



WEBINAR

FNLRS 101 - Land Registry under the Framework Agreement on First Nation Land Management

Presented by

Andrew Beynon, Resource Centre
Angie Derrickson, Resource Centre





Welcome to a TMPD Webinar

FNLRS 101 - LAND REGISTRY under the Framework Agreement on First Nation Land Management

TMPD Objectives

- Introduction and explanation of Land Registry under the Framework Agreement
- Review of “interest” provisions within First Nation Land Codes
- Overview of land registry best practices for Land Governance under the Framework Agreement
- How to setup a CITRIX-ILRS account and access the First Nation Land Registry System (FNLRS)

WEBINAR PRESENTERS



Andrew Beynon
Law Making & Enforcement Advisor



Angie Derrickson
TM PD Manager



Framework Agreement on First Nation Land Management



FRAMEWORK AGREEMENT (FA) Government to Government Agreement



A government to government agreement recognizing self-government authority of First Nations (FNs) over lands, resources and environment



The FA provides a flexible approach under which individual FNs decide how to govern their lands



FA Amendments require at least 2/3^{rds} approval by land code (operational) FNs



Over the years, six formal amendments have been negotiated and agreed upon by Canada and land code (operational) FNs

Indian Act vs. Land Code

Land Registry



INDIAN ACT

ILRS – INAC approval

No Registry Regulations

Council may (with the approval of the Minister) negotiate leases up to 99 years

Council may use the land for development or other uses without the consent of the membership

Council may grant land interests or uses to family members, themselves or friends

Council is accountable to the Department of Indian Affairs

Membership cannot appeal a decision of Council

FA & LAND CODE

FNLRS – FN approval

Registry Regulations

Council may only approve a lease in accordance with the rules of the Land Code

Council decisions in accordance with LUP that is typically voted on by communities. All uses of the land must comply with the LUP

Land Codes contain provisions in respect to existing & new creation of interests which include conflict-of-interest provisions

Council is accountable to the membership

Dispute resolution panels established to handle appeals for decisions made by Council



Framework Agreement Amendment # 6 CLARIFYING SELF-GOVERNMENT AUTHORITIES

Land Management Powers

- Authority to grant interests or land rights and licences in relation to its First Nation land and natural resources

First Nations Lands Registry

- Established to record documents respecting First Nation Land for First Nations with a Land Code in force. A separate register will be maintained for each First Nation
- Regulation established in respect of the First Nation Lands Register
- Authority for new FN led registry – potentially several years down the road – requires new regulations, informatics systems and cost discussions

Law Development

- FN managed registration process, ability to develop their own laws regarding registrations

Background on FNLRS



Subsection 51(1) of the Framework Agreement on First Nation (FN) Land Management provides for Canada to establish a FNLRS to record documents respecting FN land or interests on the reserve



It is administered by Canada as a subsystem of the Indian Lands Registry System (ILRS) established under the Indian Act

 [First Nation Land Registry System](#)



First Nation Land Registry Regulations

Subsection 25(1) of the *First Nations Land Management Act* states the Minister shall establish a register

The FNLR Regulations set out the rules for the registration or recording documents

These regulations only apply to FNs that have an effective land code in place

 [First Nation Land Registry Regulations](#)



First Nation Land Code “interest” provisions





Model Land Code Requirements

Land Code – Part 7 – Interests and Licences in Land

- 25. REVENUE FROM LAND AND NATURAL RESOURCES.....29
- 26. REGISTRATION OF INTERESTS AND LICENCES.....29
- 27. LIMITS ON INTERESTS AND LICENCES30
- 28. EXISTING INTERESTS30
- 29. NEW INTERESTS AND LICENCES31
- 30. INTERESTS OF NON-MEMBERS.....32
- 31. CERTIFICATES OF POSSESSION OR MEMBER INTERESTS.....32
- 32. ALLOCATION OF LAND TO MEMBERS.....32
- 33. TRANSFER AND ASSIGNMENT OF INTERESTS32
- 34. LIMITS ON MORTGAGES AND SEIZURES33
- 35. RESIDENCY AND ACCESS RIGHTS34
- 36. TRANSFERS ON DEATH36
- 37. FAMILY HOMES AND MATRIMONIAL INTERESTS LAND LAW.....36

LINKS:

 [First Nation Land Code Model](#)

26. Registration of Interests and Licences

Enforcement of Interest and Licences

26.1 An Interest or Licence in FN Land created or granted after this *Land Code* takes effect is not enforceable unless it is registered in the First Nation Lands Register.

Registration of Consent or approval

26.2 An instrument granting an Interest or Licence in FN Land that requires the consent of Council, or community approval, shall include a form of certificate indicating that the applicable consent or approval has been obtained.

Duty to deposit

26.3 A copy of the following instruments shall be deposited in the First Nation Lands Register:

- a) any grant of an Interest or Licence in FN Land;
- b) any transfer or assignment of an Interest or Licence in FN Land;
- c) every Land use plan, subdivision plan or resource use plan;
- d) every Land law: and
- e) this *Land Code* and any amendment to this *Land Code*.

27. Limits on Interests and Licences



All dispositions in writing

27.1 An Interest or Licence in FN Land may only be created, granted, disposed of, assigned or transferred by a written document made in accordance with this Land Code and any relevant Land law.

Standards

27.2 Council may establish mandatory standards, criteria and forms for Interests and Licences in FN Land.

Improper Transactions void

27.3 A deed, lease, contract, instrument, document or agreement of any kind, whether written or oral, by which the FN, a Member or any other person purports to grant, dispose of, transfer or assign an Interest or Licence in FN Land after the date this Land Code takes effect is void if it contravenes this Land Code.

27. Limits on Interests and Licences



Continuation of existing Interests and Licences

28.1 Any Interest or Licence in FN Land that existed when this Land Code takes effect will, subject to this Land Code, continue in force in accordance with its terms and conditions.

Voluntary amendment or replacement of existing Interests and Licences

28.2 For greater certainty, the terms of a designation or surrender made under the Indian Act do not restrict the ability of the FN and third parties, a Member or non-Member, by agreement, to modify an Interest or Licence or to have the Interest or Licence replaced by a new Interest or Licence issued under this Land Code.

Replacing the role of the Minister

28.3 Immediately upon the coming into force of this Land Code, Canada transfers to FN all the rights and obligations of Canada as grantor in respect of existing Interests and Licences in or in relation to FN Land.

Unregistered Interests

28.4 A policy shall be established as soon as practical after the coming into force of the Land Code to accommodate unregistered Interests.

29. New Interests and Licences



Authority to make Dispositions

29.1 Council may, on behalf of FN, grant:

- a) Interests and Licences in FN Land, including certificates of possession, member allocations, leases, permits, easements and rights-of-way; and
- b) Licences to take natural resources from FN Land, including cutting timber or removing minerals, stone, sand, gravel, clay, soil or other substances.

Conditional grant

29.2 The grant of an Interest or Licence may be made subject to the satisfaction of written conditions.

Role of the Lands Committee

29.3 The Lands Committee shall advise Council on the granting of Interests or Licences and may be authorized to act as a delegate of Council under this section.



30. Interests of Non-Members

Grants to non-Members

- 30.1 A transfer or other disposition of all or any part of an Interest or Licence in FN Land to a person who is not a Member shall not be effective unless and until it is confirmed by a resolution of Council.

31. Certificates of Possession or Member Interests

Application

- 31.1 For greater certainty, certificates of possession or Member Interests previously issued under the Indian Act shall continue to exist after the coming into force of this Land Code.



32. Allocation of Land to Members

Policies and procedures for allocation of Land

32.1 Subject to the provisions of this Land Code, Council in consultation with the Lands Committee shall establish Land laws, policies and procedures for the allocation of Land to Members.

Allocation

32.2 Council may, in accordance with this Land Code:

- a) allocate Land to Members; or
- b) issue a certificate for an interest to a Member for Land allocated to that Member.

No allocation of Land to non-Members

32.3 A person who is not a Member is not entitled to be allocated Land or to hold a permanent Interest in FN Land.



33. Transfer and Assignment of Interests

Transfer of Member Interest

33.1 A Member may transfer or assign an Interest in FN Land to another Member without community approval or the consent of Council.

Consent of Council

33.2 There shall be no transfer or assignment of an interest in FN Land without the written consent of Council, except for:

- a) transfers between Members;
- b) transfers that occur by operation of law, including transfers of estate by testamentary disposition; and
- c) transfers in accordance with any family homes and matrimonial interests Land laws.



34. Limits on Mortgages and Seizures

Protections

34.1 In accordance with the Framework Agreement, the following provisions of the Indian Act, as amended from time to time, continue to apply to the FN Land: (a) section 29; (b) section 87; (c) Sub-section 89(1); and (d) Sub-section 89(2).

Mortgage of Allocated Land

34.2 The Interest of a Member in First Nation Land may be subject to a mortgage or charge, but only to a Member or, the FN with the express written consent of Council.

Mortgages of leasehold Interests with consent

34.3 A leasehold Interest may be subject to charge or mortgage, but only with the express written consent of Council.

Time limit

34.4 The term of any charge or mortgage of a leasehold Interest shall not exceed the term of the lease.

34. Limits on Mortgages and Seizures (cont.)

Default in mortgage

- 34.5 In the event of default in the terms of a charge or mortgage of a leasehold Interest, the leasehold Interest is not subject to possession by the chargee or mortgagee, foreclosure, power of sale or any other form of execution or seizure, unless:
- a) the charge or mortgage received the written consent of Council;
 - b) the charge or mortgage was registered in the First Nation Lands Register; and
 - c) a reasonable opportunity to redeem the charge or mortgage is given to Council on behalf of FN.

Power of redemption

- 34.6 Subject to prior redemption by the lessee or Member, Council may redeem the charge or mortgage from the charger or mortgagor in possession and shall thereupon acquire all the rights and Interests of the charger or mortgagor and of the lessee or Member for all purposes after the date of the redemption.

Waiver of redemption

- 34.7 Council may waive its right to redemption for any charge or mortgage of a leasehold Interest or Licence.

35. Residency and Access Rights

Right of residence

- 35.1 The following persons have a right to reside on FN Land:
- a) Members and their Spouses and children;
 - b) Members with a registered Interest in FN Land;
 - c) any invitee of a Member referred to in clause (a) or (b);
 - d) lessees and permittees, in accordance with the provisions of the granting instrument; and
 - e) a person authorized in writing by Council, Lands Committee or by a Land law.

Right of Access

- 35.2 The following persons have a right of access to FN Land:
- a) a lessee and his or her invitees;
 - b) a person granted a right of access under a permit;
 - c) FN Members and their Spouses and children and his or her invitees;
 - d) a person who is authorized by a government body or any other public body, established by or under an enactment of the FN, Parliament or the province to establish, operate or administer a public service, to construct or operate a public institution or to conduct a technical survey provided that the person received written authorization from Council; or
 - e) a person authorized in writing by Council or Lands Committee or by a Land law.

36. Transfers on Death

Indian Act application

- 36.1 Subject to any Land laws on family homes and matrimonial interests, until FN exercises jurisdiction in relation to wills and estates, the provision of the Indian Act dealing with wills and estates shall continue to apply with respect to Interests in FN Land.

Registration of transfer

- 36.2 A person who receives an Interest in FN Land by testamentary disposition or succession in accordance with a written decision of the Minister, or his or her designate, pursuant to the Indian Act, is entitled to have that Interest registered in the First Nation Lands Register.

Disposition of Interest

- 36.3 If no provision has been made by the deceased Member of the disposition of the Interest to another Member, the following rules apply:
- a) the Minister or his or her delegate may make application to Council requesting that an instrument evidencing lawful possession or occupation of FN Land be issued; or
 - b) a certificate for an Interest or other instrument may be issued in accordance with procedures established by Council, or application of the Minister or his or her delegate, if the beneficiary or purchaser is a Member of the FN.

37. Family Homes and Matrimonial Interests Land Law

Development of rules and procedures

- 37.1 Council has the power to enact Land laws that apply during a conjugal relationship, when that relationship breaks down or on the death of a Spouse, respecting:
- a) the use, occupancy and possession of family homes on FN Land;
 - b) the division of the value of any Interests held by Spouses in or to structures and lands on FN Land; and
 - c) the period of cohabitation in a conjugal relationship to qualify as a Common-Law Partnership.

Enactment of rules and procedures

- 37.2 The rules and procedures contained in family homes and matrimonial Interests Land laws shall be developed by the Lands Committee in consultation with the Members.

Additional Provisions

- 37.3 Family homes and matrimonial Interests Land Laws may include:
- a) provisions for administrating those laws;
 - b) despite subsection 89 (1) of the Indian Act, provisions for enforcing, on FN Land, an order of a court or a decision made or an agreement reached under those laws; and
 - c) procedures for amendment and repeal of those laws.

Notice of Land Laws

- 37.4 Council will provide, to the provincial Attorney General, notice of its intent to make family homes and matrimonial Interests Land laws and, upon enactment, provide a copy of those laws to the Attorney General.



First Nations Land Registry System (FNLRS)





First Nation Land Registry System (FNLRS)



ELECTRONIC



PROVIDES FOR
INSTANT
REGISTRATION



PRIORITY BASED



PAPERLESS



BACKED BY
REGULATIONS



Registration of Interests

The First Nation Lands Register was established to record documents respecting First Nation Land for First Nations with a Land Code in force.

The Lands Advisory Board and the Minister developed the *First Nations Land Registry Regulations* respecting the First Nation Lands Register, unlike the internal departmental policy for the *Indian Act* registry.

The FNLRS and regulations are landmark achievements. The regulations provide for greater land certainty, mortgageability, title insurance and drastically reduced or eliminated land transaction costs.

LINKS:

-  [First Nation Land Registry Regulations](#)
-  [First Nation Land Registry System](#)



Administration of the Registry



The FNLRS is administered by the Department of Indigenous & Northern Affairs Canada (INAC) and is located in Ottawa



The system is entirely electronic and does not contain the actual physical documents



Applications are submitted to the Registry through a secure website



Access to the FNLRS



Access

- 1. ILRS/FNLRS/SGFNLRS Public Registries**

<http://pse5-esd5.ainc-inac.gc.ca/ILRS/home/home.aspx>

Public Registries which is limited and unable to view certain documents, reports or to initiate a registration

- 2. Citrix Access**

<https://pa-ap.aadnc-INAC.gc.ca/Citrix/XenApp/auth/login.jsp>

Citrix which provides FN secured access to retrieve and register documents including reports



CITRIX XenApp – ILRS (FNLRS)



Request Access



Citrix Form



Authorized By
First Nation



Citrix-ILRS Portal



Main 2 Reports that are generated:

- **Reserve General**
consists of instruments relating to FN Land as a whole (establishment of the reserve, OIC's, ATR's, ROW's for public use)
- **Parcel Abstract Report**
consists of instruments relating to an individual parcel of land (lease, sublease, certificate of possession)
- Every parcel has Parcel Identification Number (PIN) unique to that parcel
- When a lot or parcel gets subdivided a new PIN is given to the new parcel

Reports Created by FNLRS

Purpose of FNLRS Registration

3 Goals of the FNLRS:

1. Give notice to the public of all documents that are registered or recorded pertaining to a parcel of land
2. Establish priorities among competing registered interests (not recorded documents)
3. An orderly listing of documents which concern the title to the FN land or parcel of land



- There is a difference between registering a document and recording a document
- A document that grants or effects an interest in FN land is **Registered**.
A Registered document has priority in accordance with the Regulations
- The date the document is registered determines the priority, not the date of the document or submission date
- A **Recorded document** does not effect the interest in the land (change of name or corporation)

FNLRS Registration vs. Recording



Priority Example

2 documents are prepared and submitted separately over the same parcel of land

Regardless of the execution dates or the date they were received, the ultimate priority will be given to the document registered first

Example 1:
Mortgage and Name Change of one of the grantees

- **Priority** will be given to the mortgage since it is a registration and not a recorded document as is the name change

**Priority
Example –
Sublease
#4023243**



INSTRUMENTS REGISTERED AGAINST PIN: 903019894

Registration Number:	Reference Registration Number:	Instrument Date:		
4023243		2015/03/06		
Registration Date:	Effective Date:	Expiry Date:	Actual Expiry Date:	
2015/06/04 9:07:37AM	2015/05/15	2114/05/14		
Instrument Type:	Purpose:			
Sub-Lease	RESIDENTIAL			
OCPG:	IOGC:	Area:	Term:	FN Land Code:
		0.00	99y 0m 0d	
Land Affected:	LOT 111 CLSR 103364			
Remarks:	LEASE REG #4021500			
Grantor(s):	Spirit Bay Developments Limited Partnership by its general Partners, TSD General Partner INC. And Beecher BAY GP LTD>			
Grantee(s):	KEVIN DANIEL MCNEIL - Interest Note: Joint Tenant NANETTE LEE MCNEIL - Interest Note: Joint Tenant			

**Priority
Example –
Mortgage
#4023244**



INSTRUMENTS REGISTERED AGAINST PIN: 903019894

Registration Number:	Reference Registration Number:	Instrument Date:		
4023244		2015/03/06		
Registration Date:	Effective Date:	Expiry Date:	Actual Expiry Date:	
2015/06/04 12:00:00AM				
Instrument Type:	Purpose:			
Mortgage				
OCPC:	IOGC:	Area:	Term:	FN Land Code:
		0.00		
Land Affected:	LOT 111 CLSR 103364			
Remarks:	LEASE REG #4021500 SUB-LEASE REG #4023243			
Grantor(s):	KEVIN DANIEL MCNEIL NANETTE LEE MCNEIL			
Grantee(s):	ROYAL BANK OF CANADA			

Document handling



Documents are submitted for registration or recording either by the FN or a lawyer acting for the party



When a document is received by the Registrar for registration/recording, the year, month, day and hour are endorsed on the instrument and it is given a registration number



This process establishes a priority of registration for all documents that are registered



Documents may be sent electronically or by mail, faxes will not be accepted



Unacceptable documents

- In the event a document is unacceptable the Registrar will return to the applicant the application and all accompanying documents and provide written reasons for refusal to register/record
- If electronically submitted the Registrar will send an email to the applicant (FN) outlining the reasons for rejection

GROUNDS FOR REFUSING REGISTRATION OR RECORDING

16. The Registrar shall not register or record a document if

- (a) it is not dated;
- (b) it is not legible;
- (c) it does not identify each party to the document;
- (d) the information contained in the application for registration or recording conflicts with the information contained in the document; or
- (e) the land description does not meet the requirements of subsection 17(1) or section 18 or 19.



Grounds for Refusing Registration or Recording



Validity of Documents

- There is absolutely no guarantee that a document which is recorded or registered in the FNLRS is legally valid or effective
- It is essential that the person wishing to obtain an interest in FN land become familiar with any FN laws concerning validity or effect



Application to Register/Record

10(1) Any person may apply for the registration or recording in the Register of a document that affects first nation land

10(2) An application for registration or recording shall contain specific information, in relation to the document submitted for registration or recording

Only one completed application and the actual document accompanying the application is required



Land Governance Office Policies & Procedures



FN Registration Process



First Nations have authority to make laws requiring that documents be certified or approved by the First Nation before registration



The First Nation law would provide that the document will have no effect if it is not certified or approved by the First Nation prior to being registered or recorded



However, there are many documents which do not require First Nation certification or approval (see FNLRR section 15)

Land Governance Office

Land Registry Policy & Procedures



- <FN> Land Code 3**
 - <FN> Registration Statistics 3
- <FN> Land Registry Fees 4**
 - <FN> Land Registry Fee Schedule 4
- <FN> Land Registry Forms 5**
 - FORM No. 01A – Transfer of Interest..... 5
 - FORM No. 01B – Estate Transfer..... 6
 - FORM No. 01C – Request for Replacement of Title 6
 - FORM No. 01D – Request for Update of Title (Community Land) 7
 - FORM No. 02 – General Instrument 8
 - FORM No. 03 – Mortgage..... 9
 - FORM No. 04 – Other Registerable Instruments 10
 - FORM No. 05 – Executions..... 11
 - FORM No. 06 – <FN> Consent 12
 - FORM No. 07 – Affidavit of Witness 13
 - Certificate of Possession (if applicable) 14

LGO Land Registry Policy & Procedures (cont.)



- <FN> Land Registry Stamps and Official Seal 16
- <FN> Inter-Departmental Form..... 17
- <FN> Land Registry Process Timeline..... 18
- <FN> Land Registry FNLRS-CITRIX Access Form 19
- <FN> Land Registry Checklist..... 20
 - Lease 20
 - Sublease 21
 - Discharge of Mortgage 22
 - Transfer of Interest 22
 - Request for Replacement of Title 23
 - Allotment (*if applicable*) 23
- Land Registry Procedures 24**
 - Assignment of Lease 24
 - Assignment of Sublease 26
 - Mortgage of Sublease, or other interest..... 28
 - Discharge of Mortgage 30
 - Death Certificate 32
 - Transfer of Interest – Certificate of Possession 34
 - Admin Transfer by Executor of Estate..... 36

LGO Land Registry Policy & Procedures (cont.)



- Matrimonial Real Property Forms (FHRMIRA) 38**
 - MRP 01 - Assessment Form 38
 - MRP 02 - Declaration Form 39
 - MRP 03 - Consent of Spouse/Common-Law Partner Form..... 40
 - MRP 04 - Consent of Executor of Will or Administrator of Estates Form 41
 - MRP 05 - Court Ordered Transfer of Land or Structures 42
- Land Status Report 43**
- <FN> Survey Process 45**



First Nation Land Registry Online Resources

<https://labrc.com/land-governance-tools/resources/>



Land Registry Forms

These samples have been developed by operational First Nations and designed to be...



Land Registry Checklists

These samples have been developed by operational First Nations and designed to be...



Land Registry MRP Forms (FHRMIRA)

The following registration procedures are samples that have been developed by operational...



Land Registry

The following samples that have been developed by operational First Nations. You...

Training, Mentorship & Professional Development (TMPD)

SUPPORT



WORKSHOPS



ONLINE COURSES



**LAND GOVERNANCE
MANUAL**



**KNOWLEDGE
REPOSITORY**



**DIRECT COMMUNITY
SUPPORT**



Questions & Discussion





**FIRST NATIONS
LAND MANAGEMENT
RESOURCE CENTRE**

THANK YOU!

For more information please visit:

LABRC.com

