

## **Declarations of Trust**

### **Recording a Trust against a Certificate of Title (Section 60)**

The Registration of Titles Act prohibits the Registrar of Titles from recording a trust on the face of a Certificate of Title regardless of whether the trust is express, implied or a constructive trust.

It is important to note that executors and administrators are in fact trustees of the estate of the deceased. The Registrar will note on the Title the transmission of the estate from the deceased to the personal representative where a Transmission Application is submitted. Where a new Certificate of Title is issued in the name of the personal representatives of the deceased owner, their capacity will not be evident on the face of the Title. However for the purposes of any dealings therewith under the provisions of the Act the personal representative registered in transmission shall be deemed the absolute proprietor thereof (Section 130). However, they are accountable as trustees to any beneficiary.

### **Procedure as to Trust**

Where land is transferred to an individual to hold on trust for the benefit of others, the individual should execute a Declaration of Trust and deposit it with the Registrar of Titles for safe keeping and reference.

The Registrar will protect the declaration of trust by lodging a Registrar's Caveat against the Title as notice of the existence of the trust and where necessary to ensure that the registered owner deals with the Title only in accordance with the terms of the Trust. Where a Declaration of Trust is being executed, the Trust document should be appropriately stamped and should set out the details of the trust.

Any subsequent dealing will require proof that such dealing is in accordance with any specific terms of the trust.

### **Fees**

Fee No. 22 is applicable.

**YOU DO NOT NEED THE DUPLICATE CERTIFICATE OF TITLE TO LODGE  
A DECLARATION OF TRUST AS NO ENTRY IS MADE ON THE  
CERTIFICATE OF TITLE.**