

LAND TITLE PRACTICE MANUAL
EXCERPT FROM PART 5

LAND TITLE ACT: PART 5
(ss. 41 to 50)
Attestation and Proof of Execution of Instruments

Overview of Part 5 [§5.1]

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OVERVIEW OF PART 5 [§5.1]

Part 5 of the *Land Title Act* creates a scheme of certification that has eliminated and replaced the traditional role of the witness. The registrar only accepts affidavits of execution when satisfied that the circumstances require an affidavit of execution rather than officer certification as provided for in this Part.

CROSS REFERENCES AND OTHER SOURCES OF INFORMATION [§5.2]

Execution of Instruments [§5.3]

See Tab 61 in this Manual regarding the execution of instruments.

SECTION 41 [§5.4]

Definitions

41 In this Part:

“**corporation**” includes Her Majesty;

“**instrument**” includes a true copy of an electronic instrument as defined in section 168.1;

“**officer**” means a person before whom an affidavit may be taken or made under section 42(3), but does not include a registrar;

“**signature**” includes the mark of an individual who cannot sign his or her name in English characters;

“**transferor**” includes a grantor and assignor and any other transferring or charging party.

SECTION 42 [§5.5]

Witnessing and execution

42 (1) The execution by a transferor of an instrument must be witnessed by an officer who is not a party to the instrument.

(2) Subsection (1) does not apply to

- (a) a Crown grant,
- (b) an order in council,
- (c) a court order, or
- (d) an instrument or an instrument that is of a class of instrument that is prescribed for the purposes of this section.

(3) An affidavit necessary for the purposes of this Act may be taken or made inside or outside British Columbia by and before a person before whom an affidavit may be sworn under the *Evidence Act*.

(4) The signature of a transferor on an instrument is proof, in the absence of evidence to the contrary, that the transferor

- (a) knows the contents of the instrument and has signed it voluntarily, and
- (b) has the legal capacity to execute the instrument and intends to be bound by it.

1979-219-41; 1989-69-4, effective April 1, 1990 (B.C. Reg. 53/90).

FORMS [§5.6]

Officer Certification [§5.7]

In accordance with DR 04-11, Hardcopy Land Title Forms (at ltsa.ca), any forms requiring an officer as a witness, not specifically included in director's requirements and approved by the registrar for application, must be modified to the extent necessary to accommodate the execution and officer certification by striking out "SIGNED IN THE PRESENCE OF" and substituting "OFFICER CERTIFICATION", and by adding the following immediately below the signatures of the executing parties and the witness:

Officer Certification: Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

Failure to include the officer certification statement is grounds for rejection.

Officer Certification for Other Instruments Not Required to Be in Prescribed Form [§5.8]

DR 04-11, Hardcopy Land Title Forms (at ltsa.ca), provides that any other instrument that must be witnessed under Part 5 of the Act, but which is not required to be in a form prescribed under the Act, must, where the witness is an officer, contain the officer certification statement set out in the above example and the witness must sign the instrument under a column headed "Officer Signature(s)" in the same manner as required in Item 7 of Form A.

Exception for Form 22: Application for Duplicate Infeasible Title [§5.9]

Form 22 does not require an officer's certification.

Instrument Requiring Affidavit of Execution [§5.10]

DR 04-11, Hardcopy Land Title Forms (at ltsa.ca) provides that, where an officer does not witness an instrument, the applicant must enter the words "see affidavit of execution" in the officer signature column and attach an affidavit of execution to the instrument. See the *Land Title Electronic Forms Guidebook* (the "Green Book") for examples of affidavits. The examples are also reproduced under s. 49 of the Act.

PRACTICE [§5.11]

Scheme of Officer Certification [§5.12]

The Act requires all transferor signatures to be certified by an officer, who is a person authorized by the *Evidence Act* to take affidavits. Certification by an officer operates to verify the signature and identity of the transferor. No officer certification is required for a Crown grant, order in council, court order, or other instrument prescribed for the purposes of s. 42(2).

Officer Must Be Person Authorized by Evidence Act to Take Affidavits [§5.13]

Registrar Has Discretion to Request Proof

The person who signs as an officer must be an officer before whom an affidavit may be sworn under the *Evidence Act*. If the officer is one who on the face of the document complies generally with the *Evidence Act*, the registrar does not request proof of officer identification and capacity. The registrar may, however, request proof where the authority of the officer is questionable.

Commissioners Acting as Officers

“The Attorney General may appoint, by order, commissioners for taking affidavits for British Columbia”. See s. 56(1) of the *Evidence Act*.

Officer Certification Made Out of British Columbia

A person who gives an officer certification outside the province must be a person who is authorized by British Columbia law and by the law of his or her jurisdiction to take affidavits for use within British Columbia. Where an out-of-country commissioner makes the officer certification, the registrar may require proof that the commissioner is acting as a commissioner authorized to administer oaths in the courts of justice of that country. For authority, see s. 63(a) of the *Evidence Act*.

Use of Seal by Foreign Notary [§5.14]

If a notary is acting as an officer, as opposed to taking an affidavit, the notary does not need to use a notarial seal.

Officer Must State Professional Capacity and Address [§5.15]

The officer must state his or her professional capacity and address. If the officer’s name, address, and capacity does not appear typed or printed below his or her signature, the registrar rejects the document. The registrar has the power under s. 150 of the Act to require this information.

Impression of Signatures and Use of Rubber Stamps [§5.16]

Documents submitted for registration must be capable of being microfilmed or scanned. Use of an ink other than black or dark blue may result in rejection if the land title office’s image processor will not reproduce the data. Consequently, signatures in dark ink are preferred. An officer may hand print or use a rubber stamp showing professional capacity and address, but rubber stamps should use a dark blue or black inkstamp. An inkstamp with characters of 10–12 pitch, but not smaller than 12 point, is acceptable. When sending transfer forms out of province for execution, encourage the use of dark ink to avoid the possibility of rejection.

Variation of Wills [§5.17]

A consent document under s. 12 of the *Wills Variation Act* is not an “instrument” as defined in the *Land Title Act*. (The *Wills Variation Act* was repealed on March 31, 2014, and its provisions were substantially carried forward into Part 4, Division 6 of the *Wills, Estates and Succession Act*, S.B.C. 2009, c. 13.) Accordingly, Part 5 of the Act does not apply and the signature of a consenting person does not need to be witnessed by an officer or be proven by affidavit of witness. However, the registrar prefers that the consent be witnessed by a neutral party whose name, address, and occupation appear below the witness signature. See Tab 58 in this Manual regarding the *Wills, Estates and Succession Act*.

Electronic Submissions [§5.17A]

On the Declaration form, enter a description of the attached document and attach an image of the originally signed consent witnessed by a neutral party. By attaching an image of the consent and applying an electronic signature to the electronic Declaration, the subscriber certifies that the original of the supporting document is in his or her possession (*Land Title Act*, s. 168.3 and s. 168.41).

The electronic Declaration with the image attached is submitted immediately following the document it supports. The Electronic Filing System appends the Declaration to the document it follows.

CROSS REFERENCES AND OTHER SOURCES OF INFORMATION [§5.18]

Evidence Act [§5.19]

See generally ss. 56 to 69 of the *Evidence Act* regarding who may take affidavits. Note, in particular, s. 60 of the Act, which provides that certain persons are, because of their office or employment, commissioners for taking affidavits for British Columbia.

Commissioners because of office or employment

60 The following persons are, because of their office or employment, commissioners for taking affidavits for British Columbia:

- (a) a judge of a court in British Columbia;
- (b) justices;
- (c) registrars, deputy registrars, district registrars and deputy district registrars of the Supreme Court;
- (d) practising lawyers as defined in section 1(1) of the *Legal Profession Act*;
- (e) notaries public;
- (f) the local government corporate officer and that person's deputy;
- (g) [repealed]
- (h) the secretary treasurer of a board of school trustees;
- (h.1) the directeur général of a francophone education authority as defined in the *School Act*;
- (i) coroners;
- (j) government agents and deputy government agents;
- (k) [repealed]
- (l) other classes of office holder or employment the Attorney General prescribes.

1979-116-67; 1980-1-9; 1982-46-18; 1983-10-23; 1987-25-102;
1987-42-20; 1989-61-200; 1989-40-88; 1998-34-248;
1999-6-11, effective October 15, 1999 (B.C. Reg. 288/99);
2000-7-191; 2003-52-59, effective January 1, 2004 (B.C. Reg. 465/2003);
2007-16-39, effective July 1, 2007 (B.C. Reg. 194/2007).

Note that s. 60(k) of the Act was repealed by s. 11 of the *Attorney General Statutes Amendment Act, 1999*, in force October 15, 1999, by B.C. Reg. 288/99. Consequently, a provincial or municipal constable holding a rank of sergeant or higher is no longer authorized under this section to take an affidavit for land title purposes.

Section 63 of the Act defines who may swear affidavits outside British Columbia and what effect those affidavits have within the province.

Affidavits sworn out of British Columbia for use in British Columbia

63 Oaths, affidavits, affirmations or statutory declarations administered, sworn, affirmed or made in any other province or any country other than Canada before

- (a) a magistrate or an officer of a court of justice, a judge or a commissioner authorized to administer oaths in the courts of justice of that province or country, as the case may be,
- (b) the mayor or chief magistrate of any city, borough or town corporate, certified under the seal of the city, borough or town corporate, as the case may be,

- (c) an officer of any of Her Majesty's diplomatic or consular services exercising the officer's functions in any country other than Canada, including an ambassador, envoy, minister, chargé d'affaires, counsellor, secretary, attaché, consul general, consul, vice consul, proconsul, consular agent, acting consul general, acting consul, acting vice consul and acting consular agent,
- (d) an officer of the Canadian diplomatic and consular service exercising the officer's functions in any country other than Canada, including, in addition to the diplomatic and consular officers under paragraph (c), a high commissioner, permanent delegate, acting high commissioner, acting permanent delegate, counsellor and secretary,
- (e) a Canadian government trade commissioner or an assistant Canadian government trade commissioner exercising his or her functions in any country other than Canada,
- (f) a notary public acting in the territorial limits of the notary's authority, certified under the notary's hand and official seal, or
- (g) a commissioner authorized by the laws of British Columbia to take affidavits,

are as valid and effectual, and have the same force and effect as if the oath, affidavit, affirmation or statutory declaration had been administered, sworn, affirmed or made in British Columbia before a commissioner for taking affidavits or other competent authority of the same nature.

1979-116-70.

Section 64 of the Act defines the powers of officers in the military for the purpose of taking affidavits either within or outside British Columbia for use in British Columbia.

Commissioned officers empowered to administer oaths

64 All commissioned officers of Her Majesty's naval, military and air forces of Canada on active service in or out of Canada and all Agents General for British Columbia are empowered to administer oaths and take and receive affidavits, declarations and affirmations in or out of British Columbia for use in British Columbia.

1979-116-71; 1990-21-10.

Section 65 deals with the admissibility and validity of documents that bear the signature or seal of a person designated as a commissioner for taking affidavits under the Act.

Admissibility of documents attesting to affidavits having been sworn

- 65** (1) A document purporting to have affixed, impressed or subscribed on it or to it
- (a) the signature of
 - (i) a commissioner for taking affidavits for British Columbia,
 - (ii) a commissioner for taking affidavits within British Columbia,
 - (iii) a special commissioner for taking affidavits within British Columbia,
 - (iv) a commissioner for taking affidavits in and for the courts of British Columbia, or
 - (v) a person designated in section 63(a) or section 64, or
 - (b) a seal designated in section 63(b) together with the signature of the mayor or chief magistrate of the city, borough or town corporate, or
 - (c) the seal, if any, and signature of any other person designated in section 63,

in testimony of an oath, affidavit, affirmation or declaration having been administered, sworn, made or affirmed by or before him or her, is as valid and effectual as if effected in British Columbia before a commissioner appointed under section 56, and must be admitted in evidence without proof of the signature or, as the case may be, seal and signature, or of the official position of the person.

(2) Subsection (1) applies even though the person whose signature is subscribed in testimony of an affidavit having been sworn is the solicitor or the partner, associate, agent or clerk of the solicitor for the deponent or for the party on whose behalf the affidavit is to be used, and a provision of a statute, rule or regulation inconsistent with this subsection is inoperative.

1979-116-72.

Capacity of Minors [§5.20]

See the *Age of Majority Act*.

Secondary Sources [§5.21]

See Di Castri, *Registration of Title to Land*, vol. 1, para. 293.

CASE LAW [§5.22]

Errors in Form [§5.23]

The lawyer who witnessed the signature of the mortgagor to a mortgage inadvertently wrote the client's name rather than his own under the words "Officer Signature". The mortgage was registered and the funds advanced. The mortgagors later alleged that the mortgage was invalid and/or unregistrable because of the witnessing irregularity. Section 42(1) of the *Land Title Act* requires that the execution of an instrument be witnessed by an officer who is not a party to it. The lawyer fulfilled this requirement. Whether he wrote his own name, an "X", or some other name, it could not be said that he did not witness the execution of the document. Mechanical errors or errors of form should not be allowed to undermine the registration, the binding effect, or the validity "for all purposes" of an instrument that the registrar considers legally binding (*Hongkong Bank of Canada v. Upright Developments* (1992), 61 B.C.L.R. (2d) 231 (S.C.)).

Unqualified Officers [§5.24]

A purchaser under a contract of purchase and sale brought an action against the vendors for recovery of deposit money, alleging that the vendors breached the contract by failing to provide executed copies of the Form A, Freehold Transfer, in registrable form. The vendors, who resided in London, England, counterclaimed for specific performance. The vendors had executed the transfer form in England, but their signatures were witnessed by an American attorney who did not qualify as an "officer" as defined by the operation of ss. 41 and 42(3) of the *Land Title Act* and s. 63 of the *Evidence Act*. Both by agreement and by practice, the parties had arranged that the purchaser would prepare and lodge the transfer for registration. Consequently, it was primarily the purchaser's responsibility to ensure a proper transfer in registrable form was prepared for execution. Instead, the transfer contained an attestation clause suitable for executions within the province, but not without; it did not indicate who would be qualified to witness the signatures outside the province, despite the fact that it was known where the vendors resided and would likely execute the document. The purchaser could not rely on the defect in the transfer to avoid her obligation to complete the purchase. Upon discovering it, she was duty bound to take the necessary steps to correct the defect and to lodge the transfer for registration. Specific performance was granted (*MacDonald v. Vandiver* (1995), 3 B.C.L.R. (3d) 269 (S.C.)).

Validity of Improperly Executed Instrument [§5.25]

The petitioner, a law corporation, sought an order nisi of foreclosure on a mortgage granted by the respondent to secure payment of the petitioner's fees for representing the respondent at a trial. Mr. D., the lawyer who represented the respondent at the trial, was the sole shareholder and director of the law corporation. Mr. D. also witnessed the respondent's signature on the mortgage. At trial, the court dismissed the law corporation's petition and granted an order discharging the mortgage relying on both s. 84 of the *Legal Profession Act* and s. 42(1) of the *Land Title Act* which states that the execution by a transferor of an instrument must be witnessed by an officer who is not a party to the instrument. The Court of Appeal found that the mortgage did not become invalid as between the parties to it because of a deficiency in its execution. Section 42(1) of the Act does not in and of itself affect the validity of a mortgage. Rather, the point of s. 42(1) is to assist in ensuring that instruments which are presented for registration are indeed the instruments of the persons who executed them. Accordingly, the Court of Appeal set aside the order discharging the mortgage and remitted the matter back to the trial court to consider evidence about any equitable issues that might have arisen as between the mortgagor and the mortgagee (*Daroux Law Corp. v. Jennings*, 2004 BCSC 1442, appeal allowed 2005 BCCA 229).

SECTION 43 [§5.26]

Witnessing—individuals

43 The signature of the officer witnessing the execution of an instrument by an individual is a certification by the officer that

- (a) the individual appeared before and acknowledged to the officer that he or she is the person named in the instrument as transferor, and
- (b) the signature witnessed by the officer is the signature of the individual who made the acknowledgement.

1979-219-43; 1989-69-4, effective April 1, 1990 (B.C. Reg. 53/90); 2016-5-39, Sch. 1.

FORMS [§5.27]

Execution Item [§5.28]

The following points of practice apply to the execution item in Transfer Forms A, B, C, and D:

If there is insufficient space on an electronic form, enter this information on the electronic Form D Executions Continued.

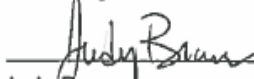
If there is insufficient space on an electronic form, enter this information on the electronic Form D Executions Continued. The name of the party executing Forms A, B, C or D must be entered in the execution portion of the form, in order to confirm that the party executed the form. The name, address and capacity of the officer must also be entered in the execution portion of the form in order to confirm that the officer witnessed the party's signature. See the *Land Title Electronic Forms Guidebook* (the Green Book) and s. 150 of the Act.

Forms of Officer Certification for Individual Transferors [§5.29]

EXAMPLE : More than one Transferor


7. EXECUTION(S): The transferor(s) accept(s) the above consideration and understand(s) that the instrument operates to transfer the freehold estate in the land described above to the transferee(s)

Officer Signature(s)


 Judy Brown
 Barrister & Solicitor
 Unit 67 120 Street North
 Vancouver BC V3E 6Y6

Execution Date		
Y	M	D
17	06	13

Transferor(s) Signature(s)


 Ingrid Stevenson

 George Evan Smith

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

PRACTICE [§5.30]

Scheme of Officer Certification [§5.31]

This section contains the basic scheme of officer certification. Where an officer certifies a transferor's signature, the officer's signature constitutes a certification that:

- (1) the transferor appeared before the officer and acknowledged that he or she is the person named in the instrument as transferor; and
- (2) the signature certified by the officer is the signature of the person who made the acknowledgment.

“Signature of the Officer” and “Certification of the Officer” [§5.32]

An officer’s signature in the execution item indicates that the officer is certifying matters specified in Part 5 of the Act. The effect of the officer’s signature in the execution item is to give officer certification to execution of the instrument.

CASE LAW [§5.33]

The petitioner sought a declaration that the requirements for the witnessing of an instrument set out in ss. 42, 43, and 44 of the Act could be met through the use of interactive videoconferencing. The petitioner was in the business of issuing title insurance policies to lending institutions. In November 1999, the petitioner started a program with certain lenders that permitted borrowers to sign mortgage documents in the offices of the lenders, while a lawyer retained by the petitioner witnessed and certified the documents via live interactive videoconference instead of being physically present. In March 2000, the petitioner asked the Ethics Committee of the Law Society of British Columbia to consider whether a lawyer could properly witness a document in this way. The Ethics Committee concluded that the words “appeared before” in s. 43 of the Act required an actual physical appearance before the officer. The petitioner then voluntarily suspended the videoconferencing practice pending the outcome of this petition. In dismissing the petition and upholding the ruling of the law society, the court found that, given the conclusive effect of registration under the Act and the importance of preserving the integrity of the register, any changes in formalities surrounding the execution of instruments must be carefully scrutinized and fully understood before their endorsement. To permit documents executed at one location to be sent to another location for completion would provide increased opportunities for fraud and would therefore have the effect of increasing the exposure of the Land Title Assurance Fund to claims by the victims of fraud. Furthermore, the use of such a program would be contrary to the best interests of the public and the legal profession and could harm the standing of the legal profession (*First Canadian Title Co. v. Law Society of British Columbia*, 2004 BCSC 197).

SECTION 44 [§5.34]

Witnessing—corporations

44 (1) In the case of an instrument that is executed by a corporation, the signature of the officer witnessing the execution is a certification by the officer that

- (a) the individual who executed the instrument for the corporation appeared before and acknowledged to the officer that
 - (i) the individual is an authorized signatory of the corporation,
 - (ii) the individual and any other individual who executed the instrument for the corporation were authorized by the corporation to execute the instrument, and
 - (iii) the corporation existed at the time the instrument was executed and is legally entitled to hold and dispose of land in British Columbia, and
- (b) the signature witnessed by the officer is the signature of the individual who made the acknowledgement.

(2) A corporation must execute an instrument by its authorized signatory who must, on behalf of the corporation, sign his or her name to the instrument.

(3) In the case of an instrument executed for a corporation by more than one authorized signatory, only the signature of one authorized signatory is required to be witnessed in accordance with this Part.

1979-219-44; 1989-69-4, effective April 1, 1990 (B.C. Reg. 53/90); 2016-5-39, Sch. 1.

FORMS [§5.35]

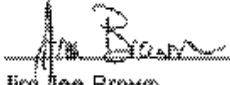

Execution Item [§5.36]

See the requirements for the execution item under the “Forms” heading for s. 43 of the Act.

Forms of Officer Certification for Corporate Transferor [§5.37]

EXAMPLE: Corporate Transferor

7. EXECUTION(S): The transferor(s) accept(s) the above consideration and understands that the instrument operates to transfer the feehold estate in the land described above to the transferee(s)

<p>Officer Signature(s)</p>  <p>Jim Joe Brown Barrister & Solicitor Unit 07 Street South Vancouver BC V3E 6Y6</p>	<p>Execution Date</p> <table border="1"> <tr> <td>Y</td> <td>M</td> <td>D</td> </tr> <tr> <td>17</td> <td>05</td> <td>13</td> </tr> </table>	Y	M	D	17	05	13	<p>Transferor(s) Signature(s)</p> <p>ABC Limited by its authorized signatory</p>  <p>John Lee Doe</p>
Y	M	D						
17	05	13						

OFFICER CERTIFICATION:
Your signature constitutes a representation that you are a solicitor, notary public, or other person qualified by the Evidence Act, R.S.B.C. (1966, c.126), to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

PRACTICE [§5.38]

Scheme of Officer Certification [§5.39]

The same basic scheme as described for s. 43 of the Act applies to officer certification of execution by a corporation with the necessary adjustments. A seal is no longer required for land title purposes (see s. 16 of the *Property Law Act* in this Manual).

Only One Authorized Signatory Needs to Be Certified [§5.40]

Under s. 44(3) of the Act, only one authorized signatory needs to execute on behalf of a corporation. However, where more than one authorized signatory for a corporation executes an instrument, the officer need only certify one of the signatures.

CROSS REFERENCES AND OTHER SOURCES OF INFORMATION [§5.41]

Instrument Executed by Corporation Conclusively Deemed to Be Properly Executed [§5.42]

See s. 165(4) of the Act.

Officer’s Signature Sufficient Evidence Corporation Existed When Instrument Executed [§5.43]

See s. 165(5) of the Act and Tab 61 in this Manual regarding the execution of instruments. The registrar verifies that the corporation existed at the time of execution.

SECTION 45 [§5.44]

Witnessing—individual power of attorney

45 (1) In the case of an instrument that is executed by an individual who is acting under a subsisting power of attorney, the signature of the officer witnessing the execution is a certification by the officer that

- (a) the individual appeared before and acknowledged to the officer that
 - (i) the individual is the person named as the attorney of the transferor in a subsisting power of attorney,

- (ii) if the transferor is an individual, the individual acting under the power of attorney had, at the time the instrument was executed, no knowledge of the death or bankruptcy of the transferor, or of the revocation of the power by the transferor, and
 - (A) if the power of attorney is not an enduring power of attorney, the individual had, at that time, no knowledge of the mental infirmity of the transferor, or
 - (B) in the case of an enduring power of attorney, the individual had, at that time, no knowledge of the suspension or termination of his or her authority under any enactment,
 - (ii.1) each change to the authority of an attorney under an enduring power of attorney has been filed with the registrar under this Act or a copy, certified under section 51(4) as a true copy of those changes, has been filed, and
 - (iii) if the transferor is a corporation, it is legally entitled to hold and dispose of land in British Columbia and, at the time the instrument was executed, the corporation existed and the individual had no knowledge of the bankruptcy of the transferor or of a revocation of the power by the transferor, and
- (b) the signature witnessed by the officer is the signature of the individual who made the acknowledgement.
- (2) An attorney who is an individual must execute the instrument by signing his or her name and must indicate on the instrument that he or she is the attorney of the transferor.

1979-219-45; 1989-69-4, effective April 1, 1990 (B.C. Reg. 53/90);
 2007-34-86, effective September 1, 2011 (B.C. Reg. 14/2011); 2016-05-39, Sch. 1.

FORMS [§5.45]

Execution Item [§5.46]

See the requirements for the execution item under the “Forms” heading for s. 43 of the Act.

Forms of Officer Certification for Individual Power of Attorney [§5.47]

EXAMPLE: Execution by Individual Attorney

7. EXECUTION(S): The transferor(s) accept(s) the above consideration and understand(s) that the instrument operates to transfer the freehold estate in the land described above to the transferee(s)
 Officer Signature(s)

 Judy Brown
 Barrister & Solicitor
 Unit 67 120 Street North
 Vancouver BC V3E 6Y6

Execution Date		
Y	M	D
17	06	13

Transferor(s) Signature(s)


 John Lee Doe by his Attorney Joan
 Smith see CA1234567

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

PRACTICE [§5.48]

Scheme of Officer Certification [§5.49]

The same scheme as described for s. 43 applies to officer certification of execution by an individual who is acting under a subsisting power of attorney, with the appropriate acknowledgments pertaining to the validity of the power of attorney.

Acknowledgments Regarding Bankruptcy and Entitlement to Hold and Dispose of Land [§5.50]

The officer certifying a document does not have to inquire personally into the facts described in s. 45(1)(a)(iii) of the Act. Rather, the individual who executes the document in the presence of the officer must acknowledge his or her knowledge of these facts to the officer certifying execution.

Individual Attorney Signs Own Name [§5.51]

Under s. 45(2), an individual who is an attorney executes a document by signing only his or her own name, and is not required to sign the name of the donor. However, the name of the donor must appear in the execution block, as shown in the preceding example.

Reference to Power of Attorney Registration Number [§5.52]

The signature of the attorney must be followed by a reference to the land title registration number of the power of attorney appointing the signatory as attorney.

Where the power of attorney is submitted in the same package as the instrument, the reference to the registration number must be by description rather than by reference to the land title registration number.

CROSS REFERENCES AND OTHER SOURCES OF INFORMATION [§5.53]

Deposit of Power of Attorney [§5.54]

See s. 51 of the Act regarding the requirement that a power of attorney be filed with the registrar before an instrument executed by the attorney appointed under it may be registered.

Revocation of Power of Attorney [§5.55]

See s. 57 of the Act.

SECTION 46 [§5.56]

Witnessing—corporate power of attorney

46 (1) In the case of an instrument that is executed by a corporation acting under a power of attorney, the signature of the officer witnessing the execution is a certification by the officer that

- (a) the individual who executed the instrument for the corporate attorney appeared before and acknowledged to the officer that
 - (i) the individual is an authorized signatory of the corporate attorney,
 - (ii) the individual and any other individual who executed the instrument for the corporate attorney were authorized by the corporate attorney to execute the instrument,
 - (iii) the corporate attorney is the attorney of the transferor under a subsisting power of attorney,
 - (iv) if the transferor is an individual, the individual executing the instrument for the corporate attorney had, at the time the instrument was executed, no knowledge of the death or bankruptcy of the transferor, or of the revocation of the power by the transferor, and

- (A) if the power of attorney is not an enduring power of attorney, the individual had, at that time, no knowledge of the mental infirmity of the transferor, or
 - (B) in the case of an enduring power of attorney, the individual had, at that time, no knowledge of the suspension or termination of the authority of the corporate attorney under any enactment,
 - (iv.1) each change to the authority of an attorney under an enduring power of attorney has been filed with the registrar under this Act or a copy, certified under section 51(4) as a true copy of those changes, has been filed, and
 - (v) if the transferor is a corporation, it is legally entitled to hold and dispose of land in British Columbia and, at the time the instrument was executed, the corporation existed and the individual had no knowledge of the bankruptcy of the transferor or of a revocation of the power by the transferor, and
 - (b) the signature witnessed by the officer is the signature of the individual who made the acknowledgement.
- (2) A corporate attorney must execute an instrument in accordance with section 44(2) and must indicate on the instrument that the corporation is the attorney of the transferor.

1979-219-46; 1989-69-4, effective April 1, 1990 (B.C. Reg. 53/90);
 2007-34-87, effective September 1, 2011 (B.C. Reg. 14/2011); 2016-5-39, Sch. 1.

FORMS [§5.57]

Execution Item [§5.58]

See the requirements for the execution item under the “Forms” heading for s. 43 of the Act.

Forms of Officer Certification for Corporate Attorney [§5.59]


EXAMPLE: Execution by Corporate Attorney

7. EXECUTION(S): The transferor(s) accept(s) the above consideration and understand(s) that the instrument operates to transfer the freehold estate in the land described above to the transferee(s)
 Officer Signature(s)

 Judy Brown
 Barrister & Solicitor
 Unit 67 120 Street North
 Vancouver BC V3E 6Y6

Execution Date		
Y	M	D
17	06	13

Transferor(s) Signature(s)



 John Lee Doe by his Attorney ABC
 Limited by its authorized signatory
 Joan Smith see CA12374859

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

PRACTICE [§5.60]

Scheme of Officer Certification [§5.61]

The same scheme described for s. 44 of the Act applies to officer certification of execution by a corporate signatory on behalf of a corporate attorney acting under a subsisting power of attorney, with the appropriate acknowledgments pertaining to the validity of the power of attorney. See also the practice notes applicable to attorneys under the “Practice” heading for s. 45 of the Act.

CROSS REFERENCES AND OTHER SOURCES OF INFORMATION [§5.62]

Use of Power of Attorney [§5.63]

See the “Cross References and Other Sources of Information” heading under s. 45 of the Act.

SECTION 47 [§5.64]

Witnessing—persons not fluent in English

47 In the case of an instrument that is executed by an individual who appears to the officer to be unable to read English or sign his or her name in English characters, the signature of the officer is, in addition to the certification in section 43, a certification by the officer that the individual appeared before and acknowledged to the officer that the contents and effect of the instrument were sufficiently communicated to the individual and that the individual fully understood the contents of the instrument.

1979-219-47; 1989-69-4, effective April 1, 1990 (B.C. Reg. 53/90).

PRACTICE [§5.65]

Use of Interpreter [§5.66]

Section 47 of the Act provides that individuals who are unable to read English or sign their names in English characters must acknowledge to the officer that the contents and effect of the instrument have been sufficiently communicated to them and that they fully understand the contents of the instrument. The officer may require an interpreter to be present at the execution. The interpreter is not required to swear an affidavit for land title purposes.

CROSS REFERENCES AND OTHER SOURCES OF INFORMATION [§5.67]

“Signature” [§5.68]

See the definition of “signature” in s. 41 of the Act.

SECTION 47.1 [§5.69]

[Repealed 2007-34-88, effective September 1, 2011 (B.C. Reg. 14/2011).]

Representation agreement

47.1 (1) *This Part and section 51 apply to an instrument executed by a representative under a representation agreement made under section 9 of the Representation Agreement Act as though the representation agreement were an enduring power of attorney.*

(2) *For the purposes of subsection (1), the following references in this Part and in section 51 are to be read as follows:*

- (a) a reference to a power of attorney or to an enduring power of attorney as a reference to a representation agreement;*
- (b) a reference to an attorney as a reference to a representative;*
- (c) a reference to the Power of Attorney Act or to a provision of that Act as a reference to the Representation Agreement Act or to the corresponding provision of that Act, as the case may be.*

(3) *In addition to certifying the matters set out in section 45(1) or 46(1), as applied by this section, the signature of the officer witnessing the execution of an instrument by a representative is a certification by the officer that the representative appeared before and acknowledged to the officer that*

- (a) the authority conferred by the representation agreement is not suspended under section 12(8) of the Representation Agreement Act,*
- (b) no provision of the representation agreement is cancelled under section 28 of the Representation Agreement Act,*
- (c) the representation agreement has not ended for any of the reasons set out in section 29 of the Representation Agreement Act,*

- (d) no provision of the representation agreement affecting property is suspended or cancelled under section 19.1 of the *Patients Property Act*, and
- (e) any changes to the representation agreement affecting the authority given to a representative under section 9(1)(g) of the *Representation Agreement Act* have been filed with the registrar under this Act or a copy, certified under section 51(4) as applied by section 51(4.1) of this Act to be a true copy of those changes, has been so filed.

1999-25-19, effective February 27, 2000 (B.C. Reg. 12/2000);
 2001-2-17, effective September 1, 2001 (B.C. Reg. 99/2001).

PRACTICE ALERT [§5.69A]

Section 47.1 of the *Land Title Act* was repealed by s. 88 of the *Adult Guardianship and Planning Statutes Amendment Act*, 2007, S.B.C. 2007, c. 34 on September 1, 2011. By virtue of the transitional provisions in s. 65 of that Act, s. 44.3 of the *Representation Agreement Act* provides that, if a representation agreement executed before September 1, 2011, authorized a representative to exercise the powers of an attorney, that part of the representation agreement is deemed to be an enduring power of attorney under Part 2 of the *Power of Attorney Act* on and after September 1, 2011.

Under s. 51(2.1)(b) of the *Land Title Act*, enduring powers of attorney in a representation agreement executed before September 1, 2011, are accepted by the land title office in the same manner as an enduring power of attorney signed under s. 16(2) of the *Power of Attorney Act*. A representation agreement executed after September 1, 2011 may not be used for land title purposes.

The practice materials under s. 47.1 of the *Land Title Act* have been modified and are included in the Manual as information only with respect to representation agreements executed before September 1, 2011.

FORMS [§5.70]

Execution Item [§5.71]

See the requirements for the execution item under the “Forms” heading for s. 43 of the Act.

Forms of Officer Certification for Representatives [§5.72]

EXAMPLE I: Execution by Individual Representative


7. EXECUTION(S): The transferor(s) accept(s) the above consideration and understand(s) that the instrument operates to transfer the freehold estate in the land described above to the transferee(s)

Officer Signature(s)

 Judy Brown
 Barrister & Solicitor
 Unit 67 120 Street North
 Vancouver BC V3E 6Y6

Execution Date		
Y	M	D
17	06	13

Transferor(s) Signature(s)


 John Lee Doe by his Representative
 Joan Smith see CA987654

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

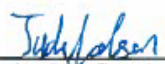
EXAMPLE 2: Execution by Corporate Representative

7. EXECUTION(S): The transferor(s) accept(s) the above consideration and understand(s) that the instrument operates to transfer the freehold estate in the land described above to the transferee(s)

Officer Signature(s)


 Jim Joe Brown
 Barrister & Solicitor
 Unit 67 Street South
 Vancouver BC V3E 6Y6

Execution Date		
Y	M	D
17	06	13

Transferor(s) Signature(s)


 John Lee Doe by his Representative
 Judy Nelson ABC Company see
 CA987654

OFFICER CERTIFICATION:
 Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

PRACTICE [§5.73]

Scheme of Officer Certification [§5.74]

The scheme of officer certification of execution that applies under a representation agreement, with the appropriate acknowledgments pertaining to the validity of the representation agreement, is, with respect to:

- (1) execution by an individual representative, the same scheme as described for s. 43; and
- (2) execution by a corporate representative, the same scheme as described for s. 44.

CROSS REFERENCES AND OTHER SOURCES OF INFORMATION [§5.75]

Powers of Attorney [§5.76]

See the practice notes for individual and corporate powers of attorney under ss. 45 and 46 of the Act.

Representation Agreements [§5.77]

Sections 45 and 46 do not cover all of the circumstances that may arise with respect to representation agreements. As a consequence, the registrar requires a statutory declaration in a form similar to the following example:

EXAMPLE: Statutory Declaration Accompanying Representation Agreement

I, _____ of _____, DO SOLEMNLY DECLARE THAT:

- 1. I am a person named as a representative of _____ according to a Representation Agreement given on _____ dd/mm/yyyy, and filed in the _____ Land Title Office on _____ dd/mm/yyyy under # _____ (or filed concurrently with this document).
- 2. I am authorized to act for _____ in these circumstances, at this time, and for these purposes.
- 3. I have no knowledge that the Representation Agreement has been changed, revoked, cancelled, or come to an end under the provisions of Part 4 of the *Representation Agreement Act*.
- 4. I have no knowledge that the authority granted under the Representation Agreement has been terminated under sections 19 or 19.1 of the *Patients Property Act* because _____ has become or has been declared to be a patient.

And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.

DECLARED BEFORE ME at the City of _____,
Province of British Columbia, this _____ day of _____, _____.

Officer Signature

Representative Signature

Execution of Representation Agreements

Execution by Adult

Prior to September 1, 2011, a representation agreement was executed by an adult in the presence of two witnesses. Section 13(3.1) of the *Representation Agreement Act* provided that:

- 13 (3.1) If an instrument executed by a representative under a representation agreement made under section 9 of this Act is to be effective for the purposes of the *Land Title Act*,
- (a) one of the witnesses to the execution of that agreement by the adult must be an officer as defined in section 41 of the *Land Title Act*, and
 - (b) the execution of the representation agreement by the adult must be witnessed or proved in the manner required for instruments by Part 5 of the *Land Title Act*.

Execution by Representative and Alternate Representative

Prior to September 1, 2011, a representation agreement was executed by each representative or alternate representative in the presence of two witnesses. A representative or alternate representative could not be a witness. Neither witness needed to be an officer.

Execution on Behalf of Adult Unable to Sign

Section 13(4) of the *Representation Agreement Act* provided that a person could execute a representation agreement on behalf of an adult who was unable to sign. In these circumstances, the person signing on behalf of the adult could not be named as a representative or alternate representative in the agreement or be a witness to the agreement. One of the witnesses had to be an officer.

Certificates to Be Filed with Representation Agreement

Certificate of Witness

Section 13(6) of the *Representation Agreement Act* provided that each witness must complete a certificate in the prescribed form (Form 5). The certificate of each witness must be attached to the representation agreement filed in the land title office.

Certificate of Representative or Alternate Representative

Each representative and alternate representative was required to complete a certificate in the prescribed form (Form 1). The certificate of each representative or alternate representative must be attached to the representation agreement filed in the land title office.

Certificate of Person Signing on Behalf of Adult

The person who signed on behalf of an adult must have completed a certificate in the prescribed form (Form 4). The certificate of the person signing on behalf of the adult must be attached to the representation agreement filed in the land title office.

Certificate of Monitor

If a monitor was appointed under the conditions set out in s. 12 of the *Representation Agreement Act*, a certificate in Form 2 must have been completed and attached to the representation agreement that was filed in the land title office.

Effective Date of Representation Agreement

Under s. 15 of the *Representation Agreement Act*, a representation agreement was effective from the date it was executed, unless the agreement expressly provided that it took effect at a later date when an event occurred. The registrar requires a declaration in the following or a similar form as proof that the event has occurred.

EXAMPLE: Declaration as to the Occurrence of an Event (Section 15(2) of the Representation Agreement Act)

IN THE MATTER OF a Representation Agreement made by _____ dated dd/mm/yyyy (the “Agreement”)

I, _____, of _____, DO SOLEMNLY DECLARE:

1. That this declaration is made to confirm the occurrence of the event described in paragraph [#] of the Agreement.
2. That I am the person named in the Agreement as the person who is to confirm how and when the event has occurred.
3. That the event, being [provide particulars and date], and now produced and shown to me and marked Exhibit “A” to this declaration is a letter dated [provide date] from [name of physician or other person making the assessment] regarding [provide particulars].
4. That I confirm that the event referred to in paragraph [number] of the Agreement has occurred.

And I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

DECLARED BEFORE ME at the City of _____,
Province of British Columbia, this ____ day of _____, _____.

Officer Signature

Representative Signature

Deposit of Power of Attorney

Section 51 of the Act provides that a power of attorney must be filed with the registrar before an instrument executed by the attorney may be registered.

Submissions

On the Form 17 Charge, Notation or Filing, select Nature of Interest, Representation Agreement, and attach an image of the original representation agreement. A representation agreement, executed before September 1, 2011, is in the class of supporting documents designated by the director for electronic filing. By attaching an image of the representation agreement to an electronic Form 17 Charge, Notation or Filing and applying an electronic signature to the electronic Form 17, the subscriber certifies that the true copy of the supporting document is in his or her possession (*Land Title Act*, s. 168.3 and s. 168.41).

Change or Revocation of Representation Agreement

See Part 4, ss. 27 to 29, of the *Representation Agreement Act* with respect to changing, revoking, cancelling, or ending a representation agreement.

An amendment to a representation agreement must be executed and witnessed in the same manner as the agreement. The registrar requires proof, in the form of a solemn declaration, that written notice of the amendment has been given to each representative, alternate representative, or monitor.

A revocation of a representation agreement must be in writing. The registrar requires proof, in the form of a solemn declaration, that written notice of the revocation has been given to each representative, alternate representative, or monitor.

A representation agreement comes to an end when the registrar receives written evidence that the representative has resigned unless

- (1) another representative, named in the representation agreement, has agreed to continue to act, or
- (2) an alternate representative, named in the representation agreement, has agreed to act.

Representation Agreements and the Patients Property Act

The authority of a representative is affected when a person becomes a patient under the *Patients Property Act*. See the discussion of the *Patients Property Act* under Tab 58 of this Manual.

SECTION 48 [§5.78]

Execution under seal

48 (1) In the case of an instrument executed under seal by an individual, whether on the individual's own behalf or as the attorney for the transferor, the signature of the officer witnessing the execution is, in addition to any other certification evidenced by his signature, a certification by the officer that the individual appeared before the officer and acknowledged that

- (a) the individual affixed his or her seal to the instrument, or
- (b) if the individual is acting under a power of attorney, the individual affixed his or her seal to the instrument and was authorized by the transferor to do so.

(2) In the case of an instrument executed under the seal of a corporation, whether on its own behalf or as the corporate attorney of the transferor, the signature of the officer witnessing the execution is, in addition to any other certification evidenced by the officer's signature, a certification by the officer that the individual who signed the instrument as the authorized signatory appeared before the officer and acknowledged that

- (a) the individual affixed the corporate seal of the transferor to the instrument and was authorized to do so, or
- (b) in the case of a corporate attorney, the individual affixed the corporate seal of the attorney to the instrument and was authorized to do so.

1979-219-48; 1989-69-4, effective April 1, 1990 (B.C. Reg. 53/90).

FORMS [§5.79]

Use of Seal [§5.80]

See Completion Instructions for Hardcopy Transfer Forms, which stipulates that a seal must not obliterate any part of the document or a signature. These requirements are available at ltsa.ca.

PRACTICE [§5.81]

Use of Wax Seal [§5.82]

Wax seals are not capable of being microfilmed or scanned, and the registrar rejects documents to which wax seals are affixed. See s. 168(2)(a)(v) of the Act.

Use of Chinese Chop for Signature [§5.83]

If the transferor uses a Chinese “chop” for a signature, the registrar accepts it as the mark of the transferor so long as an officer certifies the execution.

CROSS REFERENCES AND OTHER SOURCES OF INFORMATION [§5.84]

Deed Executed by Attorney under Seal [§5.85]

See s. 7 of the *Power of Attorney Act*, which provides:

7 A deed executed by an attorney under the seal of the attorney on behalf of a donor, whether an individual or corporation,

- (a) is binding on the donor if it comes within the scope of the attorney's authority, and
- (b) is of the same effect as if it were under the seal of the donor.

Corporations Need Not Execute under Seal for Land Title Purposes [§5.86]

See s. 165(4) and (5) of the Act and s. 16 of the *Property Law Act* in this Manual.

Secondary Sources [§5.87]

See *Di Castri, Registration of Title to Land*, vol. 1, paras. 236, 275, and 292, and vol. 2, para. 356, regarding deeds executed by an attorney under seal.

SECTION 49 [§5.88]

If instrument not witnessed

49 If

- (a) the signature of a transferor is not witnessed in the manner required by this Part, and
- (b) the registrar is of the opinion that the circumstances require,

the registrar may receive the instrument for the purpose of registration in the same manner as if its execution had been witnessed in accordance with this Part on being satisfied

- (c) as to the facts, and
- (d) as to the testimony, by affidavit,
 - (i) of a person 16 years of age or older acquainted with the transferor and the signature of the transferor stating his or her belief that the signature subscribed to the instrument is the signature of the person named in the instrument as transferor, or
 - (ii) in the case of a corporate transferor or corporate attorney, of a person 16 years of age or older having personal knowledge of the matters contemplated in sections 44, 46 and 48(2) that would otherwise be acknowledged by the authorized signatory before an officer under those sections.

1979-219-49; 1989-69-4, effective April 1, 1990 (B.C. Reg. 53/90).

FORMS [§5.89]

Lack of Officer Certification [§5.90]

The Completion Instructions for Electronic Forms provide that in situations where an affidavit of execution is acceptable in lieu of officer certification, the applicant must enter “See Affidavit of Execution” in the officer signature portion of the execution block. The affidavit of execution replaces the officer signature. These requirements are set out in DR 03-11, Electronic Land Title Forms and Supporting Documents, and reproduced in the Green Book. DR 03-11 is available at ltsa.ca.

EXAMPLE: Lack of Certification

7. EXECUTION(S): The transferor(s) accept(s) the above consideration and understand(s) that the instrument operates to transfer the freehold estate in the land described above to the transferee(s)
 Officer Signature(s)

 See Affidavit of Execution

Execution Date		
Y	M	D
17	06	13

Transferor(s) Signature(s)



 John Lee Doe

Affidavit of Execution Not Part of Form E [§5.91]

Submissions

On the Declaration form, enter a description of the attached document and attach an image of the affidavit. By attaching an image of the affidavit to an electronic Declaration and applying an electronic signature to the electronic Declaration, the subscriber certifies that the true copy of the supporting document is in his or her possession (*Land Title Act*, s. 168.3 and s. 168.41).

DR 03-11, Electronic Land Title Forms and Supporting Documents, identifies if and under what circumstances supporting documentation may be a true copy of the supporting document. An affidavit in accordance with s. 49 of the Act is an example of a designated true copy of supporting document. DR 03-11 is available at ltsa.ca.

Preferred Forms of Affidavit [§5.92]

The following preferred forms of affidavit from the Appendix of the Green Book are intended to provide guidelines only. Changes to the wording may be acceptable.

EXAMPLE 1: For a Transfer Form Executed by an Individual

- (1) I am 16 years of age or older and am acquainted with the person named in the instrument as the transferor.
- (2) I am acquainted with the signature of the transferor and believe that the signature subscribed to the instrument is the signature of the transferor.
- (3) The signature of the transferor was not certified by an officer under Part 5 of the *Land Title Act*, R.S.B.C. 1996, c. 250 because *[set out reason, for example, the instrument was executed by the transferor outside British Columbia]*.

EXAMPLE 2: For a Transfer Form Executed by a Corporation

- (1) I am 19 years of age or older and am a person named in the instrument as an authorized signatory of the transferor and I was authorized by the transferor to execute the instrument.
- (2) Any other person who executed the instrument for the transferor was authorized to do so by the transferor.
- (3) The transferor existed at the time the instrument was executed and is legally entitled to hold and dispose of land in British Columbia.
- (4) My signature was not certified by an officer under Part 5 of the *Land Title Act*, R.S.B.C. 1996, c. 250 because *[set out reason, for example, the instrument was executed outside British Columbia]*.

EXAMPLE 3: For a Transfer Form Executed by an Individual Attorney on Behalf of an Individual Transferor

- (1) I am the attorney of the transferor under a subsisting power of attorney and am 19 years of age or older.
- (2) I am the person named in the instrument as the attorney of the transferor and, at the time I executed the instrument, I had no knowledge of
 - [in a case where the power is not enduring]*
 - (a) the death, bankruptcy or mental infirmity of the transferor;
 - [in a case where the power is enduring]*
 - (a) the death or bankruptcy of the transferor or of a termination of my authority under the power of attorney by the operation of s. 29 of the *Power of Attorney Act*; or
 - (b) a revocation of the power of attorney by the transferor.
- (3) My signature was not certified by an officer under Part 5 of the *Land Title Act*, R.S.B.C. 1996, c. 250 because *[set out reason, for example, the instrument was executed outside British Columbia]*.

EXAMPLE 4: For a Transfer Form Executed by an Individual Who Is an Attorney of a Corporate Transferor

- (1) I am the attorney of the transferor under a subsisting power of attorney and am 19 years of age or older.
- (2) I am the person named in the instrument as the attorney of the transferor and at the time the instrument was executed the transferor existed and I had no knowledge of the dissolution or bankruptcy of the transferor or of a revocation of the power of attorney by the transferor.
- (3) The transferor is legally entitled to hold and dispose of land in British Columbia.

- (4) My signature was not certified by an officer under Part 5 of the *Land Title Act*, R.S.B.C. 1996, c. 250 because *[set out reason, for example, the instrument was executed outside British Columbia]*.

EXAMPLE 5: For a Transfer Form Executed by a Corporate Attorney of an Individual Transferor

- (1) *[Name of corporate attorney]* is the attorney of the transferor under a subsisting power of attorney.
- (2) I am an authorized signatory of the person named in the instrument as the attorney of the transferor and, at the time the instrument was executed, neither I nor the attorney had knowledge of *[in the case where the power is not enduring]*
 - (a) the death, bankruptcy or mental infirmity of the transferor;*[in a case where the power is enduring]*
 - (a) the death or bankruptcy of the transferor or of a termination of my authority under the power of attorney by the operation of s. 29 of the *Power of Attorney Act*; or
 - (b) a revocation of the power of attorney by the transferor.
- (3) I was authorized by the attorney to execute the instrument and the attorney existed at the time I executed the instrument.
- (4) My signature was not certified by an officer under Part 5 of the *Land Title Act*, R.S.B.C. 1996, c. 250 because *[set out reason, for example, the instrument was executed outside British Columbia]*.

EXAMPLE 6: For a Transfer Form Executed by a Corporate Attorney of a Corporate Transferor

- (1) *[Name of corporate attorney]* is the attorney for the transferor under a subsisting power of attorney.
- (2) I am an authorized signatory of the attorney of the transferor and, at the time I executed the instrument, neither I nor the attorney had any knowledge of the dissolution or bankruptcy of the transferor or of a revocation of the power of attorney by the transferor.
- (3) I was authorized by the attorney to execute the instrument and both the attorney and the transferor existed at the time I executed the instrument.
- (4) The transferor is legally entitled to hold and dispose of land in British Columbia.
- (5) My signature was not certified by an officer under Part 5 of the *Land Title Act*, R.S.B.C. 1996, c. 250 because *[set out reason, for example, the instrument was executed outside British Columbia]*.

PRACTICE [§5.93]

Overview [§5.94]

The title certification rules require strict compliance. Where an officer has not witnessed a transferor's signature, the following land title office practice applies.

- (1) An affidavit of execution must explain the lack of officer certification.
- (2) If the transferor executed the instrument in British Columbia, the registrar exercises his or her discretion to determine whether the reasons stated in the affidavit of execution justify its use.
- (3) If the transferor executed the instrument outside British Columbia, the registrar accepts affidavits without further justification. (See the preferred forms of affidavit under "Regulations, Fees, and Forms" for this section of the Act. See also the preferred forms of affidavit in the Required Electronic Filing of Land Title Documents (DR 06-11) and the Completion Instructions for Hardcopy Transfer Forms, available at ltsa.ca.)

DETERMINATION OF WHETHER USE OF AFFIDAVIT ACCEPTABLE [§5.95]

Exercise of Discretion [§5.96]

The registrar may accept an affidavit of execution when he or she is "of the opinion that the circumstances require". The rule is that all instruments must have an officer certification, unless the registrar exercises his or her discretion under s. 49 of the Act.

Policy Objectives for Requiring Officer Certification [§5.97]

The policy objectives of Part 5 are to reduce the volume of paper associated with conveyancing documents and to prove due execution of these instruments. The elimination of affidavits of execution helps reduce the paper volume, and officer certification deals with the proof of execution issue. Applicants are to use affidavits of execution only in exceptional circumstances where the registrar considers use of an affidavit to be reasonable.

Affidavit of Execution Must Give Reason for Registrar to Waive Officer Certification [§5.98]

The registrar must be satisfied in each case that the circumstances require an affidavit of execution in lieu of an officer certification. The affidavit of execution must give the registrar a reason to waive the officer certification requirement. Reasons such as remoteness or physical disability would strengthen a case, but such factors need not always be present. The registrar does not consider simple statements in an affidavit to the effect that the transferee is a utility company, or is a publicly funded enterprise, to be sufficient reasons. The registrar is prepared to recognize the exigencies around the timely completion of real estate transactions. However, affidavits must state facts and not simply opinions or generalities.

Factors Registrar Considers in Deciding to Accept Affidavit of Execution [§5.99]

By way of summary, the following is a list of some of the factors a registrar considers in deciding whether to accept an affidavit of execution in lieu of officer certification:

- (1) execution outside the province of the instrument for which registration is sought;
- (2) disability of the transferor where the affidavit sets out the nature of the disability and the reason why the transferor was not able or prepared to attend at an officer's place of business to sign the transfer;
- (3) remoteness of the transferor's place of residence where the affidavit sets out the place of residence and the reason why the transferor was not able or prepared to attend at an officer's place of business to sign the transfer; or
- (4) occupation of the transferor where the affidavit sets out reasons why the transferor is not able or prepared to attend at an officer's place of business to sign the transfer.

This list is not exhaustive; it does not include all of the situations where the registrar may accept an affidavit of execution.

Execution out of the province is the only reason that the registrar routinely accepts an affidavit of execution. The land title branch recognizes that a lawyer or notary in another jurisdiction may not be prepared to give the Part 5 certification associated with an officer's signature.

Example From Exploration, Transmission, and Utility Enterprises

The oil and gas industry cites the example of the farmer during harvest time who is either not prepared or not able to take time off work to appear before an officer to execute a transfer document. In such a case, the affidavit should set out the reason why the farmer was neither prepared nor able to attend before an officer at that particular time. The registrar bases his or her decision to relax the officer certification requirement on the reasons stated in the affidavit. As such, the reason the farmer gives should be more than a statement that he or she was not able or prepared to attend before an officer, but should explain why the farmer was not prepared to do so.

Pro Forma Affidavits with Pre-Printed Standard Reasons Not Likely Persuasive

The registrar considers the circumstances of each case in deciding whether or not to relax the officer certification requirement. Accordingly, pro-forma affidavits using pre-printed standard reasons are not likely to be persuasive.

Use of Notary's Seal on Instruments Executed Outside of British Columbia [§5.100]

If an out-of-jurisdiction notary is taking an affidavit for use in British Columbia, the notary must attach his or her notarial seal to the attestation portion of the affidavit. However, if the notary is acting as an officer, he or she does not have to use a notarial seal.

Affidavit of Execution by Transferor Who Uses Chinese Chop for Signature [§5.101]

If the transferor has chosen to use his or her Chinese “chop” on the instrument of transfer and execution is proven by affidavit, the affidavit must reflect that the “chop” is the mark of the transferor.

[§5.102] has been deleted.

SECTION 50 [§5.103]**Defects**

50 If there is a defect in the execution of an instrument, the registrar may, if the registrar considers that the instrument is legally binding, register it, and the registration is valid for all purposes despite the defect.

1979-219-50; 1989-69-4, effective April 1, 1990 (B.C. Reg. 53/90).

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