

Subject: **TRANSFERS**

## **BACKGROUND**

Section 68 of the Land Titles Act authorizes the use of Form 8 (prescribed by the Land Titles Act Forms Regulation) when titled land is intended to be transferred. The transfer is normally of a fee simple estate but the form is also used for a life estate or a titled leasehold estate. A quit claim deed is not an acceptable substitute for a transfer and cannot be accepted for registration.

## **REGISTRATION PROCEDURE**

1. As with any document submitted for registration, a full examination must be made to ensure compliance with all legal requirements. If the transfer must be rejected, all reasons for rejection must be listed to enable the registrant to cure all deficiencies at one time.
2. The following documents endorsed on the title might affect the registrability or the registration requirements for a transfer: (1)
  - special power of attorney
  - Registrar's caveat
  - court order
  - notation of an irrigable unit or land included in an Irrigation District
  - mentally incompetent certificate or a certificate under the Dependent Adults Act or a caveat by the Public Trustee
  - bankruptcy assignment or bankruptcy receiving order
  - order (Agricultural Service Board Act s. 16)
3. If the duplicate certificate of title ("D.C.T.") is not on file, it must be presented with the transfer. If the D.C.T. has been lost or destroyed, a statutory declaration must be presented. (2)
4. **Name and Interest of Transferor** - The names of the transferor and the registered owner must be consistent. For example, if the title shows John R. Smith, the transfer is acceptable if the transferor is shown as John Robert Smith or John Smith. If there is any doubt with respect to identity, evidence must be obtained by way of either an addition to the affidavit of execution or a separate statutory declaration explaining the discrepancy and establishing that the transferor and the registered owner are the same person. (3)

If the transferor's name has changed as a result of marriage, a marriage transmission pursuant to section 128 of the Land Titles Act may be registered, alternately, if the affidavit of execution is amended to include the previous and married name, the transfer may be accepted for registration.

If the transferor is a religious body, an executor, an administrator, a civil enforcement agency or the Crown, there are special requirements which are dealt with in separate procedures.

If the transferor is a Board of Trustees of a school district or a school division and the land is other than reserve land, a letter of approval from the Minister of Education is required. (4)

### **School Divisions/Districts**

Section 195 of the School Act sets out that a division shall be given a name and number in the following form:

The \_\_\_\_\_ School Division No. \_\_\_\_\_.

Section 217(1) of the School Act states that for each public school district not included in a division, the Minister shall by order establish a board and the members of the board are a corporation under the name of :

The Board of Trustees of \_\_\_\_\_ School District No. \_\_\_\_\_.

Section 217(2) of the School Act states that for each separate school district not included in a division, there shall be a board and the members of the board are a corporation under the name of:

The Board of Trustees of \_\_\_\_\_ Separate School District No. \_\_\_\_\_ .

Section 217(3) of the School Act states that for each school division, the Minister shall by order establish a board and the members of the board are a corporation under the name of:

The Board of Trustees of \_\_\_\_\_ School Division No. \_\_\_\_\_.

Section 217(4) of the School Act states that for each regional division, the Minister shall by order establish a board and the members of the board are a corporation under the name of:

The Board of Trustees of \_\_\_\_\_ Regional Division No. \_\_\_\_\_.

Documentation registering the interest of a school division that does not include in the name "The Board of Trustees" is to be accepted for registration. The examiner must enter the correct corporate name. Use &L on ALTA. Execution of documents by a school division need not include "The Board of Trustees" in its seal to be acceptable for registration.

5. **Legal Description** - The legal description on the transfer must be consistent with the legal description on the certificate of title.

If the legal description in the transfer omits:

- a) the mineral exception for a lot or block in a subdivision plan registered after July 1, 1950 (see (a) below), or
- b) a recent road exception, it is not necessary to reject for this reason alone but correction of the description should be requested if the transfer is rejected for other reasons. In each of these cases, the description in the title is used in the new title.

Any transfer where only part of the land described in the certificate of title is being conveyed must be checked by the Surveys section for legal description approval and compliance with subdivision approval requirements of Part 17 of the Municipal Government Act. The exceptions to this are as follows:

- a) where the areas of land described in the title consist of whole lots or blocks in a subdivision plan registered on or after July 1, 1950 and the transfer is of one or several of the areas:
  - Edmonton Office: all plans including and after Plan 1966 H.W.
  - Calgary Office: all plans including and after the G.D. series,
- b) where the areas of land are described in the title by reference to a subdivision plan registered prior to July 1, 1950 and the transfer dealing with some of the described areas is endorsed by the subdivision authority, and
- c) where a document with subdivision approval has already been registered in respect of the portion of the title being transferred (e.g., a caveat re an interim agreement for sale).
- d) where the certificate of title includes both surface and mines and minerals and the transfer is of surface or mines and minerals.

6. **Name and Address of Transferee** - At least one full given name for the transferee and an adequate mailing address must be provided. (5) If there are two or more transferees, the transfer must specify each name separately in full. It is not acceptable for the transferees to be described as "John and Mary Smith" or for a married woman to be described as "Mrs. John Smith". Her given name and surname are required.

If the transferee is a corporation, the requirements of section 30 of the Land Titles Act must be complied with. (6)

If the description of the transferee is followed by "Trustee" or "In Trust", no mention of the trust is made on the title (7) except where named individuals are described as trustees for a specific religious society or congregation. If a transfer to trustees as joint owners specifies that there is "no survivorship", this is included on the title after the names of the owners. Any future dealing with the land must be by all of the owners unless a court order directs otherwise. (8)

7. **Designation of Interest** - The transfer must either state that the transferor is transferring all his estate and interest in land or specify a lesser estate, such as a life estate.

It is not necessary to reject if the transferor does not specifically identify the estate which he holds as the title will show this.

If there are two or more transferees, the nature of the co-tenancy arrangement should be specified (e.g., joint tenants or tenants in common). However, if it has not been indicated, the transfer is registrable and the parties are deemed to hold as tenants in common but no indication of the tenancy is made on the title. (9)

If a transfer which fails to specify the nature of the co-tenancy is presented with another document, such as a mortgage or encumbrance, which indicates a joint tenancy arrangement, it must be rejected for clarification of the co-ownership arrangement.

If a transfer which fails to specify the nature of the co-tenancy arrangement is being rejected for other reasons, it should be suggested to the registrant that he may wish to specify the proportionate interests of the transferees to avoid the possible need to clarify the interests at a later date. (10)

Examples of the wording for co-tenancy arrangements are:

a) joint tenants: JOHN ROBERT SMITH AND MARY LOUISE SMITH AS JOINT TENANTS

b) tenants in common: JOHN ROBERT SMITH AS TO AN UNDIVIDED THREE-QUARTERS (3/4) INTEREST AND MARY LOUISE SMITH AS TO AN UNDIVIDED ONE-QUARTER (1/4) INTEREST or alternatively, JOHN ROBERT SMITH AS TO AN UNDIVIDED SEVENTY-FIVE PERCENT (75%) INTEREST AND MARY LOUISE SMITH AS TO AN UNDIVIDED TWENTY-FIVE PERCENT (25%) INTEREST.

8. **Execution Requirements** - The transfer must be executed by the transferor or his attorney pursuant to a registered power of attorney.

If the transferor is a corporation, the transfer must be sealed with the corporate seal containing the exact name of the corporation and countersigned by at least one officer or director of the corporation or executed by at least one officer or director of the corporation who has his signature attested to and completes a corporate signing authority affidavit pursuant to section 152.3. (6) The office held by the signing officer is not required, however its inclusion is encouraged. The seal may be a rubber stamp.

If the transferor is an individual, an original of the individual's normal signature is required. An initial for the surname is unacceptable. The signature must be witnessed and the witness must complete an affidavit of attestation, more commonly known as an affidavit of execution. (11)

If the proof of execution is defective, the Court may authorize registration notwithstanding the defect. (12) This is normally done by a fiat (i.e., order) endorsed on the document itself. If it is by way of separate order, the order is attached to the transfer.

The date of execution should be indicated. If the omission of the date is the only defect, it is not necessary to reject. However, if the document is being rejected for other reasons, suggest that the date be completed.

9. **Affidavit of Transferee** (Affidavit Re Value of Land - Form 32) - This affidavit may be completed by the transferee or an agent of the transferee. (13)

Clause 2 must outline the details of the consideration. This clause is important as it indicates whether rights under the transfer have been conferred for value and the Registrar is only empowered to make corrections "so far as practicable without prejudicing rights conferred for value". (14) Indicating "cash" was paid, without specifying the amount, is not sufficient, unless the amount has been specified in the consideration clause in the transfer. If part of the consideration is stated on the face of the transfer to be "other good and valuable consideration", there must be an explanation in the affidavit of transferee as to what the other good and valuable consideration is.

In showing the consideration on the certificate of title, the general principle is that where the total dollar amount is shown either in the body of the transferring document or in clause 2 of the affidavit of transferee, that amount is shown as the consideration. The following is a list of how the consideration should be shown on title in special situations. This list is not necessarily exhaustive.

<b>Consideration</b>	<b>Endorsement on Title</b>
- \$1.00, love and affection	NOMINAL
- settlement of estate	ESTATE
- gift	NIL
- quit claim	QUIT CLAIM
- matrimonial property settlement; insurance settlement; etc.	SETTLEMENT
- cash & assumption of mortgage; \$1.00 & assumption of mortgage; \$ amount cash to mortgage (where the total amount is not shown elsewhere)	CASH & MTGE.

If the transfer deals with parcels in more than one title the value is left blank and the consideration is "SEE INSTRUMENT." FEE CALC is used for the value as stated in the affidavit of transferee.

When the consideration in the transfer is ambiguous or difficult to summarize, the consideration is listed as "SEE INSTRUMENT".

Clause 3 requires that an opinion be given as to the present value of the land. "Land" includes buildings and other improvements affixed to the land but does not include personal property not affixed to the land. (15) The affidavit must be sworn within the preceding 2 years as the value of the land must be reasonably current. The Registrar has the authority to question the valuation of land. (16) Thus, if there is reason to believe that the value stated may not be the true current value, an explanation should be requested.

If only mines and minerals are being transferred, an affidavit which does not specify a value may be accepted. The affidavit must indicate that the value of the interest being transferred has not been ascertained and that there are no known minerals of marketable value included in the land being transferred. Nominal fees will be charged in this situation.

If a reserve lot is being transferred as a result of annexation, an affidavit indicating that the value of the land is nominal is acceptable in view of the land's reserve status.

The affidavit of transferee may be corrected after the registration of the transfer if the deponent made an error in the affidavit. A new affidavit must be sworn outlining the error and the correct particulars. The affidavit is registered as a correction (CORT) and fees are calculated by adding or subtracting the difference in value-based fees from the amount payable under Tariff item 11(6). Fees are recorded under "other services" using the code "VALU".

For example:

- a) if the value was originally shown as \$150,000 and the correcting affidavit indicates that the value is \$170,000, fees for the correction are \$30 (\$10 plus \$20).
- b) if the value was originally shown as \$150,000 and the correcting affidavit indicates that the value is \$145,000, fees for the correction are \$5 (\$10 minus \$5).
- c) if the value was originally shown as \$150,000 and the correcting affidavit indicates that value is \$130,000, the VALU code is not used. Instead, a credit adjustment or refund of \$10 (\$10 minus \$20) is made.

10. **Dower Requirements** - The provisions of the Dower Act must be complied with. (17)

11. **Foreign Ownership Requirements** - The provisions of the Foreign Ownership of Land Regulations must be complied with. (18)

12. **Transfers with Reserved Rights or Conditions** - A transfer which reserves any right or interest (e.g., an easement (19)) to the transferor is not registrable as each interest must be dealt with in its own prescribed form. The one exception is the reservation of a life estate to the transferor.

A transfer made subject to a condition which is not satisfied at the time of registration cannot be registered. (20) One specific statutory exception is section 18 of the Public Lands Act, R.S.A. 1980, c. P-30. It permits registration of a transfer or notification from the Crown to certain organizations subject to a condition or restriction that the land only be used for a specified purpose. (21)

13. **Transfer of Minerals** - If minerals are being conveyed, the minerals must be checked except for the transfer of a subdivision lot or block of less than 2 hectares (or 5 acres) where both the surface and mineral rights are being transferred to the same party. In this case, if there are separate titles for the surface and minerals, the surface and mineral titles are consolidated.

Mineral legal descriptions must be checked for an asterisk \* indicating that the minerals have been verified. An additional \$10 is charged for each title transferred using the MINC code under other services. If no asterisk is shown a historical of the title is performed to ensure ownership of the minerals.

Mineral transfers are subject to Dower requirements unless there is a statement within the transfer that at no time did the title contain both the surface and mineral rights.

14. **Fees** - The fee in Tariff item 3 is charged.

## STATUTE AND CASE REFERENCES

Statute references are to the Land Titles Act, R.S.A. 1980, c. L-5, unless otherwise indicated.

1. for specific details, see the procedure relating to each instrument
2. see procedure on Duplicate Certificates of Title (DCT-1)
3. see procedure on Confirmation of Identity (IDE-1)
4. s. 187, School Act, S.A. 1988, c. S-3.1; see procedure on Surveys-Removal or Change of Reserve Designation (SUR-10)
5. s. 49
6. see procedure on Corporations-Acquisition and Disposition of Interests (COR-1)
7. s. 51
8. s. 197
9. s. 8, Law of Property Act, R.S.A. 1980, c. L-8

10. see procedure on Alteration or Clarification of Co-ownership Arrangements-Tenancies in Common and Joint Tenancies (TEN-2)
11. s. 151 and 152; Form 31; see procedures on Attestation (AFF-1, AFF-2 and COR-1)
12. s. 152.4
13. s. 154(2)
14. s. 177(4)
15. s. 1(n)
16. s. 154(4) confers on the Registrar the right to question the value and cause a valuation to be made if the one provided is unsatisfactory
17. see procedure on Dower (DOW-1)
18. see procedure on Foreign Ownership of Land (FOL-1)
19. s. 68(2)
20. s. 54(2)
21. see procedure on Crown Grants-Notifications Under the Public Lands Act and Letters Patent (CRG-1)