



Ontario

Ministry of
Consumer and
Commercial
Relations

Registration
Division

Property
Law
Branch

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TO:
ALL LAND REGISTRARS

FAMILY LAW ACT, 1986

LAND TITLES ACT - ESTATE
CONVEYANCES - SPOUSAL
ENTITLEMENT

The Family Law Act, 1986 (F.L.A.), section 6, allows a surviving spouse to choose either the equalizing entitlement conferred by section 5 of the F.L.A. or benefits to the spouse under the Will (if there is one) or if there is no Will, the entitlement conferred by Part II of the Succession Law Reform Act (S.L.R.A.). The election is to be made within 6 months of the date of death of the deceased spouse and filed in the office of the Surrogate Clerk for Ontario. If no election is made, the spouse is deemed to have chosen to take the benefits under the Will or the S.L.R.A. (unless a court has ordered otherwise).

Where the surviving spouse elects the F.L.A. entitlement, any gifts to that spouse under the Will are deemed to be revoked unless the Will expressly provides that the gifts are in addition to the entitlement under section 5 of the F.L.A. The Will is interpreted as if the surviving spouse had died before the deceased. On an intestacy, an election in favour of the F.L.A. entitlement deems the surviving spouse to have disclaimed the benefits under Part II of the S.L.R.A.

Where there is a mixed testacy/intestacy situation, the election is between benefits under both the Will and Part II of the S.L.R.A., or the F.L.A. entitlement only.

No distribution of the estate shall be made within 6 months of the death unless the surviving spouse consents in writing or the court has authorized the distribution. Where an application is pending under the F.L.A., no distribution shall be made unless the applicant consents in writing or the court has authorized the distribution.

Note that the prohibition against distribution of the estate does not preclude the sale of a property. It means that the proceeds from the sale cannot be

distributed. Neither a court order nor a spousal consent is required. The present rules in the Land Titles Procedural Guide for consents, etc., continue to apply. Land Registrars should continue to be satisfied that the sale is for paying debts or for distribution of proceeds of sale by an inclusion in the conveyance of an appropriate statement.

Accordingly, the following requirements apply in Land Titles to real property held by a deceased spouse or to real property held by both spouses as tenants in common at the time of death of one of them. Bulletin 86001 should be referred to for joint tenancy situations. These requirements are in addition to the present requirements for estate conveyancing set out in the Land Titles Procedural Guide.

1. **Within 6 Months**

A transfer of real property to any person beneficially entitled within 6 months of the date of death must be accompanied by:

- a) a statement by the executor/administrator that the deceased had no surviving spouse; or
- b) a court order authorizing the transfer; or
- c) a consent by the surviving spouse.

In both situations a) and c), the consents of the beneficiaries normally required under the Will or the S.L.R.A. are required.

2. **After 6 Months**

A transfer of real property to any person beneficially entitled after 6 months of the date of death must be accompanied by:

- a) a statement by the executor/administrator that the deceased had no surviving spouse; or
- b) a court order authorizing the transfer; or
- c) a statement by the executor/administrator that no election has been made and no application under Part I of the F.L.A. has been received; or

- d) the consent of the surviving spouse where an application is pending under Part I of the F.L.A.; or
- e) a statement by the executor/administrator that an election has been filed with the Surrogate Clerk for Ontario, what the election is and that no application under Part I of the F.L.A. is pending.

In situations a), c), d) and e) the normal consents of beneficiaries under the Will or S.L.R.A. are required.

However, in situation e), if the election by a surviving spouse is in favour of the F.L.A. entitlement, the surviving spouse's consent is not required as the spouse ceases to be a beneficiary under the Will or the S.L.R.A. unless the Will provides that the F.L.A. entitlement is in addition to the Will's benefits. If there is no such provision in the Will, a statement to this effect must be included. If the Will provides that a spouse's entitlement is in addition to the F.L.A. entitlement, then the spouse remains a beneficiary under the Will and appropriate consents will be required.

Court orders referred to in this Bulletin that affect real property are registrable. The present statement requirements as to the status of the court order continue to apply.