

REAL PROPERTY APPLICATIONS

Witnesses to signatures in an RPA must swear an Affidavit of Execution, even if the witness is a lawyer.

The only time a direction is needed in an RPA is when the party taking title is different from the party completing the application. In this way the RPA can act not only to move property from the old system into the Torrens system, but it can then act as a transfer of that property.

Where an RPA contains a direction, as in a Transfer of Land, the RPA must contain *Homesteads Act*, *Farmlands Ownership Act*, and evidence as to fair market value as required by *The Tax Administration and Miscellaneous Taxes Act*. This information can either be typed directly onto the RPA, or where there is insufficient space, the information may be entered on a separate piece of paper, provided that the paper is attached to the RPA and marked in the same manner as schedules are marked.

When registering the Real Property Application at Land Titles do not list other new system documents on the Registration Details Application form (RDA), save and except for a mortgage of the lands which are the subject of the RPA. A series of documents which is made up of an RPA and new system documents will not be accepted for registration.

Where an RPA is filed by the executors of an estate, and the RPA contains a direction, in addition to all other requirements, Land Titles requires evidence with regard the estate. The following is a list of the evidence Land Titles requires:

1. Grant of Probate;
2. Evidence in the form of the affidavit of debts and heirs, including:
 - a. publication of notice to creditors under *The Trustee Act*, with no claims filed within the designated time;
 - b. all debts, claims and liabilities against the deceased in the estate are paid and that there are no outstanding and unpaid income taxes or succession duties, if applicable (evidence that all income taxes of the deceased in the estate have been paid should be sufficient, without requiring a copy of the clearance certificate also to be filed);
 - c. particulars of a surviving spouse/common law partner and children;
 - d. evidence that the executor has not been served with an application under *The Dependants Relief Act* (note that the limitation period under *The Dependants Relief Act* is six months from the date of the Grant of Letters Probate or Letters of Administration);
 - e. if the land is homestead, the consent of the surviving spouse/common law partner;

REAL PROPERTY APPLICATIONS (Continued)

- f. for deaths which took place after August 15, 1993, where there is a surviving spouse/common law partner, evidence that the personal representative served the surviving spouse/common law partner with the notice under section 31 of *The Family Property Act* within one month after the Grant of the Letters Probate or Letters of Administration and that no application for an accounting and equalization has been made by the surviving spouse/common law partner (the surviving spouse/common law partner has six months from the date of the Grant of Letters Probate or Letters of Administration to file an application for an accounting and equalization under *The Real Property Act*).

The above evidence is also required if somewhere on the abstract of the land in question there has been a dealing by an estate.

Where an estate wishes to transfer old system land, and the purchaser wishes to have a new system title, the easier course of action is for the estate to file the RPA, with no direction, and then file a Transfer of Land once title has issued in the name of the estate.