

Date: *April 1, 2020*

To: *All Clients of the Manitoba Land
Titles System*

Re: *Witnessing documents under The Real Property Act during COVID-19 Pandemic*

Background

As a result of the COVID-19 pandemic, the Land Titles District Registrars and the Office of the Registrar-General have received numerous inquiries seeking guidance with respect to the witnessing requirements under *The Real Property Act*.

This practice directive is in effect until May 15, 2020 and may be extended at that time.

Legislative Requirements

The requirements for the proof of execution of land titles instruments are set out in s.72 of *The Real Property Act*. The effects of the act of witnessing are set out in s.72.5(6) for Transfers and s.72.7(3)(d) for Mortgages. For Transfers and Mortgages, the act of witnessing is satisfactory evidence that:

- (1) The person executing the instrument is:
 - (a) personally known to the witness; or
 - (b) their identity has been proven to the satisfaction of the witness.

and

- (2) The person executing the instrument acknowledged to the witness that:
 - (a) they are the person named in the instrument and the person who signed the instrument;
 - (b) they are of the age of majority; and
 - (c) they are authorized to execute the instrument.

In certain cases, affidavits of witnesses are required in which the witness is to attest as to:

- (1) The execution of the instrument by the registered owner or person entitled to be registered as the owner; and
- (2) The identity and age of the registered owner or the person entitled to be registered as the owner.

Best Practice

The efficient operation of the Land Titles system and the integrity of the Land Titles registry are dependent on witnesses complying with the law. In all cases it is incumbent on the witness to properly satisfy themselves that the requirements of the Act have been met, in addition to any other professional or legal obligations. In order to ensure the authenticity of registrations under *The Real Property Act*, best witnessing practice continues to be for the executing party to execute the instrument in the physical presence of the witness. At this time, this manner of execution can be achieved while still respecting social distancing requirements set by Manitoba's Chief Public Health Officer provided that appropriate safeguards are put in place.

Temporary Accommodation

In the event that the physical presence of a witness is not possible due to COVID-19 related public health requirements, as a temporary measure and pursuant to s.72.1(c) of *The Real Property Act*, District Registrars will accept instruments witnessed via video link provided that a letter signed by the witness meeting the following requirements accompanies all such instruments.

In the letter, the witness must identify:

1. How the executing party was provided with the instrument to be executed (e.g. regular mail, fax, email, etc.).
2. Why in person witnessing could not occur and video witnessing was required (e.g. Due to self-isolation, quarantine, to comply with social distancing orders).

and **certify** that:

1. The witness is satisfied as to the identity of the executing party either because:
 - a. The executing party is personally known to them; or
 - b. The identity of the executing party was proven to their satisfaction, together with details as to manner in which this satisfaction was achieved.
2. The signature was witnessed in a single session during which the witness observed the person signing the instrument and was able, at all times, to see and hear the person signing the instrument.
3. For all instruments generating separate signature pages (eTransfer, eMortgage, eDischarge):
 - a. prior to execution, the witness saw both the control image and 32 digit control number generated by the form and that these matched the control image and control number of the version of the form sent to the executing party; and
 - b. subsequent to execution, the witness saw both the control image and 32 digit control number of the executed signature page and that these matched the control image and control number of the form sent to the executing party.

4. For instruments which do not generate signature pages, but do require witnessing (e.g. Transfers utilizing Form 5P (Transfer Under Power of Sale, Transfer of Mortgage, Transfer of Leasehold Title, Transfer of Encumbrance), Postponements, Amending Agreements, Memorandums of Lease, Agreements to Renew, Amend or Extend Lease, Surrenders of Lease, Assignments of Caveats, Transfer of a Security Interest, Assignment of Builders' Lien):
 - a. prior to execution, the witness saw the instrument in the possession of the executing party and confirmed to their satisfaction that it was the same instrument sent to the executing party; and
 - b. subsequent to execution, the witness saw the executed instrument in the possession of the executing party and confirmed to their satisfaction that it was the same instrument sent to the executing party.
5. Subsequent to execution, the original, signed copy of the instrument was received by the witness who verified that the content of the instrument received was identical to the instrument sent to the executing party (but for the addition of the executing party's signature and any other marking required to be made by the executing party) and then affixed their signature as witness.

PLEASE NOTE: This directive does **NOT** apply to:

- (1) Oaths or affirmations - Some instruments contain, or are accompanied by, oaths or affirmations which are governed by *The Manitoba Evidence Act*.
- (2) Certain forms under *The Homesteads Act* - The forms required and execution of those forms are governed by *The Homesteads Act*.

Lawyers are directed to the Law Society of Manitoba's website <https://lawsociety.mb.ca/> for best practices for using video conferencing in providing legal advice or services.

We will continue to monitor the evolving COVID-19 pandemic.

Questions about the application of this Directive to particular fact situations should be directed to the District Registrar of the Land Titles Office in question.



Lavonne M. Ross
Registrar-General