



Legislation & Regulations

First Nation Land Governance Registry (FNLGR)

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Introduction

- The First Nation Land Governance Registry is built to support land code First Nations and participating First Nations with other self-government agreements
- The federal registry will continue to operate for Indian Act land management
- Currently, the Framework Agreement (FA) and the Framework Agreement on First Nation Land Management Act (FAFNLMA) provide for Canada to operate a land register
- In future, amendments to the Framework Agreement will be required to launch the new FNLGR and for individual First Nations to transfer out of Canada's current register.....as with all other FA amendments, this requires approval of at least 2/3rds of First Nations which have signed the FA (and Canada)
- Amendments to the FAFNLMA in Parliament will also likely be required to launch the FAFNLMA and provide for the transfer out of Canada's register

Introduction (continued)

- With the upcoming federal election, the timing for Parliament to amend the FAFNLMA is uncertain but our working goal is early 2026
- We expect that FA amendments (and any associated provisions in the FAFNLMA) will provide for:
 - the establishment of FNLGR
 - the authority of the Lands Advisory Board to make regulations for the operation of FNLGR
 - a general list of the regulation making powers, including authority to charge fees
 - provisions to authorize Canada to transfer information in the federal register to the FNLGR
 - possible clarification of the federal Privacy Act to support the transfer and to exempt FNLGR from federal privacy laws
 - possible changes to Canada Lands Surveys Act.....or this might be companion legislation
- The power of the Lands Advisory Board to make the regulations is a key innovation.....no delays triggered by reliance on Canada to make regulations in future

The FNLGR.....not a Torrens System

- The FNLGR will not establish a Torrens system of land titles with an assurance fund.
- The FNLGR respects the Framework Agreement and First Nation land codes....which do not provide for fee simple ownership by individual members.....participating First Nations with self-government agreements likely the same
- The legal validity of interests registered in FNLGR is determined by reference to the land codes and other laws of individual First Nations.....and the contractual terms of those interests
- The same is true of participating First Nations with other self-government agreements where the legal validity of interests is determined by reference to the self-government agreement, self-government laws and contractual terms
- Having said this, many land codes provide that registration is also a condition for validity of interests. Failure to register in those cases would affect validity because the individual First Nation has made that the law.

Registration in the FNLGR

- If a land code requires registration, then failure to register or errors in registration are critical
- Not all land codes are the same.....vital to check with the First Nation Land Office
- FNLGR requires approval of the First Nation Land Office for almost all applications for registration
- FNLGR is vital for priority of interests
- The normal rule will be priority by date and time of application for registration (flexibility in regs for unusual cases)
- Consider your choice of FNLGR application form carefully.....because it suggests what legal rights you intend to create regardless of the name your First Nation gives to the document

Regulations

Draft Regulations – Outline

- **Definitions and interpretation** provisions (e.g. terms which apply in Quebec)
- Sections on "**abstracts**" for all parcels and a "**general index**" for plans and documents which apply to multiple parcels
- **Applications for registration**.....electronic registration and key role of First Nation Land Offices
- **Registration of "interests"**key provisions regarding registrable interests, instruments and supporting documents.....Registrar's authority to reject applications..... corrections and discharges etc
- **Registration of plans**.....subdivision plans, explanatory plans, right of way plans, mapped parcel plans etc.....
- **Air space parcels**.....special provisions for tall buildings and complicated structures

Draft Regulations: Outline

- **Effect of registration**.....key provisions on priority of registrations, including limited provisions to adjust priorities by consent (deferred priority, applications to register multiple documents in a particular order of registration).....**of particular note: The registration of an interest does not constitute a determination by the Registrar that the instrument that creates or evidences the interest is valid.**
- **Application to rescind registration**.....process to challenge registration by error or fraud for example.....requires filing a caveat and potentially a Registrar hearing
- **Lands added to or removed from reserve**.....provisions for recording additions to reserve, land exchanges, and extremely rare possibility of federal expropriation
- **General Provisions** on topics such as certified copies of documents etc....
- **Transitional Provisions**to provide for the transfer out of the current federal registry.....for existing land code and self-government First Nations.....and those who may opt in future years.

Draft Regulations: Outline

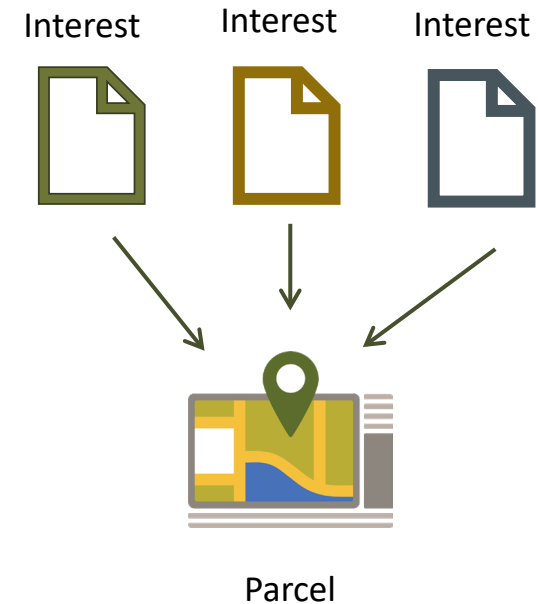
- **Transitional Provisions (continued)**.....provisions under which the Registrar of FNLGR will retain archived documents which are no longer eligible for registration in the new FNLGR (requires discussion with each land code or self-government First Nation.....limited access to archives).....

Of particular note: All First Nation lands in the First Nation Land Register shall be registered in the Register in the name of the First Nation.

Draft Regulations: Parcels & Interests

- The Register shall consist of a "parcel abstract" for each parcel of First Nation land, recording all interests in the parcel.

A "general index" will also be created to provide for example for standard mortgage conditions, change of name of a reserve, etc.



Draft Regulations: Interests

- The draft regulations recognize many of the same interests which can be registered in the current federal registry – but cuts out vague categories such as "letters", "BCR's", and "agreements"
- "Interests" include for example individual holdings, leases, mortgages, easements, and rights of way etc.....
- An "individual holding" is defined with flexibility to encompass the different ways First Nations provide for allotments, family holdings, or other long term member rights as defined in land codes, as well as older *Indian Act* interests such as Certificates of Possession

Draft Regulations: Instruments & Other Registrable Documents

- The regulations also refer to plans, such as subdivision plans, as "instruments" which are registrable
- "Instruments" also include documents related to registrable "interests" such as documents describing ownership, transfers and encumbrances or conferring a right, such as an assignment of rents, a modification, transfer or discharge of an interest
- The regulations also provide for registration of documents such as judgments, caveats and court orders



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