DEC-02 Survivorship Applications

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1 On Death of a Joint Tenant

Where any person registered with another as a joint tenant dies, the surviving joint tenant(s) must apply to be registered as the surviving proprietor(s) on the Register.

Although the interest of a joint tenant ceases immediately on death and the surviving joint tenant’s interest is immediately enlarged, the legal estate does not change until the required application is made and the Register amended.

In support of a Survivorship Application the following must be produced:

- Evidence of death – usually the original death certificate issued by Births, Deaths and Marriages, or sighted by Landgate or Australia Post. An original grant of probate or letters of administration of the deceased issued by the Probate Office is also acceptable evidence.

Where evidence of death is issued in another country in a foreign language, the original evidence must be issued and certified by the official authority that would be the equivalent of the Registry of Births, Deaths and Marriages in WA.

Where the evidence is printed in a foreign language, the original evidence (or certified copy that is certified by the issuing authority only) must be translated and a translated version plus the original/certified version will need to be produced to Landgate.

The original/certified evidence will be copied and the copy will be noted as “Landgate sighted”. The original/certified evidence will be returned to the lodging party and the “Landgate sighted” copy and the official translated version of the evidence is then lodged with the document/s.

Foreign evidence will need to be translated by a person who has a “NAATI” accreditation from the National Accreditation Authority for Translators and Interpreters.
The duplicate certificate of title to the land (where applicable), or third party consent where no duplicate title has issued

and

A statutory declaration form B3 by the surviving joint tenant(s) or his or her personal representative or by one or more of the surviving joint tenants if more than one. This declaration should:

(i) identify the declarant(s)

(ii) identify the land being dealt with by its volume and folio reference in all cases, and where a mortgage, charge or lease of land is being dealt with, the number of that instrument

(iii) contain the statement:

"I am (we are) registered as a joint tenant of the land, (lease, charge, mortgage) described above".

(iv) identify the deceased joint tenant as being one and the same as the person shown on the certified copy of the death certificate (quoting the registration number of the death certificate), or other evidence of death produced. The full name and address of deceased as shown on the Certificate of Title must be stated.

A suitable clause may read: "The person shown (full name) of (address as shown on the Certificate of Title) on Certificate of Title Volume XXX Folio XXX is one and the same as (deceased full name) described on the death certificate."

It is not necessary to amend the name of the deceased where there is a discrepancy between the evidence of death and certificate of title, however any differences in the name or address of the deceased or the surviving joint tenant(s) must be explained in the statutory declaration.

(v) refer to the certified copy of the death certificate or other evidence mentioned above.

1.1 Amend Name of Surviving Joint Tenant

An application to amend name may be required where the surviving joint tenants name differs in any way from that shown on the Register.

Alternatively, the operative wording of the survivorship application form can be modified to request the title be amended to show the correct name of the surviving joint tenant (see Form Example 4).

2 Who May Apply

The following persons may apply to be registered as proprietor by survivorship:

- all the surviving joint tenants

- the sole surviving joint tenant

- where all joint tenants are deceased the executor or administrator of the last surviving joint tenant on behalf of that joint tenant

- the surviving executor/administrator/trustee when registered as proprietor with a deceased co-
executor/co-administrator/co-trustee

- the surviving joint tenant when registered as joint tenants with a corporation that has been liquidated

and

- a corporation when registered as joint tenant with a person who has died.

The survivorship application form for the third scenario set out above is completed as shown in Form Example 3. This form of survivorship must be followed by a transmission application of the estate of the last surviving joint tenant.

The Attorney of the surviving joint tenant may execute a survivorship application form on behalf of the donor of the power of attorney, and may (in the attorney’s name) provide the declaration in support. The declaration must include the means of knowledge for the statements made.

2.1 Death of Multiple Joint Tenants

Where more than one joint tenant has died, the surviving joint tenant(s) can make one application and list all of the deceased co-proprieters in the deceased proprietor panel.

3 Bars to Survivorship

Where joint tenants die in circumstances that give rise to reasonable doubt as to which of them survived the other the Property Law Act 1969, s.120, provides that the property shall devolve as if it were owned by them as tenants in common. Separate transmission applications are required for the interest of each deceased proprietor.

Where a caveat lodged against the land is lodged specifically to prevent the application for survivorship, or indicates the existence of an unregistered but registrable transfer or an unregistered but registrable mortgage of the land, a survivorship application will not be accepted.

4 On Death of a Life Tenant

Where a Joint Life Tenant dies, the surviving Joint Life Tenant should complete an Application by Survivorship, see paragraph 1 of this Topic. Where a Life Tenant dies and the person holding the remainderman is seeking the removal of the deceased sole Life Tenant, refer to paragraph 5 in policy and procedure guide TFR-06 Life Estates.

1[Guide updated on 17/10/2018 to provide greater details.]

5 Death of a Joint Encumbrance Holder

Where an encumbrance holder of a Mortgage, Charge or Lease dies and where they hold the interest jointly, a Form Application by Survivor should be used.

The effect of the application is to remove the deceased encumbrance holder, leaving the surviving
interest holder to hold the interest solely. The debt or interest can then be discharged or surrendered by the surviving interest holder, or as the case may be.

The evidence requirements are the same as survivorship application (Form Application by Survivor), being a statutory declaration and the office copy or the original Death Certificate (see above).

The production of the relevant duplicate certificate of title (if any) is not essential but it is desirable.²

²[Guide updated on 30/08/2018 to insert new sentence]

6 Also see

- DEC-01 Deceased Proprietor
- DEC-03 Transmission Applications