

REAL PROPERTY APPLICATIONS

EXECUTION / WITNESS REQUIREMENTS

The signature of the applicant in a Real Property Application (RPA) must be properly witnessed and the witness must swear an affidavit of execution. This is the case even where the witness to the execution is a lawyer / notary public. The only exception to this rule is where the applicant is a corporate entity signing with the corporate seal affixed. In this case, no witness is required.

RPA TO BE REGISTERED ON ITS OWN

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

DIRECTION

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

Where an RPA contains a direction, much as in a Transfer of Land, the RPA must contain *Homesteads Act*, *Farmlands Ownership Act*, and evidence as to 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 XVII** for a sample of such an affidavit

APPLICATION BY EXECUTORS / ADMINISTRATORS OF AN ESTATE

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

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

REAL PROPERTY APPLICATIONS (continued)

DIRECTED APPLICATION BY EXECUTORS / ADMINISTRATORS OF AN ESTATE

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

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

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

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

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