

Subject: **DECEASED JOINT TENANT - TRANSFER OF INTEREST**

BACKGROUND

A.

As "the Torrens system has not changed the substantive rules of the common law as to the nature and incidents of estates and interests in land" (1), the right of survivorship continues as a significant characteristic of a joint tenancy relationship. Briefly, it may be defined as:

"on the death of one joint tenant, his interest in the land passes to the other joint tenants by the right of survivorship (*jus accrescendi*), and this process continues until there is but one survivor, who then holds the land as sole owner." (2)

The Land Titles Act recognizes this right of survivorship and to effect a transfer of the deceased joint tenant's interest the registration of an appropriate statutory declaration accompanied by proof of death (FORM A) is required. (3)

B.

Wills And Succession Act

Prior to February 1, 2012 and in the case of joint tenants who died at the same time or in circumstances where it could not be determined who died first, the Land Titles Office would accept for registration an Affidavit of Surviving Joint Tenant for the older joint tenant and an Application for Transmission for the surviving owner.

As of February 1, 2012, the Wills and Succession Act (the Act) came into effect. This Act states that if joint tenants die at the same time or if it cannot be determined who died first, the owners are deemed to have held the property as tenants in common. (4)

In light of this change, attention must be paid to the date of death to determine if the following procedure is applicable.

Documents dated prior to February 1, 2012 will still be accepted for registration using the policy in effect prior to that date. (5)

REGISTRATION PROCEDURE

A.

1. A form of statutory declaration has been developed ([FORM A](#)) although it is not prescribed by statute or regulation. The form contemplates completion by a surviving joint tenant, but it can be completed by some other party who is able to declare as to the necessary facts such as the personal representative or a relative of the deceased or a solicitor.
2. The declaration must be accompanied by a death certificate issued by the Vital Statistics Registry, medical examiners certificate, funeral directors' certificate, cremation certificate, or by a comparable authority if the death occurred outside the Province of Alberta. If an original death certificate cannot be produced, a notarized copy under notary seal or a court certified copy of Letters Probate or Letters of Administration can be substituted. If some other document is submitted as evidence of death, it should be reviewed by a supervisor. Other than a funeral directors' certificate, all other original official documents submitted should be photocopied and the photocopy certified by an Assistant Deputy Registrar as a true copy of the original. The original should then be returned to the registrant.
3. If the joint tenant is a corporation which has ceased to exist, the statutory declaration would have to be appropriately modified and accompanied by evidence from the Registrar of Corporations, or other proper government official, establishing that the corporation no longer exists.
4. If the name of the deceased on the death certificate is not consistent with the name on the certificate of title, additional confirmation of identity should be required.
5. A proper legal description must be provided.
6. The statutory declaration is rejected if:
 - a) the certificate of title does not specify that the owners hold as joint tenants, or
 - b) a bankruptcy memorandum has been endorsed on title as the bankruptcy of a joint tenant severs the joint tenancy as to the interest of the bankrupt. [\(6\)](#)
7. All writs of enforcement against the deceased joint tenant remain on title. [\(7\)](#)
8. A new certificate of title with the title number being the registration number of the declaration is issued. The consideration is listed as "SURVIVING JOINT TENANT". See [ADD-1](#) for procedures on updating the mailing address for the surviving joint tenant.
9. **Fees** - The fee in [Tariff item 11\(4\)](#) is charged.

B.**Wills And Succession Act**

1. In order to comply with the Act, the joint tenancy must be severed. This is achieved by providing a statutory declaration made by someone with knowledge of the facts, which sets out the relevant information and makes reference to sec 5(2) of the Act.

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Once the statutory declaration is registered, the usual requirements for Transmission on Death are followed. See TRA-1

2. The Act makes provision for a surviving spouse or partner who is not a registered owner to occupy the property for a period of 90 days. (8)

It also makes provision for the Court to alter the time prescribed by the Act. (9)

A filed copy of this order (Judicial District Filed stamp) may be registered on the title and it binds any interest that the deceased's estate, a co-owner or any person who is the owner of the real property by right of survivorship on the deceased's death, has in the property. (10)

Document code ORDE is used and Tariff item 11(6) is charged.

3. Once this order is registered, the title cannot be disposed of or encumbered except by court order or with the written consent of the surviving spouse or partner who registered the order. (11) The consent must comply with attestation requirements. The order or consent must be attached to the disposition or encumbrance.

4. An order made under the above section can only be cancelled by another court order. (12)

5. Compliance with section 191 of the Land Titles Act is not required.

Document code DISO is used and Tariff item 11(5) is charged.

STATUTE AND CASE REFERENCES

1. V. DiCatri, *Thom's Canadian Torrens System, 2nd ed.*, p. 350.
2. R.E. Megarry and H.W.R. Wade, *The Law of Real Property, 3rd ed.*, pp. 403-404.
3. s. 121, Land Titles Act, R.S.A. 2000, c. L-4
4. s. 5(2), Wills and Succession Act, R.S.A. 2010, c. W-12.2

5. s. 86, Wills and Succession Act, R.S.A. 2010, c.W-12.2
6. see procedure on Bankruptcy [BAN-1](#)
7. s. 76(2) of the Civil Enforcement Act, S.A. 2000, c. C-15
8. s. 75, Wills and Succession Act, R.S.A. 2010, c.W-12.2
9. s. 82(1)(a), Wills and Succession Act, R.S.A. 2010, c.W-12.2
10. s. 83(2), Wills and Succession Act, R.S.A. 2010, c.W-12.2
11. s. 83(3), Wills and Succession Act, R.S.A. 2010, c.W-12.2
12. s. 85(1), Wills and Succession Act, R.S.A. 2010, c.W-12.2