

ESTATES AND DEATHS

DISCHARGE BY EXECUTOR OF UNPROBATED ESTATE

The executor named in an unprobated will may execute a Discharge where evidence is attached to the Discharge that includes the following:

1. Death certificate;
2. Notarial copy of the will;
3. Affidavit of identity establishing that the testator in the will and the party named in the death certificate are one and the same individual as the Mortgagee in the Mortgage to be discharged (or other instrument holder);
4. Evidence that no other will can be found and the will attached as evidence is believed to be the last will and testament of the Mortgagee (or instrument holder);
5. Evidence that the will has not been probated in any jurisdiction and that there are no other assets of the estate or circumstances that would require the will to be probated;
6. Evidence that the Mortgage debt is paid in full;
7. An affidavit of heirs; and
8. Consent of the heirs to the execution of the Discharge by the executor.

DISCHARGE BY PARTY ENTITLED TO ADMINISTRATION OF UNPROBATED ESTATE

Where there is no will the person entitled to administration may execute a Discharge where evidence is attached to the Discharge that includes the following:

1. Death certificate (original or notarial copy);
2. Evidence that no will has been located after a complete search;
3. Evidence that the Mortgage debt is paid in full;
4. Evidence that there are no other assets of the estate or circumstances that would require the application for letters of administration
5. Evidence that the applicant/s are entitled to Administration of the Estate pursuant to the *Intestates Succession Act* of the Province of Manitoba
6. Evidence as to the heirs-at-law pursuant to the *Intestate Succession Act*.
7. Consent of the heirs to the execution of the Discharge by the party entitled to administration.

HOMESTEADS ACT EVIDENCE

Homesteads Act evidence contained in a Transfer from the executors of an estate must give *Homesteads Act* evidence with regard the deceased.

MORTGAGING ESTATE LANDS

The administrator of an estate may not mortgage the property vested in him as administrator without the approval of the court (s. 46 of *The Trustee Act*). There is no similar restriction on a mortgage executed by the Executors of an estate.

ESTATES AND DEATHS (continued)

DELEGATION OF POWERS

The trustee of an estate (executor or administrator) may delegate to another person by Power of Attorney all or any of the powers vested in him/her as trustee (s. 36(1) *The Trustee Act*). This is subject to two restrictions: 1. The trustee must be intending to remain out of the province for a period exceeding one month (Land Titles will ask for evidence on this point, including evidence that at the time of the exercise of the power by the attorney the donor was out of the province); and 2. The person appointed may not be the only other co-trustee.

DEATH OF BOTH JOINT TENANTS

Where a title is held by joint tenants and both joint tenants have died (provided that they did not die simultaneously) Land Titles will accept one document to move title from the name of the deceased parties into the name of the Executors/Administrators of the one joint tenant who died last. To accomplish this, use a standard LTO Request/Transmission form, attach the death certificate for the joint tenant who died first and the Grant of Probate/Letters of Administration for the joint tenant who died last. Where the document provides "Apply by Virtue of" insert a phrase to the affect that "This is a Survivorship Request and Transmission by the Executors of the Estate of Mary Brown." Mary Brown will be the joint tenant who was the last to die.

SIMULTANEOUS DEATH OF ALL JOINT TENANTS

Where all joint tenants on a title die at the same time, or where the circumstances of death make it impossible to determine which died first, the joint tenancy is severed and the parties will be deemed to have held the title as tenants in common, each as to an equal share.

PROOF OF DEATH AND DEATH CERTIFICATES

Land Titles will only accept death certificates from the Department of Vital Statistics. We will not accept funeral directors' or church death certificates. Similarly we will not accept a Grant of Probate or Letters of Administration as proof of death. All death certificates must be either originals or notarial copies.

See **REAL PROPERTY APPLICATIONS** for a discussion of Real Property Applications by the executors of an estate.

ESTATES AND DEATHS (continued)**ADMINISTRATION ORDER WHERE ESTATE VALUE LESS THAN \$10,000.00**

An Administration Order granted where the value of an estate is less than \$10,000.00 is materially different from either a Grant of Probate or Letters of Administration. Unlike the Grant of Probate or the Letters of Administration, both of which give the parties appointed the authority to deal with land on behalf of a deceased person, the Administration Orders typically vest the land/interest in land directly without it first going into the name of a trustee (either an administrator or an executor).

This difference has a direct effect on the documents one must file at Land Titles. In the ordinary course one files a transmission, with a notarial/certified copy of the Probate or Letters of Administration attached and the title to the land moves thereby into the name of the executor(s)/administrators(s) in their capacity as such. They then can transfer the land to themselves personally or to another party by virtue of this authority. This two stage process of transmission and transfer does not take place where the courts have granted an Administration Order.

Where an administration Order has been granted, the property vests directly into the name of the party named in the order, in their personal capacity. As such there is no need for a transmission and a transfer, all that must be filed at land titles is the transmission, with a notarial/certified copy of the Administration Order attached. Upon the filing of this document, the land/interest in land moves directly from the name of the deceased into the name of the party shown in the Administration Order, in their personal capacity. This person is then free to deal the land/interest in land in the same manner as any other land that they might own.

As a final result of this process, when the person named in the Administration Order ultimately transfers the land/interest in land in question, Land Titles will want Homesteads Act evidence for that person and not for the deceased former owner.