

Subject: **TRANSMISSION ON DEATH**

## BACKGROUND

Transmission "applies to change of ownership consequent on death, mental incapacity, sale under execution, order of court, or other act of law, sale for arrears of taxes or on a settlement or any legal succession in case of intestacy". (1) An application for transmission consequent upon death is the most common form of transmission. The other forms of application for transmission have been covered in procedures for those specific topics.

When the owner of land for which a certificate of title has been granted dies, the land vests in the personal representative of the deceased owner. (2) The personal representative must make application to be registered as owner before he may deal with the land. (3)

The personal representative in an estate may be an executor, an administrator or a trustee. If there is more than one personal representative of the estate, the rule of survivorship applies. (4) An executor is appointed by the court pursuant to the terms of the will of the deceased and in the event of the executor's death, his executor has authority to continue with the business of the estate. If the executor dies intestate (i.e., no valid will), the court must appoint an administrator *de bonis non* (TRANSLATION: of goods not administered) to complete the administration of the estate left without a legal representative. An administrator is appointed by the court either where the deceased dies intestate or where an executor is appointed and is unwilling or unable to act. As the deceased does not choose the administrator, the administrator's executor does not take over his responsibilities as administrator but rather, an administrator *de bonis non* must be appointed by the court. (5)

In many other land registration systems, dealings by a personal representative must be checked to ensure that they are authorized by the will of the deceased or the court appointment of the personal representative. In Alberta, however, the personal representative is deemed to be the absolute and beneficial owner for the purpose of registered dealings with the land. (6) Notwithstanding section 47, which prohibits the acknowledgment of a trust on a certificate of title, a personal representative is described as such on the title so that proper evidence concerning infants interested in the estate will be obtained when the personal representative deals with the land. (7)

## REGISTRATION PROCEDURE

### A. TRANSMISSION OF REGISTERED OWNERSHIP

1. An Application for Transmission on Death form has been developed ([FORM A](#)) for use when a personal representative has been appointed but any document, which provides all the necessary information, can be accepted.

2. An original or a certified copy of the grant of probate or letters of administration under seal of the Court of Queen's Bench of Alberta must be attached to the application. A notarized copy or a photocopy is unacceptable. If it is issued from a court of a jurisdiction other than Alberta, it must be re-sealed by the Court of Queen's Bench. (8) If an original grant is submitted, it should be photocopied and the photocopy certified by an Assistant Deputy Registrar as a true copy of the original. The original should then be returned to the registrant.

3. The name of the deceased in the grant of probate or letters of administration must be consistent with the registered owner. If there is any discrepancy, confirmation of identity must be obtained. (9)

4. The application is to be completed by the personal representative or his solicitor. (10) Neither a witness nor an affidavit of execution is required.

5. A mailing address for the personal representative is required and is endorsed on the new certificate of title.

6. If Y, the executor of the will of X, dies, his executor Z may apply for a transmission and the title will read as follows:

"Z executor of the will of X".

7. Where Z is appointed by the court as an administrator of unadministered property (*de bonis non*) for the estate of X, no reference is made on the certificate of title to the intervening personal representative.

8. Letters of administration or an order appointing a person as administrator which limit the administrator's authority to deal with the real property in a deceased's estate may be registered. (11) To notify persons dealing with the property that the authority of the administrator is limited, a memorandum of the letters of administration or order is also endorsed against the title as follows:

"ORDER LIMITING ADMINISTRATOR'S AUTHORITY".

9. Letters of administration, which only authorize the administrator to collect or take charge of the assets of a deceased's estate, are not registrable, as they do not authorize the administrator to sell, distribute or otherwise deal with assets.

10. When a person dies testate or intestate, in or out of Alberta, leaving property in Alberta, the gross value of which as estimated by the Public Trustee does not at the time of the election mentioned in this section exceed an amount prescribed by regulation, and no person has taken out letters of administration, the Public Trustee instead of obtaining letters of administration may make an election in writing electing to administer the estate. A Court Certified copy of the election can be submitted with the application for transmission. (12)

11. **Fees** - The fee in [Tariff item 11\(4\)](#) is charged.

## **B. TRANSMISSION OF INSTRUMENTS OR CAVEATS**

1. A personal representative may submit an application for transmission of an instrument or caveat registered in the name of a deceased person. The requirements listed above apply. Although the provisions of section 117 refer to an estate or interest in land for which a certificate of title has been granted, it is established practice to apply the provisions to a caveat in order that the personal representative may deal with the interest claimed by the deceased.

2. If the personal representative submits a grant of probate or letters of administration with a transfer or discharge of an instrument or caveat, a formal application to transmit is not required. The instrument or caveat is transmitted under a separate registration number given to the grant or letters prior to registration of the transfer or discharge.

3. **Fees** - The fee in [Tariff item 11\(6\)](#) is charged.

## **C. REPLACEMENT OF PERSONAL REPRESENTATIVE**

1. The Court of Queen's Bench may order that the administrator or trustee of a deceased's estate be discharged from his duties and replaced by a new personal representative. (13) An application for transmission completed by the new personal representative or his solicitor and a certified copy of the order may be accepted for registration. Alternatively, a transfer from the personal representative currently registered as owner to the new personal representative accompanied by a certified copy of the order appointing the replacement personal representative may be accepted. In both cases, documents are registered as a transmission and fees are charged accordingly.

2. If a certificate of title has been issued in the name of more than one personal representative and one of the personal representatives dies, a new personal representative may be appointed to replace the deceased personal representative. (14) When accompanied by proof of death of the deceased personal representative, an appointment executed by the surviving personal representatives and an application for transmission may be accepted for registration. Alternatively, a transfer from the surviving personal representatives to themselves and a new personal representative may be accepted. In both cases, documents are registered as a transmission and fees

are charged accordingly.

3. When a trustee dies or refuses to act or becomes incapable or unfit to act, the remaining trustee is empowered to appoint new trustee(s). (15)

a) The appointment must be original,

b) The appointment must include the statement that “there is no person empowered to appoint a new trustee by deed, will or other instrument creating the trust,

c) Evidence must be provided indicating the reason for the need of a replacement trustee.

## STATUTE AND CASE REFERENCES

Statute references are to the Land Titles Act, R.S.A. 2000, c. L-4, unless otherwise indicated.

1. s. 1(z.1)
2. s. 116(1)
3. s. 116(2)
4. s. 59, Administration of Estates Act, R.S.A. 2000, c. A-2
5. T.G. Feeny, *The Canadian Law of Wills: Probate*, at pp. 148 - 9
6. s. 118(1)
7. s. 116(5)
8. s. 116(3)
9. see procedure on Confirmation of Identity [IDE-1](#)
10. s. 116(2)
11. for example, an order granted under s. 26, Administration of Estates Act
12. s. 16(1), Public Trustee Act
13. s. 14(2), Trustee Act, R.S.A. 2000, c. T-8
14. s. 14(1), Trustee Act
15. s. 14(1), Trustee Act