

Subject: **AFFIDAVITS SWORN OUTSIDE OF ALBERTA**

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## **BACKGROUND**

Although section 152 pertains to affidavits of execution, its provisions have historically been applied to all affidavits required for Land Titles purposes.

## **REGISTRATION PROCEDURE**

1. The general requirements for affidavits of attestation apply. (1)
2. Section 152 permits the acceptance of affidavits made outside the province when sworn before the following officials.
  - a) **In a province of Canada other than Alberta**
    - (i) a judge of any court
    - (ii) a commissioner having authority to take affidavits in the particular jurisdiction (2) or an Alberta commissioner (3)
    - (iii) a notary public having authority in the particular jurisdiction or an Alberta notary under his official seal
    - (iv) if the jurat is completed by a Barrister or Solicitor in any province other than Quebec, it is not necessary to affix the notary seal. For jurats completed in Quebec, a solicitor's letter or statutory declaration confirming notary appointment, will permit registration.
  - b) **In Great Britain or Northern Ireland**
    - (i) a judge of the Supreme Court of Judicature in England or Northern Ireland
    - (ii) a judge of the Court of Session of Scotland
    - (iii) a judge of the Judiciary Court of Scotland
    - (iv) a judge of any of the County Courts within his county
    - (v) the mayor of a city or incorporated town under the common seal of the city or town
    - (vi) any commissioner in Great Britain or Northern Ireland authorized to take affidavits therein for use in any court of record in Alberta or an Alberta commissioner (3)
    - (vii) a notary public having authority in the particular jurisdiction or an Alberta notary under his official seal

- c) **In any British Dominion, Colony or Possession outside of Canada**
- (i) a judge of any court of record
  - (ii) a mayor of a city or incorporated town under the common seal of the city or town
  - (iii) an Alberta commissioner (3)
  - (iv) a notary public having authority in the particular jurisdiction or an Alberta notary under his official seal (3)
- d) **In any Foreign Country**
- (i) the mayor of any city or incorporated town under the common seal of the city or town
  - (ii) the Canadian or British consul, vice-consul or consular agent residing therein
  - (iii) a judge of any court of record
  - (iv) an Alberta commissioner (3)
  - (v) a notary public having authority in the particular jurisdiction or an Alberta notary under his official seal (3)

3. The office of the official must be clearly indicated with his signature. If the office or seal are in a foreign language which cannot be adequately interpreted by someone in the Land Titles Office, a statutory declaration by someone who can interpret the language stating what the office and seal mean in the English language can be accepted and attached to the document.

4. The official's name must be legibly printed or stamped near his signature (4) or his signature must be legible, as it may be necessary to locate the commissioner for evidentiary purposes if the execution of the document is challenged.

5. **Justice of the Peace** - If a Justice of the Peace has commissioned an affidavit but has not indicated that he is a commissioner or a judge of a court of record in the jurisdiction, the registrant must provide evidence establishing that a Justice of the Peace is authorized by a statute of the relevant jurisdiction to act as a commissioner or a judge of a court of record. The Alberta Justices of the Peace Act provides that Alberta Justices of the Peace are by virtue of their office commissioners for taking affidavits, declarations and affirmations and for administering oaths. (5)

6. **Defective Attestation** - The court may authorize the registration of an instrument notwithstanding that the proof of the execution may be absent or defective. (6) This will normally be done by a Fiat endorsed on the instrument. If it is by way of separate order, attach the order to the instrument. A Fiat does not require compliance with s. 180.1 of the Land Titles Act when dealing with defective or absent execution.