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District Registrar Has Broad Power to Extend Redemption Deadline: MBQB

The district registrar has broad powers to extend the time for redemption under s.45(4) of *The Real Property Act* and could not be said to have breached any statutory or common law duty to the assignee of a tax sale certificate by failing to register his transmission documents according to the court in [*Thunderbird Holdings Ltd. v. The Government of Manitoba*](#), 2011 MBQB 182. The property owners indicated an intention to redeem the property before the plaintiff filed the final certificate and although they did not attend at the WLTO with the requisite funds by the extended deadline date they did do so before the plaintiff's documents were processed. The district registrar began examining the plaintiff's documents at the earliest point after the extension expired and acted expeditiously throughout according to the court. He had no choice but to reject the plaintiff's documents and proceed with the redemption, since s.255(1) of *The City of Winnipeg Act* gives the owner the right to redeem "before the issue of title."

Preferential Treatment Invites Scrutiny of Testator's Intent: MBQB

Two recent cases illustrate the animosity that can result when testators prefer one beneficiary over others and the testator's intentions are unclear:

- In [Naherny v. Naherny](#), 2011 MBQB 142 the court considers whether a holograph will preferring one child over another was a voluntarily written document or a sign that the testator had capitulated to the "vulgar haranguing of his daughter" that he provide for her financial security. After assessing why the testator created the document he did, the court rejected the son's allegation that the daughter had exercised undue influence over her father and found that there was "nothing unusual or unreasonable" in the testator providing more for the daughter given her "bleaker future."
- The testator intended to forgive the entire balance of an unpaid vendor mortgage on farmland sold to her son and was content with the preferential nature of this gift according to the court in [Estate of Reita Rome](#), 2011 MBQB 151. The court extinguished the son's \$105,000 mortgage debt, rejecting the argument made by his sisters that the words "unpaid balance" were not intended to include accrued payments due and owing under the mortgage at the time of death. Costs were awarded against the son, however, due to the adversarial position he took concerning the mortgage dispute. He was also removed as co-executor.

Mortgage Dispute Turns on Credibility Concerns: MBQB

The court has [decided](#) another dispute involving a GFK Capital Base mortgage and, not surprisingly, credibility of the parties was in issue. The court found that while there was no doubt the mortgagor got the bad end of the bargain, her evidence concerning an agreement that allegedly allowed her to make up a deficit by providing property evaluations and client referrals was evasive, contradictory and unbelievable. Despite years of accepting reduced payments, the mortgagee was allowed to enforce the original agreement. He was disentitled to the full cost of collection, however, for "sitting on his rights for years and being unable to provide proper documentation for much of his claim." (para. 82)

Commission's Decision to Add Tenants to Appeal Upheld: MBQB

In [Phoenix Enterprises Ltd. v. Residential Tenancies Commission](#), 2011 MBQB 144 the court dismissed a landlord's challenge to a procedural and interim decision of the Residential Tenancies Commission to add all tenants to an appeal of a decision concerning allowable rent increases. The court found that the Commission did not breach any requirement of natural justice or procedural fairness in deciding to add all tenants to the appeal. The Commission's reasons were brief but adequate: their initial analysis of the evidence led them to conclude that they might "substantially revise the decision of the Residential Tenancies Branch," and this would impact all tenants.

Leave to Appeal Dismissed in **Labossiere** Case: SCC

The Supreme Court of Canada [dismissed](#) the application for leave to appeal the Manitoba Court of Appeal decision in [Labossiere-Clark et al. v. Wood](#), 2011 MBCA 7. The Manitoba courts found no basis upon which the estate or beneficiaries of a murdered man could claim against land co-owned by the deceased and the wife of the alleged murderer, the deceased's brother. Substantial mortgages on the land had been discharged by the deceased's insurer.

2012 Rent Guideline Set

The 2012 provincial rent guideline has been set at 1 per cent ([Regulation 86/2011](#)) and will take effect January 1, 2012. See the [news release](#) from Manitoba Family Services and Consumer Affairs or the [Residential Tenancies Branch](#) website for further details.

In Force Legislation

Manitoba Regulation [42/2011](#), Real Estate Brokers Regulation, amendment, came into force August 1, 2011. Among other things, it amends Form 1 of Schedule A (the current residential form of offer to purchase) by adding a section on property

disclosure statements. It also amends Regulation [56/88](#) to add s.3.2, requiring the commission to conduct periodic reviews of the forms prescribed under *The Real Estate Brokers Act*.

Several sections of [The Residential Tenancies Amendment Act](#) (assented to June 11, 2009) will come [into force](#) November 1, 2011, as will the following regulations: [55/2011](#), Residential Tenancies Regulation, amendment and [56/2011](#), Residential Rent Regulation, amendment. The Director of Residential Tenancies now has the authority to deal with tenancy agreements that include supplemental services such as meals and housekeeping. New administrative penalties will apply to landlords who fail to comply with orders made under the Act.

Public Consultation Sought on New Home Defect Warranties Proposals

This June 23, 2011 [news release](#) regarding proposed warranty protection for new home buyers invites interested parties [to comment](#) on their [public consultation paper](#) by September 30, 2011.

Articles on Property and Estates Topics

These recent publications may be of interest to solicitors:

The July 2011 [CBA National Real Property Section Newsletter](#) includes a link to a preliminary [Comparison Chart](#) developed by the section in which different provinces answer common real estate questions; the article [Closing the Deal: Tendering](#) which examines three aspects of tendering: the interaction between tender and anticipatory breach, preserving the client's rights when neither party can close on time, and how electronic registration has affected the logistics of tendering; and the article [Electronic real estate transactions and the Statute of Fraud: The requirement to get it in writing](#).

Two new articles dealing with estates topics have been posted on BC CLE's [Practice Points](#):

- [Taxation of Personal Trusts](#) - which highlights the tax issues that non-tax estate practitioners should be alert to when dealing with personal trusts; and
- [Incapacity Planning: Issues for Grantors of Enduring Powers of Attorney](#) - which deals primarily with BC legislation, but references cases from other jurisdictions pertaining to enduring powers of attorney.

Fall CPD Programs: LSM

Be sure to register soon for these upcoming continuing professional development programs offered by the Law Society:

- [Will Drafting Process and Pitfalls - Can You Afford to Charge \\$175?](#) - This repeat of the sold out Winnipeg program will be held September 19, 2011 at the Victoria Inn Hotel in Brandon, Manitoba. Presenters Cynthia Hiebert-Simkin and Jennifer Pfuetzner will discuss best practices in will drafting and estate planning and highlight common drafting errors.
- [Succession Planning](#) - This topical program will address what you need to know about retiring or winding down your practice from a variety of perspectives. Presenters include practice advisors from the LSM and Alberta, a Law Society contract custodian, and the lawyers' insurance counsel from Nova Scotia. The program takes place October 6, 2011, from 9:00 a.m. to 12:00 noon, followed by a networking lunch. [Register](#) soon to ensure your spot.
- [Challenges to Wills & Gifts](#) - This informative program will address the grounds for attacking and defending wills, trust settlements, *inter vivos* gifts and other voluntary wealth transfer instruments. It will be held in the Law Society classroom on December 2, 2011, from 1:00 to 4:00 p.m.

MBA Program

Those who act for buyers, sellers or mortgage financiers of condominium units or for a

condominium corporation will be interested to hear Rob Giesbrecht speak about the recent legislative changes dealing with condominiums. The Real Property section is presenting the program [Recent Changes to The Manitoba Condominium Act](#) on September 20, 2011 from 5:00 - 6:30 p.m. at Pitblado LLP. RSVP to bogoros@pitblado.com.

STEP Programs

The [Winnipeg branch](#) of STEP, the [Society of Trust and Estate Practitioners](#), has announced its 2011/2012 [program schedule](#). The first session, Post-Mortem Planning, takes place September 11, 2011, from 1:30 - 3:30 p.m. Upcoming sessions include: Asset Protection, Changes to the CPP, Salary v. Dividends in 2012, The Primary Caregiver Tax Credit, Taxation Issues at Separation or Divorce, Administration of Estates and Accounts, and Cottage Planning.

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