

Updated Nov 10, 2011

LAND TITLES DOCUMENT WITNESSING RULES

For all documents signed after December 4, 2011

Corporate Seal ≠ Witnessed

- “New System” Documents signed by a corporation or credit union must be witnessed.
- A corporate seal now *does nothing* for “New System” purposes.

The new rules **apply** to:

These rules apply to all:

- Individuals,
- Corporations,
- Credit unions, and
- Other organizations.

Old System Documents & RPAs

The rules for RPAs and O/S documents **haven't changed**.

For **Old System** documents & **RPAs**, signed by individuals, **ALL** witnesses (including lawyers & notary publics) must swear an Affidavit of Witness.

For ALL Old System document and RPAs signed by corporations - if a seal is used, no witness is needed.

No Parties as Witnesses

No one who is a party or signs on behalf of a party can:

- (i) Be a witness to the document; or
- (ii) Take an Affidavit of Witness for that document.

The new rules **don't apply** to:

A) Documents registered by parties who aren't owners of an interest in the land.

Examples:

- Caveat,
- Judgment (Form 21.1),
- Notice exercising power of sale,
- Builders' lien,
- Condominium lien,
- Legal aid statement

B) Documents or executions under *The Homesteads Act*. Those are governed by that Act.

C) Documents executed by Federal & Provincial Governments or their Agencies

- The Government of Manitoba and its agencies;
- Municipalities and local government districts;
- The governments of other Canadian provinces and territories and their agencies;
- The Government of Canada and its agencies; or
- National, state or provincial governments outside of Canada and their agencies.

RULES FOR WITNESSING TRANSFERS OF LAND & ENCUMBRANCES (BUT NOT MORTGAGES)

RULE 1 - Transfers Signed in Canada

In Canada:

Transfers must be witnessed by:

- A lawyer who practices in the province/territory where they're signed; or
- If signed in B.C. or Quebec - by a lawyer or notary public authorized to practice in that province.
- If it's not possible to meet with a lawyer (or a notary in B.C. or Que.) the District Registrar may allow a person entitled to administer oaths (see s. 62 & 63 of *The Manitoba Evidence Act*) to be the witness. Example - if the party is at an extremely remote location.

Below their signature the witness must state:

- their name,
- position, and
- address.

No affidavit of execution is required.

See section 72.5, *The Real Property Act* (revised December 5, 2011).

Important definition

Transfer includes:

- A transfer of land; or
- A transfer of encumbrance

Transfer DOES NOT include:

- A transfer of mortgage.

For a transfer of mortgage use the "General Witnessing Rules" on page 4 below.

RULE 2 - Transfers Signed Outside Canada

Outside Canada:

Transfers must be witnessed by:

- A lawyer who practices in the jurisdiction where the transfer is signed; or
- A notary public for the jurisdiction where the transfer is signed; or
- A person entitled to administer oaths outside of Manitoba (see s. 63 of *The Manitoba Evidence Act*).

Below their signature the witness must state:

- their name,
- position, and
- address.

No affidavit of execution is required.

Alternative Execution - a foreign notary public may – instead of signing as witness – execute the certificate prescribed by s. 68 of *The Manitoba Evidence Act*.

See section 72.6, *The Real Property Act* (revised December 5, 2011).

RULES FOR WITNESSING MORTGAGES

RULE 3 - Mortgages Signed in Canada

In Canada:

Mortgages must be witnessed by:

- A lawyer who practices in the province/territory where they're signed; or
- If signed in B.C. or Quebec - by a lawyer or notary public authorized to practice in that province; or
- If the mortgagee is a financial institution, by:
 - an officer or employee of that financial institution or
 - a person designated to act on behalf of that financial institution.
- If it's not possible to meet with one of the above witnesses, the District Registrar may allow a person entitled to administer oaths (see sections 62 & 63, *The Manitoba Evidence Act*) to be the witness. Example - if the party is at an extremely remote location

Below their signature the witness must state:

- their name,
- position, and
- address, and
- (if applicable) that they are an officer or employee of that financial institution, or a person designated to act on behalf of that financial institution.

No affidavit of execution is required.

See section 72.7, *The Real Property Act* (revised December 5, 2011).

RULE 4 - Mortgages Signed Outside Canada

Outside Canada:

Mortgages must be witnessed by:

- A lawyer who practices in the jurisdiction where the mortgage is signed; or
- A notary public for the jurisdiction where the mortgage is signed; or
- If the mortgagee is a financial institution, by:
 - an officer or employee of that financial institution or
 - a person designated to act on behalf of that financial institution; or
- A person entitled to administer oaths outside of Manitoba (see section 63, *The Manitoba Evidence Act*).

Below their signature the witness must state:

- their name, |
- position, and
- address, and
- (if applicable) that they are an officer or employee of that financial institution, or a person designated to act on behalf of that financial institution.

No affidavit of execution is required.

Alternative Execution - a foreign notary public may – instead of signing as witness – execute the certificate prescribed by s. 68 of *The Manitoba Evidence Act*.

See section 72.8, *The Real Property Act* (revised effective December 5, 2011).

GENERAL WITNESSING RULES

(For LTO documents other than Transfers & Mortgages.)

(Note - Caveats, Requests and Transmissions do not require a witness.)

RULE 5 - Documents Signed in Canada

In Canada:

All LTO documents (other than transfers, mortgages, caveats, requests and transmissions) may be witnessed by:

- A lawyer who practices in the province/territory where they're signed; or
- If signed in B.C. or Quebec - by a lawyer or notary public authorized to practice in that province

Below their signature the witness must state:

- their name,
- position, and
- address.

No affidavit of execution is required.

Alternative Execution

Any competent adult can be the witness, provided:

- they are **not** a party to the instrument;
- they are not signing **on behalf of** a party to the instrument (e.g. signing as power of attorney for a party); and,
- they swear an "Affidavit of Subscribing Witness" where they attest to the identity and age of the party whose signature they witnessed.

If the document was signed **in Manitoba** this affidavit must be sworn or affirmed before a person authorized by section **62** of *The Manitoba Evidence Act*.

If the document was signed **in Canada, but outside Manitoba**, this affidavit must be sworn or affirmed before a person authorized by section **63** of *The Manitoba Evidence Act*.

RULE 6 - Documents Signed Outside Canada

Outside Canada:

All LTO documents (other than transfers, mortgages, caveats, requests and transmissions) may be witnessed by:

- A lawyer who practices in the jurisdiction where the document is signed; or
- A notary public for the jurisdiction where the document is signed; or
- A person entitled to administer oaths outside of Manitoba (see s. 63 of *The Manitoba Evidence Act*).

Below their signature the witness must state:

- their name,
- position, and
- address.

No affidavit of execution is required.

Alternative Execution - One

Any competent adult can be the witness, provided:

- they are **not** a party to the instrument;
- they are not signing **on behalf of** a party to the instrument (e.g. signing as power of attorney for a party); and,
- they swear an "Affidavit of Subscribing Witness" where they attest to the identity and age of the party whose signature they witnessed.

The affidavit must be sworn or affirmed before a person authorized by section **63** of *The Manitoba Evidence Act*.

Alternative Execution – Two

A foreign notary public may – instead of signing as witness – execute the certificate prescribed by section 68 of *The Manitoba Evidence Act*.

See section 72.9, *The Real Property Act* (revised effective December 5, 2011).

INDEX of LTO WITNESSING RULES

| Document Type | Executed inside Canada (See Rule) | Executed outside Canada (See Rule) |
|---|---|---------------------------------------|
| Amending agreements | <u>5</u> | <u>6</u> |
| Assignments of caveats | <u>5</u> | <u>6</u> |
| Builders' liens | NO WITNESS REQUIRED | |
| Caveats | NO WITNESS REQUIRED | |
| Condominium declarations | <u>5</u> | <u>6</u> |
| Condominium liens, bylaws, amending declarations, amending by-laws. | NO WITNESS REQUIRED | |
| Conforming Construction Agreements | <u>5 (for registered owner)</u> (For authority) Executed by authority with a seal, or Witnessed by: <ul style="list-style-type: none">• A lawyer - stating their name, position, and address; or• A competent adult, with an Affidavit of Witness. | |
| Consents (to easements, condominium declarations, amending agreements) | Executed by a corporation with a seal, or Witnessed by: <ul style="list-style-type: none">• A lawyer - stating their name, position, and address; or• A competent adult, with an Affidavit of Witness. | |
| Debentures | Executed by a corporation with a seal, or Witnessed by: <ul style="list-style-type: none">• A lawyer - stating their name, position, and address; or• A competent adult, with an Affidavit of Witness. | |
| Discharges | <u>5</u> | <u>6</u> |
| Homesteads Act notices, releases, consents, etc. | <ul style="list-style-type: none">• Governed by <i>The Homesteads Act</i>.• Witness requirements are usually found on the LTO form. | |
| Instruments attached to caveats | LAND TITLES DOES NOT EXAMINE EXECUTION | |
| Instruments granting statutory easements | <u>5</u> | <u>6</u> |
| Judgments (Form 21.1) | NO WITNESS REQUIRED | |

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|---|---|----------|
| Legal aid statements | NO WITNESS REQUIRED | |
| Mortgages | <u>3</u> | <u>4</u> |
| Mortgages of encumbrances other than mortgages | <u>3</u> | <u>4</u> |
| Mortgages of mortgages | <u>3</u> | <u>4</u> |
| Notice exercising powers of sale | NO WITNESS REQUIRED | |
| Old System (<i>Registry Act</i>) documents | <ul style="list-style-type: none"> Executed by a corporation with a seal, or Witnessed by a competent adult, with an Affidavit of Witness. (including lawyers & notary publics) | |
| Personal property Security Act notices | NO WITNESS REQUIRED | |
| Postponements | <u>5</u> | <u>6</u> |
| Powers of attorney - enduring powers of attorney | <ul style="list-style-type: none"> Enduring powers of attorney executed in Manitoba must be witnessed by a person specified in s. 11 of <i>The Powers of Attorney Act</i>. If the witness is a lawyer they must state their name, position and address. No Affidavit of Witness is required. If the witness is not a lawyer, an Affidavit of Witness is required. If executed outside of Manitoba, the laws of that jurisdiction apply. | |
| Powers of attorney - lacking enduring clause | <u>5</u> | <u>6</u> |
| Real property applications without direction | <ul style="list-style-type: none"> Executed by a corporation with a seal, or Witnessed by a competent adult, with an Affidavit of Witness. (including lawyers & notary publics) | |
| Real property applications with direction | <ul style="list-style-type: none"> Executed by a corporation with a seal, or Witnessed by a competent adult, with an Affidavit of Witness. (including lawyers & notary publics) | |
| Requests | NO WITNESS REQUIRED | |
| Section 76 registrations (easements, etc.) and Section 111 statutory easements | <u>5</u> | <u>6</u> |
| Transfers | <u>1</u> | <u>2</u> |

Transfers of encumbrances 1 2

other than mortgages

Transfers of mortgages 5 6

Transmissions **NO WITNESS REQUIRED**