

POLICY 2 REGISTRATION

POLICY 2 REGISTRATION..... 1

Purpose	1
Legal Authorities	3
Roles and Responsibilities	3
Policy	3
Process	8
Resources and Forms	9

Purpose

The objectives of this policy are to:

- (a) provide general information for the registration of land instruments that grant an interest or licence in ʔaᑭam lands;
- (b) describe the role and responsibilities of the Lands Department, and individuals in the registration process;
- (c) prescribe the forms of land instruments that must be registered.

General Overview

The Framework Agreement on First Nation Land Management and the First Nations Land Management Act provide for Regulations to establish and operate a First Nations Land Register. The regulations provide a legislative basis for the registration of documents affecting interest and licences in First Nation land.

The First Nation Land Register

The First Nation Land Register:

- (a) is a federally regulated database of land instruments that grant interests and licences relating to First Nations reserve lands;
- (b) does not purport to guarantee the accuracy of documentation filed therein;
- (c) is maintained in an office known as the First Nation Land Registry;
- (d) is maintained by a registrar who is an Department of Indigenous Services Canada officer responsible for managing the First Nation Land Registry.

Only a First Nation that is operational under a land code can create an account on the First Nation Land Registry's online system that allows them to register an interest. Individuals cannot do this.

The information in the First Nation Land Register is used by ʔaᑭam to:

- assess applications for allotment and for the use of ʔaᑭam lands;

- confirm a registered interest before issuing a certificates of possession; and
- assist members in determining whether an interest they purport to have is registered and what that interest includes.

There is no guarantee that a document that is registered in the First Nation Land Register is legally valid or effective, or that all documents affecting an interest in ʔaǰam lands have been submitted for registration.

An interest or licence in ʔaǰam lands created or granted after the *ʔaǰam Amended Land Code* came into effect, is not enforceable unless it is registered or recorded in the First Nation Land Register, in accordance with the *First Nations Land Registry Regulations*.

Benefits and Effect of Registration

The benefits of registering an interest in ʔaǰam lands in the First Nation Land Register include:

- I. Courts can enforce a land instrument if it is registered¹;
- II. having a record of transactions and uses of ʔaǰam lands to allow ʔaǰam to track transactions;
- III. the documentation of priority of interests;
- IV. providing a history of transactions and interests granted on a parcel of land;
- V. Helping to secure and protect the legal rights of individuals who have, or may acquire, an interest or licence in or to ʔaǰam lands;
- VI. Establish rules to determine priority among and between registered or unregistered interests documents;
- VII. A registered instrument has priority over an unregistered instrument;
- VIII. Instruments registered in the Indian Lands Registry system before the Regulations came into force have priority over instruments registered after these Regulations came into force.

Table 2.1 Registerable Interest Examples

Type	Description
Individual(s)	A First Nation's member's interests. Residential rental agreements, leases or subleases. Could be commercial leases where third party has been granted use by Individual interest holder.
Community	E.g. administrative offices, community hall, daycare, schools, health centre, public works facility, band owned housing, wildlife (protected or conservation areas), water/sewage treatment plant, cemetery.
Natural Resources	E.g. timber cutting, gravel extraction.
Traditional/Custom/Family Holding	An original allocation or compounded heirs.
Third Party	E.g. Commercial/retail space, offices rented to third party institutions, churches, healing lodges etc.
Easement/Right of Way	E.g. Utility roads

¹ The Courts are required to take Land Code as the law meaning that without registration no land instrument will be enforced by the courts.

Information taken from the LABRC Unregistered Interests Workshop

Legal Authorities

The relevant legal authorities are:

- (a) section 25 of the [First Nations Land Management Act](#);
- (b) sections 8.2, 16.9, 26.2, 29.1 to 29.6, 34.9 and 36.1 to 36.4 of the *ᑭᓄᓐᓄᓐ Amended Land Code*; and
- (c) the [First Nations Land Registry Regulations](#).

Roles and Responsibilities

Role of Council

See Policy 1 Regarding Council Role, and *ᑭᓄᓐᓄᓐ Amended Land Code* Section 29.2(c)

Role of the Lands Department

The Lands Department is responsible for the following taken in part from the *ᑭᓄᓐᓄᓐ Amended Land Code* S.29.2, in addition to what is generally stated in Policy 1:

- (a) developing forms of land instruments for use in registering or recording interests or licences in the First Nation Land Register if it is deemed necessary and advisable by the Lands Department;
- (b) processing applications for the registration or recording of land instruments and documents that relate to interests or licences in *ᑭᓄᓐᓄᓐ* lands in the First Nation Land Register;
- (c) maintaining and protecting records in relation to *ᑭᓄᓐᓄᓐ* lands in the Lands Department files;

Role of the Lands Committee

See Policy 1 for general responsibilities.

Policy

Enforceability of Registered Interests

An interest or licence in *ᑭᓄᓐᓄᓐ* lands created or granted after the *Amended ᑭᓄᓐᓄᓐ Land Code* comes into effect, is not enforceable unless:

- (a) It is registered in the First Nation Land Register; or
- (b) It is a residential tenancy agreement.

Registration of Consent or Approval

No land instrument that requires the consent of Council, approval of the *ᑭᓄᓐᓄᓐ* Lands Department, or approval of Members at a Meeting of Members or in a Ratification Vote may be registered or recorded in the First Nation Land Register unless a certified copy of the document

that records the consent or approval is attached to the land instrument (per section 29.4 *ᐃᓄᓄᓄ* Amended Land Code).

Table 2.2 Guideline for Minimum Land Description Requirements

10.0 CHART A - GUIDELINE FOR MINIMUM LAND DESCRIPTION REQUIREMENTS	
Land Transaction Purpose	Minimum Description Requirement ^{note 1, 2}
I ADDITIONS TO RESERVE	Provincial Plan recorded in CLSR
II BAND VOTE FOR DESIGNATION	Explanatory Plan (<i>Administrative Plan</i>)
III DISPOSITION OF RESERVE ^{note 3}	
a) Surrender of Parcel	Plan of Survey (<i>Official Plan</i>)
b) Highway / Right of Way Transfer ^{note 4}	Plan of Survey (<i>Official Plan</i>)
IV EXCLUSIVE USE	
a) Allotment of land ^{note 5}	Plan of Survey (<i>Administrative Plan</i>)
b) Lease of land for longer than 10 years ^{note 6}	Plan of Survey (<i>Administrative Plan</i>)
c) Lease of building unit for longer than 10 years	Plan of Building Unit(s) (<i>Administrative Plan</i>)
d) Lease of land for 10 years or less ^{note 7}	Explanatory Plan (<i>Administrative Plan</i>)
e) Lease of building unit for 10 years or less	Textual Description
f) Interest in Airspace	Plan of Airspace Parcel(s) (<i>Administrative Plan</i>)
V NON-EXCLUSIVE USE	
a) Permit or License ^{note 7}	Explanatory Plan (<i>Administrative Plan</i>)
b) Utility Permit over unencumbered lands	Textual Description
c) Utility Permit over encumbered lands	Explanatory Plan (<i>Administrative Plan</i>)
d) Access Agreement (Access Right of Way) over Allotted or Leased lands	Textual Description
e) Agricultural Permits	Land Use Area Plan (<i>Administrative Plan</i>)

Source: Interdepartmental Letter of Agreement related to the Cooperation in the Area of Surveys and the Specifications for Descriptions of Land for Transactions on Reserve Lands 2014.

Requirements for Documents That Are Submitted for Registration

A document that is submitted for registration must, per the *First Nations Land Registry Regulations*:

- (a) show the date it was executed;
- (b) be executed and be witnessed by at least one other person who has attained the age of majority;
- (c) identify each party to the transaction;
- (d) identify the nature of the right or interest to be registered;
- (e) provide the name of ᑭᓱᓂ, the name of the ᑭᓱᓂ lands and lot number if any associated with the transfer;
- (f) contain a legal land description that consists exclusively of a reference to one or more complete parcels on a registration plan or official plan, if it grants:
 - (i) an interest or licence in ᑭᓱᓂ lands to a person who is not a member of ᑭᓱᓂ for a term of ten (10) or more years;
 - (ii) a strata title, a condominium interest or any similar interest or right;
 - (iii) an allotment to a member;
 - (iv) a transfer of an allotment;
 - (v) the expropriation of an interest in ᑭᓱᓂ lands; or
 - (vi) an easement;
- (g) if the transaction to which the document relates is the original grant of a lease, licence, permit or easement, be accompanied by an original Band Council Resolution from Council consenting to the transaction; and
- (h) be accompanied by a list of, and copies of, any supporting documents accompanying the document being submitted for registration or recording.

Do Documents Being Submitted for Registration Have to be Original?

In general, documents that are submitted for registration must be originals. However, the following documents may be submitted instead of an original document:

- (a) a copy of a judgement or court order, certified by the court;
- (b) a copy of a document registered in a provincial registry or land titles system, certified by the appropriate provincial registrar;
- (c) a copy of a death certificate, marriage certificate, name change certificate, power of attorney, will, approval or probate of will, or appointment of administrator, certified by the person who has custody of the original (certified by an appointed commissioner for taking affidavits);
- (d) a copy of a certificate of amalgamation or change of name of a corporation, certified by the agency responsible for recording the amalgamation or change of name;
- (e) a copy of a document issued by ᑭᓱᓂ, that is certified by the person who has custody of the original.

A copy of a document is considered certified when it is signed and dated along with a statement by the person signing it declaring that the document is a copy of the original document.

Allotment

Where Council grants an allotment, the following documents must be registered in the First Nation Land Register:

- (a) the Band Council Resolution that approves the allotment; and
- (b) the Form 3-1-02: Allotment to Member.

Transfer of an Allotment

Where an allotment of *ᐱᐱᐱ* lands is being transferred from one member to another, the following documents must be registered in the First Nation Land Register:

If the transfer of the allotment is by an agreement between two (2) members who are both living at the time of the transfer:

- (i) Form 3-2-01: Transfer of Interest in Allotment, with the consideration section of that form whited or blacked out; and
- (ii) if the transferor has a spouse or common-law partner, Form 3-2-03: Consent of Spouse;

If the transfer of the allotment is pursuant to a testamentary disposition or succession:

- (i) Form 3-2-01: Transfer of Interest in Allotment;
- (ii) a legal document or court order that proves the person executing the transfer is the person stated in section 36.1 or 36.2 of the *ᐱᐱᐱ Amended Land Code*, and

If the transferor (the deceased member) had a spouse or common-law partner, Form 3-2-03: Consent of Spouse;

If the transfer of allotment is executed by a personal representative of the transferor and the transferor is allegedly mentally incompetent:

- (i) Form 3-2-01: Transfer of Interest in Allotment, with the consideration section of that form whited or blacked out; and
- (ii) a legal document from the Minister, or a court order, that proves the person executing the document is the person stated in section 36.3 of the *ᐱᐱᐱ Amended Land Code*;

If the transfer of allotment is executed by a personal representative of the transferor and the transferor is not allegedly mentally incompetent:

- (i) Form 3-2-01: Transfer of Interest in Allotment, with the consideration section of that form whited or blacked out, and
- (ii) a legal document or court order that proves the person executing the document is the transferor's power of attorney;

If the transfer of the allotment is pursuant to either subsection 50(2) or 50(3) of the *Indian Act*:

- (i) Form 3-2-01: Transfer of Interest in Allotment, with the consideration section of that form whited or blacked out; and
- (ii) Form 3-2-02: Declaration of Superintendent, with the consideration section of that form whited or blacked out.

Lease, Permit, Licence, Easement or Right-of-way in an Allotment

Where a member grants a lease, permit, licence, easement or right-of-way in their allotment, the following documents must be registered in the First Nation Land Register:

- (a) Form 2-1-01: Registration of Interest;
- (b) the original lease, permit, licence, easement or right-of-way; and

(c) where the lease, permit, licence, easement or right-of-way that is granted will involve the development on a cultural heritage site, an original, certified copy of the results from the ratification vote that approved of the lease, permit, licence, easement or right-of-way.

Lease, Permit, Licence, Easement or Right-of-way in ?aqam Community Lands

Where Council has granted a lease, permit, licence, easement or right-of-way in ?aqam community lands, the following documents must be registered in the First Nation Land Register:

- (a) the Band Council Resolution that approves the lease, permit, licence, easement or right-of-way;
- (b) the lease, permit, licence, easement or right-of-way; and
- (c) where the lease, permit, licence, easement or right-of-way that is granted will involve the development of a cultural heritage site, a certified copy of the results from the ratification vote that approved of the lease, permit, licence, easement or right-of-way.

Cancelled Allotment, Lease, Licence, Permit or Right-of-Way in ?aqam Community Lands

Where Council cancels an allotment, lease, licence, permit or right-of-way in ?aqam community lands, the following documents must be registered in the First Nation Land Register:

- (a) if the licence, permit or right-of-way is cancelled at the request of a licensee, permittee or grantee:
 - (i) the Band Council Resolution consenting to the cancellation; and
 - (ii) Form 6-1-03: Certificate of Cancellation of a Licence, Permit or Right-of-Way;
- (b) if the lease, licence, permit or right-of-way is cancelled by Council because the interest holder failed to comply with the terms of their lease, licence, permit or right-of-way, the notice of cancellation;
- (c) if an allotment is cancelled because Council has determined that it was issued in error, by mistake or by fraud:
 - (i) Form 6-1-01: Cancellation of Allotment; and
 - (ii) if a new allotment was granted to remedy the error or mistake:
 - (A) the Band Council Resolution granting the corrected allotment, and
 - (B) the newly issued Form 3-1-02: Allotment to Member;
- (d) if a lease, licence, permit or right-of-way is amended because Council has determined that it was issued in error, or by mistake, the amended lease, licence, permit or right-of-way; and
- (e) if the lease, licence, permit, easement or right-of-way in ?aqam community lands is cancelled because Council has determined that it was issued by fraud, Council will provide instructions on what to register.

Expropriated Lands

Where Council expropriates ?aqam lands, the following documents must be registered in the First Nation Land Register:

- (a) the Band Council Resolution that approves of the expropriation document; and
- (b) the expropriation document.

Voluntary Land Exchange

Where Council voluntarily exchanges ʔaǰam lands as part of an addition to reserve process, the following documents must be registered in the First Nation Land Register:

- (a) the land exchange agreement; and
- (b) a certified copy of the results from the ratification vote that approved of the land exchange agreement.

Laws

Where a new or amended law is enacted, the new or amended law must be registered in the First Nation Land Register.

Effect of Submitting for Registration

The submission of a land instrument for registration in the First Nation Land Register does not imply that the document is validly made or that it has been registered as opposed to having been recorded.

Effect of Registration – Creating Priority Interests

A registered land instrument is entitled to priority over an unregistered land instrument affecting the same parcel.

Land instruments registered in the First Nation Land Register that affect the same parcel of land have priority according to the time and date of the registration of the land instruments evidencing those interests or licences and not according to the time and date that the documents were executed.

When Registration is Refused by the Registrar

Any land instrument that the registrar refuses to register or record should be corrected and re-submitted for registration as quickly as possible.

Process

In general, the processes for the registration of land instruments that grant interests and licences relating to ʔaǰam lands are set out in the *First Nations Land Registry Regulations*.

Who is Responsible for Submitting a Document for Registration?

The Lands Department is responsible for ensuring that the following documents are submitted for registration in the First Nation Land Register, in accordance with the *First Nations Land Registry Regulations*:

- (a) Except residential tenancy agreements, any interest or licence in ʔaǰam lands that ʔaǰam is a party to;
- (b) an interest or licence in ʔaǰam community lands granted by ʔaǰam;
- (c) the transfer or assignment of an interest or licence in ʔaǰam community lands that

Council consents to;

- (d) a completed application for registration of an interest or licence in ᐱᐱᐱ lands received by the Lands Department;
- (e) a copy of the *ᐱᐱᐱ Amended Land Code* and any amendments to the *ᐱᐱᐱ Amended Land Code*; and
- (f) any law made pursuant to the *ᐱᐱᐱ Amended Land Code*.

Where a member decides to transfer their allotment, or grant a lease, licence, permit, easement or right-of-way in or to their allotment, **it is the responsibility of the parties to that transaction to provide the Lands Department with all forms that are required to be registered under this policy**, and then the Lands Department is responsible for registering that land instrument in the First Nation Land Register, in accordance with the *First Nations Land Registry Regulations*.

Arranging with the Lands Department to Register an Interest or Licence

The Lands Department will make itself available, by appointment and between the hours of 8:30am and 4:30pm on regular business days, to receive applications for the registration of a land instrument in the First Nation Land Register.

Where a person asks the Lands Department, without an appointment, to register a land instrument that relates to an allotment, the Lands Department must:

- (a) provide that member with:
 - (i) if the person wants to register the transfer of an allotment:
 - a copy of this policy;
 - a copy of Policy 3-2: Transferring Allotments; and
 - any forms required for the registration of their specific allotment transfer;
 - (ii) if the person wants to register a lease, licence, permit, easement or other interest in an allotment:
 - (A) a copy of this policy;
 - (B) a copy of Policy 4&5: Leases, Licences, Permits and Easements Over Land Held Under an Allotment; and
 - (C) Form 2-1-01: Registration of Interest; and
- (b) set a time to meet with that member to receive all relevant documents and register their land instrument.

Where the Lands Department receives all relevant documentation required for the registration of a land instrument related to allotted lands, the Lands Department must as soon as practical:

- (a) register the land instrument in the First Nation Land Register in accordance with the First Nation Lands Registry Regulations; and
- (b) send the interest holder a copy of the registration confirmation and parcel abstract report.

Resources and Forms

Further consult the following resources:

- [*First Nations Lands Management Act*](#);
- ᐱᐱᐱ Amended Land Code*;
- [*First Nation Lands Registry Regulations*](#);

The Deputy Registrar at the First Nations Land Registry, who at the time of the writing of this Manual is:

Brenda Power
Phone: 819-743-4739
Email: brenda.power@canada.ca

The First Nations Land Management Resource Center's Developmental & Operational Support Manager, who at the time of the writing of this Manual is:

Patti Wight
Phone: 250-981-6870
Email: pwight@labrc.com

ᐱᐱᐱᐱ Contact Regarding the Registration Policy

Leeanna Rhodes, Lands Officer and Membership Clerk
250 426 5717 lrhodes@aqam.net

Forms

- 2-1-01 Registration of Interest