

DUPLICATE TITLES

Where a duplicate certificate of title cannot be located because it has been lost or destroyed, Land Titles can dispense with its production (s. 26(1) *The Real Property Act*). In order for Land Titles to do so, we must be provided with an affidavit of lost title. The affidavit of lost title must conform to the following:

1. It must state that the reason the title cannot be found is that it has been lost or destroyed;
2. It must state that the title has not been deposited by way of lien or as security for a loan;
3. It must be **executed by all of the Registered Owners** of the land, even where all of the parties believe that only one of the Registered Owners was in possession of the title;
4. It must refer to the outstanding title number, not to the current title number if these numbers differ. These two numbers would be different if for example Land Titles registered a special plot plan and put a note on the title created by virtue of the plan that the old duplicate title must still be produced by the client. This is called a “Hold for Production” note. Unfortunately this note does not appear on a Land Titles *Status of Title*, however it is available to those searching electronically and is on the *Record of Title*.
5. If there is an encumbrance registered against the title by a lending institution giving notice of an equitable charge which does not give specific notice of an hypothecation of the duplicate title, in addition to the Registered Owner’s affidavit of lost title, Land Titles requires either:
 - a. a letter from the lending institution confirming that they were never in possession of the duplicate title; or
 - b. an affidavit of lost title from the lending institution.
6. If the title has a caveat registered against it that gives specific notice of an hypothecation of the duplicate Land Titles will require an affidavit of lost title from both the lending institution and the Registered Owner(s).
7. Where the affidavit of lost title is being sworn by the executors/administrators of an estate each and every executor/administrator of the estate must swear an affidavit. They may jointly swear one affidavit where that is appropriate.
8. As a final note, care should be taken when using a prior affidavit of lost title stored on a computer as a precedent. Often clients using these precedents forget to delete and replace the old title number. Consequently these affidavits do not contain the title number which is to be dispensed with and have to then be re-sworn.

See **Schedule VII** for an example of an affidavit of lost title. **Schedule VIII** is an example of an affidavit of lost title which must be used where the registered owner is a corporation. **Schedule IX** is an example of an affidavit which can be used by the executors/administrators of an estate. **Schedule X** is an example of an affidavit which can be used by an attorney under a Power of Attorney.