

## 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 the Registrar General or Deputy Registrar General for “fiating”.

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

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

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

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

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

There is no fee for having a debenture fiated. The fee to register the fiated debenture is the same as the fee to register a mortgage, \$70.00 (in each office the debenture is registered in).

### REQUIREMENTS

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

## **DEBENTURES (continued)**

### **REQUIREMENTS (continued)**

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

Note: Notwithstanding the fact that the (Deputy) Registrar General 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.