

NOTE: The provisions identified by asterisk and bold type (or comparable variations thereof) are to be included in every Declaration as to Possession delivered under the Protocol. The meaning of these declarations must be explained to, and affirmed by the maker before execution.

The Declaration as to Possession is to be made in duplicate and executed in accordance with section 72 of The Real Property Act.

There is no requirement to obtain a Declaration as to Possession from a Purchaser who is not financing the transaction through a new mortgage.

SCHEDULE V

SAMPLE DECLARATION AS TO POSSESSION

IN THE MATTER OF THE SALE/MORTGAGE OF: *(insert civic address of the Land)*

TO: *(insert name of Purchaser/Mortgagee)*

I, *(insert full legal name)*, and I, *(insert full legal name)*, (each) of the _____ of _____, in the Province of Manitoba, do (severally) solemnly declare that:

- *1. My full and correct legal name is as set out above.**
- *2. I am (one of) the registered owner(s) in fee simple in possession of the following lands and premises:**

(hereinafter the “Land”)
- *3. I am (one of) the vendor(s)/mortgagor(s) of the Land and I am of the full age of 18 years.**
- *4. I have never had a spouse or common-law partner.**

OR

My co-declarant is my spouse or common-law partner and has homestead rights in the Land.

OR

***(Insert full legal name)* is the full and correct legal name of my spouse or common-law partner who has homestead rights in the Land and who consents to the disposition of the homestead in the Land to be effected by this transaction.**

OR

I have no spouse or common-law partner, and no other person has acquired homestead rights in the Land during my ownership.

OR

The Land is not homestead property.

5. My lawyers, (*insert name of law firm or lawyer*), have my full authority to do all things required to complete this transaction, including the making of any necessary amendments to correct any document signed by me which is to be registered in the Land Titles Office.

*6. I am rightfully in actual personal peaceable possession and occupation of the whole of the Land and have been so continuously since I became the/a registered owner of the Land, and I have never been disturbed in my possession of the Land or any part thereof.

*7. The names of all persons in actual occupation of or residing on the Land or any portion thereof and the nature of such occupation and residence are as follows:

*8. I know of no registered or unregistered claim of any person, corporation, municipality, or government, to or affecting the Land, whether adverse to my title thereto or otherwise, for a lease, option to purchase, easement, right-of-way, order of attachment, judgment, order for the payment of money, execution, builder's lien, charge, mortgage, encumbrance, order under the *Bankruptcy and Insolvency Act (Canada)*, agreement for sale or other agreement affecting the Land, other than the agreement for sale of the Land to the purchaser(s) named above, except:

*9. There has been no work done, services provided, or materials supplied for the erection, renovation or repair of any building or other improvement on the Land within the preceding 40 days or, if such is not the case, there are no outstanding accounts for such work, services or materials, except:

10. The electrical system and equipment, heating system, hot water tank and heater, and all other fixtures, chattels, and equipment comprising the Land are fully paid for and are not affected by any chattel mortgage, rental agreement, conditional sales contract or other charge or encumbrance whatsoever.

*11. All taxes on the Land are paid to the 31st day of December, 20____ and, except for the water account for the current period, there are no outstanding accounts owing to the Municipality which are capable of forming a lien on the Land.

12. The water meter reading, as of _____, 20__, was _____, and all accounts for water supplied to the Land up to the Closing Date will be paid by me or on my behalf. [*It is recommended, but not required, that this declaration be obtained from Vendors.*]

13. The Land is not the subject of any loan under *The Homeowner's Tax and Insulation Assistance Act (Manitoba)* or, if any such loan is outstanding, the same will be paid off from the sale proceeds.

14. This sale is a sale of a used residential property and is an exempt supply pursuant to the Goods and Services Tax (“GST”) provisions under the *Excise Tax Act (Canada)*, and no GST is payable by the purchaser regarding this supply.

***15. I am not now and, as at the date of the completion of the sale of the Land, will not be a non-resident of Canada within the meaning of the *Income Tax Act (Canada)*.**

16. I have not received a notice of application, nor am I aware of any notice of application, with respect to the provisions of *The Safer Communities and Neighbourhoods and Consequential Amendments Act* for the subject property.

17. *[Insert any other representations made under the Agreement for Sale which are to survive the Closing.]*

AND I make this solemn declaration conscientiously, believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the *Evidence Act (Canada)*.

(SEVERALLY) DECLARED before me at)
the ___ of _____, in the Province of) _____
Manitoba, this _____ day of) _____
_____, 20____.) _____
_____) _____

A Notary Public/Commissioner for Oaths
in and for the Province of Manitoba
My Commission expires:
***[Insert name, office and
address of witness, as
required by the LTO.]***

AFFIDAVIT OF SUBSCRIBING WITNESS

I, _____, of the _____ of _____, in
Manitoba

make oath and say that:

1. I am a subscribing witness to the attached Declaration as to Possession and I was present and saw it executed at _____ by _____.
2. I verily believe that each person whose signature I witnessed is of the full age of majority and is the party of the same name referred to in the Declaration as to Possession.

SWORN before me at the _____)
_____, in _____)
this _____ day of _____, 20__)
_____)
_____)
A Commissioner for Oaths in and for the)
Province of Manitoba)
My Commission expires: _____)
_____)
_____)