



Financing Options on First Nations Land Residential & Commercial Lending under Land Code

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Land Code A-to-A Leases & Residential Mortgages





A-to-A Leases & Residential Mortgages

- Important that your Land Code permits granting of mortgages of leased interests
- Based on the Land Code the mortgage is subject to legal and equitable rights of the mortgagee (lender), including default remedies
- **How does a FN Member obtain mortgage financing?
One Scenario based on an A to A lease:**





Land Code / A-to-A Leases & Residential Mortgages

- A to A lease creates a marketable property as the lease may be transferred/sold to another member or non-member, creating a marketable, valued asset
- for conventional financing an appraisal is required
- work with lender – like PHT – that understands qualifying mortgagors using non-taxable / non-T4 income & grossing factors
- In addition to construction financing, it can allow leaseholder to refinance & take advantage of the equity in their home the same as off reserve homeowners



Mortgage of Leasehold First Nations Land Management Act



Westbank First Nation, BC – A to A Leases, Individual Homeowners



A-to-B Leases & Residential Mortgages

- under some land codes the CP Holder creates a shell company & leases to that corporate entity, similar to A-to-A leasing allows for a mortgage of leasehold
- provides lenders with proper recourse
- allows borrowers to access equity in the property
- downsides when compared with A-to-A leasing, specifically added cost and administration



Land Code

LENDER'S PERSPECTIVE

Commercial Financing



Framework Agreement - Land Code LENDER'S PERSPECTIVE for Commercial Financing

5) Certainty



4) Self - Determination



1) Efficiency



2) Revenue
Control



3) Powers of
Ownership





Non-FN Commercial Development - Play Estate Winery
Penticton Indian Band lands



***FN owned Commercial Dev - Dakota Dunes Golf Course
Whitecap Dakota Nation lands, SK***



***Member owned Commercial Dev - Eagles Nest Gas Bar
Nipissing First Nation lands, ON***

Best Practices & Lessons Learned

- **Consult with experienced legal counsel early**, expert in Land Code nuances for: First Nation, commercial tenant(s) & lenders
 - ❖ prepaid vs term payments (tenant/lender)
 - ❖ length of lease (tenant/lender)
 - ❖ mortgagee remedies / default constitution (lender)
 - ❖ Non-Disturbance Agreements / Exclusivity Clauses (tenant)
 - ❖ assignability / Sub-Let Approval Process (protect FN)
- Prioritize master planning developments / zoning / subdivisions
 - ❖ does your FN want a subdivision for membership only?
 - ❖ create marketable housing development including non-members



First Nation as Commercial Developer / Landlord / Borrower

➤ Developments & financing scenarios are as unique as each First Nation's priorities, location and capacity

- 1) Community Lands commercial subdivision under Land Code
- 2) Commercial Development Feasibility & Business plan
- 3) FN creates Legal Entity as Landlord / Headlease holder
- 4) Sublease / Prelease vs “build it & they will come”
- 5) Experienced PM; bonded builder, fixed pricing contract
- 6) “as if complete” appraisal for financing purposes



First Nation as Borrower

➤ Financing & equity requirements

- 1) Once proposed project costs established, PHT can work with you to determine how much financing the projected net operating income of the development can support
- 2) In turn that will determine how much equity is required
- 3) % of equity is also dependent on the type of project / property, financing can be from 50–80% of cost / value
- 4) Equity requirement can include the assigned value of lands per appraisal
- 5) Federal / Provincial Grants – project & timing dependent



Best Practices / Considerations

First Nation as Commercial Developer / Landlord / Borrower

- Work with your lender early
- Quality tenants
- Leasing considerations, fit up costs, operational costs, property management must be factored to determine net operating income to support long term debt

First Nation Residential Development for membership only

- Land Code subdivision plan, allow for subleasing & mortgaging?
- FN as borrower, will financing be repaid via rent collection?
Rental policy? Eviction policy? Management





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