

YAKWEAKWIOOSE FIRST NATION
CERTIFICATE OF POSSESSION LAW
JANUARY 2015



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WHEREAS:

Whereas Yakweakwioose First Nation (also known as Yakweakwioose Indian Band, "Yakweakwioose") has an inherent right to self-government which emanates from our people, culture and land and which is recognized and affirmed by section 35 of the *Constitution Act, 1982*;

Whereas Yakweakwioose has taken control of Reserve lands and resources pursuant to the Framework Agreement on First Nation Land Management and has enacted the *Yakweakwioose Land Code* effective the 1st day of May, 2014;

Whereas under the *Yakweakwioose Land Code*, Yakweakwioose Council is authorized to pass laws relating to lands including laws relating to creation, regulation and prohibition of Interests in lands under Part 9 of the Land Code;

Whereas Yakweakwioose has outstanding housing issues to deal with, including past agreements, which may create commitments to provide allotments or Certificates of Possession ("CPs") to Yakweakwioose members who have paid out their mortgages;

Whereas there are existing CP's on Yakweakwioose Reserve Lands which were issued under the *Indian Act*, which will continue to in accordance with the *Yakweakwioose Land Code*; and

Whereas Yakweakwioose Council believe it is in the interests of the social, economic and community development of Yakweakwioose to continue to provide CPs for Members in appropriate circumstances and will commit to ensure that the process is fair and transparent and follows clear polices and criteria;

NOW THEREFORE, THIS YAKWEAKWIOOSE CERTIFICATE OF POSSESSION LAW IS HEREBY ENACTED A LAW OF YAKWEAKWIOOSE.

1. TITLE

- 1.1 This Law may be cited as the "*Yakweakwioose Certificate of Possession Law*".

2. DEFINITIONS

- 2.1 For the purposes of this Law, terms have the same definitions as in the *Yakweakwioose Land Code* except as set out below.
- 2.2 The following definitions apply in this Law, where a CP means a CP as defined in the *Yakweakwioose Land Code* but, also means an Allotment which grants the CP:

"Province" means British Columbia.

3. GENERAL CRITERIA FOR GRANTING CP's

- 3.1 A CP for Community Lands may only be granted in accordance with this Law.
- 3.2 A CP may only be granted to a Member.
- 3.3 Subject to sections 3.1 and 3.2, a CP in Community Lands may be granted in accordance with this Law.
- 3.4 Nothing in this Law prevents the granting of a CP in a strata title in accordance with this Law.

4. NATURAL RESOURCES

- 4.1 Unless specifically excluded by the document granting a CP of Yakweakwioose Lands, CPs include all Natural Resources on or under that land to the extent they are under Yakweakwioose jurisdiction.
- 4.2 Despite section 4.1:
- (a) the use and development of all Natural Resources on or under Yakweakwioose Lands is subject to all relevant Yakweakwioose laws, Land Use Plans and other laws; and
 - (b) extraction of ground water, development of minerals and commercial harvesting of trees require a permit from Yakweakwioose and requires fees and/or royalties to Yakweakwioose.

5. PROCESS FOR GRANTING CP LANDS

- 5.1 Council may grant a CP under any of the circumstances set out below.

CPs for Members Who are Ready

- 5.2 Council may by Council Resolution grant a CP to any member provided the following

criteria are met:

- (a) There is an available parcel of Community Land that is free and clear of any other adverse interests or has not already been designated by Yakweawkwoose for another use;
- (b) The available parcel meets the requirements of any applicable Land Use Plan and any applicable zoning and, if in a zone, is an area zoned or designated residential use;
- (c) The granting of a CP is for Residential Use only unless there has been a community Ratification Vote as required by subsection 9.16(b) of the Land Code;
- (d) The lot size is not greater than half an acre, in accordance with subsection 9.17 (a) of the Land Code;
- (e) There is a fair process to ensure that Members who do not yet have a CP have an opportunity to apply for one if they meet the criteria;
- (f) Council and the Lands Committee has reviewed an assessment of whether hook-up, servicing, or other fees are required to cover or offset expenses incurred by Yakweawkwoose in acquiring or developing the lot;
- (g) the Member has complied with all relevant Yakweawkwoose Laws and policies and has paid any relevant servicing, hook-up, administration or CP acquisition fees;
- (h) the Member has provided documents to demonstrate that all relevant mortgages, loans and housing agreements relating to Yakweawkwoose have been paid out, if this relates to an existing CMHC agreement;
- (i) there is a registered legal survey;
- (j) the Member is in good standing with and does not owe housing arrears or other debts to Yakweawkwoose;
- (k) the Member has signed an Acceptance of Home Ownership Form; and
- (l) if requested by Council, the Member has signed a release and indemnity to release and indemnify Yakweawkwoose from any liability or payments relating to the house, unit and/or the CP.

Granting CP's Relating to Pre-existing Mortgages and Housing Agreements

5.3 Where, under a written agreement between Yakweawkwoose and a Member, or where a Member can demonstrate through an affidavit or otherwise that a commitment was made,

- (a) Yakweawkwoose has committed to grant a CP to a Member once that Member has paid out a mortgage, built a home, or otherwise satisfied the conditions of the agreement, or
- (b) All or part of a CP is temporarily cancelled or surrendered for the purpose of allowing a Member to participate in a housing program authorized by

Yakweakwioose or to allow the Member to benefit from a guarantee provided by Yakweakwioose or for other purposes,

Council shall by Council Resolution grant the CP in the subject lands to the Member once the following conditions have been met:

- (c) the Member has provided documents to demonstrate that all relevant mortgages, loans and housing agreements relating to Yakweakwioose have been paid out;
- (d) the Member has satisfied all the conditions of the agreement;
- (e) there is a registered legal survey;
- (f) the Member is in good standing with Yakweakwioose;
- (g) the Member has complied with all relevant Yakweakwioose Laws and policies and has paid any relevant servicing, hook-up, administration or CP acquisition fees;
- (h) the Member has signed an Acceptance of Home Ownership Form; and
- (i) if requested by Council, the Member has signed a release and indemnity to release and indemnify Yakweakwioose from any liability or payments relating to the house, unit and/or the CP.

5.4 If, despite meeting the requirements set out in section 5.3, a Member is not willing or not able to assume ownership of the home or the CP, Council may, in accordance with Yakweakwioose housing policies,

- (a) Give direction to the designated official to enter into a lease or other arrangement by which the Member may continue to occupy the home, but
- (b) Any such arrangement in subsection (a) must require the Member to pay a monthly maintenance fee or similar fee.

Granting of a CP After a Foreclosure or Redemption

5.5 Where under a mortgage which involves Yakweakwioose as a guarantor or where Yakweakwioose otherwise has a right to redeem a mortgage, there is a default by the Member and the Member's CP is forfeited or redeemed, and Yakweakwioose pays out the mortgage or assumes liability,

- (a) Council may cancel the CP and the parcel of land then becomes Community Land;
- (b) Yakweakwioose may sell the CP by sale or by lottery for a price at least equal to the amount owing under the mortgage and any costs and expenses incurred in the foreclosure, redemption and sale proceedings; and
- (c) If the CP is sold to another Member, Council shall by Council Resolution grant a CP of the subject lands to the purchasing Member subject to this Law.

Conditional Grant

5.6 Council may attach specific conditions to the grant of an Interest including a CP, which may include, without limiting the generality of the conditions, a requirement to begin construction of a new home on a CP within six months.

- 5.7 The conditions for any conditional grants shall be in writing and may specify if the grant will be automatically cancelled if the one or more of the conditions are not met.
- 5.8 If a Member fails to comply with specific conditions that lead to automatic cancellation, the grant will be cancelled and any CP provided under such a grant will revert to Community Land.

6. EXCHANGE OF LANDS

- 6.1 Council may, by Council Resolution, exchange a parcel of Community Lands for a CP held by a Member, where it is in the best interests of Yakweawkwoose, provided the following conditions are met:
- (a) the lands being exchanged are of approximately equal size or value;
 - (b) Council has made full disclosure through a newsletter or other means to Yakweawkwoose Members of the purpose and all the circumstances surrounding the proposed exchange; and
 - (c) Council has complied with all relevant Yakweawkwoose Laws, other laws and Land Use Plans.

7. CORRECTION OR CANCELLATION

- 7.1 Council may, by Council Resolution, after reviewing the documentation set out in paragraph 7.2:
- (a) Correct the name or names on a CP;
 - (b) Have a CP re-surveyed or request a surveyor to correct the boundaries of a CP; and/ or
 - (c) cancel a CP.
- 7.2 The documentation under section 7.1 may include:
- (a) A court order or ruling;
 - (b) A survey plan certified by a qualified surveyor; and
 - (c) A release and waiver signed by all individuals potentially affected which releases and indemnifies Yakweawkwoose for any claims arising from the correction or cancellation.

8. REGISTRATION OF ALLOTMENTS AND CPs

- 8.1 For each CP granted under this Law and for all corrections and cancellations, Council shall:
- (a) Direct the Lands Manager to register the CP or the correction or cancellation in the Registry.

9. CONFLICT OF INTEREST

- 9.1 A conflict of interest arises in any situation where a Council member or a staff member or their immediate family has a personal or business interest in the matter under consideration in relation to a CP or proposed CP.
- 9.2 All Council members and staff members shall notify Council in writing if they have a potential conflict of interest in relation to a decision about a CP or proposed CP.
- 9.3 No Council member shall participate in a decision, and no staff member shall make a recommendation, where a potential conflict of interest may improperly influence the result of the decision relating to a CP proposed CP.
- 9.4 For greater certainty, section 9.3 does not prevent Council members from participating in decisions, or staff members from making recommendations, in relation to a CP which will be granted via lottery or independent sale or auction processes.

10. CONFIDENTIALITY AND PRIVACY

- 10.1 Neither Council nor staff will release or make public any information about a Member's interest in housing or CPs except as required by Law or for the carrying out of a process under this Law.

11. GENERAL

- 11.1 This Law is without prejudice and will not abrogate, derogate from, diminish or suspend any of Yakweakwioose' Aboriginal rights or title.
- 11.2 Where any federal Act or regulation or provincial Act or regulation or any other Yakweakwioose Law or Law may apply to any matter covered by this Law, compliance with this Law will not relieve the person from also complying with the provisions of the other applicable Act, regulation, bylaw or law.
- 11.3 If any section of this Law is for any reason held invalid by a decision of a court of competent jurisdiction, the invalid section or subsection will be severed from and will not affect the remaining provisions of this Law.
- 11.4 The headings given to the sections and paragraphs in this Law are for convenience of reference only. They do not form part of this Law and will not be used in the interpretation of this Law.

12. PENALTY

- 12.1 Any person who violates any provision of this Law is guilty of an offence and liable upon summary conviction to a fine of up to ten thousand (\$10,000) dollars or to a term of imprisonment not exceeding thirty (30) days, or both.

13. COMING INTO FORCE


- 13.1 This Law comes into force on the date it is passed by Council Resolution.

BE IT KNOWN that this Law entitled, *Yakweakwioose Certificate of Possession Law*, is hereby:

Enacted by a Council Resolution of Council on the 16th day of Feb, 2015.

A quorum is ~~3~~ ²
BH


(Chief Frank Malloway Sr.)


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(Councilor - Terry Horne)

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(Councilor- Jennifer Malloway)

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(Councilor - Jason Malloway)

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(Councilor- Frank Malloway Jr.)