

Manitoba Land Titles Guide

Revision 65 – June 2019

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 clients having difficulty.

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

This document is 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 in these materials to legislation should be confirmed by a review of the relevant act to ensure that the legislation has not changed since the creation of these materials.

Manitoba legislation can be found here:

http://web2.gov.mb.ca/laws/statutes/index_ccsm.php

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General advice

Having documents either rejected or held up for a correction letter or document can add considerably to the processing time of that document, resulting in stress and frustration for all involved. The following advice should help to make the registration process smoother.

New forms (including eForms)

Effective December 17, 2017, new versions of all land titles forms have been approved for use by the Registrar-General. Of particular note, this approval included the most current versions of the smart eForms (eDischarge, eCaveat, eMortgage and eTransfer). These new versions of all forms must be used. All references in these materials are to these forms.

Up to date versions of land titles forms can be found here:

http://www.tprmb.ca/tpr/land_titles/lto_offices/forms.html

eRegistration

For most regular land titles clients the use of eRegistration became mandatory on April 3, 2018. This included all lawyers and all financial institutions. It also included all other clients who submit more than 500 documents per year. Clients who submit more than 100 documents per year will be required to use eRegistration beginning October 1, 2018.

Information about eRegistration, including system requirements can be found here:

<https://ereginfo.ca/faqs/>

Up-to-date title search

An up-to-date title search done prior to registration is a wise idea. It helps prevent the registration of documents that have not been made subject to all encumbrances, that contain incorrect legal descriptions or that do not show the current registered owners.

Proof-read documents

Proof-reading documents is crucial and will help to avoid common errors such as missing encumbrances, missing signatures, missing dates, and incorrect legal descriptions.

Duplicate titles

Where a duplicate certificate of title has been issued and that duplicate it still outstanding, it must be accounted for when documents are submitted by or on behalf of the registered owners of the lands in the title. Where a duplicate title is outstanding, either an affidavit of lost title or an affidavit of destroyed title must accompany the dealing. See **Duplicate Titles** for further information.

Affected Titles and Affected Instruments

In order to keep documents to manageable sizes and to avoid the registration of documents that can have a negative impact on system processing, The Registrar-General has limited the maximum number of titles and instruments that certain registrations can affect.

Caveat

A caveat may affect any number of titles.

Change of address for an instrument

A change of address may affect up to ten instruments. If those instruments affect multiple titles only a total of ten titles may be affected; however, if there is only one affected instrument and it affects more than ten titles that is acceptable.

Discharge

A discharge may affect any number of titles.

Mortgage

A mortgage may affect any number of titles.

Request/Transmission

A request/transmission may affect up to twenty titles.

Transfer of Land

A transfer of land may affect up to ten titles; however, there are two exceptions to this: a transfer of land may affect all units in a condominium plan or all lots, blocks and parcels in a plan.

Transfer of Mortgage

A transfer of mortgage may affect up to ten instruments. If those instruments affect multiple titles only a total of ten titles may be affected; however, if there is only one affected instrument and it affects more than ten titles that is acceptable.

Amending agreements

Vary terms and correct errors

Amending agreements can be registered to vary almost all of the terms of a mortgage, including increasing the principal amount. They can also be used to correct an error in a mortgage that was made prior to the execution of the mortgage.

The affected lands

Amending agreements can be used to add new lands to the mortgage, provided that these lands are owned by a current mortgagor. Amending agreements cannot be used to remove lands from a mortgage. A partial discharge is to be used to remove a mortgage from some of the lands that it affects.

Changing mortgagor or mortgagee

Amending agreements cannot be used to change mortgagors or the mortgagees. The mortgagee is changed by way of a transfer of mortgage. The mortgagor is changed by way of a transfer of the affected lands.

The Homesteads Act

Amending agreements can have the effect of being a disposition of land. Because of this, *Homesteads Act* evidence must be provided in all situations where the mortgagors are natural persons. *Homesteads Act* consents must accompany amending agreements where appropriate.

Witnessing

See **Witnessing rules** (below) for the rules governing the witnessing of these agreements.

Consents of encumbrancers

All amending agreements must include the consent of encumbrancers registered subsequent to the mortgage being amended. In addition, consents must be obtained from those prior encumbrancers that have postponed their interest to the subject mortgage. Consent is not required from registrants of encumbrances that will not be affected by mortgage sale and foreclosure proceedings, including:

- Building restriction caveats
- Condominium liens, notices and change agreements
- Registered conforming construction agreements
- *Contaminated Site Remediation Act* notices and liens
- Court Orders that create (or pertain to) recognized exceptions (e.g. easements)
- Development Schemes (registered under s.76.2 or by way of caveat)
- Easement agreements, declarations & caveats, including party wall and right of way agreements
- Notices under *The Energy Savings Act* or *The Efficiency Manitoba Act*

- Expropriation caveats or agreements
- Rehabilitation scheme notices
- Statutory easement agreements and caveats (including deemed statutory easements) & utility and pipeline easements
- Tax sale registrations
- *Water Resources Administration Act* order, notice, or cancellation of a notice
- Zoning caveats and development agreements
- Provincial Heritage Site designations
- Historic Property notices

Consent of encumbrancers unavailable

If the consent of an encumbrancer cannot be obtained, two options can be considered:

1. The parties can give notice of the amending agreement by way of a caveat registered on title, targeted at the instrument being amended.
2. The instrument being amended can be postponed to the encumbrance in question. While this would enable the amending agreement to proceed without the consent, it would give that other encumbrance priority over the instrument being amended.

The district registrar cannot recommend either of these options as a best-practice because they both have very real limitations.

Bankruptcy

Certified copy of appointment or assignment

A copy certified by the official receiver of either the assignment for the benefit of creditors or the order appointing the receiver must be attached to any transmission by a licensed insolvency trustee (formerly called a trustee in bankruptcy).

Inspectors

The transfer of land from a licensed insolvency trustee (formerly called 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

A transmission and transfer by a licensed insolvency trustee (formerly called a trustee in bankruptcy) must be made subject to those encumbrances registered by secured creditors. A receiving order does not have precedence over the rights of a secured creditor. The holder of a judgment (including a judgment for support or maintenance) is not a secured creditor.

Where the trustee intends for title to issue free and clear of encumbrances registered by unsecured creditors like judgments, those encumbrances must not be listed in the transmission or transfer. Title will issue subject to all encumbrances registered by secured parties, **and also to all encumbrances listed in the transfer or transmission.**

The district registrar will not lapse a judgment or similar encumbrance that has been carried forward to a title created by a transfer from a licensed insolvency trustee (formerly called a trustee in bankruptcy) where the transfer was made subject to that encumbrance. Such encumbrances can be removed by way of a discharge from the registrant, or, where they were extinguished by the bankruptcy and the creditor is not willing to provide a discharge, by way of the thirty day notice process.

The Homesteads Act

Homesteads Act evidence required

Homesteads Act evidence regarding the bankrupt must be provided by the trustee when executing a disposition of lands that have become vested in it by reason of a bankruptcy. Where the spouse or common-law partner of a bankrupt has rights under *The Homesteads Act* in the affected lands, and that person is not a co-owner and party to the disposition by the trustee, that person will have to sign either a release of their *Homesteads Act* rights prior to the transfer or sign a consent to the disposition by the licensed insolvency trustee (formerly called a trustee in bankruptcy).

Homestead rights and bankruptcy

The rights of a bankrupt under *The Homesteads Act* vest in their licensed insolvency trustee

(formerly called a trustee in bankruptcy). This gives the trustee and not the bankrupt the right to register homestead notices, the right to discharge such notices and the right to consent to a disposition of the homestead.

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

Caveats

Use of eCaveat form

All caveats must be completed using the eCaveat smart form.

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 a natural person and corporation. The district registrar will not accept a trust, a family trust, a limited liability partnership, a partnership or a law firm as a caveator.

Address for service

Every caveat must contain a complete address for service for each caveator. These addresses must be within Canada.

Interest in land

Caveats must claim at least one valid and acceptable interest in land. The drop-down list in box 3 of the eCaveat contains as exhaustive a list of interests in land as the legal staff of land titles could create.

The list is built dynamically and the items populated in it will depend on the nature of the caveator and on the nature of other interests already claimed in the caveat; certain interests can only be claimed by certain caveators and certain interests cannot be claimed in the same caveat as other interests.

If the interest that you are intending to claim is not in the drop-down list it is likely that it either isn't a valid interest in land (a right of first refusal for example) or, if it is, that you are not aware of the proper name for that interest in land (a pledge of land to secure a real estate broker's commission creates an equitable mortgage).

The list in box 3 allows a caveator to choose, "other" to enter an interest in land that is not on the drop-down list. Please consult with the district registrar prior to doing this to ensure that the interest you are claiming is a valid interest in land and to make sure that it is not already on the list with different wording.

It is both the right and the responsibility of the district registrar to ensure that the interest claimed is a valid interest in land.

Basis for claim

Once you have claimed an interest in land in box 3, you must enter the basis for this claim in box 4 of the caveat. It is here that you can enter the particulars of the agreement or set of circumstances that give rise to the interest in land claimed in box 3. This should include the names of all relevant parties, the dates and particulars of relevant agreements, and any other relevant information.

Copies of agreements

For the benefit of future parties, it is appropriate to attach copies of relevant agreements to caveats. This is because lawyers retire, they die, they close files, and they change firms and when they do the agreements that underlie caveated claims often become irretrievably lost.

Relevant agreements must always be attached to caveats giving notice of:

- Statutory easements
- Development agreements filed by municipal governments other than the City of Winnipeg

Effect of registration on the interest claimed

The acceptance of a caveat for registration by the district registrar does not mean that the interest claimed is a valid interest in land. Further, the acceptance for registration of a caveat does not convert an invalid interest into an interest in land, capable of binding subsequent owners. Finally, the acceptance of a caveat by the district registrar is not an indication by the registrar that the caveator is legally entitled to the interest in land claimed therein.

These three Manitoba decisions are relevant to this issue:

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

The Homesteads Act

The district registrar does not examine agreements attached to caveats to ensure compliance with *The Homesteads Act* (other than *statutory easements*). Often these agreements are not attached. This does not mean that *The Homesteads Act* does not apply to dispositions registered by way of caveat.

Parties drafting agreements that they intend to register by way of caveat should ensure that they have obtained *Homesteads Act* consents where appropriate.

In *Hildebrandt v. Hildebrandt*, 2009 MBQB 52, [2009] W.D.F.L. 2526, 238 Man. R. (2d) 71, 68 R.F.L. (6th) 105 the Manitoba Court of Appeal held that the term *disposition* in *The Homesteads Act* applies to both legal and equitable dispositions. In *Hildebrandt*, an equitable mortgage registered by way of caveat was found to be invalid with no registration priority because it lacked the consent of the spouse with *Homesteads Act* rights. The court held that it could not dispense with the missing consent, as the consent was prerequisite to a valid disposition. The court couldn't validate an earlier and otherwise prohibited disposition.

Easement caveats

Where the interest claimed in a caveat is based upon an easement, and the easement is not a statutory easement (as detailed 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 **Statutory easements in Easements** (below).

Restrictive covenant caveats

There are three types of caveats that can be filed based upon restrictive covenants:

- Traditional restrictive covenants
- Building schemes / development schemes
- Restrictive covenants contained in development agreements

Traditional restrictive covenants

Traditional restrictive covenant caveats give notice of an agreement entered into between a vendor and a purchaser of land wherein certain restrictions are imposed upon the uses that the purchaser can make of the subject lands, which restrictions are for the benefit of lands retained by the vendor.

These caveats must contain the legal description of both the dominant and servient lands.

Building schemes / development schemes

The second sort of restrictive covenant that can be protected by a caveat is one imposed by a developer where that developer has subdivided a large piece of land into numerous lots and is selling off those lots.

In these situations, the developer will enter into separate agreements with each purchaser and, when taken as a whole, the numerous separate agreements act together to control the entire development.

In these cases, the restrictions in each separate agreement are intended to 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

related group of caveats creates a private building scheme or development scheme.

In addition to the lands that are being restricted by the agreement, building scheme caveats must set forth all of the lands benefiting from the overall scheme. Typically this would be all of the land in the development. When referring to these 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. Despite the fact that all the benefited lands must be shown in these caveats, each separate caveat will only be registered on the title to the land that is restricted by the particular agreement.

Section 76 of *The Real Property Act* allows building/development schemes to 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.

Restrictive covenants contained in 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.

Certain interests in land

Assignment of rents

While the district registrar will accept a caveat for an **assignment of rents and leases**, a caveat giving notice simply of an 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 land titles, protecting certain rights vis-à-vis other parties with an interest in the relevant lands.

See **Personal Property Security Notices** (below) for a more detailed discussion of registrations pursuant to *The Personal Property Security Act*.

Smell and noise

Caveats registered for the purpose of giving notice of agreements prohibiting the owners of land from complaining about or taking action with regard to smells and noises associated with agricultural processes will not be accepted for registration by the district registrar. This position is based upon the fact that the personal covenants of the land owners in these agreements do not form an interest in the underlying land, nor do they control the use of the land itself.

Rights of first refusal

Caveats claiming a right of first refusal have in the past been accepted for registration by the district registrar. 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 ruled that agreements containing only conditional interests, instruments that might at some future time and upon the happening of a future conditional event, do not create an 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.

Committees

Appointment

Where a person residing in the province becomes incapable of managing their property because of mental incapacity and needs decisions to be made on their behalf regarding that property, the court may appoint another person as that person's committee.

See s. 71(1), *The Mental Health Act*, C.C.S.M. c M110.

Basic powers of committees

See s. 80(1), *The Mental Health Act*

Absent specific authorization, a committee appointed under section 71(1) only has the following land 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), *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 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).

Condominiums

Seal not required

Under previous *Condominium Act* all condominium corporations were required to have a seal. Furthermore, that Act required the seal to be affixed to certain documents. The current Act does not contain any such requirement. Accordingly, the district registrar does not require the seal of the condominium corporation on any document registered by a condominium corporation.

The declaration

Percentages must add to 100

The allocation in percentages as to the voting rights of unit owners, the share in the common elements and responsibility of unit owners to contribute to common expenses and the reserve fund must add up to exactly 100 percent. The district registrar will not accept an allocation that adds up to any smaller amount (for example 99.999 percent).

Bare land units

Declarations with one or more bare land units (where the boundaries of one or more of the units are defined by horizontal delineation without reference to any building), including phasing units, must:

1. Contain a description of the manner of determining the value of each unit in the event that the property ceases to be governed by *The Condominium Act*.
See s. 13(3), *The Condominium Act*.
2. Meets the requirements of section 117 of *The Real Property Act* (plans of subdivision).
See s. 17, *The Condominium Act*.

Checklists

The district registrar has prepared a number of checklists to assist with the examination of condominium declarations. These checklists can be obtained from the district registrar and can be used to help ensure that draft declarations comply with all of the requirements the district registrar will enforce. These checklists should be used with care because they do not address matters that are not of concern to the district registrar.

Amending the declaration

Generally

Amendments to a condominium declaration must be signed by the condominium corporation. As discussed below, there is no need for a seal to be affixed. All amendments to a condominium declaration must be accompanied by either:

1. A statutory declaration made by an authorized director or officer of the condominium corporation which contains evidence that:
 - i. The person making the statutory declaration is an officer or director of the corporation and is authorized to make the statutory declaration; and
 - ii. The amendment was consented to in writing at a general meeting or within 180 days after that meeting by the unit owners holding not less than either 80% of the voting rights in the condominium corporation or, if a greater percentage is specified in the declaration for that matter, that percentage specified in the declaration; or
2. A certified copy of a court order permitting the registration.
See s. 24, *The Condominium Act*.

Minor amendments

Amendments that correct minor mathematical, grammatical, clerical, typographical or printing errors, that do not affect any person's rights, interests or obligations, are referred to in *The Condominium Act* as minor amendments. Minor amendments do not need to be made with the same formality as normal amendments and as such do not need to be accompanied by any supporting declaration or court order.

See s. 25, *The Condominium Act*.

Change of address for service

A condominium corporation can change its address for service by filing a notice of that change. Use the land titles request/transmission form for this purpose.

See s. 25(3), *The Condominium Act*.

By-laws

Effective

A by-law is not effective until it is registered at land titles.

See s. 168(1)(b), *The Condominium Act*.

Initial by-law

In addition to submitting the condominium plan and declaration, the declarant/registrant must submit the condominium corporation's initial by-law (By-law no. 1) at the time of the creation of the condominium corporation. This initial by-law is to be signed by the declarant and not the condominium corporation (it does not yet exist).

See s. 10, *The Condominium Act*.

The initial by-law of a condominium corporation may contain only those provisions that may be contained in a by-law made under Part 8 of *The Condominium Act* (Condominium Corporation By-laws and Rules).

See s. 19, *The Condominium Act*.

Statutory declaration to accompany by-laws and amendments

All by-laws (other than the initial by-law submitted at the time of the registration of the corporation – see above) and all amendments to by-laws must be accompanied at the time of registration by a statutory declaration made by an authorized director or officer of the condominium corporation which contains evidence that:

1. The person making the statutory declaration is an officer or director of the corporation and is authorized to make the statutory declaration; and
2. The by-law or amendment was done in accordance with *The Condominium Act* and the corporation's declaration and by-laws.

See s. 168, *The Condominium Act*.

Repealing by-laws

Where a by-law is repealed, the condominium corporation must file a copy of either the resolution repealing the by-law or an extract of the meeting minutes respecting the vote on the repeal, certified by an authorized director or officer of the corporation as a true copy. This must be accompanied by a statutory declaration made by an authorized director or officer of the condominium corporation which contains evidence that

1. The person making the statutory declaration is an officer or director of the corporation and is authorized to make the statutory declaration; and
2. The by-law or amendment was done in accordance with *The Condominium Act* and the corporation's declaration and by-laws.

See s. 168, *The Condominium Act*.

Statutory declarations required on transfer

Where a condominium unit is being transferred under an agreement of purchase and sale, both the transferor (seller) and the transferee (buyer) must provide statutory declarations. These must be attached to the transfer of land at the time that it is registered at land titles.

Samples of statutory declarations for individuals and corporations can be found here:

http://www.tprmb.ca/tpr/land_titles/ito_offices/forms.html

Modify these as required where they are being signed on behalf of the parties by an attorney under a power of attorney, by a committee or a substitute decision maker, or by an executor, administrator or other trustee.

The transferor's (seller's) statutory declaration

Each transferor must sign a statutory declaration. These can be combined into one omnibus declaration for all to sign where circumstances permit.

See s. 57(1)(a), *The Condominium Act*.

The transferee's (buyer's) statutory declaration

Only One Declaration Required

Unlike transferors, who must each provide a statutory declaration, one and only one transferee must provide a statutory declaration regardless of how many transferees there are. Where there are multiple transferees, they must designate one transferee to give the declaration.

See s. 48(1)(c) and s. 57(1)(b), *The Condominium Act*.

Where transferee not a buyer

When one or more of the transferees is not an original buyer of the unit (they have been added or substituted) the statutory declaration must come from one of the original buyers and it must contain a statement consenting to the title issuing into the name of the new party. Once again, one and only one statutory declaration is required, regardless of the number of original buyers.

See s. 57(1)(b)(iii), *The Condominium Act*.

Declaration not required

These statutory declarations are not required when:

1. It's not a sale. Where a condominium unit is being transferred but the transfer is not as a result of a sale (for example it is being gifted), the statutory declarations are not required.

In such a case either:

- i. Insert the following statement into one of the signature pages for the transfer:
This unit is not being transferred under an agreement of purchase and sale. *The Condominium Act* s. 57 declarations are not required; or
- ii. Attach a letter from the buyers' or sellers' lawyer making that statement.

The unit is sold by court order or pursuant to an order in mortgage sale proceedings.

- In such a case either:
 - i. Insert the following statement into one of the signature pages of the transfer: The Transfer of this unit is exempt under *The Condominium Act* s. 46. *The Condominium Act* s. 57 declarations are not required; or
 - ii. Attach a letter from the buyers' or sellers' lawyer making that statement.

Website

The Province of Manitoba maintains a website with condominium information:

<http://www.gov.mb.ca/condo/>

Conforming Construction Agreements

Both *The City of Winnipeg Charter* and *The Planning Act* allow for the registration at land titles of documents called conforming construction agreements. These agreements address the required separation between exposed face buildings, the location of these buildings on the parcels on which they are constructed and access from these buildings' exits to public thoroughfares and public streets.

See s. 240.2(2) and (3) *The City of Winnipeg Charter*
See s. 151.1(2) and (3) *The Planning Act*

Authority

The authority to enter into these agreements:

For the City of Winnipeg: The City can require an owner to enter into such an agreement as a condition of issuing a building permit or approving a variance.

See s. 240.2(1) *The City of Winnipeg Charter*

For an authority under *The Planning Act*: The authority can require an owner to enter into such an agreement as a condition of issuing a building permit or making a variance order.

See s. 151.1(1) *The Planning Act*

Content

These agreements must:

- Contain the legal description of each affected parcel.
- Contain a recital of the specific circumstances that allow for the registration of the agreement.

Example: This agreement is being entered into as a condition of making a variance order.

- Contain a provision that they run with the land.
- See s. 240.2(3)(a) *The City of Winnipeg Charter*
- See s. 151.1(3)(a) *The Planning Act*
- Be limited to terms and conditions within the scope of the authority granted by the empowering legislation.
- See *Jacques v. Alexander (District)*, 33 M.P.L.R. (2d) 81, [1996] 7 W.W.R. 677, 109 Man. R. (2d) 223
- Be executed in accordance with the standard land titles execution rules.
- Be witnessed in accordance with the land titles standard witnessing rules:
- Signatures of the owners of affected lands: These are to be witnessed a lawyer, or if not a by lawyer, by any other person provided that there is a witness and an affidavit of subscribing witness.
- The signatures of the authority: These can be witnessed in the same manner as the signatures of the owners or, in the absence of a witness, the authority can affix their seal.
- See 2. 72.9 *The Real Property Act*

- Do not need to contain evidence under *The Homesteads Act*. These are not dispositions as defined in that Act.
- Must conform to the land titles rules regarding schedules. See **Schedules, Document incorporates schedule by reference** (below).

Registration

These agreements are to be registered in their right and are not to be attached to caveats.

Survive Tax Sales and Mortgage Sale and Foreclosure Proceedings

Conforming construction agreements survive both tax sales and mortgage sale and foreclosure proceedings. One consequence of this is that no consent is required from the registrant of a conforming construction agreement to the amendment of a mortgage on an affected title. See s. 45(5)(f.1) and s. 141 *The Real Property Act*

Amendment

Conforming construction agreements can be amended by the parties to the agreement. The word "parties" is interpreted by the District Registrar to mean the authority and the *current* owner of the affected lands. These amending agreements must conform to land titles execution and witnessing rules.

See s. 76.5(4) *The Real Property Act*

Discharge

Conforming construction agreements can be discharged by the authority.

See s. 76.5(5) *The Real Property Act*

Corporate execution

Smart forms

The signature pages generated by the four smart forms, the eDischarge, eMortgage, eCaveat and eTransfer, will assist parties completing those forms when it comes to complying with the rules regarding corporate execution. The pages will adapt, based upon the selections made, to help ensure that the rules of corporate execution are followed. Care should be taken before deleting or amending clauses populated in the smart form signature pages.

Age of majority statement

Do not delete the age of majority statement from approved forms. 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...)

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 land titles office. If the power of attorney relied upon is one on file at a 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.

Rules may not apply to the Crown, religious organizations, et al.

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

The execution requirements for these entities are often regulated by a specific piece of legislation. If there is any doubt please consult the district registrar.

The corporate execution rules *do* apply to credit unions and banks.

Corporate resolutions

Corporate resolutions as proof of signing authority for a party who is not an officer, director, or attorney under a power of attorney will not be accepted.

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, the district registrar 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 signed on behalf of a corporation by an agent to be discharged by that agent continues to apply to these documents.

Requests

The rules regarding corporate execution generally apply to the signing of requests (not transmissions) made using the request/transmission form, with the following additions:

1. Requests may also be signed by a solicitor and agent on behalf of a 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, the district registrar 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.

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 notice 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, the district registrar 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

The correction policy established by the Registrar-General allows for the correction of most errors, omission and mistakes. With the exception of corrections to sworn evidence, most errors can be corrected by way of letter or an email, provided that the correction does not change the substance of the subject document.

Letters may be emailed to the examiner without any need for the original to follow in the regular mail.

Corrections to sworn evidence can often be made using the new Correction to Statutory Evidence form (Form 30).

The entire correction policy has been removed from this guide and constituted into a separate document. That document can be found here:

http://tprmb.patternhosting.com/wp-content/uploads/2019/11/corrections_policy_en.pdf

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 filed, it can be registered either as a mortgage or as a mortgage amending agreement. That choice is up to the filing party. Absent specific instructions, the district registrar will assume a fiat as a mortgage is required.

Document can either be filed as part of the registration process or they can be submitted to the district registrar for filing, and then returned to the client for registration at a later date.

Documents that are to be fiated as part of the registration process should be submitted through the eRegistration portal in the same manner as any other paper document. These should be accompanied by a letter asking the district registrar to fiat and register the relevant document. The letter should specify if the debenture is to be fiated as a mortgage or as an amending agreement.

Debentures that are to be fiated and then returned for registration at a later date must be submitted in paper form to the district registrar. The district registrar will endorse the fiat on the paper document prior to return. Only one copy needs to be submitted for fiating, even if the debenture affects lands in multiple land titles districts.

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.

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.
- A debenture should set forth a principal amount, however the district registrar does not require this. Where no principal amount has been set forth we will 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 a mortgage amending agreement. In those cases, while charging language is not required, like all other amending agreements, the debenture must be signed by all parties to the original debenture, and not just the mortgagor.
- The debenture must contain a complete legal description of the land charged.
- The interest in land charged must be a titled interest in land. A debenture cannot charge a leasehold interest if there is no leasehold title. The title number of the charged land must be provided.
- 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 where the mortgagee is a charter bank.
- 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.

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

Authority to register

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).

Authorizing 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

Caveats giving notice of development agreements must contain evidence that the development agreement was entered into in accordance with the relevant legislation. The following additional requirements must be complied with:

Caveator is the City of Winnipeg

- In box 3 of the caveat, the caveator must select the following interest from the drop-down list: Development Agreement. The City of Winnipeg Charter
- The appropriate statutory authority must be selected in box 3.
- Details of the constituting agreement must be set out in box 4.
- The agreement must be between the City of Winnipeg and those parties who are the registered owners of the affected lands at the time the caveat is registered.

Caveator is a municipal government other than the City of Winnipeg

- In box 3 of the caveat, the caveator must select the following interest from the drop-down list: Development Agreement. *The Planning Act*
- The appropriate statutory authority must be selected in box 3.
- Details of the constituting agreement must be set out in box 4.
- The agreement must be between the municipality and those parties who are the registered owners of the affected lands at the time the caveat is registered.
- The actual development agreement or a copy of it, including all 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.

- 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.

Development schemes

Creation

In addition to the rules for the creation of building/development schemes that arise from the common law (see **Caveats, Restrictive covenant caveats** (above)), subsection 76.2 of *The Real Property Act* allows for the creation of development scheme by a document, either an agreement or a declaration. An agreement is to be used where the affected lands do not have common ownership while a declaration is to be filed if all of the affected lands have common ownership.

Registration requirements

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

- Be executed by the owners of all of the affected lands.
- Contain consents from all the owners of all encumbrances affecting the lands (other than the holders of statutory easements).
- Be executed and witnessed in accordance with the Registrar-General's rules governing execution.
- Clearly identify which lands are restricted and which are benefited 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 development scheme agreement or declaration document is to be registered. It is not to be attached to a caveat.

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

Use of eDischarge form

All discharges must be completed using the eDischarge smart form.

Types of discharges

Full discharge

A full discharge releases all of the lands and titles that the subject instrument affects. Because of the broad effect of the full discharge, there is no need to list specific title numbers or lands. The eDischarge will not allow such entries if the Full Discharge option is selected in box 3.

The status of the subject instrument will be changed to *discharged* upon the registration of a full discharge.

Do not use a full discharge unless you are intending to fully remove the subject instrument from all affected titles.

Part discharge releasing all lands in one or more titles

This variant of the discharge releases **all of the lands** in one or more (but not all) of the titles affected by the subject instrument. Because the intention is to release all of the lands in the specified titles, there is no need to provide a description of the land. The eDischarge will not allow for the entry of specified lands if the Partial Discharge option is selected in box 3 and the registrant indicates that the discharge affects all of the lands in the specified title.

The status of the subject instrument will not change to discharged upon the registration of a partial discharge.

Use this type of partial discharge if you are intending to completely remove the subject instrument from some but not all of the titles that it affects.

Part discharge releasing only some of the lands in a title

In certain cases, and subject to the rules governing the subdivision of land, it is also possible to release only some of the lands in a title affected by an instrument. In such a case, after selecting the Partial Discharge option in box 3 of the eDischarge, select the Part option rather than the All option for those (and only those) titles. Once Part has been selected you will then need to list the lands from which the instrument is to be removed.

If you are intending to remove the subject instrument from all of some titles and from part of other titles, make sure that you select the ALL or Part options as are relevant for each separate title.

The status of the subject instrument will not change to discharged upon the registration of a partial discharge.

Do not use the Part option unless you are intending to release only some of the land in at least one title.

Partial discharge changed to full discharge by district registrar

A partial discharge that has the effect of releasing all or the balance of the titles affected by the subject instrument will be registered as a full discharge.

The status of the subject instrument will be changed to discharged upon the registration of a partial discharge that releases all or the balance of the titles affected by the subject instrument.

See s. 103(2), *The Real Property Act*.

Discharge of an instrument that have been transferred, assigned or amended

When discharging an instrument 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.

The discharge of an instrument that has been assigned or transferred must be signed by the assignee/transferee.

Discharge of a mortgage that has been mortgaged

A mortgage of mortgage has virtually the same effect as a transfer of mortgage. Accordingly, a discharge of a mortgage that has been mortgaged must be signed by the mortgagee in the mortgage of mortgage and not the original mortgagee.

Extra care must be taken where a mortgage has been mortgaged. The mortgagee in the mortgage of mortgage actually has the option of discharging the mortgage of mortgage or the original mortgage. If the mortgage of mortgage is discharged then the original mortgage survives and the rights vest back in the original mortgagee. If the original mortgage is the instrument specified in the discharge then the mortgage and the mortgage of mortgage will both be removed.

Discharge by agent

- An agent may execute the discharge of a caveat where the agent also executed the caveat.
See 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. This authorisation must be attached to the discharge when it is filed at land titles.
See s. 55(1), *The Builders' Liens Act*
- A judgment, provided that it is not for alimony, maintenance, or child support, may be discharged by "any person entitled to discharge the judgment". This may be an agent, provided that they are the agent who registered the judgment.
See s. 20, *The Judgments Act* and s. 75(7.1) *The Real Property Act*

- A notice exercising power of sale may be discharged by the mortgagee's agent where that agent signed the notice.
See rule 1.05 Registrar-General's Mortgage Sale & Foreclosure Rules
- A personal property security notice may be discharged by the registrant's agent where that agent signed the notice

With the exception of discharges of builders' liens, the agent signing the discharge must be the very same person who signed the initial registration.

Discharge of maintenance 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.

See 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. Please file a court certified copy of the order attached to a land titles request/transmission form.

See s. 21(1), *The Judgments Act*

Discharge of attaching orders

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.

See Queen's Bench Rules 46.13(1)(i) & 46.13(2)

Discharge of pending litigation orders

A pending litigation order may only be discharged by the Court of Queen's Bench.

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. The registration of the certificate discharges the pending litigation order.

See Queen's Bench Rules 42.02(2) and s. 55(6) *The Builders' Liens Act*

By Order upon Application / Motion where proceedings not concluded

At any time in the proceedings the court may, following a motion/application, make an order discharging a pending litigation order. The registration of the order discharges the pending litigation order.

See Queen's Bench Rules 42.02(1) and s. 55(4) *The Builders' Liens Act*

See **Estates** (below) for the rules governing discharges where the deceased's will has not been probated or where there is no will and letters of administration have not been granted.

Duplicate titles

Where a duplicate certificate of title has been issued and that duplicate is still outstanding, it must be accounted for when documents are submitted by or on behalf of the registered owner of the lands in the title. The district registrar has the authority to dispense with the production of that duplicate title where they are satisfied that the duplicate title has been lost or destroyed. Typically this proof comes in the form of an affidavit.

See s. 26(1), *The Real Property Act*

Affidavit of destroyed duplicate title

It is not possible to submit a duplicate title with a registration series filed through the eRegistration portal. Where a duplicate title is outstanding and the registered owner is in possession of the title, in lieu of the duplicate title, the district registrar will accept evidence that the duplicate title has been destroyed.

The affidavit of destroyed duplicate title must:

1. Confirm that the affiant had physical possession of the duplicate title;
2. That the affiant destroyed the duplicate title;
3. Specify the manner in which the title was destroyed;
4. Have a copy of the duplicate title affixed and marked as an exhibit.

The duplicate title can be destroyed by the lawyer, the secretary or paralegal, or one of the registered owners. Whoever it is that destroys the title must swear the affidavit.

Affidavit of lost duplicate title

The affidavit of lost title must:

1. State that the reason the title cannot be found is that it has been lost or destroyed;
2. State that the title has not been deposited by way of lien or as security for a loan;
3. 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. Refer to the outstanding title number and not to the current title number where these numbers differ. These two numbers would be different if, for example, the land titles office registered a special plot plan and created new titles. In such a case, a note on the title created by the plan would indicate that the old duplicate title must still be produced. This will appear as a "hold for production" note.

Equitable charge caveat

If a caveat has been registered against the title by a lender giving notice of an equitable charge, in addition to the registered owner's affidavit of lost title, the registrant must provide either:

1. A letter from the lender confirming that they were never in possession of the duplicate title; or
2. An affidavit of lost title from the lender.

Hypothecation caveat

If a caveat has been registered against the title by a lender giving specific notice that the duplicate title has been hypothecated, in addition to the registered owner's affidavit of lost title, the registrant must provide an affidavit of lost title from the lender.

All executors/administrators must sign

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 convenient.

Use of precedents

Care should be taken when using a prior affidavit of lost title as a precedent. Often clients using these precedents forget to delete and replace the old title number. These affidavits will not contain the correct title number and will have to then be re-sworn.

See **Schedule II** for an example of an affidavit of lost title; **Schedule III** for use by a corporation; **Schedule IV** for use by the executors/administrators of an estate; and **Schedule V** for use by attorney under a power of attorney.

Schedule VI 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

Note: The following paragraphs do not apply to statutory easements created pursuant to section 111 of *The Real Property Act*. See STATUTORY EASEMENTS below for a discussion of easements created pursuant to that section of the legislation.

Easements and party wall agreements can be registered in one of two ways: they can either be registered pursuant to s. 76 of *The Real Property Act*, or they can be registered by way of a caveat. Each method of registration has its own requirements.

Registered pursuant to s. 76

An easement registered pursuant to s. 76 of *The Real Property Act* must conform to the following:

1. The lands affected must be clearly defined. It must affect 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 using either a “metes and bounds” description acceptable to the examiner of surveys or a plan of survey. Registrations with sketches included or attached will not be accepted.

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 and witnessing, including proper parties and proper officers. See **Witnessing Rules** (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 be executed in accordance with land titles rules governing execution and witnessing.
4. With the exception of party wall agreements and declarations, the dominant and servient lands must be reasonably proximate, though they do not need to be adjoining. For party wall agreements and declarations, the lands must be adjoining.
5. A statutory declaration containing evidence under The *Homesteads Act* from the owners of the servient lands (and the dominant lands if there are cross easements) must be attached. Where appropriate, consents under the *Homesteads Act* must also be attached.

Where the dominant and servient lands have common ownership, easements and party-walls can be created by declaration rather than by agreement. Because these are pure creatures of statute (at common law the dominant and servient lands must be owned by different parties), they must be registered in their own right and pursuant to s. 76 and not attached to a caveat. See s. 76(2), *The Real Property Act*

Registered by caveat

While it is to everyone’s benefit, there is no rule that requires the underlying agreement to be attached to a caveat giving notice of an easement (other than a caveat for a statutory easement). Further, where such an agreement is attached, it will not be not examined.

A caveat for an easement has only two requirements:

1. It must contain a clear statement as to the interest claimed (easement, right-of-way or party-wall); and
2. It must list the dominant and servient lands.

When easement or party wall is selected from the drop-down list, the eCaveat will not lock unless it contains both dominant and servient lands.

These minimal requirements do not apply to caveats creating *statutory easements*. Please see **Statutory easements** (below) for a discussion of the requirements for these registrations.

Easements that arise from the circumstances and actions of the parties, those that are not created by agreement, can *only* be registered by way of caveat. This would include easements by necessity, prescriptive easements and easements by proprietary estoppel.

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.

Discharges from the party who originally registered an easement by way of caveat will not be accepted if they no longer own the dominant lands. Similarly, an agent who signed an easement caveat can only sign the discharge of it if the ownership of the dominant lands has not changed.

Assignment

Because easements run with and benefit the dominant lands, they do not need to be assigned on a sale of the dominant lands. Further, given that these agreements benefit the owner of the dominant lands and cannot benefit any other party, these easements 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 of the servient lands) and given that they cannot be assigned to a party who is not the owner of the dominant lands, the district registrar 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, a license is not an interest in land.

Statutory Easements

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 on title, 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.

Requirements for agreements dated on or after June 16, 2011

- The grantee may register either the agreement or a caveat with the agreement attached. The examination requirements are the same regardless of the method of registration.
- The agreement must be between the grantee and either the current owner of land or a person entitled to be the owner of lands who becomes the owner by the time the easement is registered.
- 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 on the caveator's signature page that the party is an eligible grantee within the meaning of section 111(1) of *The Real Property Act*.
- The agreement must contain evidence from the grantors under *The Homesteads Act* and, where the situation warrants, *Homesteads Act* consents.

Requirements for agreements dated 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 agreements are in compliance with the previous section 111(1) and:

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

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 these agreements were entered into with the correct party at the time they were executed, the district registrar will accept these registrations regardless of who the current owner happens to be.

Titles for statutory easements

As a result of the legislative changes, title can now issue 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 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 a pipeline.

Titles for statutory easements issue free and clear of encumbrances on the affected title, other than those relating to 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 easement 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 either discharge their encumbrances or consent to the discharge of the easement. 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 the easement in the ordinary course.

Estates and death

Discharge on behalf of unprobated estate

With the proper supporting materials, the district registrar 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 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;
 - ii. That no other will has been found and the will attached as evidence is believed to be the last will and testament of the mortgagee;
 - 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

With the proper supporting materials, the district registrar will accept a discharge signed on behalf of a deceased mortgagee who has left no will by a 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 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.

Mortgaging estate lands

The administrator of an estate may not mortgage the property vested in him as administrator without the approval of the court. There is no similar restriction on a mortgage executed by the executors of an estate.

See s. 46, *The Trustee Act*

Delegation of powers to attorney

The trustee of an estate (executors or administrators) may delegate to another person by power of attorney all or any of the powers vested in them as trustee. This is subject to numerous strict restrictions:

1. The trustee must be intending to remain out of the province for a period exceeding one month (evidence on this point will be required, including evidence that at the time of the exercise of the power by the attorney, the donor was out of the province).
2. The person appointed may not be the only other co-trustee.
3. The power of attorney shall be attested to by at least one witness.
4. The power of attorney must be filed in the land titles office of each land titles district in which trust property is located, within 10 days after its execution, together with a statutory declaration by the donor that they intend to remain out of the province for a period exceeding one month from the date of the declaration, or from a date therein mentioned.

See s. 36, *The Trustee Act*

The power of attorney does not come into operation unless the donor is out of the province, and is revoked by their return.

See s. 36(3), *The Trustee Act*

Administration order for estate worth less than \$10,000

An administration order granted where the value of an estate is less than \$10,000 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, an administration order vests the land or interest in land directly, without title having to first issue into the name of a trustee (either an administrator or an executor). Accordingly, there is no need for a transmission to move the property into the names of the executors/administrators. A transmission with the order attached will move the land directly from the deceased's name into the name of the ultimate beneficiary. The transmission is to be signed by the beneficiary, requesting that title issue into their name.

Joint tenancy

Both joint tenants deceased

Where title is held in a joint tenancy and the joint tenants have died (provided that they did not die simultaneously) one document can be used to move title from the name of the deceased parties into the name of the executors/administrators for the estate of the joint tenant who died last. A request/transmission form is to be used, signed by the executors/administrators for the estate of the last deceased joint tenant. This must be accompanied by the grant of probate or letters of administration for that joint tenant, together with the death certificate for the first deceased. In box 2, "Application for", insert a phrase along the following lines of, "This is a survivorship request and transmission by the executors of the estate of Mary Brown." In this case, Mary Brown would 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. In such a case a survivorship request will not be accepted and both estates will have to be probated.

See s. 3, *The Survivorship Act*

Proof of death – death certificate required

Proof of death must come in the form of a death certificates from the Department of Vital Statistics. A funeral director or church death certificate is not sufficient, nor are grants of probate or letters of administration.

Transfer by 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. In such a case:

- Enter the names of all the current registered owners into box 3 of the eTransfer, including the deceased;
- Select “Deceased joint tenant” under the name of the deceased;
- Upload the death certificate as a supporting document with the transfer of land in the eRegistration portal;
- Insert a statement into the signature box for the transferor, 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.

Discharge by surviving joint mortgagee / encumbrance holder

Where a mortgage is held jointly and one of the mortgagees has died, the surviving mortgagee can discharge the mortgage without the need for a separate survivorship request. In such a case:

- Enter the names of all the mortgagees into box 1 of the eDischarge, including the deceased
- Select “Deceased joint interest holder” under the name of the deceased
- Upload the death certificate as a supporting document with the discharge in the eRegistration portal
- Insert a statement into the signature box for the mortgagee, confirming that the person in the death certificate and the mortgagee are one and the same person and that the person signing the discharge is the surviving joint interest holder.

The same process can be used for other joint interest holders. See **Real Property Applications** (below) for a discussion of Real Property Applications by the executors or administrators of an estate.

Judgments and orders

Registering a judgment

Notarized or true copy not accepted

All judgments presented for registration must be either original copies or court certified copies. Notarial and "True" copies will not be accepted.

See s. 2, *The Judgments Act*

Court certified copy required

A Certificate of Decision from small claims court cannot be registered directly. After receiving the decision, the registrant must obtain a certificate of judgment from the court. This can then be registered.

See s. 2, *The Judgments Act*

Form 21 (Registration of Judgment, Lien or Order form) required

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

The form 21 can be found here: teranetmanitoba.ca/land-titles/land-titles-forms/

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.

The following circumstances do not create interests in land against which a judgment can be registered:

- The right to a marital property accounting;
- Rights under *The Homesteads Act*;
- Being the general beneficiary under the will of a deceased land owner.

Where the judgment debtor is not the owner of the subject land, but has an interest in the land, that interest in land must be set forth in box 6 of the Registration of Judgment, Lien or Order form (form 21.1).

Registering a court order

Court certified copy required

To register a court order (such as a vesting order or an order discharging an encumbrance), a court certified copy of the order is required.

Request/transmission form (Form 15) required

This order should be attached to a request/transmission form.

When completing box 2 of the request/transmission form please insert wording like:

To discharge instrument no. 1234567/1 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, ensure that the tenancy the parties' intend 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 for the new owner(s) is correctly set forth in Box 1 of the request/transmission form.

The form 15 can be found here: teranetmanitoba.ca/land-titles/land-titles-forms/

Appeal periods

An Order is never final until all rights of appeal have expired.

On registration of an order that operates to cancel a title, terminate an interest in land, or discharge an instrument, you must include either:

- a) Consents by all parties or their solicitors;
- b) An undertaking by those having a right to appeal that no appeal will be commenced;
- c) A certificate from the court that issued the order that the time for appeal has expired and no appeal has been made;
- d) A certificate from the solicitor that all appeals have been finally disposed of or discontinued; or
- e) Where an appeal of the order has been made, a certified copy of the order, together with the certificate from the solicitor set out in paragraph d) above.

The only time the above is not required is where the order expressly states that it is not required or if the order was made ex parte and stated that it did not have to be served.

Certificate of expired time for appeal

A certificate from the Court or solicitor that the time for appeal has expired should include the

following:

1. The date;
2. The style of cause;
3. That the date for appeal has expired in the proceedings and that no appeal has been filed OR that all appeals have been finally disposed of or discontinued; and
4. Where the proceedings relate to specific subject property these should be set out in the certificate as well.

Resuing and registering a judgment thereafter

Where a certificate of judgment has been registered 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 result. In this case the new judgment has the same priority as the old judgment provided that the new judgment is registered within the 30 days after it is entered in court.

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

See s. 8, *The Judgments Act*

The form 21 can be found here: teranetmanitoba.ca/land-titles/land-titles-forms/

Statute barred judgments

The district registrar will not lapse a judgment where it has become barred by *The Limitations of Actions Act*. Nor will the registrar issue a thirty day notice on such a judgment. *The Judgments Act* specifically gives the power to vacate barred judgments to the court and not the district registrar.

See s. 11(1), *The Judgments Act*

Assignment of a judgment

Judgments cannot be assigned in the land titles system; this is prohibited by *The Judgments Act*.

See s. 12(3), *The Judgments Act*

An assignment of a judgment is be registered in court.

See s. 12(2), *The Judgments Act*

The process to record the assignment in the land titles system 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. The district registrar 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.

Registered judgment failing to bind or form a lien on targeted land

In certain cases, validly issued and properly registered judgments will not bind or form a lien on the lands of the judgment debtor. Specifically, where there is a bona fide sale or transfer, a bona fide agreement for sale or where the debtor has given a bona fide option to purchase which is subsisting at the time of the registration, the judgment may not bind the targeted lands.

See s. 10, *The Judgments Act*.

Where there appear to be competing priorities between a judgment and a transfer of land, *The Real Property Act* gives the district registrar the authority to take evidence and decide whether or not a certificate of judgment affects the land and to determine the priority of the judgment. See s. 74, *The Real Property Act*

See also **Discharges** (above) for discharging judgments.

Lapsing instruments from title

Certain instruments registered against titles may be removed from the title by way of a request to the district registrar. This request is to be made using the request/transmission form. Below is a list of instruments that can be lapsed together with the circumstances where a request to lapse will be approved.

Caveats

A caveat that has expired on its face can be lapsed. No review of outside evidence should be required to determine if the interest in the caveat has expired – it must be clear based on a review of the caveat itself.

See s. 150(1.1), *The Real Property Act*

Building restriction caveats

Building restriction caveats expire 50 years after their registration in the land titles system, or earlier if an earlier date is specified in the agreement giving rise to the BRC (this agreement must be attached to the BRC).

See s. 159(1), *The Real Property Act*

PPSA registrations

Notices 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.

See s. 49(6), *The Personal Property Security Act*

Notices 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.

Builders' liens

Builders' 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.

See s. 49(2), *The Builders' Liens Act*

Judgments

The district registrar will not lapse judgments that appear to be statute barred. The Judgments Act gives the power to vacate a statute barred judgment to the courts and not to the district registrar.

See s. 11(1), *The Judgments Act*

Mortgages

Use of eMortgage form

All mortgages must be completed using the eMortgage smart form.

Corporations

Where the **mortgagor** is a corporation, the district registrar will require the evidence of corporate status. See **Transfers** (below) for an explanation of the type of evidence required.

Where the **mortgagee** is a corporation, evidence may be required as to corporate status. If the mortgagee is a Manitoba company in good standing no further evidence needs to be provided – our staff will search the Companies Office database. If the mortgagee is extra-provincially registered, a certificate of status (or equivalent) from the foreign jurisdiction must be provided. This document can be no more than two years old.

There are certain exceptions to these requirements, and in those cases the district registrar 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 uploaded as a supporting document with the mortgage in the eRegistration portal or registered 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.

Interest of multiple mortgagees

Where a mortgage has multiple mortgagees, and it is the parties' intent that the mortgage vest

in the remaining mortgagees in the event of the death of any one of them (a right of survivorship), the mortgage should express this. To indicate that a mortgage is to be held jointly select, "The mortgagees hold the mortgage jointly" in box 4 of the eMortgage. The district registrar will not assume that multiple mortgagees are joint tenants unless this is indicated.

Mortgagees cannot hold a mortgage as tenants in common of specified interests (i.e. each as to an undivided one-half interest).

See s. 96(3), *The Real Property Act*

Where multiple mortgagees 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 is entitled to. Box 4 of the eMortgage provides for this information to be entered in boxes captioned, "Share or fractional interest of the mortgage monies contributed," and, "Details of any agreement for sharing the proceeds of the mortgage."

See s. 96(3)(a)-(c), *The Real Property Act*

Mortgages by one of several joint tenants

Given the specific nuances of *The Real Property Act* of Manitoba, it is the position of the district registrar that a mortgage by some but not all of the joint owners of land has the effect of severing the 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 registered. Once the joint tenancy has been severed, the mortgage by one of the owners can then be registered.

See s. 79(1)-(5), *The Real Property Act*

Mortgages without a principal amount

While the district registrar currently accepts 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. The district registrar does not recommend leaving the principal amount blank as there is case law to suggest that this may impair your security.

Mortgages registered in series behind other charges

Mortgages registered subsequent in series to other encumbrances charging the same lands must be made subject to those encumbrances. This can be done by selecting, "Registered prior in series" in box 3 of the eMortgage and then indicating the instrument type for that charge.

Discrepancies between a name on title and in a mortgage

The name of the mortgagor must be exactly the same as the name of the registered owner on title. 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, a request/transmission form must be filed prior in series to the

mortgage to correct the name of the registered owner on the incorrect title. See **Witnessing rules** (below) for a summary of the rules governing the witnessing of mortgages.

Personal property security notices

Registration in the Manitoba land titles system

Form 25.1 is used to register these notices. It can be found here: teranetmanitoba.ca/land-titles/land-titles-forms/

Discharge

Notices are discharged using the standard discharge form. 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.

Assignment

Notices can be assigned or transferred using the transfer of security interest form (form 26.1). It can be found here: teranetmanitoba.ca/land-titles/land-titles-forms/

Amendment and renewal

Notices may be renewed or amended using either the request/transmission form (form 15.1) or the amending agreement form (form 9.1).

They can be found here: teranetmanitoba.ca/land-titles/land-titles-forms/

Lapsing

Notices 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.

See s. 49(6), The Personal Property Security Act

Notices 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.

Postponements

Registration

Form 8.1 is used to register a postponement. It can be found here: teranetmanitoba.ca/land-titles/land-titles-forms/

Effect

Postponements change the registration priority of the affected instruments, changing them vis-à-vis each other.

See s. 109(2), *The Real Property Act*

Cannot postpone to prior instrument

A postponement will not be accepted by the district registrar to postpone the registration of an encumbrance to one that already has registration priority.

Priority of advances

Where the holder of a mortgage or encumbrance has advanced funds before a prior mortgage or encumbrance and the parties wish to avoid the effect of *The Mortgage Act* as it relates to their respective priorities, they can execute a postponement of advances agreement. This is a private agreement between the parties and does not have any effect on the priority of registrations or on other instruments. If the parties wish, they can give notice of this agreement by way of caveat, selecting, "Postponement of Advances" form the drop-down list in box 3 of the eCaveat. The registration numbers of the relevant instruments should be entered into box 6 of the eCaveat.

See s. 17, *The Mortgage Act*

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 rules** (below) for a summary of the rules governing the witnessing of postponements.

Powers of attorney

Language construed strictly

Every power of attorney used to convey land and interests in land will be reviewed in its entirety. In keeping with the common law, the language will be construed quite strictly. Where a power of attorney contains a specific grant, accompanied by general language, the general language will be strictly construed, and the district registrar 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. Leclaire [1930] 2 D.L.R.427 [Man. K.B.]

Power of attorney limited to specific transaction

Where a power of attorney is only intended to be used for a specific real property transaction, the power of attorney should contain the legal description of the relevant lands. Where the power of attorney contains a civic address and not the legal description, at the time of execution of the relevant document (transfer, mortgage, etc.) the attorney should include a statement on their signature page providing that the lands as described by the civic address are the same lands as the lands legally described in the conveyance document. For example: 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.

Specific provisions required

There are certain powers that an attorney constituted by a properly drafted power of attorney cannot exercise without specific authorization. The following is a discussion of those powers.

Power to mortgage

Where a power of attorney document contains an enumerated list of the powers that the attorney can exercise, the attorney will only have the power to execute mortgages if there is a specific grant of that power.

See Andrews v. Sinclair [1923] 2 W.W.E. 166 [C.A.]

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, the district registrar will not accept such a conveyance. This applies to gifts as well as to any other conveyances for nominal or insufficient consideration.

Transfers to an attorney

Unless specifically authorized by the power of attorney, named attorneys may not use the

power of attorney to transfer a donor's land to themselves nor can they otherwise benefit from the exercise of their power (for example the execution of a discharge of mortgage on behalf of a 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, the district registrar 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

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 s. 10(1), *The Powers of Attorney Act*

To be validly constituted these enduring powers of attorney must be witnessed in accordance with the provisions of the legislation. See **Witnessing the power of attorney document** (below).

***Homesteads Act* Consents, Releases, etc.**

The power of attorney document must contain a specific provision allowing the attorney to execute releases and consents under *The Homesteads Act*.

See s. 23(1), *The Homesteads Act*

In addition, for those powers to be effective, Form 9 under *The Homesteads Act* (Acknowledgement by Spouse or Common-law Partner for Power of Attorney) must be executed and attached to the power of attorney.

See s. 23(3) & 23(4), *The Homesteads Act*

Form 9 can be found here:

http://web2.gov.mb.ca/laws/regs/current/_pdf-regs.php?reg=121/93

Witnessing the power of attorney document

See **Witnessing rules** (below) for the rules governing the witnessing of those powers of attorney that do not continue after mental incompetence. The rules governing the witnessing of enduring powers of attorney are as follows:

Manitoba enduring powers of attorney

Where a power of attorney signed in Manitoba 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 *The Powers of Attorney Act*. See s. 11(1), *The Powers of Attorney Act*

If the witness is a lawyer and they provide their name, position and address no affidavit of witness is required. In all other cases an affidavit of witness is required.

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 witnessing of enduring powers of attorney in *The Powers of Attorney Act* do not apply to enduring powers of attorney executed outside of Manitoba. See s. 25, *The Powers of Attorney Act*

In order to accept a foreign enduring power of attorney (one executed outside of the Province of Manitoba), the district registrar must be provided with 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.

This letter can come 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

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

Powers of Attorney from Corporations

The donor in a power of attorney from a corporation must be the corporate entity. The district registrar 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.

Notary Copies

Either the original power of attorney document or a notarized copy of such original is required.

Notarized copies of notarized copies and notarized copies of facsimile or photocopies will not be accepted. When submitted through the eRegistration portal, the scanned image may be of either the original or of a notarized copy.

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 stamp containing sufficient information to fully identify the document in question.

Here is a sample of an acceptable stamp:

COMPARED WITH THE ORIGINAL CONSISTING OF _____ PAGES AND CERTIFIED TO BE A TRUE COPY OF
DATED THE _____ DAY OF _____, 20_____

Homesteads Act Issues

Executing *Homesteads Act* consents, release, etc.

Specific Authority Required

Absent specific authorization, an attorney cannot execute a consent to a disposition, a consent to a change of homestead or a release of homestead.

See s. 23(1), *The Homesteads Act*.

In addition, for those powers to be effective, Form 9 under *The Homesteads Act* (Acknowledgement by Spouse or Common-law Partner for Power of Attorney) must be executed and attached to the power of attorney.

See s. 23(3) & 23(4), *The Homesteads Act*

Form 9 can be found here:

<http://web2.gov.mb.ca/laws/regs/current/pdf-regs.php?reg=121/93>

Spouse cannot execute *Homesteads Act* consents, release, etc.

Under no circumstances can an attorney 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 s. 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 s. 24 and s. 4(d), *The Homesteads Act*

***Homesteads Act* special authority clause**

Many modern powers of attorney contain a clause allowing 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 the alternate attorneys to execute releases and consents under *The Homesteads Act*. This addition is helpful, however many such clauses are lacking in one of essential element: they do not provide for the execution of a disposition of jointly held homestead property.

In order to protect from the difficulties that this situation can give rise to, powers of attorney need include a clause specifically authorizing an alternate attorney to act in place of the primary attorney for dispositions of jointly held property that is the parties homestead where the primary attorney cannot act because they are also the spouse or common law partner of the donor.

Substitute attorneys

Termination of authority of substitute attorney

Many powers of attorney authorize an attorney to appoint substitute attorneys. The authority of such 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 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 attorney limited to those of the named attorney

A substitute attorney appointed by a named attorney cannot have 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 exercise this power.

Alternate attorney acting

Generally

An alternate attorney under a power of attorney can only act under those circumstances specified in the power of attorney document. The district registrar will require evidence supporting the right of the alternate attorney to act.

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. The district registrar is guided by *The Powers of Attorney Act*. In these cases, the district registrar will accept dispositions by an alternate attorney where the primary attorney has become bankrupt, mentally incompetent or has died. An alternate will also be able to sign where the first named attorney is legally incapable of doing so because the document in question effects a disposition of homestead property.

See s. 13(d), *The Powers of Attorney Act*

Alternate attorney executing a disposition of the homestead

Many modern powers of attorney contain a clause allowing 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 the alternate attorneys to execute releases and consents under *The Homesteads Act*. This addition is helpful, however many such clauses are lacking in one of essential element: they do not provide for the execution of a disposition of jointly held homestead property.

In order to protect from the difficulties that this situation can give rise to, powers of attorney need include a clause specifically authorizing an alternate attorney to act in place of the primary attorney for dispositions of jointly held property that is the parties homestead where the primary attorney cannot act because they are also the spouse or common law partner of the donor.

Powers of attorney from trustees

The trustee of an estate (executors or administrators) may delegate to another person by power of attorney all or any of the powers vested in them as trustee. This is subject to numerous strict restrictions:

1. The trustee must be intending to remain out of the province for a period exceeding one month (evidence on this point will be required, including evidence that at the time of the exercise of the power by the attorney, the donor was out of the province).
2. The person appointed may not be the only other co-trustee.
3. The power of attorney shall be attested to by at least one witness.
4. The power of attorney must be filed in the land titles office of each land titles district in which trust property is located within 10 days after its execution, together with a

statutory declaration by the donor that they intend to remain out of the province for a period exceeding one month from the date of the declaration, or from a date therein mentioned.

See s. 36, *The Trustee Act*

The power of attorney does not come into operation unless the donor is out of the province, and is revoked by their return.

See s. 36(3), *The Trustee Act*

Springing powers of attorney

Where a power of attorney contains a clause providing that the power comes into force upon the occurrence of a specified contingent event (i.e. mental incompetence) the district registrar must be satisfied that the specified condition has occurred. Mere execution of a document by the attorney in a springing power of attorney is not as proof that the power they are relying on has vested.

If a springing power of attorney sets forth the manner for determining if the specified event has occurred, the district registrar will require this evidence. For example, if a power comes into force upon the mental incompetence of the donor and the power of attorney states that the declaration of one doctor is required, the district registrar must receive this declaration.

If the specified condition is the mental incompetence of the donor, and the power of attorney does not specify the manner for determining if this has occurred, the declaration of two duly qualified medical practitioners will be required.

See s. 6(4), *The Powers of Attorney Act*

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, the district registrar will allow multiple attorneys to act jointly, concurrently or successively, provided that this is in accordance with the power of attorney document.

Power of attorney with an enduring clause

Joint attorneys

For those powers of attorney that continue after mental incompetence, *The Powers of Attorney Act* has created special rules governing the decision making for attorneys appointed jointly. 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 s. 18(1), *The Powers of Attorney Act*

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

See s. 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, the district registrar will accept execution by less than all of the attorneys. In such cases the registrar will require evidence that the decision was that of the majority (where available) or of the first named where a majority cannot 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 the their attorneys. This section does not contemplate the appointment of concurrent attorneys.

Section 17(2) of the Act 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.

Read together, sections 17(1) and 17(2) suggest 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.

This interpretation of section 17 makes 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 to the detriment of the donor. Control of multiply appointed attorneys is usually exercised by the donor; they can remove attorneys where they aren't acting appropriately. When the donor is no longer available, there is no one to reign in attorneys that aren't cooperating.

This isn't the only instance where legislation has the effect of frustrating 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.

It is important to note that the enduring power of attorney does not exist at common law and is a creation of statute. Accordingly the rules of the common law do not apply to these documents.

The Real Property Application (RPA)

Execution / Witnessing requirements

See **Witnessing rules** (below) for a summary of the rules governing the witnessing of real property applications.

RPA not to be registered in series

Other than a mortgage of the subject lands, new system documents (for example a transfer of land) are not to be registered in series with an RPA.

See s. 30(1) and s. 99, *The Real Property Act*

Direction

A direction is to be inserted into an RPA when the party taking title will 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 VII** for a sample of such an affidavit.

Applications by executors of administrators

Where old system lands are owned by a person who has passed away, and the parties involved want to have a new system certificate of title for those lands, an application may be made by the executors or administrators of the estate. Evidence of their appointment in the form of letters of administration or a grant of probate must accompany the RPA.

Where an application is made by the executors or administrators of an estate, title will issue into the name of the executors or administrators in that capacity unless the RPA contains a direction. Once the new system title has issued, the executors or administrators are free to transfer the lands to a purchaser or a beneficiary without the need for any special evidence regarding the estate.

Direction by executors or administrators

Where the parties intend for title to issue into the name of a party other than the executors or administrators in their capacity as executors or administrators, a directed real property application must be filed. In addition to all other requirements of a regular RPA, the district registrar will require evidence concerning the estate.

The district registrar will not permit a disposition other than in accordance with the will (if there

is a will).

The following is a list of the evidence that must be presented with a directed RPA by an estate:

1. Grant of probate or 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 Dependants Relief Act* (note that the limitation period under *The Dependants Relief Act* is six months from the date of the grant of 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 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 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 there has been a disposition of the subject the lands in the old system by the executors or administrators of an estate.

Registration Details Application (RDA)

Registrations submitted in paper, and not through the eRegistration portal, must be accompanied by a form called the registration details application or RDA for short.

When completed the RDA form will contain a list of documents to be registered in series, including the order in which they are to be registered. It must contain a complete and current list of the titles and instruments affected by the documents to be registered.

Please ensure that your full name, address, phone number (together with extension number where applicable), and your e-mail address are all on the RDA. A document series submitted without an RDA or with an incomplete or illegible RDA form will be returned without registration.

If the documents that you have submitted are not suitable for registration the reasons for rejection will be endorsed on the RDA.

See s. 63(1), *The Real Property Act*

The RDA form can be found here:

http://www.tprmb.ca/tpr/land_titles/lto_offices/forms.html

Instruments or series of instruments submitted through eRegistration do not need to be accompanied by a separate Registration Details Application (RDA) form. The information contained in eRegistration constitutes the approved RDA form. It captures all of the information and provides all of the relevant functionality of the RDA form.

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) to 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 Manitoba are governed by *The Religious Societies' Lands Act*. This legislation governs the manner in which religious societies that don't have specific governing 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:

Transfer to a religious society

Transfers Expire

Transfers to a religious society must be registered at land titles within 12 months of 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. See s. 14(1) and s. 14(2), *The Religious Societies' Lands Act*

Transfer from a religious society

When 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:

1. 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
2. A court certified copy of an order by a judge of the Court of Queen's Bench approving the sale.

See s. 21 and s. 22(1), *The Religious Societies' Lands Act*

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

When 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:

1. 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
2. A court certified copy of an approval of by a judge of the Court of Queen's Bench.

See s. 24 and s. 26, *The Religious Societies' Lands Act*

Religious societies uniting

When 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:

1. 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
2. A court certified copy of an approval of by a judge of the Court of Queen's Bench.

See s. 24 and s. 26, *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 the Registrar-General orders.

See s. 23, *The Religious Societies' Lands Act*

Transfer of cemetery to a cemetery company or municipality

A religious society may transfer any land used by it for cemetery purposes to either a company incorporated under *The Corporations Act* for the purpose of operating of cemetery or to a municipality.

This is done 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).

See s. 27(1), *The Religious Societies' Lands Act*

Mortgage from a religious society

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

See s. 15, *The Religious Societies' Lands Act*

Update named trustees

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

See s. 10(1), *The Religious Societies' Lands Act*

Rules governing resolutions

A resolution 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. The district registrar will accept a copy of this document certified by the secretary (or equivalent) of the religious society.

See s. 11(1), s. 11(2) and s. 11(4), *The Religious Societies' Lands Act*

Schedules

Use

Schedules are to be attached to documents where there is insufficient room in that document or in a particular box of that document for the information required for that document.

Schedules are not to be used with the eDischarge, eMortgage, eTransfer or eCaveat smart forms. The boxes on these forms expand as required.

Statements in schedules deemed sworn

The Real Property Act provides that any statements set out in a document, the form of which has been approved for use under that Act by the Registrar-General, 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 schedule is such a form, and accordingly, the completion and signing of it has the same effect as if the evidence contained therein was given in an oath, affidavit, affirmation or statutory declaration by the signatory.

See s. 194, *The Real Property Act*

Document incorporates schedule by reference

The following requirements must be observed for the contents of a schedule to be incorporated into the body of a document:

1. The schedule must be referred to in the body of the original document. This is typically done by inserting a given letter into the box provided following the expression "see schedule".

2. The schedule must contain the following particulars:
 - i. It must specify the type of document to which it is attached;
 - ii. It must specify the parties to the document;
 - iii. It must provide the total number of pages in the schedule;
 - iv. The last page must be signed by all parties signing the document;
 - v. All other pages must be initialled by all parties signing the document; and
 - vi. It must specify the date of the document to which it is attached (see below for discussion).
3. The original document must be signed by the appropriate parties (see below for discussion).

Date

When completing a schedule, the date to be inserted must be the execution date of the document that the schedule forms a part of. Do not use the date that the schedule was signed unless, of course, 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 required so as to identify the document that the schedule forms a part of and the inclusion of the date of that document will make that process more certain.

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 that the last person executed the document.

Original document must be signed

Where there is insufficient room on a document 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 also sign on the original document. All formalities and rules regarding both execution, dating and witnessing must be followed.

Execution is required on the original document to ensure that the document the schedule is meant to be attached to and form a part of is the document that it 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 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.

Supporting pieces of evidence are not schedules

Where pieces of evidence such as a birth or death certificates are being submitted, they are to be attached to the document without being marked as schedules. Schedules contain information that belongs in the original document but for which there is insufficient room.

Severance of Joint Tenancy

Severance by a joint tenant with notice

The process to be followed to sever a joint tenancy by notice (in accordance with section 79 of *The Real Property Act*) is as follows:

1. Complete Notice of Intention to Sever Joint Tenancy (form 20). Do not register this at Land Titles.
 - i. At common law there is no notion of a severance allowing a party to claim an unequal share. While form 20 leaves the fractional interest to be claimed blank, it does not specifically allow or even contemplate an unequal claim. For a joint tenancy to exist, the parties must have equal shares. Those who believe they are entitled to a greater share must make application to court for an order of partition.
2. Personally serve the form 20.
3. Wait 30 days.
4. Register the severing instrument with Land Titles
 - i. The severing instrument can be a conveyance of an interest by the joint tenant to a third party or, for a severance by a joint tenant without a disposition, the severing instrument can either be a Transfer of Land by the severing joint tenant to themselves or it can be a request/transmission.
 - ii. An affidavit of service of the form 20 (with a copy of the actual form 20 that was served attached thereto as an exhibit) must be submitted with the severing instrument. When using eRegistration, this affidavit is to be added to the severing instrument as a supporting document.

Where a joint tenant served with the form 20 wishes to contest the severance, they must file evidence with the district registrar confirming that they have taken court proceedings to oppose the severance. This should include court certified copies of the originating document in court (Statement of Claim), together with any relevant motions. The evidence should be attached to a request/transmission form (form 15) and submitted in the eRegistration portal as a miscellaneous (MISC) instrument.

Once evidence of proceedings has been filed the district registrar will not complete the registration of the severing instrument; nor will land titles process a survivorship request in the event that either of the joint tenants dies, unless either a court order or consent to that registration by the estate of the deceased joint tenant is received. This is because there is no certainty as to whether or not the joint tenancy has been severed.

The forms (transfer, request/transmission and form 20) can be found here:
teranetmanitoba.ca/land-titles/land-titles-forms/

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.

Not available for certain documents

The district registrar will not issue a thirty day notice for district registrar caveats, building restriction caveats, easement agreement caveats, judgments for child support, or judgments for spousal support.

Where the instrument in question is a judgment, and the applicant is requesting the notice based upon the fact that, in their opinion, the courts made an error in issuing the judgment, the district registrar will not issue the notice. The correct procedure is to file an appeal with the courts within the required time.

The district registrar will not issue a thirty day notice to remove a judgment because the judgment has been on title for a length of years (i.e. for 10 years). Legislation gives the power to vacate a statute barred judgment to the courts and not to the district registrar.

See s. 11(1), *The Judgments Act*

The process

Application for the notice

The thirty day notice process is started by filing a request/transmission form asking that a thirty day notice be issued. In box 2 of the request form insert language to the effect of "Request thirty day notice regarding caveat 1234567/1."

Where the instrument to be removed is a builders' lien, the district registrar will automatically issue the thirty day notice upon receipt of the request.

Where the instrument to be removed is a caveat or a judgment, the district registrar 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.

Service

Upon being satisfied that it is appropriate to issue a thirty day notice, the district registrar will prepare and forward the notice to the applicant.

It is the applicant's responsibility to serve the thirty day notice as directed therein.

Where there appears to be a good address for service on file in the land titles system for the holder of the subject instrument, the district registrar will give instructions for service of the notice to be made by sending it by registered mail to that address.

Where there is no suitable address, personal service will be ordered.

Application for Removal of the Instrument

Once service of the thirty-day notice has been made and the time period specified in the notice has passed without any action having been taken by the claimant in the subject instrument, a second request may be filed.

In box 2 of the second request insert language to the effect of "Request lapse of caveat 1234567/1 by virtue of service of thirty 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 that was 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, the district registrar 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.

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, the district registrar 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.

No order of substitutional service is required where the thirty day notice calls for registered

mail service but the notice was actually served personally on the holder of the subject instrument. Personal service is always valid.

Pending Litigation Order / Proof of Proceedings

The district registrar will not lapse an instrument through the thirty day notice process where appropriate proof of proceedings has been filed with them.

Builders' Liens

The district registrar will not lapse a builder's lien from title where a pending litigation order drawn in accordance with Form 9 in the Schedule to *The Builders' Liens Act* has been registered.

See s. 50(1) *The Builders' Liens Act*

It is important to note that the pending litigation order does not have to have been registered by the specific party served with the thirty day notice.

See s. 61(1), *The Builders' Liens Act*

Caveats and judgments

The district registrar will not lapse a caveat or a judgment from title where the registrant has, within the time period specified in the notice, filed with the district registrar proof of proceedings taken in the Court of Queen's Bench to establish/protect their claim. This can include a pending litigation order.

See s. 75(12) and s. 150(1), *The Real Property Act*

Transfers

Use of eTransfer form

Transfers of land must be completed using the eTransfer smart form, with the following exceptions:

- Transfers under power of sale in mortgage sale and foreclosure proceedings
- Transfers of mortgages
- Transfers of leasehold titles
- Transfers of encumbrances

Corporations

Where land is transferred either to or from corporation, a search of the companies office database will be made to ascertain if the corporation has the corporate status to permit the transaction. 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 bodies corporate carrying on business in Manitoba to be registered under that act. A transfer will not be accepted where either a transferor or a transferee does not have the requisite corporate status.

See s. 187(2) and s. 187(3), *The Corporations Act*

There are certain exceptions to the requirement for registration in the companies office. Where that registration is not required the district registrar may require such other 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 it can be registered at a prior time 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

The full and complete names of all transferees must be set out in every transfer. Initials used in place of full names are not allowed.

In the event that an individual uses an initial, not because they do not wish to set out their full middle name, but rather for identification purposes, the transfer of land must contain a statement signed from the transferee to that effect.

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 (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

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. Typically this will be amount paid by a knowledgeable and willing buyer to a knowledgeable and willing seller where the parties are unconnected and equally motivated.

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 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.
- The amount that was paid for the lands where that amount is less than the true fair market value of the lands.

Improvements made prior to registration of 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

The district registrar 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 - 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 even if that information was correct at some point in time in the past.

Exemptions from Land Transfer Tax

In certain circumstances, transferees are exempt from paying land transfer tax. There are numerous circumstances when this tax may not be payable. The smart eTransfer provides relevant options based upon the nature of the transferee selected.

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 a family farm corporation 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 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 transferee is acquiring the land for the use and benefit of an Indian band for treaty land entitlement purposes pursuant to s. 113(3) of *The Tax Administration and Miscellaneous Taxes Act*.
- The transferee is a non-profit corporation that is controlled by the transferor which is a registered charity as defined in s. 248(1) of the *Income Tax Act*.

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

See **Witnessing rules** (below) for the rules governing the witnessing of transfers.

Witnessing rules

The law governing the witnessing of land titles documents has changed quite dramatically. In particular, changes now mandate a high 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 VIII**.

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 has 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, such as 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

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, municipalities and their agencies** (below) for a summary of the rules regarding the witnessing of disposition documents executed by governments and governmental agencies.

The witnessing rules have been incorporated into the smart eForms (the eDischarge, eCaveat, eMortgage and eTransfer) and as a result the options available on the signature pages will be in keeping with these rules.

Rules for 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.

Rules for 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.

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 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;
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.

Witnessing rules for governments, municipalities 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

may be executed in any 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 rules do not apply to those documents executed by the Government of Canada where the signature is not witnessed, but there is a proper counter-signature by an officer from the Department of Justice.

Ancillary 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.

Sample information from witness

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 document (the smart eForms will prompt for this information):

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

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

Schedule II

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

Affidavit of lost duplicate title for estate

In the matter of lost duplicate certificate of title number _____.

I, _____, and I, _____, 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

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 _____ (the "Title").
2. 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 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. (Inset 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

Affidavit of lost duplicate title for lender

In the matter of lost duplicate certificate of title number _____.

I, _____, make oath and say / hereby affirm 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. 1234567/1 registered against the lands described in certificate of title no. 2345678/1.
3. I believe that duplicate certificate of title no. 2345678/1 (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 / 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

Affidavit to accompany directed real property application

In the matter of the attached directed Real Property Application

I, _____, and I, _____, (severally) make oath and say / hereby affirm 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. The registration of this instrument does not contravene the provisions of *The Farms Land Ownership Act* because _____.
- 4. The registration of this instrument does not contravene the provisions of *The Homesteads Act* because _____.

(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 VIII

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:

- (i) Be a witness to the document; or
- (ii) 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 Witnessing 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	NO WITNESS REQUIRED	
Caveats	NO WITNESS REQUIRED	
Condominium declarations	<u>5</u>	<u>6</u>
Condominium liens, bylaws, amending declarations, amending by-laws.	NO WITNESS REQUIRED	
Consents (to easements, condominium declarations, amending agreements)	Executed by a corporation with a seal, or Witnessed by: <ul style="list-style-type: none"> • A lawyer - stating their name, position, and address; or • A competent adult, with an Affidavit of Witness. 	
Debentures	Executed by a corporation with a seal, or Witnessed by: <ul style="list-style-type: none"> • A lawyer - stating their name, position, and address; or • A competent adult, with an Affidavit of Witness. 	
Discharges	<u>5</u>	<u>6</u>
<i>Homesteads Act</i> notices, releases, consents, etc.	<ul style="list-style-type: none"> • Governed by <i>The Homesteads Act</i>. • Witness requirements are usually found on the LTO form. 	
Instruments attached to caveats	LAND TITLES DOES NOT EXAMINE EXECUTION	
Instruments granting statutory easements	<u>5</u>	<u>6</u>
Judgments (Form 21)	NO WITNESS REQUIRED	
Legal aid statements	NO WITNESS REQUIRED	
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	NO WITNESS REQUIRED	
Old System (<i>Registry Act</i>) documents	<ul style="list-style-type: none"> • Executed by a corporation with a seal, or • Witnessed by a competent adult, with an Affidavit of Witness. (including lawyers & notary publics) 	
<i>Personal property Security Act</i> notices	NO WITNESS REQUIRED	
Postponements	<u>5</u>	<u>6</u>
Powers of attorney - enduring powers of attorney	<ul style="list-style-type: none"> • 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>. • If the witness is a lawyer they must state their name, position and address. No Affidavit of Witness is required. • If the witness is not a lawyer, an Affidavit of Witness is required. • If executed outside of Manitoba, the laws of that jurisdiction apply. 	
Powers of attorney - lacking enduring clause	<u>5</u>	<u>6</u>
Real property applications without direction	<ul style="list-style-type: none"> • Executed by a corporation with a seal, or • Witnessed by a competent adult, with an Affidavit of Witness. (including lawyers & notary publics) 	
Real property applications with direction	<ul style="list-style-type: none"> • Executed by a corporation with a seal, or • Witnessed by a competent adult, with an Affidavit of Witness. (including lawyers & notary publics) 	
Requests	NO WITNESS REQUIRED	
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>
