

# POLICY 3 ALLOTMENTS

**POLICY 3 ALLOTMENTS ..... 1**

**Policy 3-1: Creating Allotments ..... 1**

    Purpose.....1

    Roles and Responsibilities .....2

    Legal Authorities.....2

    Policy.....3

    Process.....8

    Resources and Forms.....15

**Policy 3-2: Transferring Allotments..... 16**

    Purpose.....16

    Roles and Responsibilities .....16

    Legal Authorities.....17

    Policy.....17

    Process.....19

    Resources and Forms.....22

**Policy 3-3: Leases, Licences, Permits, Easements and other interests in an Allotment ..... 23**

    Purpose.....23

    Roles and Responsibilities .....23

    Legal Authorities.....24

    Policy.....24

    Process.....26

    Resources and Forms.....26

## Policy 3-1: Creating Allotments

Please refer to the *ḥaqam Allotment Law*, 2016 for comprehensive content from which the majority of this Policy was taken from.

### Purpose

The objectives of this policy are to:

- (a) introduce the powers of Council to grant allotments under the *ḥaqam Amended Land Code* and *ḥaqam Allotment Law*;
- (b) provide standardized processes that must be followed by Council, the Lands Department and the Lands Committee in the granting of new allotments.

## **Overview**

An allotment is the right to use and occupy a parcel of reserve land.

## **Roles and Responsibilities**

### **Role of Council**

In addition to the Roles and Responsibilities noted in Policy 1, Council is responsible for:

- (a) consenting, by Band Council Resolution, to the grant of an allotment to a member.

### **Role of the Lands Department**

In addition to the Roles and Responsibilities noted in Policy 1, The Lands Department is responsible for:

- (a) ensuring the requirements in this policy and the *ᐱᐱᐱᐱ Allotment Law* are complied with in the granting of allotments;
- (b) ensuring all land instruments granting an allotment are in accordance with the *ᐱᐱᐱᐱ Amended Land Code*, *ᐱᐱᐱᐱ* laws and by-laws, and any applicable provincial or federal laws;
- (c) issuing certificates of possession;
- (d) maintaining a file in the Lands Department for all allotments; and
- (e) in accordance with Policy 2, registering all allotments in the First Nation Land Register.

### **Role of the Lands Committee**

In addition to the Roles and Responsibilities noted in Policy 1, The Lands Committee is responsible for:

The Lands Committee may assist the Lands Department with any matter related to the assessment of an application or the granting of an allotment and may perform duties and functions as directed by Council or requested by the Lands Department.

It is the responsibility of the Lands Committee to respond to allotment-related requests from the Lands Department or Council, and where necessary to consult with members on allotment-related issues.

### **Role and Responsibility of Allotment Holder**

An allotment holder is responsible for:

- (a) insurance and maintenance of their allotment;
- (b) insurance, maintenance and repairs for structures and residential homes on their allotment;
- (c) managing and monitoring any interests, licences or permits granted over their allotment;
- (d) where there are changes to ownership of their allotment, providing all relevant information to the Lands Department so such changes may be registered in the First Nation Land Register; and
- (e) ensuring all uses of their allotment comply with *ᐱᐱᐱᐱ* laws and policies, and all applicable laws or regulations of Canada or the Province.

## **Legal Authorities**

The relevant authorities are:

- (a) paragraphs 12.1, 12.2(b), 16.1 and 16.2 of the *Framework Agreement*;
- (b) paragraphs 6(1)(j) and 18(1)(b) of the *First Nations Land Management Act*;
- (c) sections 32.1, 32.1(a), 32.2, 32.3, 33.1 and 33.2 of the *ᑭᓄᓐᓄᓐ Amended Land Code*; and
- (d) the *ᑭᓄᓐᓄᓐ Allotment Law*.

The *ᑭᓄᓐᓄᓐ Allotment Law* sets out rules and procedures for the:

- (a) creation, granting and registration of an allotment;
- (b) disposal, assignment, and transfer of allotments;
- (c) entitlements of an allotment holder;
- (d) responsibilities of an allotment holder;
- (e) acquisition of a Certificate of Possession; and
- (f) powers of Council to cancel an allotment.

## **Policy**

An allotment may only be created, granted, disposed of, assigned or transferred by a land instrument in accordance with the *ᑭᓄᓐᓄᓐ Amended Land Code* or *ᑭᓄᓐᓄᓐ Allotment Law* and this policy.

### **Creation of an Allotment**

An Allotment:

- Must be created, granted, disposed of, assigned or transferred by a land instrument and in accordance with the *ᑭᓄᓐᓄᓐ Amended Land Code* and *Allotment Law*;
- May only be granted, disposed of, assigned or transferred to ᑭᓄᓐᓄᓐ or to one or more members;
- Must be allotted under the Allotment Law for a residential purpose;
- Must not exceed one (1) acre in size at the time it is allotted;
- Must only be allotted under the Allotment Law to a person who already is an allotment holder if that person's existing allotment has an occupied residential home located on it; and
- May be subject to any condition deemed necessary or advisable by ᑭᓄᓐᓄᓐ Council;
- For greater certainty, an allotment must not be granted to a legal entity other than to ᑭᓄᓐᓄᓐ or to one or more members.

### **Entitlements of Allotment**

Subject to ᑭᓄᓐᓄᓐ laws, by-laws and policies, an allotment holder is entitled to:

- a. Permanent possession of their allotment;
- b. Benefit from the resources in and of their allotment;
- c. Grant subsidiary interests, licences and permits in their allotment;
- d. Transfer, devise or otherwise dispose of their allotment to another member; and
- e. Any other rights consistent with the *ᑭᓄᓐᓄᓐ Amended Land Code* that are attached to certificate of possession under the Indian Act.

### **Characteristics of an Allotment**

Although ᑭᓄᓐᓄᓐ lands are for the use and benefit of ᑭᓄᓐᓄᓐ as a whole, An allotment means those *ᑭᓄᓐᓄᓐ* lands that have been lawfully granted to a member and in which that member has lawful possession;

Subject to ?aqam laws, by-laws, regulations and policies, the characteristics of an allotment are as follows:

- (a) it is granted, in writing, by Council pursuant to either section 32.1(a) of the *?aqam Amended Land Code* or the *?aqam Allotment Law*;
- (b) it can only be granted to, or held by, a member;
- (c) it permanently grants a member lawful possession of, and a right to use and occupy, a parcel of ?aqam lands, on the condition that the allotment holder builds a residential home on that parcel of ?aqam lands. If there are no improvements on the parcel of ?aqam lands that are part of a residential home at the time of the allotment holder's death:
  - (i) the parcel of ?aqam lands reverts back to ?aqam, and
  - (ii) all the rights and obligations related to interests and licences in or to that parcel of ?aqam lands are transferred to ?aqam;
- (d) its legal title remains with Canada;
- (e) it may be transferred by the allotment holder without the consent of Council, or to ?aqam with the consent of Council;
- (f) subject to ?aqam laws and policies, it provides an allotment holder a right to benefit from the resources in and of the ?aqam lands to which it applies;
- (g) subject to ?aqam laws and policies, it provides an allotment holder with the ability to grant subsidiary interests, licences and permits in the ?aqam lands to which it applies, provided that any original grant of a subsidiary interest, licence or permit is approved by Council;
- (h) subject to ?aqam laws, by-laws and policies, it provides the allotment holder with the ability to transfer, devise or otherwise dispose of the ?aqam lands to which it applies to another member; and
- (i) it provides the allotment holder with any other rights, consistent with the *?aqam Amended Land Code* that are attached to Certificates of Possession under the *Indian Act*.

### **Allotments Granted Prior to Enactment of the St. Mary's Indian Band Land Code**

Prior to the enactment of the *St. Mary's Indian Band Land Code*, an allotment in ?aqam lands may have been granted by:

- (a) Council, with approval from the Minister under section 20(1) of the *Indian Act*, called a cardex holding. The land for a cardex holding is not surveyed and no evidence of title is issued for the cardex holding until the land is surveyed, meaning no Certificate of Possession could be issued under the *Indian Act* without a survey being completed first;
- (b) Council, with approval from the Minister under section 20(1) of the *Indian Act*, called a Notice of Entitlement. The land for a Notice of Entitlement is not surveyed and until the land is surveyed no Certificate of Possession could be issued under the *Indian Act* without a survey being completed first; or
- (c) Council, with the approval of the Minister, under section 20(1) of the *Indian Act*, where a survey had been completed and the allotment holder was granted a Certificate of Possession.

An allotment in ?aqam lands that was created prior to the enactment of the *St. Mary's Indian Band Land Code* and that was in effect on the date the *?aqam Amended Land Code* came into force:

- (a) continues in force in accordance with the terms and conditions of that allotment;
- (b) is considered an allotment under this policy; and
- (c) must be in compliance with all ?aqam laws and by-laws.

### **Eligibility to be an Allotment Holder**

A person who is not a member may not apply for or hold an allotment in ḥaqām lands.  
An allotment to a person who is not a member is invalid.

### **Allotments Must be Consistent with the Best Interests of ḥaqām**

All allotments must be consistent with the best interests of ḥaqām.

### **Legal Description Required At Cost of Applicant / Allotment Holder**

The applicant is responsible for the costs of obtaining a legal description that refers to an official plan or registration plan to support their application.

Where an allotment holder wishes to obtain a Certificate of Possession over their allotment, they are responsible for the costs of obtaining a legal description of their allotment that refers to an official plan or registration plan.

### **Allotment must be Consistent with Other Interests in the Land**

An allotment must be consistent with previously registered interests in the same parcel of land.

### **Allotment Must be Consistent with ḥaqām Laws, Regulations and By-laws**

The granting of an allotment must be consistent with all ḥaqām laws and policies. Some examples of laws to consider are ka kniḥwi·tiyaḥa: Strategic Plan, ḥaqām Community Land Use Plan and zoning laws.

### **Allotments May Only Be Granted Over ḥaqām Community Lands**

Council may only grant an allotment over ḥaqām community lands.

### **Access Requirement**

In general, Council must not grant an allotment unless there is legal access to that allotment and the allotment does not impair the only access route to another allotment holder's lands.

### **Environmental Assessment Review Requirement**

Before granting an allotment, all environmental requirements set out in Policy 8 must be complied with.

### **Consistency with Development Plans**

Council must not grant an allotment if making such a grant will adversely impact on development plans that Council has already approved.

### **Must Be In Good Standing**

A person must be in good standing with *ḥaqām* to be granted an allotment.

### **Requirement for Mortgage Pre-Approval**

Council must not grant an allotment to a member unless that person has evidence of a mortgage pre-approval that was obtained within the three (3) months preceding the date of that member's application.

### **Requirement for Building Plans**

Council must not grant an allotment to a member unless:

- (a) that person has provided plans for the construction of a residential home on the lands requested for allotment; and
- (b) if that person is not building the residential home themselves, the name and contact information of a licensed residential builder who will be responsible for constructing the residential home and a written authorization for *ḥaqām* to confirm that the applicant has made arrangements for the licensed residential builder to manage such construction.

### **Requirements of Band Council Resolution: Preliminary Allotment Decision**

A Band Council Resolution by which Council makes a preliminary decision on an allotment must contain the following information:

- (a) the full legal name and membership number of the applicant;
- (b) the section of the *ḥaqām Amended Land Code* or *ḥaqām Allotment Law* under which the allotment will be made if the applicant meets the conditions set out in the preliminary decision;
- (c) a description, and attached sketch, of the *ḥaqām* lands that will be granted to the applicant if the applicant meets the conditions set out in the preliminary decision; and
- (d) a statement setting out that a preliminary decision has been made to grant an allotment to the applicant conditional on:
  - (i) the applicant, at their own expense and within one (1) year from the date of the preliminary decision, providing Council with:
    - a legal description of the requested allotment that refers to a registered plan or official plan and that shows there are no overlapping or inconsistent encumbrances on the requested allotment,
    - plans for the construction of a residential home on the requested allotment,
    - the name and contact information of the person who will be responsible for constructing the residential home on the requested allotment; and
    - an undertaking in a form approved by Council, setting out that the applicant will construct a residential home on the requested allotment within five (5) years of the date the final allotment is granted;
  - (ii) Council approving the plans for construction of the residential home on the requested

allotment;

(iii) the applicant, at their own expense and within two (2) years from the date of the preliminary decision, obtaining all relevant building and other permits for the construction of the residential home on the requested allotment,

(iv) the applicant obtaining either from Council or DISC a written decision setting out that the construction of the proposed residential home:

- is not likely to cause significant adverse environmental effects as defined in the *Canadian Environmental Assessment Act 2012*, or
- is likely to cause significant adverse environmental effects, as defined in the *Canadian Environmental Assessment Act*, which are justified in the circumstances, and

(e) the applicant being in good standing at the time Council grants a final allotment;

(f) a statement setting out that until such time as one (1) or more of the timeframes relating to conditions set out in the Band Council Resolution expire, ?aqam will not grant any interests or licences in or to the ?aqam lands to which the application relates to another person without the written consent of the applicant; and

(g) a statement setting out that if any one or more of the conditions set out in the Band Council Resolution are not met within the required timeframes:

- the preliminary decision of Council to grant the allotment to that member will expire,
- the applicant will be required to make a new application to pursue an allotment,
- ?aqam will not be responsible to the applicant or any third party for losses, damages, liabilities or costs in relation to the applicant's failure to comply with the conditions in the Band Council Resolution, and
- ?aqam will be free to grant interests or licences in or to the ?aqam lands to which the application relates without the written consent of, and without providing notice to, the applicant.

### **Allotments are Final**

Once an allotment is approved by Council, it cannot be cancelled unless:

- (a) it was granted in error, by mistake or by fraud, in which case it may only be cancelled in accordance with Policy 6; or
- (b) the cancellation is by agreement between the allotment holder and Council.

In certain circumstances an allotment may revert to ?aqam. These circumstances are discussed in Policy 3.

In certain circumstances ?aqam may expropriate an allotment. These circumstances are discussed in Policy 7.

### **Documentation Requirements**

For every application made under this policy, the Lands Department must maintain in the Lands Department file to which that application is connected:

- (a) the original, completed Form 3-1-01: Application for Allotment, and all supporting documentation;
- (b) all original Band Council Resolutions related to the application;
- (c) copies of all correspondence with the applicant related to the application, including letters, emails and notes from telephone conversations; and

- (d) all documentation gathered by the Lands Department in processing the application.

### **Conflicts of Interest**

Where an application is made by a council member or their immediate family, Council must follow the conflicts of interest procedures set out in the *ḥaqam Financial Administration Law 2018, Schedule – Avoiding and Mitigating Conflicts of Interest* during their consideration of all decisions related to that application.

### **Certificates of Possession**

All Certificates of Possession must be:

- (a) in Form 3-2-04: Certificate of Possession;
- (b) printed two-sided and in color;
- (c) signed by a witness and an authorized signatory in blue ink; and
- (d) officially stamped.

### **Process**

#### **Application for Allotment**

**A member who does not owe arrears or bad debt to ḥaqam** may apply for an allotment in a parcel of land that is ḥaqam community lands by completing Form 3-1-01: Application for Allotment, and submitting the completed application to the Lands Department, with all supporting documentation.

The following information must be included in an application:

- the full legal name, membership number and mailing address of the applicant;
- a description and sketch of the requested allotment;
- information on any known interests or rights held by third parties in the requested allotment;
- a description of all structures and residential homes the applicant proposes to construct on the requested allotment and a cost estimate for such construction;
- either:
  - (i) evidence in a form approved by Council that shows the applicant has sufficient funds to construct the proposed structures and residential homes, or
  - (ii) evidence of a mortgage pre-approval that:
    - a) covers the estimated costs of construction for the proposed structures and residential homes,
    - b) is in the applicant's name,
    - c) was obtained within the three (3) month period preceding the date of the application, and
    - d) is accompanied by a written authorization granting the entity that provided the applicant's mortgage pre-approval permission to confirm the authenticity of that mortgage pre-approval with ḥaqam; and
- a statement setting out:
  - (i) whether the applicant is the owner of an existing allotment, and
  - (ii) if the applicant owns an existing allotment, details of whether there is an occupied residential home constructed on that allotment.



## **Receiving an Application for Allotment**

The person at the Lands Department who receives an application must document the following in Part 2 of Form 3-1-01: Application for Allotment:

- (a) date and time that the application was received; and
- (b) the name of the person at the Lands Department who received the application.

If the applicant is not known personally to the person at the Lands Department who receives the application, the person receiving the application must either have an employee or Council member of ʔaḡam verify that applicant's identity or:

- (a) obtain two pieces of government issued identification from that applicant;
- (b) compare the two pieces of government issued identification to that applicant and the application and assess whether that applicant is the same person as the person in the identification and the person named in the application;
- (c) photocopy the two pieces of government issued identification that are provided and attach them to the application; and
- (d) document on Part 2 of Form 3-1-01: Application for Allotment whether the identification provided shows a likely representation of the applicant.

## **Creation of Lands Department File**

The person at the Lands Department who receives an application must ensure that a Lands Department file is created for that application.

## **Preliminary Application Review**

Within thirty (30) days of receiving an application, the Lands Department must complete the following steps in the following order:

- (a) verify the applicant's identity and whether the applicant is a member and if the applicant is not a member:
  - (i) prepare a letter to the applicant setting out that they are not eligible to apply for an allotment because they are not a member,
  - (ii) sign and photocopy the letter,
  - (iii) deliver one (1) copy of the letter to the applicant, and
  - (iv) place one (1) copy of the letter in the applicant's file with a notation on it stating the date that the letter was delivered to the applicant and the name of the person who delivered it to the applicant;
- (b) determine whether the applicant has provided authorization in the application for the Finance Department to disclose to the Lands Department information relating to arrears or bad debt in the applicant's name. If the applicant has not provided this authorization, advise the applicant that their application cannot proceed until such authorization is provided in writing. If the applicant has provided this authorization, check with the finance department to determine whether the applicant is in good standing with ʔaḡam. If the applicant is not in good standing with ʔaḡam:
  - (i) prepare a letter to the applicant setting out:
    - (A) that they are not eligible to apply for an allotment because they are not in good standing with ʔaḡam,

- (B) the specific details of all arrears and bad debts owed by the applicant to ᐱᓄᓄᓄ,
- (C) the name and contact information for the person in the finance department who the applicant may contact to obtain further information regarding their arrears or bad debt and to make arrangements to repay to ᐱᓄᓄᓄ their arrears or bad debt, and
- (D) an invitation for the applicant to re-apply for an allotment once they are in good standing with ᐱᓄᓄᓄ with regard to their arrears or bad debt;
- (ii) sign and photocopy the letter,
- (iii) deliver one (1) copy of the letter to the applicant, and
- (iv) place one (1) copy of the letter in the applicant's file with a notation on it stating the date that the letter was delivered to the applicant and the name of the person who delivered it to the applicant;
- (c) determine whether the requested allotment is ᐱᓄᓄᓄ community lands;
- (d) determine whether the requested allotment is surveyed. This can be done by conducting a search of the Indian Lands Registry System, First Nation Land Register, ᐱᓄᓄᓄ Lands Department files, and Natural Resources of Canada website;
- (e) if there is a survey of the requested allotment, obtain a copy of the survey and conduct an encumbrance check on the requested allotment. This can be done by printing the survey from the Indian Lands Registry System, First Nation Land Registry and searching the First Nation Land Register for other interests;
- (f) complete a parcel abstract report to determine whether there are any known encumbrances and obtain copies of all land instruments that are encumbrances on the requested allotment and add them to the Lands Department file to which the application relates;
- (g) assess whether the requested allotment and the proposed uses are in compliance with ᐱᓄᓄᓄ Laws and policies that apply to the application, including any zoning laws, *ᐱᓄᓄᓄ Community Land Use Plan, 2016* and environmental management plans;
- (h) determine whether allotting the requested allotment may impact on any development plans which have already been approved by Council or are expected to be approved by Council in the near future. To determine this, contact the director of community and economic development;
- (i) determine whether the requested allotment has within it a cultural heritage site identified in the *ᐱᓄᓄᓄ Community Land Use Plan, 2016* by checking the *ᐱᓄᓄᓄ Community Land Use Plan, 2016*;
- (j) confirm the authenticity of the applicant's mortgage pre-approval, or the applicant's capacity to otherwise fund the construction of the proposed structures and residential homes;
- (k) if the applicant is already the owner of an allotment, confirm that the existing allotment has an occupied residential home on it;
- (l) conduct a site visit to the requested allotment; and
- (m) complete Part 2 of Form 3-1-01: Application for Allotment.

### **Lands Committee Review and Recommendation**

Within thirty (30) days from the time the Lands Department receives an application, the Lands Department must:

- (a) ensure Parts 1 and 2 of Form 3-1-01: Application for Allotment are completed;
- (b) send the completed Parts 1 and 2 of Form 3-1-01: Application for Allotment, and all supporting documentation, to the Lands Committee; and
- (c) obtain from the Lands Committee a recommendation for Council on whether Council should pursue granting of the requested allotment. Such recommendation must be documented in Part 3 of Form 3-1-01: Application for Allotment.

## Report to Council

Within forty-five (45) days of receiving an application, the Lands Department must:

- (a) ensure Parts 1, 2 and 3 of Form 3-1-01: Application for Allotment are completed; and
- (b) provide the completed Form 3-1-01: Application for Allotment to Council, along with all supporting documentation.

## Council Preliminary Decision on Allotment

Council must ensure the following conditions are met before making a preliminary decision on whether to grant a requested allotment to an applicant:

- (a) an applicant must be a member;
- (b) the requested allotment must be consistent with the best interests of ḥaqām;
- (c) the requested allotment must be within ḥaqām community lands;
- (d) there must be a survey or sketch of the requested allotment;
- (e) the applicant must have either provided evidence in a form approved by Council that shows they have sufficient funds to construct the proposed structure and residential homes, or provided evidence of a mortgage pre-approval that was checked for authentication by the Lands Department and that meets the requirements of this policy;
- (f) there must be legal access to the requested allotment, unless exceptional circumstances exist and Council grants an exception;
- (g) the requested allotment must not be inconsistent with known encumbrances, unless the interest holder for the known encumbrance has provided a written letter setting out that they agree to the allotment;
- (h) the requested allotment must not adversely impact on development plans which have already been approved by Council;
- (i) if the applicant is the owner of an existing allotment, there must be an occupied residential home on that allotment;
- (j) the requested allotment must be in compliance with ḥaqām laws and policies that apply to the application, including any zoning laws, *ḥaqām Community Land Use Plan, 2016*, environmental management plans and environmental review requirements; and
- (k) if ḥaqām has provided a guarantee for a mortgage relating to a residential home on the requested allotment:
  - (i) that mortgage must be discharged, and
  - (ii) the allotment must be consistent with ḥaqām housing policies.

## Council Decision

At the next duly convened meeting of Council following their receipt of a Form 3-1-01: Application for Allotment from the Lands Department, Council must:

- (a) pass a Band Council Resolution that sets out Council's decision to:
  - (i) preliminarily approve the allotment and the conditions required under subsection 18(2) of the *ḥaqām Allotment Law* (and this policy) that must be complied with before Council will grant a final allotment, or
  - (ii) deny the application and Council's reasons for such denial;
- (b) complete Part 4 of Form 3-1-01: Application for Allotment; and

(c) return Form 3-1-01: Application for Allotment to the Lands Department along with the executed Band Council Resolution.

### **Notice to Applicant**

As soon as practical after receiving a preliminary decision on an allotment from Council, the Lands Department must complete Part 5 of Form 3-1-01: Application for Allotment and send to the applicant:

- (a) a copy of the completed Form 3-1-01: Application for Allotment;
- (b) a copy of the Band Council Resolution; and
- (c) a letter setting out:
  - (i) whether the application has been preliminarily approved, or rejected;
  - (ii) if the application has been rejected, a summary of the reasons for that rejection; and
  - (iii) if the application has been preliminarily approved, clear statements that:
    - (A) until the required conditions are met, the ?aqam lands to which the application is connected will remain ?aqam community lands under the management and control of ?aqam,
    - (B) the required conditions, deadlines and documentation requirements that must be met by the applicant before a final allotment will be granted are set out in Part 5 of Form 3-1-01: Application for Allotment, and
    - (C) ?aqam will not consider allotting the ?aqam lands to which the application is connected to any other person until after the deadlines set out in Part 5 of Form 3-1-01: Application for Allotment have passed and only if the applicant fails to meet the required conditions by the specified deadlines.

### **Obtaining an Official Plan or Registration Plan to Complete Legal Description Requirements**

- To obtain an official plan or registration plan, the applicant must contact a Canada Land Surveyor. Contact information for Canada Land Surveyors can be found on the Association of Canada Lands Surveyors Website.
- The surveyor will initiate the survey process and will seek to obtain permission from ?aqam to enter ?aqam lands to commence the survey. ?aqam will need to provide a permission letter to the surveyor.
- A permission letter must not be provided until after Council has made a preliminary decision on the proposed allotment and it must include:
  - o a statement of permission for the surveyor to enter ?aqam lands;
- information on the work that will be carried out by the surveyor, including a copy of a preliminary sketch plan that sets out the area Council is approving to be surveyed;
  - o the name of the surveyor(s) to whom the permission applies; and
  - o the signature and title of the authorized signatory.
- After the surveyor has permission to enter ?aqam lands, the surveyor will contact the applicant and enter into a contract for services with him or her.
- After the surveyor and applicant have entered into a contract for services, the surveyor will send a request for survey to the Surveyor General of Canada with the contract for services and the letter of permission attached.
- The Surveyor General of Canada must authorize the survey before the surveyor can begin the work.

- After the surveyor has acquired authorization from the Surveyor General of Canada to conduct the survey, he or she will conduct all the work and review the preliminary survey plan with the applicant.
- Next, the surveyor will provide ?aqam with a request for their review and approval of the preliminary survey plan.
- ?aqam must ensure the preliminary survey plan complies with the scope of work that was approved by ?aqam to be conducted by the surveyor and with all ?aqam laws and by-laws.
- ?aqam must then approve of the preliminary survey plan in writing by providing the surveyor with either a Band Council Resolution or a letter signed by an authorized signatory.
- After ?aqam approves of preliminary survey plan, the surveyor will:
  - o finalize the survey and send the Mylar to Natural Resources Canada in Edmonton for review and completion;
  - o provide a copy of the official plan or registration plan to the applicant and to ?aqam.
- Where ?aqam does not approve of the preliminary survey plan, the Lands Department must work with the applicant and the surveyor to have the plan amended to a form that ?aqam will approve.

### **Monitoring Completion of Conditions for Allotment**

As soon as practical after providing an applicant with Council's preliminary decision on their application, the Lands Department must set review dates for monitoring whether the applicant has completed the required conditions.

The Lands Department is responsible for:

- (a) monitoring the progress of the applicant in completion of the conditions, in accordance with the plan set out in Part 5 of Form 3-1-01: Application for Allotment;
- (b) receiving and maintaining in the Lands Department file all documentation from the applicant that is required by the preliminary decision of the Council; and
- (c) marking down in Part 5 of Form 3-1-01: Application for Allotment whether that documentation is received, by whom it is received and the date on which it is received.

### **Report to Council on Completion of Conditions for Allotment**

Where Council preliminarily approves the granting of an allotment the Lands Department must, at the next duly convened Council meeting following the completion deadlines, provide Council with the completed Form 3-1-01: Application for Allotment, and copies of all documentation received in support of completing the conditions in the preliminary approval.

If the Lands Department has received all required documentation in relation to the conditions set out in Council's preliminary approval of an allotment, the Lands Department must also prepare the following documents and provide them to Council for consideration:

- (a) two (2) original copies of a Band Council Resolution approving of the allotment and setting out:
  - (i) the section of the *?aqam Amended Land Code* or *?aqam Allotment Law* under which the allotment is being made,
  - (ii) the full legal name and membership number of the person to whom the allotment is made,
  - (iii) a legal description of the allotment that refers to a registered plan or official plan,
  - (iv) a list of all encumbrances on the allotment,

- (v) the number forming a quorum of Council,
- (vi) signature lines for the Chief and all councillors in favor of the Band Council Resolution, and
- (vii) the date of the Council meeting;
- (b) two (2) copies of a completed Form 3-1-02: Allotment to a Member; and
- (c) two (2) copies of a confirmation letter to the applicant setting out that Council has approved of the final allotment and invites the applicant in to execute Form 3-1-02: Allotment to a Member.

### **Council Final Allotment Decision**

Where Council decides to allot a parcel of land to an applicant, Council must:

- (a) pass and sign two (2) copies of a Band Council Resolution, which must meet the requirements of this policy and the *ᑭᓱᓱᓱ Allotment Law*;
- (b) sign two (2) copies of the completed Form 3-1-02: Allotment to a Member;
- (c) forward the signed documents to the Lands Department, along with all documents provided to Council for consideration.

Where Council decides not to allot a parcel of land to an applicant, Council must:

- (a) provide the Lands Department with their written reasons for not allotting the requested allotment; and
- (b) return to the Lands Department all documents provided to Council for consideration.

### **Letter to Applicant**

Where Council has made a final decision on an application, the Lands Department must provide the applicant with a letter:

- (a) confirming whether the allotment has been approved;
- (b) if the allotment has not been approved, setting out the reasons it was not approved; and
- (c) if the allotment has been approved, setting out that the allotment has been approved by Council and inviting the applicant to contact the Lands Department so arrangements can be made for the applicant to execute Form 3-1-02: Allotment to a Member.

### **Execution of Allotment to Member by the Applicant**

The Lands Department must ensure that the Form 3-1-02: Allotment to a Member is executed by the applicant and by an authorized signatory for ᑭᓱᓱᓱ.

### **Registering the Allotment**

After the applicant and an authorized signatory for ᑭᓱᓱᓱ execute Form 3-1-02: Allotment to a Member, the Lands Department must ensure the allotment is registered in accordance with Policy 2 in the First Nation Land Register.

### **Completing and Issuing the Certificate of Possession**

After the allotment is registered, the Lands Department must:

- (a) complete and have an authorized signatory sign one (1) Form 3-2-04: Certificate of Possession for each new allotment holder; and
- (b) provide each new allotment holder with:
  - (i) the names of all *ᐱᐱᐱ* laws, by-laws and *ᐱᐱᐱ Community Land Use Plan, 2016* which are in effect and the locations where the new allotment holder may access such laws, by-laws and *ᐱᐱᐱ Community Land Use Plan, 2016*,
  - (ii) one (1) original, signed copy of the Band Council Resolution granting the final allotment,
  - (iii) one (1) original, signed copy of Form 3-1-02: Allotment to a Member,
  - (iv) one (1) original, signed copy of Form 3-2-04: Certificate of Possession, and
  - (v) the updated Parcel Abstract Report; and
- (c) send the new allotment holder's information to the *ᐱᐱᐱ* Finance Department to update the taxation and assessment rolls.

### Documentation Requirement

The Lands Department must complete Part 6 of Form 3-1-01: Application for Allotment.

### Resources and Forms

Besides this policy, consult the following resources:

- (a) the *ᐱᐱᐱ Amended Land Code*;
- (b) the *ᐱᐱᐱ Allotment Law*;
- (c) the *ᐱᐱᐱ Community Land Use Plan, 2016*;
- (d) 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](mailto:brenda.power@canada.ca)

- (e) the First Nations Land Management Resource Center's Developmental and Operational Support Technician, who at the time of the writing of this Manual is:

Patti Wight

Phone: 250-981-6870

Email: [pwight@labrc.com](mailto:pwight@labrc.com)

### FORMS

- 3-1-01 Application for Allotment
- 3-1-02 Allotment to a Member
- 3-1-03 Undertaking to Build Residential Home

## Policy 3-2: Transferring Allotments

### Purpose

The objectives of this policy are to:

- (a) provide the procedures that must be followed when an allotment holder, or their personal representative, transfers their allotment in ʔaǰam lands to another member or to ʔaǰam; and
- (b) clarify the roles and responsibilities of the Lands Department in relation to the transfer of an allotment.

This policy does not address matters relating to a person's right to the use, occupancy and possession of an allotment and the division of interests in an allotment on the breakdown of a marriage or the death of a spouse or common-law partner. **The rules regarding such matters are addressed in the *ʔaǰam Matrimonial Real Property Law*, which is administered by the courts, not by ʔaǰam.** The role of ʔaǰam is limited to assisting with the registration of a transfer of such interests once a determination has been made with regard to that transfer.

### Roles and Responsibilities

#### Role of Council

Council is responsible for the following in addition to what is stated in Policy 1:

- (a) enacting laws pursuant to section 33.1 of the *ʔaǰam Amended Land Code* providing for the transfer, devise or otherwise disposal of land held under an allotment from one member to another;
- (b) cancelling or correcting any allotment over ʔaǰam lands that was issued in error, by mistake or fraud;
- (c) cancelling or correcting any allotment by agreement between ʔaǰam and the allotment holder; and
- (d) consenting to the transfer of an allotment to another member where the transfer is the result of a sale by the superintendent under section 50(2) of the *Indian Act*.

#### Role of the Lands Department

The Lands Department is responsible for:

- (a) providing members with the forms that are relevant to the registration of a transfer of an allotment;
- (b) providing members with information regarding the process for registering the transfer of an allotment;
- (c) registering transfers of allotments in the First Nations Land Registry; and
- (d) maintaining a copy of all land instruments related to allotments in the ʔaǰam Lands Department file to which a transfer of an allotment relates.

The Lands Department is not responsible for, and must not provide advice to members on:

- (a) the negotiation, drafting or execution of a land instrument that transfers an interest in an allotment;
- (b) whether a transfer of an allotment is valid or enforceable; or



- (c) any matter in relation to a dispute over the division of property on-reserve.

### **Role of the Lands Committee**

The Lands Committee has NO role in the transfer of allotments from one member to another.

### **Role of the Minister**

The Minister is responsible for:

- under section 51 of the *Indian Act*, managing the assets of a Member who is deemed mentally incompetent; and
- under section 52 of the *Indian Act*, at his or her sole discretion, managing the assets of a member who is under the age of nineteen (19) years.

### **Legal Authorities**

Relevant statutory authorities include:

- sections 50(1) to 50(3), 51 and 52 of the *Indian Act* ;
- section 16(4) of the *First Nations Lands Management Act*;
- sections 30.3, 31.1, 33.1 to 33.4 and 36.1 to 36.6 of the *ᐱᐱᐱᐱ Amended Land Code*; and
- the *ᐱᐱᐱᐱ Allotment Law*.

Sections 50(1) to 50(3), 51 and 52 of the *Indian Act* state:

Section 16(4) of the *First Nations Lands Management Act* states:

Sections 30.3, 31.1, 33.1 to 33.4 and 36.1 to 36.6 of the *ᐱᐱᐱᐱ Amended Land Code* state:

The *ᐱᐱᐱᐱ Allotment Law* sets out rules and procedures for the:

- role of Council and the Lands Department in the management of allotments;
- procedures to be followed for the creation, granting and registration of an allotment;
- rules around the disposal, assignment, and transfer of allotments;
- entitlements of an allotment holder;
- responsibilities of an allotment holder;
- acquisition of a Certificate of Possession; and
- power of Council to cancel an allotment and the cancellation procedure.

### **Policy**

#### **What is Transferred?**

When an allotment holder transfer's their allotment to another member or to ᐱᐱᐱᐱ, legal title to the requested allotment remains with Canada but all the allotment holder's rights and obligations in relation to that allotment are transferred.

### **Registration**

A document that registers the transfer of an allotment must be in Form 3-2-01: Transfer of Interest in Allotment.

The registration of a Form 3-2-01: Transfer of Interest in Allotment is not proof that a transfer of an allotment was validly made. Both the transferor and transferee are responsible for ensuring their interests in the transfer of an allotment are protected. They may do so by consulting with their own independent legal counsel. ʔaᓄam has no role in ensuring that the transfer of an allotment is validly made.

### **Council Consent**

The *ʔaᓄam Amended Land Code* does not require the approval of Council for a transfer of an allotment to another member except where the transfer is the result of a sale by the superintendent under section 50(2) of the *Indian Act*.

### **Environmental Assessment**

Although it is uncommon, the transfer of an allotment may be subject to an environmental assessment. Details on environmental assessment are found under Policy 8.

### **Transfers to Persons under Nineteen (19) years of Age**

Although an allotment holder may transfer lawful possession to a person under nineteen (19) years of age, the Minister may, at his or her sole discretion, take over the management and control of that allotment on behalf of the person under nineteen (19) years of age.

### **Transfers on Death**

ʔaᓄam has no authority to decide who will inherit a deceased member's allotment. A member who believes they are entitled to an allotment by testamentary disposition or succession must contact INAC's Wills and Estates personnel to determine whether they are entitled to that allotment and the process that must be followed to give effect to the transfer of that allotment into their name.

ʔaᓄam has no authority to determine whether the transfer of a deceased member's allotment is valid. The role of ʔaᓄam in the transfer of an allotment belonging to a deceased member is limited to:

- (a) providing Form 3-2-01: Transfer of Interest in Allotment to members and their representatives; and
- (b) at the request of a transferor or transferee, registering their completed Form 3-2-01: Transfer of Interest in Allotment in the First Nation Land Register.

### **Transfer Where Allotment Holder is Declared Mentally Incompetent**

- It is ʔaᓄam policy to presume that an allotment holder who is transferring their allotment to another member is mentally competent to do so.
- ʔaᓄam has no authority to determine whether a member is mentally incompetent. Such determinations can only be made by a health authority or a court.
- ʔaᓄam has no authority to make decisions regarding the transfer of assets belonging to a member who has been declared mentally incompetent by a health authority or a court,

regardless of whether or not that member normally resides on ʔaḡam lands. Such decisions can only be made by:

- (a) either the Minister or a person appointed by the Minister if that member is ordinarily resident on ʔaḡam lands; or
  - (b) a person named in the member's power of attorney or in a court order, if that member is not ordinarily resident on ʔaḡam lands.
- The role of ʔaḡam in the transfer of a mentally incompetent member's allotment is limited to:
    - (a) providing Form 3-2-01: Transfer of Interest in Allotment to members and their representatives; and
    - (b) at the request of a transferor or transferee, registering their completed Form 3-2-01: Transfer of Interest in Allotment in the First Nation Land Register.
  - A member who receives an allotment from an allotment holder who normally resides on ʔaḡam lands, and knows that the allotment holder was declared mentally incompetent prior to the transfer, must contact INAC personnel to determine the appropriate process for the transfer of that allotment.
  - A member who receives an allotment from an allotment holder who normally does not reside on ʔaḡam lands, and knows that the allotment holder was declared mentally incompetent prior to the transfer is encouraged to consult with their own legal counsel. The transferee must ascertain whether the person who is signing for the transfer of that allotment has a legal power of attorney or an order from the court allowing them to execute that transfer of allotment on behalf of the allotment holder.

### **Disputes Regarding a Transfer of Allotment**

Where a person has a dispute with another person or with ʔaḡam in relation to the possession, use or occupation of ʔaḡam lands, they may request that the dispute be resolved in accordance with Part 8 of the *ʔaḡam Amended Land Code*. They may also access the courts to ascertain their rights.

## **Process**

### **Process for the General Transfer of Allotments**

Where the Lands Department receives a request from a person for assistance in, or information with regard to, transferring an allotment, the Lands Department must:

- (a) provide that person with the following documents:
  - (i) two (2) copies of Form 3-2-01: Transfer of an Interest in Allotment,
  - (ii) one (1) copy of this policy,
  - (iii) one (1) copy of Policy 2, and
  - (iv) if the transferor is not deceased and has a spouse or common-law partner, two (2) copies of Form 3-2-03: Consent of Spouse or Common-Law Partner; and
- (b) advise that person that:
  - (i) the transfer of an allotment is a private matter between the transferor and transferee;
  - (ii) ʔaḡam plays no role in the negotiation, drafting or execution of a transfer of an allotment;
  - (iii) ʔaḡam does provide Form 3-2-01: Transfer of Interest in Allotment to members for their

use in registering a transfer but:

- ?aqam does not guarantee the condition of the land being transferred using the form, or that the transfer will be valid and enforceable; and
  - ?aqam will not assume any liability for any claims, losses, or damages arising out of the use of Form 3-2-01: Transfer of Interest in Allotment;
- (iv) before signing Form 3-2-01: Transfer of Interest in Allotment, the transferee and transferor are strongly encouraged to seek independent legal advice regarding the transfer to ensure that the deal being entered into is legally enforceable and that it involves what the parties entering into it think it involves;
- (v) the transfer of an allotment will not be enforceable if it is not registered in the First Nation Land Register; and
- (vi) the role of ?aqam in the transfer of an allotment is limited to:
- providing Form 3-2-01: Transfer of Interest in Allotment;
  - at the request of a transferor or transferee, and in accordance with Policy 2, registering their completed Form 3-2-01: Transfer of Interest in Allotment in the First Nation Land Register and
  - issuing Form 3-2-04: Certificate of Possession to the new allotment holder.

The Lands Department must receive and register all transfers of an allotment in accordance with Policy 3-1 in the First Nation Land Register.

Once registration is completed, the Lands Department must:

- (a) prepare and have Council sign Form 3-2-04: Certificate of Possession;
- (b) make a copy of the signed Form 3-2-04: Certificate of Possession and place it in the Lands Department file;
- (c) provide the new allotment holder with:
  - (i) the original, signed Form 3-2-04: Certificate of Possession;
  - (ii) updated Parcel Abstract Report; and
  - (iii) the names of all ?aqam laws, by-laws and *?aqam Community Land Use Plan, 2016* which are in effect and the locations where the new allotment holder may access such laws, by-laws and *?aqam Community Land Use Plan, 2016*,
- (d) document in the Lands Department file that steps 3(a) through (c) have been completed; and
- (e) send the new allotment holder's information (i.e. Name, Address, Legal Description and House number) to the ?aqam Finance Department to update the taxation and assessment rolls.

### **Process for Transfer of Allotment to a Purchaser under Subsection 50(2) of the Indian Act**

Where a member or the superintendent requests assistance in transferring an allotment under subsection (2) of the *Indian Act* to a purchaser, the Lands Department must provide that person with:

- (a) two (2) copies of Form 3-2-01: Transfer of Interest in Allotment Lands; and
- (b) two (2) copies of Form 3-2-02: Declaration of Superintendent.

The purchaser must:

- (a) complete and sign two (2) copies of Form 3-2-01: Transfer of Interest in Allotment, attaching all required documentation to it; and
- (b) provide the completed Form 3-2-01: Transfer of Interest in Allotment to the Lands Department.

The Lands Department must provide the Form 3-2-01: Transfer of Interest in an Allotment completed by the purchaser to the Superintendent, along with two (2) copies of Form 3-2-02: Declaration of Superintendent.

The Superintendent must:

- (a) sign Form 3-2-01: Transfer of Interest in an Allotment on behalf of the deceased Transferee;
- (b) complete and sign two (2) copies of Form 3-2-02: Declaration of Superintendent; and
- (c) return the completed forms to the Lands Department.

Council must approve of the transfer, in writing by signing two (2) copies of a Band Council Resolution and the Lands Department must place one (1) copy in the Lands Department file, and the other copy in the Executive Assistant's files.

The Lands Department must register the transfer in accordance with Policy 2 in the First Nation Land Register.

Once registration is completed, the Lands Department must:

- (a) prepare and have a member of Council sign Form 3-2-04: Certificate of Possession;
- (b) make a copy of the signed Form 3-2-04: Certificate of Possession and place it in the Lands Department file; and
- (c) provide the new allotment holder with:
  - (i) the original, signed Form 3-2-04: Certificate of Possession;
  - (ii) updated Parcel Abstract Report; and
  - (iii) the names of all *ᑭᓄᓐ* laws and *ᑭᓄᓐ Community Land Use Plan, 2016* which are in effect and the locations where the new allotment holder may access such laws and *ᑭᓄᓐ Community Land Use Plan, 2016*,

and document in the Lands Department file that this has been completed,

- (d) send allotment holder's information to the *ᑭᓄᓐ* Finance Department to update the taxation and assessment rolls.

### **Process for Reversion of an Allotment to *ᑭᓄᓐ* Under an Estate Transfer Pursuant to Section 50(3) of the Indian Act**

Where no tender is received within six (6) months (or period directed by the Minister) from the date when an allotment is offered for sale by the Superintendent under subsection 50(2) of the *Indian Act*, the land automatically reverts to *ᑭᓄᓐ*, subject to any payment as is directed by the Minister to be paid to the devisee or descendent from the funds of *ᑭᓄᓐ* as compensation for permanent improvements to the allotment.

The Lands Department must ensure:

- (a) any payments directed by the Minister to a devisee or descendent are approved by Council and paid out to the devisee or descendent by the Minister;
- (b) one (1) copy of Form 3-2-01: Transfer of Interest in Allotment is completed by the Superintendent and returned to the Lands Department;
- (c) one (1) copy of Form 3-2-02: Declaration of Superintendent is completed by the Superintendent and returned to the Lands Department; and
- (d) the reversion of the interest to *ᑭᓄᓐ* registered in accordance with Policy 2 in the First Nation Land Register.

Once the reversion of the interest to *ᑭᓄᓐ* is registered, the Lands Department must ensure that the following documents are in the Lands Department file:

- (a) the copy of the completed Form 3-2-01: Transfer of Interest in Allotment;
- (b) the copy of the completed Form 3-2-02: Declaration of Superintendent;
- (c) a copy of the completed registration; and
- (d) the new Parcel Abstract Report.

## Resources and Forms

Besides this policy, consult the following resources:

- (a) the *ᐱᓐᓐᓐ Amended Land Code*;
- (b) the *ᐱᓐᓐᓐ Allotment Law*;
- (c) the [First Nations Land Registry Regulations](#);
- (d) 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](mailto:brenda.power@canada.ca)

- (e) the First Nations Land Management Resource Center, Developmental & Operational Support Technician who at the time of the writing of this Manual is:

Patti Wight  
 Phone: 250-981-6870  
 Email: [pwight@labrc.com](mailto:pwight@labrc.com)

## Forms

- ᐱᓐᓐᓐ Form 3-2-01 Transfer of Interest to Allotment
- ᐱᓐᓐᓐ Form 3-2-02 Declaration of Superintendent
- ᐱᓐᓐᓐ Form 3-2-03 Consent of Spouse of Common-law Partner
- ᐱᓐᓐᓐ Form 3-2-04 Certificate Possession
- ᐱᓐᓐᓐ Form 3-2-05 Request for Replacement Title

## **Policy 3-3: Leases, Licences, Permits, Easements and other interests in an Allotment**

### **Purpose**

This Policy provides information to the Lands Department regarding allotment holders who choose to grant interests in their allotments to third parties.

Band instigated projects are to follow the same process as third party applicants.

### **Roles and Responsibilities**

#### **Role of Council**

See Policy 1 regarding Council Roles and Responsibilities

#### **Role of the Lands Department**

In addition to the Policy 1 Roles and Responsibilities, the Lands Department:

- Is not responsible for ensuring that a lease in ᐃᓐᓐᓐ land permits the leasehold to be mortgaged or charged, that the lease is in good standing, or that the leaseholder is in compliance with the terms of the lease.
- Must not provide any advice to an allotment holder regarding the negotiation, drafting or execution of a lease, licence, permit or easement over land held under an allotment.
- **When asked for advice on the negotiation, drafting or execution of a lease, licence, permit or easement over land held under an allotment, the Lands Department must encourage the person asking for advice to seek independent legal advice.**
- Is not responsible to ensure that a lease, licence, permit or easement over land held under an allotment is valid, or to monitor or enforce the terms of a lease, licence, permit or easement over land held under an allotment.
- Is responsible to ensure that an original copy of all leases, licences, permits and easements over land held under an allotment *that are received by the Lands Department from the allotment holder or interest holder*, are registered in the First Nation Land Register.
- Is responsible for maintaining a copy of all leases, licences, permits and easements relating to ᐃᓐᓐᓐ land in the appropriate Lands Department files.

#### **Role of the Lands Committee**

See Policy 1

#### **Role of the Allotment Holder**

The allotment holder is responsible for:

- (a) overseeing the negotiations, drafting and execution of a lease, licence, permit, easement or other subsidiary interest over land held under an allotment in his or her name;
- (b) obtaining the consent of Council to every lease, licence, permit, easement and other subsidiary interest over land held under their allotment;
- (c) ensuring that any lease, licence, permit, easement or other subsidiary interest over land held under an allotment that he or she grants is in accordance with the *ᐃᓐᓐᓐ Amended Land Code*,

- ᐃᓄᓄᓄ laws and any applicable provincial or federal legislation;
- (d) ensuring that any lease, licence, permit, easement or other interest over land held under an allotment that he or she grants is submitted to the Lands Department for registration; and
- (e) monitoring and compliance of any lease, licence, permit, easement or other interest that he or she grants over land held under his or her allotment.

## **Legal Authorities**

The relevant authorities are:

- (a) sections 30.2 – 30.6, 31.1, 33.1 and 36.1 to 36.3 of the *ᐃᓄᓄᓄ Amended Land Code*; and
- (b) sections 34, 36 and 37 of the *ᐃᓄᓄᓄ Allotment Law*.

Sections 30.2 – 30.6, 31.1, 33.1 and 36.1 to 36.3 of the *ᐃᓄᓄᓄ Amended Land Code* state that:

Sections 34, 36 and 37 of the *ᐃᓄᓄᓄ Allotment Law* state that:

## **Policy**

### **Characteristics of a Lease of an Allotment**

A lease of lands held under an allotment includes the following characteristics:

- (a) is a private contract between the lessor and the lessee;
- (b) ᐃᓄᓄᓄ is never the lessor but may be the lessee;
- (c) the original lessor is always the allotment holder;
- (d) the lessee may be any person, whether they are a member or not;
- (e) it provides the lessee a right of access to ᐃᓄᓄᓄ lands;
- (f) if specified in the lease, it may provide the lessee with the ability to reside on ᐃᓄᓄᓄ lands;
- (g) its terms and conditions are determined between the lessor and lessee;
- (h) unless ᐃᓄᓄᓄ is the lessee, ᐃᓄᓄᓄ does not participate in its negotiation, drafting or execution; and
- (i) if it is an original lease, it must be consented to by Council.

### **Characteristics of a Licence over an Allotment**

A licence over lands held under an allotment includes the following characteristics:

- (a) it is a private contract between the licensor and licensee;
- (b) ᐃᓄᓄᓄ is never the licensor but may be the licensee;
- (c) the original licensor is always the allotment holder;
- (d) the licensee may be any person, whether they are a member or not;
- (e) its terms and conditions are determined between the licensor and licensee;
- (f) unless ᐃᓄᓄᓄ is the licensee, ᐃᓄᓄᓄ does not participate in its negotiation, drafting or execution; and
- (g) if it is an original licence, it must be consented to by Council.

### **Characteristics of a Permit over an Allotment**



A permit over lands held under an allotment includes the following characteristics:

- (a) it is a private contract between the permittor and permittee;
- (b) ᐃᓇᓂᓄᓐ is never the permittor but may be the permittee;
- (c) the permittor is always the allotment holder;
- (d) the permittee may be any person, whether they are a member or not;
- (e) if specified in the permit, it may provide the permittee with the ability to reside on ᐃᓇᓂ lands; and
- (f) its terms and conditions are determined between the permittor and permittee;
- (g) unless ᐃᓇᓂ is the permittee, ᐃᓇᓂ does not participate in its negotiation, drafting or execution; and
- (h) if it is an original permit, it must be consented to by Council.

### **Characteristics of an Easement over an Allotment**

An easement over an allotment includes the following characteristics:

- (a) it is a private contract between the grantor and grantee;
- (b) ᐃᓇᓂ is never the grantor but may be the grantee;
- (c) the grantor is always the allotment holder;
- (d) the grantee may be any person, whether they are a member or not; and
- (e) its terms and conditions are determined between the grantor and grantee;
- (f) unless ᐃᓇᓂ is the grantee, ᐃᓇᓂ does not participate in its negotiation, drafting or execution; and
- (g) if it is an original easement, it must be consented to by Council.

### **Granting Interests and Licences to Non-members**

A person who is not a member may hold a lease, licence, permit, easement or other interest over ᐃᓇᓂ lands, except for an allotment.

The Council must provide written consent for all original grants of interests and licences in ᐃᓇᓂ lands.

Once Council consent has been provided on an original lease, it may be subsequently mortgaged, transferred or assigned without the consent of the Council or approval of the members of the ᐃᓇᓂ, so long as such transaction is allowed under the lease.

### **What Type of Lease, Licence, Permit, Easement or Other Land Instrument May be Used?**

ᐃᓇᓂ does not prescribe the types or forms of leases, licences, permits, easements or other land instruments that may be used to grant interests in ᐃᓇᓂ lands held under an allotment.

It is entirely in the power of the allotment holder to determine what type and form of lease, licence, permit, easement or other land instrument to use, so long as it is in accordance with the *ᐃᓇᓂ Amended Land Code*, ᐃᓇᓂ laws and by-laws and any applicable provincial or federal legislation.

ᐃᓇᓂ encourages allotment holders who wish to lease, licence, permit or grant easements or other interests in their lands not to do so without discussing their proposed transaction with their own

legal counsel. ᐃᓄᓄᓄ also strongly suggests that allotment holders ensure their legal counsel are experienced in reserve land transactions and aboriginal law.

## Process

### Negotiation, Drafting and Executing

ᐃᓄᓄᓄ does not require allotment holders to follow any specific process when negotiating, drafting or executing a lease, licence, permit, easement or other land instrument pertaining to their allotment.

ᐃᓄᓄᓄ strongly recommends that allotment holders who wish to grant interests in their lands to others to seek independent legal advice on their proposed transactions from a lawyer who is experienced in reserve land transactions and aboriginal law.

### Registration of a Lease, Licence, Permit, Easement or other Land Instrument over Allotted Lands

Where the Lands Department receives a request from an allotment holder or interest holder to register a lease, licence, permit, easement or other land instrument over allotted lands, the Lands Department must provide that person with Form 2-1-01: Registration of Interest and direct that person to complete the form and return it to the Lands Department.

Where the Lands Department receives a completed Form 2-1-01: Registration of Interest along with the required documentation for registration, the Lands Department must register the land instrument in accordance with Policy 2 in the First Nation Land Register.

Once the land instrument is registered, the Lands Department must:

- (a) provide the new interest holder with the names of all ᐃᓄᓄᓄ laws and *ᐃᓄᓄᓄ Community Land Use Plan, 2016* which are in effect and the locations where the new interest holder may access such laws and *ᐃᓄᓄᓄ Community Land Use Plan, 2016*;
- (b) send the new interest holder's information to the ᐃᓄᓄᓄ Finance Department to update the taxation and assessment rolls, and
- (c) document in the Lands Department file that the requirements under paragraphs (a) and (b) have been completed.

## Resources and Forms

Besides this policy, consult the following resources:

- (a) the *First Nations Land Management Act*;
- (b) the *ᐃᓄᓄᓄ Amended Land Code*;
- (c) the Framework Agreement on First Nation Land Management;
- (d) the *First Nations Land Registry Regulations*;
- (e) Policy 7 -1;
- (f) Policy 9-1 for more information on Environmental considerations;
- (g) 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](mailto:brenda.power@canada.ca)

(f) the First Nations Land Management Resource Center's Developmental and Operational Support Technician, who at the time of the writing of this Manual is:

Patti Wight

Phone: 250-981-6870

Email: [pwight@labrc.com](mailto:pwight@labrc.com)

### **ᐱᐱᐱᐱ Contact Regarding the Allotment Policy**

Leeanna Rhodes, Lands Officer and Membership Clerk

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