

## MORTGAGES

### CORPORATIONS

Where land is mortgaged and the Mortgagor is a corporation Land Titles requires the same evidence of corporate status as set out below in **TRANSFERS**. Where the Mortgagee is a corporation Land Titles also requires evidence as to corporate status. For a Manitoba company the Land Titles staff will search the Companies Office database, and accordingly the client does not need to provide any thing. If the Mortgagee is extra-provincially registered the Land Titles Office requires a Certificate of Status (or equivalent) from the foreign jurisdiction, which status may be no more than two years old.

There are certain exceptions to these requirements, and in those cases titles will require such evidence as to corporate status as the situation warrants (e.g. Insurance companies, religious societies, charter banks, and statutorily created organisations). This evidence can either be attached to the Mortgage or registered prior in series on its own for deposit into the Land Titles deposit index. If this evidence is placed in the deposit index it can be referred to in future transactions.

### ADDRESS FOR SERVICE

A current and complete address for service is required for the Mortgagee.

### MULTIPLE MORTGAGEES / INTEREST

In Mortgages with multiple Mortgagees, where the parties intend that the Mortgage vest in the remaining Mortgagees in the event of the death of either one (the right of survivorship), the Mortgage should express this. Typically wording indicating that the monies were advanced from a joint account is inserted. Land Titles does not assume that multiple Mortgagees are joint tenants where this is not expressed.

Other than as set out above Land Titles will not accept a mortgage where the interest of the Mortgagees is specified. Accordingly Mortgagees cannot hold a mortgages as tenants in common of a specified interest (i.e. each as to an undivided one-half interest). This said, where the parties wish to, they can specify the amount of the mortgage monies contributed by each Mortgagee and the amount of the proceeds from the mortgage each Mortgagee is entitled to.

### MORTGAGE BY ONE OF SEVERAL JOINT TENANTS

Given the specific nuances of our *Real Property Act*, Land Titles takes the position that a mortgage by one joint tenant of his or her interest alone likely has the affect of severing the underlying joint tenancy. Accordingly prior to the registration of such a mortgage a notice of intent to sever the joint tenancy will have to be served by the party mortgaging their interest on all of their co-joint tenants. Once this has been done proof of the service will have to be provided at the time the mortgage is registered. Note that no registration can take place until 30 days have passed from the date of service.

**MORTGAGES (Continued)****MORTGAGES WITHOUT A PRINCIPAL AMOUNT**

While Land Titles will accept mortgages that do not disclose a principal amount we would ask that you include in your documentation some indication that the lack of principal amount was a deliberate choice and is not the result of a typographical error. LTO does not recommend these mortgages as we have seen case-law which suggests that while these mortgages are binding as against the mortgagors, they *may not* be effective with regard subsequent encumbrancers.

**MORTGAGES REGISTERED IN SERIES BEHIND OTHER ENCUMBRANCES**

Mortgages registered subsequent in series to other encumbrances affecting the same lands must be made subject to those encumbrances. This can be done by stating in the box for encumbrances that the Mortgage is “subject to the Mortgage (Caveat, etc.) registered immediately prior hereto in series.”

**MORTGAGE AMOUNT EXCEEDS FMV OF AFFECTED LANDS**

When the amount secured by a Mortgage exceeds the value of the lands according to a Transfer prior in series, evidence must be provided to explain this discrepancy. This evidence can be inserted into the execution box of the Mortgage.

**NAME DISCREPANCIES BETWEEN MORTGAGE AND AFFECTED TITLE**

The name of the Mortgagor must be (exactly) the same as the name of the Registered Owner. Name discrepancies are often noted where a Mortgage affects multiple titles and the complete name of the Registered Owner is not consistent from one title to the next. Where there is a name discrepancy, and the name on one or more of the affected titles is incorrect, a Request/Transmission form must be filed prior in series to the mortgage to correct the name of the Registered Owner on the affected and incorrect title(s). Where the name on the mortgage is not correct the mortgage document must be corrected.