

Form 41 – Application for Registration of Transmission

Land Titles Act, S.N.B. 1981, c.L-1.1, s.53

Form	PDF: https://www.gnb.ca/0062/regs/pics/83-130_en_043_001.pdf
Overview	Acceptance criteria to have Form 41 registered upon submission
Acceptance Criteria	<p>Signatures</p> <ul style="list-style-type: none"> Form 41 has to be signed by at least one of the personal representatives. It cannot be signed by the lawyer or by an attorney on behalf of the personal representative. If there is more than one personal representative, all must be listed (but the Form can be signed by one). <p>Naming Conventions</p> <ul style="list-style-type: none"> The name of the personal representative has to be as per the Naming Conventions, with a civic address. <p>Ownership</p> <ul style="list-style-type: none"> All PIDs listed must be under Land Titles. The parcel(s) must be owned by the deceased either solely or as a tenant in common. If the deceased owner (to which the Form 41 relates) owns the parcel as a joint tenant and the other joint tenant predeceased him or her, the Form 41 must be accompanied by a Form 48 (Application of Survivor), both of which are to be submitted together on paper (no exemption required). The Form 48 will be signed by the personal representative of the last survivor. The Form 41 for the last surviving joint tenant will be registered first and the Form 48, to which a proof of death for the first deceased joint tenant will be attached, will be registered second. The wording of the Form 48 can be adapted for it to be signed by the personal representative of the last survivor. Please note that if two joint tenant owners die within 10 days of each other, they are deemed to have died at the same time and are deemed to be <u>tenants in common</u>, pursuant to sections 6 & 3 of the <i>Survivorship Act</i>. When this happens, Form 41 needs to be submitted for each owner, instead of the usual Form 41/48 situation as described above. If the deceased's name appears differently on the Will (or Letters) than on title and/or if multiple versions appear on title, all variations should be listed and the Form 41 should indicate that they are all one and the same person. <p>Wills</p> <ul style="list-style-type: none"> The Will has to name an executor or a trustee to act on behalf of the deceased. If it does not, it will have to be probated before it can be attached to Form 41. Except for Notarized Wills from the Province of Québec, the Form has to be accompanied by an original Will, Letters Probate, or Letters of Administration. If any one of those 3 documents is not attached, it will not be registered. The Will has to be the original, or a certified copy from a Registry office. Copies



	<p>certified by lawyers etc. are not acceptable. The Will has to be accompanied by a proof of execution and a proof of death (certificate of death from funeral director or affidavit of death from a knowledgeable person).</p> <ul style="list-style-type: none"> • If the Will is a Notarized Will from the Province of Quebec, it has to comply with the provisions of subsection 23(3) of the <i>Registry Act</i>. Namely, it must be accompanied by an affidavit by the officer with whom the Will is deposited, stating that the Will is valid and subsisting under the laws of that Province and by a proof of death of the testator. • The original Will has to be witnessed by two individuals, who signed in the presence of each other and in the presence of the testator at the same time. That has to be stated in the proof of execution, and one witness to the testator’s signature cannot be a witness to the signature of (or take the oath of) the other witness on the proof of execution of the Will. Affidavits by persons familiar with the signature of the testator, who did not witness the signature of the testator, are not acceptable. Holograph wills are not exempted from these requirements. • If the Will names two executors and one is deceased or has renounced to act, then Form 41 must also be accompanied by a proof of death of the deceased executor, or by a renunciation to act executed by that executor. The same is true if the main executor is dead or has renounced to act, which results in the signature of the alternate executor on Form 41. <p>Letters Probate or Letters of Administration</p> <ul style="list-style-type: none"> • Letters Probate or Letters of Administration have to be originals, or certified true copies of the Court, or certified copies from the Registry Office. • Letters of administration (with no Will attached thereto) from other jurisdictions must be resealed by the Probate Court of New Brunswick, pursuant to subsection 26(2) of the <i>Registry Act</i>, before they can be attached to support the signature of the personal representative on Form 41. <p>Persons having the authority to act</p> <ul style="list-style-type: none"> • In cases where a personal representative is appointed under a Will to act on behalf of the estate of the deceased owner and where that personal representative dies before Form 41 is registered, or dies after Form 41 is registered but where the personal representative omits to transfer the property of the deceased by Form 13, the personal representative cannot appoint other individuals to act on his/her behalf, as it is the estate of the deceased owner that is being dealt with, not the estate of the deceased personal representative. In such cases, the Probate Court will have to appoint a personal representative to act on behalf of the estate of the deceased owner. • The exception to this is that if the personal representative (executor) of the deceased registered owner obtained Letters Probate and the personal representative of the executor also obtained Letters Probate. That is, there must be no break in obtaining successive probates. In this case, the executor of the executor can sign as personal representative of the deceased registered owner. Each successive Letters Probate must accompany the Form 41.
Communication	<p>June 23, 2016 – Transmission on Death Under the Land Titles Act: https://www.pwx1.snb.ca/snb7001/e/PDF/Form41modified.pdf</p>
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