

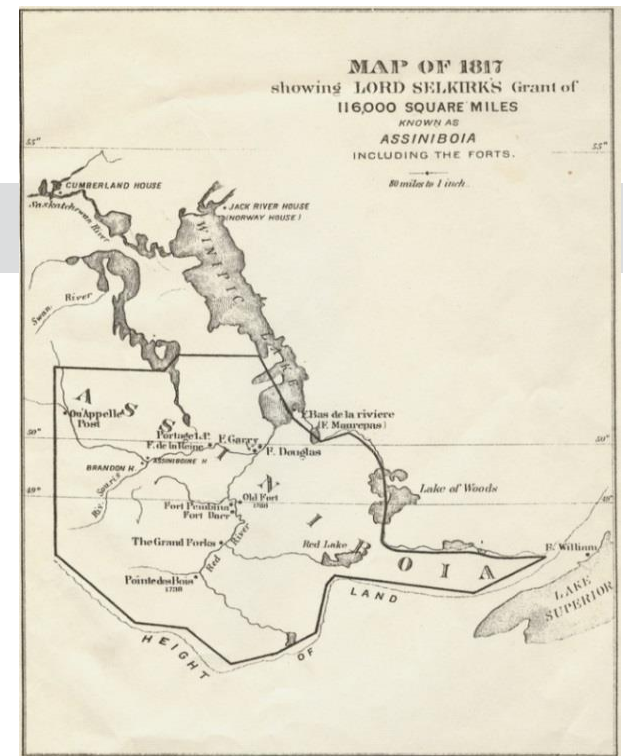
September 11, 2020

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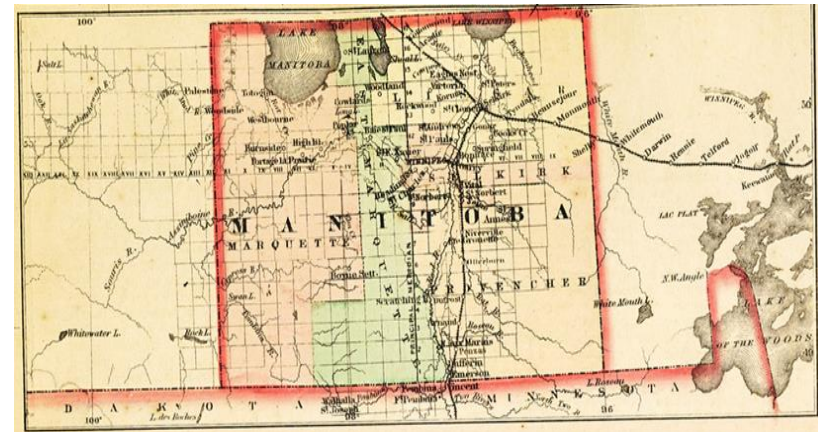
# Registry Systems and Application under *The Real Property Act*



# A Brief History



- In 1670, King Charles II granted a charter document which gave control of an area of land in North America, which described simply, was all the land in the watershed of Hudson Bay and was known as “Rupert’s Land” to the Hudson’s Bay Company (“HBC”)
- In 1811, HBC transferred land (the District of Assiniboia) which was an area of approximately 74,240,000 acres to Lord Selkirk
  - This land roughly corresponds to what was to become the Province of Manitoba in 1870
  - Lord Selkirk offered this land to Scottish settlers



# A Brief History

- In 1834, Selkirk's heir conveyed the land in The District of Assiniboia, less the lands deeded in the interim to the settlers, back to HBC
- In 1869, by virtue of the Deed of Surrender, the Canadian Government (through the British Crown) acquired Rupert's Land from HBC
  - It was acquired for £300,000 and a right to 1/20<sup>th</sup> of the surveyed lands in the "fertile belt" of Canada. These lands are specified in section 17 of *The Dominion Lands Act*, 35 Victoria c. 23 (1872)
  - The ultimate transfer of control from HBC to Canada was accomplished by an act of the British Parliament, *The Rupert's Land Act*, 31 & 32 Victoria, c. 105 (1868)
- The Province of Manitoba was created in 1870 and officially became a province of Canada on July 15, 1870 by *An Act to amend and continue the Act 32 and 33 Victoria, chapter 3; and to establish and provide for the Government of the Province of Manitoba*, 33 Victoria, c. 3 (*The Manitoba Act*)

# A Brief History

- *The Manitoba Act* addressed the existing ownership of lands and Aboriginal and Métis rights in lands
  - Section 31: Enacted for the purpose of extinguishing “Indian Title”, this section contemplated the allocation of 1.4 million acres to the children of the Métis people
  - Section 32: Provided that all grants of land and interests in land made by the Hudson’s Bay Company up to March 8<sup>th</sup> 1869 and all persons in occupancy of lands whose occupancy is sanctioned by the Company were to have their ownership confirmed by grants from the Crown
- Section 30 of the Act provided that all ungranted lands in the Province, subject to the obligations in the deed of surrender, were to be retained by the Dominion Government and not Manitoba

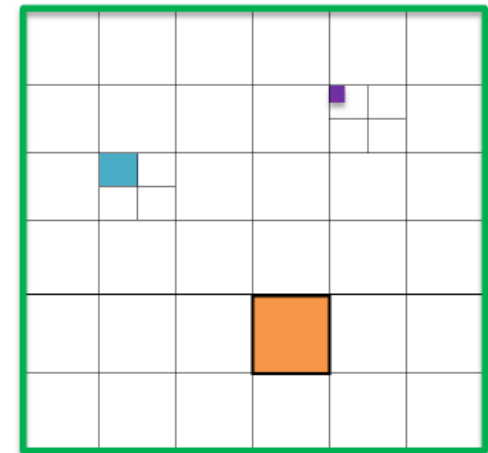
# A Brief History

- Because *The Manitoba Act* provided that all ungranted lands were to be retained by the Government of Canada, initial grants of land to new settlers came from Canada and not Manitoba
- In 1930, *An Act respecting the Transfer of Natural Resources to the Province of Manitoba The Manitoba Natural Resources Act*, S.C. 1930, c. 29, was passed by the Government of Canada; it transferred administration and control of all remaining ungranted and undeveloped crown land, from Canada to Manitoba, effective July 15, 1930
- Upon Manitoba becoming part of Canada, the Canadian government initiated general surveys of Manitoba and the Northwest Territories. The plans resulting from these surveys are collectively called the “original Dominion government surveys” and established the township system and developed the parish system

# Dominion Government Survey

## Land Descriptions

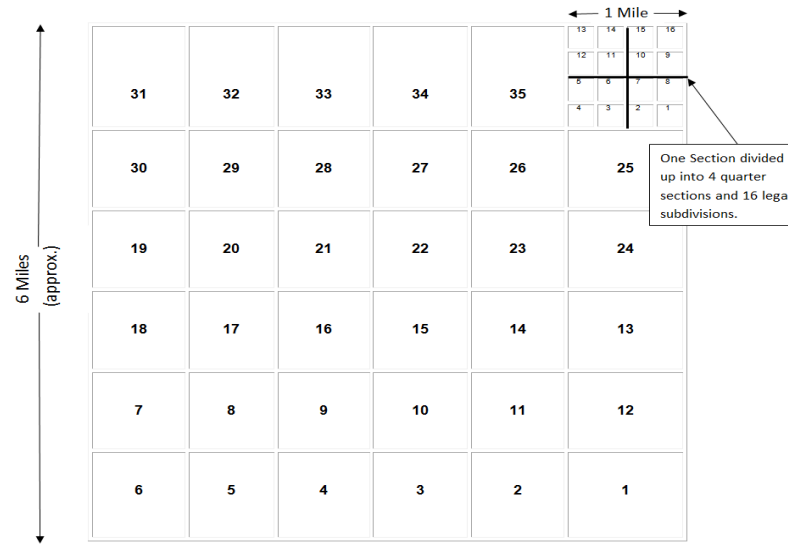
<b>Township</b>	A division of land fixed by a government survey which includes 36 sections of land. Townships start at the American border (township 1) and were numbered going north. Each township is approximately 6 miles by 6 miles square (not including land for roads).
<b>Section</b>	A division of land within a township comprising one square mile or approximately 640 acres. There are 36 sections in each township.
<b>Quarter section</b>	Each section is divided into four quarter sections. Theoretically, these quarter sections are $\frac{1}{2}$ mile by $\frac{1}{2}$ mile (2640 ft. X 2640 ft.) and contain 160 acres.
<b>Legal subdivision</b>	Each quarter section can be divided into four legal subdivisions (16 in total per section). Legal subdivisions are $\frac{1}{4}$ mile by $\frac{1}{4}$ mile (1320 ft. X 1320 ft.) and contain approximately 40 acres.
<b>Range</b>	Ranges are numbered east and west of the Principal meridian; there are 29 ranges west and 24 ranges east until you reach the Second meridian east where the numbering starts again at 1
<b>Township diagram</b>	A township diagram is the map or survey representing a township. The original diagrams were approved and issued out of Ottawa and were not registered and given numbers in a registry or land titles district office.





# The Township System

- *The Dominion Land Act*, 35 Victoria c. 23 (1872) established the legal framework for the survey fabric in the Province of Manitoba
  - The Act directed that what land was not covered by the parish lot system was to be surveyed into a grid with survey monumentation physically making the grid on the land and this survey was part of the Dominion Government Survey (DGS)
- The sections do not actually touch one another; they are separated on all sides by 99 feet set aside for roads; these are called the road allowances or Dominion Government Road Allowances



# The Township System

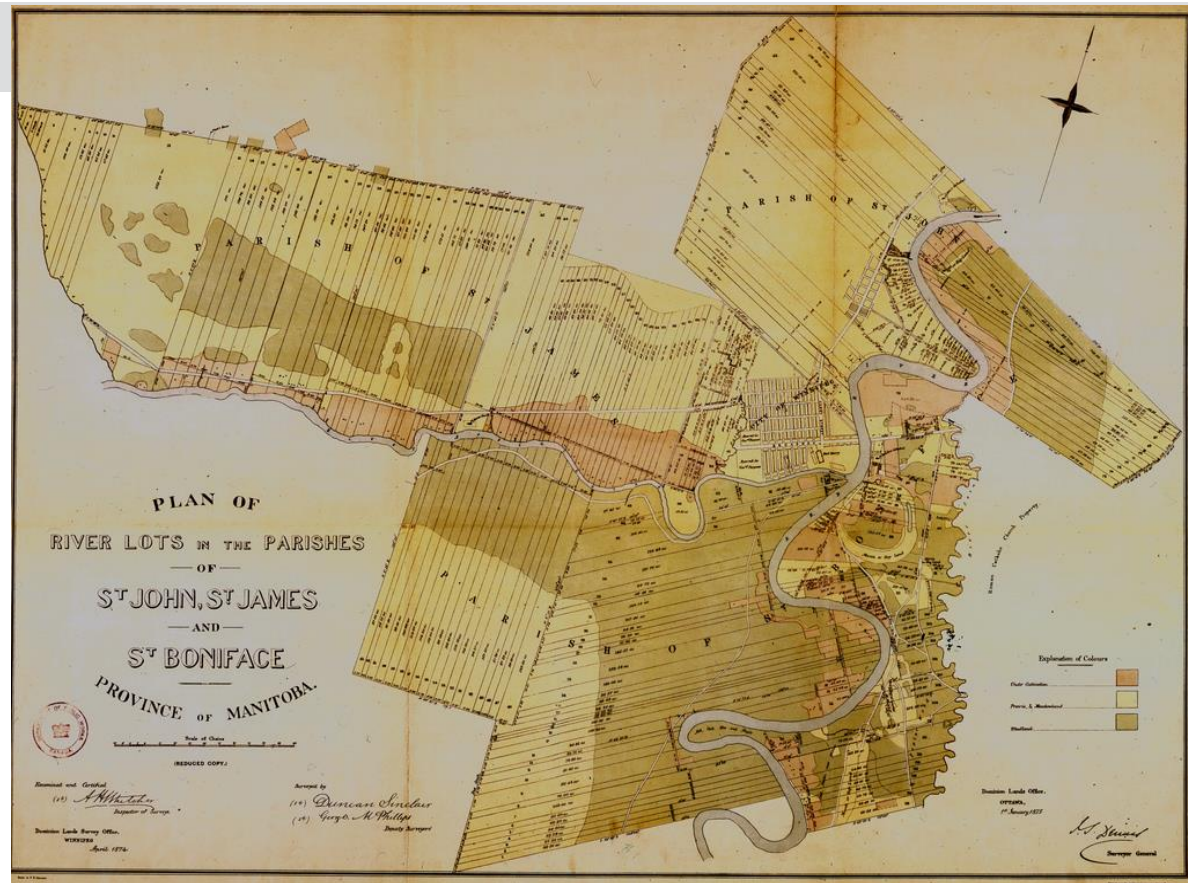
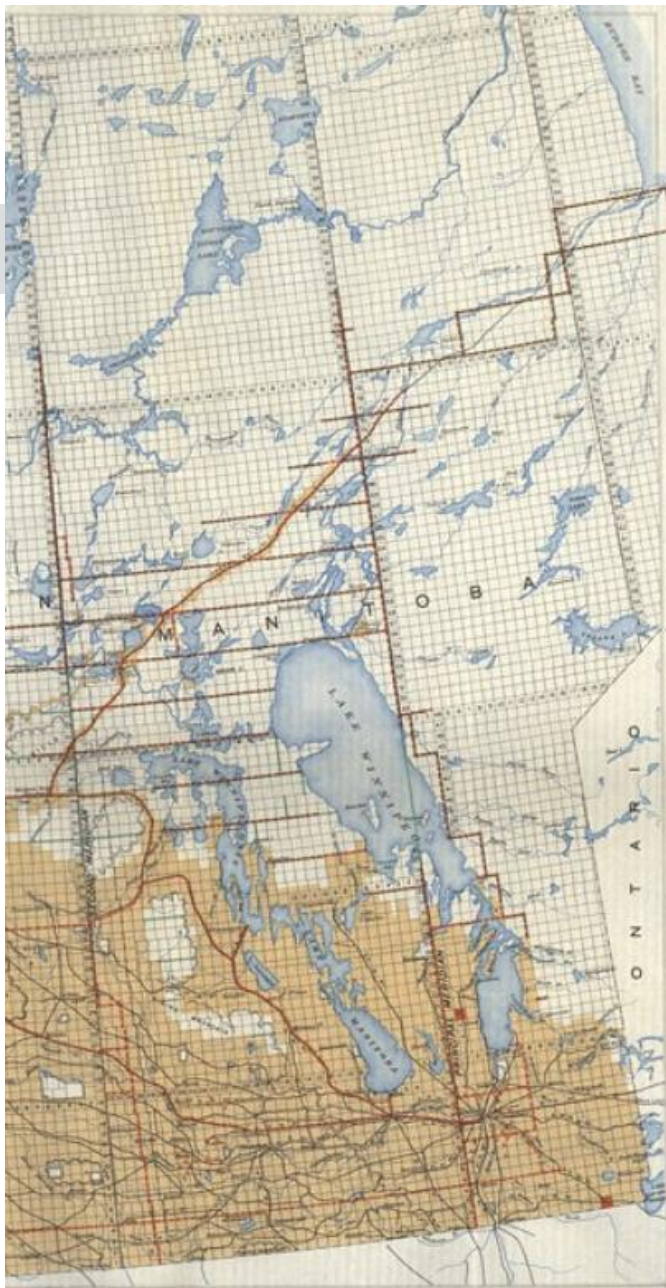
- It is important to remember that the Dominion Government Survey was done using 19<sup>th</sup> century technology (massive metal chains measuring 66 feet in length, wooden stakes, etc.) and as a result, given the challenges of topography, weather and temperature changes, some quarter sections are not exactly 160 acres
- This can also require some conversions when determining the appropriate legal description for old system land

1 link	7.92 inches
100 links	1 chain
16 ½ Feet	1 rod
25 Links	1 rod
4 Rods	1 chain
40 Rods	1 furlong
8 Furlongs	1 mile
66 Feet	1 chain
80 Chains	1 mile (5280 feet)
40 Chains	1 Quarter Section (2640 feet)
20 Chains	1320 feet (1 L.S.)
40 Acres	1 L.S.
16 L.S.	1 Section
4 Quarters	1 Section (640 acres)
1 Quarter	160 Acres
4 L.S.	1 Quarter Section
8 L.S.	½ Section (320 Acres)
1 metre	39.23 inches
1 L.S.	20 chains long (13.20 ft.) (¼ Mile)
1 L.S.	1320 ft. X 1320 ft.
1 Acre	208.7 ft. X 208.7 ft.
2 Acres	295.16 ft. X 295.16 ft.
3 Acres	361.5 ft. X 361.5 ft.
4 Acres	417.42 ft. X 417.42 ft.
5 Acres	466.69 ft. X 466.69 ft.
6 acres	511.23 ft X 511.23 ft
1 Acre	66 ft X 660
20 Sq. Chains	40 acres (1320 ft. X 1320 ft.)
1 Section	640 acres or 1 sq. mile
1 Mile	5280 ft. X 5280 ft.



# The Parish (River Lot) System

- In a river lot system, the lands are divided up into long narrow strips that run perpendicular to the river (typically the lot stretched back two miles)
  - The first roads were built near and parallel to the river and are referred to as the River Roads
  - Another road was typically established at the two mile limit and are referred to as the Two Mile Road
  - Stretching back a further two miles was a second lot. This is referred to as the Outer Two Mile Lot
- River Lots were grouped into parishes, including St. Vital, St. James and St. Boniface
- A certificate of title for land in the river lot system will:
  1. Identify whether the lot is a river lot (RL) or an outer two mile lot (OTM);
  2. State the lot number; and
  3. Identify in which parish the lot is located



# Land Registry Systems in Manitoba

The Province of Manitoba has two concurrent land registry systems:

## 1. The Registry (Deed/Old) System

- Manitoba adopted the registry system in 1871 (the current applicable legislation is *The Registry Act*, C.C.S.M. c. R50)
- This system issues a defeasible title (i.e. titles are not guaranteed)
- It is a race-notice system. In this system an interest in land is acquired where the party acquiring the interest (see sections 53 and 55 of *The Registry Act*):
  - i. Has no prior notice of a competing interest (where notice means actual notice not constructive notice); and
  - ii. Registers their deed (or other instrument) prior to any other party acquiring the same interest.
- Deeds (or other instruments) are submitted through the eRegistration portal and assigned a registration number. The particulars of the document(s) are recorded on folios in an abstract book. Abstract books are lists of all the dealings affecting a particular parcel of land.
- The chain of title must be examined prior to a conveyance of the land; typically this means, examining the chain back to the original grant of the lands from the Crown

After February 20, 1914, no further registrations of Crown grants were to be registered under the Old System, see section 18(1) of *The Registry Act* and section 27 of *The Real Property Act*



# Land Registry Systems in Manitoba

## 2. The Torrens (New) System

- Manitoba adopted a Torrens style system under the operation of *The Real Property Act* which came into force July 1, 1885 (the current applicable legislation is *The Real Property Act*, C.C.S.M. c. R30 (the “Act”))
- This system issues an indefeasible title (subject to section 58 of the Act) (i.e. titles are guaranteed – see section 59 of the Act)
- It is a registration system. Rights and title pass upon the registration of instruments and not upon their execution.
- Principles of a Torrens System
  1. **Mirror Principle:** the register (Certificate of Title) shows accurately and completely the state of title to land. In addition to showing the owner of the land, it must also show any other interest in the land that is owned by another party. (i.e. a mortgage). This abolishes the common law doctrine of notice – if an interest is not recorded on the title one need not be concerned with it. The fundamental objective being that parties searching the register can rely on the results of their search without the need for further inquiries.
  2. **Curtain Principle:** one does not need to be concerned with dealings that took place prior to those currently recorded on the register. The fundamental objective being that one does not need to obtain and review copies of prior dealings to ensure that there is a safe chain of title.
  3. **Insurance Principle:** The assurance fund was established to compensate parties who suffer a loss caused by fraud or by an error in the registry.

# Land Registry Systems in Manitoba

The terms “new system” and “old system” are defined terms in the legislation to refer to lands under *The Real Property Act* and *The Registry Act*, respectively.

As noted above, we continue to have land under the old system – land that has never been brought under the operation of *The Real Property Act*. These lands are governed by *The Registry Act*.

Types of land that are still under the operation of the old system:

1. Much of northern Manitoba (ungranted crown lands);
2. Streets and lanes in old subdivision lands where the land was brought into the new system one lot at a time;
3. Farmland that has been in a family for generations and has never had to be mortgaged; and
4. Small parcels here and there.

# Application under *The Real Property Act*

The appropriate document used for bringing old system land into the new system is FORM 3 Application under *The Real Property Act* (RPA) the approved version of the RPA form can be found on the Teranet Manitoba website: <https://teranetmanitoba.ca/land-titles/land-titles-forms/> This form has been in use for the past 100 years with minimal changes to same.

When an RPA is filed at Land Titles, a (Deputy) District Registrar examines all dealings recorded in the old system (on an abstract) affecting the lands (including, but not limited to, deeds, mortgages, etc.) back to the initial grant of land from the Crown. Provided they are able to determine with certainty that the applicant is entitled to be the owner of the lands in question, the District Registrar will cause a Torrens title to issue.

At the discretion of the applicant, title can either issue into their name or into the name(s) of some other person(s). Where title issues into the name of another person(s), the RPA is called a Directed Real Property Application (“Directed RPA”). (See section 35 of *The Real Property Act*)



# Application under *The Real Property Act*

## When is an RPA required?

- When an owner of an estate or interest in land under the old system wants the land to be governed by *The Real Property Act* (see section 29(1) of the Act)
  - It is common practice for registered owners to bring old system land into the Torrens system prior to conveying it to an arms length third party or during the administration of an estate prior to transferring the land to the beneficiaries or selling the land where it forms part of the residue
- When an owner is intending to subdivide land for any purpose, prior to the subdivision, the land in the old system, must be brought under *The Real Property Act* (see section 47(1) of *The Registry Act*), regardless of whether the subdivision is in connection with a Plan of Subdivision or by way of instrument (i.e. conveyance/mortgage/etc.)
- When an owner is dealing with a mineral interest in the old system, other than a mineral lease or instrument relating thereto, the mineral interest must be brought under *The Real Property Act* (see section 47(4) of *The Registry Act*)
- When an owner is consolidating land, where some, but not all of the land, is in the old system, the old system land must be brought under *The Real Property Act* prior to the consolidation with new system land

# Application under *The Real Property Act*

## What land may be included in the RPA

### *The Real Property Act, Section 31*

#### Land in one application

[31\(1\)](#) Subject to subsection (2), contiguous unsubdivided lands, not exceeding altogether 2,000 acres, (a road not to be considered a break in the contiguity), or any number of lots under the same plan of subdivision, may be included in a single application; but in no case shall a first or subsequent certificate of title issue for more than 50 lots, or for unsubdivided lands that are not contiguous or that contain more than 2,000 acres.

#### Variations of restrictions

[31\(2\)](#) Where the district registrar deems that the inclusion in a single certificate of title of

- (a) a number of acres or lots greater or less than that stated in subsection (1); or
- (b) lots that are not under the same plan of subdivision; or
- (c) unsubdivided lands that are not contiguous;

would facilitate dealings with the land, he may issue a certificate of title accordingly.

# Application under *The Real Property Act*

## What land has to be included in the RPA

### *The Real Property Act*, Section 33

#### Undivided interests

[33\(1\)](#) An application shall not be received to bring under the new system an undivided interest in land, unless an application is also made for all other undivided interests in the land; and no withdrawal or rejection of an application for an undivided interest shall be permitted, unless the application for all other undivided interests in the same land is withdrawn or rejected.

#### Appl. for additional land required

[38\(1\)](#) Where an application to bring land under this Act is made by a grantee of part only of the contiguous land formerly owned by the grantor in any quarter section, parish lot or lot shown on a plan, the district registrar shall reject the application unless an application is also made to bring under this Act the balance of the land owned by the grantor in the quarter section, parish lot or lot shown on the plan.

# Application under *The Real Property Act*

## Basic investigation steps to take before preparing the RPA:

- Search the land index by going to the Land Titles Online for the land to see if all or part of it is already under the new system, also check to see if there are any roads or similar plans that affect the land since those plans may have to be excepted from the title
- Obtain and review the old system Abstract from Land Titles
  - This can be done using a Service Request form (Form 19) which can be found on the Teranet Manitoba website: <https://teranetmanitoba.ca/land-titles/land-titles-forms/>
- Follow the chain of ownership from the Patent (Original Grant from the Crown) to each subsequent owner, watching for breaks/clouds in the chain of ownership
- **Remember, the Abstract is only an index of the documents registered**
  - You will need to order and review the documents themselves to be certain of their actual effect.
- Watch for Deeds and other instruments that conveyed or excluded some part of the land or some interest in the land – ORDER Deeds and Other Instruments and review same
- Watch for reservations of mines and minerals in the original grant from the Crown, reservations of mines and minerals in later Deeds or P&NG in later Deeds
- Watch for Leases and other encumbrances that will have to be included on the new title. Ensure to list them as part of paragraph 5 on the RPA
- NOTE: for Hudson Bay land the chain of title will begin with a *Notice of Completion of Survey* instead of a Patent . Under their settlement with the Crown, Hudson Bay got all of section 8 and all of section 26 except the NE ¼ in most townships (in every 5<sup>th</sup> township they got ALL of section 26). Mines and minerals were not reserved out of the dispositions of land from the Crown to HBC.

# Application under *The Real Property Act*

## Additional Requirements for a Directed RPA

- A direction is to be inserted into an RPA when the party taking title will be different from the party making the application. With the insertion of a direction clause, the RPA does two things: (1) it brings the land under the operation of the new system, and (2) it also transfers those lands from the applicant to the directee.
- Where an RPA contains a direction, given it is also a transfer of land. It must therefore contain *Homesteads Act* evidence, *Farmlands Ownership Act* evidence, and evidence as to the fair market value as required by *The Tax Administration and Miscellaneous Taxes Act*. This evidence must be provided by way of an affidavit attached to the RPA. (See page 55 and Schedule VII of The Land Titles Guide)

- (i) and I direct the Certificate of Title to be issued in the name of FRANKLIN JOHN GLADSTONE.
- (j) Address for service: 123 Laurier Avenue, PO BOX 123, Killarney, MB, R0K 1G0, teacher, 55 years of age.

### Affidavit to accompany directed real property application

In the matter of the attached directed Real Property Application

I, \_\_\_\_\_, and I, \_\_\_\_\_, (severally) make oath and say / hereby affirm that:

1. I am (one of) the applicant(s) in the attached Directed Real Property Application.
2. The fair market value of the land as a whole with respect to which this Directed Real Property Act Application is tendered for registration within the meaning of Part III of *The Tax Administration and Miscellaneous Taxes Act* is \$ \_\_\_\_\_.
3. The registration of this instrument does not contravene the provisions of *The Farms Land Ownership Act* because \_\_\_\_\_.
4. The registration of this instrument does not contravene the provisions of *The Homesteads Act* because \_\_\_\_\_.

(Severally) Sworn / Affirmed before me )  
at the \_\_\_\_\_ of \_\_\_\_\_ )  
in the Province of \_\_\_\_\_, this \_\_\_\_\_ )  
\_\_\_\_\_ day of \_\_\_\_\_, )  
\_\_\_\_\_ )

\_\_\_\_\_  
A Commissioner for Oaths in and for the  
Province of Manitoba. My Commission expires:  
A Notary Public in and for the Province of Manitoba

# Application under *The Real Property Act*

## Applications by Executor/Administrator

- Where old system lands are owned by a deceased person, an application may be made by the executors or administrators of the estate. Evidence of their appointment in the form of a grant of probate or letters of administration must accompany the RPA.
- Where an application is made by the executors or administrators of an estate, title will issue into the names of the executors or administrators in that capacity unless the RPA contains a direction. Once the new system title has issued, they are free to transfer the lands to a purchaser or a beneficiary without the need for any special evidence regarding the estate.

(a) JOHN JOSEPH SMITH, as Executor for the Estate of JACK WAYNE SMITH

(a) JOHN JOSEPH SMITH, as Executor for the Estate of JACK WAYNE SMITH. JACK WAYNE SMITH, named in the Grant of Probate attached, and the person named in the Deed 56789 as JACK SMITH as the same person.



# Application under *The Real Property Act*

## Additional Requirements for a Directed RPA by Executor/Administrator

- Where the parties intend for title to issue into the name of a party other than the executors or administrators in their capacity as executors or administrators, a directed RPA must be filed. In addition to all other requirements of a regular RPA, the district registrar will require evidence concerning the estate.
- The district registrar will not permit a disposition other than in accordance with the will/the rules in *The Intestate Succession Act* unless all the heirs (beneficiaries) provide either a Quit Claim deed or their consents are included with the disposition.
- **The rules and evidentiary requirements (set out above and on the next slide) will also be applied to any disposition of the subject lands in the old system by the executors or administrators of an estate. If that evidence is not included with that deed, the district registrar will requisition it at the time they are examining the chain of title.**

## Issue of certificate

[43](#) The district registrar, on being satisfied of the due service of all notices that he deems requisite, and that the title to the land is safe-holding, may bring the land under the new system, and issue a certificate of title therefor to the person who appears to be entitled thereto.

# Application under *The Real Property Act*

## **Additional Requirements for a deed or a Directed RPA by Executor/Administrator**

The following is a list of the evidence that must be presented with a deed or a directed RPA by an estate:

1. Grant of probate or letters of administration;
2. Evidence in the form of the affidavit of debts and heirs, including:
  - i. Publication of notice to creditors under *The Trustee Act*, with no claims filed within the designated time;
  - ii. All debts, claims and liabilities against the deceased in the estate are paid and that there are no outstanding and unpaid income taxes or succession duties, if applicable (evidence that all income taxes of the deceased in the estate have been paid should be sufficient, without requiring a copy of the clearance certificate also to be filed);
  - iii. Particulars of a surviving spouse/common law partner and children;
  - iv. Evidence that the executor has not been served with an application under *The Dependants Relief Act* (note that the limitation period under *The Dependants Relief Act* is six months from the date of the grant of probate or letters of administration);
3. If the land is homestead, the consent of the surviving spouse/common law partner;
4. For deaths which took place after August 15, 1993, where there is a surviving spouse/common law partner, evidence that the personal representative served the surviving spouse/common law partner with the notice under section 31 of *The Family Property Act* within one month after the grant of probate or letters of administration and that no application for an accounting and equalization has been made by the surviving spouse/common law partner (the surviving spouse/common law partner has six months from the date of the grant of probate or letters of administration to file an application for an accounting and equalization under *The Family Property Act*).

See page 56 of The Land Titles Guide

# Application under *The Real Property Act*

## Quit Claims

- Using a Quit Claim Deed
  - A Quit Claim Deed is the proper instrument for *releasing* an interest in land in favour of the owner on the abstract
  - A Quit Claim Deed is not a conveyance document.
  - As such it will not be accepted as a conveyance document from a previous owner to a party who does not already have an interest in the lands.
    - This is based upon the fact that the district registrar must be satisfied that a certificate of title to land is safe-holding. A quit claim deed does not contain the covenants contained in an ordinary deed of conveyance.
- The effect of the Quit Claim Deed
  - The grantor of a Quit Claim Deed merely releases to the grantee their claim, whatever it may be, with the understanding that there may be other outstanding claims or interests which may affect the chain of title of the land
  - The grantor affirms nothing as to the ownership, and undertakes only a release of any claim to or interest in the land which they may possess without asserting the ownership of either.

# Application under *The Real Property Act*

## ***The Real Property Act*, section 41**

### **Service on adverse claimants**

[41\(1\)](#) Where the district registrar finds that some person other than the applicant has, or appears to have, some right or claim to, or against, the land respecting which the application is made, he may issue a notice, and cause that person to be served with a copy thereof, to the effect that a certificate of title will issue for the land pursuant to the application, unless that person, within the time limited by the notice, which shall, in each case, be fixed by the district registrar, take proceedings to stop the issue thereof.

### **Barring Notice**

- Using a Barring Notice
  - A Barring Notice is available in situations where there is a cloud on the chain of title in which another party, other than the applicant, have a right or interest in the subject land
  - Example: Upon review of the abstract and chain of title, there is a deed from A to B and then another deed from A to C. There is then a deed from C to D and from D to E, etc. With the Deed from A to B being missing. In this situation, the applicant has an unbroken chain back to the original grant, with a cloud on the chain, the cloud being the missing deed between A and B.
- The effect of the Barring Notice
  - Issuing the Barring Notice does not remove that party's rights; their rights are removed by inaction on their part once properly served with the Barring Notice

# Application under *The Real Property Act*

## When a plan may need to accompany an RPA

### *The Real Property Act*, Section 32

#### Plan may be required

[32\(1\)](#) Where an application is made to bring land under this Act, the district registrar may require the applicant to file a plan of survey defining the limits of the land for which the application is made.

In determining if a plan is required, the district registrar will consider following:

- The cost of the plan to the applicant
- If the boundaries of the parcel described in the application agree with adjoining titles – no plan
- If the descriptive formats do not agree but the wording in the application could be changed to agree – no plan required (RPA would be rejected and resubmitted with an appropriate legal)
- If the boundaries of the parcel and adjoining titles agree in descriptive format but conflict in measurements (creating a gap or overlap in title) – plan required
- In situations where without the benefit of a survey it cannot be determined if any land was left in the parcel – plan required (this is most common when there are bodies of water covering the parcel)
- Applications resulting from the closing of a Government Road Allowance – plan required
- Applications resulting from the closing of any old system road, street or lane – plan required

# Application under *The Real Property Act*

## Common Errors and How to Avoid Them

### 1. Execution and Witnessing of Documents

#### i. No Affidavit of Execution/Subscribing Witness

- a. The rules for the execution and witnessing of old system documents including RPAs have not changed
- b. All witnesses (including practicing lawyers and notary publics) must swear an Affidavit of Execution/Subscribing Witness

#### ii. No Applicant's Affidavit

- a. All applicants, whether natural persons or not, must complete and properly execute the Applicant's Affidavit on page 4
- b. The same applicant who signs the RPA must also sign this Affidavit. Without the signing of this Affidavit by the same/correct applicant, the evidence provided in the RPA itself is not sworn evidence as required

### 2. Including Land not Owned by the Applicant

- i. A common example of this is not including exceptions affecting the land in the RPA i.e. mines & minerals or other reservations set out in the Original Grant from the Crown and/or exclusions from Deeds that affected the land



# Application under *The Real Property Act*

## Common Errors and How to Avoid Them

### 3. No Address for Service in Left Margin on First Page

- i. The address provided in paragraph (a) of the RPA is intended to assist in the identification of the applicant (this is based on the form being quite old with minimal amendments over time); whereas, the address for service is the mailing address to be included on the issuing new systems title. In the event they are the same, put the address in both locations on the form.

### 4. Missing encumbrances

- i. All encumbrances that carry over to the new system title are to be set out at paragraph 5 of the RPA. You will need to obtain and review a copy of the Abstract for the affected land to determine what, if any, encumbrances have not been discharged and will carry forward.

### 5. Schedule of Documents

- i. List here the registration number of the most current deed (typically, the one to applicant), together with any active charges. This should not be left blank.

# Application under *The Real Property Act*

## Common Errors and How to Avoid Them

### 6. Missing Directed RPA evidence

- i. As noted, a Directed RPA must include *Homesteads Act*, *Farmland Ownership Act* and fair market value evidence. This is to come in an affidavit. An affidavit may be required from both the applicant and the directee (*Homesteads Act* evidence from the applicant and a land transfer tax exemption from the directee) .
- ii. Land Transfer Tax may be payable given a Directed RPA is a transfer pursuant to section 111(1) of *The Tax Administration and Miscellaneous Taxes Act*

### 7. Completing paragraph (i) on page 2 of the RPA if it is not a Directed RPA

### 8. Missing Estate evidence (see above Applications by Executors)

### 9. Submitting to the wrong Land Titles District Office.

- i. Ensure you select the District Office where the land is located when submitting through eRegistration (which is required).

# Application under *The Real Property Act*

## Registration and Review of the RPA

1. Client submits RPA along with other documents in series through eRegistration. Any old system instrument may be registered prior in series to the RPA provided it does not subdivide. Pursuant to section 30(1) of *The Real Property Act* documents that can follow an RPA in series are limited to:
  - i. Mortgages (section 99 of *The Real Property Act*);
  - ii. Amending Agreements (section 99 of *The Real Property Act*);
  - iii. Encumbrances (in the narrow sense i.e. a charge or lien on land for securing a series of payments – these will be rare) (section 99 of *The Real Property Act*);
  - iv. Builders' Liens (section 30(2) of *the Real Property Act*).If non-permitted documents are registered in series the series will be rejected.
2. All documents in series are first reviewed as to form, compliance with execution and witnessing requirements and the inclusion of necessary evidence. If the RPA or any other document is found to be deficient the series will be rejected. The chain of title research will not have been completed.

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### 3. Chain of Title research includes:

- i. Land Index search completed to see what, if any, new system titles exist for subject land and the remainder of the ¼ section or river lot;
- ii. Land Index search completed to see what, if any, plan deposits, exist and affect the subject land;
- iii. Abstract for ¼ section and/or parish lot reviewed:
  - a. This involves checking to see all whether all instruments have been discharged or carry over;
  - b. This involves tracing the chain of title and ensuring there are no breaks **or** clouds in the chain;
- iv. Patent (Original Grant from the Crown) reviewed:
  - a. This involves checking for reservations in the original grant (i.e. mines and minerals, specific roads or trails, specific bodies of water, etc.)
- v. All Deeds (starting with the first one issued after the Patent up to the last one in the chain):
  - a. This involves checking for proper execution and inclusion of all necessary evidence (i.e. Dower/Homesteads evidence);
  - b. Ensure the entire interest has been dealt with;
- vi. Note any encumbrances to be shown on the new system title (RPA needs to be made subject to these instruments);

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### 4. Cloud on title

- i. Where there is a cloud on the chain of title this will be dealt with through either a barring notice or with a quit claim deed.

### 5. Break in chain

- i. Where there is a break in the chain of title, the applicant must complete the chain through submission of a deed. A Court Order may be required to fix a broken chain where a deed cannot be obtained.

### 6. The Title issues

- i. If chain of title is acceptable, a new system title will issue to either the applicant or directee, as the case may be.