



**LANDS DEPARTMENT
ASSIGNMENT OF LEASE - INSTRUCTIONS &
CHECKLIST**

Contact: lands@lslb.ca
250-679-3203

FOR THE PURCHASER'S LAWYER OR NOTARY PUBLIC

2022/02/28

GENERAL: If you are not familiar with First Nations Lease Agreements and the process of registering an Assignment of Lease in the Indian Land Registry System ("ILRS") you may want to consider recommending your client deal with a Lawyer or Notary in the Kamloops/Shuswap area that is familiar with such transactions. If you decide to act on behalf of your client in the transaction you should:

PROCEDURES:

- A. REVIEW THE TERMS OF THE ASSIGNMENT OF LEASE PURCHASE AGREEMENT IN DETAIL AND:
 - a) confirm that the Purchase Agreement is the latest form of Assignment of Lease Purchase Agreement recommended by the Kamloops Real Estate Board or the Okanagan Mainline Real Estate Board.
 - b) ensure the Purchase Agreement contemplates an Assignment of Lease rather than a transfer of Fee Simple Title.
 - c) ensure the Closing of the Purchase and Sale will be by way of the use of Title Insurance, and in particular, GAP Insurance.

- B. IF THE VENDOR'S REAL ESTATE AGENT, LAWYER OR NOTARY HAS NOT PROVIDED THEM:
 - a) obtain a copy of the Lease and Assignment of Lease into the Vendor's name from the ILRS or the Vendor's Lawyer or Notary.
 - b) obtain a search of the Abstract of Title. If you have an account with the ILRS you can do this yourself. Otherwise, you should contact the Band and obtain a copy of the Abstract. The Band will charge a fee for conducting this search. Note: This fee and others charged by the Band for searches and copies of land documents, is set out in a Schedule which is available from the Band
 - c) obtain a copy of a Survey Certificate from the Vendor's Lawyer or Notary – if available.

- C. MOBILE HOMES: If the structure on the Property is a mobile home you will need to conduct the same searches and inquiries in the provincial system that you would with a regular mobile home transaction as the Lawyer or Notary for a Purchaser.

- D. CONTACT THE LANDS OFFICE AT THE LSLB OFFICE AND OBTAIN:
 - i. a property tax search for the Property to determine the amount of the annual property taxes for the current year and to confirm that the property taxes for the previous year(s) have been paid in full;
 - ii. the amount of the annual lease payment for the Property if it is a **Periodic Lease** and confirm that the lease payments for the Lease are current.

- iii. confirmation that there is no Additional Rent, other charges, or notices of default outstanding with respect to the Property;
 - iv. a copy of any zoning or use restrictions (if any) with respect to the Property from the Band;
 - v. confirmation that there is not an outstanding Building Permit for the Property and if applicable, obtain a copy of the Occupancy Permit.
- E. CHECK THE ABSTRACT OF TITLE: Review the Abstract to determine which charges are registered against the title of the Lease. Note: The ILRS operates on a historical land title system rather than a Torrens land title system. Charges registered against the title of the Lease remain on the title permanently. Generally, the charges on the title are registered in date order – but occasionally this is not the case. Review the title and work through the charges to see which charges are still in effect. This can be a bit complicated – especially if the title is old – as the title can be many pages long. The purpose of this review is to:
- i. ensure your client is aware of any charges that will be remaining on the title, and in effect, after the Closing; and
 - ii. determine which charges are to be discharged by the Vendor’s Lawyer or Notary at the time of Closing.
- F. TYPE OF LEASE: Review the terms of the Assignment of Lease Purchase Agreement in detail to ensure that it reflects the terms of the Agreement as understood by your client. Confirm the Term of the Lease and whether it is a Prepaid Lease or a Periodic Payment Lease with annual lease payments.
- G. PERMITTED USES: Review the Lease to determine the permitted uses allowed under the terms of the Lease. In addition, the Lease might contain a Schedule which shows the buildings and/or structures permitted on the Property at the time the Lease was granted. If there are additional buildings or structures presently on the Property you will want to ensure that they have been approved by the Band through the issuance of a Building Permit or some other Band document.
- H. ENVIRONMENTAL ASSESSMENT: The Lease likely contains a Schedule that contains the Environmental Assessment that was conducted by the Band prior to the Lease being granted. This should be reviewed with your client.
- I. DOCUMENTS: Prepare the documents required to effect the Assignment of the Lease:
- a) Assignment of Lease;
 - b) Consent to Assignment Agreement. The form of Consent is attached as a Schedule to the Lease. A Consent to Assignment document is not required for Scotch Creek I.R. #4 Leases;
 - c) Assessment of Matrimonial Real Property and Statutory Declaration Document. The Matrimonial Declaration has to be executed by all of the Vendors;
 - d) Application for Use of Indian Reserve Land (one for each Purchaser);
 - e) LSLB Lease Community Disclosure and Acknowledgement (one per Application, signed by all Purchasers);
 - f) Vendor’s and Purchaser’s Statement of Adjustments.

Contact the LSLB Lands Department to ensure that you have the most recent versions of items a) to e). The Band must be provided with four originally signed copies of these documents. An Affidavit of Witness must be affixed and completed for each of these documents as well. This includes having the witnessing Lawyer or Notary affix their seal to the Affidavit. The Band will attend to having the documents executed by the Ministry where required.

- J. **MORTGAGE:** If a Mortgage is being obtained by the Purchaser, it is your responsibility to prepare the Mortgage documentation required by the Financial Institution providing the Loan. You must provide the Band with four originally signed (by all of the Mortgagors) copies of:
- i. the Mortgage; and
 - ii. the Lender's Agreement in the most recent form accepted by the Band. The Lender's Agreement must be executed by the Financial Institution, all of the Mortgagors and the Ministry. The Band will arrange for the Ministry to sign the Lender's Agreement.
- K. **TITLE INSURANCE:** Arrange for Title Insurance for the Purchaser, which must include GAP Insurance. The Title Insurance should be obtained for both the Assignment of the Lease and the Mortgage (if applicable).
- L. **SUBMIT APPROVAL PACKAGE:** When the documents have all been executed by the respective parties, you will need to provide the following to the Lands Department at the Little Shuswap Lake Band:
- a) Assignment of Lease (4 copies);
 - b) Consent to Assignment of Lease (4 copies). (Exception: This is not required for Assignments of Scotch Creek I.R. #4 Leases);
 - c) Assignment of Matrimonial Real Property and Statutory Declaration signed by the Vendors (4 copies);
 - d) Application for Use of Indian Reserve Land (one per Purchaser);
 - e) LSLB Lease Community Disclosure and Acknowledgement (one per Application);
 - f) \$2,000.00 Assignment Fee.
 - g) Mortgage (4 copies). A separate Affidavit of Witness is not required on the Mortgage by the ILRS or the Band;
 - h) Lenders Agreement (4 copies);
 - i) \$275.00 Mortgage Registration Fee (if-applicable);
 - j) Payment of any rent or property tax arrears, if any;
 - k) Proof of Valid Comprehensive Liability Insurance, in an amount of not less than \$3.0 million for Quaaout I.R.#1 Leases and \$2.0 million for Scotch Creek I.R.# 4 Leases. The Proof of Insurance must show an additional named insured as follows:
"Her Majesty the Queen in Right of Canada with respect to liability"
- M. The documents will be reviewed by the Lands Department and submitted to the ILRS in Vancouver. Registration can take several months to complete. The Band will advise you once the documents have been registered and you will be provided with a copy of the registered documents.

IN AN EFFORT TO CLARIFY AND EXPEDITE THE PROCESSING OF SALES AT LITTLE SHUSWAP, THIS CHECKLIST HAS BEEN PREPARED BY THE LANDS DEPARTMENT AS A GUIDE AND FOR INFORMATIONAL PURPOSES ONLY. THE CHECKLIST IS SUBJECT TO CHANGE FROM TIME TO TIME AND MAY NOT BE ALL ENCOMPASSING.

IT IS THE RESPONSIBILITY OF THE PARTIES TO ENSURE THAT THEY HAVE CONDUCTED THE SEARCHES AND COMPLETED THE DOCUMENTATION NECESSARY TO COMPLETE THE PURCHASE AND SALE OF THE LEASEHOLD PROPERTY. THE PARTIES SHOULD OBTAIN ADVICE FROM THEIR PROFESSIONAL ADVISERS IN THIS REGARD. IF A PARTY HAS ANY QUESTIONS OR IS UNCERTAIN AS TO THE PROCESS OR DOCUMENTATION REQUIRED BY THE BAND WITH RESPECT TO THE REGISTRATION OF AN ASSIGNMENT OF LEASE OR MORTGAGE, THEY SHOULD CONTACT THE LANDS DEPARTMENT AT THE CONTACT INFORMATION ABOVE.