



**CERTIFICATE OF IDENTIFICATION**

Name.....

I HEREBY CERTIFY that the above named .....PERSON.....appeared before me on the.....day of.....20.....and being identified by\* .....

(or being known to me) acknowledged the above signature or mark to be his/theirs and that he/they had freely and voluntarily executed this instrument and understood its contents.

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Signature and designation of the person certifying

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\*NOTE: Please ensure that the appropriate insertions and/or deletions are made so that the method of identification is clear.

**The information provided in this guide is not intended to amount to legal advice. These Guidance Notes are of a general nature and are not intended to, and cannot, replace the advice of a Legal Practitioner. Professional assistance may be required to determine the most appropriate action.**

**If you need more help or information about completing the form, contact us. Please be aware that we do not give legal advice.**

## **BACKGROUND**

Section 83 of the Registered Land Act authorizes the use of RL1 when registered land is intended to be transferred. The transfer is normally of a fee simple estate. RL Form 2 is used for a registered leasehold estate.

It is essential that the correct form is used to achieve the desired change to the register. A transfer by a mortgagee exercising a power to sell will not be registered in any other form than on Form RL4. Members of the public should be careful not to choose the wrong form when preparing a transfer of a Leasehold Interest (RL2), or by a proprietor in common for their share only RL 6 or a transfer by personal representative of an estate to a beneficiary RL7, for the same reason.

## **REGISTRATION PROCEDURE**

As with any document submitted for registration, a full examination must be made to ensure compliance with all legal requirements.

The following documents endorsed on the register might affect the registrability or the registration requirements for a transfer:

- 1) Caution;
- 2) Court Order;
- 3) Entry for guardianship or receiver under the Mental Health Act;
- 4) Restrictions – example from the Pensions Board, Ministry of Finance or any other restrictions which limit disposition without consent or removal;
- 5) Bankruptcy Orders;
- 6) Vesting of property in the Minister with responsibility for Finance where the registered owner is a company;
- 7) An outstanding Land Certificate.

## **Describe the Land Being Transferred**

The legal description on the transfer form must be consistent with the legal description on the register. This should be a full description with reference to the Registration

Section (location) and Block and Parcel number. If the legal description in the transfer omits any of the above or is incorrect a requisition will be raised and correction of the description will be requested.

### **Describe the Transferor(s)**

The names of the transferor(s)/registered owner(s) must be identical to that shown on the register. For example, if the register shows John D. Smith, a requisition will be raised if the transferor is shown as John Dean Smith or John Smith. It is not necessary to show the address of the transferor(s).

Where the name of the registered owner differs on the transfer and register it may be necessary to file a Rectification Form or an Affidavit of Identity. If the transferor's name has changed as a result of marriage, or deed poll, Rectification Form may be registered. If there is any doubt with respect to identity, evidence must be obtained by way of either an addition to the certificate of identification or a separate statutory declaration explaining the discrepancy and establishing that the transferor and the registered owner are the same person.

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 Ministry with responsibility for Finance. After ten years, the Registrar of Lands will vest the land in the CROWN.

Where the transferor is suffering from a mental defect, an order of the appointing a guardian(s) under the Mental Health Act should be produced. The Order will first be noted on the register and list the persons authorized to administer such estate or interest.

### **Show the True 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. If the consideration for the transfer is a sum of money, then the amount and currency should be shown in words. It is acceptable to use currency other than Cayman Islands Dollar. If the consideration for the transfer is not a sum of money, then the true consideration must be stated concisely. If the Transfer is a gift between certain parties then natural love and affection or gift is acceptable. If the statement of the true consideration involves a reference to a document (e.g. an agreement or court order) the document may be clearly identified by making reference to the date it was made or executed or File Number and a copy lodged with

the transfer for registration. If the document is a court order, an office copy of is sufficient.

## **TRANSFERS FOR NATURAL LOVE AND AFFECTION**

Schedule 1 section 9(a) and (b) of the Stamp Duty Act provides exemption from stamp duty for property given as a gift between a parent and child or between spouses; or children born to the same parent, or between a grandparent and a grandchild. In addition to the Transfer instrument, the transferor will need to complete a Statutory declaration confirming the gift as well as providing evidence of the relationship such as birth certificates, marriage or civil partnership certificates, to prove the relationship between the Transferor and Transferee.

Other relationships, such as uncle to niece, fall outside the stamp duty concession. In order to take advantage of the stamp duty concession in these cases, parties may find that it would be possible to transfer the land via a family member who is related to both transferor and transferee, so that each step would fall within the stamp duty concession. For example, an uncle wants to pass land to his brother's daughter. He could first transfer to his brother, and the brother could then transfer to his daughter. To avoid the need for two separate transfers in these types of cases, the land registry will accept a single transfer form from the current proprietor direct to the final recipient, without the need to transfer the land via the intermediate family member. Although the intermediate family member need not be a party to the transfer, the intermediate family member must be **living at the time of transfer**; and proof will be required before registration. This can easily be achieved by having the intermediate family member sign the application or provide some other form of declaration to this effect.

The transfer form must state that it is made 'in consideration of natural love and affection for my [niece, nephew, etc, as appropriate]', stating the family relationship between the transferor and transferee. The applicant must provide evidence of:

- a) the family relationship between the transferor and the intermediate family member;
- and
- b) the family relationship between the intermediate family member and the transferee.

### **Describe the Transferee(s)**

The full given name for the transferee(s) and full mailing address for service, must be given. If there are two or more transferees, the transfer must specify each name separately in full. It is not acceptable for the transferees to be described as "John and

Mary Smith" or for a married woman to be described as "Mrs. John Smith". Her given name and surname are required. If the transferee is a corporation, the requirements of section 27 of the Land Titles Act must be complied with. The description of the transferee may be followed by "Trustee" ", and it will be entered on the register as such, however, the particulars of the trust will not be entered.

Where a minor is acquiring property a Trust document may not be required. The Registrar will note the disability (age) on the face of the register when the transfer is registered. A trustee can be named for the minor and the register will show the transferee as Trustee.

### **Designation of Interest/Tenancy**

The transfer must either state that the transferor is transferring all his estate and interest in land or specify a lesser estate, such as a life estate. If there are two or more transferees, the nature of the co-tenancy arrangement should be specified (e.g., joint tenants or proprietors in common). A transfer, which fails to specify the nature of the co-tenancy, will be rejected for clarification of the co-ownership arrangement in compliance with section 99 of the RLA.

Examples of the wording for co-tenancy arrangements are:

**Joint Tenants:** JOHN CARL BROWN AND MARY JANE BROWN AS JOINT TENANTS.

### **Proprietors in common:**

- **Where the shares are equal:**

JOHN BROWN of P.O. BOX 1 GRAND CAYMAN KY1-1000 of one undivided half share (1/2) and JANE JONES of P.O. BOX 2 GRAND CAYMAN KY2-2000 of one undivided half (1/2) share as proprietors in common, or

JOHN BROWN of P.O. BOX 1 GRAND CAYMAN KY1-1000 and JANE JONES of P.O. BOX 2 GRAND CAYMAN KY2-2000 as proprietors in common in equal shares.

- **Where the shares are unequal:**

JOHN BROWN of P.O. BOX 1 GRAND CAYMAN KY1-1000 of two undivided third shares and JANE JONES of P.O. BOX 2 GRAND CAYMAN KY2-2000 of one undivided third share as proprietors in common.

- **Transfer – Proprietors in Common and Joint Tenants**

Where persons desire to hold land as proprietors in common but some of them, between themselves, desire to create a joint tenancy as to their share, the transferee panel should show:

JOHN BROWN, and MARY BROWN, both of P.O. BOX 1 GRAND CAYMAN KY1-1000, as joint tenants of one undivided half share and THOMAS JOE of P.O. BOX 2, GRAND CAYMAN NKY1-2000, of one undivided half share, as tenants in common.

**or**

JOHN BROWN, and MARY BROWN, both of P.O. BOX 1 GRAND CAYMAN KY1-1000, as joint tenants, of one undivided half share and THOMAS JOE, and JANE JOE, both P.O. BOX 3 GRAND CAYMAN KY1-3000, as joint tenants, of one undivided half share, as tenants in common.

**or**

JOHN BROWN, and MARY BROWN, both of P.O. BOX 1 GRAND CAYMAN KY1-1000, as joint tenants of two undivided fourth shares, THOMAS JOE of one undivided fourth share and JANE RICH of one undivided fourth share, both P.O. BOX 3 GRAND CAYMAN KY1-3000, as tenants in common.

**Note: Persons holding individual shares cannot also be joint tenants, for example: 'A' of one undivided third share, 'B' of one undivided third share and 'C' of one undivided third share as Joint Tenants. This situation creates a conflict of interest and rights of the parties.**

### **Transfer to Effect a Change of Tenancy**

Where persons registered as tenants in common wish to hold as joint tenants the change is effected by transfer.

The consideration of the transfer should read:

**Transferor:** A and B

**Consideration:** the desire of the registered proprietors to hold the land as joint tenants

**Transferee:** A of etc. and B of etc. as joint tenants.

**The reverse situation, joint tenants to tenants in common, is achieved in the by completing RL 18 Severance of Joint Proprietorship.**

**In the case of a proprietor in common transferring his or her entire interest only RL Form 6 must be used.**

### **CREATION OF LIFE ESTATES AND ESTATES IN REMAINDER**

Estates for life and estates in remainder must be created by transfer.

By way of transfer, a proprietor of any land may either create in himself or herself or, another, a life estate and an estate in fee simple in remainder in another or himself or herself. The appropriate panels of such transfers would show: A of etc an estate for life and B of etc an estate in fee simple in remainder expectant upon the death of A. Such estates may also be created at the request of purchasers.

## **TRANSFERS CREATING EASEMENT AND COVENANTS**

### **EASEMENTS**

An easement may be created by a separate document prepared solely for that purpose. A transfer may contain additional words creating an easement (section 92). Such an easement shall specify clearly –

- a) the nature of the easement, the period for which it is granted and, any conditions, limitations or restrictions intended to affect its enjoyment;
- b) the land burdened by the easement; and,
- c) the land which enjoys the benefit of the easement,

The Registrar, may require a plan sufficient in the Registrar's estimation to define the easement.

### **COVENANTS**

Restrictive or positive covenants (section 93) are usually created by adding the required words to a transfer Form. Restrictive covenants must be negative in their nature and must be capable of running with the land. Generally, restrictive covenants must:

- directly control the use of the land of the covenantor;
- benefit the land of the covenantee;
- be negative in their content; and,
- be intended by the parties creating them to run with the land.

### **Execution Requirements**

The transfer must be executed by the transferor or their attorney pursuant to a power of attorney (POA). See procedure under POA for the requirements with respect to use of a power of attorney.

If the transferor is a corporation, corporate attestation is required pursuant to s. 106 (2) (b).

If the transferor is an individual, an original of the individual's normal signature is required. Proper attestation requirements must be met.

If the proof of execution is defective, the Court may authorize registration notwithstanding the defect.

The date of execution should be indicated.



**FOR DETAILS OF EXECUTION REQUIREMENTS PLEASE SEE GUIDANCE NOTES ON SIGNING AND EXECUTING INSTRUMENTS.**

**MISCELLANEOUS**

Multiple parcels may be included in a transfer of land if the registered owner holds the same interest in each parcel affected. However, an original instrument of transfer is required for each parcel of land.

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.