

Wills & Estates – Exploring Future Needs



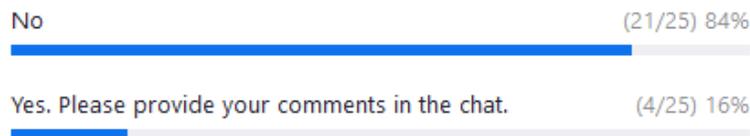
ZOOM POLL Q&A RESULTS – Oct. 7, 2021

Armchair Discussion - Exploring Change & Future Amendments

1. I believe that lands offices are feeling pressure to provide estates services to members, as least land related estates issues, even though the Framework Agreement does not currently touch on the Indian Act estates provisions...can you comment on this?

1. Do you have any comments on land office wills and estates service expectations? (Single Choice) *

25/25 (100%) answered



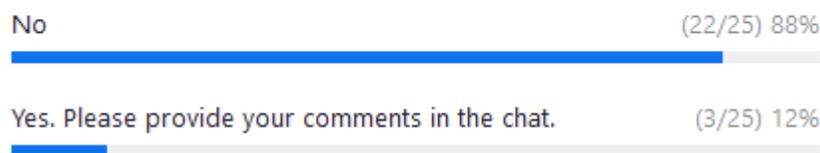
Comments

We don't have a relationship with our regional office at all, I only have recently received contacts thanks to OALA. There is no outreach whatsoever from our regional office, and it seems like there is constant turn-around in staff. I have worked with Whitney in Six Nations exclusively on our Estates issues, she is wonderful but our Estate administration issues is work that should not have to fall on her plate.

2. What recommendations would you have – from your lands office perspective – on working effectively with others on wills and estates ... be it ISC regional offices, your own First Nations' membership staff, or even members who ask about land holdings?

1. Do you have any recommendations on working effectively with others on wills & estates? (Single Choice) *

25/25 (100%) answered



Comments

- It may be better to include Wills and Estates in the FNLM. It currently takes too long to complete the process respectively.
- Could we have these forms?
Please view the [resources section](#) on the LABRC website to find copies of all of our sample forms and templates. If you need further assistance, please feel free to reach out to your support services technician.
- Is there funding for membership clerks to be involved? *To be updated, for more information contact [Estate services for First Nations \(sac-isc.qc.ca\)](#)*
- We've had several requests over the past two years and no resolve, nor visit made.
- We need kits so we can help members. There are many Elders that want to have a Will in place, they are on fixed incomes so they don't go to a lawyer on their own.

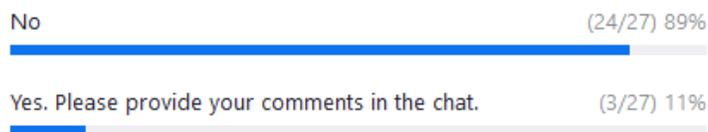
I agree, we have the same issue with our Elders on limited incomes

Please find the presentation materials [here](#). This package includes an outreach kit and Estates Q&A document.

3. Some First Nations are exploring or implementing member only land holdings under land codes...something beyond CPs under the *Indian Act*...Do you have any recommendations on dealing with old unresolved estates or anticipating future estates issues going forward? (How do you make the transition?)

1. Do you have any recommendations on dealing with old unresolved estates or anticipating future estates issues going forward? (Single Choice) *

27/27 (100%) answered



Comments

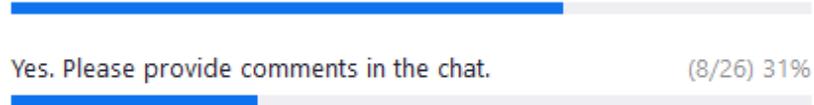
- Old, unresolved estates should be able to be dealt with under land holdings laws or procedures established under land code.
Agreed. Depending upon the circumstances of the old, unresolved estate, there may be some tools within the Land Code that can assist with resolving. Connect with your Support Services contact to look more closely at each issue and to explore what other options may be available.

4. Are you seeing practical land management difficulties with fractional holdings amongst family members (e.g. 1/72nd shares)..... practical difficulties dealing with sales of lands arising from estates or lastly, from MRP issues?

1. Are you seeing practical land management difficulties with fractional holdings amongst family members, practical difficulties dealing with sales of lands arising from estates, or from MRP issues?
(Single Choice) *

26/26 (100%) answered

No (18/26) 69%



Yes. Please provide comments in the chat. (8/26) 31%

Comments

- Yes, I had to deal with 30 people who held different fractions on one quarter of one lot.
- This becomes a large challenge for our members who want to build as they need to have the signature from each interest holder granting permission to build.
- When it comes to fractional interests on CP land, we are at a loss of what to do. While we only have two CP lots, they are further broken down to 1/4 and 1/12, etc. Also, some of the people that have interest have passed, which makes it even more difficult. The lots sit with houses on them, that are unlive in, and are becoming a safety hazard.
I agree, fractional interests on CP lands can be a real challenge to resolve and unfortunately, they can turn into safety hazards as you've noted. There may be other tools, such as law-making, that are there as an option to deal with building safety issues. Visit the [resources part of the LABRC website](#) and connect with your Support Services contact to discuss respecting available tools and resources.
- We are looking to limit the number of people on an interest in the future to help avoid these fractions.
- Is it possible to get the holdings transferred from Tenancy in Common to Joint tenancy to deal with the many fractional interests? If all parties are in agreement? that may help with this? Just curious. I have quite a few allotments such as this and have not been able to figure out a solution for this.
If the parties are willing, they could register an update of title / transfer to reflect joint tenancy ... RC support services can assist you with review of the specifics as needed.

Armchair Discussion - Exploring New Approaches

1. Assuming that the Indian Act wills and estates provisions stay...are there some adjustments that could at least help overcome some practical problems... such as registration of interests, issues around privacy, unresolved estates, and death certificates (taking years for registering transfers).

1. Do you have suggestions for improvements on estates which would not require overturning the Indian Act estates provisions? (Single Choice) *

23/23 (100%) answered

No (19/23) 83%



Yes. Please provide comments in the chat. (4/23) 17%



Comments

- If ISC cannot keep up with the backlog and the current needs of FNs to deal with estates, then I think an amendment to the Framework Agreement may be necessary to at least assist FA FNs to be able to deal with their own issues.
- With respect to the privacy issue, once a FN has a role in the estates process, there must be information sharing on the part of Canada. Here, the privacy of the individual testator and their estate comes into effect. ISC as a governmental department is subject to the Privacy Act as well as some Treasury Board policies? The Estates Reporting System to my knowledge uses personal information for admin purposes thus has to comply with privacy legislation, policies etc.?
- Regarding privacy, is there not a way to have the named executor/administrator in a will sign a consent to release information type of document naming ISC Estates so there is freedom to share info?
To be updated, for more information contact [Estate services for First Nations \(sac-isc.gc.ca\)](mailto:sac-isc.gc.ca)

2. What do you suggest to tackle the backlog? (Whether or not the Indian Act provisions are changed)

1. Do you have suggestions for the backlog of unresolved estates? (Single Choice) *

23/23 (100%) answered

No (21/23) 91%



Yes. Please provide your comments in the chat. (2/23) 9%



Comments

- As for the backlogged estates and suggestions to improve, funding and specific training needs to be provided to Lands Staff in order to assist.
3. Generally, the Framework Agreement recognizes First Nation self-government and puts an end to old colonial *Indian Act* authority of the Minister...on wills and estates can you offer thoughts on “who” could replace the Minister...Chief and

Council...membership (votes)...a First Nations organization...someone else? Do we need a variety of options or would that risk be creating inefficiency and an even worse backlog?

1. Do you have suggestions for moving beyond the Indian Act estates provisions? (Single Choice) *

19/19 (100%) answered

No (18/19) 95%

Yes. Please provide your comments in the chat. (1/19) 5%

Comments

-

4. Do you have any suggestions for avoiding fractional Land Holdings?

1. Do you have any concerns over small fractional holdings? (Single Choice) *

14/14 (100%) answered

No (9/14) 64%

Yes. Please provide comments in the chat. (5/14) 36%

2. If yes, do you have any suggestions for reform? (Single Choice) *

14/14 (100%) answered

No (10/14) 71%

Yes. Please provide comments in the chat. (4/14) 29%

Comments

- Inheritance of interests in allotments should be limited in some acceptable and equitable way within any future laws made by a FN
- develop a simple majority system within the family. Review every 5 years, or 10, depends on them.

Other Comments / Questions

- When you say Estate Management Fund, do you mean a budget for the First Nation? Thank you!
Estate Management Fund is in reference to an internal fund that the First Nation could set up to assist Members with resolving their long-standing estate issues
- So when an heir to an estate is a non-member, is their interest in the land sold in a sale conducted by ISC, or are there provisions written into the band's land code to handle this?
An estate sale is typically conducted by ISC. Please connect with your regional ISC estates officer for more details. It will also be important to review the land code for any other requirements that may apply in a particular situation.
- Wills can be kept in Membership files?
Some FNs keep wills in membership office in a fireproof safe

- Do you have to register a death certificate in FNLRS to trigger right of survivorship?
We register the death certificate, and it removes the deceased joint tenant leaving the survivor on title. We do the same type of registry...
- These are just suggestions not requirements, right?
Correct, all Resource Centre materials are suggestions that are based on the collective experiences of First Nations. It is very important for each First Nation to review their Land Code and any Land Laws enacted under the Land Code for any requirements. It is up to each First Nation to determine how to meet those requirements. Resource Centre materials and samples are there to assist First Nations considering all available options and for use in determining their own process.
- How can Operational FN's deal with decades-long unsettled estates?
The backlog of unresolved estates is an issue we're going to talk about in the upcoming armchair discussion of estates. We are hoping to hear from lands offices your suggestions on issues like tackling backlogs during this session and afterwards. I do not know if the leadership at the December AGM will ask us to explore a Framework Agreement amendment to create options in the Framework Agreement beyond Indian Act estates but whether or not that happens, we are also interested in practical improvements on issues like the backlog.
- Is it common practice for Land Code Bands to request a copy of the will who hold a CP? And then to request a death certificate from the executor when the member passes?
It is the responsibility of the Executor or the appointed Administrator to determine who will hold a CP based upon the approved Will and Indian Act estate regulations. If the allotment is held in joint-tenancy by the deceased then it is necessary to request a copy of the death certificate in order to remove the deceased from title. For more in-depth discussions about this please connect with your Resource Centre Support Services point of contact.
- Is there a one-pager to outline the process, of who family members contact in ISC to start the process? Something we can give to our Band members, to let them know what to do.
There is a hardcopy kit available in the TMPD workshop materials [here](#), where you will find several resources on membership outreach.
- If there is no will in place, can an Executor claim deceased persons home etc?
• *No, the administrator (no Executor, if there is no Will) cannot claim the home.*
- Could FNLMRC/ISC provide funding for drafting wills for Members?
- *Through ISC, there is a little bit of proposal-based funding, but not much.*
- *Our Nation accessed that funding, and we received enough funds to get about 30-40 wills completed. It is a good funding source for this.*
- Depending on when the person dies, will follow the new Wills and Estates Act or follow the old succession Wills and Estates Act -- right?
This question is referring to provincial legislation although many provinces have Wills and Estates legislation as well as succession Acts as well. I'm assuming it is BC as they amalgamated all of their estates legislation in 2014. This would only apply if the estate on reserve (through the IA Wills and Estates Regulations) was transferred to provincial court for probate. Therefore the new legislation would apply.
- Is there a mechanism for the family to appoint a new executor if the named one passes away or renounces, in writing, their participation as the appointed executor?

Hi Erna, this is Holly Beaton. I work with Lynn as the Director responsible for the Estates Services program in ISC. To answer your Q, under the IA, an executor can be removed and another appointed if an Executor or Administrator renounces or dies.

- Is the posting for Notice to Creditors posted in a Newspaper or online somewhere?

Yes, these are posted in a Post Office, Newspapers, or any public place ...

- If land does not sell within 6 months and it reverts back to the band, is the band obligated to pay the heir(s) value for the land?

This refers to section 50 of the IA – no provision to give them value for the land... however money back for improvements made to the land or to the home would be provided. The right reverts back to the First Nation free from any claim on the part of the devisee or descendant. Payment can be made at the discretion of the Minister to the devisee or descendant from the funds of the First Nation (band), for compensation for permanent improvements as the Minister may determine.

- Probably not common practice, however a member is wanting to have land transfer forms complete and signed to be submitted upon passing then to be transferred to the children rather than having a will in place. What are the pros and cons of this approach?

To be updated, for more information contact [Estate services for First Nations \(sac-isc.gc.ca\)](mailto:sac-isc.gc.ca)

- If a property was held in common by two members (brother and sister) and it has not been surveyed into two separate parcels when either brother and sister die and leave their portion (un-surveyed) to their heirs (s) in the will how is this addressed is it 50/50 shares?

To be updated, for more information contact [Estate services for First Nations \(sac-isc.gc.ca\)](mailto:sac-isc.gc.ca)

- We have 45+ Elders who want a Will done in our community, with all these variation of complications to writing a Will... I believe our Lands Department put in a Proposal Request for someone coming in to help write Wills. Can we be on a wait list for the Funding for help? It's very hard to write a Will, not knowing if it's done right or not?

To be updated, for more information contact [Estate services for First Nations \(sac-isc.gc.ca\)](mailto:sac-isc.gc.ca)

- I am wondering about FHRMIRA and how that effects wills and estates? What if a member willed their estate to a sibling but the spouse applied to the courts under the MRP law for a life estate or half value of the home?

A: The answer depends on various factors (assuming the Indian Act's estate provisions will apply - deceased is a First Nation member who is registered under the Indian Registry; and resided in their home located on reserve at the time of their death.)

Under FHRMIRA, a surviving spouse or common-law partner is entitled to an equal division of the matrimonial interests or rights on reserves. The Provisional Federal Rules (PFRs) of FHRMIRA provide new rights for survivors. Sections 34-40 of the PFRs explain the rights of survivors upon the death of a spouse or common-law partner.

With respect to selling the estate, a surviving spouse or common-law partner has two options: Under the PFR's: They may choose to inherit from the deceased's will or under the estates provisions of the Indian Act in respect of the family home and other matrimonial interests; or They may choose to apply to court for an amount equal to half the value of the deceased spouse's or common-law partner's interest or right in the family home and of other matrimonial interests or rights.

Also, it depends if the spouse or common law was a First Nation or non-member as the PFRs do not lead to non-Indians or non-members acquiring a permanent interest in reserve land. Once the family home and matrimonial rights or interests have been distributed, the remainder of the estate will be distributed to the remaining heirs as per the Will (or Section 48 of the Indian Act, where there is no existence of a valid Will.)

Comments

- Any complaints or concerns regarding estate administration should always be put in writing and sent to your regional estates officer
- If a survey is required NFN works with the Executor to determine the boundary lines and receives direction for Transfers that have not been completed by the person before they died. We obtain legal advice and abide by it when we have to do so.
- Our issue is in dealing with ISC Estate Officers. We seem to keep getting bounced back and forth between Estate Officers. It hasn't been made clear to us as to who we deal with regarding our estate issues. We are a relatively new Land Code FN and we understood that Estates is not a function or responsibility that we assumed. However, we are finding more and more that ISC generally advises our Members and our Lands Office those transfers are now our responsibility. We don't know who to contact at this point.

Thank you please forward any forms that would help with Estate Planning and Wills.

You can find resources such as an Estates Outreach Kit and Estates Q&A on the presentation and materials page for this workshop. Please find that [here](#).