DEC-03 Transmission Applications

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1 Transmission Applications (Section 219 of the TLA)

This document is subject to the Verification of Identity Practice issued jointly by the Western Australian Registrar of Titles and Commissioner of Titles. Please refer to the VOL webpage.

1.1 On Death of Registered Proprietor

A transmission application is required from the Executor or Administrator of a deceased registered proprietor in order that such Executor or Administrator may be entered on the Register as the proprietor of the estate or interest of the deceased proprietor.

The effect of the application is to place the Executor or Administrator on the Register as if he or she was a transferee and the absolute proprietor of the estate or interest being dealt with.

Where the name of an Executor or Administrator shown in a Grant of Probate or Letters of Administration differs to that shown in a transmission application a new or amended Grant of Probate or Letters of Administration will be required from the Probate Office. Where a formal change of name is made after the date of the grant, proof will be required as to the correct name and the reason for the error in the grant before an application for transmission can be entered.

The executor or administrator holds the land subject to the same equities upon which the deceased held the land. In support of a Transmission Application (see LT RPM Form Examples - Example 1) the following must be produced:

(1). An office copy or the original Grant of Probate or Letters of Administration as issued by the Probate Office or a Landgate Sighted copy or Australia Post certified copy. Present practice is to return such original copies to the lodging party. Office copies of Grants of Probate should be re-lodged with any subsequent dealing by the executor, other than a sale:

- A copy of a Grant of Probate or Letters of Administration certified by a Justice of the Peace or
Solicitor is not acceptable.

- A Grant of Probate or Letters of Administration granted in another jurisdiction (i.e. interstate or overseas) must be re-sealed by the Western Australian Probate Office.

(2) A statutory declaration, identifying the deceased if the name and addition as shown on the office copy of the Grant of Probate or Letters of Administration differ in any way from those shown in the Register, (but if the Grant of Probate correctly identifies the proprietor as the deceased or the details on the title and the Will agree, no further proof is required).

This statutory declaration is made by the executor or administrator. Where two or more executors or administrators are appointed, only one of them needs to make the declaration.

(3) The duplicate certificate of title (if any). Where the title is encumbered by a Mortgage and the title is Non-Issue, the Mortgagee must provide consent on letterhead consenting to the change in ownership.

Note: This type of application is not suitable where the land is a trust property as the land does not form part of the estate of the deceased proprietor and cannot be dealt with by the executor or administrator.

See also TFR-07 Transfer by an Attorney under EPA or by Administrator Order.

1.2 Statutory Declaration

Where an Application is to be accompanied by a statutory declaration the declaration should cover the following minimum points:

- Identify who is making the Application and in what capacity.

- Identify who the registered proprietor is/was.

- Identify the land the subject to the Application by legal land description (Lot on Plan and Volume/Folio)

- Reference to the date of death and date of issue of Grant of Probate / Letter of Administration.

- The (name of deceased) of (address) as shown on the Certificate of Title is one and the same person as (name and address) as shown on the Grant of Probate / Letters of Administration.

1.3 Who May Apply

The following persons can apply to be registered as proprietor by transmission:

- the executor or executors named in a Grant of Probate

- the administrator or administrators named in a Grant of Letters of Administration

- the survivor or survivors of those set out in the preceding two points

- the executor or executors of a deceased sole or surviving executor

and
- the administrator named in a Grant of Letters of Administration with the will annexed.

All the persons (executors or administrators) entitled to apply must join in the application and sign the form.

1.4 Who May Not Apply

The following persons cannot apply to be registered as proprietor by transmission:

- the administrator of a deceased executor

- the administrator or executor of a deceased administrator with the will annexed

- the administrator or executor of a deceased administrator

- the administrator or executor of a deceased proprietor holding the land as Trustee.

They have, however a power to appoint a new trustee under s.7 of the Trustees Act 1962, see paragraph 3.7.1 of the Land Title Registration practice manual. Alternatively, a new application at the Court can be made for a Grant of Letters of Administration for the original estate.

2 Endorsement on Title

The name of the deceased proprietor noted on the Grant of Probate or Letters of Administration is deemed to be the true legal name, irrespective of the name on the certificate of title or contained in the Will.

The name of the deceased registered proprietor as shown on the Grant of Probate or Letters of Administration should be stated in the Deceased Registered Proprietor panel of the Application with the reference to any variations of the name. For example:

- John Patrick Citizen (incorrectly shown as John Citizen) of .... (address as shown on the title)

Upon registration of the Application the primary name of the deceased will be shown as stated on the Grant of Probate or Letters of Administration followed by any variations. For example:

- As Executor of the Will of John Patrick Citizen (also known as John Citizen) who died on ....

As a general rule the endorsement shown on the certificate of title should follow what is described on the Grant of Probate or Letters of Administration.

3 Death of an Encumbrance Holder

Where the sole holder of a Mortgage, Charge or Lease dies or where interest holders have specified the interest is held in shares (like tenants in common), a Form Application By Personal Representative should be used.

The effect of the application is to place the Executor or Administrator of the deceased encumbrance holder as the absolute proprietor of the interest being dealt with. The debt or interest can then be discharged or surrendered by the Executor or Administrator.
The evidence requirements are the same as transmission application, being a statutory declaration and the office copy or the original Grant of Probate or Letters of Administration, see above.

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

4 Also see

- DEC-01 Deceased Proprietor
- DEC-02 Survivorship Applications
- DOC-05 Tenancy