

Phone: (204) 239-3306  
Fax: (204) 239-3615

Dauphin Land Titles Office  
308 Main Street South  
Dauphin, Manitoba  
R7N 1K7

Phone: (204) 622-2084  
Fax: (204) 622-2454

Materials prepared by: Russell E. Davidson  
Senior District Registrar  
Manitoba Land Titles

## LAND TITLES GUIDE

### INTRODUCTION and CAUTION

Please be advised that the purpose of this guide is to provide users of the Manitoba Land Titles System with assistance in certain areas where we see our client's are having difficulty.

This document is *not* intended to be an exhaustive or comprehensive *users' guide*.

This document is only intended to be used by parties who have a working knowledge of the laws and policies that govern the Manitoba Land Titles System (such as lawyers, legal assistants and surveyors) as a supplement to their existing body of knowledge.

Parties who do not have this essential knowledge are advised that **this document cannot take the place of proper professional advice, either from a lawyer or a surveyor.**

### ALL REFERENCES ARE TO NEW FORMS

On February 26, 2013 all Land Titles forms were replaced with new versions. These new forms will be mandatory for all documents executed after September 30, 2013. Until that date they are optional. These new forms have different form numbers, contain different content, and, in certain cases, have different names from the current forms. All references in these materials are to these new forms.

The new forms can be obtained from the Land Titles website:  
[http://www.gov.mb.ca/tpr/land\\_titles/lt\\_offices/offices.html](http://www.gov.mb.ca/tpr/land_titles/lt_offices/offices.html)

# LAND TITLES GUIDE

## TABLE OF CONTENTS

<b><u>GENERAL CONCERNS</u></b> .....	1
<b><u>AGREEMENTS TO AMEND OR EXTEND MORTGAGES</u></b> .....	2
<b><u>BANKRUPTCY</u></b> .....	3
<b><u>CAVEATS</u></b> .....	4
<b><u>COMMITTEES</u></b> .....	8
<b><u>CONDOMINIUMS</u></b> .....	9
<b><u>CORPORATE EXECUTION RULES FOR LAND TITLES DOCUMENTS</u></b> .....	11
<b><u>CORRECTION POLICY</u></b> .....	14
<b><u>DEBENTURES</u></b> .....	19
<b><u>DEVELOPMENT AGREEMENTS</u></b> .....	21
<b><u>DEVELOPMENT SCHEMES</u></b> .....	23
<b><u>DISCHARGES</u></b> .....	24
<b><u>DUPLICATE TITLES</u></b> .....	26
<b><u>EASEMENTS</u></b> .....	27
<b><u>ESTATES AND DEATH</u></b> .....	32
<b><u>HOMESTEADS ACT EVIDENCE</u></b> .....	35
<b><u>JUDGMENTS AND ORDERS</u></b> .....	37
<b><u>LAPSING OF INSTRUMENTS/ENCUMBRANCES</u></b> .....	39
<b><u>MORTGAGES</u></b> .....	40
<b><u>PERSONAL PROPERTY SECURITY NOTICES</u></b> .....	42
<b><u>POSTPONEMENTS</u></b> .....	43
<b><u>POWERS OF ATTORNEY</u></b> .....	44
<b><u>PROPERTY REGISTRY APPLICATION (PRA)</u></b> .....	55
<b><u>REAL PROPERTY APPLICATIONS</u></b> .....	56
<b><u>RELIGIOUS SOCIETIES</u></b> .....	58
<b><u>SCHEDULES</u></b> .....	61
<b><u>THIRTY DAY NOTICES</u></b> .....	63
<b><u>TRANSFERS</u></b> .....	67
<b><u>WITNESSING LAND TITLES DOCUMENTS</u></b> .....	70
<b><u>ATTACHED SCHEDULES</u></b>	

## LAND TITLES GUIDE

### GENERAL CONCERNS

Having documents either rejected by Land Titles or held up for a correction letter or document can add considerably to the processing time of a document, resulting in stress and frustration for all involved. Many of the errors that we see at Land Titles could be remedied by simply paying more care and attention to the documents submitted.

An **up to date title search** done prior to the registration of documents at Land Titles avoids documents which have not been made subject to all encumbrances, contain incorrect legal descriptions (this is especially important where parts of the title have been transferred and the document in question affects only the balance of the title), or do not show the correct or current Registered Owners.

**Proof-reading documents** can avoid rejections based upon missing encumbrances, missing witness's signatures, missing dates, and incorrect legal descriptions. When proof-reading ensure that the name, position and address of all witnesses are set out. Where a witness witnesses more than one signature in a document please ensure that they sign beside each signature that they witness, or there is a statement below/beside their signature that it is as to all of the executing parties (or specify which parties it is as to).

The Registered Owner of lands affected by documents registered at Land Titles must provide all **duplicate certificates of title** that have been issued upon the registration of documents affecting the lands in those titles. If the duplicate title is not available an affidavit of lost title must be provided. See **DISPENSING WITH PRODUCTION OF DUPLICATE TITLES** for further information.

Where **corrections** must be made to Land Titles documents please bear in mind that the document must be suitable for microfilming and accordingly must be clear and legible. Any material change to a document must be initialled by the party (ies) executing the document and the witness to the execution. Corrections made by way of lawyer's letter must be signed by the solicitor involved, and not by his or her secretary/para-legal.

All registrations at Land Titles must be on **suitable and proper forms**. These forms must be clear and therefore suitable for microfilming purposes, must be the correct size (reduced forms are not suitable), must be double sided (documents, especially Caveats, which leave off the backer part of the document will be rejected as will documents where the "front" and "back" are on separate pages and have been stapled together).

All registration must be accompanied by **sufficient funds** where the registering party does not have an account at Land Titles containing the necessary funds. At the present time separate accounts are required for each of the provinces Land Titles Offices.

## **AGREEMENTS TO AMEND OR EXTEND MORTGAGES**

Amending/Extending agreements can be registered to vary almost all of the terms of the Mortgage, including varying the principal amount and adding additional lands. These Agreements cannot be used to change either the Mortgagors or the Mortgagees. All Agreements to Amend/Extend must contain the consent of encumbrancers registered subsequent to the Mortgage being amended/extended. In addition, consents must be obtained from those prior encumbrancers that have postponed their interest to the subject Mortgage. Land Titles does not require consents from registrants of building restriction caveats, utility caveats and caveats giving notice of statutory easements.

### **CONSENTS OF SUBSEQUENT ENCUMBRANCES UNAVAILABLE**

If the required consents of subsequent encumbrancers cannot be obtained, Land Titles will allow (but does not recommend) the Agreement to Amend/Extend to be attached to a Caveat and registered as a Caveat on title.

### **WITNESS**

See **WITNESSING LAND TITLES DOCUMENTS** (below) for the rules governing the witnessing of these agreements.

### ***HOMESTEADS ACT EVIDENCE***

Given the fact that an agreement to amend a mortgage can have the affect of being a new disposition of land, Land Titles requires *Homesteads Act* evidence in all situations where the mortgagors are natural persons, and *Homesteads Act* consents where appropriate. While not all Agreements to Amend will be a disposition, for simplicity we require this evidence in all Agreements to Amend.

## BANKRUPTCY

### CERTIFIED COPY OF ORDER REQUIRED

A certified copy of the Assignment for the Benefit of Creditors or Receiving Order must be attached to the transmission.

### INSPECTORS

The Transfer of Land from a trustee in bankruptcy must contain evidence as to whether or not inspectors were appointed. If inspectors were appointed the Transfer from the trustee must name the inspectors and the inspectors must approve of the transfer, which approval must be provided.

### ENCUMBRANCES

The trustee should make the Transmission and Transfer subject only to those encumbrances that are registered by a secured creditor. Section 70 (1) of The *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, states that the Receiving Order does not have precedence over the rights of a secured creditor. Of note, secured creditor does not include an individual who has registered a Judgment (s. 70(1)).

Please note that if the trustee wishes to have title to a purchaser issue clear of registrations from unsecured creditors, the Transfer from the trustee must not be made subject to those encumbrances. Land Titles will issue the created title subject to all encumbrances registered by secured parties, and also to all encumbrances listed in the Transfer of land.

In the event that an unsecured encumbrance is carried forward to the created title by virtue of the fact that the Transfer was made subject to it, Land Titles will not lapse it, either automatically or upon the request of the Transferee or trustee. These encumbrances can be removed by way of a discharge from the registrant. In the event that they were extinguished by the bankruptcy and the creditor is not willing to provide a discharge, they can also be removed by way of the 30 Day Notice process.

### HOMESTEADS ACT ISSUES

#### *Homesteads Act Evidence Required*

Homesteads Act evidence regarding the bankrupt party must be provided by the trustee when executing a disposition of land (including a transfer). Where there is a person with Homesteads Act rights in the affected lands, and that person is not a co-owner and party to the disposition, that person will have to sign either a Release of their Homesteads Act rights or a consent to the disposition before the disposition can be accepted for registration at Land Titles.

*Homestead Rights and Bankruptcy*

Where a party with homesteads rights becomes bankrupt, their rights vest in their trustee in bankruptcy. This includes the right to register a Homesteads Notice, the right to discharge such a notice and the right to consent to a disposition of the homestead.

See Chartier (Bankrupt), Re, 2013, MBCA 41

See **Schedule XVII** for a sample of wording to be used in box 7 of a transfer by a trustee in bankruptcy. Note that this sample also incorporates consents from inspectors.

## CAVEATS

### PROPER CAVEATOR

*The Real Property Act* allows a person who is claiming an interest in land to register a caveat. For the purposes of *The Real Property Act*, person includes natural persons and corporations. Land Titles will not accept as caveator a trust, a family trust, a limited liability partnership, a partnership or a law firm. Where a client's lands have been pledged as security for the payment of legal fees and disbursements the caveator should be the specific lawyer and not the firm.

### ADDRESS FOR SERVICE

Every Caveat filed at Land Titles must contain a complete address for service. These addresses must be within Canada. Caveats must set out the names of all of the Registered Owners, and must set out the correct and current affected title numbers.

### INTEREST IN LAND REQUIRED

To be registerable at Land Titles, a Caveat must claim a valid and acceptable interest in land. When completing the Caveat you can either select one of the interests listed in box 2, or, if the interest you are claiming is not in that list, you can write in your own in the space provided. Please limit your entry here to the specific interest in land that you are claiming. The basis for your claim (the circumstances giving rise your right to make the claim) is to be entered into box 3.

It is both our right and our responsibility to ensure that the interest claimed is a valid one. This said, once Land Titles has determined that the interest claimed is a valid interest in land, we do not investigate to determine if this interest is validly claimed.

### BASIS FOR CLAIM

Once you have claimed your interest in land in box 2, you must enter the basis for your claim in box 3 of the caveat. It is here that you can enter the particulars of the agreement or circumstances that give rise to the interest in land claimed in box 2. This should include the names of all relevant parties, the dates and particulars of relevant agreements, and any other relevant information.

## CAVEATS (continued)

### AFFECT OF REGISTRATION ON INTEREST CLAIMED

From time to time Land Titles accepts for registration Caveats where we are not entirely certain that the interest claimed is an interest in land. Where we have some doubt, but are not entirely certain such a caveat may be accepted. Be aware that the mere acceptance of caveat for registration by Land Titles does not mean that the interest claimed is in fact an interest in land. Further, the fact that a caveat has been accepted for registration does not convert an otherwise invalid interest into an interest in land.

Three recent Manitoba decisions have highlighted this principal quite clearly. See:

Kadyschuk v. Sawchuk 2006 CarswellMan 41 2006 MBCA 18 Manitoba Court of Appeal, February 10, 2006

Willman v. Ducks Unlimited (Canada), (2004) 187 Man. R. (2d) 263, 245 D.L.R. (4th) 319, 24 R.P.R. (4th) 150, [2005] 2 W.W.R. 1 (Man. C.A.)

Jacques v. Alexander (District), 33 M.P.L.R. (2d) 81, [1996] 7 W.W.R. 677, 109 Man. R. (2d) 223

### COPIES OF AGREEMENTS

For the benefit of future parties it is wise to attach copies of relevant agreements to Caveats. This is because Lawyers retire, die, close files, and change firms and the agreements which underlie caveated claims can become irretrievably lost. Where the Caveat is filed pursuant to section 111 of *The Real Property Act* (Rights analogous to easements and Statutory Easements) or is a development agreement filed by a municipal government (other than the City of Winnipeg) the agreement must be attached.

### SMELL AND NOISE CAVEATS

Caveats which are registered for the purpose of giving notice of agreements prohibiting the owners of land from complaining about or taking action with regard the **smells and noise** associated with agricultural processes will not be accepted for registration at Land Titles. Land Titles position is based upon the fact that these agreements contain only the personal covenants of the land owners governing their own conduct, but do not form an interest in the underlying land or control the use of the land itself.

### RIGHT OF FIRST REFUSAL CAVEATS

Caveats claiming a right of first refusal have in the past been accepted for registration at Land Titles. The Manitoba Court of Appeal has now confirmed that a right of first refusal is not an interest in land, and only becomes one upon the receipt of an offer to purchase by the registered owner (an event that may never occur). The court made it clear that agreements containing conditional interests in land, instrument giving rights that *might* at some future time become an interest in land, do not create interest in land capable of supporting the registration of a caveat. See: Kadyschuk v. Sawchuk 2006 CarswellMan 41 2006 MBCA 18 Manitoba Court of Appeal, February 10, 2006.

**CAVEATS (continued)****EASEMENT CAVEATS**

Where the interest claimed in a Caveat is based upon an easement, and the easement is not of the type specified in section 111 of *The Real Property Act*, the Caveat must contain the legal description of both the dominant and servient lands.

*Section 111 caveats do not require dominant lands. These caveats are typically registered by the Crown, a municipality, Hydro, MTS, or a similar agency for the supply of some service – water, electricity, etc. For a discussion of these instruments, see **EASEMENTS**, **STATUTORY EASEMENTS** (below).*

Caveats giving notice of easements do not survive tax sale, nor do they survive a mortgage sale/foreclosure under a mortgage which is registered in priority to the caveat. If this protection is important, the easement should be registered in its own right, pursuant to section 76 of *The Real Property Act*. See **EASEMENTS** (below) for a complete discussion of the difference between these two methods of registration.

**RESTRICTIVE COVENANT CAVEATS**

There are essentially two types of restrictive covenant caveats (other than those which are based upon Development Agreements entered into with municipal authorities, which are discussed below).

*Traditional Restrictive Covenants*

The first type of restrictive covenant caveat gives notice of an agreement entered into between a vendor and a purchaser of land wherein certain restrictions are imposed upon the uses the purchaser can make of the subject lands, which restrictions are for the benefit of other lands owned by the vendor.

To be registerable at Land Titles a Caveat based upon a traditional restrictive covenant must specify both the beneficial (dominant) and the affected (servient) lands.

**CAVEATS (continued)***Building Schemes / Development Schemes*

The second sort of restrictive covenant that can be protected by caveat is one imposed by a developer. These are caveats registered by a party who has subdivided a large piece of land into numerous lots and is selling off the lots. These caveats are based upon separate agreements between the developer and the purchasers of each separate lots.

Taken as a whole the numerous separate agreements together act to create and control development in an area. In these cases the restrictions in each separate agreement are intended to bind and benefit all of the lots in the subdivision and not any specific land retained by the developer. In the end, in this type of situation the developer ultimately would own no lands, having sold all of the lots. This is referred to as a building scheme or a development scheme.

To be registerable at Land Titles building scheme caveats must set forth all of the lands affected by and benefiting from the overall scheme of restrictions. Please note that when referring to those lands, it is sufficient to use some form of short hand, for example: All lots and blocks in Plan no. 45678 WLTO or Lots nos. 1-100 Plan 45678 WLTO.

Typically caveats creating a building scheme will be registered subsequent in series to a transfer from the developer to the purchaser. Despite the fact that all the affected lands must be shown in these caveats, each separate caveat of this type is only registered on the title to the land that is actually being sold, and not on all of the lots in the subdivision.

Note: By virtue of recent amendments to *The Real Property Act*, and in particular section 76 of the Act, building/development schemes can also be created by the registration of a single document, either an agreement or a declaration. Provided that the legislation is strictly complied with, the registration of this document will create a development scheme all on its own. See **DEVELOPMENT SCHEMES** (below) for a more complete explanation.

**MUNICIPAL RESTRICTIVE COVENANTS / DEVELOPMENT AGREEMENTS**

By operation of *The City of Winnipeg Charter* and *The Planning Act*, both the City of Winnipeg and municipal governments outside of the City have the right to register caveats giving notice of development agreements containing restrictive covenants (and other terms).

See **DEVELOPMENT AGREEMENTS** (below) for a more complete discussion.

**CAVEATS (continued)****CAVEATS BASED UPON AN ASSIGNMENTS OF RENTS**

While Land Titles will accept a caveat for an assignment of rents and leases, a caveat giving notice of a pure assignment of rents will not be accepted. These caveats do not contain an interest in land capable of supporting the registration of a caveat. This said, due to the provisions of *The Personal Property Security Act*, one can register a filing under that act, at the Land Titles Office, protecting those rights vis-à-vis other parties with an interest in the relevant lands. This registration is made using the Land Titles Request/Transmission form as modified for *Personal Property Security Act* registrations.

See **PERSONAL PROPERTY SECURITY NOTICES** for a more detailed discussion of registrations pursuant to *The Personal Property Security Act*.

**CAVEATS AND THE HOMESTEADS ACT**

While Land Titles does not examine caveats or the agreements attached to caveats for *Homesteads Act* evidence or consents (with the notable exception of caveats creating *statutory easements*), parties drafting agreements that they intend to register by way of caveat should ensure that they have obtained Homesteads Act consents where appropriate. In particular, consent should be obtained where the lands affected by the underlying agreement are the Homestead of the registered owner and the owner's spouse or common law partner is not a party to the agreement.

The Manitoba Court of Queen's Bench, in the case of *Hildebrandt v. Hildebrandt*, 2009 MBQB 52, [2009] W.D.F.L. 2526, 238 Man. R. (2d) 71, 68 R.F.L. (6th) 105 held that a *disposition* under the *Homesteads Act* includes both legal and equitable dispositions. In this case, an equitable mortgage registered by way of caveat was found not to be valid where it was executed by one spouse without the *Homesteads Act* consent of the other. The caveat was also held to be invalid, with no registration priority. Finally, the court held that it could not dispense with the missing consent, as the consent was prerequisite to a valid disposition and the court couldn't validate an earlier and otherwise prohibited disposition.

## COMMITTEES

### APPOINTMENT

Where a person residing in the province is incapable of managing his or her property because of mental incapacity and needs decisions to be made on his or her behalf regarding that property, the court may appoint another person as that person's committee. See s. 71(1) of *The Mental Health Act*, C.C.S.M. c M110.

#### POWERS OF COMMITTEES GENERALLY (See s. 80(1) of *The Mental Health Act*)

Absent specific authorization, a committee appointed under section 71(1) only has the following land titles related powers. They may:

1. Transfer property held in trust by the incapable person, either solely or jointly with another, to the person beneficially entitled to it;
2. Execute any document on behalf of the incapable person that is necessary to comply with *The Homesteads Act*;
3. Give or receive a notice on behalf of an incapable person that relates to his or her property; and
4. Grant or accept a lease of real property for a term not exceeding three years.

#### SPECIAL POWERS OF COMMITTEES (See s. 81(1) of *The Mental Health Act*)

Certain other powers can also be exercised by a committee, but only with the specific authorization of the court. The following land titles related powers require the specific authorization of the court. The power to:

1. Mortgage or encumber real property;
2. Transfer real property;
3. Grant (or accept) a lease for more than three years; and
4. Surrender (or accept a surrender of) a lease.

### REQUIRED DOCUMENTS

Where a committee is filing a document on behalf of the owner of an interest in land, the following must accompany the filing at land titles:

1. A court certified copy of the order appointing the committee; and
2. A court certified copy of the order authorizing the committee to act (required where the power exercised requires specific authorization).

#### EXECUTION OF LAND TITLES DOCUMENTS BY THE COMMITTEE

When executing a document on behalf of an incapable person, all information must be provided by the committee in the third person. This ensures the information provided is about the incapable person and not the committee. **Schedule XVIII** is an example of acceptable execution.

## CONDOMINIUMS

### DECLARATION

The allocation in percentages as to the voting rights of unit owners, share of ownership of the common elements and responsibility of unit owners to contribute to common expenses must add up to exactly 100.00%. Land Titles will not accept an allocation that adds up to any smaller amount (for example 99.99%).

### AMENDING DECLARATION

All amendments to the condominium declaration must be accompanied at the time of registration by a certificate under the seal of the condominium corporation which certifies that the those persons who hold 80%, or such greater percentage as may be specified in the declaration, of the voting rights in the corporation have consented in writing to such amendment. (s. 5(7) *The Condominium Act*).

### BY-LAWS AND AMENDING BY-LAWS

All by-laws and all amendments to by-laws must be accompanied at the time of registration by a certificate executed by the condominium corporation certifying that the by-law or amendment was made in accordance with the *Condominium Act*, the condominium declaration and the by-laws of the condominium corporation. (s. 12(3) *The Condominium Act*).

### BARE LAND CONDOMINIUM DECLARATIONS

All declarations which create bare land condominiums or a condominiums with bare land units (where the boundaries of one or more of the units are defined by horizontal delineation without reference to any building) must contain a description of the manner of determining values in the event the property ceased to be governed by *The Condominium Act* (s. 5(1)(k) *The Condominium Act*).

### RESERVE FUND STATEMENT

*The Condominium Act* requires every condominium corporation to file annually a document called a *reserve fund statement*. In the statement, the condominium corporation is to certify that they have a reserve fund, and how much is in the fund. The form to be used can be found in the regulations to *The Condominium Act*. Once completed, the statement is to be filed with the Residential Tenancies Branch of the Government of Manitoba.

**CONDOMINIUMS (continued)**

## SEAL REQUIRED

Prior to the enactment of specific legislation (see section 23 of The Corporations Act), corporations were, as a rule, required to affix their corporate seal to documents executed by them. Because of section 10(3) of The Condominium Act, which provides that the Corporations Act does not apply to condominium corporations, the common law rules governing corporate execution likely continue to govern condominium corporations. As such, Land Titles requires a corporate seal to be affixed to all documents executed by a condominium corporation. Section 10(10) of The Condominium Act, while not specifically addressing this point, does make it clear that condominium corporations are still required to have a corporate seal.

## TRANSFER OF A CONDOMINIUM UNIT

*Cooling-off Period Declaration Required*

Effective September 1, 2006, every Transfer of Land for a condominium unit must be accompanied by a statutory declaration from the purchaser(s) regarding the financial statements and the cooling-off period. This can come in the form of a statutory declaration or a schedule completed pursuant to *The Real Property Act*. See **Schedule XIII** for a sample of a schedule form that would be acceptable to the Land Titles Office.

Please note that where there are multiple purchasers, each one of them must provide a declaration.

*Declaration only Required from Purchasers*

Because the act requires the cooling-off declaration from all purchasers, no such declaration is required from a transferee who is not actually a purchaser of the affected condominium unit. This can happen in any number of situations, including:

- Where the transferee has received the unit as a gift;
- Where the transferee has received the unit pursuant to a bequest under a will;
- Where the transferee's name has been included on a transfer (perhaps for financing purposes) and they were not a party to the initial purchase and sale documents.

A lawyer's letter can confirm that a particular transferee is not a purchaser.

## CORPORATE EXECUTION RULES FOR LAND TITLES DOCUMENTS

### AGE OF MAJORITY STATEMENT

Do not delete the age of majority statement from land titles documents. This statement is required for corporate executions.

### RULES FOR DOCUMENTS GENERALLY

All documents (without exception) executed by a Corporation may be signed in any of the following ways:

1. By any employee of the corporation, regardless of their job title, so long as the document contains an express statement to the effect that they have been authorized by the corporation to execute the instrument.

Sample of acceptable statement: I am an employee of the Corporation and have authority to bind same.

2. By a director of the corporation;
3. By an officer of the corporation. Where an officer signs on behalf of a company, no further statement is required (in other words, they don't have to put in the statement, *I am an employee of the Corporation and have authority to bind same*).

Officer includes:

President  
Vice-President  
Treasurer  
Secretary

Officer will be deemed to include variations on the offices set out above, including such offices as:

Assistant Vice-President  
First Vice-President  
Secretary-Treasurer

The following will not be accepted as corporate officers:

Chief Operating Officer  
Chief Financial Officer  
Chief Executive Officer  
Any Manager  
Assistant to the secretary (or any other Assistant to...)

## CORPORATE EXECUTION RULES FOR LAND TITLES DOCUMENTS (continued)

### RULES FOR DOCUMENTS GENERALLY (continued)

4. By a person who is an attorney for the Corporation under a Power of Attorney. Where a party signs pursuant to a Power of Attorney:
  - i. The party must explicitly state that they are signing pursuant to a Power of Attorney;
  - ii. The Power of Attorney document must either be attached to the document, filed in series with the document or already be on file at a Manitoba Land Titles Office. If the Power of Attorney relied upon is one on file at a Manitoba Land Titles Office the registration number assigned to the Power of Attorney document must be specifically set out; and
  - iii. The party signing may not be an employee of the donor. If the party is an employee of the donor, use the statement, *I am an employee of the Corporation and have authority to bind same*, and do not refer to the power of attorney document.

Here is a sample of acceptable execution pursuant to a Power of Attorney:

ABC Company Ltd.

Per: \_\_\_\_\_  
 John Tupper  
 Executed pursuant to POA # 12345678

See below for additional methods of execution for Caveats, Requests and Personal Property Security Notices.

### EXECUTION RULES DO NOT APPLY TO CONDOMINIUMS, CROWN, CHURCHES, ETC.

The rules regarding corporate execution may not apply to condominium corporations, agencies of government, Her Majesty the Queen (Manitoba and Canada), Crown corporations, religious societies, rural and urban municipalities (including the City of Winnipeg), Legions, school divisions and similar organizations.

These entities are often regulated by specific pieces of legislation. If there is any doubt please consult a (Deputy) District Registrar. The corporate execution rules *do* apply to Credit Unions and Banks.

### CORPORATE RESOLUTIONS

As a general rule Land Titles will not accept corporate resolutions as proof of signing authority for a party who is not an officer, director, or attorney under a power of attorney. Nor will Land Titles accept corporate resolutions regarding signing authority into the deposit index. Both of these rules are subject to the discretion of the (Deputy) District Registrar.

## **CORPORATE EXECUTION RULES FOR LAND TITLES DOCUMENTS (CONTINUED)**

### **ADDITIONAL RULES FOR CAVEATS**

The rules regarding Corporate Execution generally apply to the signing of Caveats, with the following additions:

1. Caveats may also be signed by an attorney/agent of the Caveator. This person does not need to be an employee of the Corporation.
2. Where a person signs a Caveat on behalf of a corporation and lists a position from which it can be reasonably inferred that the person is an employee of the company, Land Titles will accept this execution. The statement that the party is an employee and has the authority to bind the Corporation may be added but is not required.

The rule allowing a Caveat which was signed on behalf of a Corporation by an agent to be discharged by that agent continues to apply as it has to these documents.

### **ADDITIONAL RULES FOR REQUESTS**

The rules regarding Corporate Execution generally apply to the signing of Requests, with the following additions:

1. Requests may also be signed by a solicitor and agent on behalf of the corporation. This person does not need to be an employee of the Corporation.
2. Where a person signs a Request on behalf of a corporation and lists a position from which it can be reasonably inferred that the person is an employee of the company, Land Titles will accept this execution. The statement that the party is an employee and has the authority to bind the Corporation may be added but is not required.

### **ADDITIONAL RULES FOR PERSONAL PROPERTY SECURITY NOTICES**

The rules regarding Corporate Execution generally apply to the signing of Personal Property Security Notices, with the following additions:

1. Personal Property Security Notices may also be signed by a solicitor and agent on behalf of the corporation. This person does not need to be an employee of the Corporation.
2. Where a person signs a Personal Property Security Notices on behalf of a corporation and lists a position from which it can be reasonably inferred that the person is an employee of the company, Land Titles will accept this execution. The statement that the party is an employee and has the authority to bind the Corporation may be added but is not required.

## CORRECTION POLICY

As a general rule Land Titles will allow any error, omission or mistake in a document to be corrected by way of letter provided that the correction does not change the substance of the document as initially intended by the parties thereto.

These letters must be from a lawyer in and for the Province of Manitoba and must be signed by that lawyer.

These letters may faxed to the office without any need for the original to follow in the regular mail.

## GUIDELINES FOR LETTERS

All letters must contain at a minimum certain elements. Please note that in many situations more than the minimum will be required. The required elements are:

- 1) A clear statement of the correction to be made;
- 2) A statement or set of statements that proves that the person signing the letter has the complete authority to make the change; and
- 3) A statement that the change to the document is a correction of an error, omission, or typographical error, and is not a change in the substance of the document.

## SAMPLE OF CORRECTION LETTER

**Schedule X** is an example of a letter of correction. This is not a binding precedent, but rather a guide to preparing properly drafted correction letters.

The sample can be used by Land Titles staff, and where the Land Titles staff feels it is appropriate, it can be faxed to individual lawyers.

## CORRECTIONS BY LAWYERS WHO ATTEND IN PERSON

Where a lawyer wishes to make a correction /change to a document and they are in our office the lawyer must write up a letter of correction which conforms to the guidelines set out above.

**Schedule XI** is a blank letter of correction. The lawyer who attends in person can fill in the blanks in this letter rather than taking the time to write out their own letter.

**CORRECTION POLICY (continued)****EXCEPTIONS TO GENERAL CORRECTION POLICY***Notices of Exercising Power of Sale Correction Policy*

Notices of Exercising Power of Sale cannot be corrected by way of lawyer's letter.

*Caveats Correction Policy*

Either the Caveator or the Agent of the Caveator (where that agent signed the Caveat as agent) can authorize a correction to any part of an unaccepted Caveat. Executed agreements attached to Caveats cannot be corrected in this manner.

*Mortgaging / Transferring Clause Correction Policy*

Errors or omissions in clause 2 in Box 7 of the mortgage (the mortgaging clause) or clause 3 in box 7 of the transfer (the transferring clause) cannot be corrected by way of lawyer's letter. Where either of these statements is not complete the statement must be inserted and the document re-executed.

*Personal Property Security Act Notices Correction Policy*

A Personal Property Security Act Notice can be corrected by a letter from any of the following parties:

1. The agent who signed the PPSA Notice on behalf of the secured party;
2. The officer/employee of the secured party who signed the notice;
3. Any other officer/employee of the secured party.

*Discharge Correction Policy*

At the complete discretion of the staff member examining a Discharge, mistakes in the discharge can be fixed by way of correction letter. These letters may be executed by any of the following parties:

1. The "owner" of the instrument affected by the discharge.
2. The solicitor and agent of the "owner" of the instrument affected by the discharge, using a standard "lawyer's correction letter" (standard other than that there is no need for a statement that they have the permission of any other party – a discharge is a one party document).
3. The party who actually executed the discharge where that party is neither the owner nor their solicitor but was otherwise entitled to execute the discharge (for example an agent who signed the original Caveat or Form 21 and has now signed a discharge of same).

**CORRECTION POLICY (continued)****EXCEPTIONS TO GENERAL CORRECTION POLICY (continued)***Homesteads Act Evidence Correction Policy*

Homestead Act evidence, Consents, Releases, discharges of Homestead Notices, and discharges of Dower Caveats cannot be corrected by way of lawyer's letter.

Where an instrument contains no Homesteads Act evidence or Homesteads Act evidence that is contradictory or unacceptable the standard correction policy is not to be followed. As a general practice the Homesteads Act evidence must be provided by the party and accordingly the document has to be rejected and re-executed. Land Titles will not accept for registration a document, which has been rejected, where the evidence has been inserted without re-execution.

To avoid having to reject documents that contain defective Homesteads Act evidence Land Titles staff should offer to the presenter the option of providing the evidence or clarification by way of a schedule. In this case the document is not to be rejected, instead the schedule is to be attached to the existing registration. This schedule must be executed by the party and not their solicitor. **Schedule XII** is a sample schedule that may be used as a guide.

*Mines and Minerals Correction Policy*

Where a title contains a reservation of mines and minerals and a document is registered which is silent in that regard Land Titles must have the document corrected in the ordinary fashion. Land Titles staff cannot on their own initiative add the mines and minerals reservation to the legal description in the instrument.

The only exception to this rule is where the reservation of mines and minerals is a reservation contained in an original grant from the crown. By virtue of section 58 of *The Real Property Act*, titles are automatically subject to all reservations contained in the original grant of those lands from the crown. Because of this, no special mention need be made of this exception for it to be carried forward.

**CORRECTION POLICY (continued)****EXCEPTIONS TO GENERAL CORRECTION POLICY (continued)***Alterations and Obliterations in Documents*

Special rules apply where it appears that the document has been altered after execution.

1. Where it is evident that the information in a transfer of land or mortgage has been altered (whiteout, strike-out, cross-out, etc.) and this alteration has not been initialed by (all of) of the transferor(s)/mortgagor(s) the examiner shall obtain a letter from the solicitor for the transferor(s)/mortgagor(s) confirming that the alterations were made prior to execution.
2. Where a letter from the solicitor for the transferor(s)/mortgagor(s) confirming that the alterations were made prior to execution cannot be obtained (likely because the alterations were made subsequent to execution) the examiner will instead obtain a letter from the solicitor for either of the parties to the document confirming that the information as altered is correct. The letter must contain a statement that his/her client(s) have consented to the alterations and that the solicitor for the other party(s) has advised that his/her clients have also consented to the alterations.
3. If the change is to Homesteads Act evidence that has not been initialed by the Mortgagor(s)/Transferor(s), and if a letter cannot be obtained confirming the alteration was made prior to the execution of the document, a new schedule (signed by the mortgagors/transferees) must be provided containing the proper Homesteads Act evidence (it is important to remember that the evidence currently in box 7 though possibly technically correct was not sworn to by the transferees/mortgagors and therefore is of no use).
4. If the alteration is to box five of a transfer and it has the affect of either removing a name completely or adding a new name special rules apply. See below.

*Removing the Name of a Transferee*

If an alteration to box five of a transfer has the affect of removing a name completely and the obliteration has not been initialed by the transferor(s) then it can be remedied by either:

1. a letter from the solicitor for the transferor(s) confirming that the alteration was made prior to the execution of the Transfer; or
2. both:
  - i) the written approval of the party who has been deleted; and
  - ii) a letter from the solicitor for either of the parties to the document confirming that the information as altered is correct. The letter must contain a statement that his/her clients have also consented to the alterations and that the solicitor for the other party (ies) has advised his/her clients and they have consented to the alterations.

**CORRECTION POLICY (continued)****EXCEPTIONS TO GENERAL CORRECTION POLICY (continued)***Adding a New Name as a Transferee*

If an alteration to box five of a transfer has the affect of adding a completely new name and the addition has not been initialed by the transferor(s) then it can be remedied by either:

1. a letter from the solicitor for the transferor(s) confirming that the alteration was made prior to the execution of the Transfer; or
2. both:
  - i) the written approval of the other transferees; and
  - ii) a letter from the solicitor for either of the parties to the document confirming that the information as altered is correct. The letter must contain a statement that his/her clients have also consented to the alterations and that the solicitor for the other party (ies) has advised his/her clients and they have consented to the alterations.

## DEBENTURES

### PROCESS

Prior to the registration of a Debenture in any one of the six Manitoba Land Titles Offices, the document must be submitted to a District Registrar for “fiating”.

Once a Debenture has been fiated, it can be registered as a Mortgage or an Agreement to Amend or Extend Mortgage. The choice is up to the filing party. Absent specific instructions from them, the District Registrar will assume a fiat as a mortgage is required.

Where the document affects land within the jurisdiction of the *Winnipeg Land Titles Office*, following fiating it can either be registered immediately or it can be returned to the client for registration at a later date.

Where immediate registration is desired, please include a notation to that effect, a properly completed PRA and proper payment of all fees. If immediate registration is not required please provide a note indicating that the document is to be returned following fiating.

All debentures affecting land within the jurisdiction of one of the rural Land Titles offices will automatically be returned to the client following fiating and it is up to the client to then forward these documents to the appropriate office.

Where a debenture affects land in multiple Land Titles offices the District Registrar will fiat one copy for each office.

There is no fee for having a debenture fiated. The fee to register the fiated debenture is the same as the fee to register a mortgage, \$82.00 (in each office the debenture is registered in).

### REQUIREMENTS

- The document must stand on its own.
- The parties to the debenture must be persons (i.e. natural people and/or corporate entities) and the document must set forth their full true and correct names.
- In most cases a debenture should set forth a principal amount, however Land Titles does not require this. Where no principal amount has been set forth we will endeavor to call to confirm this is the client’s intent.
- The debenture must have a specific provision charging land unless the document is to be fiated as an Agreement to Amend or Extend Mortgage. In those cases, while charging language is not required, the debenture must now be signed by all parties to the original debenture, and not just the mortgagor(s). (Exactly the same as for any other Agreement to Amend or Extend.)
- The debenture must contain a complete legal description of the land charged.
- The interest in land charged must be a titled interest in land. Accordingly it cannot charge a leasehold interest if there is no leasehold title. The title number of the charged land must be provided.

**DEBENTURES (continued)****REQUIREMENTS (continued)**

- The debenture must list those prior encumbrances affecting the charged land that it is made subject to. Land Titles prefers the following order:
  - a) Title number;
  - b) Legal description; and
  - c) Encumbrances affecting the title.
- To be a debenture, the document must charge more than just land in Manitoba. It must either charge personalty, be a floating debenture or charge land in a jurisdiction other than Manitoba. Where all that is charged is land in Manitoba, a mortgage using the form prescribed by The Real Property Act is to be registered and not a debenture.
- Debentures will not be accepted where they only charge a future interest in land.
- All debentures must contain an address for service for each of the mortgagees. These addresses do not have to be Manitoba addresses.
- Debentures must be executed in accordance with the Land Titles rules concerning execution/corporate execution.
- Debentures must contain *Farmlands Ownership Act* evidence. This evidence should come in the form of a statutory declaration. This requirement is waived for Charter Banks.
- Where the debtors are natural people the document must contain *Homesteads Act* evidence. This evidence should come in the form of a statutory declaration.
- All schedules must conform to Land Titles requirements for schedules. Specifically they must contain a legend at the bottom in the same format as in the LTO prescribed Schedule form and the legend is to be executed and dated. See **SCHEDULES** (below) for further information on the proper completion of schedules.

Note: Notwithstanding the fact that the District Registrar examines the debenture to ensure that it contains title numbers, legal descriptions and encumbrances at the time of fiating, he or she does not check to see if this information is correct. It is only when the document is ultimately registered that this information is verified by a document examiner.

## DEVELOPMENT AGREEMENTS

### RIGHT TO REGISTER DEVELOPMENT AGREEMENT CAVEATS

By operation of *The City of Winnipeg Charter* and *The Planning Act*, both the City of Winnipeg and municipal governments outside of the City have the right to register caveats giving notice of development agreements containing restrictive covenants (and other terms).

### RESTRICTION

The Manitoba Court of Queen's Bench in the case of Jacques v. Alexander (District), 33 M.P.L.R. (2d) 81, [1996] 7 W.W.R. 677, 109 Man. R. (2d) 223 has held that agreements of this type have no force and effect and are in fact void unless they are enacted in accordance with empowering legislation. As such, all development agreements registered by a municipal government must conform to the terms of the legislation that allows for their creation (the empowering legislation).

### THE EMPOWERING LEGISLATION

The right to register development agreements by way of caveat arises from and is constrained by the following legislative sections:

#### *The City of Winnipeg*

The City of Winnipeg has the authority to enter into development agreements in the following circumstances:

1. As a condition of adopting or amending a zoning bylaw - subsection 240(1) of *City of Winnipeg Charter*; and
2. As a condition of subdivision approval – subsection 259(1)(f) of *City of Winnipeg Charter*.

#### *Municipal Governments Outside of the City of Winnipeg*

Municipal governments outside the City of Winnipeg have the authority to enter into development agreements in the following circumstances:

1. As a condition of amending a zoning bylaw - section 150 of *The Planning Act*;
2. As a condition of making a variance order - section 150 of *The Planning Act*;
3. As a condition of approving a conditional use - section 150 of *The Planning Act*;
4. As a condition of approving a conditional use for a livestock operation - section 107 and 116 of *The Planning Act*;
5. As a condition of subdivision approval – section 135 of *The Planning Act*.

Note: Section 151(1) of *The Planning Act* specifies that development agreements must contain a specific statement that the agreement runs with the land it affects. That act also requires that a copy of the actual agreement be attached to the caveat registered.

## REQUIREMENTS FOR REGISTRATION AT LAND TITLES

Land Titles can accept caveats giving notice of development agreements provided they contain evidence that the development agreement was entered into in accordance with the relevant legislation and provided that they otherwise comply with that legislation. In addition, these caveats must comply with the general principals of a Torrens Land Titles / Real Property Act system. In particular, these caveats must contain the following:

### *Where the Caveator is the City of Winnipeg*

- In box 2 of the caveat, the caveator must select the following interest:  
Development Agreement pursuant to either *The Planning Act* or *The City of Winnipeg Charter* (if the Development Agreement is pursuant to *The Planning Act* it must be attached).
- In box 3 of the caveat, the caveator must provide details of the constituting agreement. A statement such as the following would be acceptable:  
An agreement entered into between the City of Winnipeg and (insert name) pursuant to s. 240(1) of *The City of Winnipeg Charter* as a condition of amending a zoning bylaw.
- The agreement in question must be between the City of Winnipeg and those parties who are the current registered owners of the affected lands at the time the agreement is registered at land titles.

### *Where the Caveator is a municipal government other than the City of Winnipeg*

- The actual development agreement or a copy of it together with any schedules must be attached to the caveat.
- The agreement must specifically state that it *runs with the land*. Please use this expression in the agreement, preferably in a prominent place.
- In box 2 of the caveat, the caveator must select the following interest:  
Development Agreement pursuant to either *The Planning Act* or *The City of Winnipeg Charter* (if the Development Agreement is pursuant to *The Planning Act* it must be attached).
- In box 3 of the caveat, the caveator must provide details of the constituting agreement. A statement such as the following would be acceptable:  
An agreement entered into between the Rural Municipality of Cartier and (insert name) pursuant to s. 150 of *The Planning Act* as a condition of approving a conditional use.
- Where the development agreement has been entered into as a condition of subdivision approval, and the Certificate of Approval refers to an agreement of a specific date, the agreement attached to the caveat must bear that date.
- The agreement must be between the municipal government and by those parties who are the registered owners of the affected lands at the time the agreement is registered at land titles.

## DEVELOPMENT SCHEMES

### CREATION

As a result of amendments to section 76 of *The Real Property Act* (effective June 16, 2011), a Development Scheme (Building Scheme) can now be created in two manners:

1. The traditional way, whereby a developer of land enters into separate restrictive covenant agreements with each purchaser every time a lot in his or her subdivision is sold, registering these agreements as caveats. All together, these caveats create a development scheme. See **CAVEATS, RESTRICTIVE COVENANT CAVEATS** (above) for a more complete discussion of this method.
2. The new way, by the registration of one single document against all of the titles in a subdivision to be affected by the scheme. Like easements created pursuant to section 76, the document that creates a Development Scheme can either be an agreement or a declaration. An agreement is to be used where the affected lands are owned by multiple parties whereas a declaration is to be filed if all of the affected lands have common ownership.

### REGISTRATION REQUIREMENTS

These requirements apply to all development schemes, regardless of whether they are create by agreement or declaration. Development schemes must:

- Be executed by the owner(s) of all of the affected lands.
- Contain consents from all the owners of all encumbrances affecting the lands (other than the owners of statutory easements).
- Be executed in accordance with all Land Titles rules governing execution.
- Clearly identify which lands are restricted and which are benefit by the scheme. In most cases the list of lands restricted and those benefited will be the same.
- Contain a statement that the restrictions benefit each of the parcels.
- Contain a statement that the burdens and benefits run with the lands.
- Contain restrictions that are negative in effect.
- The affected lands must be proximate, but they do not have to be contiguous.
- The actual document is to be registered. It is not to be attached to a caveat.

Note: Our first Development Scheme document is already registered. See instrument number 4440149.

### DISCHARGE AND AMENDMENT

Development schemes can be discharged and amended by either:

1. An Order from the Municipal Board; or
2. By an instrument executed by the owners of all affected lands, which has attached thereto the consents of the owners of all affecting encumbrancers (other than the owners of statutory easements).

## DISCHARGES

### TYPES OF DISCHARGE

There are three types of discharge that can be registered at Land Titles:

1. Full discharges;
2. Partial discharges which release all of the lands in one or more titles; and
3. Partial discharges which release only some of the lands in a title.

The full discharge option in box 3 of the discharge form is to be selected only when the subject instrument is to be removed from all of the titles that it affects (or from the last of the titles that it affects where one or more titles have already been released). At all other times, one of the two partial discharge options is to be selected.

### WHEN TO LIST AFFECTED TITLES AND AFFECTED LANDS

#### *Full Discharge*

A full discharge releases all of the lands and titles that an instrument affects. The land titles system will automatically remove the subject instrument from all affected titles upon the registration of a full discharge. Because of this, you do not need to list any title numbers in a full discharge.

#### *Part Discharge Releasing all Lands in One or More Titles*

As noted above, there are two types of partial discharges. The first type releases all of the lands in one or more titles, but does not release all of the titles that the subject instrument affects. For example, when discharging (completely removing) a mortgage that affects four titles from two of those titles, a partial discharge is to be used. In such cases, list all of the title numbers to be discharged (released), but do not list any lands.

#### *Part Discharge Releasing some of the Land in a Title*

The second type of partial discharge only releases some of the lands in a particular title. For these discharges please provide both the title number and the legal description for the lands to be released.

### WHEN PARTIAL DISCHARGE TO BE REGISTERED AS A FULL DISCHARGE

Where a partial discharge is registered at land titles, and the effect of the partial discharge is to release all or the balance of the lands affected by the subject instrument, the partial discharge will be treated as a full discharge and the subject instrument will be fully discharged from the land titles system. This is provided for in section 103(2) of The Real Property Act.

**DISCHARGES (continued)**

## INSTRUMENTS THAT HAVE BEEN TRANSFERRED, ASSIGNED, AMENDED

When discharging instruments that have been transferred, assigned or amended, discharge the original instrument, not the Transfer, Assignment, or Amendment. Discharging the original instrument will remove all of the instruments affecting it. In cases where the instrument has been transferred or assigned, details of the transfer or assignment must be set out.

## DISCHARGES EXECUTED BY AGENTS

- An agent may execute the Discharge of a Caveat where the agent also executed the caveat (s. 75 (7.1) The Real Property Act).
- An agent may discharge a builder's lien provided the agent has the authorisation in writing to do so (s. 55(1) The Builders' Liens Act). This authorisation must be attached to the Discharge when it is filed at Land Titles.
- A Judgment, provided that it is not for either alimony, maintenance, or child support may be discharged by "any person entitled to discharge the Judgment" (s. 20 The Judgments Act). This may be an agent (s. 75(7.1) The Real Property Act), provided that they are the agent who registered the Judgment.
- A Notice Exercising Power of Sale may be discharged by the mortgagee's agent where that agent signed the Notice (Rule 1.05 Registrar General's Mortgage Sale & Foreclosure Rules).

Note: With the exception of Builders' Liens discharges, where an instrument can be discharged by an agent, the agent must be the very same person who signed the initial registration.

## DICHARGE OF MAINTENANCE ORDERS / SPOUSAL & CHILD SUPPORT ORDERS

### *Order for Spousal Support*

A Discharge of a Judgment (or Order) for spousal support may only be signed by the person in whose favour the Order was made (s.21 (5) *The Judgments Act*).

### *Order for Child Support*

A Discharge of a Judgment (or Order) that contains a provision the support of children, may only be discharged by an Order of the court (s. 21(1) *The Judgments Act*). Please file a court certified copy of the order attached to a Land Titles Request/Transmission form.

## DISCHARGE OF ATTACHING ODERS

The court may, on motion, make an order, discharging the registration of an attaching order. The registration of the order at Land Titles discharges the attaching order (Queen's Bench Rules 46.13(1)(i) & 46.13(2)).

## DISCHARGE OF PENDING LITIGATION ODERS

A pending litigation order may only be discharged by the Court of Queen's Bench. This may be effected by either a certificate or by an order, depending on the circumstances.

### By Certificate Where Proceedings Discontinued or With Consent

Where the proceedings in which the pending litigation order was made have been discontinued, or dismissed or otherwise finally disposed of, or where all parties' consent to the discharge of the pending litigation order, the registrar of Queen's Bench shall issue a certificate discharging the pending litigation order (Queen's Bench Rules 42.02(2) and s. 55(6) *The Builders' Liens Act*). The registration of the certificate at Land Titles discharges the pending litigation order.

### By Order Upon Application / Motion Where Proceedings Not Concluded

The court may, following a motion/application make an order at any time discharging a pending litigation order (Queen's Bench Rules 42.02(1) and s. 55(4) *The Builders' Liens Act*). The registration of the order at Land Titles discharges the pending litigation order.

See **ESTATES** for the execution of Discharges by the executors named in an unprobated will.

See also **PERSONAL PROPERTY SECURITY NOTICES**.

## DUPLICATE TITLES

Where a duplicate certificate of title cannot be located because it has been lost or destroyed, Land Titles can dispense with its production (s. 26(1) *The Real Property Act*). In order for Land Titles to do so, we must be provided with an affidavit of lost title. The affidavit of lost title must conform to the following:

1. It must state that the reason the title cannot be found is that it has been lost or destroyed;
2. It must state that the title has not been deposited by way of lien or as security for a loan;
3. It must be **executed by all of the Registered Owners** of the land, even where all of the parties believe that only one of the Registered Owners was in possession of the title;
4. It must refer to the outstanding title number, not to the current title number if these numbers differ. These two numbers would be different if for example Land Titles registered a special plot plan and put a note on the title created by virtue of the plan that the old duplicate title must still be produced by the client. This is called a “Hold for Production” note. Unfortunately this note does not appear on a Land Titles *Status of Title*, however it is available to those searching electronically and is on the *Record of Title*.
5. If there is an encumbrance registered against the title by a lending institution giving notice of an equitable charge which does not give specific notice of an hypothecation of the duplicate title, in addition to the Registered Owner’s affidavit of lost title, Land Titles requires either:
  - a. a letter from the lending institution confirming that they were never in possession of the duplicate title; or
  - b. an affidavit of lost title from the lending institution.
6. If the title has a caveat registered against it that gives specific notice of an hypothecation of the duplicate Land Titles will require an affidavit of lost title from both the lending institution and the Registered Owner(s).
7. Where the affidavit of lost title is being sworn by the executors/administrators of an estate each and every executor/administrator of the estate must swear an affidavit. They may jointly swear one affidavit where that is appropriate.
8. As a final note, care should be taken when using a prior affidavit of lost title stored on a computer as a precedent. Often clients using these precedents forget to delete and replace the old title number. Consequently these affidavits do not contain the title number which is to be dispensed with and have to then be re-sworn.

See **Schedule VI** for an example of an affidavit of lost title.

**Schedule VII** is an example of an affidavit of lost title which can be used where the registered owner is a corporation.

**Schedule VIII** is an example of an affidavit which can be used by the executors/administrators of an estate.

**Schedule IX** is an example of an affidavit which can be used by an attorney under a Power of Attorney.

**Schedule XVI** is an example of an affidavit which can be used by a lender where the title was lost while in the lender’s possession.

## EASEMENTS

### REGISTRATION METHODS AND COMPARATIVE ADVANTAGES

*Note: The following paragraphs do not apply to those easements created by section 111 of The Real Property Act and referred to as Statutory Easements. See STATUTORY EASEMENTS below for a discussion of easements created pursuant to that section of the legislation.*

An easement (party wall or right-of way) can be registered at Land Titles in one of two ways. The easement can either be registered pursuant to section 76 of *The Real Property Act*, or it can be registered by way of a caveat. Each method of registration has its own advantages and challenges.

#### *Easement Registered Pursuant to Section 76*

Where an easement is registered pursuant to section 76 of *The Real Property Act*, the easement must conform to the following rules:

1. The lands affected must be clearly defined, affecting either all of the lands in the servient land owner's title or a defined portion thereof. Where only a portion of the lands are affected this portion must be identified in one of two ways. The easiest way to identify the lands is to use a "metes and bounds" description of the affected lands. Land Titles will only accept "metes and bounds" descriptions where they are clear and meet the strict guidelines set forth by our surveys department.

Where the affected lands are not the entire title and an easy "metes and bounds" description cannot be prepared then the easement agreement must refer to lands set forth in a registered plan of survey. Land Titles does not accept sketches in section 76 agreements.

2. The easement document must be executed by all of the registered owners of all of the lands (dominant and servient). This execution must conform to Land Titles rules governing execution generally, including proper parties and proper officers. See **WITNESSING LAND TITLES DOCUMENTS** (below) for the rules governing the witnessing of these signatures.
3. The consents of all persons who have a registered interest in the lands must be attached. Consents will not be required from the holders of statutory easements. These consents must also be executed in accordance with Land Titles rules governing execution.
4. The lands affected must be reasonably proximate, though, other than for party wall agreements and declarations, they do not need to be adjoining.
5. A statutory declaration containing *Homesteads Act* evidence from the owners of the servient lands (and the dominant lands as well if there are cross easements) must be attached. Where appropriate, consents under the *Homesteads Act* consent must also be attached.

**EASEMENTS (continued)***Easement Registered by Caveat*

Where an easement is registered by way of caveat, Land Title's requirements are significantly lower. In these cases Land Titles does not examine the agreement (if it is even attached to the caveat) for Homesteads Act evidence or consents, the consents of encumbrancers or for execution. Nor do we examine the description of the affected lands in the agreement where the caveat affects all of the land in the servient land owner's certificate of title. Finally we don't check to see if the dominant and servient lands are contiguous.

We do require the following:

- The caveat must contain a clear statement as to the interest claimed (easement, right-of-way or party-wall)
- The caveat must set forth the dominant and the servient lands.

These lower requirements do not apply to caveats creating *Statutory Easements*. Please see STATUTORY EASEMENTS (below) for a discussion of the requirements for these caveats.

*Comparative Advantages of Each Method of Registration*

The greatest advantage of the easement caveat is obvious, it is the simplicity of registration. The advantage the section 76 registration has over the caveat is the protection given section 76 registrations. An easement registered by way of caveat will be disposed of in the event the property is sold for taxes and will also be disposed of in the event of a mortgage sale or a foreclosure under a mortgage registered in priority to the caveat. Section 76 registrations survive both tax sale and mortgage foreclosure!

An added advantage the section 76 registrations have is the fact that that are very difficult to remove from title. In order to discharge a section 76 registration all owners and all encumbrancers of all affected lands must consent.

Where the dominant and servient lands are owned by the same party, easements (easement declarations and party-wall declarations) can only be created pursuant to section 76. They cannot be registered by way of caveat.

**DISCHARGE**

As noted above, a section 76 registration can only be discharged with the consent of all owners and all encumbrancers of all affected lands. A caveat protecting an easement can be discharged by the current owner of the dominant lands.

Note that Land Titles will not accept a discharge from the party who originally registered an easement caveat where they are no longer the owner of the dominant lands. Given that the only party who can sign a discharge of these caveats is the current owner of the dominant land, Land Titles will only allow an agent to sign a discharge of these caveats (where the agent also signed the original caveat) where the ownership of the dominant lands has not changed.

**EASEMENTS (continued)****ASSIGNMENT**

Because easements run with the land, because they benefit the dominant lands regardless of who the owner of the dominant lands is, these agreements do not need to be assigned on the sale of the dominant lands. Further, given that these agreements benefit the owner of the dominant lands and cannot benefit any other party, these easement cannot be assigned to a party who is not the owner of the dominant lands.

Given that easements do not need to be assigned to a purchaser upon the sale of the dominant lands (nor do they need to be assumed by a purchaser upon the sale of the servient lands) and given that they cannot be assigned to a party who is not the owner of the dominant lands, Land Titles will not accept for registration an assignment of an easement (agreement or caveat).

Easements cannot be assigned because they are un-assignable. An interest similar to an easement which is assignable is a license. Unlike an easement though, a license is not an interest in land.

**STATUTORY EASEMENTS***Generally*

Effective June 16, 2011, s. 111 of *The Real Property Act* was substantially amended. The effect of this amendment was to create a new type of easement called the Statutory Easement. These are easements created in favour of agencies such as municipal governments and utility providers. Prior to the amendment to the Act, these rights were referred to in the Act as *Rights Analogous to Easements*. As a result of the legislative amendment:

1. Agreements entered into on or after June 16, 2011 that comply with the new section 111 can be registered at Land Titles, and when so registered, they create easements.
2. Agreements entered into prior to June 16, 2011 pursuant to the old section 111(1) and registered *either before or after* the date of the change to the legislation (provided they are registered within 10 years) also create Statutory Easements.

Statutory Easements are, by operation of *The Real Property Act*, easements for all purposes. They are unique for several reasons:

1. There is no requirement for dominant lands;
2. Statutory Easements come into being only once the constituting document has been registered at Land Titles; and
3. Because the rights created by the agreement benefit a person and not dominant lands, these easements can be transferred.

**EASEMENTS (continued)**

## STATUTORY EASEMENTS (continued)

*Registration Requirements for Agreements Entered Into on or after June 16, 2011*

- The grantee may register either the agreement or a caveat with the agreement attached.
- The agreement must be between the grantee and either the current owner of land or a person entitled to be the owner of lands.
- The rights granted by the agreement must be of the type specified in section 111(3) of *The Real Property Act* (which includes easements for municipal purposes, pipelines and power generation and wind farms).
- The grantee must be one of the parties specified in the section (which includes the Crown, MTS, Manitoba Hydro, rural municipalities, and other parties carrying on those activities specified in section 111(3)).
- The registration must be accompanied by a statutory declaration satisfying the district registrar that the grantee is one of the eligible grantees specified in the legislation. This declaration can be as simple as a statement made in box 6 of a Caveat that the party is an eligible grantee within the meaning of section 111(1) of *The Real Property Act*.
- The agreement attached to the caveat must be accompanied by a declaration containing appropriate *Homesteads Act* evidence and, where the situation warrants, *Homesteads Act* consents.

*Requirements for Registration of Agreements Entered Into Prior to June 16, 2011*

Agreements executed prior to June 16, 2011, pursuant to the old section 111(1), created rights analogous to easements. The interests created by these old agreements can now become statutory easements if the agreement is in compliance with the previous section 111(1) and:

1. Was registered (on its own right or by way of a caveat with the agreement attached) prior to June 16, 2011; or
2. Is registered (either in its own right or by way of a caveat with the agreement attached) within 10 years of June 16, 2011

Note: Unlike those agreements signed on or after June 16, 2011, there is no requirement for agreements executed under the old section 111(1) to be with the current registered owner. Provided they were entered into with the correct party at the time, Land Titles will take these registrations regardless of who the current owner happens to be.

**EASEMENTS (continued)**  
STATUTORY EASEMENTS (continued)

*Titles for Statutory Easements*

As a further result of the legislative changes, Land Titles can now issue titles for Statutory Easements. The title issuing process will be very similar to the issuance of titles for pipeline easements. In order to have a title issued, the owner of the Statutory Easement must file a request using the Land Titles Request/Transmission form.

As a condition of issuing title, the District Registrar may require a plan to be filed for the Statutory Easement. A plan will always be required if the Statutory Easement is for pipelines.

Titles for Statutory Easements issue free and clear of encumbrances other than those affecting the easement itself. Statutory Easement titles may be encumbered, transferred (to another eligible grantee) and they may be subdivided.

To cancel the title to a statutory easement, the current registered owner of the title must file a discharge of the easement. If the title to the Statutory Easement is affected by encumbrances, the owners of the encumbrances must consent to the discharge. In addition, a request to cancel the easement title must be filed. This request can be from either the owner of the statutory easement, the owner of the underlying freehold lands, or the solicitor and agent for either of these parties.

Where no title has issued, the owner of a Statutory Easement can discharge it in the ordinary course.

## ESTATES AND DEATHS

### DISCHARGE BY EXECUTOR OF UNPROBATED ESTATE

With the proper supporting materials, Land Titles will accept a discharge signed on behalf of a deceased mortgagee by the executor(s) named in an unprobated will. The following is a summary of the materials required:

1. The death certificate from the Department of Vital Statistics for the mortgagee.
2. The original or a notarized copy of the will.
3. An affidavit from the Executor(s) named in the will, confirming:
  - i. That the testator named in the will and the party named in the death certificate is one and the same person as the Mortgagee in the Mortgage to be discharged (or other instrument holder);
  - ii. That no other will can be found and the will attached as evidence is believed to be the last will and testament of the Mortgagee (or instrument holder);
  - iii. That the will has not been probated in any jurisdiction and that there are no other assets of the estate or circumstances that would require the will to be probated;
  - iv. That to the best of their knowledge, the will has not been revoked, either by the testator or by operation of law;
  - v. That the testator did not marry subsequent to the date of the will;
  - vi. That the Mortgage debt is paid in full; and
  - vii. The identity of all heirs.
4. Consent of the heirs named in the affidavit to the execution of the discharge by the executor.

### DISCHARGE BY PARTY ENTITLED TO ADMINISTRATION OF UNPROBATED ESTATE

With the proper supporting materials, Land Titles will accept a discharge signed on behalf of a deceased mortgagee who has left no will by the person entitled to administration of the estate of the mortgagee. The following is a summary of the materials required:

1. The death certificate from the Department of Vital Statistics for the mortgagee.
2. An affidavit from the by the person entitled to administration of the estate, confirming:
  - i. That no will has been located after a complete search;
  - ii. that the Mortgage debt is paid in full;
  - iii. That there are no other assets of the estate or circumstances that would require the application for letters of administration
  - iv. That the applicant(s) is are entitled to administration of the estate pursuant to *The Intestates Succession Act* of the Province of Manitoba
  - v. The identity of all heirs-at-law pursuant to the Intestate Succession Act.
3. Consent of the heirs named in the affidavit to the execution of the discharge by the person entitled to administration.

### *HOMESTEADS ACT EVIDENCE*

The *Homesteads Act* evidence contained in a Transfer from the executors of an estate must be evidence that is clearly with regard to the deceased.

## ESTATES AND DEATHS (continued)

### MORTGAGING ESTATE LANDS

The administrator of an estate may not mortgage the property vested in him as administrator without the approval of the court (s. 46 of *The Trustee Act*). There is no similar restriction on a mortgage executed by the Executors of an estate.

### DELEGATION OF POWERS

The trustee of an estate (executor or administrator) may delegate to another person by Power of Attorney all or any of the powers vested in him/her as trustee (s. 36(1) *The Trustee Act*). This is subject to two restrictions: 1. The trustee must be intending to remain out of the province for a period exceeding one month (Land Titles will ask for evidence on this point, including evidence that at the time of the exercise of the power by the attorney the donor was out of the province); and 2. The person appointed may not be the only other co-trustee.

### ADMINISTRATION ORDER WHERE ESTATE VALUE LESS THAN \$10,000.00

An Administration Order granted where the value of an estate is less than \$10,000.00 is materially different from either a Grant of Probate or Letters of Administration. Unlike the Grant of Probate or the Letters of Administration, both of which give the parties appointed the authority to deal with land on behalf of a deceased person, the Administration Orders typically vest the land/interest in land directly, without it first going into the name of a trustee (either an administrator or an executor).

This difference has a direct effect on the documents one must file at Land Titles. In the ordinary course one files a transmission, with a notarial/certified copy of the Probate or Letters of Administration attached and the title to the land moves thereby into the name of the executor(s)/administrators(s) in their capacity as such. They then can transfer the land to themselves personally or to another party by virtue of this authority. This two stage process of transmission and transfer does not take place where the courts have granted an Administration Order.

Where an administration Order has been granted, the property vests directly into the name of the party named in the order, in their personal capacity. As such there is no need for a transmission and a transfer, all that must be filed at Land Titles is the transmission, with a notarial/certified copy of the Administration Order attached. Upon the filing of this document, the land/interest in land moves directly from the name of the deceased into the name of the party shown in the Administration Order, in their personal capacity. This person is then free to deal the land/interest in land in the same manner as any other land that they might own.

As a final result of this process, when the person named in the Administration Order ultimately transfers the land/interest in land in question, Land Titles will want Homesteads Act evidence for that person and not for the deceased former owner.

**ESTATES AND DEATHS (continued)****JOINT TENANCY ISSUES***Both Joint Tenants Deceased*

Where a title is held by joint tenants and both joint tenants have died (provided that they did not die simultaneously) Land Titles will accept one document to move title from the name of the deceased parties into the name of the Executors/Administrators of the one joint tenant who died last. To accomplish this, use a standard LTO Request/Transmission form, attach the death certificate for the joint tenant who died first and the Grant of Probate/Letters of Administration for the joint tenant who died last. Where the document provides "Apply by Virtue of" insert a phrase to the affect that "This is a Survivorship Request and Transmission by the Executors of the Estate of Mary Brown." Mary Brown will be the joint tenant who was the last to die.

*Simultaneous Death of Joint Tenants*

Where all joint tenants on a title die at the same time, or where the circumstances of death make it impossible to determine which died first, the joint tenancy is severed and the parties will be deemed to have held the title as tenants in common, each as to an equal share.

*Proof of Death – Death Certificate Required*

Land Titles will only accept death certificates from the Department of Vital Statistics. We will not accept funeral directors' or church death certificates. Similarly we will not accept a Grant of Probate or Letters of Administration as proof of death. All death certificates must be either originals or notarial copies.

*Transfer by a Surviving Joint Tenant – No Separate Survivorship Request Required*

Where title is held by joint tenants and one of the tenants has died, the surviving joint tenant can transfer the lands in the title without the need for a separate Survivorship Request. Instead, the evidence of death (death certificate) can simply be attached to the transfer of land. In box 7. of the transfer, a statement should be added confirming that the person in the death certificate and the person on the title are one and the same person and that the person signing the transfer is the surviving joint tenant.

See **REAL PROPERTY APPLICATIONS** for a discussion of Real Property Applications by the executors of an estate.

## **HOMESTEADS ACT EVIDENCE**

### **EVIDENCE REQUIRED**

Any disposition of an interest in land by a natural person must be accompanied by acceptable *Homesteads Act* evidence, and where appropriate *Homesteads Act* consents or releases. The term “disposition” includes but is certainly not limited to Transfers of Land, Mortgages and Amending Agreements and Leases in excess of three years.

### **EXAMPLES OF ACCEPTABLE EVIDENCE**

The following list of acceptable *Homesteads Act* evidence may be of assistance, however this list is not to be taken as exhaustive. Special circumstances (Powers of Attorney, Bankruptcy, Committeeship) require *Homesteads Act* evidence custom tailored for those circumstances.

- My co-transferor is my spouse or common-law partner and has homestead rights in the within lands.
- My co-mortgagor is my spouse or common-law partner and has homestead rights in the within lands.
- I have no spouse or common-law partner. No other person has acquired Homestead rights in the within lands during my ownership.
- The within lands are not my homestead.
- The within lands are not homestead property.
- I have never had a spouse or common-law partner.
- The person consenting to this disposition is my spouse or common-law partner and has homestead rights in the within lands.
- I am one of the transferees and my co-transferee is my spouse or common-law partner and has homestead rights in the within lands.
- The within lands were not the homestead of the deceased John Brown.
- The deceased John Brown had no spouse or common-law partner at the time of his death and no other party acquired homestead rights in the within lands during his ownership.
- The transferee was the spouse or common-law partner of the deceased John Brown at the time of his death and has homestead rights in the within lands.

**HOMESTEADS ACT EVIDENCE (continued)****EVIDENCE WHERE A RELEASE OF HOMESTEAD IS OR HAS BEEN FILED**

Where a Release of Homestead has been filed on a title, or is being filed in series with a disposition, it is not necessary to refer to the Release of Homestead when giving *Homesteads Act* evidence and in fact, merely referring to the release will not be sufficient.

Examples of acceptable evidence following a Release of Homestead:

- The within lands are not my Homestead.
- The within lands are not Homestead Property.
- My spouse or common-law partner has released all of his/her Homestead rights in the within lands and no other person has Homestead right in the within lands.

Examples of unacceptable evidence:

- My spouse or common law partner has released his/her Homestead rights in the within lands.

## JUDGMENTS AND ORDERS

### REGISTERING A JUDGMENT

#### *Notarized or True Copy Not Accepted*

Pursuant to s. 2 of *The Judgments Act*, all Judgments presented for registration at Land Titles must be either original copies or court certified copies. Notarial and “True” copies will not be accepted.

#### *Certificate of Decision Not Accepted*

When a party seeks to register a Judgment from small claims court, they must obtain and register a Certificate of Judgment, not the Certificate of Decision.

#### *Registration of Judgment, Lien or Order Form (Form 21) Required*

All Judgments must be accompanied by a properly completed Registration of Judgment, Lien or Order form (form 21.1).

This form can be obtained from the land titles website:

[http://www.gov.mb.ca/tpr/land\\_titles/lto\\_offices/offices.html](http://www.gov.mb.ca/tpr/land_titles/lto_offices/offices.html)

Attached as **Schedule I** are some examples dealing with discrepancies between the name of the Judgment Debtor and the name of the Registered Owner. These may be of some assistance in completing this form.

#### *Judgment Debtor Not Owner of Targeted Lands*

A judgment can be registered against lands owned by a party who is not the judgment debtor provided that the judgment debtor has an interest in those lands. For this purposes, the expression, *interest in land*, has the same meaning as it does for caveats.

Judgments cannot be registered against lands in which the debtor has limited rights (such as a marital property accounting, Homesteads Act rights, a general beneficiary under a will, and etc.) where those rights do not create a vested interest in land. This *interest in land* must be set forth in box 6 of the Registration of Judgment, Lien or Order form (form 21.1).

**JUDGMENTS AND ORDERS (continued)****REGISTERING A COURT ORDER**

To register a Court Order (such as a vesting order or an order discharging an encumbrance) at Land Titles a court certified copy of the Order is required. This Order should be attached to a Land Titles Request/Transmission form.

When completing box 2. of the Request/Transmission form please insert wording like:

To discharge instrument no. 1234567 by virtue of the attached order; or  
To vest title into the name of John Smith by virtue of the attached order.

Where the order vests land it is important to ensure that the order either specifies the encumbrances that are to be carried forward (if any) or that the title is to issue free and clear of all encumbrances. Where there are multiple parties taking title pursuant to a vesting order please ensure that the tenancy the parties desire is clearly expressed in Box 1. of the Request/Transmission form. In all cases where an order vests land, please ensure that the address for service of the new owner(s) is correctly set forth in Box 1. and Box 5. of the Request/Transmission form.

**RESUING AND REGISTERING A JUDGMENT THEREAFTER**

Where a Certificate of Judgment has been registered at Land Titles, and the underlying Judgment is not yet statute barred but that time is close, the judgment debtor has the option of resuing upon the Judgment and registering the Judgment from the resuit at Land Titles. In this case the new Judgment has the same priority as the old Judgment provided that the new Judgment is registered at Land Titles within the 30 days after it is entered in Court.

Please ensure than the new Judgment is accompanied by the Registration of Judgment, Lien or Order form (form 21.1) and that box 8 of that form has been completed.

This form can be obtained from the land titles website:  
[http://www.gov.mb.ca/tpr/land\\_titles/lto\\_offices/offices.html](http://www.gov.mb.ca/tpr/land_titles/lto_offices/offices.html)

See also section 8 of *The Judgments Act*.

## JUDGMENTS AND ORDERS (continued)

### ASSIGNMENT OF A JUDGMENT

Judgments cannot be assigned at land titles; this is prohibited by *The Judgments Act*.

#### Registration in land titles offices prohibited

12(3) No assignment of a judgment shall be registered in any land titles office in the province.

To assign a judgment, you must assign the judgment at the court.

#### Registration of assignments in court

12(2) An assignment of a judgment may be registered in the court in which the judgment was recovered.

The process to record the assignment at land titles is as follows:

1. File the assignment of the subject judgment with the court.
2. Following the filing of the assignment, the court will issue a new certificate of judgment. It must contain words to the following effect:
 

*I further certify that by an assignment dated the            day of            , 19    , and registered in this court on the            day of            , 19    , the above named judgment creditor assigned the said judgment to            of            .*
3. Register the new judgment at land titles. LTO will target the new judgment at the original judgment and we will indicate on description line of the new judgment that it is a judgment based upon the assignment of a prior judgment.

See also **DISCHARGES** for discharging Judgments.

See also **LAPSING OF INSTRUMENTS/ENCUMBRANCES** for reasons why LTO will not lapse Judgments.

## LAPSING OF INSTRUMENTS/ENCUMBRANCES

Certain encumbrances registered against titles may be removed from the title by the filing of a simple request on the Land Titles Request Transmission form. Below is a list of the encumbrances to be removed and the situations in which a simple request will remove them:

CAVEATS	Caveats, which upon review of the face of the record at Land Titles, have expired.
BUILDING RESTRICTION CAVEATS	Building restriction Caveats expire 50 years after their registration in Land Titles, or earlier if an earlier date is specified the agreement giving rise to the BRC (this agreement must be attached to the BRC).
PPSA REGISTRATIONS	See <b>PERSONAL PROPERTY SECURITY NOTICES</b>
BUILDERS' LIENS	Builder's liens expire two years after their registration in Land Titles, provided that no Pending Litigation Order has been filed pursuant to that or any other builders' lien registered on the affected title.
JUDGMENTS	Section 11(1) of the <i>Judgments Act</i> gives the power to have a Judgment which is statute barred vacated and endorsements of the Judgment removed from Land Titles to the courts. As this power has been specifically given to the courts Land Titles will not lapse old Judgments.

## MORTGAGES

### CORPORATIONS

Where land is mortgaged and the Mortgagor is a corporation Land Titles requires the same evidence of corporate status as set out below in **TRANSFERS**. Where the Mortgagee is a corporation Land Titles also requires evidence as to corporate status. For a Manitoba company the Land Titles staff will search the Companies Office database, and accordingly the client does not need to provide anything. If the Mortgagee is extra-provincially registered the Land Titles Office requires a Certificate of Status (or equivalent) from the foreign jurisdiction, which status may be no more than two years old.

There are certain exceptions to these requirements, and in those cases Land Titles will require such evidence as to corporate status as the situation warrants (e.g. Insurance companies, religious societies, charter banks, and statutorily created organisations). This evidence can either be attached to the Mortgage or registered prior in series on its own for deposit into the Land Titles deposit index. If this evidence is placed in the deposit index it can be referred to in future transactions.

### ADDRESS FOR SERVICE

A current and complete address for service is required for the Mortgagee.

### MULTIPLE MORTGAGEES / INTEREST

In Mortgages with multiple Mortgagees, where the parties intend that the Mortgage vest in the remaining Mortgagees in the event of the death of either one (the right of survivorship), the Mortgage should express this. Typically wording indicating that the monies were advanced from a joint account is inserted. Land Titles does not assume that multiple Mortgagees are joint tenants where this is not expressed.

Other than as set out above Land Titles will not accept a mortgage where the interest of the Mortgagees is specified. Accordingly, Mortgagees cannot hold a mortgage as tenants in common of specified interests (i.e. each as to an undivided one-half interest). This said, where the parties wish to, they can specify the amount of the mortgage monies contributed by each Mortgagee and the amount of the proceeds from the mortgage each Mortgagee is entitled to.

### MORTGAGE BY ONE OF SEVERAL JOINT TENANTS

Given the specific nuances of our *Real Property Act*, Land Titles takes the position that a mortgage by one joint tenant of his or her interest alone likely has the affect of severing the underlying joint tenancy. Accordingly prior to the registration of such a mortgage a notice of intent to sever the joint tenancy will have to be served by the party mortgaging their interest on all of their co-joint tenants. Once this has been done, proof of the service attached to a request to sever the tenancy and issue titles accordingly will have to be provided at the time the mortgage is registered. Note that no registration can take place until 30 days have passed from the date of service.

**MORTGAGES (Continued)****MORTGAGES WITHOUT A PRINCIPAL AMOUNT**

While Land Titles will accept mortgages that do not disclose a principal amount we would ask that you include in your documentation some indication that the lack of principal amount was a deliberate choice and is not the result of a typographical error. Land Titles does not recommend these mortgages as we have seen case-law which suggests that while these mortgages are binding as against the mortgagors, they *may not* be effective with regard to subsequent encumbrancers.

**MORTGAGES REGISTERED IN SERIES BEHIND OTHER ENCUMBRANCES**

Mortgages registered subsequent in series to other encumbrances affecting the same lands must be made subject to those encumbrances. This can be done by stating in the box for encumbrances that the Mortgage is “subject to the Mortgage (Caveat, etc.) registered immediately prior hereto in series.”

**NAME DISCREPANCIES BETWEEN MORTGAGE AND AFFECTED TITLE**

The name of the Mortgagor must be (exactly) the same as the name of the Registered Owner. Name discrepancies are often noted where a Mortgage affects multiple titles and the complete name of the Registered Owner is not consistent from one title to the next. Where there is a name discrepancy, and the name on one or more of the affected titles is incorrect, a Request/Transmission form must be filed prior in series to the mortgage to correct the name of the Registered Owner on the affected and incorrect title(s). Where the name on the mortgage is not correct the mortgage document must be corrected.

See **WITNESSING LAND TITLES DOCUMENTS** (below) for a summary of the rules governing the witnessing of mortgages for registration at land titles.

## PERSONAL PROPERTY SECURITY NOTICES

### NEW LEGISLATION

Effective September 5, 2000 the entire *Personal Property Security Act* was replaced. All Land Titles procedures for filing notices, discharging notices, assigning notices, lapsing notices and amending and renewing notices were changed.

### FILING IN LAND TITLES

Filing a notice in land titles can be done using the Personal Property Security Notice form (form 25.1). This form is not mandatory, but if it is not used a standard Request/Transmission form with the following information will be required:

- 1) A statement that a security interest is claimed pursuant to section 49 of *The Personal Property Security Act* in either growing crops, fixtures, or payments under a lease (or several of these).
- 2) A statement that the security agreement was registered in the PPR and the number it was assigned or a statement that the security agreement was not registered in the PPR.
- 3) A statement that the interest expires on a particular date or a statement that the interest does not expire.
- 4) A statement that the security agreement attaches the interest of the registered owner of the affected lands or that it affects the interest of a party other than the registered owner, with that party's name and relationship to the registered owner/interest in the lands set forth.
- 5) The Notice may be signed by an agent on behalf of the secured party.

The Personal Property Security Notice form (form 25.1) can be obtained from the land titles website:

[http://www.gov.mb.ca/tpr/land\\_titles/lto\\_offices/offices.html](http://www.gov.mb.ca/tpr/land_titles/lto_offices/offices.html)

### DISCHARGING

Notices are to be discharged using the standard Land Titles discharge form. This applies to all notices; even those filed under the old legislation prior to September 5, 2000. Like all other Land Titles documents, Notices may be either fully discharged or discharged in part. An agent may execute the discharge, provided they are the same agent (The same person!) who signed the Notice.

### ASSIGNING/TRANSFERRING NOTICES

Notices are to be assigned/transferred using the Transfer of Security Interest form (form 26.1). This form can be obtained from the land titles website:

[http://www.gov.mb.ca/tpr/land\\_titles/lto\\_offices/offices.html](http://www.gov.mb.ca/tpr/land_titles/lto_offices/offices.html)

**PERSONAL PROPERTY SECURITY NOTICES (Continued)**

## AMENDING NOTICES

Notices may be renewed or amended using the Land Titles Request/Transmission form.

## LAPSING NOTICES

A Notice registered prior to September 5, 2000 can be lapsed three years and thirty days following registration in Land Titles provided that no renewals have been registered and also provided that the registration was not a corporate security. A review of the original registration will be required to determine if the document is a corporate security.

A notice registered after September 5, 2000 can be lapsed if the Notice has not been renewed or amended and provided that the date set forth in the Notice as the expiry date has passed. Notices that do not expire cannot be lapsed.

## POSTPONEMENTS

### *Effect of Postponements*

A Postponement will only be accepted by Land Titles to postpone the registration of an encumbrance to a subsequently registered encumbrance. A Postponement will not be accepted to postpone an instrument to one registration prior in series, notwithstanding the order of advancement of the funds under the two encumbrances.

### *Postponement of Advances*

Where a subsequent encumbrancer has advanced funds prior in time to a prior encumbrancer and the parties wish to establish their respective security interests, and in particular wish to avoid the affect of s. 17 of *The Mortgage Act*, Land Titles will accept an agreement (a “Postponement of Advances”) registered attached to a Caveat.

### *Multiple Instrument Postponements*

Where parties are seeking to postpone one instrument to multiple subsequent instruments, one postponement form can be used and one registration fee will be charged.

Where parties are seeking to postpone multiple instruments to one instrument, separate postponements will be required for each instrument to be postponed, and a separate fee will be charged for each such postponement.

See **WITNESSING LAND TITLES DOCUMENTS** (below) for a summary of the rules governing the witnessing of postponements for registration at land titles.

## POWERS OF ATTORNEY

### LANGUAGE CONSTRUED STRICTLY

Every power of attorney received by Land Titles is reviewed in its entirety, and in keeping with the common law, the language in a power of attorney is construed quite strictly. Where a power of attorney contains a specific grant, accompanied by general language, the general language will be strictly construed, and Land Titles will only accept the document for those purposes necessarily associated with the specific grant.

See:

Bryant Powis and Bryant Ltd. v. La Banque du Peuple [1893] A.C. 170

Taylor v. Wallbridge (1879) 2 S.C.R. 616 at page 678

Attwood v. Munnings (1827) 7 B. & C. 278

Arpin v. Leclair [1930] 2 D.L.R.427 [Man. K.B.]

### POWERS OF ATTORNEY LIMITED TO SPECIFIC PROPERTY TRANSACTION

Where a Power of Attorney is given for the use in a specific real property transaction, the Power of Attorney should contain the legal description of the affected lands. Where the Power of Attorney contains the civic address and not the legal description, at the time of execution of the relevant document (Transfer, Mortgage, etc.) the attorney should add a clause to that document specifically identifying the lands affected by the document as being the same as the civic address set forth in the Power of Attorney. A sample of this statement is provided in **Schedules III and IV**.

### SPECIFIC PROVISIONS REQUIRED

There are certain acts that an attorney constituted by a properly drafted Power of Attorney cannot perform without there being some authorization in the document. The following is a discussion of those acts.

#### *Power to Mortgage*

An attorney in a power of attorney cannot execute a mortgage absent a specific grant of that power. Land Titles policy, in keeping with the common law, is that a general power to do all things that can be done by an attorney does not include a power to borrow by pledging property. The only exception to this general rule is where the exercise of the power to mortgage is strictly necessary to carry out an express act that is specifically authorized in the power of attorney document. See: Andrews v. Sinclair [1923] 2 W.W.E. 166 [C.A.]

**POWERS OF ATTORNEY (continued)**  
**SPECIFIC PROVISIONS REQUIRED (continued)**

*Transfers for Less than Fair Market Value /Power to Gift*

Absent a specific provision in a power of attorney allowing for conveyances at less than fair market value, Land Titles will not accept such a conveyance executed by an attorney. This applies to gifts as well as to any other such conveyances for nominal consideration.

*Transfers to an Attorney*

Unless specifically authorized by the power of attorney, the attorney named in a power of attorney may not use the power of attorney to transfer the donor's land to him or herself or otherwise benefit him or herself (for example the execution of a Discharge of Mortgage on behalf of the donor where the affected lands are owned by the attorney).

Due to the trust created by the power of attorney, in those situations where a power of attorney names multiple attorneys, or has alternate attorneys, Land Titles will not accept a conveyance to any of the attorneys, even if they are not the party actually signing the conveyance. Furthermore, such a conveyance will not be accepted even under those circumstances where the intended transferee has renounced their right to be an attorney under the power of attorney document without leave of the court.

See: *Elford v. Elford* (1922), 69 DLR 284 (SCC)

*Continuing to Act After Mental Incompetence of Donor*

As a general rule, at common law powers of attorney are terminated by the mental incompetence of the donor.

See:

*Drew v. Nunn* (1879), 4 Q.B.D. 661 (C.A.)

*Axler v. Axler*, 1993 CarswellOnt 566, 50 E.T.R. 93

*Parnall v. British Columbia*, 2004 BCCA 100, [2004] B.C.W.L.D. 371, 236 D.L.R. (4th) 433, 26 B.C.L.R. (4th) 45, 193 B.C.A.C. 309, 316 W.A.C. 309, 9 E.T.R. (3d) 117

Legislation in Manitoba allows powers of attorney to continue after mental incompetence, but only if there is a specific provision in the power of attorney which provides that it is to continue despite the mental incompetence of the donor.

See: Section 10(1) *The Powers of Attorney Act*, C.C.S.M. c. P97

Note: To be validly constituted these enduring powers of attorney must be executed in accordance with the provisions of the legislation (see EXECUTION OF THE POWER OF ATTORNEY below).

**POWERS OF ATTORNEY (continued)**  
**SPECIFIC PROVISIONS REQUIRED (continued)**

*Homesteads Act Consents, Releases, etc.*

See HOMESTEADS ACT ISSUES below for a complete discussion of the impact of *The Homesteads Act* upon the authority of an attorney under a power of attorney.

**EXECUTION OF LAND TITLES DOCUMENTS BY THE ATTORNEY**

*Evidence to be in the Third Person*

When executing a document on behalf of the donor, all information must be provided by the attorney in the third person. This ensures the information provided is about the donor and not the attorney. This is of particular importance where the information provided is Homesteads Act evidence. See **Schedule III** and **IV** for examples of acceptable execution.

*Original Document must still be Signed*

Please note that where there is insufficient room in the execution box on original document (such as box 7 in a transfer) for the evidence of the attorney and that evidence is being provided on a schedule, both the schedule and the original document must be properly executed. See SCHEDULES (below) for a full discussion of this issue.

**WITNESS TO THE POWER OF ATTORNEY**

*Generally*

See **WITNESSING LAND TITLES DOCUMENTS** (below) for the rules governing the witnessing of these documents. See also the sections titled *Manitoba Enduring Powers of Attorney* and *Foreign Enduring Powers of Attorney* for their specific execution requirements.

*Manitoba Enduring Powers of Attorney*

As a general rule, where the power of attorney provides that it is to continue despite the mental incompetence of the donor and was executed subsequent to April 7, 1997, the witness to the signature of the donor must be one of the parties provided for in section 11(1) of *The Powers of Attorney Act* (an individual registered, or qualified to be registered under section 3 of *The Marriage Act* to solemnize marriages, a judge of a superior court of the province, a justice of the peace, magistrate or provincial judge, a duly qualified medical practitioner, a notary public appointed for the province, a lawyer entitled to practice in the province, a member of the R.C.M.P., or a peace officer with a municipal police force).

Please note that if the witness is a lawyer they must state their name, position and address and when they do, no affidavit of witness is required. If the witness is not a lawyer, an affidavit of witness is required.

**POWERS OF ATTORNEY (continued)****EXECUTION OF THE POWER OF ATTORNEY (continued)***Foreign Enduring Powers of Attorney*

Enduring powers of attorney executed outside of Manitoba are only acceptable for registration in Manitoba if they are valid according to the laws of the jurisdiction in which they were executed. The rules governing the execution and witnessing of enduring powers of attorney set forth in section 11(1) of *The Powers of Attorney Act* do not apply to enduring powers of attorney executed outside of Manitoba.

See: Section 25 *The Powers of Attorney Act*

In order to accept a foreign enduring power of attorney (one executed outside of the Province of Manitoba), Land Titles requires proof that the document is valid in the jurisdiction in which it was executed. This proof should come in the form of a letter from a lawyer entitled to practice in that foreign jurisdiction. This letter must:

1. Be signed by the lawyer personally;
2. Contain sufficient information to identify the power of attorney in question (i.e. the name of the donor, the name of the attorney, the date of execution, and the location of execution); and
3. State that the document is a valid enduring power of attorney according to the laws of that jurisdiction and would be legally valid to convey/mortgage (as appropriate) land.

Land Titles will accept this letter as to validity from a Manitoba lawyer, where the Manitoba lawyer states that he or she is familiar with the applicable laws of that foreign jurisdiction.

*Ontario Enduring Powers of Attorney*

Land Titles is aware that for an enduring power of attorney to be valid in Ontario, it must be witnessed by two persons.

**USE OF ON-DEPOSIT POWER OF ATTORNEY**

Powers of attorney intended for more than one use can be placed on deposit at Land Titles. Once a power of attorney has been placed on deposit in one Land Titles office, documents relying on it can be filed in any of the Land Titles offices in the Province of Manitoba. Where a document is executed pursuant to a power of attorney already on file, the document must reference the power of attorney with specific reference to the registration number assigned to the power of attorney at the time that it was placed on deposit.

**POWERS OF ATTORNEY (continued)****CORPORATE POWERS OF ATTORNEY**

The donor in a power of attorney from a corporation must be the corporate entity. Land Titles will not accept a power of attorney, where the attorney has been appointed by an officer or employee of a corporate entity in their personal capacity, even if the power of attorney document explicitly gives the attorney the authority to act on their behalf for the corporate entity.

**COPIES OF THE POWER OF ATTORNEY DOCUMENT**

Land Titles requires either the original power of attorney document or a notarized copy of such original. Land Titles will not accept notarized copies of notarized copies, nor will we accept notarized copies of facsimile copies.

Notarized copies can only be made by a Notary Public. Notarized copies cannot be made by any other officer, including bank officials, commissioners for oaths and postmasters.

When making a notarized copy, the best practice is to use a formal notary's certificate. Where this is not used, and a stamp is used in lieu thereof, the stamp should contain sufficient information to identify the document in question.

Here is a sample of an acceptable stamp:

<p>COMPARED WITH THE ORIGINAL CONSISTING OF ____ PAGES AND CERTIFIED TO BE A TRUE COPY OF</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>DATED THE _____ DAY OF _____, 20____</p> <p>_____</p> <p>JAYNE THOMPSON</p> <p>A NOTARY PUBLIC IN AND FOR THE PROVINCE OF MANITOBA</p>
--

**POWERS OF ATTORNEY (continued)****HOMESTEADS ACT ISSUES**

*Executing Homesteads Act Consents, Release, etc.*

**Specific Authority Required**

Absent a specific authorization, a power of attorney document cannot be used for a consent to a disposition, a consent to a change of homestead or a release of homestead.

See: Section 23(1) *The Homesteads Act*, C.C.S.M. c. H80

**Form 9 to be Attached**

Even where a power of attorney contains the power to execute The Homesteads Act consents and releases, the prescribed form under The Homesteads Act, form 9, ACKNOWLEDGMENT BY SPOUSE OR COMMON-LAW PARTNER FOR POWER OF ATTORNEY, must be executed and attached to the power of attorney or it cannot be used for those purposes. This form is **attached as Schedule V**.

In the event that the Form 9 is not attached to the Power of Attorney, Land Titles will not accept for registration documents containing consents or releases executed by the attorney on behalf of the donor. This said, if the Power of Attorney is otherwise properly drawn, Land Titles would accept the Power of Attorney for other purposes.

See: Section 23(3) & 23(4) *The Homesteads Act*

**Spouse Cannot Ever Execute Homesteads Act Consents, Release, etc.**

Under no circumstances can a party use a power of attorney to execute a consent, a release, a consent to terminate a release or a discharge of homestead notice as attorney for his or her spouse or common law partner. Furthermore, where the attorney is prohibited from acting, they cannot appoint a substitute attorney to act on their behalf to carry out the prohibited action.

See: Section 23(2) *The Homesteads Act*

*Disposition of the Homestead*

Parties are prohibited from executing dispositions of homestead property (transfer, mortgage, etc.) as attorney for their spouse/common law partner where the donor of the power of attorney owns an estate or interest in the property in addition to their *Homesteads Act* rights.

Where homestead property is jointly held by a husband and wife, or by common law partners, each spouse or common law partner has an ownership interest in the property in addition to their Homesteads Act rights. In such cases, the spouses and common law partner cannot act as attorney on behalf of their spouse or common law partner in a disposition of that property.

See: Section 24 and 4(d) *The Homesteads Act*

**POWERS OF ATTORNEY (continued)**  
**HOMESTEADS ACT ISSUES**

*Homesteads Act Special Authority Clause*

Many modern Power of Attorney documents contain a specific clause allowing specified alternate attorneys to act where the primary attorney, the spouse or common-law partner of the donor, cannot act due to the operation of *The Homesteads Act*. A typical clause will allow these alternate attorneys to execute Homesteads Act releases and consents.

This addition is helpful, however experience has now shown that such clauses are lacking in one of essential element. Specifically, these clauses do not provide for the execution of a disposition of jointly held homestead property. In short, where the property is the homestead of the parties, and where a transfer or a mortgage of that property needs to be signed, and the primary attorney is prohibited from signing because they are the spouse or common-law partner of the donor, the special alternate attorneys cannot sign because they are limited to executing consents and releases.

In order to protect from the difficulties this situation gives rise to, powers of attorney need include a clause specifically authorizing an alternate attorney to act in place of the primary attorney to execute dispositions of the homestead where the primary attorney cannot do so because they are the spouse or common law partner of the donor. See **Schedule XIV** for a sample of a special alternate clause that Land Titles would accept.

**SUBSTITUTE ATTORNEYS**

*Termination of Authority of Substitute Attorney*

Many powers of attorney authorize an attorney to appoint substitute attorneys. The authority of these substitutes derives from and depends upon the authority of the named attorney. Accordingly, if the original attorney becomes incapable of acting, the authority of the substitute is also automatically terminated. This would happen where the named attorney becomes bankrupt, mentally incompetent or dies.

See:

Potasky v. Potasky (2002), [2002] 7 W.W.R. 504

*Powers of Substitute Limited to the Powers of the Named Attorney*

A substitute attorney, appointed by a named attorney, has no more authority than the named attorney. If the named attorney cannot exercise a particular power, the substitute attorney cannot either, even where the document creating the delegation purports to allow this. Furthermore, where an attorney is prohibited by law from doing some act (i.e. executing *Homesteads Act* consents and releases), a substitute attorney named by them cannot do this act.

**POWERS OF ATTORNEY (continued)**

## ALTERNATE ATTORNEY ACTING

*Generally*

An alternate attorney under a power of attorney can only act under those circumstances as are specified in the power of attorney document. Land Titles will normally require evidence supporting the action of the alternate attorney.

*No Provision in Power of Attorney for When Alternate to Act*

Where the power of attorney document does not specify when the alternate may act, they can only act when the authority of the primary attorney has been terminated by operation of law. Land Titles is guided by section 13 (d) of *The Powers of Attorney Act*. In these cases, Land Titles will allow the alternate to act where the primary attorney has become bankrupt, mentally incompetent or has died. Land Titles will also allow an alternate to sign where the first named attorney is legally incapable of signing because the document in question effects a disposition of homestead property.

*Alternate Attorney Executing a Disposition (Transfer, Mortgage, etc.) of the Homestead*

Many modern Powers of Attorney documents contain specific clauses allowing specified alternate attorneys to act where the primary attorney, the spouse or common-law partner of the donor, cannot act due to the operation of *The Homesteads Act*. A typical clause will allow these alternate attorneys to execute Homesteads Act releases and consents.

While these clauses are helpful, experience has now shown that such clauses are lacking in one of essential element. Specifically, these clauses do not provide for the execution of a disposition of jointly held homestead property. In short, where the property is the homestead of the parties, and where a transfer or a mortgage of that property needs to be signed, and the primary attorney is prohibited from signing because they are the spouse or common-law partner of the donor, the special alternate attorneys cannot sign because they are limited to executing consents and releases.

In order to protect from the difficulties this situation gives rise to, powers of attorney need include a clause specifically authorizing an alternate attorney to act in place of the primary attorney to execute dispositions of the homestead where the primary attorney cannot do so because they are the spouse or common law partner of the donor. See **Schedule XIV** for a sample of a special alternate clause that Land Titles would accept.

**POWERS OF ATTORNEY (continued)****POWERS OF ATTORNEY GIVEN BY TRUSTEES**

The trustee of an estate (executor or administrator) may delegate to another person by Power of Attorney all or any of the powers vested in him/her as trustee (s. 36(1) *The Trustee Act*). This is subject to two restrictions:

1. The trustee must be intending to remain out of the province for a period exceeding one month (Land Titles will ask for evidence on this point, including evidence that at the time of the exercise of the power by the attorney the donor was out of the province); and
2. The person appointed may not be the only other co-trustee.

**SPRINGING POWERS OF ATTORNEY**

Where a power of attorney contains a clause that the power is only to come into force upon the occurrence of a specified contingency (i.e. mental incompetence) Land Titles must be satisfied that the specified condition has occurred. Land Titles will not rely on the mere execution of a document by the attorney in a springing power of attorney as proof that the power he or she is relying on has become effective.

If the springing power of attorney sets forth the manner for determining if the specified event has occurred, Land Titles will require this evidence. For example if the power comes into force upon mental incompetence and the power of attorney states that the declaration of one doctor will be sufficient Land Titles will require a Notarized copy of the declaration. Pursuant to s. 6(4) of *The Powers of Attorney Act*, if the specified condition is mental incompetence, and the power of attorney does not specify the manner for determining when this has occurred, the declaration of two duly qualified medical practitioners is required.

**MULTIPLE NAMED ATTORNEYS***Power of Attorney Without Enduring Clause*

At common law, a donor can appoint multiple attorneys to act jointly, concurrently or successively. Where a power of attorney document does not contain a clause that the powers continue after the mental incompetence of the donor, Land Titles will review the power of attorney document and will allow multiple attorneys to act jointly, concurrently or successively in accordance with the power of attorney document.

**POWERS OF ATTORNEY (continued)**  
MULTIPLE NAMED ATTORNEYS (continued)

*Power of Attorney with an Enduring Clause*

**Joint Attorneys**

*The Powers of Attorney Act* has created special rules governing the decision making for attorneys appointed jointly (restricted to those powers of attorney that continue after mental incompetence). The Act provides that in those situations where the attorneys cannot come to a unanimous decision, the decision of a majority will be deemed to be the decision of all.

See: Section 18(1) *The Powers of Attorney Act*

The Act further provides that where the attorneys cannot even come to a simple majority, the first named attorney shall be entitled to make the decision.

See: Section 18(2) *The Powers of Attorney Act*

Where joint attorneys cannot come to a unanimous decision, and the power of attorney provides that it continues after mental incompetence, Land Titles will accept execution by less than all of the attorneys. In such cases we will require evidence that the decision was that of the majority (where available) or of the first named where even a majority could be obtained.

**Joint vs. Consecutive vs. Concurrent**

Section 17(1) of *The Powers of Attorney Act* allows a donor in an enduring power of attorney to appoint any number of persons to act jointly or successively as their attorneys. This section does not seem to contemplate the appointment of concurrent attorneys.

Given that the common law already allowed for joint and successive attorneys, the effect of section 17(1) is unclear. Does it simply re-state the common law, making it clear that enduring powers of attorney can also appoint attorneys to act jointly and successively (and if this is so, why not also mention concurrently?) or does it specifically limit multiple attorneys to acting jointly or successively?

Section 17(2) further complicates the matter. That section provides that where multiple attorneys are appointed to act, and the document does not indicate whether they are to act jointly or successively, they are to act successively, in the order in which they are named. It is unclear when this section comes into play.

One interpretation of section 17(2) is that this section comes into play any time it cannot be determined if the attorneys are either joint or successive. This means that where multiple attorneys are appointed to act, and the appointment is neither joint nor successive (concurrently for example) then the appointment is successive (and not concurrent, despite the clear wording of the document).

**POWERS OF ATTORNEY** (continued)  
**MULTIPLE NAMED ATTORNEYS** (continued)  
*Power of Attorney with an Enduring Clause* (continued)  
**Joint vs. Consecutive vs. Concurrent** (continued)

The other interpretation is that the section is only intended to be looked to where there is genuine confusion. An appointment of concurrent attorneys is not a situation of genuine confusion.

Read together, sections 17(1) and 17(2) seem to imply that where a party has appointed multiple attorneys in an enduring power of attorney, they must be either joint or successive, and if they are anything else, they will be treated as successive. That said, the section does not explicitly prohibit the appointment of concurrent attorneys.

The more restrictive interpretation of section 17 seems to make some sense when one considers the special circumstances in which an enduring power of attorney is intended to be used. Specifically, an enduring power of attorney will be relied upon to manage a person's affairs after that person has become incompetent.

In such cases, section 17 provides a safeguard against the possibility of multiple attorneys going off in separate and contradictory directions, possibly to the detriment of the donor. This role is usually filled by the donor, who would typically oversee his or her attorneys, removing them if needed, where they can't get along. When the donor is not available however, there is no one to reign in attorneys when they can't act cooperatively.

One should note that this isn't the only time that legislation frustrates the express wording in a power of attorney. Absent the presence of form 9 under the Homesteads Act, an attorney cannot execute consents or releases, even if specifically authorized. A spouse or common law partner can never execute consents or releases as attorney for their spouse or common law partner, even if specifically authorized to do so, even if the form 9 is attached. An entire enduring power of attorney will be of no force and effect if it isn't witnessed in accordance with section 11.

The restrictive interpretation seems to be in keeping with the effect of section 18 of the Act. That section (discussed above) sets up special decision making rules for jointly appointed attorneys in enduring powers of attorney. Once again, these rules seemed aimed at creating a clear mechanism for determining who is capable of making the decision for a party who has become mentally incompetent. Like section 17, section 18 can also have the effect of overriding the apparently clear wishes of a donor. Specifically, even where a donor has set up a regime appearing to require unanimous decision making, the Act allows for a simple majority, or where that isn't available, for the first named to act on his or her own.

Land Titles is currently considering the effect of section 17.

### **PROPERTY REGISTRY APPLICATION (PRA)**

A PROPERTY REGISTRY APPLICATION (PRA) form must accompany all registrations (s. 63(1) *The Real Property Act*). When properly completed, this form contains the registering party's firm number, a complete list of only the registerable documents, a complete and current list of affected titles and instruments. Requests for other services such as copies of titles or documents are to be made using this form.

One final, but very important note: Please put your **full name, phone number** (together with extension number where applicable), and **your e-mail address** on the PRA. If you don't, we may not be able to contact you to ask for a correction letter and your documents may get rejected as a result!

A document series with an incomplete or illegible PRA form (or without a PRA form) will be returned to the client prior to the registration, together with the accompanying documents.

## REAL PROPERTY APPLICATIONS

### EXECUTION / WITNESS REQUIREMENTS

See **WITNESSING LAND TITLES DOCUMENTS** (below) for a summary of the rules governing the witnessing of Real Property Application.

### RPA TO BE REGISTERED ON ITS OWN

Other than a mortgage of the subject lands, Land Titles will not accept new system documents (for example a Transfer of Land) registered in series with a Real Property Application. These registrations are specifically prohibited by *The Real Property Act*.

### DIRECTION

The only time that a direction is to be inserted into an RPA is when the party taking title is intended to be different from the party making the application. With the insertion of a direction clause, the RPA acts not only to move lands from the old system into the Torrens system, but also as a transfer of those lands from the applicant to the directee.

Where an RPA contains a direction, much as in a Transfer of Land, the RPA must contain *Homesteads Act* evidence, *Farmlands Ownership Act* evidence, and evidence as to the fair market value as required by *The Tax Administration and Miscellaneous Taxes Act*. This information must be provided by way of an affidavit attached to the RPA. See **Schedule XV** for a sample of such an affidavit.

### APPLICATION BY EXECUTORS / ADMINISTRATORS OF AN ESTATE

Where 'old system' lands are owned by a person who has passed away, and the parties involved wish to have a 'new system' certificate of title issue for those lands, an application may be made by the executors / administrators of the estate of the deceased person. Land Titles will require evidence of their appointment in the form of Letters of Administration or a Grant of Probate.

Where an application is made by the executors / administrators of an estate title will issue into the name of the executors / administrators unless the RPA contains a direction. Once the new system title has issued, the executors / administrators are free to transfer the lands to a purchaser or a beneficiary without providing any other special evidence to Land Titles.

## REAL PROPERTY APPLICATIONS (continued)

### DIRECTED APPLICATION BY EXECUTORS / ADMINISTRATORS OF AN ESTATE

Where the parties involved wish to have a 'new system' certificate of title issue for the lands into the name of a party other than the executors / administrators, a Directed Real Property Application is to be filed. In addition to all other requirements of a regular RPA, Land Titles will require evidence concerning the estate. Further, where there is a will, Land Titles will ensure that all dispositions are in accordance therewith.

Because of these additional requirements, and in the interests of simplicity, Land Titles recommends against the use of Directed RPA's by estates. It is often much simpler to wait for title to issue and then to file a transfer of land.

The following is a list of the evidence Land Titles requires for a Directed RPA by an estate:

1. Grant of Probate / Letters of Administration
2. Evidence in the form of the affidavit of debts and heirs, including:
  - a. Publication of notice to creditors under *The Trustee Act*, with no claims filed within the designated time;
  - b. All debts, claims and liabilities against the deceased in the estate are paid and that there are no outstanding and unpaid income taxes or succession duties, if applicable (evidence that all income taxes of the deceased in the estate have been paid should be sufficient, without requiring a copy of the clearance certificate also to be filed);
  - c. Particulars of a surviving spouse/common law partner and children;
  - d. Evidence that the executor has not been served with an application under The Dependents Relief Act (note that the limitation period under The Dependents Relief Act is six months from the date of the Grant of Letters Probate or Letters of Administration);
  - e. If the land is homestead, the consent of the surviving spouse/common law partner;
  - f. For deaths which took place after August 15, 1993, where there is a surviving spouse/common law partner, evidence that the personal representative served the surviving spouse/common law partner with the notice under section 31 of *The Family Property Act* within one month after the Grant of the Letters Probate or Letters of Administration and that no application for an accounting and equalization has been made by the surviving spouse/common law partner (the surviving spouse/common law partner has six months from the date of the Grant of Letters Probate or Letters of Administration to file an application for an accounting and equalization under *The Family Property Act*).

The above rules and evidentiary requirements will also be applied if somewhere in the history of the dealings with the lands in the 'old system' there has been a disposition by the representatives of an estate.

## RELIGIOUS SOCIETIES

Numerous religious organizations and associations hold land and interests in land in the Province of Manitoba. Some religious organizations have specific legislation (either Federal or Provincial) which govern them. Where such specific legislation exists, any dealing with land by that religious group is governed by the provisions of their particular legislation. One example of such legislation is *The Catholic Parishes and Missions Incorporation Act*, R.S.M. 1990, c. 27

Most other religious organizations in the Province of Manitoba are governed by *The Religious Societies' Lands Act*, C.C.S.M. c. R70. This legislation governs the manner in which religious societies, that don't have specific incorporating legislation, carry on their business. In particular, this act controls the manner in which religious societies acquire and dispose of interests in land.

The relevant sections of *The Religious Societies' Lands Act* are summarized as follows:

### TRANSFERRING LAND TO A RELIGIOUS SOCIETY

Transfers in favour of a religious society must be registered at Land Titles within 12 months of their execution; otherwise they are deemed void and cannot be accepted. Where a transfer is deemed void, the Registrar General of Land Titles may, at the Registrar's absolute discretion, approve the document, if the Registrar determines that it is in the best interest of all parties to so do.

For further detail, see sections 14(1) and (2) of *The Religious Societies' Lands Act*.

### HOW RELIGIOUS SOCIETIES TRANSFER LAND

#### *Generally*

Where a religious society is transferring land in the ordinary course, the religious society can do this by way of a transfer executed by the trustees of the religious society accompanied by both:

- a. A copy of a resolution adopted by the society at a regular annual meeting or a special meeting of the society, approving the sale (see below for rules governing resolutions); and
- b. A court certified copy of an order by a judge of the Court of Queen's Bench approving the sale.

For further detail, see sections 21 and 22(1) of *The Religious Societies' Lands Act*.

**RELIGIOUS SOCIETIES (continued)****HOW RELIGIOUS SOCIETIES TRANSFER LAND (continued)***Exceptions*

The rules governing transfers by religious societies do not apply to religious societies in the following circumstances:

**Transfer to an Incorporated Board of which the Society Forms Part**

Where a religious society transfers land to an incorporated board of the denomination of which the society forms a part, the religious society can do this by way of a transfer executed by all of the trustees of the religious society, accompanied by either:

- a. A copy of a resolution adopted by the society at a regular annual meeting or a special meeting of the society, approving the sale (see below for rules governing resolutions); or
- b. A court certified copy of an approval of by a judge of the Court of Queen's Bench.

For further detail, see sections 24 and 26 of *The Religious Societies' Lands Act*.

**Religious Society Uniting with Another**

Where a religious society is uniting with another society of the same denomination, the trustees may transfer to the trustees of the last mentioned society by way of a transfer executed by all of the trustees of the religious society, accompanied by either:

- a. A copy of a resolution adopted by the society at a regular annual meeting or a special meeting of the society, approving the sale (see below for rules governing resolutions); or
- b. A court certified copy of an approval of by a judge of the Court of Queen's Bench.

For further detail, see sections 24 and 26 of *The Religious Societies' Lands Act*.

**Sales More Than 10 Years Old**

Where a sale of land by the trustees of a religious society is more than ten years old, and has not been approved by a judge of the Court of Queen's Bench, the Registrar General of Land Titles may confirm the sale upon such terms as he orders.

For further detail, see section 23 of *The Religious Societies' Lands Act*.

**RELIGIOUS SOCIETIES (continued)****HOW RELIGIOUS SOCIETIES TRANSFER LAND (continued)***Exceptions (continued)***Transfer of Cemetery to a Company or Municipality**

Religious societies may transfer any land used by it for cemetery purposes to either:

a. A company incorporated under The Corporations Act for the purpose of operating of a cemeteries or;

b. A municipality,

by way of a transfer executed by all of the trustees of the religious society, accompanied by a copy of a resolution adopted by the society at a regular annual meeting or a special meeting of the society, approving the sale (see below for rules governing resolutions).

For further detail, see section 27(1) of *The Religious Societies' Lands Act*.

**HOW RELIGIOUS SOCIETIES MORTGAGE LAND**

A religious society may mortgage lands by way of a mortgage signed by all or a majority of the trustees of the religious society.

For further detail, see section 15 of *The Religious Societies' Lands Act*.

**HOW TO UPDATE NAMED TRUSTEES ON A TITLE**

Where a certificate of title is in the name of specified trustees of a religious society, and the trustees want to update the names to the current trustees, the religious society can file at Land Titles a request using the Request/Transmission form. Please attach to the Request/Transmission a copy of a resolution containing the names of all current trustees (see below for rules governing resolutions).

For further detail, see section 10(1) of *The Religious Societies' Lands Act*.

**RULES GOVERNING RESOLUTIONS**

A resolution, either appointing or confirming trustees, or approving a sale, must be adopted at either a special or annual meeting of the religious society. A copy of that resolution is to be signed by the chairman and secretary of the meeting. Land Titles will accept a copy of this document certified by the secretary (or equivalent) of the religious society.

For further detail, see sections 11(1), 11(2) and 11(4) of *The Religious Societies' Lands Act*.

## SCHEDULES

### USE

A schedule is to be attached to a land titles document where there is insufficient room in that document or in a particular box of that document for the information required for that document.

### STATEMENTS IN SCHEDULE DEEMED TO BE SWORN

By virtue of Section 194 of *The Real Property Act*, any statements set out in a document, the form of which has been prescribed by the regulations to that Act, and signed by the party making that statement, has the same validity as an oath, affidavit, affirmation or statutory declaration made under *The Manitoba Evidence Act*. The completion of a Form 3 schedule therefore has the same validity as if the evidence contained therein was given in an oath, affidavit, affirmation or statutory declaration.

### DOCUMENT INCORPORATES SCHEDULE BY REFERENCE

All schedules to Land Titles documents must be referred to in the body of the Land Titles document. This is typically done by inserting a given letter into the box provided following the expression "See Schedule".

### MINIMUM REQUIRED PARTICULARS

All schedules, whether or not it is on a prescribed form, must contain certain particulars. In addition to being signed by the parties to the Land Titles document, the schedule must set out the identity and type of that document, the parties to the document and the number of pages in that document. Where there is more than one page to the schedule, the last page should be signed and every other page should be initialled by the parties executing the document to which the schedule is attached.

**See Schedule II** for an example of a properly completed schedule.

### DATE

When completing the bottom portion of a schedule, the date to be inserted is to be the execution date set forth in the document that the schedule forms a part of. It is not to be the date that the schedule itself was signed (unless this happens to be the very same date).

The reason for this rule lies in the purpose behind the wording at the bottom of the schedule: This wording, including the date, is provided so as to identify the document that the schedule forms a part of; it is not meant to indicate the date on which the schedule was completed.

Please note that the date of a document is the date on which the document was *executed* and not the date that any supporting evidence was signed (such as Farmlands Ownership Act evidence or Tax Administration and Miscellaneous Taxes Act evidence). Where multiple parties have executed a document, the date of the document is the date the last person executed the document.

### ORIGINAL DOCUMENT MUST STILL BE SIGNED

Where there is insufficient room on a prescribed form for proper execution, the execution portion of the document is often moved to a schedule. This typically occurs in two situations: 1. where there are a large number of people executing a document; and 2. where the document is being executed by an attorney under a power of attorney and there is insufficient room in the document for the required evidence.

In these cases, it is not sufficient to ensure that the schedule is properly executed. Where the execution has been moved to a schedule at least one of the parties must still sign in the execution portion of the document. Furthermore, all formalities and rules regarding both execution, dating and witnessing must be complied with.

This execution is required on the original document to ensure that the document that the schedule is meant to be attached to and form a part of is the document that is actually attached to it. It makes no sense for a schedule to say that it is a schedule to a transfer dated June 23, 2010 where the execution portion of the transfer is actually blank and contains no date whatsoever. The logic behind this requirement is the same logic that requires the bottom portion of a schedule to be signed in the first place.

Here are some helpful guidelines to ensure that you are properly executing your documents:

1. The execution box in the original document (box 7 in a transfer or a mortgage) must be signed by at least one party. That signature must be properly witnessed and dated.
2. Where there is insufficient room in the original document for the evidence of the party signing (for example an attorney), that party must also execute a schedule. That execution must also be properly witnessed and dated. In these cases it is acceptable to cross out all of the evidence statements in the original document.
3. Where there are too many parties to fit into the execution box of a document, at least one of the parties must sign in the execution box.
4. The date at the bottom of the schedule (in the statement that identifies the schedule as forming a part of a particular document) must be the date that the party signed the original document. If multiple people signed on the original document, it must be the date of the last such signature.

### SUPPORTING EVIDENCE IS NOT A SCHEDULE

Please also note that where stand alone evidence is being submitted, such as a birth or death certificate, this may be attached to the registered document without the above schedule formality.

## **THIRTY DAY NOTICES**

One method for removing unwanted judgments, caveats and builders' liens from a certificate of title is through the use of a thirty day notice. The thirty day notice process is not suitable for all situations and can lead to unwanted litigation. Accordingly, serious consideration to the circumstances and the consequences must be given prior to making an application for such a notice.

### **THE PROCESS**

#### *Application for the Notice*

- As a rule Land Titles will not issue thirty day notices for District Registrar's Caveats, building restriction caveats, easement caveats, judgments for child support, or judgments for spousal support.
- The thirty day notice process is started by filing in Land Titles a request/transmission form asking for that a thirty-day notice be issued. In box 2 of the request form insert language to the effect of "Request 30-day notice regarding Caveat 1234567."
- Where the instrument to be removed is a builders' lien, Land Titles will automatically issue the thirty day notice upon receipt of the request.
- Where the instrument to be removed is a caveat or a judgment, Land Titles will not issue the thirty day notice automatically or as a matter of right. In addition to requesting the notice, the applicant must add into box 2 evidence in the form of a statement or series of statements advising why the caveat or judgment is not properly registered against the title.

#### *Issuance of the Notice*

- Upon receipt of the request, Land Titles will review the evidence provided. If satisfied that the allegations made genuinely call into question the appropriateness of the registration, Land Titles will then issue the thirty day notice.
- Where the instrument in question is a judgment, and the applicant requests the notice based upon the fact that, in their opinion, the courts made an error in issuing the judgment, Land Titles will not issue the notice. The correct procedure is, where available, to file an appeal with the courts.

Furthermore, Land Titles will not issue a thirty day notice to remove a judgment simply because the judgment has been on title for a particular length of time (i.e. for 10 years). The *Judgments Act* allows parties to make application to court to have statute barred judgments removed from title, and no similar authority is given to Land Titles staff.

- As discussed above, where the instrument in question is a Builders' Lien, Land Titles will issue the thirty day notice automatically.

**THIRTY DAY NOTICES (Continued)**  
THE PROCESS (continued)

*Service*

- Upon the applicant's receipt of the thirty day notice it is the responsibility of the applicant and not Land Titles to serve the notice upon the person who registered the instrument.
- Where there is what appears to be a good address for service on file at Land Titles for the instrument in question, Land Titles will normally give instructions for service to be made by mailing the notice by registered mail to that address.
- Where there is no such acceptable address, personal service will be ordered.

*Application for Removal of the Instrument*

- Once service of the thirty-day notice has been effected and the time period specified in the notice has passed, without any action having been taken by the claimant in the original instrument, a second request may be filed.
- In box 2 of the second request insert language to the effect of "Request lapse of Caveat 1234567 by virtue of service of 30-day notice. Proof of service attached hereto."
- Affix to the request an affidavit of service with attached thereto a copy of the thirty day notice served as an exhibit.
- Upon receipt of such a properly completed request, with appropriate evidence and where no action has been taken by the claimant, Land Titles will remove the subject registration from title.
- Where registered mail service has been ordered, the notice must actually be delivered. A notice which has been sent but not accepted has not been served.

**THIRTY DAY NOTICES (Continued)**  
THE PROCESS (continued)

*Failure to Serve / Substitutional Service*

- In the event that service of the notice cannot be effected in accordance with the instructions in the notice, application may be made for an order of substitutional service. This application is made using the request/transmission form.
- In box 2 of the request form insert language to the effect of “Request for an order of substitutional service upon 1234321 Manitoba Ltd. by virtue of the attached affidavit of attempted service.”
- Attach to the request form your affidavit of attempted service. The affidavit must detail the efforts made to serve the party and the efforts made to locate the party where service has failed.
- Upon receipt of an application for substitutional service, Land Titles will review the attempted service affidavit and either request further information or issue an order of substitutional service.
- Once an order of substitutional service has been issued, service of the notice must then be made in accordance with that order.
- Once proper service has been made and the time period specified has passed without any action having been taken by the claimant in the original instrument, the request to lapse may be filed.
- Where registered mail service cannot be made, service can always be made on the party personally without any need for an order of substitutional service. Personal service is always accepted.

**THIRTY DAY NOTICES (Continued)**  
 THE PROCESS (continued)

*Pending Litigation Order / Proof of Proceedings*

- Land Titles will not lapse the subject instrument from title where the registrant has, within the time period specified in the notice:
  1. Taken proceedings in the Court of Queen's Bench to establish/protect the claim made; and
  2. Filed proof of those proceedings at Land Titles.
- Where the subject instrument is a builders' lien, a pending litigation order drawn in accordance with Form 9 in the Schedule to *The Builders' Liens Act* must be registered at Land Titles to stop the thirty day notice proceedings. Due to the specific wording in that act, no other materials will be accepted.

It is important to note that Land Titles will not remove any builders' lien from a title where a pending litigation order has been registered against the affected title, even if the pending litigation order was registered by a party other than the party who registered the builder's lien.

- Where the subject instrument is either a caveat or a judgment, evidence satisfactory to the district registrar that court proceedings have been taken is all that the act requires. As a rule Land Titles deems a pending litigation order to be satisfactory evidence.
- On those occasions where a pending litigation order cannot be obtained in a timely enough fashion, and where the registration in question is either a caveat or a judgment, Land Titles may accept copies of court pleadings wherein the applicant has requested a pending litigation order.

In these cases Land Titles will take in the evidence, initiate the registration process as though a pending litigation order had been filed, and hold the materials for such time as the Registrar feels is appropriate to allow the applicant to obtain the pending litigation order.

Where the order ultimately cannot be obtained, or cannot be obtained in a timely enough manner, Land Titles will reject the materials.

These materials will not be accepted where the instrument in question is a builders' lien. As noted above, a pending litigation order must be filed to preserve the registration of a builders' lien.

## TRANSFERS

### CORPORATIONS

Where land is transferred to corporation (**or by a corporation**) Land Titles will perform a search of the Companies Office database to ascertain if the corporation has the corporate status to permit the transaction to be registered. Section 187(2) of *The Corporations Act* states that a body corporate is deemed to be carrying on business in Manitoba if it is the Registered Owner of real property situate in Manitoba. *The Corporations Act* requires that a body corporate carrying on business in Manitoba be registered under that act (s. 187(3)). A Transfer will not be accepted where either the Transferor or Transferee does not have the requisite corporate status.

There are certain exceptions to the requirement for registration in the Companies Office, and where that registration is not required Land Titles will require sufficient evidence as to corporate status as the situation warrants (e.g. Insurance companies, religious societies, charter banks, and statutorily created organisations). This evidence can either be attached to the Transfer or registered prior in series on its own for deposit into the Land Titles deposit index. If this evidence is placed in the deposit index it can be referred to in future transactions.

### FULL AND COMPLETE NAME REQUIRED

Where the Transferee is an individual the individual's full name must be set out in the Transfer, initials are not allowed. In the event that an individual does use an initial, not because they do not wish to set out their full middle name, but rather because they use the initial for identification purposes, the Transfer of Land must contain a statement signed by the Transferee, typically in box 4, to that effect.

### INTEREST OF MULTIPLE TRANSFEREES

A Transfer of Land to multiple Transferees should set out in box 5 the interest of the Transferees. Where no interest is set out the Land Titles staff will not make the assumption that the parties are joint tenants, rather by operation of section 15 of *The Law of Property Act* the parties will be assumed to be tenants in common.

### CONVEYANCE BY FRACTIONAL INTEREST HOLDER

Where an owner of land who owns only a fractional interest in the lands is conveying all of his or her fractional interest, do not list the interest in box 1 of the Transfer: A Transferor is deemed to convey all of his or her interest unless otherwise specifically stated. Where the fractional interest is listed in box 1 Land Titles will not be able to determine if the entire fractional interest is being conveyed, or simply a fraction of the fractional interest.

**TRANSFERS (Continued)**

## LAND TRANSFER TAX

*Tax Payable on Transfer*

By operation of *The Tax Administration and Miscellaneous Taxes Act*, land transfer tax is payable upon registration of a transfer of land at a Land Titles office (unless the conveyance is exempted by that Act). The amount of tax to be paid depends upon the fair market value of the land.

*Fair Market Value means:*

The value of the land being transferred (including all improvements and buildings) at the time a transfer of land is registered at Land Titles.

*Fair Market Value does not mean:*

The value of the lands at the time the transfer was signed.

The value of the lands at the time the parties to a conveyance agreed to buy and sell the lands.

The value of the lands at the time the offer to purchase was signed.

The value of the lands at the time the evidence as to value in the transfer form was signed.

*Improvements Made Prior to Registering Transfer*

Parties who are considering making improvements to a piece of property prior to filing a transfer of land should be aware of the fact that any improvements they make will affect the value of the subject lands and therefore the amount of tax they will be required to pay.

*Evidence must be Current (six months time period explained)*

Land Titles will not accept a transfer of land where the sworn fair market value is more than six months old. This does not mean that parties can register Transfers of Land containing fair market value evidence that is not correct just because it was correct when it was signed and the six month time period has not passed. Remember, it is the value of the land at the time the transfer is registered that is the relevant value! It is completely inappropriate to file a transfer which contains a value that does not reflect the fair market value of that property as of the filing date.

**TRANSFERS (continued)****LAND TRANSFER TAX (continued)***Exemptions from Land Transfer Tax*

In certain circumstances, land transfer tax is not payable.

If the Transferee is not required to pay land transfer tax, exemption evidence must be given by the Transferee, not the party's solicitor and agent. The only exception to this occurs where the tax exemption is claimed because the Transferees are a farmer and his or her spouse or common law partner. In these cases, the exemption may be signed by the farmer alone provided he or she gives evidence that the other Transferee is their spouse or common law partner. Pursuant to the Tax Administration and Miscellaneous Taxes Act, tax *may* not be payable where:

- The value of the land transferred is less than \$ 30,000.00
- The transferor is the director of The Veteran Lands Act and the transferee is a veteran or the spouse of a veteran or the common-law partner of a veteran
- The land is farmland, the transferee is a farmer, a spouse or common-law partner of a farmer, or a farmer and the farmer's spouse or common-law partner, and the land will continue to be used for farming
- The land is farmland, the transferee is congregation within the meaning of section 143 of *The Income Tax Act* (Canada) and the land will continue to be used for farming
- The transferee is a registered charity as defined in *The Income Tax Act of Canada*
- The transfer is filed to correct an error in a previous transfer
- The transfer is to facilitate a scheme of subdivision to or from a trustee where there is no change of beneficial ownership
- The transfer is to give effect to a change of name
- The transfer is to change the type of tenure as between the existing owners of the land in question
- The transfer is a transfer of non-commercial property and the transferee is the registered owner's spouse or common-law partner (within the meaning of section 114 (1) (e) of *The Tax Administration and Miscellaneous Taxes Act*) or former spouse or former common-law partner or the executors/administrators of the registered owner's spouse or common-law partner
- The transfer is from a company which has dissolved, and is to the company which held all of its shares immediately prior to dissolution
- The transfer is pursuant to an agreement between an Indian band and the government and the transferee is an Indian band and the land is for the use of the band

See also **ESTATES** (above) for issues regarding transfers by the executors/administrators of an estate.

See **WITNESSING LAND TITLES DOCUMENTS** (below) for a summary of the rules governing the witnessing of transfers for registration at land titles.

## WITNESSING LAND TITLES DOCUMENTS

The laws governing the witnessing of Land Titles documents have changed quite dramatically. In particular, the changes mandate a higher standard for the witnessing of transfers and mortgages, although the law for other instruments has changed as well. A quick summary of the rules can be found at **Schedule XIX**.

### What these rules apply to:

1. The witnessing of Land Titles documents executed on or after December 5, 2011.
2. Supplementary executions required to correct documents where they are signed on or after December 5, 2011.

### What these rules do not apply to:

1. Documents executed prior to December 5, 2011.
2. The execution of documents. They only apply to the witnessing of the execution. Existing execution rules continue to apply to the execution with one exception: The corporate seal. Historically the seal taken the place of a witness for corporate executions. This is no longer the case. All signatures on behalf of corporations will have to be witnessed.
3. The witnessing of affidavits, including supplementary affidavits required to provide missing evidence.
4. Documents registered by parties who are not the owners of interests in land. Accordingly, they do not apply to such documents as Caveats, Judgments (Form 21), Notices Exercising Powers of Sale, Builders' Liens, Personal Property Security Notices, Condominium Liens and Legal Aid Statements.
5. Documents or executions pursuant to *The Homesteads Act* of Manitoba. These executions are governed by that Act.
6. Land Titles requests and transmissions. The signatures of parties executing these documents do not have to be witnessed.

### Who these rules apply to:

Corporations as well as to individuals. As a result, executions by corporations using a corporate seal in place of an appropriate witness will no longer be accepted.

### Who these rules do not apply to:

These rules do not apply to the witnessing of documents executed by the governments of Manitoba and the other provinces and territories (and their agencies), the Government of Canada (and its agencies) and the governments of municipalities and local government districts. They also don't apply to documents executed by governments outside of Canada (and their agencies).

See WITNESSING RULES FOR GOVERNMENTS AND THEIR AGENCIES (below) for a summary of the rules regarding the witnessing of disposition documents executed by governments and governmental agencies.

**WITNESSING LAND TITLES DOCUMENTS (continued)****RULES FOR WITNESSING TRANSFERS***Transfers Witnessed within Canada*

The witnessing rules for Transfers signed within Canada are set forth in section 72.5 of *The Real Property Act*. The signature of parties signing Transfers executed within Canada may be witnessed by any one of the following persons signing as witness:

1. By a **lawyer** who is entitled to practice law in the province or territory where the Transfer was executed;
2. If the Transfer was signed in either British Columbia or Quebec, by a **notary public** who is authorized to practice in accordance with the laws of that province;
3. Where it is not possible to find a witness of the type set out in 1 or 2 (usually due to extreme remoteness), at the **discretion of the District Registrar**, before a person entitled to administer oaths either inside or outside Manitoba (as appropriate), as set out in sections 62 and 63 of *The Manitoba Evidence Act*.

In all cases, the witness must set forth their name, position and address beneath their signature as witness. No affidavit of execution is required.

*Transfers Witnesses Outside of Canada*

The witnessing rules for Transfers signed outside of Canada are set forth in section 72.6 of *The Real Property Act*. The signature of parties signing Transfers executed outside of Canada may be witnessed by any one of the following persons signing as witness:

1. By a **lawyer** who is entitled to practice law in the jurisdiction where the Transfer was executed;
2. By a **notary public** who is authorized to practice in accordance with the laws of the jurisdiction where the Transfer was executed;
3. By a **person entitled to administer oaths outside of Manitoba** (as set out in section 63 of *The Manitoba Evidence Act*).

In all cases, the witness must set forth their name, position and address beneath their signature as witness. No affidavit of execution is required.

**Notary Certificate** also accepted: In addition to the above, Transfers signed outside of Canada can be proven by a Notary Public in accordance with section 68 of *The Manitoba Evidence Act*. This involves a party signing before a Notary Public who, instead of signing the Transfer as a witness, executes and attaches a certificate (in the form prescribed by that Act), affixing to it their seal of office.

## WITNESSING LAND TITLES DOCUMENTS (continued)

### RULES FOR WITNESSING MORTGAGES

#### *Mortgages Witnessed within Canada*

The witnessing rules for Mortgages signed within Canada are set forth in section 72.7 of *The Real Property Act*. The signature of parties signing Mortgages executed within Canada may be witnessed by any one of the following persons signing as witness:

1. By a **lawyer** who is entitled to practice law in the province or territory where the Mortgage was executed;
2. If the Mortgage was signed in either British Columbia or Quebec, by a **notary public** who is authorized to practice in accordance with the laws of that province;
3. Where it is not possible to find a witness of the type set out in 1 or 2 (usually due to extreme remoteness), at the **discretion of the District Registrar**, before a person entitled to administer oaths either inside or outside Manitoba (as appropriate), as set out in sections 62 and 63 of *The Manitoba Evidence Act*;
4. Where the mortgagee is a financial institution, by an **officer** or **employee** of the **financial institution** or another **designated person** on behalf of the financial institution.

In all cases, the witness must set forth their name, position and address beneath their signature as witness. No affidavit of execution is required. For employees of financial institutions, they must also clearly set forth the fact that they are employees of the mortgagee financial institution.

#### *Mortgages Witnessed Outside of Canada*

The witnessing rules for Mortgages signed outside of Canada are set forth in section 72.8 of *The Real Property Act*. The signature of parties signing Mortgages executed outside of Canada may be witnessed by any one of the following persons signing as witness:

1. By a **lawyer** who is entitled to practice law in the jurisdiction where the Mortgage was executed;
2. By a **notary public** who is authorized to practice in accordance with the laws of the jurisdiction where the Mortgage was executed;
3. By a person **entitled to administer oaths outside of Manitoba** (as set out in section 63 of *The Manitoba Evidence Act*);
4. Where the mortgagee is a financial institution, by an **officer** or **employee** of the **financial institution** or another **designated person** on behalf of the financial institution.

In all cases, the witness must set forth their name, position and address beneath their signature as witness. No affidavit of execution is required. For employees of financial institutions, they must also clearly set forth the fact that they are employees of the mortgagee financial institution.

**WITNESSING LAND TITLES DOCUMENTS (continued)**  
**RULES FOR WITNESSING MORTGAGES (continued)**

**Notary Certificate** also accepted: In addition to the above, Mortgages signed outside of Canada can be proven by a Notary Public in accordance with section 68 of *The Manitoba Evidence Act*. This involves a party signing before a Notary Public who, instead of signing the Mortgage as a witness, executes and attaches a certificate (in the form prescribed by that Act), affixing to it their seal of office.

**RULES FOR WITNESSING DOCUMENTS OTHER THAN TRANSFERS AND MORTGAGES**

The witnessing rules for documents other than Transfers and Mortgages are set forth in section 72.9 of *The Real Property Act*.

*Documents Witnessed within Canada*

The signature of parties signing documents (other than Transfers and Mortgages) signed within Canada may be witnessed by any one of the following persons signing as witness:

1. By a **lawyer** who is entitled to practice law in the province or territory where the document was executed. The lawyer must set forth their name, position and address beneath their signature. No affidavit of execution is required;
2. If the document was signed in either British Columbia or Quebec, by a notary public who is authorized to practice in accordance with the laws of that province. The **notary public** must set forth their name, position and address beneath their signature. No affidavit of execution is required;
3. By any **competent adult** person provided that they then swear an affidavit of subscribing witness. In that affidavit they must attest to the identity and age of the party whose signature they witnessed. This affidavit must be sworn or affirmed before a party set forth in section 62 of *The Manitoba Evidence Act* if the document was signed within Manitoba, and before a party set forth in section 63 of that Act if it was signed outside of Manitoba.

*Documents Witnessed Outside of Canada*

The signature of parties signing documents (other than Transfers and Mortgages) signed outside of Canada may be witnessed by any one of the following persons signing as witness:

1. By a **lawyer** who is entitled to practice law in the jurisdiction where the document was executed. The lawyer must set forth their name, position and address beneath their signature. No affidavit of execution is required;
2. By a **notary public** who is authorized to practice in accordance with the laws of the jurisdiction where the document was executed. The notary public must set forth their name, position and address beneath their signature. No affidavit of execution is required;

**WITNESSING LAND TITLES DOCUMENTS (continued)****RULES FOR WITNESSING DOCUMENTS OTHER THAN TRANSFERS AND MORTGAGES (continued)**

3. By a **person entitled to administer oaths outside of Manitoba** (as set out in section 63 of *The Manitoba Evidence Act*). The witness must set forth their name, position and address beneath their signature. No affidavit of execution is required;
4. By any **competent adult person** provided that they then swear an affidavit of subscribing witness. In that affidavit they must attest to the identity and age of the party whose signature they witnessed. This affidavit must be sworn or affirmed before a party set forth in section 63 of *The Manitoba Evidence Act*.

**Notary Certificate** also accepted: In addition to the above, documents (other than Transfers and Mortgages) signed outside of Canada can be proven by a Notary Public in accordance with section 68 of *The Manitoba Evidence Act*. This involves a party signing before a Notary Public who, instead of signing the document as a witness, executes and attaches a certificate (in the form prescribed by that Act), affixing to it their seal of office.

## ANCILLIARY NOTES

- For the purposes of execution of documents, the expression *Transfer* does not include a Transfer of Mortgage. The rules that apply to the execution of Transfers of Mortgages are those rules applying to other documents (documents other than Transfers and Mortgages).
- (As always) A person who signs a document as a party or on behalf of a party cannot either:
  - (i) Be a witness to an execution in the document; or
  - (ii) Take an affidavit of execution in that document.
- By signing as witness to a signature, the party so doing is representing that:
  1. Either:
    - i. The person whose signature they have witnessed is personally known to them; or
    - ii. The identity of the person whose signature they have witnessed has been proven to them.
  2. The person whose signature they have witnessed has acknowledged that he or she:
    - i. Is the person named in the instrument;
    - ii. Has attained the age of majority; and
    - iii. Has the authority to execute the instrument.
- Land title will accept a disclaimer on a document from a lawyer who has witnessed the document, but has not given the party signing advice regarding its content. Wording such as “NO ADVICE GIVEN OR SOUGHT” will be accepted. This said, such language in no way diminishes the duty of the lawyer acting as witness, including in particular the duty to establish identity.

## WITNESSING LAND TITLES DOCUMENTS (continued)

### SAMPLE INFORMATION FROM WITNESSES

The following are several samples of the information that needs to be set out below the signature of a witness to a signature on a land titles document:

#### Example 1

Susan Smith  
Manitoba Practising Lawyer  
106 – 360 Main St. WPG MB R3K 3M5

#### Example 2

Annette Browning  
Employee of the Mortgagee  
123 Main Street WPG MB R1M 1A1

#### Example 3

Quincy Adams  
Notary Public for British Columbia  
123 Main Street Victoria BC V1A 1A1

#### Example 4

Digory Kirke  
Witness Designated by Mortgagee  
123 Main Street WPG MB R1M 1A1

### WITNESSING RULES FOR GOVERNMENTS AND THEIR AGENCIES

All disposition documents executed by:

- the Government of Canada (together with its agencies);
- the Government of Manitoba (together with its agencies);
- the governments of Canadian territories and provinces other than Manitoba (together with their agencies);
- governments outside Canada (together with their agencies); or
- the government of a municipality or of a local government district within Canada

Must be executed in one of the following manners:

- under corporate seal of the entity, without the requirement for a witness;
- witnessed by a lawyer without the requirement for an affidavit of witness;
- witnessed by anyone permitted to administer oaths under *The Manitoba Evidence Act* without the requirement for an affidavit of witness; or
- witnessed by anyone accompanied by an affidavit of witness.

#### *Particular of Witness Required*

In all cases where there is a witness and no affidavit of witness (where the witness is a lawyer or anyone permitted to administer oaths under *The Manitoba Evidence Act*), the witness must provide their full particulars, including their name, the full title of their office or position and their address.

#### *Exception for Government of Canada Countersigned Documents*

The above witnessing rule does not apply to those documents executed by the Government of Canada where the signature is not witnessed, but there is a counter-signature by an officer from the Department of Justice.

## ATTACHED SCHEDULES

SCHEDULE I
------------

### A. Missing Middle Names

- Debtor name, box 1 - Darlene Randall
  - Name provided in box 5 - Darlene Randall
  - Name of Registered Owner on title - Darlene Rose Marie Randall
  - Box 6, statement A) selected (The debtor referred to in box 1 is (one of) the registered owner(s) of the above land)
- Acceptable for registration**

### B. Different First Name

- Debtor name, box 1 - Darlene Randall
  - Name provided in box 5 - Marie Randall
  - Name of Registered Owner on title - Marie Randall
  - Box 6, statement A) selected (The debtor referred to in box 1 is (one of) the registered owner(s) of the above land)
  - A statement of identity added to box 7 as number 6:  
6. I believe that the debtor Darlene Randall as set out in box 1 is one and the same person as the Marie Randall set out in box 5 as the registered owner
- Acceptable for registration**

### C. Registered Owner on Title Different from Registered Owner in form

- Debtor name, box 1 - Darlene Randall
  - Name provided in box 5 - Darlene Randall
  - Name of Registered Owner on title - John Doe Randall
  - Box 6, statement A) selected (The debtor referred to in box 1 is (one of) the registered owner(s) of the above land)
- Will be rejected, regardless of whatever statements are added**

### D. Different Last Name

- Debtor name, box 1 - Darlene Randall
  - Name provided in box 5 - Darlene Smith
  - Name of Registered Owner on title - Darlene Smith
  - Box 6, statement A) selected (The debtor referred to in box 1 is (one of) the registered owner(s) of the above land)
  - A statement of identity added to box 7 as number 6:  
6. I believe that the debtor Darlene Randall as set out in box 1 is one and the same person as the Darlene Smith set out in box 5 as the registered owner
- Acceptable for registration**

**ADDITIONAL INFORMATION**

Page 1 of 1 pages

SCHEDULE A  
*(insert letter)*

This Schedule forms part of a TRANSFER OF LAND *(insert instrument type)*,  
dated MARCH 1<sup>st</sup>, 2013, *(insert date of that instrument)*  
from MARY BROWN  
to FRED JONES

\_\_\_\_\_  
signature  
MARY BROWN

\_\_\_\_\_  
signature

**IMPORTANT NOTICES**

By virtue of section 194 of *The Real Property Act*, any statement set out in this document and signed by the party making the statement has the same effect and validity as an oath, affidavit, affirmation or statutory declaration given pursuant to *The Manitoba Evidence Act*.

**The date at the bottom of this schedule must be the same as the execution date of the instrument that it forms a part of.**

**ADDITIONAL INFORMATION**

SCHEDULE     A      
(insert letter)

7. EVIDENCE OF TRANSFEROR(s)

- 1. I, JOHN DOE, am the duly authorized attorney for one of the Transferors, MARY BROWN, and that I am and she is of the full age of majority.
- 1. I, JOHN DOE, am the duly authorized alternate attorney for the transferor MARY BROWN. The first named attorney JOE BROWN being legally incapable of acting as he is the spouse/common law partner of the said MARY BROWN and the property herein transferred is their Homestead. I am and the said MARY BROWN is of the full age of majority.
- 2. MARY BROWN is one of the owners of the within described land.
- 3. MARY BROWN hereby transfers the land to the Transferees.
- 4. MARY BROWN is the spouse/common law partner of the co-Transferor, JOE BROWN and he has Homestead rights in the within land.
- 4. The person consenting to this disposition is the spouse/common-law partner of MARY BROWN and has Homestead rights in the within land.
- 4. MARY BROWN has no spouse or common law partner. No person has acquired Homestead rights in the within land during her ownership.
- 4. This within land is not the homestead of MARY BROWN within the meaning of *The Homesteads Act*.
- 5. The property legally described as Lot 1, Block 2, Plan 3 WLTO is the same as the property with the civic address 123 Main Street. (for use when the Power of attorney document contains only a civic address)

MARY BROWN by her  
lawful attorney JOHN

DOE

2013/06/23

<b>witness signature</b> <b>name of witness</b> <b>title of witness</b> <b>address of witness</b>	<b>name</b>	<b>signature</b>	<b>date</b> (YYYY/MM/DD)
--	-------------	------------------	--------------------------

This Schedule forms part of a TRANSFER OF LAND (insert instrument type),  
dated June 23<sup>rd</sup>, 2013, (insert date of that instrument)  
from JOE BROWN and MARY BROWN  
to FRED JONES

\_\_\_\_\_  
signature  
MARY BROWN by her lawful Attorney JOHN DOE

\_\_\_\_\_  
signature

**IMPORTANT NOTICES**

By virtue of section 194 of *The Real Property Act*, any statement set out in this document and signed by the party making the statement has the same effect and validity as an oath, affidavit, affirmation or statutory declaration given pursuant to *The Manitoba Evidence Act*.

The date at the bottom of this schedule must be the same as the execution date of the instrument that it forms a part of.

**ADDITIONAL INFORMATION**

SCHEDULE A  
*(insert letter)*

7. SIGNATURE OF MORTGAGOR

1. I, JOHN DOE, am the duly authorized attorney for MARY BROWN, one of the Mortgagors herein.
2. MARY BROWN is one of the owners of the land.
3. As security for the performance of all her obligations herein, I, JOHN DOE, acting as the attorney for MARY BROWN, hereby Mortgage to the mortgagee her interest in the land.
4. MARY BROWN, by my signature herein, promises to pay the principal amount and interest and all other charges and money hereby secured and to be bound by all the terms herein.
5. I acknowledge receipt of a copy of this instrument and all of the terms herein.
6. BOTH MARY BROWN and I are of the full age of majority.
7. The registration of this instrument does not contravene the provisions of The Farm Lands Ownership Act because:
  - a) the within land is not farm land as defined in The Farm Lands Ownership Act.
8. MARY BROWN is the spouse/common law partner of the co-mortgagor, JOE BROWN and he has Homestead rights in the within land.
8. The person consenting to this disposition is the spouse/common-law partner of MARY BROWN and has Homestead rights in the within land.
8. MARY BROWN has no spouse or common-law partner. No person has acquired Homestead rights in the within land during her ownership.
8. This within land is not the homestead of MARY BROWN within the meaning of The Homesteads Act.
9. The property legally described as Lot 1, Block 2, Plan 3 WLTO is the same as the property with the civic address 23 Main Street. (for use when the Power of attorney document contains only a civic address)

	MARY BROWN by her lawful attorney JOHN DOE		2013/06/23
.....	.....	.....	.....
<b>witness signature</b>	<b>name</b>	<b>signature</b>	<b>date (YYYY/MM/DD)</b>
<b>name of witness</b>			
<b>title of witness</b>			
<b>address of witness</b>			

This Schedule forms part of a MORTGAGE *(insert instrument type)*,  
 dated JUNE 23<sup>RD</sup>, 2013, *(insert date of that instrument)*  
 from JOE BROWN and MARY BROWN  
 to ABC MORTGAGE SERVICES LTD.

\_\_\_\_\_  
 Signature  
 MARY BROWN by her lawful Attorney JOHN DOE

\_\_\_\_\_  
 signature

**IMPORTANT NOTICES**

By virtue of section 194 of *The Real Property Act*, any statement set out in this document and signed by the party making the statement has the same effect and validity as an oath, affidavit, affirmation or statutory declaration given pursuant to *The Manitoba Evidence Act*.

**The date at the bottom of this schedule must be the same as the execution date of the instrument that it forms a part of.**

SCHEDULE V

Form 9

THE HOMESTEADS ACT

ACKNOWLEDGMENT BY SPOUSE OR COMMON-LAW PARTNER  
FOR POWER OF ATTORNEY

I, \_\_\_\_\_, the donor named in the above/attached Power of Attorney appointing \_\_\_\_\_

as my attorney, acknowledge that:

1. I am executing this Power of Attorney freely and voluntarily without any compulsion on the part of my spouse or common law partner.
2. I am aware of the nature and effect of this Power of Attorney.
3. I am executing this acknowledgement apart from my spouse or common law partner.

\_\_\_\_\_  
(name of spouse or common law partner)

\_\_\_\_\_  
(signature of spouse or common law partner)

\_\_\_\_\_  
(date)

\_\_\_\_\_  
(name of witness)

\_\_\_\_\_  
(signature of witness)

\_\_\_\_\_  
(date)

A Notary Public in and for  
the Province of Manitoba/  
A Commissioner for Oaths in and  
for the Province of Manitoba  
My commission expires: \_\_\_\_\_

Or other person authorized  
to take affidavits under  
The Manitoba Evidence Act  
(Specify) \_\_\_\_\_

**SCHEDULE VI**

**AFFIDAVIT OF LOST DUPLICATE TITLE**

**IN THE MATTER OF: Lost Duplicate Certificate of Title Number**

I \_\_\_\_\_ and I \_\_\_\_\_ ,  
(SEVERALLY) MAKE OATH AND SAY / HEREBY AFFIRM:

1. THAT I am (one of) the Registered Owner(s) of the land described in Certificate of Title \_\_\_\_\_ .
2. THAT I have made a thorough search for Duplicate Certificate of Title No. \_\_\_\_\_ through all of my papers and in all locations where such a document would be stored or placed, and I have been unable to locate it.
3. THAT the said Duplicate Certificate of Title has not been pledged, hypothecated or deposited by me or any other person on my behalf by way of lien or as security for a loan.
4. THAT to the best of my knowledge the said Duplicate Certificate of Title is lost or has been destroyed.
5. (INSERT ADDITIONAL INFORMATION HERE)

6. THAT I make this affidavit for the purpose of inducing the District Registrar of the Land Titles Office to dispense with the production of Duplicate Certificate of Title No. \_\_\_\_\_ .

(SEVERALLY) SWORN / AFFIRMED )  
before me at the \_\_\_\_\_ of )  
\_\_\_\_\_, in the Province )  
of \_\_\_\_\_, this \_\_\_\_\_ )  
day of \_\_\_\_\_, \_\_\_\_\_ . )

\_\_\_\_\_

\_\_\_\_\_  
A Commissioner for Oaths in and for the  
Province of Manitoba  
My Commission expires:  
A Notary Public in and for the  
Province of Manitoba

SCHEDULE VII

**AFFIDAVIT OF LOST DUPLICATE TITLE FOR CORPORATION**

**IN THE MATTER OF: Lost Duplicate Certificate of Title Number \_\_\_\_\_**

I Mary Brown make oath and say / hereby affirm:

1. THAT I am the President of ABC Company Ltd.(the “Corporation”), the Registered Owner(s) of the land described in Certificate of Title Number 1234567.
2. THAT I have made a thorough search for Duplicate Certificate of Title No. 1234567 through all of the Corporation’s papers and in all locations where such a document would be stored or placed, and I have been unable to locate it.
3. THAT the said Duplicate Certificate of Title has not been pledged, hypothecated or deposited by me or any other person on behalf of the Corporation by way of lien or as security for a loan.
4. THAT to the best of my knowledge the said Duplicate Certificate of Title is lost or has been destroyed.
5. (INSERT ADDITIONAL INFORMATION HERE)

6. THAT I make this affidavit for the purpose of inducing the District Registrar of the Land Titles Office to dispense with the production of the said Duplicate Certificate of Title.

SWORN / AFFIRMED )  
 before me at the \_\_\_\_\_ of )  
 \_\_\_\_\_, in the Province )  
 of \_\_\_\_\_, this \_\_\_\_\_ )  
 day of \_\_\_\_\_, \_\_\_\_\_ ) \_\_\_\_\_

\_\_\_\_\_  
 A Commissioner for Oaths in and for the  
 Province of Manitoba  
 My Commission expires:  
 A Notary Public in and for the  
 Province of Manitoba

**SCHEDULE VIII**

**AFFIDAVIT OF LOST DUPLICATE TITLE FOR ESTATE**

**IN THE MATTER OF: Lost Duplicate Certificate of Title Number**

I \_\_\_\_\_ and I \_\_\_\_\_, am one of the  
executors/administrators of the estate of John Doe, deceased

(SEVERALLY) MAKE OATH AND SAY / HEREBY AFFIRM:

1. THAT I am one of the executors/administrators of the estate of John Doe, who is (one of) the Registered Owner(s) of the land described in Certificate of Title \_\_\_\_\_ .
2. THAT I have made a thorough search for Duplicate Certificate of Title No. \_\_\_\_\_ through all of the papers of the deceased and in all locations where such a document would be stored or placed, and I have been unable to locate it.
3. THAT the said Duplicate Certificate of Title has not been pledged, hypothecated or deposited by the deceased or by me or by any other person on behalf of the deceased or on my behalf by way of lien or as security for a loan.
4. THAT to the best of my knowledge the said Duplicate Certificate of Title is lost or has been destroyed.
5. (INSERT ADDITIONAL INFORMATION HERE)
6. THAT I make this affidavit for the purpose of inducing the District Registrar of the Land Titles Office to dispense with the production of Duplicate Certificate of Title No. \_\_\_\_\_.

(SEVERALLY) SWORN / AFFIRMED )  
before me at the \_\_\_\_\_ of )  
\_\_\_\_\_, in the Province )  
of \_\_\_\_\_, this )  
day of \_\_\_\_\_, \_\_\_\_\_. )

\_\_\_\_\_

\_\_\_\_\_  
A Commissioner for Oaths in and for the  
Province of Manitoba  
My Commission expires:  
A Notary Public in and for the Province of Manitoba

**SCHEDULE IX**

**AFFIDAVIT OF LOST DUPLICATE TITLE FOR POWER OF ATTORNEY**

**IN THE MATTER OF: Lost Duplicate Certificate of Title Number \_\_\_\_\_**

I \_\_\_\_\_ and I \_\_\_\_\_, (one of) the attorney(s) under a Power of Attorney from John Doe (the "Donor")

(SEVERALLY) MAKE OATH AND SAY / HEREBY AFFIRM THAT:

1. I am (one of) the attorney(s) for the Donor, who is (one of) the registered owner(s) of the land described in Certificate of Title number \_\_\_\_\_ .
2. I have made a thorough search for Duplicate Certificate of Title No. \_\_\_\_\_ (the "Title") through all of the papers of the Donor and in all locations where such a document would be stored or placed, and I have been unable to locate it. The Donor is unable to perform this search because (s)he is out of the jurisdiction.
2. THAT I have made a thorough search for the Title through all of the papers of the Donor and in all locations where such a document would be stored or placed, and I have been unable to locate it. The Donor is unable to perform this search due to mental and or physical incapacity.
2. THAT the Donor has informed me, and I do verily believe that (s)he has made a thorough search for the Title through all of the Donor's papers and in all locations where such a document would be stored or placed, and (s)he has been unable to locate it. The Donor is unable to provide this evidence personally because (s)he is out of the jurisdiction.
3. THAT the Title has not been pledged, hypothecated or deposited by me, on behalf of the Donor, by way of lien or as security for a loan. To the best of my knowledge and belief the Title has not been pledged, hypothecated or deposited by the Donor or by any other person on behalf of the Donor by way of lien or as security for a loan. The Donor is unable to provide this evidence personally due to mental incapacity.
3. THAT the Title has not been pledged, hypothecated or deposited by me, on behalf of the Donor, by way of lien or as security for a loan. I am informed by the Donor that the Title has not been pledged, hypothecated or deposited by the Donor or by any other person on behalf of the Donor by way of lien or as security for a loan. The Donor is unable to provide this evidence personally due to physical incapacity.
3. THAT the Title has not been pledged, hypothecated or deposited by me, on behalf of the Donor, by way of lien or as security for a loan. I am informed by the Donor that the Title has not been pledged, hypothecated or deposited by the Donor or by any other person on behalf of the Donor by way of lien or as security for a loan. The Donor is unable to provide this evidence personally because (s)he is out of the jurisdiction.
4. THAT to the best of my knowledge the Title is lost or has been destroyed.
4. THAT to the best of my knowledge the Title is lost or has been destroyed and the Donor informs me that to the best of the Donor's knowledge the Title is lost or has been destroyed.
5. (INSERT ADDITIONAL INFORMATION HERE)
6. THAT I make this affidavit for the purpose of inducing the District Registrar of the Land Titles Office to dispense with the production of the Title.

(SEVERALLY) SWORN / AFFIRMED )  
before me at the \_\_\_\_\_ of )  
\_\_\_\_\_, in the Province )  
of \_\_\_\_\_, this )  
day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
A Commissioner for Oaths in and for the  
Province of Manitoba. My Commission expires:  
A Notary Public in and for the Province of Manitoba

**SCHEDULE X**

May 29, 2014

Winnipeg Land Titles Office  
276 Portage Avenue  
Winnipeg MB CANADA R3C 0B6

Attention: \_\_\_\_\_, Document Examiner

Dear Sir/Madam:

This statement is required because we will only allow errors to be corrected; we will not allow the substance of a document to be altered.

**RE: Correction of Transferee in Transfer Number 2345676**

- A. Please correct Transfer Number 2345676 as follows:  
Change the name of the Transferee from Jon Jines to John Jones
- B. This is a correction of a typographical error and is not a change in party;
- C. I am the solicitor for the Transferee John Jones;
- D. I have my client's authority to make this change; and
- E. I have received the authority from the solicitor for the Transferor to make this change.

These three paragraphs are **all** required to prove authority where more than one lawyer is involved in the transaction.

**RE: Correction of Legal in Transfer Number 2345676**

- A. Please correct Transfer Number 2345676 as follows:  
Change the legal description from Lot 1 Block 2 Plan 33 to Lot 1 Block 22 Plan 33
- B. This is a correction of a typographical error and is not a change in the land conveyed;
- C. I am the solicitor for the Transferee John Jones;
- D. I have my client's authority to make this change; and
- E. I have received the authority from the solicitor for the Transferor to make this change.

This statement is required because we will only allow errors to be corrected; we will not allow the substance of a document to be altered.

**RE: Correction of Mortgage Number 2345678**

- A. Please correct Mortgage Number 2345678 as follows:
  - 1. Make the document subject to Caveat 1234567; and
  - 2. Make the document subject to the mortgage from John Jones to The Royal Bank of Canada registered immediately prior in series to Mortgage number 2345678 as number 2345677.
- B. I am the solicitor for the Mortgagor John Jones and the Mortgagee The Bank of Montreal.
- C. I have both of my clients' authority to make the above changes.

This statement makes it clear that no other lawyers are involved in the transaction and therefore that no other authority is required

**RE: Correction of Transfer Number 2345679**

- A. Please correct Transfer Number 2345678 as follows:  
Add the words "As Joint Tenants" following the names of the transferees in box 5.
- B. As a result of an oversight at the time the transferred was prepared no interest was typed onto the transfer. This is the interest the parties intended.
- C. I am the solicitor for the Transferor Susan Thomas and the Transferees John Jones and Mary Jones
- D. I have all of my clients' authority to make the above change.

Yours truly,

Barrister and Solicitor

Please note: All letters of correction must be signed by the lawyer, Land Titles will not accept a letter signed by a secretary or a para-legal.



ADDITIONAL INFORMATION

SCHEDULE A  
(insert letter)

7. EVIDENCE OF MORTGAGORS(s)

1. I, MARY ANNE BROWN am the Mortgagor in a certain Mortgage registered in the Winnipeg Land Titles Offices as number 1234567.

2. I, MARY ANNE BROWN, HAVE NO SPOUSE or common-law partner. No person has acquired Homestead rights in the within land during my ownership.

.....	MARY ANNE BROWN	.....	2013/06/23
witness signature	name	signature	date (YYYY/MM/DD)
name of witness			
title of witness			
address of witness			

This Schedule forms part of a MORTGAGE (insert instrument type),  
 dated JUNE 23<sup>RD</sup>, 2013, (insert date of that instrument)  
 from MARY ANNE BROWN  
 to ROYAL BANK OF MANITOBA

\_\_\_\_\_  
 signature  
 MARY ANNE BROWN  
 \_\_\_\_\_  
 signature

IMPORTANT NOTICES

By virtue of section 194 of *The Real Property Act*, any statement set out in this document and signed by the party making the statement has the same effect and validity as an oath, affidavit, affirmation or statutory declaration given pursuant to *The Manitoba Evidence Act*.

The date at the bottom of this schedule must be the same as the execution date of the instrument that it forms a part of.

ADDITIONAL INFORMATION

Page 1 of 1 pages

SCHEDULE A (insert letter)

This statutory Declaration pertains to purchase made by [Purchaser(s)] to [Vendor(s)] dated regarding the purchase of Condominium Unit of Condominium Corporation No. with civic address of

1. In accordance with Section 8(1.0.3) of The Condominium Act, the purchaser acknowledged that he/she received the documentation from the Vendor and/or the Condominium Corporation as required by section 8(1.1) of The Condominium Act.

2. In accordance with Sections 8(1) and 8(1.0.3) of The Condominium Act, the purchaser also acknowledges being given 48 hours to review this documentation and that the 48-hour cooling-off period has expired.

JOHN DOE Purchaser's name signature 2013/06/23 date (YYYY/MM/DD)

This Schedule forms part of a TRANSFER (insert instrument type), dated JUNE 23RD, 2013, (insert date of that instrument) from MARY ANNE BROWN to JOHN DOE

signature JOHN DOE

signature

IMPORTANT NOTICES

By virtue of section 194 of The Real Property Act, any statement set out in this document and signed by the party making the statement has the same effect and validity as an oath, affidavit, affirmation or statutory declaration given pursuant to The Manitoba Evidence Act.

The date at the bottom of this schedule must be the same as the execution date of the instrument that it forms a part of.

SCHEDULE XIV

Notwithstanding the generality of the foregoing, and with respect to any and all dispositions affecting my Homestead, where the above named attorney is unable to act on my behalf, I APPOINT MY DAUGHTER, MARY ANNE BROWN, acting alone, to execute any and all consents, releases or documents required or permitted under *The Homesteads Act* of the Province of Manitoba and amendments thereto, to give on my behalf evidence, by way of affidavit, statutory declaration or otherwise concerning any matters and in any form required or permitted under *The Homesteads Act* of the Province of Manitoba and amendments thereto and to execute any and all dispositions of my homestead, where I have an estate or interest in that property, which estate or interest is in addition to the rights that I have in the property by operation of *The Homesteads Act* of the Province Manitoba and amendments thereto.

SCHEDULE XV

C A N A D A )  
)  
PROVINCE OF MANITOBA )  
)  
TO WIT: )

I, \_\_\_\_\_ of the \_\_\_\_\_ of \_\_\_\_\_,  
in the Province of Manitoba,

And I, \_\_\_\_\_ of the \_\_\_\_\_ of \_\_\_\_\_,  
in the Province of Manitoba,

(SEVERALLY) AFFIRM / MAKE OATH AND SAY THAT:

1. I am (one of) the applicant(s) in the attached Directed Real Property Application.
  
2. The fair market value of the land as a whole with respect to which this Directed Real Property Act Application is tendered for registration within the meaning of Part III of *The Tax Administration and Miscellaneous Taxes Act* is \$ \_\_\_\_\_.
  
3. \*\* SAMPLE STATEMENT \*\* The registration of this instrument does not contravene with the provision of *The Farms Land Ownership Act* as the within land is not farm land as defined in *The Farm Lands Ownership Act*. \*\* SAMPLE STATEMENT \*\*
  
4. \*\* SAMPLE STATEMENT \*\* My co-applicant is my spouse or common-law partner and no other person has Homestead rights in the within lands. \*\* SAMPLE STATEMENT \*\*

(SEVERALLY) AFFIRMED / SWORN before )  
 )  
 me at the \_\_\_\_\_ of \_\_\_\_\_, )  
 )  
 in the Province of Manitoba, this ) \_\_\_\_\_  
 )  
 day of \_\_\_\_\_, 20\_\_\_\_. )  
 ) \_\_\_\_\_  
 )

\_\_\_\_\_  
A Notary Public  
in and for the Province of Manitoba

A Commissioner for Oaths  
in and for the Province of Manitoba  
My Commission expires:

**SCHEDULE XVI**

**AFFIDAVIT OF LOST DUPLICATE TITLE FOR LENDER**

C A N A D A  
PROVINCE OF MANITOBA  
TO WIT:

IN THE MATTER OF DUPLICATE  
CERTIFICATE OF TITLE NO. 2345678

I, \_\_\_\_\_, of the \_\_\_\_\_ of \_\_\_\_\_, in the  
Province of Manitoba,

MAKE OATH AND SAY THAT:

1. I am employed as a \_\_\_\_\_ with The Manitoba Credit Union Limited (the "Credit Union") and as such I have personal knowledge of the facts and matters set forth in this affidavit.
2. The Credit Union is the owner of Caveat No. 1234567 registered against the lands described in certificate of title no. 2345678.
3. I believe that duplicate certificate of title no. 2345678 (the "Duplicate Title") was received by the Credit Union.
4. I have made a thorough search for the Duplicate Title through all of the Credit Union's papers and in all locations where such a document would be stored or placed, and I have been unable to locate it.
5. The Credit Union has no record of having ever returned the Duplicate Title to the registered owners thereof, nor is there any record of the Credit Union having released the Duplicate Title to any other party.
6. That to the best of my knowledge and belief, the Duplicate Title is lost or has been destroyed.
7. THAT I make this Affidavit on behalf of the Credit Union to induce the Registrar of the Winnipeg Land Titles Office to dispense with the production of the Duplicate Title.

SWORN before me at the City of Winnipeg, in the  
Province of Manitoba, this \_\_\_\_\_ day of September,  
2011

\_\_\_\_\_

\_\_\_\_\_  
A Commissioner for Oaths in and  
for the Province of Manitoba.  
My Commission Expires:

ADDITIONAL INFORMATION

SCHEDULE A (insert letter)

7. EVIDENCE OF TRANSFEROR(S)

- 1. PRICEANDERSON is the trustee in bankruptcy for MARY BROWN, and I am and she is of the full age of majority.
2. PRICEANDERSON, as the trustee in bankruptcy for MARY BROWN, is one of the owners of the within described land.
3. PRICEANDERSON hereby transfers the land to the Transferees.
4. MARY BROWN is the spouse/common law partner of the co-Transferor, JOE BROWN and he has Homestead rights in the within land.
4. The person consenting to this disposition is the spouse/common-law partner of MARY BROWN and has Homestead rights in the within land.
4. MARY BROWN has no spouse or common law partner. No person has acquired Homestead rights in the within land during her ownership.
4. This within land is not the homestead of MARY BROWN within the meaning of The Homesteads Act.
5. No inspectors have been appointed in this bankruptcy.
5. ADAM WEST has been appointed as the sole inspector in this bankruptcy. His consent to this transfer is set out below.
6. I am an employee of PRICEANDERSON and have the authority to bind same.

PRICEANDERSON as Trustees
in Bankruptcy for
MARY BROWN
per: John Adams
Account Administrator

2013/06/23

witness signature name signature date (YYYY/MM/DD)
name of witness
title of witness
address of witness

I, ADAM WEST, inspector in the bankruptcy of MARY BROWN, hereby consent to this transfer.

ADAM WEST

2013/06/23

witness signature name signature date (YYYY/MM/DD)
name of witness
title of witness
address of witness

This Schedule forms part of a (insert instrument type),
dated , 20, (insert date of that instrument)
from
to

signature
PRICEANDERSON per John Adams, as trustee in bankruptcy for MARY BROWN

signature

IMPORTANT NOTICES

By virtue of section 194 of The Real Property Act, any statement set out in this document and signed by the party making the statement has the same effect and validity as an oath, affidavit, affirmation or statutory declaration given pursuant to The Manitoba Evidence Act.

The date at the bottom of this schedule must be the same as the execution date of the instrument that it forms a part of.

**ADDITIONAL INFORMATION**

SCHEDULE     A      
(insert letter)

7. EVIDENCE OF TRANSFEROR(s)

- 1. I, JOHN DOE, am the committee of the property of MARY BROWN, one of the Transferors, and I am and she is of the full age of majority. A certified copy of the Order appointing me as committee is attached hereto.
- 2. MARY BROWN is one of the owners of the within described land.
- 3. On behalf of MARY BROWN, I hereby transfer the land to the Transferees. A certified copy of the Order authorizing this transfer is also attached hereto.
- 4. MARY BROWN is the spouse or common law partner of the co-Transferor, JOE BROWN and he has Homestead rights in the within land.
- 4. The person consenting to this disposition is the spouse/common-law partner of MARY BROWN and has Homestead rights in the within land.
- 4. MARY BROWN has no spouse or common law partner. No person has acquired Homestead rights in the within land during her ownership.
- 4. This within land is not the homestead of MARY BROWN within the meaning of *The Homesteads Act*.
- 5. The property legally described as Lot 1, Block 2, Plan 3 WLTO is the same as the property with the civic address of 123 Main Street. (This clause is to be used when the court order contains only a civic address)

JOHN DOE as committee  
of the property of  
MARY BROWN

2013/06/23

<b>witness signature</b> <b>name of witness</b> <b>title of witness</b> <b>address of witness</b>	<b>name</b>	<b>signature</b>	<b>date (YYYY/MM/DD)</b>
--	-------------	------------------	--------------------------

This Schedule forms part of a \_\_\_\_\_ (insert instrument type),  
dated \_\_\_\_\_, 20\_\_\_\_, (insert date of that instrument)  
from \_\_\_\_\_  
to \_\_\_\_\_

\_\_\_\_\_  
signature  
JOHN DOE as committee for MARY BROWN  
\_\_\_\_\_  
signature

**IMPORTANT NOTICES**

By virtue of section 194 of *The Real Property Act*, any statement set out in this document and signed by the party making the statement has the same effect and validity as an oath, affidavit, affirmation or statutory declaration given pursuant to *The Manitoba Evidence Act*.

The date at the bottom of this schedule must be the same as the execution date of the instrument that it forms a part of.

## SCHEDULE XIX

Updated Nov 10, 2011

### LAND TITLES DOCUMENT WITNESSING RULES

For all documents signed after December 4, 2011

#### Corporate Seal ≠ Witnessed

- “New System” Documents signed by a corporation or credit union must be witnessed.
- A corporate seal now *does nothing* for “New System” purposes.

#### No Parties as Witnesses

No one who is a party or signs on behalf of a party can:  
(iii) Be a witness to the document; or  
(iv) Take an Affidavit of Witness for that document.

#### The new rules **apply** to:

These rules apply to all:

- Individuals,
- Corporations,
- Credit Unions, and
- Other organizations.

#### Old System Documents & RPAs

The rules for RPAs and O/S documents **haven’t changed**.

For **Old System** documents & **RPAs**, signed by individuals, **ALL** witnesses (including Lawyers & Notary Publics) must swear an Affidavit of Witness.

For ALL Old System document and RPAs signed by corporations - if a seal is used, no witness is needed.

#### The new rules **don’t apply** to:

A) Documents registered by parties who aren’t owners of an interest in the land.

Examples:

- Caveat,
- Judgment (Form 21),
- Notice Exercising Power of Sale,
- Builders’ Lien,
- Condominium Lien,
- Legal Aid Statement

B) Documents or executions under *The Homesteads Act*. Those are governed by that Act.

C) Documents executed by Federal & Provincial Governments or their Agencies

- The government of Manitoba and its agencies;
- Municipalities and local government districts;
- The governments of other Canadian provinces and territories and their agencies;
- The government of Canada and its agencies; or
- National, State or Provincial governments outside of Canada and their agencies.

**RULES FOR WITNESSING TRANSFERS OF LAND  
& ENCUMBRANCES (BUT NOT MORTGAGES)**

**RULE 1 - Transfers Signed in Canada**

**In Canada:**

Transfers must be witnessed by:

- A lawyer who practices in the province/territory where they're signed; or
- If signed in B.C. or Quebec - by a lawyer or notary public authorized to practice in that province.
  
- If it's not possible to meet with a lawyer (or a notary in B.C. or Que.) the District Registrar may allow a person entitled to administer oaths (see s. 62 & 63 of *The Manitoba Evidence Act*) to be the witness. Example - if the party is at an extremely remote location.

Below their signature the witness must state:

- their name,
- position, and
- address.

No affidavit of execution is required.

See s. 72.5 of *The Real Property Act* (revised December 5, 2011).

**Important definition**

*Transfer* includes:

- A Transfer of Land; or
- A Transfer of Encumbrance

*Transfer* DOES NOT include:

- A Transfer of Mortgage.

For a Transfer of Mortgage use the "General Execution Rules " on page 4 below.

**RULE 2 - Transfers Signed Outside Canada**

**Outside Canada:**

Transfers must be witnessed by:

- A lawyer who practices in the jurisdiction where the Transfer is signed; or
- A notary public for the jurisdiction where the Transfer is signed; or
- A person entitled to administer oaths outside of Manitoba (see s. 63 of *The Manitoba Evidence Act*).

Below their signature the witness must state:

- their name,
- position, and
- address.

No affidavit of execution is required.

**Alternative Execution** - a foreign Notary Public may – instead of signing as witness - execute the certificate prescribed by s. 68 of *The Manitoba Evidence Act*.

See s. 72.6 of *The Real Property Act* (revised December 5, 2011).

## RULES FOR WITNESSING MORTGAGES

### **RULE 3 - Mortgages Signed in Canada**

#### **In Canada:**

Mortgages must be witnessed by:

- A lawyer who practices in the province/territory where they're signed; or
- If signed in B.C. or Quebec - by a lawyer or notary public authorized to practice in that province; or
- If the mortgagee is a financial institution, by:
  - an officer or employee of that financial institution or
  - a person designated to act on behalf of that financial institution.
- If it's not possible to meet with one of the above witnesses, the District Registrar may allow a person entitled to administer oaths (see s. 62 & 63 of *The Manitoba Evidence Act*) to be the witness. Example - if the party is at an extremely remote location

Below their signature the witness must state:

- their name,
- position, and
- address, and
- (if applicable) that they are an officer or employee of that financial institution, or a person designated to act on behalf of that financial institution.

No affidavit of execution is required.

See s. 72.7 of *The Real Property Act* (revised December 5, 2011).

### **RULE 4 - Mortgages Signed Outside Canada**

#### **Outside Canada:**

Mortgages must be witnessed by:

- A lawyer who practices in the jurisdiction where the Mortgage is signed; or
- A notary public for the jurisdiction where the Mortgage is signed; or
- If the mortgagee is a financial institution, by:
  - an officer or employee of that financial institution or
  - a person designated to act on behalf of that financial institution;or
- A person entitled to administer oaths outside of Manitoba (see s. 63 of *The Manitoba Evidence Act*).

Below their signature the witness must state:

- their name,
- position, and
- address, and
- (if applicable) that they are an officer or employee of that financial institution, or a person designated to act on behalf of that financial institution.

No affidavit of execution is required.

**Alternative Execution** - a foreign Notary Public may – instead of signing as witness - execute the certificate prescribed by s. 68 of *The Manitoba Evidence Act*.

See s. 72.8 of *The Real Property Act* (revised effective December 5, 2011).

## GENERAL WITNESSING RULES

(For LTO documents other than Transfers & Mortgages.)

(Note - Caveats, Requests and Transmissions don't require a witness.)

### **RULE 5 - Documents Signed in Canada**

#### **In Canada:**

All LTO documents (other than Transfers, Mortgages, Caveats, Requests and Transmissions) may be witnessed by:

- A lawyer who practices in the province/territory where they're signed; or
- If signed in B.C. or Quebec - by a lawyer or notary public authorized to practice in that province

Below their signature the witness must state:

- their name,
- position, and
- address.

No affidavit of execution is required.

#### **Alternative Execution**

Any competent adult can be the witness, provided:

- they are **not** a party to the instrument;
- they are not signing **on behalf of** a party to the instrument (e.g. signing as Power of Attorney for a party); and,
- they swear an "Affidavit of Subscribing Witness" where they attest to the identity and age of the party whose signature they witnessed.

If the document was signed **in Manitoba** this affidavit must be sworn or affirmed before a person authorized by s. **62** of *The Manitoba Evidence Act* .

If the document was signed **in Canada, but outside Manitoba**, this affidavit must be sworn or affirmed before a person authorized by s. **63** of *The Manitoba Evidence Act*.

### **RULE 6 - Documents Signed Outside Canada**

#### **Outside Canada:**

All LTO documents (other than Transfers, Mortgages, Caveats, Requests and Transmissions) may be witnessed by:

- A lawyer who practices in the jurisdiction where the document is signed; or
- A notary public for the jurisdiction where the document is signed; or
- A person entitled to administer oaths outside of Manitoba (see s. 63 of *The Manitoba Evidence Act*).

Below their signature the witness must state:

- their name,
- position, and
- address.

No affidavit of execution is required.

#### **Alternative Execution - One**

Any competent adult can be the witness, provided:

- they are **not** a party to the instrument;
- they are not signing **on behalf of** a party to the instrument (e.g. signing as Power of Attorney for a party); and,
- they swear an "Affidavit of Subscribing Witness" where they attest to the identity and age of the party whose signature they witnessed.

The affidavit must be sworn or affirmed before a person authorized by s. **63** of *The Manitoba Evidence Act*.

#### **Alternative Execution – Two**

A foreign Notary Public may – instead of signing as witness - execute the certificate prescribed by s. 68 of *The Manitoba Evidence Act*.

See s. 72.9 of *The Real Property Act* (revised effective December 5, 2011).

## INDEX of LTO WITNESSING RULES

Document Type	Executed inside Canada (See Rule)	Executed outside Canada (See Rule)
Amending Agreements	<u>5</u>	<u>6</u>
Assignments of Caveats	<u>5</u>	<u>6</u>
Builders` Liens	<b>NO WITNESS REQUIRED</b>	
Caveats	<b>NO WITNESS REQUIRED</b>	
Condominium Declarations	<u>5</u>	<u>6</u>
Condominium Liens, bylaws, amending declarations, amending by-laws.	<b>NO WITNESS REQUIRED. CORPORATE SEAL TO BE ATTACHED.</b>	
Consents (to Easements (etc.)), Condominium Declarations, Amending Agreements)	Executed by a corporation with a seal, or Witnessed by: <ul style="list-style-type: none"> <li>• A lawyer - stating their name, position, and address; or</li> <li>• A competent adult, with an Affidavit of Witness.</li> </ul>	
Debentures	Executed by a corporation with a seal, or Witnessed by: <ul style="list-style-type: none"> <li>• A lawyer - stating their name, position, and address; or</li> <li>• A competent adult, with an Affidavit of Witness.</li> </ul>	
Discharges	<u>5</u>	<u>6</u>
Homesteads Act Notices, Releases, Consents, etc.	<ul style="list-style-type: none"> <li>• Governed by The Homesteads Act.</li> <li>• Witness requirements are usually found on the LTO form.</li> </ul>	
Instruments attached to caveats	<b>LAND TITLES DOES NOT EXAMINE EXECUTION</b>	
Instruments granting statutory easements	<u>5</u>	<u>6</u>
Judgments (Form 21)	<b>NO WITNESS REQUIRED</b>	
Legal Aid Statements	<b>NO WITNESS REQUIRED</b>	
Mortgages	<u>3</u>	<u>4</u>
Mortgages of Encumbrances other than Mortgages	<u>3</u>	<u>4</u>

Mortgages of Mortgages	<u>3</u>	<u>4</u>
Notice Exercising Powers of Sale	<b>NO WITNESS REQUIRED</b>	
Old System (Registry Act) Documents	<ul style="list-style-type: none"> <li>• Executed by a corporation with a seal, or</li> <li>• Witnessed by a competent adult, with an Affidavit of Witness. (including Lawyers &amp; Notary Publics)</li> </ul>	
Personal Property Security Act Notices	<b>NO WITNESS REQUIRED</b>	
Postponements	<u>5</u>	<u>6</u>
Powers of Attorney (Enduring Powers of Attorney)	<ul style="list-style-type: none"> <li>• Enduring Powers of Attorney executed in Manitoba must be witnessed by a person specified in s. 11 of <i>The Powers of Attorney Act</i>.</li> <li>• If the witness is a lawyer they must state their name, position and address. No Affidavit of Witness is required.</li> <li>• If the witness is not a lawyer, an Affidavit of Witness is required.</li> <li>• If executed outside of Manitoba, the laws of that jurisdiction apply.</li> </ul>	
Powers of Attorney (Lacking enduring clause)	<u>5</u>	<u>6</u>
Real Property Applications	<ul style="list-style-type: none"> <li>• Executed by a corporation with a seal, or</li> <li>• Witnessed by a competent adult, with an Affidavit of Witness. (including Lawyers &amp; Notary Publics)</li> </ul>	
Real Property Applications with Direction	<ul style="list-style-type: none"> <li>• Executed by a corporation with a seal, or</li> <li>• Witnessed by a competent adult, with an Affidavit of Witness. (including Lawyers &amp; Notary Publics)</li> </ul>	
Requests	<b>NO WITNESS REQUIRED</b>	
Section 76 Registrations (easements, etc.)	<u>5</u>	<u>6</u>
Transfers	<u>1</u>	<u>2</u>
Transfers of Encumbrances other than Mortgages	<u>1</u>	<u>2</u>
Transfers of Mortgages	<u>5</u>	<u>6</u>
Transmissions	<b>NO WITNESS REQUIRED</b>	