Subject: **EXECUTION OF DOCUMENTS BY PERSONAL REPRESENTATIVES**

BACKGROUND

Once land or an interest in land has been transmitted to the personal representative (i.e., executor, administrator or trustee) of a deceased person, all instruments presented for registration in respect of that land or interest in land are to be executed by the personal representative who is deemed to be the owner. (1) A personal representative may make a valid transfer to himself in his personal capacity, but cannot grant a power of attorney.(2)

REGISTRATION PROCEDURE

1. In addition to the normal requirements for the type of document submitted for registration, a transfer, mortgage or other instrument executed by a personal representative must be accompanied by one of the following:

a) a certificate of the Public Trustee made subsequent to the grant of probate or letters of administration or its resealing, stating that the Public Trustee has no knowledge of minors being interested in the estate.

b) the consent of the Public Trustee where minors are interested,

c) a certified copy of a court order authorizing the dealing, or

d) an affidavit (SCHEDULE A) by the personal representative or other person connected with the deceased stating:

> "That he/she knows there are no minors who are interested in the estate of the deceased owner, nor were there any minors interested in the estate of the deceased owner at the time of his/her death."

The above requirements do not apply to an application for transmission, a caveat or a discharge of mortgage. (3)

2. The Public Trustee may give a single written consent where property is subject to a general testamentary trust for sale. Once this consent has been registered with a specific document, any further documents executed by the personal representative may be registered without further consent by referring to the registration particulars of the document to which the consent was attached. (4)

3. Where the Public Trustee for the Province of Alberta is the personal representative, strict enforcement of the requirements in item 1 is unnecessary as the signature of the Public Trustee on the document is assumed to be sufficient compliance with section 120 of the Land Titles Act. Also, as the Public Trustee executes documents under seal, it is established practice not to require a witness and affidavit of execution.

4. **Dower** - Dower requirements must be complied with in respect of the deceased and not the personal representative. (5)

5. If there is more than one personal representative, the signatures of all of them are required on any document, unless proof of death of a personal representative is provided. The proof of death documentation may be registered at any time prior to the execution of a document by the surviving personal representative(s). (6)

STATUTE AND CASE REFERENCES

Statute references are to the Land Titles Act, R.S.A. 2000, c. L-4, unless otherwise indicated.

1. s. 116(4) and 117(2); see procedure on Powers of Attorney POA-1
2. s. 119; see procedure on Powers of Attorney POA-1
3. s. 120(1)
4. s. 120(2)
5. see procedure on Dower DOW-1
6. s. 59, Administration of Estates Act, R.S.A. 2000, c. A-2; see procedure on Deceased Joint Tenant - Transfer of Interest TEN- 1