

TAB 4

Difficult to Administer Assets

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Practice Gems: Probate Essentials 2010
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The Law Society of
Upper Canada | Barreau
du Haut-Canada

Continuing Legal Education

Difficult to Administer Assets

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Toronto Stock Exchange Website :

<http://www.tmx.com/en/listings/index.html>

RCMP Website on Inherited Firearms:

<http://www.rcmp-grc.gc.ca/cfp-pcaf/fs-fd/will-testament-eng.htm>

The *Criminal Code*. R.S., c. C-34, s. 1. :

Registry – Recital for Executor's Deed

1. WHEREAS Restin Peace, also known as Reston Peace, (the "deceased") died on or about the 20th day of August, 2009, having duly made a last Will and Testament, and a Certificate of Appointment of Estate Trustee With a Will for his estate was granted to the Transferor as Estate Trustee thereof by the Ontario Superior Court of Justice at Kingston on the 2nd day of September, 2009, and which Certificate of Appointment of Estate Trustee With a Will was duly registered in the Land Registry Office for the Registry Division of Frontenac as Instrument No. FR123456 on 30 September 2009;

2. AND WHEREAS the said deceased was, at the aforesaid time of death, seized and possessed of the lands described herein;

3. AND WHEREAS Restin Peace, at the time of his death, was not a spouse;

4. AND WHEREAS all creditors of the said deceased have been notified and all debts of the Estate of the said deceased have been paid.

5. AND WHEREAS, for the purpose of administering the estate of the said deceased, it is necessary to transfer the said lands.

AND THEREFORE, in pursuance of the powers vested in the Transferor as personal representative of the deceased, the within transfer is made by the Transferor to the Transferee(s).

Registry – Recitals for Deed for Surviving Joint Tenant

1. WHEREAS Restin Peace and Tracy Peace are the registered owners of the lands described herein as joint tenants and not as tenants in common, having obtained title to the said lands by Instrument No. FR 123456 on 1 November 1999;
2. AND WHEREAS Restin Peace died on or about the 20th day of August, 2009.
3. AND WHEREAS proof of death of the said Restin Peace in the form of a Funeral Director's Certificate of Death was deposited on title by Document General registered on 15th day of September 2009 as Instrument No. FR456789;
4. AND WHEREAS Tracy Peace became the sole owner of the said lands by right of survivorship;
5. AND WHEREAS Restin Peace, at the time of his death, was the spouse of Tracy Peace.

Land Titles – Transmission Application

Transfer/Deed:

I, Sally Jones, hereby apply to be registered as owner, as Estate Trustee With a Will, of the land entered as Lots 6 and 7, Concession 1, Geographic Township of Bastard Township of North Frontenac in the County of Frontenac;

The evidence in support of this application consists of:

1. Affidavit of Applicant; and
2. Notarial copy of Certificate of Appointment of Estate Trustee With a Will.

A F F I D A V I T (Schedule)

I, Sally Jones, make oath and say as follows:

1. I am the Estate Trustee With a Will in the estate of Restin Peace, also known as Reston, the registered owner of the property known as Lots 6 and 7, Concession 1, Geographic Township.
2. The said Restin Peace died on the 20th day of August, 2009.
3. The Certificate of Appointment of Estate Trustee With a Will of the Estate of Restin Peace, also known as Reston Peace, was granted by the Ontario Superior Court of Justice at Napanee on the 2nd day of September, 2009, to me as Estate Trustee.
4. The deceased, at the time of his death, was not a spouse.
5. The creditors of the deceased have been notified and all debts of the said Restin Peace have been paid.
6. I make this application for no improper purpose.

SWORN BEFORE ME at the

City of Kingston

in the County of Frontenac

this day of September, 2010

A Commissioner, etc.

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Land Titles - Survivorship Application

Restin Peace and Tracy Peace are the registered owners, as joint tenants, of the land entered as:
Lots 6 and 7, Concession 1, Geographic Township;

The said Restin Peace died on the 20th day of August, 2009.

The said Tracy Peace being entitled to the land by right of survivorship hereby applies to have
the name of the deceased owner deleted from the parcel register.

The evidence in support of this application consists of:

1. Affidavit of Tracy Peace and
2. Proof of Death Certificate of Restin Peace.

A F F I D A V I T

I, Tracy Peace, of the Town of Napanee, make oath and say as follows:

1. Restin Peace and Tracy Peace, joint tenants are the registered owners, as joint tenants, of
the land entered as :
Lots 6 and 7, Concession 1, Geographic Township;
2. The said Restin Peace died on the 20th day of August, 2009.
3. I am entitled, by right of survivorship, to have the name of Restin Peace, the deceased
joint owner, removed from the Register.
4. Restin Peace, at the time of his death, was the spouse of Tracy Peace.
5. I make this application for no improper purpose.

SWORN BEFORE ME at the	}	
City of Kingston	}	
in the County of Frontenac	}	
this	}	
day of September, 2010	}	_____ Tracy Peace

A Commissioner, etc.

First Dealings After Property Converted to Land Titles:

The following procedures may be used for transmission applications for the first dealing after the property has been converted to the Land Titles System where no application for a certificate of appointment of estate trustee has been applied for. Land Registrars are authorized to exempt the requirement of a certificate of appointment of estate trustee and the following must be included by the applicant, or by way of statements from a solicitor.

- 1) the property has been converted from Registry to Land Titles by the Ministry.
- 2) the transaction is the first dealing after conversion of the property.
- 3) the value of the estate is (enter value of estate).
- 4) that the will is the last will and was properly executed and witnessed and that a certificate of appointment of estate trustee was not applied for. This is to be a law statement. Alternatively an affidavit or statement evidence by a subscribing witness to the will or person well acquainted with the testator can be indexed (not scanned into Statement 61)
- 5) that the testator was of the age of majority at the time of the execution of the will, and that the will has not been revoked by the marriage of the testator or otherwise.
- 6) proof of death.

If the will has not been properly executed, evidence as to the execution of the will can be:

- 7) A statement, or a notarial copy of a statement, by one of the subscribing witnesses to the will,
or
- 8) A statement, or a notarial copy of a statement, by a person well acquainted with the testator attesting to the signature of the testator on the will.

Statements 7) and 8) above must be indexed using Statement 92.

This should be someone of good standing within the community and must be someone who can state that they knew the handwriting of the testator. For example, a bank manager, an employer, or those individuals who can attest to an application for a passport. It cannot be a family member, a beneficiary or someone who can benefit from the estate;

In all cases a covenant to indemnify the Land Titles Assurance Fund must be provided.

Covenant to Indemnify

This Agreement made the 23rd day of November, 2009

BETWEEN:

SALLY JONES,
Estate Trustee of the Estate of Restin Peace,
of the City of Kingston, County of Frontenac

-and –

HER MAJESTY in Right of Ontario

WHEREAS:

1. Restin Peace, died on the 20th of August, 2009, testate, possessed of real property described as
2. At the time of his death he was not a spouse. The value of his estate was \$800,000.
3. By his will, the deceased appointed Sally Jones as his sole Estate Trustee, and left the whole of his estate to her.
4. The applicant, Sally Jones, was appointed as Estate Trustee with a Will by the Ontario Superior Court of Justice File No. 2009-12345 on the 26th day of October 2009.

The said Sally Jones, as Estate Trustee of the Estate of Restin Peace, in consideration of the registration of a Transmission Application

For the covenantor, the covenantor's administrators, executors and assigns, covenants with Her Majesty in Right of Ontario, represented by the Director of Titles, that the said Sally Jones, Estate Trustee of the Estate of Restin Peace, shall from the Estate of Restin Peace keep indemnified Her Majesty in right of Ontario, her successors and assigns, from and against all loss or diminution of the Assurance Fund under the Land Titles Act, or established or continued under any other Act of the Province of Ontario, in respect of any valid claim that may hereafter be made on account of the circumstances set out above and also against any costs in respect thereof and will pay such amount as anyone claiming as aforesaid may be adjudged to be entitled to recover in respect of the premises and costs.

IN WITNESS WHEREOF I have set my hand and seal

Signed, Sealed and Delivered
In the presence of