

Title and Survey Services Office

30 October, 2000

MEMO TO: Land Registrars **EM200003**
Business Improvement Team

FROM: Kate Murray
Director of Titles

Re: **ESTATE CONVEYANCING**

This memo is to replace my memo to you on estate conveyancing dated February 28th, 1997. That memo was in regard to dealing with estates where property has been automated, and during the automation process converted to the Land Titles system from the Registry system.

As you know, the common practice in the Registry system when dealing with estates is to register a notarial copy of the will in the general register without applying for a certificate of appointment of estate trustee. With the conversion of properties from Registry to Land Titles, this has become a concern for our clients since they are not always aware that a property has been converted and may have advised their client of a particular course of action available in the Registry system 'but not available in Land Titles.

In 1997, I authorized land registrars to waive the requirement of a certificate of appointment of estate trustee in these circumstances. This practice has now been used for three years and has raised a number of questions from both land registry offices and clients. As a result, I asked for your comments to the process at the last automation teleconference. Based on these comments and our review, some modifications have been made to the requirements and are included in this memo.

In order for you to make an exemption for the requirement of a certificate of appointment of estate trustee, the following must be included in the supporting affidavit by the applicant:

- the property must be a Ministry conversion from Registry to Land Titles;
- the transaction must be the first dealing after the conversion of the property;
- the value of the estate must be set out;
- the client is required to provide the same evidence as under the *Registry Act* with regard to the execution of the will and proof of death. If an affidavit of execution cannot be provided, a statement or affidavit made by someone who knew the deceased's handwriting may be used in lieu of the affidavit of execution. This should be someone of good standing within the community and must be someone who can state that they knew the handwriting of the testator. For example, a bank manager, an employer, or those individuals who can attest to an application for a passport. It cannot be a family member, a beneficiary or someone who can benefit from the estate.

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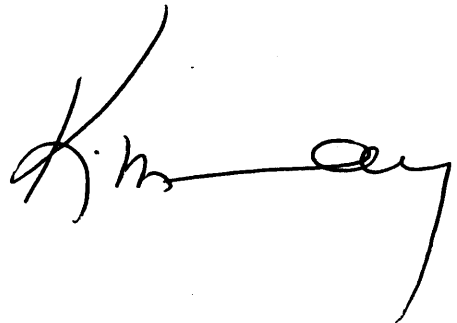
- that the will is the last will and that a certificate of appointment of estate trustee was not applied for;
- that the testator was of the age of majority at the time of the execution of the will, and that the will has not been revoked by the marriage of the testator or otherwise. (This is the current requirement in the Land Title Procedural Guide (page 35,165) for situations where a certificate has not been applied for).

The requirement in my memo of February 1997 that debts and beneficial interests be addressed in the transmission has been removed. It is quite common for debts to be dealt with in the transmission application, however, if they are not dealt with in the transmission application, they can be addressed in the transfer.

Beneficial interests are not normally dealt with until the transfer takes place. The same requirements as for other Land Titles transactions as set out in the Land Titles Procedural Guide must be complied with.

In all cases a covenant to indemnify the Land Titles Assurance Fund must be provided.

As stated in my memo of February 1997, if you have any questions or still feel the need for my office to review and grant the waiver, please contact either Margaret Wiseman or me.

A handwritten signature in black ink, appearing to read "Kim", written in a cursive style.

Cc Ian Veitch
Regional Managers
Title and Survey Services Staff
Legal Services