



NAK'AZDLI WHUT'EN

ALLOTMENT TRANSFER POLICY

Approved by Council on June 27, 2017

ALLOTMENT TRANSFER POLICY

Section 1 Purpose

(1) The objectives of this policy are to:

(a) provide the procedures that must be followed when an existing allotment holder, or their personal representative, transfers an allotment in Reserve Lands to another member or to Nak'azdli Whut'en; and

(b) set out the rules and procedures that apply to the transfer of an existing allotment.

(2) This policy does not address the creation of new allotments as at this time Nak'azdli Whut'en does not intend to grant new allotments in Reserve Lands to members.

(3) This policy does not address decisions with regard to a person's right to the use, occupancy and possession of an allotment, or the division of interests in an allotment on the event of a breakdown of a marriage or the death of a spouse or common-law partner. Nak'azdli Whut'en does not make decisions regarding such matters. Rather, the rules and procedures regarding such matters are set out in:

(a) sections 42 to 48 and subsections 50(1) to 50(3) of the *Indian Act* (R.S.C., 1985, c. I-5);

(b) the *Indian Estates Regulations* made under the Indian Act, Regulations respecting Indian Estates; and

(c) section 13 to 52 of the *Family Homes on Reserves and Matrimonial Interests or Rights Act* (S.C. 2013, c. 20), until such time as Nak'azdli Whut'en enacts a Matrimonial Real Property Law in accordance with sections 7 to 12 and 42 of the *Nak'azdli Whut'en Reserve Land Code*.

Section 2 General

Definitions

(4) In this policy:

"allotment" means:

(a) those Reserve Lands that have been lawfully granted by Council to a member, with the approval of the Minister, under section 20 of the *Indian Act*, and that are also known as lands held pursuant to a certificate of possession; and

(b) any Reserve Lands granted to an individual member as an allotment pursuant to either section 26.3 of the Nak'azdli Whut'en Reserve Land Code, or pursuant to a Nak'azdli Whut'en Land Law enacted under section 26.2 of the Nak'azdli Whut'en Reserve Land Code.

"transferor" means the person transferring the allotment; and

"transferee" means the person receiving the allotment.

The First Nation Land Register

(5) The First Nation Land Register:

(a) is a federally regulated database of land instruments that grant interests and licences relating to first nations reserve lands.

(b) does not purport to guarantee the accuracy of documentation filed therein.

(c) is maintained in an office known as the First Nation Land Registry, which is open to the public from Monday to Friday, except holidays, from 8:30 a.m. to 4: 00p.m EST or EDST;

(d) is maintained by a registrar who is an INAC officer responsible for managing the First Nation Land Registry.

(6) Electronic copies of interests and licences in the First Nation Land Register are available to the public and can be viewed and printed from the First Nation Land Registry's online system. Any person may create an account for the online system and make enquiries or generate reports on the data in the system.

(7) Only a first nation that is operational under a land code can create an account on the First Nation Land Registry's online system that allows them to register an interest. Individuals cannot do this.

(8) The information in the First Nation Land Register is used by Nak'azdli Whut'en to:

(a) assess applications for allotment and for the use of Nak'azdli Whut'en lands.

(b) confirm a registered interest before issuing a Certificate of Allotment; and

(c) assist members in determining whether an interest they purport to have is registered and what that interest includes.

(9) There is no guarantee that a document that is registered in the First Nation Land Register is legally valid or effective, or that all documents affecting an interest in Nak'azdli Whut'en lands have been submitted for registration.

(10) An interest or licence in Nak'azdli Whut'en lands created or granted after the *Nak'azdli Whut'en Reserve Land Code* came into effect, is not enforceable unless it is registered or recorded in the First Nation Land Register, in accordance with the *First Nations Land Registry Regulations*.

Benefits of Registration

(11) The benefits of registering an interest in Nak'azdli Whut'en lands in the First Nation Land Register include:

(a) having a record of transactions and uses of Nak'azdli Whut'en lands to allow Nak'azdli Whut'en to track transactions.

(b) the documentation of priority of interests.

(c) providing a history of transactions and interests granted on a parcel of land.

(d) helping to secure and protect the legal rights of individuals who have, or may acquire, an interest or licence in or to Nak'azdli Whut'en lands; and

(e) providing timely and reliable information to the public on interests and licences in and to Nak'azdli Whut'en lands.

Section 3 Authorities

(1) Relevant statutory authorities include:

(a) sections 42 to 48 and subsections 50(1) to 50(3) of the *Indian Act*.

(b) sections 16(4) and 25 of the *First Nations Lands Management Act*.

(c) sections 23.1, 23.3, 24.1, 26.1 – 26.3, 31.1, 31.2, 32.1, 33.1 – 33.3, 34.1 – 34.5, 34.9, 35.1, 42.1 and 42.2 of the *Nak'azdli Whut'en Reserve Land Code*; and

(d) the *First Nations Land Registry Regulations*.

(2) Sections 42 to 48 and 51, and subsections 50(1) to 50(3) of the *Indian Act* are not reproduced here as they do not need to be used by Nak'azdli Whut'en for any type of decision-making in relation to Reserve Lands. These sections of the *Indian Act* set out the rules and procedures that INAC uses to determine who a deceased member's estate will go to in the event

of their death, with or without a Will, or in the event of a determination that they are mentally incompetent.

(3) Sections 16(4) and 25 of the *First Nations Lands Management Act* states:

16. (4) Interests or rights in First Nation land held on the coming into force of a land code by First Nation members pursuant to allotments under subsection 20(1) of the *Indian Act* or pursuant to the custom of the First Nation are subject to the provisions of the land code governing the transfer and lease of interests or rights in First Nation land and sharing in natural resource revenues.

25. (1) The Minister shall establish a register to be known as the First Nation Land Register.

(2) The First Nation Land Register is to be administered, subject to this section, in the same manner as the Reserve Land Register established under the *Indian Act*.

(3) The Governor in Council may, on the recommendation of the Minister and in accordance with the Framework Agreement, make regulations respecting the administration of the First Nation Land Register, the registration of interests or rights in it and the recording of any other matter, including but not limited to regulations respecting

(a) the effects of registering interests or rights, including priorities.

(b) the payment of fees for the registration of interests or rights and for any other service in relation to the Register.

(c) the appointment, remuneration, powers, functions and duties of officers and employees who administer the Register; and

(d) the keeping, by officers and employees, of documents that are not registrable.

(4) Sections 23.1, 23.3, 24.1, 26.1 – 26.3, 31.1, 31.2, 32.1, 33.1 – 33.3, 34.1 – 34.5, 34.9, 35.1, 42.1 and 42.2 of the *Nak'azdli Whut'en Reserve Land Code* state:

23.1 Interests and licences in Reserve Land that are approved, created, granted or issued pursuant to the Indian Act and registered in the First Nations land Register as of the date this Reserve Land Code comes into force shall continue to have effect in accordance with their terms and conditions.

23.3 The types of interests or licences in Nak'azdli Whut'en Reserve Land include:

(a) allotments.

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24.1 No person may acquire an interest or licence in Reserve Lands by use, occupation or by any other means that is not authorized under this Reserve Land Code or a law enacted under it.

26.1 Only members can hold or receive an allotment.

26.2 Subject to section 26.3, no allotment shall be granted until a Nak'azdli Whut'en Land Law has been enacted establishing the criteria for granting allotments of Reserve Land.

26.3 Despite section 26.2, Council may grant an allotment by resolution where the allotment is required either:

- (a) To fulfill a written agreement lawfully entered prior to the date this Reserve Land Code comes into force; or
- (b) To comply with an order of a court of competent jurisdiction.

31.1 A member may, by written instrument registered in the First Nation Land Register, transfer their allotment to another member or to Nak'azdli Whut'en.

31.2 Where an allotment is transferred to Nak'azdli Whut'en the allotment shall be cancelled and the Reserve Land described in the allotment shall become community reserve land, subject to any terms of a mortgage guarantee which require Nak'azdli Whut'en to re-issue the allotment upon discharge of the mortgage and fulfillment of the terms of the guarantee.

32.1 A member or Nak'azdli Whut'en who receives an interest in Reserve Land from another member by testamentary disposition, succession, or following a declaration of mental incompetence, is entitled to have that interest registered in the First Nation Land Register provided that the written instrument transferring the interest is duly executed either by:

- (a) a person appointed under the Indian Act as the administrator of the estate of the deceased member.
- (b) a person declared by a court to be the executor of the estate of the deceased member; or
- (c) a person appointed under the Indian Act as the personal representative of the mentally incompetent member.

33.1 A person who ceases to be a member shall, within six (6) months from the date their name is removed from the membership list, transfer their allotment to Nak'azdli Whut'en or another member.

33.2 Where a person ceases to be a member and does not transfer their allotment in accordance with section 33.1, lawful possession of that allotment shall revert to Nak'azdli Whut'en and become community reserve land six (6) months plus one (1) day after the date person ceases to be a member's name is removed from the membership list.

33.3 Where an allotment reverts to Nak'azdli Whut'en pursuant to section 33.2, the individual ceasing to be a member shall remain liable for any obligations or monies owing, prior to the date the allotment reverts to Nak'azdli Whut'en, pursuant to any interest or licence they granted.

34.1 Written instruments which affect or purport to affect Reserve Lands shall be registered or recorded in the First Nation Land Register.

34.2 Notwithstanding section 34.1, only those written instruments that are in compliance with this Part shall be registered or recorded in the First Nation Land Register.

34.3 A copy of all written instruments that are submitted for registration or recording in the First Nation Land Register shall be kept at the Reserve Lands Office.

34.4 Subject to section 34.5 interests and licences in Reserve Land that are deposited with the Reserve Lands Office shall be forwarded by the Reserve Lands Office to the First Nation Land Register for registration.

34.5 Where a written instrument requires a resolution, the consent of Council or approval of eligible voters, the Reserve Lands Office must not submit it, or forward it, to the First Nation Land Register to

be registered or recorded, unless evidence of that approval is attached to the written instrument.

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34.9 The registration or recording of a written instrument in the First Nation Land Register shall not be deemed to be evidence of the legal validity of any claims nor the standing to execution or other proceedings as a result of the recording.

35.1 The grant, transfer or other disposition of an interest or licence in Reserve Land shall be effective on the date the written instrument is registered or recorded in the First Nation Land Register.

42.1 Nak'azdli Whut'en may enact a Matrimonial Real Property Law under this Reserve Land Code, or the Family Homes on Reserves and Matrimonial Interests or Rights Act that sets out the rules and procedures applicable to the use, occupancy and possession of Reserve Land and the division of interests and licences in these Reserve Lands on the breakdown of a marriage.

42.2 For greater certainty, the Law referred to in section 42.1 shall not discriminate on the basis of gender but may distinguish as between members and non-members for the purpose of determining what type of interests or licences in Reserve Land may be held by a person.

(5) The *First Nations Land Registry Regulations* set out the form and content of the First Nation Land Register and the requirements for registration of any interest or licence in Reserve Lands. Due to the size of the *First Nations Land Registry Regulations* they are not reproduced here but can be found easily by doing a google search.

Section 4 Policy

Role of Council

(1) Council is responsible for:

(a) **developing laws** regarding the development, conservation, protection, management, use and possession of Reserve Land, and interests and licences in relation to Reserve Land.

(b) **enacting a Nak'azdli Whut'en Land Law** establishing the criteria for granting allotments of Reserve Land.

(c) **making regulatory instruments**, including, but not limited to, rules, regulations, standards, codes, and policies in relation to Reserve Land.

(d) **processing applications** for the registration or recording of land instruments and documents that relate to interests or licences in Reserve Lands in the First Nation Land Register.

(e) **maintaining and protecting records** in relation to Reserve Lands in the Nak'azdli Whut'en Lands Department files.

(f) cancelling or correcting any allotment over Reserve Lands that was issued through mistake, or that contains any clerical error or misnomer or a wrong description of a material fact.

(g) cancelling any allotment that was issued through proven fraud or error; and

(h) with the consent of an allotment holder, cancelling an allotment.

Role of the Reserve Lands Office

(2) The Reserve Lands Office is responsible for:

(a) providing members with the forms that are relevant to the registration of a transfer of an allotment.

(b) providing members with information regarding the process for registering the transfer of an allotment.

(c) assisting members with the registration of transfers of allotments in the First Nations Land Registry; and

(d) maintaining a copy of all land instruments related to allotments in the Nak'azdli Whut'en Reserve Lands Office file to which the land instrument relates.

(3) The Reserve Lands Office is **not** responsible for, and **must not** provide advice to members or any other person on:

(a) the negotiation, drafting or execution of a land instrument that transfers an interest in an allotment.

(b) whether a transfer of an allotment is valid or enforceable; or

(c) any matter in relation to a dispute over the division of property on-reserve, or the division of interests in an allotment in the event of a breakdown of a marriage or common-law relationship, or in the event of a death of a spouse or common-law partner.

Role of the Reserve Lands Advisory Committee

(4) The Reserve Lands Advisory Committee has no role in the transfer of allotments from one member to another, or in the registration of such transfers in the First Nation Land Register.

What is Transferred?

(5) When an allotment holder transfers their allotment to another member or to Nak'azdli Whut'en, legal title to the requested allotment remains with Canada but all the allotment holder's rights and obligations in relation to that allotment are transferred from the transferor to the transferee.

Registration Documents Required to Affect a Transfer of Allotment

(6) Where an allotment is being transferred from one member to another, or from a member to Nak'azdli Whut'en, the following documents must be registered in the First Nation Land Register:

(a) if the transfer of the allotment is by an agreement between two (2) members who are both living at the time of the transfer:

(i) Form A: Transfer of Interest in Allotment, with the consideration section of that form whited or blacked out; and

(ii) if the transferor has a spouse or common-law partner, Form B: Consent of Spouse.

(b) if the transfer of the allotment is following the death of the transferor:

(i) Form A: Transfer of Interest in Allotment.

(ii) a legal document or court order that proves the person executing the transfer is entitled to execute that transfer on behalf of the deceased transferor, as set out on the Form A: Transfer of Interest in Allotment; and

(iii) if the deceased transferor had a spouse or common-law partner, Form B: Consent of Spouse.

(c) if the transfer of allotment is executed by a personal representative of a transferor who is allegedly mentally incompetent:

(i) Form A: Transfer of Interest in Allotment, with the consideration section of that form whited or blacked out; and

(ii) a legal document from the Minister, or a court order, that proves the person executing the document is legally authorized to do so, as set out in Form A: Transfer of Interest in Allotment.

(d) If the transfer of allotment is executed by a personal representative of the transferor and the transferor is not allegedly mentally incompetent:

(i) Form A: Transfer of Interest in Allotment, with the consideration section of that form whited or blacked out, and

(ii) a legal document or court order that proves the person executing the document is the transferor's power of attorney.

(e) if the transfer of the allotment is pursuant to either subsection 50(2) or 50(3) of the *Indian Act*.

(i) Form A: Transfer of Interest in Allotment, with the consideration section of that form whited or blacked out; and

(ii) Form C: Declaration of Superintendent, with the consideration section of that form whited or blacked out.

Council Consent

(7) The *Nak'azdli Whut'en Reserve Land Code* does not require the approval of Council for a transfer of an allotment to another member.

Transfers to Persons under Nineteen (19) years of Age

(8) Although an allotment holder may transfer lawful possession to a person under nineteen (19) years of age, the Minister may, in accordance with section 52 the *Indian Act* and at his or her sole discretion, provide for the administration of that allotment on behalf of the person under nineteen (19) years of age, and may appoint a guardian for that purpose.

Transfers on Death – Who Decides the Rightful Heir?

(9) Nak'azdli Whut'en has no authority to decide who will receive a person's allotment after their death. Such matters are determined in accordance with sections 42 to 48 and subsections 50(1) to 50(3) of the *Indian Act*.

(10) A member who believes they are receiving a person's allotment after that person's death must contact INAC's Wills and Estates personnel to determine whether they are entitled to that allotment and the process that must be followed to give effect to that transfer of allotment.

(11) The role of Nak'azdli Whut'en is to provide the appropriate forms for registration once the transfer has been completed.

Transfer Where Allotment Holder is Declared Mentally Incompetent

(12) It is Nak'azdli Whut'en policy to presume that an allotment holder who is transferring their allotment to another member is mentally competent to do so.

(13) Nak'azdli Whut'en has no authority to determine whether a member is mentally incompetent. Such determinations can only be made by a health authority or a court.

(14) Nak'azdli Whut'en has no authority to make decisions regarding the transfer of an allotment belonging to a member who has been declared mentally incompetent by a health authority or a court, regardless of whether or not that member normally resides on Reserve Lands. Such decisions can only be made by:

(a) either the Minister or a person appointed by the Minister if that member is ordinarily resident on Reserve Lands; or

(b) a person named in the member's power of attorney or in a court order, if that member is not ordinarily resident on Reserve Lands.

(15) The role of Nak'azdli Whut'en in the transfer of a mentally incompetent member's allotment is limited to providing members and their representatives with the appropriate forms for registering the transfer of their allotment and advising members and their representatives with regard to the documentation that must be provided in order to register the transfer of their allotment.

Section 5 Process

Requests for Information Re: Registering the Transfer of an Allotment

(1) Where a member requests information from the Reserve Lands Office regarding the process for registering their transfer of an allotment to another person, the Reserve Lands Office must:

(a) determine the nature of the relationship between the transferor and transferee.

(b) determine which registration documents are required to give effect to the transfer of allotment; and

(c) provide the person requesting information with a copy of this policy and either one electronic copy or two paper copies of each form that the person must provide Nak'azdli Whut'en to give effect to the transfer of allotment.

Process for the Transfer of Allotments

(2) Where the Reserve Lands Office receives a request from a person for assistance in transferring an allotment, the Reserve Lands Office must:

(a) provide that person with either one electronic copy or two paper copies of each form that the person must provide Nak'azdli Whut'en in order to give effect to the transfer of allotment.

(b) advise that person that:

(i) the transfer of an allotment is a private matter between the transferor and transferee.

(ii) if the transfer is under a will, through intestate succession, or where the allotment belongs to a person who is allegedly mentally incompetent, to contact INAC's Wills and Estates personnel at 1-604-775-5100 for further assistance in completing the required steps and documentation that are necessary for the completion of Form A: Transfer of Interest in Allotment;

(iii) Nak'azdli Whut'en plays no role in the negotiation, drafting or execution of a written instrument that is evidence of a transfer of an allotment.

(iv) Nak'azdli Whut'en does provide registration documents to members for their use in registering a transfer but:

A. Nak'azdli Whut'en does not guarantee the condition of the land being transferred using the form, or that the transfer will be valid and enforceable; and

B. Nak'azdli Whut'en will not assume any liability for any claims, losses, or damages arising out of the use of it.

(v) before signing Form A: Transfer of Interest in Allotment, the transferee and transferor are strongly encouraged to seek independent legal advice regarding the transfer to ensure that the deal being entered into is legally enforceable and that it involves what the parties entering into it think it involves;

(vi) the transfer of an allotment will not be enforceable if it is not registered in the First Nation Land Register; and

(vii) the role of Nak'azdli Whut'en in the transfer of an allotment is to:

A. register the transfer, and

B. issue a Certificate of Allotment to the new allotment holder.

- (3) The Reserve Lands Office must receive and register all transfers of an allotment in the First Nation Land Register.
- (4) Once registration is completed, the Reserve Lands Office must:
- (a) prepare and have Council sign the Certificate of Allotment.
 - (b) make a copy of the signed Certificate of Allotment and place it in the Reserve Lands Office file; and
 - (c) provide the new allotment holder with:
 - (i) the original, signed Certificate of Allotment.
 - (ii) updated Parcel Abstract Report; and
 - (iii) the names of all Nak'azdli Whut'en laws, by-laws and land use plans which are in effect and the locations where the new allotment holder may access such laws, by-laws and land use plans,
- and document in the Reserve Lands Office file that this has been completed; and
- (d) send the allotment holder's information to the Nak'azdli Whut'en Finance Department to update the taxation and assessment rolls.

Section 6 References

- (1) Besides this policy, Nak'azdli Whut'en should consult the following resources:
- (a) the *Nak'azdli Whut'en Reserve Land Code*.
 - (b) the *First Nation Land Registry Regulations*.
 - (c) the *Indian Act* and *Indian Estates Regulations*.
 - (d) the *Family Homes and Matrimonial Interests or Rights Act*.

(e) the Deputy Registrar at the First Nations Land Registry, who at the time of the writing of this Policy is:

Loretta Roy
Phone: 1-819-953-0614
Email: Loretta.Roy@INAC.gc.ca

(f) the at the First Nations Land Management Resource Center, Developmental & Operational Support Technician who at the time of the writing of this Policy is:

Patti Wight
Phone: (250) 981-6870
Email: PWight@labrc.com

Transfer of Allotment – Checklist

The following documents must be completed in full, and received by the Nak'azdli Whut'en Lands Department, in order for the Nak'azdli Whut'en Lands Department to complete the transfer of an allotment from one member to another member:

Transfer pursuant to an agreement between two (2) members who are both living at the time of the transfer:

- Form A: Transfer of Interest in Allotment, with the consideration section of that form whited or blacked out;
- Copy of transferee's status card, or letter from membership clerk confirming membership; and
- if the transferor has a spouse or common-law partner, Form B: Consent of Spouse;

Transfer following the death of the transferor:

- Form A: Transfer of Interest in Allotment;
- Copy of transferee's status card, or letter from membership clerk confirming membership;
- a legal document or court order that proves the person executing the transfer is entitled to execute that transfer on behalf of the deceased transferor, as set out on the Form A: Transfer of Interest in Allotment; and
- if the deceased transferor had a spouse or common-law partner, Form B: Consent of Spouse;

Transfer where transferor has been found to be mentally incompetent and someone is acting on their behalf:

- Form A: Transfer of Interest in Allotment, with the consideration section of that form whited or blacked out;
- Copy of transferee's status card, or letter from membership clerk confirming membership; and
- a legal document from the Minister, or a court order, that proves the person executing the document is legally authorized to do so, as set out in Form A: Transfer of Interest in Allotment;

Transfer where the transferor has appointed a power of attorney in relation to their property, but the transferor is not mentally incompetent:

- Form A: Transfer of Interest in Allotment, with the consideration section of that form whited or blacked out;
- Copy of transferee's status card, or letter from membership clerk confirming membership; and
- a legal document or court order that proves the person executing the document is the transferor's power of attorney;

Transfer by INAC pursuant to either subsection 50(2) or 50(3) of the *Indian Act* following the death of the transferor, where the transferor's property is put to auction and sold to a member:

- Form A: Transfer of Interest in Allotment, with the consideration section of that form whited or blacked out;
- Copy of transferee's status card, or letter from membership clerk confirming membership; and
- Form C: Declaration of Superintendent, with the consideration section of that form whited or blacked out.