

Meighen Haddad LLP

LAW FIRM

Transferring land after the death of a loved one

by: Shawn Eisler, Associate

published April 18, 2024

Losing a loved one is an emotional and challenging time, and dealing with legal matters can add to the stress. One important aspect to consider is the transfer of land owned by the deceased. In Manitoba, the process of transferring land after someone passes away differs depending on how the property is owned and whether or not there is a Will.

Jointly held land

Regardless of whether or not there is a Will, when land is owned jointly by one or more individuals as joint tenants, the "right of survivorship" applies. This means that when one owner passes away, the surviving owner automatically inherits the deceased owner's share of the property. In other words, the land passes directly to the surviving owner without the need for Probate.

In this case, your lawyer can help you gather the required information and evidence in order to make what is called a "survivorship request" to Manitoba Land Titles. Land Titles will process the request and will transfer the property to the surviving owner.

Holding property jointly can be an effective estate planning tool especially for couples who might not have previously been on title together, as it can eliminate the need to obtain a Grant of Probate, therefore reducing the cost and time involved in preparing Probate documents while also allowing you to avoid paying land transfer tax. However, it is important to ensure that the property is held jointly as joint tenants and not as tenants in common, as the latter does not include the right of survivorship.

Where the land is not jointly held

On the other hand, when land is not held jointly, or if there is no surviving joint tenant, the transfer process becomes a little more complex. In such cases, a Grant of Probate is required. Probate is the legal process where the Court confirms the validity of the deceased person's Will and authorizes the executor named in the Will to administer the estate, including the transfer of land to the beneficiaries named in the Will.

Manitoba Land Titles Office requires a Grant of Probate to deal with the transfer of land so that they are able to ensure that the Will is valid, and the wishes of the deceased have been properly followed. Once a Grant of Probate has been issued by the Court, your lawyer can draw up the proper transfer documentation and help with submitting it to Land Titles in order to complete the transfer to the deceased's beneficiaries.

If a person dies without a valid Will, they are said to have died "intestate" and thus instead requires that Letters of Administration be obtained from the Court. Similar to a Grant of Probate, Letters of Administration are legal documents issued by the Court, granting authority to a designated person (often a family member) to manage the deceased person's estate. This process involves proving to the Court who the rightful heirs are and demonstrating that the deceased did not leave a valid Will. Once granted, the administrator can work with their lawyer to execute and submit the appropriate transfer documents to Land Titles in order to proceed with the legal transfer of the land according to the laws of intestacy. In many cases, land transfer taxes will have to be paid in order for the recipient to have the title put in their names.

Transferring land after the death of a loved one in Manitoba involves understanding the ownership structure of the property and whether or not Probate or Letters of Administration are required. Seeking legal advice can help navigate these complexities and ensure that the transfer of land is handled appropriately and in accordance with the law.

DISCLAIMER: *This article is written for informational purposes only and does not constitute legal advice. The views expressed are solely the author's and should not be attributed to any other party, including Meighen Haddad LLP. If you want to seek legal advice, please contact the author directly or call our office at (204) 727-8461.*

The Author:

Shawn Eisler

Associate

seisler@mhlaw.ca

204.717.1458