

## **TRANSFERS**

Section 88 of the Registration of Titles Act deals with transfers of land. The transfer is normally of a fee simple estate but can also be for a life estate or a leasehold estate. The transfer form must conform substantially to that set out in the second schedule of the Registration of Titles Act.

## **EFFECT OF REGISTRATION**

Upon registration of the transfer, the estate and interest of the registered proprietor as set out in the transfer instrument or which he is entitled to dispose of shall pass to the transferee.

## **REGISTRATION PROCEDURE**

A full examination of the transfer instrument will be done to ensure compliance with the Act and its regulations. The following documents/instruments may affect the registration of a transfer therefore, all checks should be made to ensure compliance.

- Powers of Attorney
- Caveats against dealings
- Court Orders
- Orders made under the Mental Health Act
- Trustee in Bankruptcy Notices/Orders
- Vesting Orders in The Commissioner of Lands

- Right of first refusal (normally in the case of The Minister of Housing)
- Outstanding mortgages not recited in the transfer as encumbrances to which the transfer is subject.
- Consent of the Land Development and Utilization Commission where the land transferred is 100 acres or more.

## THE TRANSFEROR

The names of the transferor/registered proprietor must be consistent. (e.g.)  
If the title shows the transferor/registered proprietor as **John R. Smith**, the transfer must state the name in the same way.

If there is any doubt with respect to identity, evidence may be required by a separate Statutory Declaration explaining the discrepancy and establishing that the registered proprietor is one and the same person as the transferor. In some cases an application to amend the name may be required.

If the transferor, a female registered proprietor has changed her name by marriage, an Application to Note the Marriage may be submitted or alternatively a Statutory Declaration as to identify with supporting documentary evidence may be accepted.

If the transferor is a corporate body, then certification from the Registrar of Companies or appropriate authority in the country in which the company is incorporated will be required verifying that the company is still on the register. If a company has been struck off the register, then the property vests in the Crown as bona vacantia. The Administrator General will vest the land in Commissioner of Lands.

If the transferor is a minor, then an appointment of Trustee under the Trustees Act will be required so the Trustee may act on behalf of the minor.

Similarly where the transferor is suffering from a mental defect, an order of the appointing a committee under the Mental Health Act should be produced. The Order will first be noted on the Certificate of Title and list the persons authorized to administer such estate or interest.

### **TRANSFEEE**

Where a minor is acquiring property a Court Order is not required. The Registrar will include the age of the minor/ disability on the face of the title when the transfer is being endorsed.

Full name and address (including mailing address) must be provided. If there are two or more transferees, the transfer should specify each name and address separately.

If the transferee is a corporate body then the mode of incorporation must be established by the Incorporating Act of Parliament by charter or by statute. This is necessary to only individuals who hold an estate or interest in land. Upon incorporation the company assumes legal status of an individual and can therefore hold land in its own name.

If the description of the transferee shows him/her as Trustee no mention of the details of trust other than that the transferees hold as a Trustee is made on the title (Section 60 of the Registration of Titles Act). In a transfer to named

individuals described as trustees for a body (religions, social) all future dealings must be made by all the owners and any substitution through death or change of trustee must be registered by way of transfer by the remaining Trustee.

### **DESCRIPTION OF LAND**

The description of land on the transfer must be consistent with the land as described in the Certificate of Title.

The description must include the name of the property and parish of location, lot number and where appropriate the deposited plan number otherwise the transfer will not be accepted for registration.

### **CONSIDERATION**

The consideration must be clearly stated in the transfer. The consideration is not necessarily related to the market or other value of the land. Where the consideration is for a monetary value, fees are paid in the consideration stated. The consideration may also be nominal as a transfer by way of gift. The fees are assessed accordingly regardless of real value.

### **TENANCIES**

Where a registered proprietor desires to transfer land to himself and another as Tenants-in-common he may include himself as a transferee or merely transfer the

share and interest that he desires the others to hold. If he desires to hold as a joint tenant he must include himself as a transferee to preserve the four unities of possession, so that the joint tenancy can be created.

The transferor must specify the interest and estate being transferred that is all or a part of his estate or the creation of a life tenancy.

If there are two or more transferees, the transfer must state whether they are to hold as joint tenants or tenants-in-common. If the tenants in common are to hold in unequal shares, the shares must be stated clearly.

### **MISCELLANEOUS**

An instrument of transfer purporting to transfer separate parcels of land to separate transferees will not be accepted. Transfers by separate registered proprietors of land to one transferee in one instrument will also not be accepted.

Similarly upon registration of a transfer signed under power of sale by a mortgagee, the estate and interest of the mortgagor in the land at the time of registration of the mortgage which he was then entitled or able to transfer shall pass and vest to the purchaser/transferee freed and discharged from all encumbrances.

Any discharge of a mortgage under which a power of sale is being exercised is fatal to the exercise of the power of attorney.

## **Payment of Transfer Tax**

Pursuant to Section 33 of the Transfer Tax Act a certificate issued by the Stamp Commissioner verifying payment of transfer tax should be produced. The transfer instrument should be submitted to the Stamp Office before it is lodged with the Registrar of Titles. The payment of the Transfer Tax and Stamp Duty will be noted on the instrument and signed by the Stamp Commissioner.

## **Fee**

Fees No. 6 and 8.

## **General Notes**

The transfer form is readily available on our website [www.nla.gov.jm](http://www.nla.gov.jm)