

## **The following supplement is hereby added to the Estates Module of the Electronic Registration Procedures Guide, immediately following “First Dealings After Property Converted to Land Titles”**

### **Determining if the First Dealings Exemption is Available**

The general requirement under the Land Titles Act is that, upon the death of an owner, the estate trustee must obtain a certificate of appointment of estate trustee with a will (hereinafter referred to as “Probate”) or, where there is no will, a certificate of appointment of estate trustee without a will. There has been a long-standing exemption for the requirement for Probate in respect of estates that are \$50,000 or less in total value. However, since automation and administrative conversion of properties from the Registry Act to Land Titles Conversion Qualified (“LTCQ”), the Ministry has provided another exemption from the requirement for Probate for properties that are LTCQ. Land Registrars are authorized to exempt the requirement of a certificate of appointment of estate trustee when a transmission application is registered following the procedures set out above in the Electronic Registration Procedures Guide as “First Dealings After Property Converted to Land Titles” (hereinafter the “First Dealings Exemption”).

### **First Dealings Exemption, General Availability**

The First Dealings Exemption is available, generally, if:

- (i) the deceased owner acquired the property when it was registered under the Registry Act;
- (ii) the property was converted to LTCQ, and remains in LTCQ; and
- (iii) the deceased owner still owned the property at the time of his/her death and died with a will.

### **Effect of the First Dealings Exemption**

When the First Dealings Exemption is available, then the estate of the deceased owner may convey the land in accordance with Registry Act rules, where Probate is not required for dealings with the land.

### **Land Titles Absolute**

As noted above, the First Dealings Exemption is only available for lands that have been converted from the Registry Act into LTCQ. This LTCQ status should be evident by reviewing the “Estate/Qualifier” field on the parcel register. For greater certainty, the First Dealings Exemption is not available for any lands that are LT Absolute (there is an exception for certain specific crown leases on LT Absolute PINs) or LT Absolute Plus (see below). The term “first conversion from book” on the parcel register does not necessarily mean that the property has been converted from the Registry Act to LTCQ. The term “first conversion from book” simply refers to the transition from paper to an automated parcel register. A property that has always been LT Absolute may have been converted from paper to an automated parcel register.

### **Upgrading Title to Land Titles Absolute Plus**

The First Dealings Exemption is not available for any lands that are LT Absolute Plus. If an owner who is otherwise entitled to a First Dealings Exemption then decides to upgrade his/her title from LTCQ to LT Absolute Plus, the benefit of the First Dealings Exemption will be lost. Owners should consider this consequence before upgrading title.

### **Upgrading Registry to LTCQ**

An upgrade from LTCQ to LT Absolute Plus is not to be confused with the upgrade from the Registry Act to LTCQ by the owner. Some “non-convert” properties are subsequently converted from the Registry Act to LTCQ by way of deposit from the owner, following resolution of the issues which prevented administrative conversion. How a property was converted from the Registry Act to LTCQ (whether by administrative conversion or by way of deposit by the owner) is irrelevant to the application of the First Dealings Exemption. The fact that a property becomes LTCQ by way of deposit does not disqualify it from potential First Dealings Exemption status if the circumstances otherwise meet the criteria.

### **Condominiums Generally Ineligible**

The First Dealings Exemption is rarely available for condominium units since most condominium units in the province are constructed on lands that are LT Absolute or LT Absolute Plus. There are, however, a few LTCQ condos, especially in southwest Ontario, so the First Dealings Exemption may apply to those LTCQ condos.

### **Intestacy Ineligible**

The First Dealings Exemption is only available as an exemption from Probate for testate owners. There is no equivalent or analogous exemption for deceased intestate owners. A certificate of appointment of estate trustee without a will is required in every instance of a deceased intestate owner under the Land Titles Act.

### **Transfers After Conversion**

Generally, a transfer of the owner’s fee simple interest after conversion to LTCQ ends the First Dealings Exemption for the transferor. The transferee, not having acquired the property while under the Registry Act, never had a First Dealings Exemption in the first place. The First Dealings Exemption does not run with the land for the benefit of the transferee.

### **Non-Arms’ Length Transfers, Related Parties, Gifts, etc.**

The transfer of the owner’s fee simple interest after conversion from the Registry Act to LTCQ ends the First Dealings Exemption, even if the transferee is otherwise non-arms’ length or a related party, and/or the transfer is for nominal consideration, as a gift, or for “natural love and affection”. For example, if a deceased owner acquired the property while under the Registry Act, and then transferred that property to a spouse or child after conversion to LTCQ, then the spouse/child, as transferee, does not have the benefit of a First Dealings Exemption (since he or she did not “acquire while in Registry”). There is no general passing-along of the First Dealings Exemption to related transferees.

### **Transfer of Part of Lands Only**

If a deceased owner acquired a property while it was registered under the Registry Act, and then validly transferred part of the property after conversion to LTCQ, the First Dealings Exemption would be lost as to the lands transferred but would still be available with respect to any retained lands.

### **Intervening Instruments Less than a Transfer**

Certain conveyances and other dealings on the parcel register fall short of transferring the owner's fee simple title (such as mortgages, discharges of mortgage, notices, leases, restrictive covenants, easements, etc.) and will not jeopardize the First Dealings Exemption, no matter how many of these subsequent instruments there are, and whether such instruments are registered before or after conversion to LTCQ. For example, if the deceased owner acquired the property while it was under the Registry Act, and then mortgaged the property and/or leased the property and/or granted restrictions or easements over the property, etc., at the same or different times, before dying, such intervening instruments will not jeopardize the First Dealings Exemption otherwise available to that deceased owner because these intervening instruments do not constitute a transfer of the fee simple after conversion from the Registry Act to LTCQ.

### **Joint Tenants**

If the deceased owner acquired the property while it was registered under the Registry Act, together with another owner as joint tenants, and then the property was converted to LTCQ, the death of one joint tenant and the registration of a survivorship application by the other joint tenant does not involve the First Dealings Exemption at all. Dying as a joint tenant gives rise to survivorship rights so the property does not form part of the estate of the deceased owner and would not require Probate. Furthermore, the survivorship will not vitiate the First Dealings Exemption for the survivor. The surviving joint tenant will enjoy the benefit of the First Dealings Exemption for the whole of the undivided interest in the property when that surviving joint tenant eventually dies.

### **Tenants in Common**

If the deceased owner acquired the property while it was under the Registry Act, together with another owner as tenants in common, upon the death of each owner and the registration of a transmission application on their behalf, the estate will qualify for a First Dealings Exemption.

### **Self-to-Self Transfers to Change Tenure Allowed**

Typically, a transfer after conversion to LTCQ will end the First Dealings Exemption for the transferor (see below), but an exception to this rule exists for self-to-self transfers made by co-owners to themselves strictly for the purposes of changing tenure (e.g., from joint tenancy to tenancy-in-common or vice versa). For example, if two or more owners acquired property while it was under the Registry Act as joint tenants but then one or both of the joint tenants subsequently decides after conversion to LTCQ to sever the joint tenancy, either joint tenant (or both of them) can transfer the property back to themselves as tenants-in-common thereby severing the joint tenancy. One or more self-to-self transfers made to change tenure will not jeopardize the First Dealings Exemption available to any of the now tenants-in-common when they die.

### **Undivided Share Acquired While in LTCQ Allowed**

In the unusual scenario where an owner acquires an undivided interest in a property while it is registered under the Registry Act and then acquires another undivided interest in the same property after the property has been converted to LTCQ, the owner's estate may claim the First Dealings Exemption in respect of all of his/her undivided fractional interests in the same property (even though some of those undivided fractional interests may not properly have been "acquired while in Registry"). For example, consider the scenario where a husband and

wife acquire title when the land is registered under the Registry Act, as tenants-in-common, each as to an undivided 50% interest. The property is then converted to LTCQ, and the husband dies, but gives his 50% interest to his wife pursuant to the terms of his will. The husband's estate has the benefit of a First Dealings Exemption as to his 50% undivided interest in the property. The wife, in theory, has a First Dealings Exemption only as to her original 50% undivided interest -- the second 50% undivided interest came from her husband after conversion to LTCQ (i.e. not "acquired while in Registry"). Notwithstanding the foregoing, in this limited circumstance, the wife will be entitled to claim a First Dealings Exemption for the entirety of her undivided fractional interests in the property even though a part of her fractional undivided interest was acquired while already in LTCQ.

### **No "Tacking On" of First Dealings Exemption by Merger**

There are situations where an owner acquires a property when it is registered under the Registry Act (the "Original Parcel") and then acquires abutting lands which are already registered under the Land Titles Act (the "Abutting Parcels"). While title to the Abutting Parcels may have merged with title to the Original Parcel due to the common law doctrine of merger and/or for the purposes of the Planning Act, only the Original Parcel is eligible for the First Dealings Exemption. The subsequently acquired Abutting Parcels were not "acquired while in Registry" so never qualified for a First Dealings Exemption in the first place. The owner is not permitted to "tack on", through the common law doctrine of merger, a First Dealings Exemption to lands which would not, on their own, have qualified for the First Dealings Exemption. This is the case whether the Abutting Parcels were acquired before or after the Original Parcel is converted into LTCQ. This is the case even if the Original Parcel and the Abutting Parcels have since been consolidated into a single PIN. This is also the case even if the Original Parcel is the "main" or "principal" parcel, and the Abutting Parcels are ancillary or de minimus relative to the Original Parcel. For example, consider the scenario where a deceased owner acquired the "main house" as his/her Original Parcel while it was registered under the Registry Act, then acquired an abutting closed laneway in Land Titles as an Abutting Parcel. The Original Parcel (in this example, the house) would be eligible for a First Dealings Exemption, but the Abutting Parcel (in this example, the laneway) would not be eligible for a First Dealings Exemption (since it was always in Land Titles), notwithstanding that the two parcels have since merged at law.

### **Exception for Veterans' Land Act**

From time to time, we will see a veteran receiving Registry lands under the Veterans' Land Act but for reasons set out in this act, the lands are returned to the Department of Veterans Affairs and then re-conveyed back to the veteran at a later date. If this re-conveyance to the veteran occurs after conversion to LTCQ, then the veteran will technically have acquired the lands while in LTCQ. The veteran, in theory, has no First Dealings Exemption for the property since his/her interest in the property came after conversion to LTCQ (i.e. not "acquired while in Registry"). Notwithstanding the general rule that requires the deceased to have acquired his/her interest while the property was registered under the Registry Act, in this limited circumstance the veteran will be entitled to claim a First Dealings Exemption for the property acquired, even though he/she may have acquired the property after it was already in LTCQ. Note that the reconveyance in this scenario must be to the exact veteran who first acquired an interest in the land in Registry (not to a relative or other party).

### **No Trusts Recognized in Land Titles**

The test for the First Dealings Exemption is based on the legal owner only. The Land Titles Act does not recognize trusts, so, even if the beneficial owner may have qualified for a First Dealings Exemption, if the entitlement for a First Dealings Exemption cannot be established based on the legal ownership, then there will be no First Dealings Exemption Available.

### **Required Statements for First Dealings Exemption**

Although Probate is not required where the property qualifies for the First Dealings Exemption, there are still specified statements and the requirement of a covenant to indemnify the Land Titles Assurance Fund to transmit the property of the deceased owner. These procedures are set out immediately above in this Electronic Registration Procedures Guide.

### **Probate Notwithstanding an Available First Dealings Exemption**

One of the prescribed law statements required for the First Dealings Exemption is “no application was made for a certificate of appointment of an estate trustee, as this transaction is the first dealing after the property was converted from Registry to Land Tiles by the Ministry...”. This reflects the fact that, in most cases, where a property is eligible for a First Dealings Exemption, the estate will not be seeking the court appointment of an estate trustee. In some cases, however, such as in dual will scenarios, the estate trustee may be applying for the appointment of an estate trustee, even though some or all of the deceased owner’s real estate may be entitled to the benefit of the First Dealings Exemption. Under these scenarios, a solicitor cannot technically make the statement that “no application was made for a certificate of appointment of an estate trustee” since, in fact, an application has been made for Probate. The appropriate process under this scenario is to make the full prescribed law statement required for the First Dealings Exemption, but then to make a supplemental clarification statement in Statement 62 confirming that an application was in fact made for a certificate of appointment of Estate Trustee but has not yet completed and is not being relied upon. A similar rule would apply if an application was made for a certificate of appointment but was then withdrawn or in the process of being withdrawn.

### **Successor Estate Trustees**

If the estate of a deceased owner is otherwise entitled to a First Dealings Exemption but his/her named estate trustee dies or is otherwise replaced, the succeeding estate trustee is also entitled to use the First Dealings Exemption (and so on if that succeeding estate trustee also dies or is replaced). The First Dealings Exemption attaches to the estate of the deceased registered owner who acquired the right to the exemption and may be invoked by successor trustees of that deceased owner.