



Aboriginal Affairs and  
Northern Development Canada

Affaires autochtones et  
Développement du Nord Canada

# Indian Lands Registration Manual

July 2013



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QS-4020-000-EE-A1

Catalogue: R32-193/2013E-PDF

ISBN : 978-1-100-22543-2

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This Publication is also available in French under the title: Guide du Registre des terres  
indiennes - Juillet 2013

# Indian Lands Registration Manual July, 2013

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**Document Change Control Table**

<b>Version Number</b>	<b>Date of Issue</b>	<b>Brief Description of Change(s)</b>
1	2006	Updated Land Descriptions
2	July, 2013	introduction added; departmental name change; protecting and Handling Information advisory; formatting; Section 10.1.19 Right of Way definition changed; Transfer of Joint Tenancy by Survivorship form added; month/year of manual added; Document Change Control Table added.

# **CHAPTER 1 - Introduction**

## **1.1 About the Manual**

### **1.1.1 Purpose of the Manual**

The manual describes the procedures for preparing, submitting and registering documents in the Indian Lands Registry System (ILRS), in accordance with policy requirements developed in support of *Indian Act* land management provisions. The chapters dealing with the preparation and submission of documents (Chapters 2 through 7 and 10) are intended for use by the First Nations, their agents, AANDC (Aboriginal Affairs and Northern Development Canada) staff, or the general public, as applicable. The chapters dealing with the registration of the documents (Chapters 8 and 9) are intended for use by the AANDC regional staff.

The manual also provides descriptions of the common instruments that are registered in the ILRS.

The manual is intended to provide information relating to general practices only and should not form the basis for legal advice of any kind.

### **1.1.2 Availability of the Manual on the Internet**

The manual is available in printable pdf format on the Indian and Northern Affairs Canada website Internal Site at <http://sdiintra8/ilrs>, Public Site at: <http://pse5-esd5.ainc-inac.gc.ca/ILRS/>, and Citrix site: <https://pa-ap.aadnc-aandc.gc.ca>

### **1.1.3 New Releases of the Manual**

The manual will be updated from time to time as a result of changes in business requirements, policy, and/or feedback from users. This most recent version was updated in January, 2013.

## **1.2 The Indian Lands Registry System**

### **1.2.1 Indian Lands Registry System Mandate**

The *Indian Act*, which governs all dealings with respect to Indian lands, for those First Nations operating under the land management provisions of the *Indian Act*, provides for two types of registry. The Reserve Lands Register (established by Section 21) records instruments respecting lands which are allotted to individual band members (locatee lands) as well as other transactions. The Surrendered and Designated Lands Register (established by Section 55) records particulars in connection with any transaction affecting absolutely surrendered or designated lands (lands held by the Band).



**Indian Act, Section 21 states:**

“21, There shall be kept in the Department a register, to be known as the Reserve land Register, in which shall be entered particulars relating to Certificates of Possession and Certificates of occupation and other transactions respecting lands in a reserve.”

**Indian Act, Section 55 states, in part:**

“55 (1) There shall be maintained in the Department a register, to be known as the Surrendered and Designated Lands Register, in which shall be records particulars in connection with any transaction affecting absolutely Surrendered or Designated lands.”

The ILRS records information concerning interests registered against reserve lands. The land register provides a list of transactions that affect a parcel of land, the nature of the transaction and scope of the interest.

The basic functions of the registration system are three-fold:

- 1) to give notice to the public of all documents registered concerning a particular piece of reserve land.
- 2) to show the historical record of registered interests.
- 3) to display interests that affect reserve land.

**NOTE**

Most provincial systems deal with recording **title** to land; however, in the ILRS, title remains with the Crown and **transactions** in land are registered.

### **1.2.2 Purpose of the ILRS**

In summary, the purpose of the ILRS is:

- to fulfill the statutory requirements of the *Indian Act*,
- to record interests approved and submitted for registration in Indian reserve, Designated and Surrendered lands,
- to safeguard interests that have been registered,
- to provide timely and reliable information to clientele, and
- to provide safekeeping of original instruments and documents submitted for registration.

### **NOTE**

The ILRS displays a record of registered transactions for a reserve or for a particular parcel of land. Once recorded, transactions cannot be deleted, thus transactions remain on record as part of the history of the reserve or a parcel even though they may be discharged or expired.

#### **1.2.3 ILR Administration**

AANDC is legislatively responsible for various aspects of the management of Indian reserve land and the registration of interests in reserve land. AANDC administers the Indian Lands Register System.

Land management and registration activities are carried out primarily in the regional offices with the Toronto Office providing a policy and advisory function in the form of a Land Registry Support Centre which is intended to provide operational support and guidance to AANDC officers.

#### **1.2.4 The Indian Lands Registry System**

In general, the ILRS is guided by a set of interacting procedures designed to govern the registration of rights or interests, claims of interest, or notices of claims of interest in reserve land. The ILRS is a repository of documentation and does not purport to guarantee title or accuracy of documentation filed therein, nor gives priority to any interests with the exception of S. 54(4) of the Indian Act which provides that: "An assignment registered under this section is valid against an unregistered assignment or an assignment subsequently registered." The ILRS was established to provide a reliable, internet-based, computerized registry of registered interests in reserve lands in Canada. The ILRS is web-based and documents can be viewed online. Historical documents are maintained at Library and Archives Canada. Documents registered before December 1, 2012 are retained at HQ, save for documents transferred to Library and Archives Canada in accordance with federal record retention and disposition policies. Documents registered after December 1, 2012 are retained in AANDC regional offices. First Nations and others consult the records to conduct searches.

The information registered in the ILRS is public information; thus any person may conduct title searches in the ILRS by accessing the Public Site at: <http://pse5-esd5.ainc-inac.gc.ca/ILRS/>

The information in the ILRS is used by the AANDC staff for the following:

- to issue land status reports,
- to issue Registrar's Certificates, which provides a list of registered transactions up to a specific date and time,
- to provide information to the general public.

## 1.2.5 Security Advisory

### Passwords – Best Practices

- Do not share any of your passwords under any circumstances.
- Do not write down your passwords.
- Use strong passwords (min of 8 characters; min of 1 alphanumerical, 1 lowercase and 1 uppercase letter)
- Lock your workstation when you leave your desk.
- Change default passwords when first receiving any IT application credentials.
- Change your password when your account password has been reset.
- Change your passwords every 90 days. Do not use the same password for multiple accounts.
- If you suspect your password has been compromised, change it immediately and notify the service desk.

### Protecting and Handling Information – Best Practices

- Land Registry documents are to be considered Protected B until they have had a privacy review completed. If no sensitive information is contained within, the classification can be lowered to "Unclassified".
- Ensure all materials, reports, documents, papers etc... are marked with the appropriate security classification, ie Protected B, are distributed and stored as per the [NCR-#4653553-Awareness Protecting and Handling Information Pamphlet](#).
- Labels should be added to the top, right-hand corner of the document
- If a co-worker or client enters your office when working with a Protected B document immediately turn over the document or cover it so the information cannot be read.
- When finished with a Protected B document ensure that it is stored in a secure, locked cabinet.
- Print out Protected B documents only when necessary. If a print out is not required, work on the document in an electronic format.
- When a printed Protected B document is no longer required, ensure that it is shredded in an RCMP approved type III shredder. Do not place the document in the recycle bin or trash can.

- When sending an electronic copy of a Protected B document through mail, ensure the document is encrypted. IE. If the document is sent via mail on a USB key, ensure the key is, at a minimum, password protected. When possible use encrypted USB keys when sending the information. Place the key in a double sealed envelope and ensure that both a tracking number and signature are required for the package.
- When sending an electronic copy of a Protected B document through GroupWise email, ensure the email is encrypted using the Entrust Encryption software for the GroupWise system.

### **1.3 Validity of Documents**

There is absolutely no guarantee that a document that is registered in the ILRS is legally valid or effective, or that all documents affecting an interest in land have been submitted for registration. The manual is not intended to provide legal advice and does not replace any legal advice.

## **CHAPTER 2 - Preparing Documents for Registration**

In the normal course of management of reserve lands, a variety of transactions may affect the rights or interest in the land. The transactions may involve a First Nation, one or more members of a Band, or non-members of a Band. The transactions are described in an “instrument”, a legal document that gives effect to the transaction, and describes the parcel of land, the parties to the transaction, and any legal details and specifications required.

### **2.1 Types of Instruments Submitted for Registration**

Any instrument may be registered that:

- grants or claims a right or interest in reserve land or;
- transfers, encumbers or affects Indian reserve, designated or surrendered lands; and
- is submitted to the Regional Office in accordance with the *Indian Act* and the Indian Lands Registration Manual;

A list of the commonly used instruments is provided in Chapter 10.

### **2.2 Who May Submit an Instrument for Registration**

An instrument may be submitted by the following:

- the person transferring, receiving or claiming the right or interest (“the applicant”);
- the applicant’s solicitor;
- the applicant’s agent;
- an employee of Aboriginal Affairs and Northern Development Canada; and
- First Nations.

### **2.3 Due Diligence Responsibility**

It is the responsibility of the parties to a transaction, not the regional staff, to search the records prior to submitting the instrument for registration.

## 2.4 Documents Required

The following documents must be submitted to the AANDC Regional Office:

- 1) The **instrument**; the details for preparation of an instrument are provided in Chapter 3.
- 2) An **Affidavit of Witness**; the details for preparation of the Affidavit of Witness are provided in Chapter 4.
- 3) **Application for registration**; the details for preparation of the Application are provided in Chapter 5.
- 4) The **Legal Land Description**; the details for preparation of the Legal Land Description are provided in Chapter 6.
- 5) All **supporting documents** as required for the particular type of transaction (e.g., BCR, Access Agreement, Lease, Appointment of Administrator, Approval of Will); must be attached and the details for preparation of the most common supporting documents are provided in Chapter 7.

## CHAPTER 3 - THE INSTRUMENT

### 3.1 Preparation of the Instrument

The instrument, which is the legal document that describes the land transaction, must clearly identify all aspects of the transaction as outlined/indicated in the following requirements:

- 1) The instrument submitted must be an **original**. A facsimile/copy of an instrument is not acceptable for registration.

#### EXCEPTIONS

(i.e., when a certified true copy can be used)

- a) The instrument is a court order, certified by the court.
  - b) The instrument is an Order in Council, certified by the Clerk of the Privy Council.
  - c) The instrument is a death certificate, marriage certificate, name change certificate, power of attorney, approval or probate of will, or appointment of administrator, certified by the person who is in possession of the original, i.e., a certified true copy.
  - d) The instrument is a certificate of amalgamation for a corporation, certified by the approving officer or corporation, agency or department responsible for the issuance of the certificate.
  - e) The instrument was executed prior to December 1, 1989, and certified by the appropriate provincial registrar or master of titles attesting that the original is in his/her possession.
- 2) The instrument must show the **date** it was executed.
  - 3) The instrument must be **executed/witnessed**, as described in Section 3.2, *Execution of the Instrument*.
  - 4) The instrument must identify each **party to the instrument**.
  - 5) The instrument must identify the **nature of the right or interest** to be registered. Types of right and interest are described in Chapter 10, *Reference*.
  - 6) The instrument must contain a **legal land description**. If the land affected by the instrument submitted for registration has been resurveyed, the instrument must reflect the most current plan number, i.e., legal land description. Requirements for legal land descriptions are provided in Chapter 6, *Survey Plans and Legal Land Descriptions*.
  - 7) Where applicable, the instrument must have **Ministerial Approval (or Consent)**, as required under the *Indian Act* or in accordance with the terms of an instrument, such as a lease or permit. An instrument submitted for

registration shall have that approval and that **approval shall be dated and indicate the title/position of the person exercising delegated authority on behalf of the Minister**. Ministerial approval is provided at Regional Offices.

- 8) Where **alterations** have been made to the instrument, it must contain the initials of each party who has executed (signed) the instrument beside each alteration, or contain other proof of agreement.
- 9) Where applicable, provision for **consideration** must be specified.

**Access** (road allowance, street, or lane) must be addressed in any land transfer instrument. No interest in a lot (individual land holdings) may be registered in the ILRS unless access has been provided. Transfers of lawful possession of existing land-locked parcels will be accepted without access being provided if the whole parcel is being transferred and a witnessed statement signed by all parties agreeing to accept lawful possession under these conditions is provided. In all other situations, the extent of the access must be described textually or shown on a Registration Plan or an Official Plan and be accompanied by supporting documents as described in Section 7.1, *Access – Agreement Documents*.

### **3.2 Execution of the Instrument**

The execution of an instrument submitted for registration shall be witnessed and attested to, by at least one person who has attained the age of majority and who is not a party to the instrument.

#### **EXCEPTIONS**

- a) A Crown grant.
- b) An absolute surrender of reserve lands.
- c) A Designation of reserve lands.
- d) A Band Council Resolution.
- e) A Ministerial Order.
- f) A Court Order.
- g) An Order in Council.
- h) A certificate of death, marriage, name change or amalgamation.
- i) An instrument under the seal of a corporation. When a person signs on behalf of a corporation he/she must either affix a corporate seal, or, type/print his/her name, position and the statement "I have authority to bind the corporation" above, beneath or beside his/her signature.
- j) A Notice (requirements described in Section 7.4, *Notice Documents*).
- k) A transfer of Land by Personal Representative (Administrative Transfer).



### **3.2.1 Execution of Instrument for Persons with Reading Challenges**

Where an instrument is executed by a person who may have challenges reading or writing the instrument (by reason of physical disability, illiteracy, or lack of understanding of the English or French language), a statement to this effect must appear on the instrument. The Affidavit of Witness form, section Execution by Mark, must be completed as described in Section 4.2, *Affidavits for Persons with Reading Challenges*.

### **3.2.2 Execution of Transfer of Land by a Minor**

If a band member, while still a minor, wishes to transfer his/her lawful possession, the Transfer instrument must be signed by the legal guardian of the minor. The Ministerial Appointment of Guardian document must be attached to the instrument, except when the guardian is a parent.

### **3.2.3 Execution through Guardian Ad Litem**

An instrument submitted for registration and executed (signed) by a guardian ad litem must meet the following requirements:

- 1) The instrument must be accompanied by one of the following documents:
  - a) the original appointment of the guardian ad litem; or
  - b) a copy of the original appointment of the guardian ad litem certified by the person who has custody of the original.
- 2) The guardian ad litem shall execute the instrument on behalf of the principal by signing his/her own name and by indicating the name of the principal on the instrument.

### **3.2.4 Execution under Power of Attorney**

An instrument submitted for registration and executed (signed) by an agent under a power of attorney must meet the following requirements:

- 1) The instrument must be accompanied by one of the following documents:
  - a) the original power of attorney; or
  - b) a copy of the original power of attorney certified by the person who has custody of the original.
- 2) The agent under a power of attorney must execute the instrument on behalf of the principal by signing his/her own name and by indicating the name of the principal on the instrument.

- 3) The execution of a power of attorney must be witnessed in the same manner as required in Chapter 4, *Proof of Execution*, and the Proof of Execution (signing) of a power of attorney shall be proven by a statutory declaration of the agent.

### **3.2.5 Revocation of Power of Attorney**

A power of attorney filed in the ILRS may be revoked by registering a Notice of Revocation.

## CHAPTER 4 - Proof of Execution - Affidavit of Witness

As proof of execution, an instrument must be accompanied by an Affidavit of Witness. The witness must not be a party to the instrument and must attest to the execution (signing) of the instrument by each party who executes (signs) the instrument. Affidavits of a witness are not required for signatures of the Minister's representative, a provincial government's execution or utility company. An Affidavit of Witness form is shown on page 4-2.

### NOTE

Regional Office may accept an instrument for registration despite a defect in the proof or form of its execution where the instrument was approved by the Minister prior to January 1, 1989.

### 4.1 Swearing Affidavits

Every Affidavit of Execution must be executed (signed) in the presence of a person who is authorized to receive a solemn declaration under Section 41 of the *Canada Evidence Act* or is considered an *ex officio* commissioner for the taking of oaths under Section 108 of the *Indian Act*.

### 4.2 Affidavit for Persons with Reading Challenges

Where an instrument is executed by a person who has challenges reading or writing the instrument (by reason of physical disability, illiteracy, or lack of understanding of the English or French language), the affidavit respecting the execution of the instrument must accompany the instrument to show:

- 1) that the contents and effect of the instrument were sufficiently explained to the person executing (signing) the instrument; and
- 2) that the person executing (signing) the instrument appeared to fully understand the contents of the instrument and voluntarily executed the instrument or adopted the execution of it made on his/her behalf in the manner shown on its face.

**Affidavit of Witness  
re: execution (signing) of document**

CANADA PROVINCE OF \_\_\_\_\_  
OF THE CITY OF \_\_\_\_\_  
OF THE PROVINCE OF \_\_\_\_\_  
TO WIT

Make oath and say

1. That I was personally present and did see the within instrument duly executed by

\_\_\_\_\_  
(Where execution by mark, insert applicable clause.)

2. That I know the said party(ies), and that the said party(ies) in my belief is/are  
the full age of majority for the province of \_\_\_\_\_

3. That I am the Subscribing witness to the said instrument.

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Printed Name

SWORN before me at the City of \_\_\_\_\_, Province of \_\_\_\_\_

\_\_\_\_\_,  
this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_,

A Notary Public in and for the Province of \_\_\_\_\_ or a  
Commissioner for taking Oaths.

(Indicate under what authority and when Commission expires.)

**NOTE: EXECUTION BY MARK**

Where the transfer is signed by mark the following should be added to the attestation  
clause to be signed by the witness.

“That the said transfer having first been truly and audibly read over

to \_\_\_\_\_, he/she appeared to understand it, and  
made his/her mark hereto in our presence as aforesaid.”

## CHAPTER 5 - REGISTRATION APPLICATION

### 5.1 Application for Registration Requirements

An instrument submitted for registration must be accompanied by an application for registration as described herein:

- a) An instrument submitted for registration must be accompanied by two applications for registration, which can be printed from the in the ILRS.
- b) When an instrument is submitted for registration the application can be in the form of a covering letter, and must include all the items listed in Section 5.2.3, *Application Form Contents*, (see sample form on pages 5-3 and 5-4).

### 5.2 Application for Registration

#### 5.2.1 Application Form

An application for registration (“application”) must be completed and submitted in **duplicate** with the instrument to the appropriate Regional Office.

#### EXCEPTIONS

The exceptions when an instrument submitted for registration without an application include cases where the instrument purports

- to be a decision of the Minister,
- to be a court order; or
- to have been approved by the Minister before January 1, 1989.

When the application form is initiated in the ILRS a registration number is assigned and this number is used throughout the registration process. Applicants may provide their e-mail address in the communication section of the ILRS in order to receive notification of the registration.

#### 5.2.2 Re-Submission of a Previously Returned Instrument

All returned instruments are to be re-submitted using the same registration number.

### **5.2.3 Application Form Contents**

The application form is two pages in length. The first page as shown on page 5-3 is to be filled out by the applicant. The second page as shown on page 5-4 is for regional use. The application form must contain the following information, exactly as it appears on the instrument submitted for registration.

- 1) The name(s) of the parties to the instrument.
- 2) The instrument type (e.g., Permit, Lease, Transfer).
- 3) The instrument date, i.e., the date of execution (signing) of the instrument.
- 4) The purpose of the instrument is mandatory when the Instrument type is a Permit, a Lease, Sub-lease or a Sub-Sub-lease.
- 5) The legal land description.
- 6) The province in which the reserve is located.
- 7) The reserve name and number.
- 8) The remarks section is used to capture a variety of information. For instance, the purpose of the document can be added in this section if the description of purpose is lengthy; if reference should be made to other instruments, indicate the instrument name and registration number (e.g., an application to record a Mortgage would refer to the Lease or Sub-lease document that has already been registered in the registry).
- 9) A list of the supporting documentation to the instrument, e.g., Band Council Resolution, Appointment of Administrator, Approval of Will.
- 10) The applicant's name, phone number, e-mail (optional).
- 11) A return address.



Aboriginal Affairs and Northern Development Canada / Application for Registration

Affaires autochtones et Développement du Nord Canada / Demande d'enregistrement

Send Two Copies to: / Envoyer deux copies à:

Aboriginal Affairs and Northern Development Canada / Indian Lands Registry / Terrasses de la Chaudière / Ottawa, Ontario K1A 0H4 / Attention: Registrar of Indian Lands

Affaires autochtones et Développement du Nord Canada / Régistra des terres indiennes / Terrasses de la Chaudière / Ottawa, Ontario K1A 0H4 / Attention: Le registraire des terres indiennes

The undersigned hereby requests that the instrument, the particulars of which are set out below, be entered, pursuant to the Indian Act, in the appropriate register of the Indian Land Registry. / Le/La soussigné(e) demande par la présente que le document dont les détails sont indiqués ci-dessous, soit inscrit conformément à la loi sur les Indiens dans le Registre des terres indiennes concerné.

Registration # / # au registre, Received Date / Date au registre, Regional File # / # de dossier régional

NAME OF PARTIES TO INSTRUMENT / NOM DES PARTIES DU DOCUMENT / Grantor / Cédant, Name / Nom, Grantee / Cessionnaire

Instrument Type / Type de document, Instrument Date / Date du document, Purpose / Objet, Remarks / Remarques

LAND DESCRIPTION / DESCRIPTION DE LA TERRE / Province, Reserve Name / Nom de la réserve, Legal Description - Land Affected / Description Légal - Terre

List of Supporting documentation (must be attached to document or a registration number quoted) / Liste des documents de support annexés (doivent être attachés ou cités un numéro d'enregistrement)

Applicant Email, Band Email

Signature of Applicant, Tel. # of Applicant, email, Date

Return To:

Registration Number / Numéro d'enregistrement, Registration Date / Date d'enregistrement, and Time / et heure

Signature of Registration Office / Signature de l'office d'enregistrement, Date



Aboriginal Affairs and Northern Development Canada

Affaires autochtones et Développement du Nord Canada

**Aboriginal Affairs and Northern Development Canada  
Application for Registration**

**Affaires autochtones et Développement  
du Nord Canada**

**Demande d'enregistrement  
Envoyer deux copies à:**

Send Two Copies to:

Aboriginal Affairs and Northern Development Canada  
Indian Lands Registry  
Terrasses de la Chaudière  
Ottawa, Ontario K1A 0H4  
Attention: Registrar of Indian Lands

Affaires autochtones et Développement du Nord Canada  
Registre des terres indiennes  
Terrasses de la Chaudière  
Ottawa, Ontario K1A 0H4  
Attention: Le registraire des terres indiennes

Comments / Commentaires:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Reason for return / la raison du retour

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature of Registration Office / Signature de l'officier d'enregistrement

Date



## **CHAPTER 6 - SURVEY PLANS AND LEGAL LAND DESCRIPTIONS**

When the legal land description contained in an instrument submitted for registration is required, as set out in Section 6.2 below, is based on an Official Plan or Registration Plan, it is the applicant's responsibility to ensure that the Indian Lands Registry has or is provided with a copy of the plan before or at the time the instrument is submitted for registration.

### **6.1 Acquisition of Survey Products**

Copies of survey products may be obtained from the Regional Surveyor, Surveyor General Branch, Natural Resources Canada, for the province in which the office of Natural Resources administering the reserves is situated.

In cases where it is not clear which product must be used for an instrument, the regional surveyor of each region and the Regional Lands Manager will jointly identify the survey product to use.

### **6.2 Requirements for a Legal Land Description**

The minimum legal land description requirements for various types of transactions are summarized in Chart A to the Interdepartmental Letter of Agreement Schedule "A" of the Framework Accord with Natural Resources Canada dated February 25, 2009; this chart is displayed on page 6-2. Consult the most up-to-date interdepartmental agreement whenever issues arise in relation to legal land descriptions. This agreement is registered in the ILRS against the Canada General Abstract.

The requirements for textual legal land descriptions are outlined in Chapter 10, Section 10.2.3 *Textual Description*.

## ILR, MINIMUM LEGAL LAND DESCRIPTION REQUIREMENTS

<b>CHART "A"</b>	See Notes below	Standards for these products are set out in the <i>General Instructions for Surveys of Canada Lands , e-Edition</i>		
		<b>Administrative Plan – Sec. 31</b>		<b>Official Plan – Sec. 29</b>
<b>PURPOSE</b>		<b>Registration Plan</b>	<b>Registration Plan (Field Survey mandatory)</b>	<b>Official Plan – Sec. 29</b>
<b>I – ADDITIONS TO RESERVES</b>		<b>No</b>	<b>No</b>	<b>Yes / Prov. Plan</b>
<b>II – RE-SURVEY OF JURISDICTIONAL BOUNDARIES</b>		<b>No</b>	<b>No</b>	<b>Yes</b>
<b>III – SALES</b> <ul style="list-style-type: none"> <li>• Surrender Vote Sec 38(1) and accepting Order in Council</li> <li>• Disposition</li> <li>• Section 35 (highways, ...)</li> <li>• Section 35 (Easements)</li> </ul>	Note 3	Yes No No Yes	Optional No No Optional	No Yes Yes No
<b>IV – FIRST NATION PURPOSES</b> <ul style="list-style-type: none"> <li>• Designation Vote Sec. 38(2) and accepting OIC*</li> <li>• Welfare First Nation Sec. 18(2)</li> </ul>	Note 3 Note 1	Yes No	Optional Yes	No No
<b>V – LAWFUL POSSESSION</b> <ul style="list-style-type: none"> <li>• Allotment Sec. 20</li> <li>• Transfers Sec. 24, 43, 49</li> <li>• Access Agreements</li> </ul>	Note 1 Note 1 Note 4	Yes Yes Optional	Optional Optional Optional	No No No
<b>VI – LEASES/SUBLEASES SEC. 53, 58</b> <ul style="list-style-type: none"> <li>• <b>10 years or more</b> <ul style="list-style-type: none"> <li>- land</li> <li>- building unit with interest in land</li> <li>- building unit only</li> </ul> </li> <li>• <b>less than 10 years</b> <ul style="list-style-type: none"> <li>- land</li> <li>- building unit only</li> </ul> </li> </ul>	Note 5 Note 1  Note 4	No Yes Yes  Optional Optional	Yes Optional Optional  Optional No	No No No  No No
<b>VII – PERMITS SEC. 28(2)</b> <ul style="list-style-type: none"> <li>• 10 years or more</li> <li>• less than 10 years</li> <li>• Utilities distribution, blanket Permit</li> </ul>	Note 5 Note 4 Note 4	Yes (Note 2) Optional Optional	Optional Optional Optional	No No No

<b>VIII – EXCLUDED LANDS – Section 7 (FNLMA)</b> <ul style="list-style-type: none"> <li>• Internal Parcel</li> <li>• Parcel adjoining a jurisdictional boundary</li> </ul>	Note 6 Note 7	<b>No</b> <b>No</b>	<b>Yes</b> <b>No</b>	<b>Optional</b> <b>Yes</b>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------	------------------------	-------------------------	-------------------------------

**Notes**

- (1) Specific circumstances may require a higher quality product.
- (2) The plan will create no new lots. The plan will create a right-of-way or may be used to create an Easement.
- (3) Not required if the parcel can be fully described by reference to existing plans recorded in the Canada Lands Surveys Records (CLSR).
- (4) The minimum description required by the ILRS for these transactions is a textual reference. The guidelines for textual references are set out in the Indian Lands Registration Manual. A Land Use Area Plan (LUA) prepared under the instructions of the Surveyor General may be used as the basis of a textual reference prepared for an agricultural Permit.
- (5) The term of Leases and Permits include any renewal and extension provisions.

For Notes 6 and 7 please refer to Agreement Registration #368370 in ILRS.

**References to Sections 29 and 31 in Chart A are to the *Canada Lands Surveys Act*, all other Section references are to the *Indian Act*.**

- Subsection 18(2) land in a reserve may be taken for the general welfare of the Band (e.g. schools, Band roads, churches, etc).
- Subsection 20(1) possession of land can be allotted by a Band Council.
- Section 24 the right to possession of land may be transferred.
- Subsection 28(2) Permits may be issued on reserve lands.
- Section 35 land in a reserve may be taken for public Purposes.
- Subsection 38(1) a Band may absolutely surrender all of its rights in land to Her Majesty in Right of Canada.
- Subsection 38(2) a Band may designate (by way of a surrender that is not absolute) any right for the Purpose of leasing or granting the right.
- Sections 43 & 49 the administration of property of deceased Indians.
- Sections 53 & 58 Surrendered, Designated or reserve lands may be leased.

## **6.3 Legal Land Description Requirements for Specific Cases**

### **6.3.1 Boundary Surveys or Disposing of Land**

The legal land descriptions contained in the instrument for boundary surveys or for disposing of land must be shown on an Official Plan where an instrument purports either

- 1) to define the exterior (jurisdictional) boundaries of Indian reserves; or
- 2) to dispose of Surrendered land.

### **6.3.2 Legal Land Description for an Easement or Taking of Lands**

When an instrument purports to take lands or to grant an Easement over reserve or designated land under Section 35 of the *Indian Act*, the legal land descriptions contained in the instrument must be based on an Official Plan.

### **6.3.3 Legal Land Description: Surrender Vote**

The legal land description for Surrendered lands has specific requirements:

- 1) Reserve land that will be the subject of a surrender vote must be shown on a Registration Plan.
- 2) An Order in Council accepting the surrender must use the same legal land description as the one used in the surrender instrument.
- 3) An Official Plan must be completed prior to the disposition of surrendered land.

### **6.3.4 Legal Land Description: Designation Vote**

The legal land description for lands subject to a designation vote has specific requirements:

- 1) Reserve land that will be the subject of a designation vote must be shown on a Registration Plan.
- 2) Once the amendments to the *Indian Act* come into force, the designation will have to be accepted by the Minister. Therefore, there must be a Ministerial Order. The Ministerial Order must use the same legal land description as the one used in the designation instrument.

### **6.3.5 Legal Land Description for Permit to Utilities**

Where the instrument is a blanket Permit which grants an interest in land to a utility company for the purpose of providing service to a First Nation or members of a First Nation on a reserve, the Regional Office may accept an instrument for registration based on a textual description.

### **6.3.6 Legal Land Description: Long-Term Interest and/or Lawful Possession**

The legal land descriptions contained in an instrument granting a long-term interest and/or lawful possession must be based on a Registration Plan with field survey, where an instrument purports one of the following:

- To Lease or otherwise grant a right or interest in Designated or Surrendered land for a term of 10 years or more.
- To Lease or otherwise grant an interest, other than lawful possession, in reserve land for a term of 10 years or more.
- To take reserve land under Section 18(2) of the *Indian Act*, for the general welfare of a First Nation.

The term of the instrument includes all provisions for renewal or extension of the right or interest.

### **6.3.7 Legal Land Description: Transfer, Administrative Transfer**

A whole parcel of land or the whole of an interest in land being transferred by an Administrative Transfer should be shown on a survey with a Registration Plan. If the existing legal land description is based on an LS sketch, a metes and bounds description, or a Cardex description, a NETI (No Evidence of Title Issued) is issued in lieu of a Certificate of Possession (CP).

### **6.3.8 Legal Land Description: Lawful Possession, Portion Transfer**

When lawful possession of a portion of a parcel of reserve land is being transferred and the other portion is being retained, both portions must be shown on a Registration Plan or an Official Plan.

### **6.3.9 Legal Land Description: Lease or Granting Right of Interest**

The legal land descriptions contained in the instrument must be based on a Registration Plan, when an instrument purports either:

- to Lease or otherwise grant a right or interest in a building unit with interest in land, or building unit only for a term of ten years or more; or
- to Lease, or otherwise grant a right or interest other than lawful possession in reserve land, building unit with interest in land, or building unit only for a term of ten years or more.

The term of the instrument includes all provisions for renewal or extension of the right or interest.

### **6.3.10 Legal Land Description: Short-Term Interests**

The legal land descriptions contained in an instrument with short-term interests can be of a textual description, where an instrument purports either:

- to Lease or otherwise grant an interest in Designated or Surrendered land or building unit only for a term of less than ten years; or
- to Lease or otherwise grant an interest, other than lawful possession, in reserve land or building unit only for a term of less than ten years.

The term of the instrument includes all provisions for renewal or extension of the right or interest.

## CHAPTER 7 - SUPPORTING DOCUMENTS

### 7.1 Access Agreement Documents

In cases where there is no access (road allowance, street or lane) shown on a plan, the following will be accepted in relation to the lawful possession of reserve land:

- 1) When there is access over land held by lawful possessors, a witnessed right-of-way agreement providing for access in perpetuity, signed by all adjoining interest holders over whose land the access is being provided agreeing to the access, and its approximate location described textually along with a sketch showing the access marked in bold based on the current plan(s) defining the adjoining interests.

#### NOTE

The right of access is not a personal right, rather the right of access is attached to the property and is granted in perpetuity when the land is subdivided.

- 2) When access is over Band land, a Band Council Resolution (BCR) agreeing to the access and giving its approximate location is required except where it is identified as a road.
- 3) Subject to Section 3.1, *Preparation of the Instrument*, when new parcels are being created by the subdivision of an “existing land-locked parcel” (i.e., a parcel which was land-locked prior to January 1, 1989), all new parcels must have access to the point of entry of the original land-locked parcel, and a witnessed agreement signed by each Band member who holds an interest in any of the new parcels must be provided accepting lawful possession under these conditions.
- 4) **A new allotment or subdivided interest** where access is through the reserve boundary or over a body of water, a witnessed agreement signed by all affected Band members accepting lawful possession under these conditions.
- 5) **Islands do not require an access agreement.**

## **7.2 Forms of Lawful Possession Documents – Individual Land Holdings**

### **7.2.1 Creation of a Joint Tenancy or a Tenancy in Common**

The manner in which two or more Band members hold lawful possession of reserve land must be decided at the time they acquire the interest in the land. The manner of possession should be shown on the instrument, and/or the Band members should execute an agreement specifying the form of tenancy.

#### **NOTE**

It is essential to specify the manner in which the land will be held both in the instrument and in an Agreement.

This agreement shall be made using the form “JOINT TENANCY AGREEMENT” or the form “TENANCY IN COMMON AGREEMENT”.

The form, “JOINT TENANCY AGREEMENT” as shown on page 7-3, for Joint Tenancy can be signed by all Joint Tenants and witnessed. An affidavit of witness is not required.

The form, “TENANCY IN COMMON AGREEMENT” as shown on page 7-4, for Tenancy in Common may be signed by all new (as opposed to pre-existing) Tenants in Common, optionally.

#### **NOTE**

If tenancy is not specified, the default is Tenancy in Common.

### **7.2.2 Issuance of Certificate of Possession or Occupation**

When Joint Tenancy exists, the same number will be issued on the Certificate of Possession, (CP) , Certificate of Occupation (CO), or OKA Letter (OKA for Kanesatake Lands in Quebec), to the Joint Tenants. Each tenant receives an original document.

When Tenancy in Common exists, a separate CP number, CO number, or OKA Letter (for Kanesatake Lands in Quebec) will be issued for each lawful possessor outlining his/her respective undivided fractional interest. There are as many certificate numbers as there are lawful possessors.



**JOINT TENANCY AGREEMENT**

**Joint Tenancy is not applicable in the Province of Quebec (except Akwesasne). Except for those Joint Tenancies already in existence, all parcels of land in the province of Quebec shall be held in Tenancy in Common. Therefore this Joint Tenancy agreement should not accompany Quebec transfer documents).**

**JOINT TENANCY:** We, the undersigned, \_\_\_\_\_, agree to hold the following reserve land as Joint Tenants.

**LAND DESCRIPTION:**

We fully understand that Joint Tenancy is a form of lawful possession in which two or more Band members jointly hold equal undivided shares in the whole of a parcel of reserve land. The distinguishing feature of an interest held in Joint Tenancy is that upon the death of one Joint Tenant his or her interest in the land passes to the surviving Joint Tenant(s) by the right of survivorship. The right of survivorship takes precedence over any testamentary disposition of land made by a Joint Tenant. An interest held in Joint Tenancy cannot pass by devise or intestacy to any other person or persons except the surviving Joint Tenant(s).

Joint Tenancy can be severed (changed to a Tenancy in Common) in the following ways:

- a Joint Tenant may transfer his/her interest to any other Band member or to the Band without the consent of the other Joint Tenant(s) (a Joint Tenant may not transfer the interest to his/her self in order to sever a Joint Tenancy).
- all Joint Tenants may enter into a written agreement to hold their interests as Tenants in Common.
- all Joint Tenants may enter into a written agreement to partition their interest (divide the parcel of land into smaller parcels of land and each take one or more of the smaller parcels) and sever the Joint Tenancy. This would require approval pursuant to Section 24 of the Indian Act.

Witness

Signature

Date

Witness

Signature

Date

**TENANCY IN COMMON AGREEMENT**

**TENANCY IN COMMON:** We, the undersigned, \_\_\_\_\_,  
agree to hold the following reserve land as Tenants in Common

**LAND DESCRIPTION:**

We fully understand that Tenancy in Common is a form of lawful possession in which two or more Band members, or one or more Band members and the Band, hold equal or unequal undivided shares in a parcel of reserve land and that this form of lawful possession does not create the right of survivorship. This means that on the death of one of us, his/her interest in the land passes to his/her estate or heirs.

Tenancy in Common may be changed at any time to Joint Tenancy by two or more of the Tenants in Common transferring to two or more Band members as Joint Tenants their undivided shares in a parcel of reserve land. This transfer would require approval pursuant to Section 24 of the *Indian Act*.

The Land Registrar encourages the practice of executing this Tenancy in Common agreement and attaching it to each Transfer document which creates a Tenancy in Common (except Quebec transfer documents where Tenancy in Common is automatic, excluding Akwesasne.)

Witness	Signature	Date
---------	-----------	------

Witness	Signature	Date
---------	-----------	------

### 7.2.3 Lawful Possession Default

If the Band members do **not indicate on a Transfer and there is no agreement signed** as to the manner in which they want to hold the property at the time the lawful possession of reserve land is acquired (i.e., silent on the instrument), **the interest will be recorded as being held as Tenants in Common**. The Land Registrar encourages the practice of executing the form "AGREEMENT TENANCY IN COMMON," and attaching it to each Transfer instrument (except Quebec Transfer instruments, but within Quebec excluding Akwesasne Transfer instruments).

#### **IMPORTANT**

**When transferring an undivided interest, the undivided interest (the fractional amount, expressed in its lowest common denominator) must be indicated on the Transfer instrument**

### 7.2.4 Severance of Joint Tenancy

Joint Tenancy can be severed (i.e., changed to an interest held in Tenancy in Common) at any time in any of the following ways:

- 1) A Joint Tenant may transfer in writing his/her interest to any other Band member or to the Band itself without being required to obtain the consent of the other Joint Tenant(s). Their undivided interest must be shown on the Transfer document or the statement that they are transferring all their interest in the land. A Joint Tenant may not transfer his/her interest to him/herself in order to sever a Joint Tenancy, as this is contrary to Section 24 of the *Indian Act*.

#### **NOTE**

If there are more than two Joint Tenants, the severance by one Joint Tenant will not affect the manner in which the remaining Joint Tenants hold their interests with respect to each other.

- 2) All Joint Tenants may enter into a written agreement to hold the interests as Tenancy in Common.
- 3) All Joint Tenants may enter into a written agreement to partition their interest (divide the parcel of land into smaller parcels of land and each take one or more of the smaller parcels) and sever the Joint Tenancy. This agreement would require approval pursuant to Section 24 of the *Indian Act*.

### 7.2.5 Subdivision of Parcels Held as Tenants In Common

Severance, which is applicable to a Joint Tenancy situation, is not applicable to a Tenancy in Common situation. Tenants in Common may enter into a written

agreement to partition their interest (divide the parcel of land into smaller parcels of land and each take possession one or more of the smaller parcels) and dissolve the Tenancy in Common.

### **7.2.6 Subdivision of a Parcel Held in Joint Tenancy**

When Joint Tenants subdivide their parcel of land and transfer a portion of the original parcel to the Band or another Band member, the Joint Tenancy in regard to the subdivided parcel(s) that they retain will not be severed, but rather they will continue to hold the retained parcel(s) as Joint Tenants.

### **7.2.7 Death of a Joint Tenant**

In cases of joint tenancy, the following procedure applies: Upon the receipt of an application for transfer with attached certified copy of a death certificate or funeral director certificate, the surviving joint tenant is entitled to the land by right of survivorship. An Affidavit of Execution must accompany the transfer. Ministerial Consent is required when evidence of title are to be issued to the surviving joint tenant. If the deceased is in possession of more than one parcel of land, the application must list the land being transferred.

If requested in writing, a new CP or CO may be issued to the surviving Joint Tenant(s), without the provision of a death certificate, where the death of a Band member can be confirmed by reference to Band membership records at AANDC Headquarters.

The requirements for assigning leasehold interest to a surviving Joint Tenant(s) has not changed. The grantor will be reflected as "John Smith (deceased)" and the grantee will be the name of the surviving Joint tenant(s). If all of the grantee(s) are also deceased, the grantee would reflect "Estate of (name of the previous most recently deceased Joint Tenant)".

### **7.2.8 Death of a Tenant in Common – CP Land**

If an interest is held as Tenants in Common, the recording of the death certificate does not change the previously registered interest. If the deceased is in possession of more than one lot, one application can be submitted with a listing of the legal description of all the individual's lots that are to be dealt with.

If the deceased was living on reserve, the deceased's estate must be dealt with by the Regional Office, Estates Unit. An Administrative Transfer is required that includes an Appointment of Administrator or an Approval of Will.

If the deceased was living off reserve, the estate is dealt with by the Court. Upon receiving the Court's decision, the Regional Office prepares an Administrative Transfer. The court documents must be attached to the Administrative Transfer.

### 7.2.9 Death of a Tenant in Common – Leasehold Land

Generally, a leasehold interest in a parcel of reserve or designated land can be assigned from a deceased lessee's estate to the lessee's heirs or other third parties. The documentation required depends on whether or not there was a Will, and whether or not the estate is of value.

- 1) Estate assets have **value** and there is a **Will**. When there is a Will attached to an assignment, probate of the Will by a court is required. If no one was named in the Will to administer the estate, Letters Probate is required from a Court appointing someone to administer the estate.
- 2) Estate assets have **value** and there is **no Will**. Letters Probate is required from a Court appointing someone to administer the estate.
- 3) Estate assets are of little or **no value** and there is a **Will**: No probate is required, but a letter from a solicitor stating that he/she is not willing to apply for probate because the estate is of little or no value must also accompany the assignment document.
- 4) Estate assets are of little or **no value** and there is **no Will**. A Statutory Declaration attached to the Assignment is acceptable showing that the person executing the assignment on behalf of the estate has the authority to do so. Also, a letter from a solicitor stating that he/she is not willing to apply for probate because the estate is of little or no value, must accompany the assignment document.

## 7.3 Life Interest

A life interest exists when a Band member is the lawful possessor on reserve land and another person (usually a family member) is granted the right to use and occupy the land and live in the house. The life interest continues as long as the person with the life interest is living or has not relinquished the life interest.

### 7.3.1 Transfer criteria

The transfer criteria include the following:

- 1) A life interest can only be made to a First Nation (FN) member of the same Band.
- 2) A life interest is a transferable interest.
- 3) If the life tenant ceases to be entitled to reside on reserve, Section 25 of the *Indian Act* applies.

- 4) Once a life interest has been granted, transfers of lawful possession are subject to the life interest, as long as the life interest holder is alive.

### **7.3.2 Transfer of a Life Interest**

Transfer of a life Interest must also meet the following requirements:

- 1) As a life interest can only be granted by and to an FN member, the Transfer must include the registered name and number of both FN members.
- 2) The Transfer must include a legal land description as described in Chapter 6, *Survey Plans and Legal Land Descriptions*.
- 3) The Transfer instrument must be accompanied by a separate agreement stating that
  - a) the Transfer is subject to Ministerial Approval,
  - b) any subsequent transfer is also subject to Ministerial Approval, and
  - c) the interest terminates if the life tenant ceases to be a member of that FN.

### **7.3.3 Transfer in a Remainderman Situation**

A Remainderman situation exists where a FN member transfers or the estate of a deceased FN member effects a transfer of lawful possession of his/her lands (and house) to another FN member, and provides that another specified FN member has a right to occupy the house and land as long as this latter FN member lives. The transferee becomes the Remainderman.

Transfer of a life Interest in a “Remainderman” situation must meet the criteria listed in Section 7.3.1, *Transfer Criteria*, and also must meet the following requirements:

- 1) As a life interest can only be granted by and to a FN member, any transfer must include the registered name and number of both FN members.
- 2) The transfer must include a legal description as described in Chapter 6, *Survey Plans and Legal Land Descriptions*.
- 3) The Transfer instrument resulting from the settling of an estate must be accompanied by both:
  - a) a letter prepared by the Administrator/Executor of the estate, reflecting that the lawful possession of the Remainderman is encumbered by the life tenant’s interest, and
  - b) Ministerial Approval.

## 7.4 Notice Documents

A Notice is a document that records or gives notice of the existence of a claim, right or interest, whether legally valid or not, against a parcel or reserve, designated or surrendered land.

- Part VI of the Indian Lands Registration Manual issued Feb. 1, 1990 applies only to existing instruments registered in the Indian Lands Registry System as Caveats.
- Part VI of the Indian Lands Registration Manual issued Feb. 1, 1990 does not apply to instruments registered as Notices in the Indian Lands Registry System.

### 7.4.1 The right to deposit a Notice

Any person may deposit a Notice with the Regional Office. The person depositing the Notice must be claiming a right or interest related to reserve, designated or surrendered land, by virtue of one of the following reasons:

- 1) An unregistered instrument that is not acceptable for immediate registration.
- 2) The operation of law (e.g., a Court Order).
- 3) Other evidence of a claim to an interest in reserve, designated, or surrendered land.

### 7.4.2 Form and Content of a Notice

The Notice may be in a form as shown on page 7-11. The Notice document must contain the following information:

- 1) The full legal name of the person claiming the right or interest.
- 2) The address of the person, or their representative, claiming the right or interest.
- 3) The nature of the right or interest claimed.
- 4) The grounds for the claim.
- 5) The description of the parcel of reserve designated or surrendered land.

### 7.4.3 Term of a Notice

A registered Notice, which has not yet been withdrawn, expires three years after the date upon which it was registered.

#### **7.4.4 Effect of Depositing a Notice**

The registration of a Notice shall not delay, restrict nor prevent the registration of subsequent instruments affecting the same parcel of reserve, designated or surrendered land provided that the subsequent instruments meet registration requirements.

Upon the registration of a Notice in the Indian Lands Register, the Registrar will not be responsible for notifying the person(s) affected by the claim, but rather, as noted in Section 2.3, *Due Diligence Responsibility*, it is the responsibility of the parties to the transaction to satisfy themselves as to the status of the relevant parcel prior to submitting an instrument for registration.

#### **7.4.5 Deposit of a Response to a Notice**

A person against whose interest a Notice is registered may register a "Response to the Notice" in the form shown on page 7-12.

#### **7.4.6 Withdrawal of a Notice**

The person claiming the right or interest may at any time withdraw the Notice by registering a written "Withdrawal of Notice".



**Aboriginal Affairs and Northern Development Canada  
Ottawa, Ontario K1A 0H4  
Attention: Land Registrar**

**NOTICE**

Take notice that \_\_\_\_\_, claims a right or interest in the land

(claimant)

described hereunder:

\_\_\_\_\_  
(Legal Description, Plan No., Reserve name and number, Province)

The names of the persons who have acquired an interest in the above-mentioned parcel of land and are thereby affected by this claim:

\_\_\_\_\_

The nature of the right or interest claimed:

\_\_\_\_\_

The grounds for the claim:

\_\_\_\_\_

That I, \_\_\_\_\_, understand that:

(Claimant)

- (i) the deposit of this Notice shall not delay, restrict nor prevent the registration of Subsequent instruments affecting the same parcel of reserve, Designated or Surrendered lands;
- (ii) the Land Registrar will not be responsible for notifying the person(s) affected by the claim;
- (ii) a person against whose interest this Notice is registered may register a response to this Notice;
- (iv) this Notice, if not yet withdrawn, shall expire three years after the date upon which it is registered and
- (v) I may at any time withdraw this Notice by registering a written withdrawal of Notice with the Land Registrar.

(Signature of the claimant):

Address of the claimant:

**Aboriginal Affairs and Northern Development Canada  
Ottawa, Ontario K1A 0H4  
Attention: Land Registrar of Indian Lands**

**RESPONSE TO A NOTICE**

I, \_\_\_\_\_, am a person against whose right or interest in the land described hereunder a Notice, with the Registration Number (Registration Number given to the Notice), has been registered in the Indian Lands Registry System:

\_\_\_\_\_  
(Legal Description, Plan No., Reserve name and number, Province)

The following is my response to the aforementioned Notice:

Signature of the person depositing the Response To the Notice)

## **7.5 Specific Cases - Supporting Documents**

### **7.5.1 Setting Apart Land as Indian Reserve Land**

The following instruments shall be filed when setting apart land as Indian reserve land:

- 1) An Order in Council on the advice of Privy Council (OCPC);
- 2) Evidence of Federal Crown title, normally provincial documents or Federal Real Property Act (FRPA) documents, and may be
  - annexed to the OCPC;
  - not annexed to the OCPC and filed as a package (i.e. one supporting provincial document with the other provincial documents annexed to it) together with an Application for Registration in duplicate; or
  - not annexed to the OCPC and each supporting provincial document filed separately together with Applications for Registration in duplicate for each document filed.
- 3) An application for Registration in duplicate.
- 4) Proper land description as defined in Section 6.2, *Requirements for a Legal Land Description*.

Where the relevant parcel is not shown on a plan recorded in the Canada Lands Surveys Records, the Applicant must attach to the document to be registered either a copy of a provincial survey plan in its entirety, or, in the case where the provincial survey plan is too large, a copy of the relevant portion of the Official Plan.

### **7.5.2 Evidence of Absolute Surrender**

Where an instrument submitted for registration purports to dispose of or convey the title in whole or part of reserve land, the instrument shall be accompanied by the absolute surrender of the land certified in accordance with Section 40 of the *Indian Act* if the surrender has not previously been registered.

### **7.5.3 Evidence of Designation**

Where an instrument submitted for registration purports to lease or grant an interest in all or part of a reserve, which has been designated for leasing purposes, the instrument shall be accompanied by the Designation document certified in accordance with Section 40 of the *Indian Act* if the Designation has not previously been registered.

### **7.5.4 Evidence of Consent or Band Council Resolution**

Where the consent of the Band Council or a Band member who is lawfully in possession of reserve land is required under the *Indian Act* or other applicable legislation to approve an instrument submitted for registration, **the original copy of the instrument** shall be accompanied by that consent.

### **7.5.5 Outstanding Encumbrance or Charge**

Where an instrument submitted for registration purports to assign an interest in reserve, designated or surrendered land on which a pledge or mortgage has been registered, the instrument shall be accompanied by proof

- that the pledge or mortgage has been discharged;
- that the pledge or mortgage has been assumed by the party to whom the interest is being assigned; or
- that the pledge or mortgage will be discharged after the interest has been assigned, as specified in a letter of undertaking by a law firm.

It is the responsibility of the parties to a transaction to search the records as to the status of the relevant parcel prior to submitting an instrument for registration.

# CHAPTER 8 - REGISTRATION OF AN INSTRUMENT

## 8.1 The Registration Process

The registration of instruments is carried out by AANDC Registration Officers at the Regional Offices.

## 8.2 Document Handling

### 8.2.1 Submitted Documents

When an instrument is registered, the year, month, day and hour are recorded in the ILRS.

### 8.2.2 Unacceptable Documents

In the event an instrument is not acceptable for registration, following the criteria listed in Section 9.1, *General Criteria for Refusing to Register an Instrument*, the Region will return to the applicant the instrument, one application, and all supporting documents submitted with the instrument.

#### IMPORTANT

**Faxed instruments ARE NOT acceptable for registration.**

### 8.2.3 Order of Examination

If two or more documents affecting the same parcel are submitted for registration at the same time, the applicant must indicate the order in which they should be registered.

## 8.3 Documents Required

The following documents must be included in the submission package:

- The original instrument.
- The Affidavit of Witness, where required.
- Application in duplicate, or covering letter as described in Chapter 5, *Registration Application*.
- Survey information as required pursuant to Chapter 6.
- Other supporting documents where required, such as a BCR, Access Agreements.

## 8.4 Verification of Completeness and Accuracy of Documents

Once it has been established that all the required documents are included, verify visually each document for completeness, accuracy, and consistency as specified in the sections that follow below. As well, verify the specific requirements for the different types of instrument as specified in Chapter 7, *Supporting Documents*.

### 8.4.1 Verification of the Instrument

1. The instrument must be the original.
2. The instrument must be legible.
3. The instrument must be dated.
4. The instrument must include the names of parties.
5. The instrument must be signed by the parties named in the instrument, i.e., the same names as in item 4 in this list.
6. The instrument must be witnessed.
7. All alterations must be initialed by all pertinent parties.
8. The instrument must include the reserve name.
9. The instrument must contain a legal land description, which corresponds to the parcel of land on the survey plan.

#### NOTE

If there is uncertainty about the legal land description, refer the document to the Survey Section.

10. If applicable, the instrument must have Ministerial Approval, i.e., executed (signed) by proper delegated authority under the *Indian Act*.
11. A corporate seal may be affixed to the instrument if the transaction involves a corporation. Where a person signs on behalf of a corporation he/she must either affix a corporate seal, or, type/print his/her name, position and the statement "I have authority to bind the corporation" above, beneath or beside his/her signature.
12. If it is specified in the instrument that there are supporting documents **attached**, they **must** be attached to the instrument.

#### **8.4.2 Verification of the Affidavit of Witness**

- An Affidavit of Witness for any of the parties involved must accompany the instrument, except for a corporation where the corporate seal has been affixed.
- The Affidavit must include the signature of the Commissioner for Taking Oaths or Notary Public, as well as their title or seal.

#### **8.4.3 Verification of the Application for Registration**

The Application must contain, as it appears on the instrument, the following matching information:

- the names of parties, Grantor(s) and Grantee(s),
- the reserve name and number,
- the legal land description, and where the land affected by the instrument submitted for registration has been resurveyed, the application must refer to the new plan number.

#### **8.4.4 Verification of Survey**

Survey information: the plan type must be as required in Section 6.2, *Requirements for a Legal Land Description*.

#### **8.4.5 Verification of Transactions Involving Individual Land Holdings**

If the transaction deals with individual land-holdings, such as BCR Allotments, Transfers, the following items must be verified:

- The individual/Band conveying the right/interest lawfully owns that right/interest.
- The individual receiving the interest is entitled to hold an interest in the land.
- The land has reserve status, i.e., not Surrendered, Designated or expropriated.
- There is provision for consideration.
- Access has been provided (except Kahnawake, lots landlocked before 1989).
- If the land is mortgaged, the encumbrance must have been dealt with.
- If there are any other encumbrances, they must have been dealt with.
- Each individual's name, Band and member number correspond to the Indian Registration System (IRS) membership records.

#### **8.4.6 Verification of an Administrative Transfer**

If the transaction deals with an individual estate, i.e., an Administrative Transfer, the following items must be verified:

- 1) One of the following has been included with the Administrative Transfer:
  - An “Appointment of Administrator”,
  - an “Approval of Will”,
  - an “Appointment of Estate Trustee”, or
  - any other documentation deemed to have appointed a representative of the Estate.
- 2) The Administrative Transfer has been executed by the individual appointed to administer the estate.

#### **8.4.7 Verification for a Lease or an Assignment**

If the transaction deals with a Lease or an Assignment, the following items must be verified:

- If the transaction is on Band land, except for Sections 58(1) or 58(4) of the *Indian Act*, the Surrender/Designation must have been registered.
- If the transaction is for a Lease on locatee land, the locatee has provided consent.  
If there is a prior Mortgage, it has been dealt with, i.e., an Assumption Agreement, a Discharge Bank Assignment, a Discharge, or a letter of undertaking has been attached.
- If the transaction is related to another interest, this related interest has been registered.
- Any related previous interest has been correctly referred to in the document being submitted.

#### **8.4.8 Verification for a Permit**

If the transaction is for a Permit, the following items must be verified:

- A term has been specified.
- Any term of more than 1 year has Band Council consent.
- A purpose has been specified.
- For agricultural Permits, the area has been shown separately for each legal land description. For example,
  - SEC 14 TWP 42 RGE 2 W2M, an area of 23 ha; SEC 15 TWP 42 RGE 2 W2M, an area of 18 ha.



- If the area is a portion of a section, a sketch outlining the portion must be provided and the area indicated.

#### **8.4.9 Verification for an Expropriation, Designation or Revocation**

If the transaction is for an Expropriation, a Designation, or a Revocation, the following items must be verified:

- 1) There is an Affidavit sworn by an official on behalf of the Minister.
- 2) There is an Affidavit sworn by the Chief and/or Councillors.
- 3) There is an accepting OCPC.

## CHAPTER 9 - Refusing Registration

### 9.1 General Criteria for Refusing to Register an Instrument

The Regional Office shall **NOT** register an instrument in any one of the following circumstances:

- 1) Where, in the opinion of the Lands Officer, the instrument does not meet the requirements set out in the manual:
  - a) the document is not the original; instrument or supporting documentation contain, “privileged, confidential or solicitor client privilege” headings,
  - b) the document is not dated;
  - c) no Ministerial Approval, where applicable, or approval not in accordance with delegated authority;
  - d) missing signatures on documents (parties and/or witnesses, or commissioner/notary);
  - e) missing initials on changes;
  - f) land affected not adequately defined;
  - g) names differ on the instrument and the application;
  - h) term not stated (for Permits, Leases, Subleases, and Sub-Subleases only);
  - i) Purpose not stated (for Permits, Leases, Subleases, and Sub-Subleases only);
  - j) missing supporting documentation that was noted on the instrument as being attached;
  - k) consideration has not been provided for in a Transfer instrument;
  - l) missing pages.
- 2) No Affidavit of Witness, where required.
- 3) For individual land holdings, where an instrument (specifically, a BCR Allotment, Administrative Transfer, Transfer, or Request,) purports to grant an interest in a lot or parcel of reserve that has no means of access.
- 4) For individual land holdings, where an instrument purports to transfer the right to possession of reserve land to any person not entitled to hold lawful possession in that reserve.
- 5) Where the Lands Officer, based on matter of record, is not satisfied that the person transferring the interest is in lawful possession of the reserve land.
- 6) Where an instrument relates to a subordinate interest and the primary interest upon which it depends has not been previously registered.

- 7) Where the instrument submitted for registration, in the opinion of the Lands Officer, does not in whole or in part, affect or relate to a right or interest in reserve, designated or surrendered land.
- 8) Where the interest in an instrument submitted for registration is affected by or related to an outstanding encumbrance or charge, and evidence of an assumption or discharge of that outstanding encumbrance or charge has not been submitted.
- 9) Where more than one permit is issued to the same permittee for the same term, on the same land area.
- 10) If there is any indication on the face of the document or supporting documentation, that the instrument was signed under duress, the registration could be refused.
- 11) If the interest granted by the instrument overlaps or is inconsistent with a previously registered interest. An interest shall be considered to be inconsistent with previously registered interests under these circumstances:
  - a) The instrument is a BCR Allotment purporting to allot reserve land and a previously registered instrument for the same reserve land indicated
    - i) that another member of the Band has lawful possession of the reserve land;
    - ii) that the Minister has authorized the reserve land to be used for any of the purposes specified in subsection 18(2) of the *Indian Act*.
    - iii) that a full interest in the reserve land has been taken pursuant to Section 35 of the *Indian Act*; or
    - iv) that the reserve land has been surrendered or designated;
  - b) The instrument purports to grant a leasehold interest and the Indian Lands Registry System records indicate that an existing Lease, registered on the same lot or parcel of reserve or designated land, has not expired; and
  - c) The instrument purports to grant a leasehold interest and the instrument is not the proper authority as specified in the *Indian Act*.

## 9.2 Rejection of One of Multiple Instruments

Where multiple instruments affecting the same parcel and the same interest are submitted for registration by an applicant, **if one instrument is refused** for registration, **all instruments will be returned** to the applicant to be resubmitted.

### **9.3 Re-submission of an Instrument Returned for Registration**

All returned instruments must be resubmitted using the same registration number.

## **CHAPTER 10 - REFERENCE**

While a Glossary of short definitions of terms used throughout the manual in the preparation of instruments and other documents, this chapter provides additional information relating to terms and concepts that require a further in-depth explanation and/or examples.

### **10.1 Commonly Used Instruments**

#### **10.1.1 Administrative Transfer**

The Administrative Transfer is the instrument used for the transfer of estate lands. Pursuant to Section 49 of the *Indian Act*, the Administrative Transfer requires Ministerial Approval. The Administrative Transfer does not require an Affidavit of Witness.

#### **10.1.2 Amendment**

An Amendment (sometimes referred to as a Modification, an Addendum, or a Letter) is the instrument used when modifying one or more clauses of the original document (e.g., term, legal land description) or adding a clause to the original Lease. A common example is when the original document, a Lease Agreement, provides for a rent review period every five years. The parties in this case agree on a new rental amount to be paid in the amendment to the original agreement.

#### **10.1.3 Assignment**

An Assignment is an instrument used to assign an interest in a Lease, Sublease or Mortgage to another party who agrees to perform the lessee's (Tenant's) responsibilities under the Lease.

#### **10.1.4 Band Council Resolution (BCR) Allotment**

Most Allotments will create a new parcel. A survey is required prior to the new parcel being created.

The holder of a Certificate of Possession (CP) or an OKA Letter has the highest possible interest in First Nation land. The CP is issued pursuant to the *Indian Act* Sections 20 (2) and 20 (5).

#### **10.1.5 Band Council Resolution (BCR) Un-allotted Land**

Pursuant to Section 18 (2) of the *Indian Act*, land in a reserve may be set aside for the Purpose of schools, administration, burial grounds, health projects, or with the passing of a BCR, for any Purpose for the general welfare of the Band.

### **10.1.6 Cancellation**

The Cancellation instrument is used to register the cancellation of a Lease due to a breach of the terms of the Lease. The responsible authority for the reserve (the region) will initiate and authorize these instruments.

### **10.1.7 Name Change of an Individual - Name Change**

On application, an abstract may be revised to reflect a change of name of any party holding a registered interest in reserve, designated or surrendered lands. Proof of the name change such as a marriage certificate, a certificate of name change, or a certificate of amalgamation must accompany the application. In this situation, a certified true copy is acceptable.

### **10.1.8 Change of Reserve Name - (Order in Council (OCPC))**

Reserves are established by an Order in Council in which such an order includes the reserve name. If a Band wishes to change the reserve name, the change must be effected through an Order in Council. The recent practice of using a BCR will no longer be accepted.

### **10.1.9 Death Certificate**

The recording of a Death Certificate may or may not change the registered interest depending on whether or not the interest was with a surviving joint tenant or was with tenants-In-common. A certified true copy of the death certificate is acceptable.

### **10.1.10 Designation**

A Designation is the instrument through which a Band/First Nation relinquishes less than its entire interest (in all or part) of its reserve to the federal Crown for a specified purpose and period of time. The land retains both the underlying Indian interest and its reserve status. Designations are carried out mainly for leasing purposes (commercial or recreational) where less than the whole interest in the land is required for the transaction.

### **10.1.11 Discharge**

A Discharge, also called a Release, is used to indicate that a borrower's financial obligation to pay a debt has been satisfied. For example, a Discharge may be registered to indicate that a previously registered Mortgage has been paid out completely.

### **10.1.12 Lease**

Anyone who Leases land from another acquires a leasehold interest in that land; such an interest is called a “Lease”. The possessor of the interest is the “lessor”, namely Crown Canada, while the person who acquired the interest is the “lessee”.

A leasehold interest must have a definable time period, the term, or a time period that can be established. The term of the instrument includes all provisions for renewal or extension of the right or interest. The holder of a Leasehold interest has exclusive rights to use and occupy the land. When the term of the Lease ends, the land reverts to the lessor.

### **10.1.13 Life Interest**

A Life Interest can be granted to a First Nation member by a First Nation member through a Transfer approved under Section 24 of the *Indian Act*, or by the estate of a deceased First Nation member through a Transfer approved under Section 49 of the *Indian Act*. The life interest may be relinquished at any time by the life tenant.

### **10.1.14 Modification**

Refer to Section 10.1.2, *Amendment*.

### **10.1.15 Mortgage**

A Mortgage is an encumbrance against a parcel of land created by the person in possession of an interest in the land, and using that interest in the land as security for a debt. The Mortgage is registered and remains in effect until payment in full is received and the Discharge registered.

The person or Bank lending the money against the interest is the Mortgagee. Mortgages can be registered against individual land holdings and against leased land.

### **10.1.16 Notice**

A Notice is a document that when registered in the Indian Lands Registry System, reflects the existence of a claim or interest, whether legally valid or not, against a parcel or reserve, designated or surrendered land.

**NOTE**

The instrument known as a Caveat will no longer be registered in the Indian Lands Registry System and is replaced with the instrument known as a Notice.

**10.1.17 Permit**

A Permit is an instrument that is issued for a non-exclusive but specific purpose such as hydro transmission, communication, agricultural, grazing, advertising, timber, waste disposal, etc.

Permits issued for grazing and agricultural purposes are generally short-term (1 to 5 years). Therefore, a Registration Plan is not required. A Textual Description and a sketch are required if the area is a portion of a section. For grazing purposes, there may be more than one Permit on the same parcel of land, provided that no more than one Permit is issued to the same Permittee for the same term on the same land area.

**10.1.18 Request - Evidence of Title for Resurveyed Land**

If land has been resurveyed, an Evidence of Title (EOT) may be requested by the locatees. In this situation, while the instrument must be witnessed, there is no requirement for an Affidavit of Witness. In addition, the following signature requirements on the request are as follows:

- For land held by Joint Tenants: only one locatee is required to sign.
- For land held by Tenants in Common: all locatees must sign the request.

**10.1.19 Right of Way**

A Right of Way is often known off reserve as an Easement that is usually, although not always, related to roads. A lawful possessor without access to a public road may have a Right of Way to traverse a neighbor's land that does have access to a public road. The R/W Agreement is used for Oil and Gas rights-of-way.

**10.1.20 SubLease and Sub-SubLease**

A SubLease/Sub-SubLease is reflected in the same manner as a Lease (head Lease). The SubLease must have a term, expiry date and indicate the purpose of the SubLease. The Grantor of the SubLease will be the Grantee of the Lease. The Grantor of the Sub-SubLease will be the Grantee of the SubLease. The statutory requirement of Ministerial approval to assignments does not apply beyond the head Lease level. The Regional Office will no longer review



Assignments and Mortgages of SubLeases as well as Sub-SubLeases for conformity with the head Lease or SubLease (Ministerial Consent).

A sublease can be for the whole of the land or a portion of the land that was leased. There can be many subleases derived from a lease. A sub-sublease can be for the whole of the land or a portion of the land that was subleased. There can be many sub-subleases derived from a sublease.

The leased area can be subdivided into many parcels. Each sublease/sub-sublease registered/recorded will create a new sub-parcel (if applicable). In all cases, the land subject to a long-term sublease or sub-sublease must be surveyed.

The sublease must expire at least one day prior to the head Lease expiry date. The sub-sublease may expire on the same day as the sublease or earlier. All subleases and sub-subleases must meet the terms of the Head Lease.

### **10.1.21 Transfer**

A Transfer is used when lawful possession is transferred from one band member to another band member of the same Band or to the Band. The grantor of the Transfer will be the band member transferring the interest. The grantee will be the band member receiving the interest. Only a band member or a Band may hold lawful possession. The instrument must include the band name and number. Bands with delegated authority under Section 10 must attach band membership confirmation.

A Remainderman situation exists where a First Nation (FN) member transfers or the estate of a deceased FN member effects a transfer of lawful possession of his/her lands (and house) to another FN member, and provides that another specified FN member has a right to occupy the house and land so long as this latter FN member lives. The transferee becomes the Remainderman.

- Example: The deceased, an FN member leaves his land and house to his daughter, also a FN member. He has provided for his wife to have the right to occupy the house and land as long as she lives. In this case the daughter would be the new Remainderman, and the deceased's wife is the "life tenant" with a life interest in the land (and house).

## **10.2 Survey Plan Types**

### **10.2.1 Official Plan**

An Official Plan is a graphical description of the boundaries of land prepared from field notes of a survey pursuant to Section 29 of the Canada Lands Surveys Act.

It is recorded in the Canada Lands Survey Records in Ottawa (commonly known as a CLSR Plan). Upon confirmation by the Surveyor General, a plan is deemed to be the Official Plan of those lands shown and supersedes any other records plan of a prior date.

- Example of an Official Plan: Lot 1 CLSR 55555 (approved under Section 29)

### **10.2.2 Registration Plan**

A Registration Plan is an administrative plan. It is a graphical description of the boundaries of land prepared from information contained in existing documents, field notes of survey, controlled aerial photographs or maps and from information found in land transaction documents, and approved by the Surveyor general pursuant to Section 31 of the Canada Lands Surveys Act.

- Example of a Registration Plan: Lot 1 CLSR 55555 (approved under Section 31)

As of November 1, 2005, both Official Plans and Registration Plans are issued CLSR numbers when registered in the Canada Lands Survey Records (CLSR). In addition to technical differences, the title block and the signature block distinguish these two plans.

Regional Surveyor (RS) Plans are considered the predecessors to Registration Plans. RS Plans were approved by Regional Surveyors pursuant to Section 31 of the Canada Lands Surveys Act. Prior to November 1, 2005, there were seven RS Plans (RSA-Alberta, RSATL-Atlantic, RSBC-British Columbia, RSM-Manitoba, RSO-Ontario, RSQ-Quebec & RSS-Saskatchewan). The plan numbers issued for RS plans do not have an “R” at the end of the number.

- Example of an RS Plan: Lot 10-1 RSBC 1701

### **10.2.3 Textual Description**

A Textual Description is a metes and bounds description of First Nation lands, or any other description of First Nation lands that does not refer exclusively to one or more complete parcels on a registration plan or official plan. A textual description must meet the following requirements:

- 1) The description must clearly and unambiguously identify the land subject to the interest.
- 2) If the land subject to the interest is the whole of, or a portion of a lot shown on an existing plan, then the description must refer to the plan and lot.
- 3) The dimensions of the parcel of land must be mentioned in the text or be clearly shown on an attached sketch.

4) Any sketch accompanying a textual description should preferably not exceed a maximum size of 27.94 cm x 43.18 cm (11" x 17").

- Example of a Textual Description: Portion of the lands outlined in black on the Plan of Survey No. 3063R and attached hereto as Schedule "A"

## **10.3 Forms of Lawful Possession**

### **10.3.1 Joint Tenancy**

Joint Tenancy is a form of lawful possession of reserve land in which two or more band members jointly hold equal undivided shares in the whole of a parcel of reserve land.

The distinguishing feature of an interest held in Joint Tenancy is that, upon the death of one Joint Tenant the deceased's interest in the land passes to the surviving Joint Tenant(s) by the right of survivorship. The right of survivorship takes precedence over any testamentary disposition made by a Joint Tenant. Therefore, if the will of the deceased Joint Tenant provides that the deceased's lawful possession of reserve land is to pass to a certain person, it will nevertheless pass to the surviving Joint Tenant(s). The same principle applies if a Joint Tenant dies intestate (i.e., without a will).

**An interest held in Joint Tenancy cannot pass by devise or intestacy to any person or persons except the surviving Joint Tenant(s).**

### **10.3.2 Joint Tenancy Is Not Applicable in Quebec**

Except for those joint tenancies already in existence, all parcels of land in the province of Quebec, excluding Akwesasne, shall be held in Tenancy in Common.

### **10.3.3 Tenancy in Common**

Tenancy in Common is a form of lawful possession of reserve land in which two or more Band members, or one or more Band members and the Band itself, hold reserve land in equal or unequal undivided shares. Unlike Joint Tenancy, Tenancy in Common has no right of survivorship. Therefore, upon the death of one of the tenants in common, the deceased's interest in the land passes to the deceased's estate or heirs.

**An interest held in Tenancy in Common  
may pass by devise or intestacy.**

## **10.4 Abstracts**

The title summary listings are contained in the Reserve General Abstract, the Parcel Abstract, and the Crown Lands Abstract. Registered or recorded documents are included on these abstracts maintained by the Region.

### **10.4.1 Reserve General Abstract**

The Reserve General Abstract consists of instruments relating to Indian land as a whole, e.g., establishment of reserve, additions to reserve, Orders in Council, Right of Way Agreements for public highway or pipeline utilities. The instruments in this Abstract are those that affect the reserve as a whole.

#### **10.4.2 Parcel Abstract**

The Parcel Abstract consists of instruments relating to individual lots/parcels on reserve land. Every parcel/lot with a registered interest has a Parcel Identification Number or PIN that is unique to that parcel. When a lot or parcel is subdivided, a new PIN is given to the newly created lots when a transaction is submitted for registration.

#### **10.4.3 Crown Lands Abstract**

The Crown Lands Abstract consists of instruments relating to lands owned by Crown Canada, administered by AANDC, and that have not been set apart as reserve lands.



Aboriginal Affairs and  
Northern Development Canada

Affaires autochtones et  
Développement du Nord Canada

### TRANSFER OF JOINT TENANCY BY SURVIVORSHIP

Not applicable in the Province of Quebec (except for Akwesasne No. 15)

#### Privacy Act Statement

Personal information of deceased individuals and the heirs/beneficiaries of their estates, is collected, used, disclosed and retained by the Department of Indian Affairs and Northern Development (the "DEPARTMENT") under the authority of the *Indian Act* for the purpose of estate administration, and specifically transfers of reserve land of deceased individuals who were band members at the time of their deaths. Individuals have the right to the protection of and access to their personal information under the *Privacy Act* and the *Privacy Regulations*. The personal information will be retained indefinitely by the DEPARTMENT. Details of the collection, use, disclosure and retention of personal information are described in the Personal Information Bank INA PPU 110, available online at [www.infosource.gc.ca](http://www.infosource.gc.ca).

I/We \_\_\_\_\_

member(s) of the \_\_\_\_\_ First Nation

registered in lawful possession as joint tenants of that certain parcel of land being: (Describe only land being transferred)

Do hereby make oath and say \_\_\_\_\_

I/We are/am the registered owner(s), as joint tenants, of the land registered as described above in the Indian Land Register.

The said \_\_\_\_\_ Date of Birth \_\_\_\_\_ died on or about the

\_\_\_\_ Day of \_\_\_\_\_, 20\_\_\_\_

I/We \_\_\_\_\_ being entitled to the land by right of survivorship

hereby applies to be the lawful possessor of the lands described above in the Indian Lands Register.

In support of this application, I attach a Certified True Copy of the Death Certificate/Funeral Director Certificate.

In witness whereof I/We, have hereunto subscribed my/our name(s)

This \_\_\_\_\_ of \_\_\_\_\_,  
(Day) (Month) (Year)

Signed in the presence of

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Surviving Joint Tenant)

# AFFIDAVIT OF EXECUTION

CANADA  
PROVINCE OF

)  
)  
)  
)  
)  
)  
)

I, \_\_\_\_\_  
of the City of \_\_\_\_\_  
in the Province/Territory of \_\_\_\_\_  
make oath and say:

TO WIT:

That I was personally present and did see the within instrument duly executed by:  
(Where execution by mark insert applicable clause)

\_\_\_\_\_

That I know the said party(ies) and that the said party(ies) in my belief is/are the full age of \_\_\_\_\_

That I am the subscribing witness to the said instrument

## SWORN/AFFIRMED BEFORE ME

At

\_\_\_\_\_

in the Province/Territory of

\_\_\_\_\_

this \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_  
(Day) (Month) (Year)

\_\_\_\_\_  
A Commissioner for Oaths in and for the  
Province/Territory:

\_\_\_\_\_  
My commission expires:

\_\_\_\_\_

## **REGISTRY OFFICE**

### **Land Registrar**

The Registrar of Indian Lands (“the Registrar”) is the officer of the Department responsible for the registers created according to Sections 21 and 55 of the *Indian Act*.

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## Appendix A - Glossary, Acronyms, Abbreviations

### Cautionary Note

This Appendix provides a quick reference guide to terminology used in the Manual. These definitions are not intended to be comprehensive legal interpretations. Where an understanding of the full legal impact of any of the terms is required, appropriate legal advice ought to be obtained.

<b>53/60</b>	Refers to Sections 53 and 60 of the <i>Indian Act</i> whereby a Band/First Nation may obtain delegated authority from the Minister of Aboriginal Affairs and Northern Development and/or the Governor in Council respectively to manage or lease Designated lands and/or exercise control and management over reserve lands occupied by the Band/First Nation on behalf of the Minister of Aboriginal Affairs and Northern Development.
<b>Abstract</b>	A summary in sequence of the documents, facts and events evidencing or affecting the nature of a person's title or interest in a given tract of land.
<b>Access</b>	The way or means to approach, to enter and to leave a privately owned tract of land from a public way without trespassing on other privately owned property.
<b>Ad litem</b>	See "Guardian ad litem".
<b>Administrative Plan</b>	A plan of public lands prepared pursuant to Section 31 of the <i>Canada Lands Surveys Act</i> by the Surveyor General for administrative purposes. These plans include "Registration Plans" and need not be confirmed under Section 29 of the Act.
<b>Affidavit Of Execution</b>	A written statement, sworn before a person having authority to administer an oath, by a person having witnessed a document testifying to the document having been executed by the parties thereof.
<b>Allotment</b>	The process by which an individual Band/First Nation member receives lawful possession of reserve land from the Band/First Nation Council.

<b>Applicant</b>	The person who prepares the ILRS application (e.g. AANDC staff or 53/60 bands).
<b>Application for Registration</b>	Applications for registration can be initiated through the Indian Lands Registration System (ILRS).
<b>Assignment</b>	An instrument used to transfer an interest to another party, for instance in a Lease, SubLease, or Mortgage.
<b>Band</b>	A group of Indians for whom a reserve has been set aside on or after September 4, 1951, or for whose benefit moneys are held by the federal Crown, or which is declared by the Governor in Council to be a Band for the purposes of the <i>Indian Act</i> . The term is used interchangeably with the term "First Nation, although the term "First Nation" is not defined under the <i>Indian Act</i> .
<b>Band Council Resolution (BCR)</b>	A record of a council decision made by a quorum of the councilors of a Band at a meeting of the council duly convened.
<b>Canada Lands Survey Records (CLSR)</b>	See "Official Plan".
<b>Cardex Holding</b>	A historical individual interest in reserve land created by Band Council Resolution and approved by the Minister under Section 20(1) of the <i>Indian Act</i> . The legal land descriptions associated with Cardex Holdings were vague and often inaccurate. The interest of the holder of a Cardex holding is considered lawful possession under the <i>Indian Act</i> , however, no evidence of title is issued (NETI) until the land is surveyed.
<b>Caveat</b>	See "Notice".
<b>Certificate of Occupation (CO)</b>	Documentary evidence of a Band/First Nation member's right to temporary possession of reserve lands described therein pursuant to the <i>Indian Act</i> . It may be replaced by a certificate of possession subject to the fulfillment of certain conditions.

**Certificate of Possession (CP)** Documentary evidence of a Band/First Nation member's right to lawful possession of reserve lands described therein pursuant to the *Indian Act*.

**Certificate of Right to Use and Occupy (CRUO)**

See Notice of Right to Use and Occupy.

**Certified True Copy**

A copy of a filed document, legal or other, in its entirety that is sworn to be a true copy by the holder of the original.

**CLSR Plan (Canada Lands Survey Records)**

See "Official Plan".

**CLSR**

See "Canada Lands Survey Records".

**CO**

See "Certificate of Occupation".

**Consideration**

The price or subject matter that induces a contract, must be in money, and must be at least one dollar (\$1.00).

**Copy**

A photocopy of a document; it is not acceptable for registration.

**CP**

See "Certificate of Possession".

**Crown Lands**

Lands owned by Crown Canada. These lands include settlements and lands set aside for Band/First Nation housing which have not been set apart as reserve lands.

**CRUO**

Certificate of Right to Use and Occupy. See "Notice of Right to Use and Occupy".

**Designation**

The means by which a Band/First Nation relinquishes less than its entire interest (in all or part) of its reserve to the federal Crown for a specified purpose and period of time.

**AANDC**

Aboriginal Affairs and Northern Development Canada.

**Easement**

A non-possessing interest held by one party in land of another whereby the first party is accorded partial use of such land for a specific purpose. An Easement restricts but does not abridge the rights of the fee owner to the use and enjoyment of his land.

**Effective Date**

The commencement date of the term of an instrument.

**Encumbrance**

An interest or right in real property which diminishes the value of the fee, but does not prevent conveyance of the fee by the owner. Mortgages, taxes, judgements are

	encumbrances known as liens. Restrictions, Easements, reservations are encumbrances, though not liens.
<b>EOT</b>	See "Evidence Of Title".
<b>EPM</b>	East of the Principal Meridian.
<b>Evidence of Title (EOT)</b>	Refers to documentary proof of a Band/First Nation member's right to use and occupy reserve lands pursuant to the <i>Indian Act</i> .
<b>Expiry Date</b>	The termination of the term of an instrument.
<b>Extinct Reserve</b>	Lands which are no longer set apart for a specific Band or First Nation as a result of the surrender for sale of the reserve by the Band; the enfranchisement of all Band members; the death of the last surviving Band member(s), and no heirs have been identified; or the amalgamation of the First Nation with another Band, such that the status of the former Band and any corresponding reserve(s) cease to exist.
<b>Facsimile</b>	An accurate reproduction of a document or record and includes a print from microfilm or a printed copy generated by or produced from a computer record.
<b>Field Survey</b>	In its general sense, the determination of the position of points permanently or temporarily marked on the ground including the keeping of records of all measurements used in the determination. The term "survey" often means "legal survey", a survey made to define boundaries of parcels of land suitable for the transfer of rights. It includes the preparation of field notes and plans and any examination, approval or confirmation that may be required.
<b>First Nation (FN)</b>	Term used interchangeably with the term "Band" which is defined under the <i>Indian Act</i> , although the term "First Nation" is not defined under the <i>Indian Act</i> .
<b>First Nations Land Management Act (FNLMA)</b>	An Act that allows First Nations to opt out of the land tenure provisions of the <i>Indian Act</i> , and, in its place, to substitute their own land management codes to manage reserve lands and resources.
<b>FN</b>	See "First Nation".
<b>Forwarded Date</b>	The date that an instrument is entered and submitted to the Indian Lands Registry for registration.
<b>FRPA</b>	Federal Real Property Act.

<b>Grantee</b>	The person, corporation, partnership or other entity acquiring the interest.
<b>Grantor</b>	The person, corporation, partnership or other entity from who the interest is be acquired.
<b>Guardian ad litem</b>	A guardian appointed by the court to represent the interests of a minor or incompetent persons in legal actions.
<b>Historical Band Name</b>	Refers to the former name of a Band/First Nation.
<b>Historical Reserve Name</b>	Refers to the former name of a reserve.
<b>Indian Lands Registry System (ILRS)</b>	A database of instruments registered in the Indian Lands Registry System relating to Reserve Lands and Crown Lands. The ILRS generates Registration Numbers and Evidence of Title (EOT) numbers and is the authoritative source for reserve names. The ILRS allows all users to perform enquiries and generate reports on data in the system. Electronic images of instruments registered in the Indian Lands Registry System can be viewed and printed from the system.
<b>Indian Oil and Gas Canada (IOGC)</b>	A special operating agency within the Lands and Economic Development Sector of the Department of Aboriginal Affairs and Northern Development responsible for administering and managing First Nations' oil and gas interests on reserve pursuant to the Indian Oil and Gas Regulations.
<b>Individual Land Holding</b>	Created when a parcel of reserve land is allotted by a Band/First Nation Council to a member of that Band/First Nation.
<b>Instrument</b>	A formal legal document dealing with transactions relating to interests in Indian land; the document specifies the type of transaction, the parcel of land, the parties to the transaction, and any legal details and specifications.
<b>Instrument Date</b>	The date the instrument was executed.
<b>Instrument Status (Pending)</b>	The status of instruments that have been initiated awaiting registration in the Indian Lands Registry System.

<b>Instrument Status (Registered)</b>	The status of instruments that have been registered in the Indian Lands Registry System.
<b>Instrument Status (Returned)</b>	The status of instruments that did not meet the registration requirements of the Indian Lands Registry System and were returned to the applicant for clarification.
<b>IOGC</b>	See “Indian Oil and Gas Canada”.
<b>Joint Tenancy</b>	Joint Tenancy is a form of ownership by two or more persons of the same property. The individuals, who are called joint tenants, share equal ownership of the property and have the equal, undivided right to keep or dispose of the property. Joint tenancy creates a right of survivorship. This right provides that if any one of the joint tenants die, the remainder of the property is transferred to the survivors. Joint Tenancy does not apply to reserves in the Province of Quebec with the exception of Akwesasne Indian Reserve No. 15.
<b>Land Affected</b>	The legal land description contained in an instrument.
<b>Land Use Area (LUA)</b>	An outlined area on a photo map for certain types of land transactions such as agricultural or grazing permits.
<b>Land Use Area Plan</b>	A graphical depiction of the extent of certain interests in Indian Lands. Land Use Area plans may be used as the basis of a “textual reference” as defined in the Interdepartmental Agreement of 2003 between the Department of Indian Affairs and Northern Development and Natural resources Canada (NRCan) respecting land transactions on Reserve Lands.
<b>Lawful Possessor</b>	A Band/First Nation member who has been allotted the right to use and occupy a parcel or parcels of reserve land pursuant to the <i>Indian Act</i> . An active Lawful Possessor is the current possessor, while an inactive Lawful Possessor is the former possessor.
<b>LED</b>	Lands and Economic Development



<b>Legal Land Description</b>	A description by which property can be definitely located by reference to surveys or approved recorded plans within a system set up by law or approved by law.
<b>Legal Subdivision (LSD)</b>	The smallest defined unit of land in the Dominion Lands Township System used in the Provinces of Manitoba, Saskatchewan, Alberta and British Columbia, being a quarter of a quarter section (about 40 acres). There are 16 legal subdivisions in a section.
<b>Letters Patent</b>	An instrument issued by a government to the patentee, granting or confirming a right to the exclusive possession and enjoyment of land.
<b>Licence</b>	A personal privilege to do some act on the land of another.
<b>Life interest</b>	A life interest exists when a Band member has a CP on reserve land, and another person (normally a family member) is granted the right to use and occupy the land and live in the house. The life interest lasts as long as the person with the life interest is living or has not relinquished the life interest.
<b>Locatee</b>	The person entitled to the use and occupation of a parcel of reserve land duly allotted to that person, (a.k.a. the lawful possessor).
<b>Location Sketch (LS)</b>	A measure that was used for expedience for registration to identify individual land holding interests pending completion of a survey plan. Location Sketches replaced LTS sketches when Location Tickets became obsolete in 1951.
<b>Location Ticket (LT)</b>	The form of evidence of title that was issued until September 4, 1951 under the <i>Indian Act</i> of 1880 for lawful possession of reserve lands by a Band/First Nation member. A Certificate of Possession has replaced this form.
<b>Location Ticket Sketch (LTS)</b>	A measure that was used for expedience for registration to identify individual land holding interests pending completion of a survey plan. LS sketches replaced LTS sketches when Location Tickets became obsolete in 1951.
<b>Lot</b>	A piece of land, regardless of size or ownership.
<b>LS</b>	See "Location Sketch".
<b>LSD</b>	See "Legal Subdivision".

<b>LT</b>	See "Location Ticket".
<b>LTS</b>	See "Location Ticket Sketch".
<b>LUA</b>	See "Land Use Area Plan".
<b>Metes and Bounds</b>	A method of describing the perimeter of a tract of land using both measurements (length and direction of each limit) and natural or artificial boundaries.
<b>NE</b>	See "Notice of Entitlement".
<b>No Evidence of Title Issued (NETI)</b>	A situation where a Band/First Nation member has lawful possession of reserve lands pursuant to the <i>Indian Act</i> but evidence of title was not issued. The locatee, when abstracted as having title does have lawful possession of the subject property, it was simply that the transaction granting possession was administratively deficient or the locatee receiving the interest was deceased or immediately transferring their right of possession onto another Band member, and therefore a Certificate of Possession was not issued.
<b>Notice</b>	A document, registered in the Indian Lands Registry System, that reflects the existence of a claim or interest, whether legally valid or not, against a parcel or reserve, designated or surrendered land.
<b>Notice of Entitlement (NE)</b>	Documentary evidence of a Band/First Nation member's right to lawful possession of reserve lands which have not been officially surveyed.
<b>Notice of Right to Use and Occupy (NRUO)</b>	A form (no longer used) provided by the Registrar of Lands to a lending agency, such as the Farm Credit Corporation, on their request for evidence that an individual Band/First Nation member who is not in lawful possession of a parcel of reserve land has assured rights of occupation in a parcel of reserve land for a term equal to, or exceeding the term of a proposed loan to that Band/First Nation member.
<b>OC</b>	See "Order In Council".
<b>OCPC</b>	See "Order in Council on the advice of the Privy Council".
<b>Official Plan</b>	An Official Plan is a graphical description of boundaries of land prepared from field notes of a survey.

<b>OKA Letter (OKA)</b>	A letter issued to a member of the Mohawks of Kanesatake First Nation informing the member that his/her rights and interests in Kanesatake Lands have been recorded in the Indian Lands Registry System.
<b>Order in Council (OC)</b>	An Order made by the Lieutenant Governor in Council of a Province on behalf of Her Majesty the Queen, either under statute or by royal prerogative.
<b>Order in Council on the advice of the Privy Council (OCPC)</b>	An Order made by the Governor General in Council on behalf of Her Majesty the Queen on the advice of the Privy Council, either under statute or by royal prerogative.
<b>Parcel</b>	An area of reserve land regardless of dimension.
<b>Parcel Identification Number (PIN)</b>	A unique nine-digit number generated by the ILRS for a parcel of reserve land based on the legal land description.
<b>PIN</b>	See "Parcel Identification Number".
<b>Provincial Order in Council</b>	An order made by the Lieutenant Governor of a Province on behalf of Her Majesty the Queen on the advice of the Privy Council, either under statute or by royal prerogative.
<b>PTN</b>	Portion of a land parcel.
<b>Quarter Section</b>	A parcel of land (i.e., SW1/4, SE1/4, NW1/4 or NE1/4) in the Dominion Lands Township System used in the Provinces of Manitoba, Saskatchewan, Alberta and British Columbia that contains approximately 160 acres.
<b>Range (RGE)</b>	In the Dominion Lands Township System used in the Provinces of Manitoba, Saskatchewan, Alberta and British Columbia, townships are numbered in ranges east or west of the Principal Meridian (WPM), and west from the Second (W2M), Third (W3M) and other meridians that are established.
<b>Received Date</b>	The date that an instrument was received for registration in the Regional Office.
<b>Register</b>	A book or system of public records of land transactions identifying possessory entitlement, and encumbrances relating to identified parcels of land.

<b>Registrar of Indian Lands</b>	The person whose function is to keep a register and who is entrusted with the custody of public documents.
<b>Registration</b>	The process of inserting into the record the various transactions and supporting documentation affecting a given parcel of land. The registration of transactions gives public notice regarding the nature of an interest on land; and enables persons interested in a property to determine the rights of all parties with an interest in that particular property.
<b>Registration Date</b>	The date of registration of an instrument in the Indian Lands Registry System.
<b>Registration Number</b>	The number assigned to an instrument registered in the Indian Lands Registry System.
<b>Registration Plan</b>	See "Survey Plan"
<b>Remainderman</b>	A Remainderman situation exists where an FN member transfers or the estate of a deceased FN member effects a transfer of lawful possession of his/her lands (and house) to another FN member, and provides that another specified FN member has a right to occupy the house and land so long as this latter FN member lives. The transferee becomes the Remainderman.
<b>Reserve</b>	A tract of land, the legal title to which is vested in Her Majesty that has been set apart for the use and benefit of a Band/First Nation.
<b>Revocation</b>	An instrument used to nullify all or part of an Order in Council.
<b>Right-of-way</b>	A corridor, or similar area of land, over which people, vehicles or other things such as pipelines and powerlines have a right to cross. A right-of-way may be owned as a limited interest in land, such as an easement, or it may be owned in fee simple or administered and controlled by exclusive use, such as a road.
<b>RGE</b>	See "Range".
<b>RS Plan</b>	See "Registration Plan".
<b>RSA</b>	Regional Surveyor plan of Alberta
<b>RSATL</b>	Regional Surveyor plan Atlantic
<b>RSBC</b>	Regional Surveyor plan British Columbia

<b>RSM</b>	Regional Surveyor plan Manitoba
<b>RSO</b>	Regional Surveyor plan Ontario
<b>RSQ</b>	Regional Surveyor plan Quebec
<b>RSS</b>	Regional Surveyor plan Saskatchewan
<b>Section (SEC)</b>	The primary division of the Township, a land area measure that contains about 640 acres; in the Dominion Lands Township System, it is used in the Provinces of Manitoba, Saskatchewan, Alberta and British Columbia.
<b>Settlement</b>	A locality, often on Provincial Crown lands, where the resident population is predominately aboriginal, sometimes comprising members of a First Nation or various First Nations, non-status Indians, or Métis. A settlement is not an Indian reserve and has no statutory basis under the <i>Indian Act</i> .
<b>Subsurface Reserve</b>	Contains oil and gas instruments pertaining only to the subsurface of a reserve.
<b>Submitter</b>	An individual who sends instruments for registration to the Applicant.
<b>Surrender</b>	The process prescribed by the <i>Indian Act</i> that allows for the disposal of reserve lands to non-Indians and results in the extinguishment of the Indian interest in the lands.
<b>Surrendered Lands</b>	A reserve or part of a reserve or any interest therein, the legal title to which remains vested in Her Majesty, that has been released or Surrendered by the Band for whose use and benefit it was set apart. ( <i>Indian Act</i> , 1951).
<b>Survey Plan</b>	A graphical description of the boundaries of land prepared from information which can include existing legal land descriptions, field notes of survey, controlled aerial photographs or imagery, maps and information found in land transaction documents.
<b>Tenancy in Common</b>	Tenancy in common is a form of concurrent ownership that can be created by deed, will or operation of law. Several features distinguish it from joint tenancy. A tenant in common may have a large share of property than the other tenants. The tenant is also free to dispose of his or her share without the restrictive conditions place on a joint tenancy. Unlike joint tenancy, tenancy in common has no

right of survivorship. Thus, no other tenant in common is entitled to receive a share of the property upon a tenant in common's death; instead, the property goes to the deceased's heirs.

<b>Term</b>	A period of time with an effective date and/or an expiry date.
<b>Township (TWP)</b>	The basic unit of the Dominion Lands Township System used in the Provinces of Manitoba, Saskatchewan, Alberta and British Columbia containing 36 sections.
<b>Undivided Interest</b>	An ownership right to use and possession of a property that is shared among co-owners, with no one co-owner having exclusive rights to any portion of the property.
<b>W2M</b>	West from the Second Meridian.
<b>Will</b>	The legal statement concerning the disposition of one's property after death; the document containing such wishes.
<b>WPM</b>	West of the Principal Meridian.

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