# INDEX TO CHAPTER 3

**INDIVIDUAL INTERESTS:**
**CREATING, TRANSFERRING AND CANCELLING**

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</table>
1. **Purpose**

To provide general information about the contents of this chapter, as this relates to individual band member interests in reserve lands.

2. **General**

This directive provides information on creating, transferring and cancelling individual band member interests and related transactions.

3. **Definitions**

a) **Allotment** – the process by which an individual First Nation member receives lawful possession of reserve land from the First Nation council under section 20 of the *Indian Act*;

b) **Band Council Resolution (BCR)** – a document which contains a resolution made by a First Nation council at a duly convened First Nation council meeting which has been discussed, voted on, and passed by a quorum of council. See “*Indian Band Council Procedure Regulations*” for the order and proceedings of a meeting.

c) **Certificate of Occupation** – the documentary evidence, issued under subsection 20(5) of the *Indian Act*, of a First Nation member's right to temporary use and occupation of reserve lands pursuant to the provisions of subsections 20(4) and (6);

d) **Certificate of Possession (CP)** – documentary evidence of a First Nation member's lawful possession of reserve lands pursuant to the provisions of subsections 20(2), (3) or sections 22, 24 or 49 of the *Indian Act*;

e) **Locatee** – the individual First Nation member who holds lawful possession of a duly allotted parcel of reserve lands. A locatee must be a registered member of the First Nation making the allotment or entitled to be registered under the *Indian Act*;
Définitions (continued)

f) **Location Ticket** – a document issued under the *Indian Act, 1880* or any statute relating to the same subject matter, which is evidence of a person’s lawful possession of reserve lands, and is synonymous with CPas defined in the *Indian Act*;

g) **No Evidence of Title Issued (NETI)** – that for any of a variety of reasons, no title was issued even though the lawful possession has been approved by the Minister;

h) **Transfer** – the process which allows a locatee to give his or her lawful possession of reserve land to another member of the First Nation, or back to the First Nation, under section 24 of the *Indian Act*.

4. **Authorities**

4.1 Departmental policy is governed by sections 20 to 28, and section 49 of the *Indian Act*.

4.2 In addition, section 60 of the *Indian Act* is relevant in that it permits the Governor in Council to grant to the First Nation control and management over its lands. First Nations with section 60 authority can approve allotments and transfers on behalf of the Minister.

5. **Policy**

5.1 The department’s primary objective is to respect and carry out decisions made by the First Nation and its members concerning the creation and transfer of possessory rights on reserve land. However, individual interests in reserve land will only be created, transferred or cancelled where the relevant policy requirements are satisfied. Each directive includes separate policies for each of these requirements and other related transactions.

6. **Process**

6.1 Different statutory and policy-based procedures exist for each type of transaction. Lands Officers should follow the required procedures as set out hereafter.
7. **Implementation**

This directive replaces previous policy directives dealing with this subject matter and will come into force upon distribution.

8. **References**

8.1 For more information you should read:

a) *Indian Lands Registration Manual*


c) *Lands and Environment Fiduciary Management Strategy*, January 12, 1994
Directive 3-2
Creating Individual Interests

1. Purpose

1.1 This directive explains how to create individual band member interests in reserve land and what evidence of possession INAC provides, where possession of the land has been allotted by a First Nation council pursuant to subsection 20(1) of the *Indian Act*.

1.2 This directive explains how the historical practices of Cardex Holdings and Notices of Entitlement created individual band member interests in reserve land.

1.3 This directive also explains how, pursuant to section 22 of the *Indian Act*, individual interests may be created where a First Nation member in possession of lands has made permanent improvements thereon and the lands are subsequently added to a reserve.

2. General

2.1 Although reserve lands are for the use and benefit of the First Nation as a whole, individual members may acquire the right to use and occupy parcels of reserve land. A First Nation council may allot possession of the land to a member of that First Nation, subject to the approval of the Minister. According to the provisions of subsection 20(1) of the *Indian Act*, members who receive such an allotment have lawful possession of land in a reserve.

2.2 It is the right to possession which the locatee can transfer under section 24 and which may pass by devise or descent under sections 48 and 49 of the *Indian Act*. Legal title to the land in question always remains vested in Her Majesty in right of Canada.

2.3 The actual creation of an allotment is made by way of a BCR, which is then submitted for Ministerial approval. An approved allotment is subsequently registered in the Indian Lands Registry (ILR) and the ILR issues a CP as evidence of lawful possession.
Creating Individual Interests

2.4  a) **Cardex Holdings.** A Cardex Holding is a historical individual interest in reserve land. These holdings were created by BCR and approved by the Minister under section 20(1) of the *Indian Act*. The land descriptions associated with Cardex Holdings were vague and often inaccurate. While most of the interests known as Cardex Holdings are registered in the Indian Land Registry, a proper survey must be done before any further transactions can take place on the particular parcel of land. Generally speaking, holdings defined as Cardexes, Notice of Entitlement (NE) or No Evidence of Title Issued (NETIs) (see Directive 3-4 clauses 5.13 and 5.14) are simply unsurveyed allotments for which a CP has not been issued by the Indian Lands Registry as documentary evidence of the lawful possession.

b) The only significant difference between a Cardex, NE, or NETI and a CP is that the CP is usually surveyed and these other holdings are usually *not* surveyed.

2.5 **Notices of Entitlement (NE).** An interest held under a Notice of Entitlement is similar to a Cardex Holding, in that the holdings were created by an allotment by the First Nation council and approved by the Minister under subsection 20(1) of the *Indian Act*. The interest of the holder of a Notice of Entitlement is recognized as lawful possession under the *Indian Act*.

2.6 By virtue of section 22 of the *Indian Act*, lawful possession may also arise where a First Nation member was in possession of lands at the time that the lands were included in the reserve, and he or she had made permanent improvements on that land. Generally, the lands in question would be those which, prior to their addition to a reserve, were held by a First Nation member under the laws of the province where the lands are situated. The expectation is that First Nation members will rarely claim interests under this section of the Act.

2.7 Certain First Nations do not subscribe to the allotment provisions of the *Indian Act*. Instead, these First Nations recognize traditional or custom holdings by individuals and grant "occupational rights at the pleasure of the First Nation council." The department does not administer these interests, which are not lawful possession under the *Indian Act*, and therefore, these holdings are *not* registered in the ILR. The holders of these interests have no legal rights and remain on the property at the pleasure of the First Nation council.
3. **Authorities**

3.1 **Relevant statutory authorities include:**

*Indian Act*, ss. 20(1) - ss. 20(3), & s. 22

20. (1) *No Indian is lawfully in possession of land in a reserve unless, with the approval of the Minister, possession of the land has been allotted to him by the council of the band.*

(2) *The Minister may issue to an Indian who is lawfully in possession of land in a reserve a certificate, to be called a Certificate of Possession, as evidence of his right to possession of the land described therein.*

(3) *For the purposes of this Indian Act, any person who, on the 4th day of September 1951, held a valid and subsisting Location Ticket issued under The Indian Act, 1880, or any statute relating to the same subject-matter, shall be deemed to be lawfully in possession of the land to which the location ticket relates and to hold a Certificate of Possession with respect thereto.*

22. *Where an Indian who is in possession of lands at the time they are included in a reserve made permanent improvements thereon before that time, he shall be deemed to be in lawful possession of such lands at the time they are included.*

4. **Policy**

4.1 **Duty of Lands Officer.** Lawful possession of a parcel of reserve land by an individual has important consequences for the individual, his or her heirs and assigns, and the First Nation overall. Consequently, a Lands Officer has a responsibility to ensure that both the individual and the First Nation council are in possession of all relevant information before an allotment is made.

4.2 It should also be emphasized that allotment is a serious process which, once approved, cannot be rescinded unless there has been a major defect in the allotment such as fraud or an incorrect description. (See Directive 3-6)

4.3 It should be emphasized that once the Minister’s delegate approves an allotment, lawful possession of the lands is transferred whether the BCR is registered or not.
4.4 **Contents of BCR.** A BCR must contain the following information for a First Nation council to allot "a parcel" an allotment of land:

a) The section of the Indian Act under which they are making the allotment;

b) The full formal name and First Nation number of the person(s) to whom they are making the allotment. They should refer to the Indian Membership register for verification of correct names and First Nation numbers. In addition, married women should be identified by their given names;

   Example: Mrs. Linda Jean Smith, No. 25 *not* Mrs. George Smith, No. 25.

c) Where an individual is a First Nation member, but does not appear on the First Nation membership list, the First Nation must provide certification of the individual's membership;

d) Where an individual is entitled to be registered under the *Indian Act*, but is not yet registered, the First Nation's must provide certification that the individual is entitled to be registered under the *Indian Act*;

e) A land description which meets the requirements for legal descriptions of Indian lands, generally a Registration Plan or "an official plan" a Canada Land Survey Plan which and includes all known encumbrances affecting the parcel of land. Obtain further information by consulting the Indian Lands Registration Manual and the Interdepartmental Agreement respecting Legal Descriptions of Indian Lands, February 6, 1998;

f) Where access to the allotted parcel is not available by a public or First Nation owned road, the allotment must provide access in conjunction with the land description. Access may be provided for in the allotment itself, it may be the subject of a separate transfer pursuant to section 24 of the *Indian Act* (see Directive 3-4), or access may be granted over adjacent lands by agreement with the lawful possessors of that land. For further information, consult the Indian Lands Registration Manual;

g) The number forming a quorum of the First Nation council and the signatures of a quorum of the First Nation council.

h) The date of the duly convened First Nation council meeting.
4.5 **Environmental Assessment Requirement.** Usually, an allotment does not incorporate a project proposal for future use of the allotted land. However, where the allotment does include a project proposal, the lands officer must determine whether the department requires an environmental assessment under the CEAA. If so, the environmental assessment must be conducted prior to Ministerial approval of the allotment. Allotments without a project proposal attached are not subject to an environmental assessment under the CEAA. For further information on environmental assessments, see Chapter 12.

4.6 **Recommendations for approval of allotments** from the Lands Officers should be based on a thorough consideration of the following criteria:

a) **Status of Land.** Is the land to be allotted reserve land within the meaning of subsection 2(1) of the *Indian Act*? The definition of reserve under subsection 2(1) of the *Indian Act* expressly excludes designated lands for the purposes of section 20. Also, the council cannot allot lands which the First Nation has surrendered absolutely under section 38(1), because those lands no longer form part of the reserve. Further, a council cannot allot lands that have been allotted to another individual and are held via a CP, Cardex, NE or NETI.

b) **Compatibility of Third Party Rights.** Can the land be allotted to a First Nation member, or is it subject to third party encumbrances or other rights which are inconsistent with the proposed allotment (e.g. leases; lands set aside under ss. 18(2) for the benefit of all band members);

c) **Affect on First Nation.** Has the First Nation council confirmed that the allotment is in the best interests of the First Nation, ie: size of the parcel to be allotted must not be out of proportion in relation to the size of the reserve itself;

d) **Conformity with Development Plans or Zoning Bylaws.** Has the First Nation council confirmed that the allotment meets the requirements of any development plans or zoning bylaws which the First Nation council may have approved.

e) **Extent of Third Party Interests.** Is the proposed locatee aware of the interests to which the parcel of land is subject, such as pipelines, access roads and telephone lines?
4.7 Where the Lands Officer cannot satisfactorily resolve the above criteria in favour of the allotment, they should give the First Nation council an opportunity to reconsider its allotment choice considering the information provided.

4.8 Where the council decides to continue with the allotment, although it does not meet the above criteria, the Lands Officer should note the specific problems and unsatisfactory features of the allotment. He or she should submit this information, along with the BCR and recommendations, to the approving authority for consideration.

4.9 Where the allotment does not meet the criteria with respect to Status of Land or Compatibility of Third Party Rights as mentioned in section 4.6 a) and b) above, the subject lands are incapable of allotment and the approving authority cannot approve the allotment.

4.10 Allotments to council members and members of their immediate families raise the potential for a conflict of interest. Lands Officers should take precautions to ensure that they have informed the First Nation of the effects of the allotment. In these situations, the council should advise the council member, who is in a potential conflict of interest, not to participate in the allotment vote.

4.11 Status of Possession. Reserve land which the First Nation council has allotted to two or more First Nation members may be held by those individuals as joint tenants (right of survivorship) or as tenants in common (no right of survivorship). Where the locatees make no election when they acquire lawful possession, the interest will be recorded as held by the First Nation members as tenants in common. A full explanation of these terms, the process and consequences of electing to hold possessory rights as joint tenants or tenants in common can be found in the Indian Lands Registration Manual.

4.12 Location Tickets. Before enactment of the present day Indian Act, evidence of possession was by way of Location Ticket. Although Location Tickets continue to be valid evidence of lawful possession, Location Ticket holders should be encouraged to have their parcel legally surveyed and then to obtain a Certificate of Possession as evidence of lawful possession.

4.13 Section 22 Claims. Where it is claimed that an individual interest has been created by virtue of section 22 of the Indian Act (i.e. where a First Nation member in possession of non-reserve lands has made permanent improvements on the lands and the lands are subsequently included in a reserve) the matter should be reviewed in consultation with Headquarters.

4.14 Where section 22 applies, the First Nation member occupant is entitled to evidence of his or her possessory rights without requiring an allotment by the First Nation council.
4.15 Where new lands are set apart as reserve lands or as additions to existing reserve lands, Lands Officers should ensure the prior interest of the individual in occupation of such lands, who has made improvements thereon, are properly reported and recorded at the time of the inclusion or addition.

4.16 Where section 22 is applicable, inform the First Nation council of the circumstances with respect to the improvements before the lands are given reserve status. In this way, where the expectation is that the additional lands will be used as reserve lands, the First Nation council will have an opportunity to negotiate issues such as possession or compensation for improvements with the occupants.

4.17 The issue of compensation for improvements is a matter for negotiation between the occupant and the First Nation council. The Lands Officer’s role is to provide information in the department’s possession and encourage the parties to reach an agreement. Any information provided by the Lands Officer must be accurate and timely. For further information on compensation see Directive 3-7.

5. Process

5.1 This section provides an overview of how to allot land under section 20 of the Indian Act. A detailed checklist is included as Annex A to this Directive. First Nations exercising delegated authorities under section 60 of the Indian Act are responsible for taking the steps identified as the responsibility of INAC Field in the checklist. The Lands Officer should consult delegation instruments to confirm the scope of authority.

5.2 Request from First Nation Council. The First Nation council usually initiates the process by contacting the Lands Officer to confirm the status of a parcel of land which is being considered for allotment.

5.3 Identify Land and Verify Status. The Lands Officer, who has a responsibility to ensure all relevant information is conveyed to and considered by the First Nation before making an allotment, must review the pertinent information prior to allotment, by completing a comprehensive land status report on the parcel.

5.4 Verify First Nation Member: The Lands Officer must verify that the individual First Nation member is a registered member of the band or is entitled to be registered. In the case of a section 10 band, the First Nation must provide written confirmation of the individual’s membership in that band.

5.5 Practice varies among First Nations. Some First Nation councils, such as those with section 60 delegation, may not require the assistance of the INAC Lands Officer to confirm the status of the land being considered for allotment.
Contents of BCR (continued)

5.6 **BCR.** The First Nation passes a BCR which meets the requirements of this policy, allotting possession of the parcel of land to the First Nation member(s). This requires a majority of council’s vote [s. 2(3)(b)] *Indian Act*. The BCR and any supporting documentation are then forwarded to the Lands Officer. The First Nation council should undertake special BCR procedures where the allotment is to a council member or their immediate family (see policy requirements in section 4.10 of this Directive).

5.7 **Consideration of Allotment.** The Lands Officer considers the allotment and recommends it for approval or remits the allotment to the First Nation council for reconsideration. Where a project proposal is included in the allotment, the Lands Officer must ensure that, where required, the appropriate environmental assessment has been conducted.

5.8 **Recommendation for Approval.** If the allotment is recommended for approval, the Lands Officer submits the BCR and supporting documentation to the approving authority.

5.9 **Ministerial or Departmental Approval.** The authority approving the allotment for the Minister then approves or rejects the allotment according to department policies. If the authority approves it, the approved allotment is registered in the Indian Lands Registry by application to register the BCR. Where Ministerial approval is withheld, the First Nation is so advised.

5.10 Once the allotment has been registered, the Registrar of Indian Lands will issue a Certificate of Possession.

5.11 A request for replacement of a Location Ticket, Cardex, NE or NETI and substitution with a Certificate of Possession may originate with a simple statement signed by the individual. This statement may explain that the individual wishes to cancel the LT, Cardex, NE or NETI and replace it with a Certificate of Possession describing the parcel of land by its most recent description. Note: If the interest is unsurveyed a legal survey would be required before it could be replaced by a Certificate of Possession.

5.12 The Lands Officer then forwards this request to the Registrar of Indian Lands who will issue a Certificate of Possession.
6. References

6.1 For more information refer to the Indian Lands Registration Manual.
Directive 3-2: Creating Individual Interests

Annex A: Checklist
## Checklist

### Creating Individual Interests - Allotment

<table>
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<tr>
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<th><strong>First Nation:</strong> Where applicable, identifies the proposed parcel of land for allotment and notifies the region or district.</th>
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<tr>
<td>2</td>
<td><strong>INAC Field:</strong> Where applicable, checks the status of the land to be allotted and provides First Nation with relevant information.</td>
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</table>
| 3 | **First Nation:** Passes BCR allotting possession of the parcel of land to the First Nation member(s) which must include:  

  a) the section of the Indian Act under which the council makes the allotment  
  b) the full formal name of the person(s) to whom the allotment is being made  
  c) the First Nation number of the person(s) to whom the allotment is being made  
  d) the First Nation's certification of the individual's membership in the First Nation, and right to be registered under the Indian Act (if applicable)  
  e) a land description which meets the requirements for legal descriptions of Indian Lands, including all known encumbrances affecting that land  
  f) an allocation of access in conjunction with the land description  
  g) the number constituting a quorum of the First Nation council  
  h) the signatures of a quorum of the First Nation council |
<p>| 4 | Where an allotment is to a council member or their immediate family, the council member cannot participate in the council allotment vote. |
| 5 | Forwards the BCR and any supporting documentation to the Lands Officer. |</p>
<table>
<thead>
<tr>
<th>INAC Field:</th>
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<tr>
<td>Considers the allotment for approval having regard to the following criteria:</td>
</tr>
<tr>
<td>a) whether the BCR is correct and duly passed by a quorum of the First Nation council</td>
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<tr>
<td>b) whether the land to be allotted is described properly</td>
</tr>
<tr>
<td>c) confirmation by council that the allotment is in the best interests of the First Nation</td>
</tr>
<tr>
<td>d) confirmation by council that the allotment meets the requirements of the First Nation's approved or pending development plans and zoning bylaws</td>
</tr>
<tr>
<td>e) whether any third party rights inconsistent with the proposed allotment are present</td>
</tr>
<tr>
<td>f) whether the proposed locatee is aware of the third party interests to which the parcel of land is subject</td>
</tr>
<tr>
<td>g) if the allotment is to a council member or their immediate family, evidence that the council member did not participate in the allotment vote.</td>
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</tbody>
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| 7 |
| Ensures environmental assessment has been conducted according to CEAA, if applicable. |

| 8 |
| If the above criteria are not satisfied, returns documentation to the First Nation for reconsideration. |

| 9 |
| If the council decides to continue with the allotment, submits for consideration by the authority approving the allotment for the Minister, a record of the specific problems and unsatisfactory features of the allotment, along with the BCR and recommendations. |

| 10 |
| If the necessary criteria are satisfied, submits the documentation to the approving authority with a recommendation for approval. |

| 11 |
| Upon approval being granted, applies to register BCR. |

| INAC H.Q.: |
| Checks all documentation against the criteria in the *Indian Lands Registration Manual*. |

| 13 |
| Where applicable, verifies that the locatee is registered, or entitled to be registered, under the *Indian Act* and is a First Nation member. |

<p>| 14 |
| Registers the BCR following the <em>Indian Lands Registration Manual</em>. |</p>
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<tr>
<td>15</td>
<td>Issues Certificate of Possession when applicable.</td>
</tr>
</tbody>
</table>
| 16 | **INAC Field:**  
Retains the registered Certificate of Possession on file or forwards C.P. to locatee, keeping copy of registered Certificate of Possession on file. |
Directive 3-3
Temporary Possession

1. Purpose

1.1 This directive explains what happens when the First Nation council allots possession of land, but Ministerial approval of the allotment is withheld pending fulfilment of certain conditions. Read this directive for information about the authorization of temporary possession of land which the First Nation council has allotted, the resulting issuance of a Certificate of Occupation, extending the term of a Certificate of Occupation, and the termination of temporary possession through the subsequent grant or refusal of an allotment.

2. General

2.1 Pursuant to subsection 20(4) of the *Indian Act*, where the First Nation council allots possession of a parcel of land, the Minister may withhold approval of the allotment, grant temporary occupation of the land to the proposed locatee, and prescribe conditions as to use and settlement that the locatee must meet before the Minister approves the allotment. Note, however, that these provisions are very rarely used.

2.2 In practice, the First Nation council decides whether to recommend conditions as to use and settlement, however, the Lands Officer who reviews the allotment may suggest conditions to the First Nation.

2.3 Where the Minister grants temporary possession, a Certificate of Occupation is issued pursuant to subsection 20(5) of the *Indian Act*. This certificate entitles the individual, and those claiming through the individual by devise or descent, to temporarily occupy the land which is the subject of the allotment. The Certificate of Occupation also identifies the term of occupation. The original term of the temporary occupation is for a period of up to two years from the date of its issue. The Minister may extend this period pursuant to subsection 20(6) of the *Indian Act* for a subsequent period not exceeding two years. The *Indian Act* does not provide for any additional extensions.

2.4 Where the locatee has fulfilled the prescribed conditions, the Lands Officer may submit the allotment to the approving authority where, upon approval, the Minister will issue a Certificate of Possession.
2.5 Where there is a noncompliance with the conditions, the Minister may grant an extension of the temporary possession according to the Indian Act, or the allotment may be refused and the First Nation council notified that the land is available for re-allotment. The First Nation may also choose to waive the conditions that it set for the proposed locatee and go ahead with the allotment.

3. Authorities

3.1 Relevant statutory authorities Include:

Indian Act, ss. 20(4) - 20(6)

20. (4) Where possession of land in a reserve has been allotted to an Indian by the council of the band, the Minister may, in his discretion, withhold his approval and may authorize the Indian to occupy the land temporarily and may prescribe the conditions as to use and settlement that are to be fulfilled by the Indian before the Minister approves of the allotment.

(5) Where the Minister withholds approval pursuant to subsection (4), he shall issue a Certificate of Occupation to the Indian, and the Certificate entitles the Indian, or those claiming possession by devise or descent, to occupy the land in respect of which it is issued for a period of two years from the date thereof.

(6) The Minister may extend the term of a Certificate of Occupation for a further period not exceeding two years, and may, at the expiration of any period during which a Certificate of Occupation is in force

(a) approve the allotment by the council of the band and issue a Certificate of Possession if in his opinion the conditions as to use and settlement have been fulfilled; or

(b) refuse approval of the allotment by the council of the band and declare the land in respect of which the Certificate of Occupation was issued to be available for re-allotment by the council of the band.
4. Policy

4.1 Prescribing Conditions. As a matter of policy, the First Nation council may recommend conditions which the locatee must fulfill before they make an allotment.

Example: A typical condition might require that the First Nation member complete the foundation for a house within two years of being granted temporary possession of the lands, to be eligible for complete lawful possession.

4.2 When considering a proposed allotment, a Lands Officer may recommend to the First Nation council temporary possession of the land in question, pending fulfilment of certain conditions. It is the First Nation council, however, which must decide if it wishes to proceed in this manner.

4.3 Where a First Nation member must fulfil conditions before an allotment is finalized, the council should pass a BCR which reflects the following:

a) complete lawful possession is conditional upon the fulfilment of the conditions prescribed in the BCR; and,

b) the council will grant temporary possession to the First Nation member pending fulfilment of the conditions.

4.4 The Lands Officer reviews the documentation submitted by the First Nation council, and prepares a report and recommendation which he or she submits to the approving authority, with the BCR granting temporary possession and any other supporting documentation.

4.5 Conditions submitted must be reasonable, and capable of compliance within a period of two years.

4.6 Temporary possession is not "lawful possession" within the meaning of subsection 20(1) of the Indian Act. As a result, the First Nation member cannot transfer or dispose of the subject lands except by devise or descent. Where temporary possession of the land is transferred by devise or descent, the heirs-at-law or the beneficiaries must fulfil the stated conditions to be eligible for complete lawful possession.
4.7 **Environmental Assessment.** Although it is uncommon, it is possible that a request for temporary possession or subsequent allotment may include a project proposal. In such cases, the Lands Officer must determine whether the Department requires an environmental assessment under the CEAA. If so, the Lands Officer must ensure that an environmental assessment is conducted prior to Ministerial authorization of the temporary possession or the subsequent allotment, as applicable. For more information on environmental assessments see Chapter 12.

4.8 **Term of Possession.** While the Minister may allow temporary possession for a period of two years, lesser periods may be appropriate where desired by the First Nation council and approved by the Minister.

4.9 **Extension of Term.** According to the provisions of subsection 20(6) of the *Indian Act*, the term of a Certificate of Occupation may be extended for a second period not exceeding two years. There is no authority for additional extensions.

4.10 Either the holder of the Certificate of Occupation or the First Nation council may submit requests for an extension pursuant to subsection 20(6) of the *Indian Act*. Requests for an extension by the individual concerned should always be supported by an appropriate BCR.

4.11 Where a First Nation council either opposes or otherwise fails to support an individual's request for an extension, the Lands Officer must investigate the circumstances. The Lands Officer must submit a report containing the officer's recommendations to the appropriate approving authority.

4.12 **Compliance with Conditions.** The Lands Officer should obtain First Nation council agreement that the conditions have been met. This agreement would usually be in the form of a BCR. Where the First Nation council has established that the member has met the specified conditions as to use and settlement, the Lands Officer may submit to the appropriate authority a recommendation for approval of the allotment. The documentation indicating compliance with the prescribed conditions and making the allotment must be attached to the recommendation.

4.13 **Noncompliance with Conditions.** Where there is sufficient information showing noncompliance with the conditions at the end of any initial or extension period during which a Certificate of Occupation is in force, the Lands Officers should investigate the circumstances of the noncompliance and submit the appropriate report and recommendations to the First Nation council for confirmation.
4.14 Where there is noncompliance with the conditions at the end of any initial or extension period during which a CO is in force, the First Nation council may waive the conditions and go ahead with the allotment.

4.15 A detailed checklist is included as Annex A to this Directive. Please note that those First Nations exercising delegated authorities under section 60 of the Indian Act are responsible for taking the steps identified as the responsibility of INAC Field in the checklist. Consult delegation instruments to confirm the scope of authority.


5.1 This section provides an overview of the process for the granting of temporary possession where an allotment of land is conditional upon the fulfilment of certain prescribed conditions. These steps are besides the steps required to complete an allotment as detailed in Directive 3-2.

5.2 Lands Officer Recommending Temporary Possession. The Lands Officer, when considering an allotment, determines whether to recommend it for approval. In doing so, the Lands Officer may recommend to the First Nation council the option of temporary possession, requiring that the First Nation member fulfil certain conditions before the Minister approves the allotment. In these cases, however, it is the First Nation council that decides how it would like to proceed.

5.3 BCR. The First Nation council passes a BCR granting possession of the parcel of land to the First Nation member(s). This must be done according to Directive 3-2 and this policy. The First Nation council forwards the applicable BCR to the Lands Officer.

5.4 Usually, the BCR will grant temporary possession of the lands to a First Nation member and prescribe conditions for complete lawful possession, citing subsection 20(4) of the Indian Act. Upon fulfilment of the specified conditions, the First Nation council passes a second BCR allotting the parcel of land, quoting subsection 20(1) of the Indian Act.
5.5 Practice may vary. The First Nation council may pass a single BCR quoting subsections 20(1) and (4) which makes the allotment, grants temporary possession of the lands, and specifies the conditions which the member must fulfil before permanent entitlement to the lands is granted. Once the member has met the conditions, the First Nation passes a second BCR indicating compliance which is then forwarded to the Lands Officer. Alternatively, the First Nation council may notify the Lands Officer of compliance by way of a letter.

5.6 Where the Lands Officer receives a BCR which prescribes conditions for complete lawful possession of the subject lands, the Lands Officer reviews these conditions. Where a project proposal is included, the Lands Officer ensures that, where required, the appropriate environmental assessment has been conducted. The Lands Officer then submits his or her report and recommendation to the approving authority.

5.7 Upon approval, the requisite documentation is forwarded to the Registrar of Indian Lands for registration.

5.8 Certificate of Occupation. Where the Minister authorizes temporary possession, the Registrar of Indian Lands issues a Certificate of Occupation under subsection 20(5). This Certificate sets out the conditions that the member must fulfil and the term of occupation.


6.1 Requests for Extension. The holder of the certificate may submit requests for an extension to the First Nation council, or with a supporting BCR, to the Lands Officer.

6.2 The Lands Officer reviews the BCR and forwards it to the approving authority for approval.

6.3 Upon approval, the BCR is registered and a new Certificate of Occupation is issued.
7. **Process: Expiration of Temporary Possession**

7.1 **Compliance with Conditions.** Where the member has fulfilled the prescribed conditions, the First Nation council submits the appropriate documentation to the Lands Officer. The Lands Officer reviews the material and submits it to the approving authority. Upon approval, an application to register, along with the relevant documentation, is forwarded to the Registrar of Indian Lands who registers it and issues a Certificate of Possession.

7.2 **Noncompliance with Conditions.** Where, at the end of any initial or extension period during which a Certificate of Occupation is in force, the Lands Officer has not been advised whether the member has fulfilled the prescribed conditions, the Lands Officer should investigate the circumstances of the noncompliance and submit the appropriate report and recommendations to the First Nation council for confirmation.

7.3 **Waiving Conditions.** Where there is noncompliance with the conditions at the end of any initial or extension period during which a Certificate of Occupation is in force, the First Nation council may pass a BCR waiving fulfilment of the conditions and allotting the lands to the First Nation member. The allotment then continues as set out in Directive 03-02.

7.4 If noncompliance with the conditions exists at the end of the two-year extension period and the conditions have not been waived by the First Nation council, the Minister must refuse approval of the allotment and declare the subject lands available for re-allotment.

8. **References**

8.1 Besides the relevant sections of the legislation, more information may be found in the following:

   a) *Indian Lands Registration Manual*

Directive 3-3: Temporary Possession

Annex A: Checklist
# Checklist
## Authorization of Temporary Possession

<table>
<thead>
<tr>
<th></th>
<th><strong>INAC Field:</strong> Where appropriate, recommends conditions to the First Nation council upon which the allotment might be made contingent.</th>
</tr>
</thead>
</table>
| 1 | **First Nation:** Passes BCR granting temporary possession of the parcel of land to the First Nation member(s) following Directive 3-2 and this policy. This BCR may also allot the subject lands and must reflect the following:  
   a) complete lawful possession is conditional upon the fulfilment of the conditions prescribed therein; and  
   b) the First Nation member is granted temporary possession pending fulfilment of the conditions. |
| 2 | Forwards the BCR and any supporting documentation to the Lands Officer. |
| 3 | **INAC Field:** Considers the land transaction for approval having regard to the criteria in Directive 3-2. |
| 4 | Ensures Environmental Assessment has been conducted in accordance with CEAA, if applicable. |
| 5 | Reviews and reports on conditions in BCR. |
| 6 | Ensures conditions meet the following criteria:  
   a) reasonable  
   b) capable of compliance within two years. |
| 7 | Submits following documentation for Ministerial authorization:  
   a) BCR  
   b) report on conditions  
   c) any other supporting documentation  
   d) recommendation for Ministerial authorization. |
| 8 | Obtains Ministerial authorization. |
Forwards documentation to **INAC H.Q.** for registration.

**INAC H.Q.:** Checks all documentation submitted for registration against the criteria in the *Indian Lands Registration Manual.*

Where applicable, verifies individual being granted temporary possession is registered or entitled to be registered under the *Indian Act* and is a First Nation member.

Registers the BCR according to requirements set out in the *Indian Lands Registration Manual.*

Issues Certificate of Occupation setting out the conditions to be fulfilled by the individual and the term of the occupation.

### Extension of Temporary Possession

**First Nation:**
Where an extension of the term of Certificate of Occupation is requested, passes BCR for this purpose.

Submits request for extension with supporting BCR to Lands Officer.

**INAC Field:**
Reviews BCR, then forwards BCR and report with recommendations to the appropriate approving authority.

Approving authority grants or refuses extension.

Where an extension is granted, submits documentation for registration.

**INAC H.Q.:** Checks all documentation submitted for registration against the criteria in the *Indian Lands Registration Manual.*

Registers the BCR following the *Indian Lands Registration Manual.*

Issues new Certificate of Occupation.
# Expiration of Temporary Possession

|   | **First Nation:**
|---|---
| 23 | Determines compliance with conditions and
|    | a) where conditions have been met, passes and forwards to Lands Officer a BCR allotting subject lands to the First Nation member(s); or
|    | b) where lands were allotted in first BCR, gives Lands Officer notification of compliance with conditions; or
|    | c) waives conditions, passes BCR allotting the subject lands to the First Nation member(s) and forwards that BCR to the Lands Officer.

|   | **INAC Field:**
|---|---
| 24 | Where the First Nation Council passes and forwards a BCR allotting the subject lands to the First Nation member(s), processes the allotment following Directive 3-2.

|   | **INAC H.Q.:**
|---|---
| 29 | Checks all documentation submitted for registration against the criteria in the *Indian Lands Registration Manual*.

|   | **INAC H.Q.:**
|---|---
| 30 | Registers the BCR following the *Indian Lands Registration Manual* requirements.

|   | **INAC H.Q.:**
|---|---
| 31 | Issues Certificate of Possession when applicable.
Directive 3-4
Transferring Individual Interests

1. Purpose

1.1 This directive explains how a locatee may transfer possession of reserve lands pursuant to section 24 of the Indian Act. You should read this directive for information on:

a) **Policy:** It states the principles and requirements governing the transfer of lawful possession of reserve lands.

b) **Procedures:** It outlines the steps in the transfer process.

2. General

2.1 Generally, a First Nation member in lawful possession of reserve lands may transfer that right to possession to the First Nation or to another member of the First Nation.

2.2 It is the "right to possession" which the locatee can transfer under section 24 of the Indian Act. Legal title to the land in question remains vested in Her Majesty in right of Canada.

2.3 Any proposed transfer under this section 24 of the Indian Act requires Ministerial approval. The Minister will only grant this approval where the policy and procedure requirements of this directive have been satisfied.

3. Definitions

a) "**Transferor**" means the person transferring the right to lawful possession.

b) "**Transferee**" means the person receiving the right to lawful possession.
4. **Authorities**

4.1 **Relevant statutory authorities include:**

*Indian Act*, s. 24, ss. 28(1), & s. 49

24. An Indian who is lawfully in possession of lands in a reserve may transfer to the band or another member of the band the right to possession of the land, but no transfer or agreement for the transfer of the right to possession of lands in a reserve is effective until it is approved by the Minister.

28. (1) Subject to subsection (2), any deed, lease, contract, instrument, document or agreement of any kind, whether written or oral, by which a band or a member of a band purports to permit a person other than a member of that band to occupy or use a reserve or to reside or otherwise exercise any rights on a reserve is void.

49. A person who claims to be entitled to possession or occupation of lands in a reserve by devise or descent shall be deemed not to be in lawful possession or occupation of those lands until the possession is approved by the Minister.

5. **Policy**

5.1 **Transfer Criteria.** Any application to transfer the right to possession of reserve lands must meet the following criteria:

a) **Lawful Possession.** Only "lawful" possession may be transferred. Therefore, a locatee may transfer rights of possession acquired under the *Indian Act* pursuant to subsections 20(1) and (3) or sections 22, 24 or section 48 with section 49 approval to another First Nation member(s) or to the First Nation.

b) Certain First Nations recognize traditional or custom holdings by individuals and grant "occupational rights at the pleasure of the First Nation council." These rights are not "lawful possession" under the *Indian Act*, and therefore are incapable of transfer pursuant to section 24.

c) **Transferee.** A locatee can only transfer his or her right to possession to the First Nation or to another member of that First Nation. Further, pursuant to the provisions of section 28(1) of the *Indian Act*, any purported transfer to an individual other than a member of that First Nation is void.
Transfer Criteria (continued)

d) The **transferor** must be *in lawful possession* of the lands to be transferred.

e) The land must not be subject to any *encumbrances* inconsistent with the transfer.

5.2 **Transfer Document.** The transfer document must meet the following criteria:

a) The transfer should be submitted in the prescribed form, "Transfer of Land on an Indian Reserve." A transfer submitted in another form may be acceptable providing it conforms to all the prescribed criteria and otherwise contains all the essential information.

b) The name and the band number of the transferor must appear as it appears in the Indian Land Registry System or Band Membership records for those First Nations that have their own membership code. Therefore, if there is a difference between the abstract and the membership records, then this should be noted as follows:

   “Mary A. Smith Now Known As Mary A. Jones”

c) The registered names and numbers of both the transferor and transferee must be used in the transfer. Again as stated in 5.2 b) if the transferor’s name and or number has been changed in the Indian Registry, but appears different in the Indian Lands Registry it should be shown as follows: “Mary A. Smith, No. 25 N.K.A. Mary A. Jones No. 30”

d) If the member has an alias registered in the Indian Registry that alias could also appear on the transfer document especially if the individual signs their name using the alias. For example: “Mary A. Smith Also Known As Abbey Smith”

e) The transfer must include a land description which meets the requirements for legal descriptions of Indian lands and includes all known encumbrances affecting the land. Further information may be found in the *Indian Lands Registration Manual*, and in the *Interdepartmental Agreement Respecting Legal Descriptions of Indian Lands*, February 6, 1998 as amended from time to time.
Transfer Document (continued)

f) The transfer must include a recital that the transferor makes the transfer for consideration.

g) The transfer must include the witnessed signature of the transferor. To confirm the identity of the person signing the document, the signature should be identical to the name as it appears on the face of the document.

Example: If the transferor is described as "Harry T. Jacobs" on the face of the transfer document, he should sign his name as "Harry T. Jacobs."

The transferee is not required to sign the document.

h) The transfer must also meet the registration and execution of instruments requirements set out in Parts I and II of the Indian Lands Registration Manual.

5.3 Environmental Assessment. Although it is uncommon, should the transfer include a project proposal, the Lands Officer must determine whether the Department requires an environmental assessment under the CEAA. If so, the environmental assessment must be conducted prior to Ministerial approval of the transfer. Transfers without a project proposal attached do not require an environmental assessment under CEAA. For further information on environmental assessments see Chapter 12.
Council Consent. The *Indian Act* does not require the approval of the First Nation council for a transfer of an allotment. However, some First Nations have established procedures under which locatees submit all proposed transfers for council’s approval before they are sent to the department for Ministerial approval. The Lands Officer should respect a First Nation’s practice up to the extent where the council has unreasonably delayed a transfer or where the rights of the individual member have been infringed upon. In these instances the Lands Officer has an obligation and the authority to submit a transfer for Ministerial approval and registration without First Nation council approval.

Reporting Unusual Circumstances. If the Lands Officer receives a transfer document which is "correct" on its face, meeting the criteria set out in paragraphs 5.1 and 5.2 of this directive, then the document should be forwarded to the relevant authority for Ministerial approval. However, where the Lands Officer is aware of unusual circumstances relating to a proposed transfer, which may affect the validity of that transfer, a report on these circumstances should accompany the transfer document.

"Unusual circumstances" may include a transfer contested by a third party, or such things as medical evidence or evidence as to the capacity of the transferor.

Where the approving authority, having regard to the report of the Lands Officer, is not satisfied with the validity of the transfer document, Ministerial approval will be withheld. The transfer is then returned to the individual tendering the document, along with the reasons for the withholding of consent.

Overturning a Transfer. Where a third party has contested an approved transfer, the Lands Officer should advise those contesting the transfer that their remedy lies with the courts.

Transfers to Minors. Although a locatee may transfer lawful possession to a minor, the minor may be unable to effectively manage the transferred property. The Lands Officers should advise the locatee that the appointment of a guardian to manage the minor's property may be beneficial.
5.10 Transfers by Devisee or Heir-at-law. Lands officers should ensure that executors or administrators are aware that the transfer of lawful possession by devise or descent is not effective until the Minister approves it pursuant to the provisions of section 49 of the Indian Act. This information is very important where the devisee or heir-at-law is planning to immediately dispose of his or her interest in the subject lands following his or her inheritance.

5.11 Transfer of Cardex Holdings. Generally, the holder of a Cardex Holding has lawful possession under the Indian Act. However, First Nation members with Cardex Holdings cannot register a transfer of their interest unless they first obtain a land description which meets the requirements for legal descriptions of Indian lands. The Cardex Holding may be transferred to the First Nation without the requirement for a survey.

5.12 Estate Transfer of Cardex Holding. The Department has developed special procedures to allow the transfer of a Cardex Holding from an estate to its heirs or beneficiaries.

5.13 Transfer of Notices of Entitlement (NE). As with a Cardex Holding, to register a transfer under section 24 of the Indian Act, the holder of a Notice of Entitlement must obtain a proper legal description of the lands which meets the registration criteria for a transfer under this section.

5.14 No Evidence of Title Issued (NETI). A parcel received a NETI notation in the Indian Lands Registry when the holding was not yet legally surveyed. Consequently, registered documents were reflected on title, the transaction effectively transferred lawful possession, but the department did not issue any evidence of title. This practice no longer exists.

5.15 Transfer to an Estate. Notwithstanding 5.14, to deal with the backlog of estate transfers which existed a few years ago, the Registrar permitted estate transfers of interests in reserve lands to be registered although they did not meet the prescribed registration criteria then in place (i.e. no legal survey or it was a transfer from one estate to the other). These interests were registered as NETIs. Currently, NETI is only used where a lawful possessor transfers an interest in reserve land to an estate. Although the transfer document must meet the registration requirements referred to in this directive, the Indian Lands Registry issues no certificate of possession, as the interest will subsequently be transferred to the estate's heirs or beneficiaries.
6. Process

6.1 This section provides an overview of the process to transfer lawful possession under section 24 of the Indian Act. We include a detailed checklist as Annex A to this Directive. Please note that First Nations exercising delegated authorities under section 60 of the Indian Act are responsible for taking the steps identified as the responsibility of INAC Field in the checklist. Consult the delegation instruments to confirm the scope of authority.

6.2 Transfers by Devise or Descent. The Department has adopted special forms and procedures for estate transfers. Refer to the Estates Procedures Manual, September 14, 1994 for additional information.

A transfer of lawful possession is usually prepared at the First Nation offices. However, individual members may request a Lands Officers to assist them with the transfer of their interest. A lawyer or agent representing one or both of the parties may also prepare the transfer documentation.

6.3 Search of Abstract. When the Lands Officer receives the transfer documentation, the officer searches the Reserve General Abstract and the Reserve Parcel Abstract. These searches will confirm whether the transferor (the person granting the right to possession) is in lawful possession of the land to be transferred. The searches will also confirm whether the name of the transferor as it appears on the transfer document matches the appropriate abstract entry. Further, if the land search shows that the property is subject to a mortgage, the mortgage must be assumed or discharged prior to approval of the transfer.

6.4 Search of Membership Records. The Lands Officer may conduct a search of the Indian Register to ensure the transferee (the person getting the interest) is a member of that First Nation and has status under the Indian Act. In the case of a Section 10 band, the First Nation must provide written confirmation of the transferee’s membership in that band.
6.5 **Review of Transfer Document.** The Lands Officer reviews the transfer document to ensure it meets the policy requirements in this directive, including:

a) Form of Transfer Document;

b) Land Description and Access;

c) Encumbrances;

d) Consideration;

e) Execution by Transferor; and,

f) Verification of the Registration and Execution of Instruments requirements set out in Parts I and II of the *Indian Lands Registration Manual*.

6.6 **Environmental Assessment.** If a project proposal is included in the transfer, the Lands Officer ensures that an environmental assessment has been conducted in accordance with the CEAA. See Chapter 12 for detailed information.

6.7 **Report of Unusual Circumstances.** The Lands Officer prepares a report detailing those circumstances which question the validity of the transfer document.

6.8 **Approval and Registration.** The Lands Officer submits to the approving authority:

a) the completed transfer, in duplicate;

b) the original and any copies of the documentation evidencing lawful possession of the transferor;

c) any supporting report; and,

d) his or her recommendation for approval.
6.9 Once approved, the Lands Officer submits the transfer and supporting documentation to the Indian Lands Registry under the cover of an "Application for Registration."

6.10 Upon registration of the transfer, the Registrar issues a Certificate of Possession in the name of the transferee unless the transfer is to the First Nation.

7. References

7.1 Besides the relevant sections of the legislation further information may be found in the following:

a) *Indian Lands Registration Manual*


Directive 3-4: Transferring Individual Interests

Annex A: Checklist
## Checklist
### Transferring Individual Interests

<table>
<thead>
<tr>
<th></th>
<th>First Nation:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Prepares the documentation for the transfer of lawful possession.</td>
</tr>
</tbody>
</table>

|   | Where required, seeks the assistance of the Lands Officer to prepare the    |
|---|documentation.                                                              |

<table>
<thead>
<tr>
<th></th>
<th>INAC Field:</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>When required, provides assistance to First Nation in preparing the transfer</td>
</tr>
<tr>
<td></td>
<td>documents.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>First Nation:</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Forwards the transfer and supporting documentation to Lands Officer.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>INAC Field:</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Where there has been a transfer by devise or descent (s.49), ensures that</td>
</tr>
<tr>
<td></td>
<td>the executors or administrators are aware that lawful possession by</td>
</tr>
<tr>
<td></td>
<td>transferees is not effective until the Minister approves the transfer.</td>
</tr>
</tbody>
</table>

|   | Searches the Reserve General Abstract and the Reserve Parcel Abstract to   |
|---|confirm that:                                                              |
| 6 | a) the transferor is in lawful possession of the land to be transferred;   |
|   | b) the name of the transferor as it appears on the transfer document       |
|   | matches the appropriate abstract entry;                                   |
|   | c) the land is not subject to any encumbrances inconsistent with the       |
|   | transfer.                                                                 |

|   | Searches the First Nation membership records to ensure that the           |
|---|transferee is a First Nation member, if applicable.                       |

<p>|   | Where the transferee is a First Nation member, but does not appear on the |
|---|First Nation membership list, ensures that the First Nation has certified  |
|   | the individual's membership.                                             |</p>
<table>
<thead>
<tr>
<th></th>
<th>INAC Field:</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>Where the transferee is entitled to register under the <em>Indian Act</em>, but is not yet registered under that <em>Indian Act</em>, ensures that the First Nation has certified that the individual is entitled to be registered under the <em>Indian Act</em>.</td>
</tr>
</tbody>
</table>

| 10 | Reviews the transfer document to ensure it meets the following requirements: |
|    | a) it is in the prescribed form; |
|    | b) the correct names of the transferor, the transferee and their respective First Nation numbers appear on the document; |
|    | c) the land description meets the requirements for legal descriptions of Indian lands; |
|    | d) the land description includes all known encumbrances affecting the land; |
|    | e) if the land is subject to a mortgage, the mortgage has been assumed or discharged; |
|    | f) if the land is subject to a Notice (caveat), the Notice has been removed or the party has been advised; |
|    | g) includes a recital that the land is being transferred for valuable consideration; |
|    | h) where consideration is nominal, includes a satisfactory explanation for the nominal consideration; |
|    | i) includes the witnessed signature of the transferor, preferably identical to the name as it appears on the face of the document; and |
|    | j) complies with the registration and execution of instruments requirements set out in Parts I and II of the *Indian Lands Registration Manual*. |

| 11 | Addresses concerns of First Nation, if applicable. |

| 12 | If a project proposal is presented, ensures that an environmental assessment has been conducted according to *CEAA*. |

| 13 | If applicable, prepares report detailing the circumstances which question the validity of the transfer document. |

<p>| 14 | Submits the following to the authority approving the transfer for the Minister: |
|    | a) completed transfer, in duplicate |
|    | b) original and any copies of the documentation which proves lawful possession of the transferor |
|    | c) supporting report |
|    | d) recommendation for approval |</p>
<table>
<thead>
<tr>
<th></th>
<th>INAC Field:</th>
</tr>
</thead>
<tbody>
<tr>
<td>15</td>
<td>The transfer is approved or rejected by approving authority.</td>
</tr>
<tr>
<td>16</td>
<td>Submits the approved transfer and supporting documentation to the Indian Lands Registry under the cover of an “Application to Register.”</td>
</tr>
<tr>
<td>17</td>
<td>INAC H.Q.: Checks all documentation against the criteria set out in the <em>Indian Lands Registration Manual</em>.</td>
</tr>
<tr>
<td>18</td>
<td>Where applicable, verifies that the transferee is registered under the <em>Indian Act</em> and is a First nation member.</td>
</tr>
<tr>
<td>19</td>
<td>Registers the transfer according to the <em>Indian Lands Registration Manual</em>.</td>
</tr>
<tr>
<td>20</td>
<td>Upon registration of the transfer, the Registrar issues a Certificate of Possession in the name of the transferee, unless the transfer is to the First Nation.</td>
</tr>
<tr>
<td>21</td>
<td>INAC Field: Retains the registered Certificate of Possession on file and sends a copy to the transferee or forwards the CP to the transferee, keeping a copy of the registered Certificate of Possession on file.</td>
</tr>
</tbody>
</table>
Directive 3-5
Reversion of Right to Possession

1. Purpose

1.1 This directive explains how the right to lawful possession of reserve lands may revert to the First Nation, or be transferred to the First Nation or a member thereof, pursuant to section 25 of the Indian Act. You should read this directive for information on:

a) **Policy:** It states the principles and requirements governing the transfer of lawful possession where a First Nation member ceases to be entitled to live on reserve lands.

b) **Procedures:** It outlines the steps to take when a First Nation member in lawful possession of reserve lands ceases to be entitled to live on reserve lands.

2. General

2.1 When First Nation members cease to be entitled to live on reserve lands, subsection 25(1) of the Indian Act mandates that they must transfer their rights of possession to the First Nation or to another member. In addition, the transfer must be completed within six months, or an extension of that period, as directed by the Minister.

2.2 Where a transfer under subsection 25(1) is not completed within the initial six months or an extension of that period, the right to possession of the lands reverts to the First Nation by virtue of subsection 25(2).

2.3 Where the land reverts to the First Nation under subsection 25(2), the individual formerly in lawful possession of the land is entitled to receive compensation for permanent improvements that he or she made on the land. This compensation is from the funds of the First Nation, in an amount agreed to by the parties or determined by the Minister.
3.  Authorities

3.1 Relevant statutory authorities include:

*Indian Act*, c. I-5, s. 25

25.  (1) An Indian who ceases to be entitled to reside on a reserve may, within six months or such further period as the Minister may direct, transfer to the band or another member of the band the right to possession of any lands in the reserve of which he was lawfully in possession.

(2) Where an Indian does not dispose of his right of possession in accordance with subsection (1), the right to possession of the land reverts to the band, subject to the payment to the Indian who was lawfully in possession of the land, from the funds of the band, of such compensation for permanent improvements as the Minister may determine.

4.  Policy

4.1 Notice. As soon as a Lands Officers becomes aware that a member with lawful possession becomes ineligible to continue to hold reserve lands, they should provide notice of the provisions under section 25 to the First Nation council and the affected locatees. The First Nation must provide notice in writing to the member that they must dispose of their lawful possession within the six month period.

4.2 Transfer within the Six Month Period. Where a transfer pursuant to section 25(1) falls within the specified six month period, the transfer is completed in the same manner as a transfer under section 24 of the *Indian Act* (see Directive 3-4).

4.3 Extensions. A Locatee who becomes aware that he/she will not be able to transfer their lawful possession of reserve land within the original six month period, he/she should contact the Lands Officer and submit a request for an extension of the six-month period specified in subsection 25(1). Requests received after the expiration of the six month period will usually be refused but should be reviewed on a case-by-case basis.
4.4 A request for an extension is usually supported by a recommendation from the First Nation council. If the First Nation council does not support the request for an extension, the Lands Officer should investigate the circumstances and prepare a report containing his or her recommendation. The Lands Officer should forward this report to the approving authority, and send a copy to the First Nation council.

4.5 **Transfer within Extension Period.** Where a transfer under subsection 25(1) falls within the specified extension period, the transfer is done in the same manner as a transfer under section 24 of the *Indian Act* (See Directive 3-4). The transfer document should, however, contain the following recital:

```
WHEREAS (name and number of member) became ineligible to reside on the (name of reserve) on or about the (date);

AND WHEREAS an extension was granted in order to transfer the subject property pursuant to the provisions of subsection 25(1) to the (termination date in Minister's consent to extension);
```

4.6 **Reversion to First Nation.** Following the expiration of the initial six month period or any authorized extension of that period, if the ineligible individual has not transferred his or her interest in accordance with subsection 25(1), the possessory rights of the individual terminate and revert by operation of law to the First Nation. This reversion is subject to the payment of compensation to the ineligible individual for the value of any improvements to the land by the individual. In practice, a transfer or Ministerial Order is evidence of the reversion of a right to possession.

4.7 **Compensation for Improvements where Agreement Reached.** Usually, the amount of compensation payable to the individual is determined by mutual agreement between the First Nation council and the individual.
4.8 **Compensation for Improvements where No Agreement Reached.** Where the council and the individual cannot agree, the Minister must exercise his discretionary powers pursuant to subsection 25(2) of the Indian Act. A comprehensive investigation is conducted as soon as possible to identify the improvements to the subject property. The report on this investigation, in conjunction with Public Works and Government Services Canada (PWGSC), should include:

   a) identification of the improvements and confirmation of ownership;

   b) the value of the improvements, determined either by independent appraisal where possible, or by a mutually acceptable sum agreed upon by the individual and the First Nation council; and

   c) basis for the dispute with recommendations for its resolution.

4.9 **Documentation.** The documents required to prove the reversion of the individual's rights to the First Nation will depend upon the circumstances surrounding the reversion.

   a) **Transfer.** Where the individual and First Nation council have agreed on the compensation for permanent improvements, a transfer is completed as set out in Directive 3-4.

   b) **Ministerial Order.** Where they reach no agreement, the matter is resolved by Ministerial Order.

5. **Process**

5.1 This section provides an overview of how to do a reversion of the right to possession under section 25 of the *Indian Act*. We include a detailed checklist as Annex A to this Directive. Please note that First Nations exercising delegated authorities under section 60 of the *Indian Act* are responsible for taking the steps identified as the responsibility of INAC Field in the checklist. Consult delegation instruments to confirm the scope of authority.
5.2 **Notice.** The Lands Officer provides notice of the operation of section 25 to the individual who is ineligible to continue to reside on reserve lands and to the First Nation council. Usually the Lands Officer will become aware of the individual's ineligibility to reside on the reserve during informal discussions with First Nation members.

5.3 **Extensions.** The ineligible individual submits a request for an extension, accompanied by any supporting recommendation of the First Nation council, to the Lands Officer before the expiry of the six-month period specified in subsection 25(1) of the *Indian Act*.

5.4 The Lands Officer reviews the request and forwards it, accompanied by his or her recommendation, to the authority approving the extension for the Minister.

5.5 **Transfer by Individual.** Where an individual transfers his or her right to possession to a member of the First Nation or to the First Nation itself within the specified six-month period, or an authorized extension period, the transfer is completed according to section 24 of the *Indian Act* (see Directive 3-4) and the policies of this directive.

5.6 **Reversion where Parties Agree to Compensation.** Where a right to possession reverts to the First Nation, and the individual and First Nation council have agreed on the compensation for permanent improvements, a transfer is completed in the same manner as a transfer under section 24 of the *Indian Act* (see Directive 3-4).

5.7 **Reversion where Parties do not Agree to Compensation.** Where a right to possession reverts to the First Nation, and the council and the ineligible individual have not agreed on the compensation for permanent improvements, the Lands Officer requests PWGSC to prepare an investigative report on the improvements to the subject property to determine the compensation to be paid to the individual.

5.8 **Appraisal.** The Lands Officer arranges for an appraisal to valuate the permanent improvements to the land. A review by PWGSC is recommended.

5.9 **Verify Available Funds.** The Lands Officer checks whether adequate funds are available to the First Nation to pay appropriate compensation. Where it appears that the required First Nation funds may not be available the Lands Officer discusses the available options with the Regional Director of LTS.
5.10 The Lands Officer submits the investigative report, with his or her recommendations, to the authority approving the compensation to be paid to the individual. The officer also sends a copy to the First Nation council.

5.11 **Ministerial Order.** If a Ministerial Order ("Order") is required, the Lands Officer, with the assistance of the Department of Justice, prepares the Order setting out the compensation to be paid to the individual for improvements to the subject property and confirming that the right to possession of the land has reverted to the First Nation. The Lands Officer sends the Order for approval and registration.

5.12 If the matter has been resolved by the Order, a copy of the registered Order is forwarded to the First Nation council with the advice that the subject lands are available for re-allotment.

5.13 **Payment of Compensation.** After the Order is issued, the First Nation council arranges for payment of compensation from First Nation funds.

5.14 The Lands Officer ensures that the First Nation council complies with the terms of the Order. If necessary, the Lands Officer recommends to the Regional Director of LTS possible steps to take to ensure compliance. Discussions with the Department of Justice may also be appropriate.

6. **References**

6.1 Besides the relevant sections of the legislation, further information may be found in the *Indian Lands Registration Manual.*
Directive 3-5: Reversion of Right to Possession

Annex A: Checklist
# Checklist
## Reversion of Right to Possession

<table>
<thead>
<tr>
<th></th>
<th>INAC Field:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Provides notice of options under section 25 of the <em>Indian Act</em> to First Nation council and to the individual who is ineligible to continue to reside on reserve lands.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Where ineligible individual arranges a transfer pursuant to section 25(1) within the stipulated six-month period, completes the transfer following Directive 3-4.</th>
</tr>
</thead>
</table>

### REQUEST FOR EXTENSION

<table>
<thead>
<tr>
<th></th>
<th>First Nation:</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Before expiry of the six-month period specified in subsection 25(1), the First Nation council forwards to the Lands Officer a request for an extension, accompanied by its supporting BCR.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>In the alternative, before the expiry of the six-month period specified in subsection 25(1), the ineligible individual forwards to the Lands Officer a request for an extension of the period within which he or she must transfer the rights to possession.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Reviews the request from the First Nation council or individual.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Forwards request and his or her recommendation, to the approving authority.</th>
</tr>
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<table>
<thead>
<tr>
<th></th>
<th>Request for extension granted or denied by the approving authority.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Where a transfer pursuant to section 25(1) which falls within an authorized extension period is approved, completes transfer according to Directive 3-4, ensuring that the transfer document includes the proper recital.</th>
</tr>
</thead>
</table>

### REVERSION TO FIRST NATION - COMPENSATION AGREED

<table>
<thead>
<tr>
<th></th>
<th>First Nation:</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>Where right to possession of the subject lands reverts to the First Nation, and the individual and First Nation have reached an agreement with respect to compensation for permanent improvements, prepares documentation for transfer of lawful possession with assistance of Lands Officer if necessary.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>First Nation (continued):</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>Completes transfer of interest in land in accordance with Directive 3-4</td>
</tr>
<tr>
<td></td>
<td><strong>INAC Field:</strong>&lt;br&gt;Where right to possession of the subject lands reverts to the First Nation, and the individual and First Nation have reached an agreement with respect to compensation for permanent improvements, provides assistance to First Nation in preparation of transfer documents, when required.</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>11</td>
<td>Completes transfer of interest in land in accordance with Directive 3-4.</td>
</tr>
<tr>
<td>12</td>
<td><strong>REVERSION TO FIRST NATION - COMPENSATION NOT AGREED</strong>()&lt;br&gt;<strong>INAC Field:</strong>&lt;br&gt;Where right to possession of the subject lands reverts to the First Nation, and the individual and First Nation have not reached an agreement with respect to compensation for permanent improvements, prepares an investigative report including:&lt;br&gt;a) identification of improvements and confirmation of ownership;&lt;br&gt;b) value of the improvements determined by appraisal or agreement;&lt;br&gt;c) availability of First Nation funds;&lt;br&gt;d) basis for the dispute with recommendations for its resolution.</td>
</tr>
<tr>
<td>13</td>
<td>Submits investigative report, with his or her recommendations, to the authority approving the compensation for permanent improvements to be paid to the individual, and sends a copy to the First Nation council.</td>
</tr>
<tr>
<td>14</td>
<td><strong>First Nation:</strong>&lt;br&gt;Where the First Nation council and individual <em>agree with the valuation</em>, passes a BCR indicating concurrence with the valuation and recommending payment of compensation from First Nation funds.</td>
</tr>
<tr>
<td>15</td>
<td><strong>INAC Field:</strong>&lt;br&gt;If the First Nation council and individual <em>do not agree with the valuation</em>, prepares Ministerial Order and forwards for approval.</td>
</tr>
<tr>
<td>16</td>
<td>Forwards a copy of the order to the First Nation council, advising that the subject lands are available for re-allotment.</td>
</tr>
<tr>
<td>17</td>
<td><strong>First Nation:</strong>&lt;br&gt;Arranges for payment of compensation to the individual from First Nation funds.</td>
</tr>
<tr>
<td>18</td>
<td><strong>INAC Field</strong>&lt;br&gt;Where payment of compensation is pursuant to a Ministerial Order, ensures that the First Nation council complies with the terms of the Order.</td>
</tr>
</tbody>
</table>
Directive 3-6
Correcting and Cancelling Certificates of Possession, Certificates of Occupation or Location Tickets

1. Purpose

1.1 This directive explains how to cancel Certificates of Possession, Certificates of Occupation or Location Tickets pursuant to section 26 or cancel them pursuant to section 27 of the Indian Act. You should read this directive for information on:

a) Policy: It states the principles and requirements governing the correction or cancellation of a CP, a CO, or a LT.

b) Procedures: It outlines the steps to be taken to correct or cancel a CO, a CP, or a LT.

2. General

2.1 Section 26 of the Indian Act provides for the correction of a Certificate of Possession (CP), a Certificate of Occupation (CO) or a Location Ticket (LT) where the Minister believes that:

a) through mistake, the CP, CO or LT has been issued to or in the name of the wrong person;

b) the CP, CO or LT contains any clerical error or misnomer; or,

c) the CP, CO or LT contains a wrong description of any material fact therein.

2.2 In the above circumstances, the Minister may cancel the CP, CO or LT and issue a corrected Certificate in its place.

2.3 Unlike section 26, which contemplates that after a CP, CO or LT has been cancelled a revised or amended CP will be issued, the sole discretion vested in the Minister by virtue of section 27 is to cancel the offending CP, CO or LT.
2.4 Under section 27, the Minister may cancel a CP, CO or a LT, with the consent of the holder, where:

a) through mistake, the CP, CO or LT has been issued to or in the name of the wrong person;

b) the CP, CO or LT contains any clerical error or misnomer;

d) the CP, CO or LT contains a wrong description of any material fact therein.

2.5 The Minister may cancel an individual's lawful possession of reserve land including a CP, CO, Cardex, NE, NETI, or a LT without the consent of the holder where the Minister believes it was issued through fraud or error.

3. Authorities

3.1 Relevant statutory authorities include:

*Indian Act*, ss. 26 and 27

26. Whenever a Certificate of Possession or Occupation or a Location Ticket issued under *The Indian Act, 1880*, or any statute relating to the same subject-matter was, in the opinion of the Minister, issued to or in the name of the wrong person, through mistake, or contains any clerical error or misnomer or wrong description of any material fact therein, the Minister may cancel the Certificate or Location Ticket and issue a corrected Certificate in lieu thereof.

27. The Minister may, with the consent of the holder thereof, cancel any Certificate of Possession or Occupation or Location Ticket referred to in section 26, and may cancel any Certificate of Possession or Occupation or Location Ticket that in his opinion was issued through fraud or in error.

4. Policy

4.1 Notice. The individual(s) or the First Nation may request corrective action under section 26 or 27, or the department may initiate the correction. Whenever corrective action is initiated, the Lands Officer should give notice to both the individual(s) and the First Nation council.

4.2 Section 26 of the *Indian Act* is a remedial section intended to allow correction where a CP, CO or LT has been issued incorrectly through "clerical" error or misdescription. This section of the *Indian Act*, therefore, should not be used where there is a dispute between the parties unless it is clearly justified and the Department of Justice has approved the action.
4.3 **Amended BCR.** Where the parties agree that a CP, CO or LT has been issued based on wrong information in a First Nation council Resolution (BCR), the Department requires an amended BCR before undertaking corrective action.

4.4 **Fraud or Error.** Although the provisions of section 27 are seldom used, where circumstances show that a CP, CO, or LT has been issued through fraud or in error, the Lands Officer should consult with the Department of Justice, the First Nation council, and where appropriate, the individual(s) concerned, prior to undertaking corrective action pursuant to this section.

4.5 Where the Department of Justice has recommended that the CP, CO, or LT should not be cancelled, or where Justice is unable to determine whether the CP, CO, or LT should be cancelled, the Lands Officer should advise the parties to the dispute that if they are unable to settle the issue between themselves, their remedy lies with the courts.

4.6 Where, in consultation with the Department of Justice, the Department determines that a CP, CO, or LT has been issued through fraud or in error, and the First Nation council agrees with the determination, the Lands Officer should obtain a BCR from the First Nation council providing the required information.

4.7 Where the First Nation council does not provide a BCR because it does not agree that a CP, CO or LT has been issued through fraud or error, but such is the determination of the Department of Justice, the Lands Officer requests the corrective action and the Indian Lands Registry executes the correction through a Ministerial order.

5. **Process**

5.1 This section provides an overview of how to correct or cancel Certificates of Possession, or Occupation or LT’s under section 26 or section 27 of the *Indian Act*. We include a detailed checklist in Annex A to this Directive. Note that First Nations exercising delegated authorities under section 60 of the Indian Act are responsible for taking the steps identified as the responsibility of INAC Field in the checklist. You should consult delegation instruments to confirm the scope of authority.

5.2 **Review.** The Lands Officer reviews the circumstances to decide whether correction or cancellation of the CP, CO, or LT is the appropriate action. This would usually occur at the request of the First Nation council or an individual member.
5.3 **Notice.** Where corrective action is being considered under section 26 or 27, the Lands Officer must provide notice to the affected parties in the form of a fact letter. This letter should set out the circumstances of the error and the action that will be taken to correct it. It should provide the effected parties with at least (30) days to provide alternative facts or germane objections to the corrective action.

5.4 **BCR/Transfer Correct.** Where a BCR or transfer is correct, but the issued CP, CO, or LT contains an error, the Lands Officer notifies the Indian Lands Registry of the mistake and requests a correction.

5.5 Upon receiving a request for correction, the Indian Lands Registry reviews the request. Where it agrees with the proposed action, the Registry draws up a Ministerial Order which cancels the old interest and CP, CO or LT, and issues a new CP or CO.

5.6 The Order is executed for the Minister and is registered. The incorrect CP, CO or LT is then cancelled and a new CP or CO is issued. However, in situations where a CP, CO or LT is cancelled, and a new CP or CO is to be issued, a survey may need to be completed prior to the issuance of a new CP.

5.7 **BCR Incorrect - Parties Agree.** Where the CP, CO or LT is incorrect due to an error in the BCR and the First Nation council and individual(s) agree that the documentation contains a mistake, the individual receiving the allotment executes a transfer back to the First Nation. This transfer is then processed following Directive 3-4.

5.8 Once the transfer is complete, the First Nation council passes a new BCR, correctly allotting the subject property.

5.9 After passing the BCR, the First Nation council submits it to the Lands Officer for review. The allotment is then completed following Directive 3-2.

5.10 **Transfer Incorrect - Parties Agree.** Where a CP, CO or LT is incorrect due to an error in a transfer, and all parties agree that the documentation contains a mistake, a new transfer is prepared and executed. This transfer is then processed following Directive 3-4.

5.11 **BCR/Transfer Incorrect - Parties Disagree.** Where a CP, CO or LT is in error because the BCR or transfer is incorrect and the First Nation council and/or individual(s) do not agree that there is a mistake in the documentation, the Lands Officer should consult with the Department of Justice. Where appropriate, the Lands Officer should also consult with the First Nation council and the individual(s).
5.12 Where, after consultation, the Department of Justice determines that the CP, CO or LT should not be cancelled and reissued, or where Justice is unable to determine whether the CP, CO or LT should be cancelled, the Lands Officer informs the parties of this decision. At that point the matter is a private dispute between the parties. The Lands Officer should advise the parties to the dispute that if they are unable to settle the issue between themselves, their remedy lies with the courts.

5.13 Where, after consultation, the Department of Justice agrees that the CP, CO or LT should be cancelled, the Lands Officer forwards to the Indian Lands Registry a request for correction of a CP, CO or LT along with any supporting documentation.

5.14 Upon receipt and review of the request, where the Indian Lands Registry agrees that cancelling the CP, CO or LT is appropriate, the Registry prepares a Ministerial Order which cancels the allotment or transfer and the CP, CO or LT and orders the issuance of a CP or CO.

5.15 After the order is prepared, it is signed for the Minister and registered. The old interest and CP, CO or LT is cancelled and a new CP or CO is issued.

5.16 **Cancellation of a CP or CO or LT under Section 27.** To cancel a CP, CO, or LT, with the consent of the holder, pursuant to section 27, follow the steps outlined in paragraphs 5.1 to 5.9, with the following modifications:

a) Where an interest and CP, CO or LT are cancelled according to paragraphs 5.8 and 5.9, no corrected CP is issued.

b) Once the transfer back to the First Nation is completed in paragraph 5.10, we take no further steps.

5.17 **Fraud or Error.** In all cases where it appears the CP, CO or LT was issued through fraud or in error, the Lands Officer consults with the Department of Justice before requesting cancellation of the CP, CO, or LT.

6. **References**

6.1 For more information you should read the *Indian Lands Registration Manual.*
Directive 3-6: Correcting and Cancelling Certificates of Possession, Certificates of Occupation or Location Tickets

Annex A: Checklist
## Correcting and Cancelling
Certificates of Possession and Occupation

|   | **First Nation:**
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>First Nation or individual requests corrective action under section 26 or 27 of the Indian Act.</td>
</tr>
</tbody>
</table>
| 2 | **INAC Field:**
|   | Responds to request of First Nation or individual, or commences corrective action at the initiative of the department. |
| 3 | Provides notice of corrective action to the individual(s) and First Nation Council. |
| 4 | **If BCR/TRANSFER CORRECT or**
|   | Where BCR or transfer is correct, but Certificate or Location Ticket is in error, notifies ILR of mistake and requests correction. |
| 5 | **INAC H.Q.:**
|   | Reviews request. |
| 6 | If agrees with proposed action, drafts and submits Ministerial Order for approval. |
| 7 | Registers Ministerial Order following the *Indian Lands Registration Manual*. |
| 8 | Cancels incorrect Certificate or Location Ticket and, where applicable, issues new Certificate. |
| 9 | **If BCR/TRANSFER INCORRECT - Parties AGREE**
|   | **First Nation**
<p>|   | Where BCR incorrect and parties agree the documentation contains an error, individual executes transfer conveying subject land back to First Nation and forwards to Lands Officer (see Directive 3-4). |</p>
<table>
<thead>
<tr>
<th>Step</th>
<th>If BCR/TRANSFER INCORRECT - Parties AGREE (continued)</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td><strong>INAC Field</strong>&lt;br&gt;Reviews transfer and forwards it, along with supporting documentation for approval. Once approved, forwards transfer to Indian Lands Registry for Registration (see Directive 3-4).</td>
</tr>
<tr>
<td>11</td>
<td><strong>First Nation</strong>&lt;br&gt;Where applicable, passes new BCR correctly allotting subject lands and forwards to Lands Officer for approval (see Directive 3-2).</td>
</tr>
<tr>
<td>12</td>
<td><strong>INAC Field</strong>&lt;br&gt;Reviews new B.C.R and supporting documentation, forwards it for approval and subsequently for registration (see Directive 3-2).</td>
</tr>
<tr>
<td>13</td>
<td><strong>INAC H.Q.</strong>&lt;br&gt;Registers new BCR and issues Certificate (see Directive 3-2).</td>
</tr>
<tr>
<td>14</td>
<td><strong>If TRANSFER INCORRECT - PARTIES AGREE or</strong>&lt;br&gt;<strong>First Nation</strong>&lt;br&gt;Where transfer incorrect and parties agree the documentation contains an error, a new transfer is executed correctly conveying the subject lands. The transfer and supporting documentation are then forwarded to the Lands Officer (see Directive 3-4).</td>
</tr>
<tr>
<td>15</td>
<td><strong>INAC Field</strong>&lt;br&gt;Reviews transfer and forwards it, along with supporting documentation, for approval. Once approved, forwards transfer to Indian Lands Registry for Registration (see Directive 3-4).</td>
</tr>
<tr>
<td>16</td>
<td><strong>INAC H.Q.</strong>&lt;br&gt;Registers transfer and, where applicable, issues Certificate (see Directive 3-4).</td>
</tr>
<tr>
<td>17</td>
<td><strong>If B.C.R/TRANSFER INCORRECT-PARTIES DISAGREE or FRAUD/ERROR</strong>&lt;br&gt;<strong>INAC Field</strong>&lt;br&gt;Where BCR or transfer incorrect and parties do not agree the documentation contains an error, or where it appears Certificate or Location Ticket issued through fraud or in error, reviews circumstances in consultation with Department of Justice, and where appropriate, the parties.</td>
</tr>
<tr>
<td></td>
<td>INAC Field</td>
</tr>
<tr>
<td>---</td>
<td>---------------------------------------------------------------------------</td>
</tr>
<tr>
<td>18</td>
<td>After consultation with Department of Justice, forwards request for corrective action or cancellation to Indian Lands Registry or informs parties no corrective action to be taken.</td>
</tr>
<tr>
<td>19</td>
<td>INAC H.Q.</td>
</tr>
<tr>
<td>20</td>
<td>Where in agreement with proposed action, drafts and approves Ministerial Order.</td>
</tr>
<tr>
<td>21</td>
<td>Registers Ministerial Order in accordance with the <em>Indian Lands Registration Manual</em>.</td>
</tr>
<tr>
<td>22</td>
<td>If applicable, issues new CP or CO.</td>
</tr>
</tbody>
</table>
1. **Purpose**

1.1 This directive explains how to use section 23 of the *Indian Act*, which provides payment to a locatee to compensate for permanent improvements made to reserve lands, where the locatee is lawfully removed from those lands. You should read this directive for information on:

a) **Policy:** It states the principles and requirements governing the compensation of a First Nation member in the circumstances set out in section 23.

b) **Procedures:** It outlines the steps to take to set and pay compensation.

2. **General**

2.1 Section 23 of the *Indian Act* provides for compensation to a First Nation member for permanent improvements made on reserve lands from which the individual has been lawfully removed.

2.2 In those circumstances, the First Nation member may be compensated, at the discretion of the Minister, for the value of those improvements, either from the funds of the First Nation or from the individual who goes into possession.

3. **Authorities**

3.1 **Relevant statutory authorities include:**

*Indian Act*, s. 23

23. An Indian who is lawfully removed from lands in a reserve upon which he has made permanent improvements may, if the Minister so directs, be paid compensation in respect thereof in an amount to be determined by the Minister, either from the person who goes into possession or from the funds of the band, at the discretion of the Minister.
4. **Policy**

4.1 **Investigation.** Where a potential case of removal from reserve lands comes to the attention of a Lands Officer, the officer should investigate it as soon as possible. The Lands Officer should not delay an investigation of the underlying circumstances because litigation has been commenced between a First Nation council and an individual member concerning removal from reserve lands.

4.2 Because the department does not administer traditional or custom land holdings or occupational rights at the pleasure of the First Nation, the Lands Officer should refer disputes involving this type of tenure to the First Nation council.

4.3 **Litigation.** It is the Minister who must make the various determinations under section 23 of the *Indian Act*. The Department does not take notice of litigation proceedings before the judgement is rendered. To do so would abdicate the discretionary powers of the Minister to the court system. Likewise, although the Minister has no authority to preclude the parties from commencing litigation, it should not be encouraged as a means of determining the rights between the various parties involved in a dispute concerning compensation for improvements.

4.4 **Settlement by Mutual Agreement.** The First Nation council and the individual member should have a reasonable opportunity to settle the matter of compensation by mutual agreement.

4.5 The department should offer assistance by providing services such as determining the value of improvements.

4.6 If a settlement seems unlikely, the Lands Officer should advise the First Nation council and individual member that the Minister may exercise his discretionary powers.

5. **Process**

5.1 This section provides an overview of the process where, pursuant to section 23 of the *Indian Act*, a First Nation member may be entitled to compensation for permanent improvements made to reserve lands where the First Nation member is subsequently lawfully removed from those lands. We include a detailed checklist at the end of this directive. In summary, the process involves the following major steps:

a) **Investigation of Removal from Reserve Lands.** When reported to a Lands Officer, he or she investigates potential cases of removal.

b) **Facilitate Settlement between First Nation and Individual.** The Lands Officer offers Departmental services to assist in settlement.
Process (continued)

c) **Exercise of Discretion.** Where settlement is unlikely, the Lands Officer advises the parties to the dispute that the Minister may exercise his powers.

d) **Appraisal.** An appraisal should valuate the permanent improvements to the land. A review by Public Works and Government Services Canada is recommended.

e) **Verify Available Funds.** If applicable, check whether adequate funds are available to the First Nation to pay appropriate compensation.

f) **Ministerial Order.** If a Ministerial Order is required, the Lands Officer, with the assistance of the Department of Justice, prepares the order setting the compensation payable to the individual being removed for improvements to the subject property, and identifying the source of the compensation (i.e. First Nation funds or those of the individual going into possession). The Lands Officer forwards the Order for approval.

g) **Payment of Compensation.** Upon issuance of the Order, the Lands Officer arranges to pay compensation from First Nation moneys, if applicable.

h) If the matter has been resolved by Ministerial Order, a copy of the order is forwarded to the First Nation council, the individual being removed, and where affected by the order, the individual(s) going into possession.

6. **References**

6.1 For more information you should read the *Indian Lands Registration Manual.*
Directive 3-7: Compensation for Improvements

Annex A: Checklist
## Compensation for Improvements

|   | **First Nation:**  
<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Negotiates with individual in occupation about compensation for improvements to the subject land.</td>
</tr>
</tbody>
</table>

|   | **INAC Field:**  
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Eases settlement between First Nation and individual by offering departmental assistance.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Where no settlement, prepares an investigative report including:</th>
</tr>
</thead>
</table>
| 3 | a) identification of improvements and confirmation of ownership;  
|   | b) value of the improvements determined by appraisal or agreement;  
|   | c) availability of First Nation funds. |

<table>
<thead>
<tr>
<th></th>
<th>Submits an investigative report, with his or her recommendations, to the authority approving the compensation for permanent improvements payable to the individual being removed, and sends a copy to the First Nation council, and where applicable, the individual(s) going into possession.</th>
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<tbody>
<tr>
<td>4</td>
<td>Consult with Regional Justice about the proposed order.</td>
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<tr>
<th></th>
<th>Where compensation issue settled by Ministerial Order, prepares order and submits for approval.</th>
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<tbody>
<tr>
<td>5</td>
<td>Forwards copy of Ministerial Order to First Nation, the individual being removed and where applicable, the individual(s) going into possession.</td>
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|   | **First Nation:**  
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<tr>
<td>8</td>
<td>Arranges compensation payment from First Nation funds to the individual being removed, if applicable.</td>
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</tbody>
</table>

|   | **INAC Field:**  
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<tbody>
<tr>
<td>9</td>
<td>Where payment of compensation is pursuant to a Ministerial Order, ensures compliance with the terms of the Order.</td>
</tr>
</tbody>
</table>
Directive 3-8
Band Mortgages

1. Purpose

1.1 This directive provides an option for First Nations lending to First Nation members on reserve lands, and it should be noted that with any agreement between parties there are risks. Consequently, the Lands Officer should caution both the Mortgagor and Mortgagee that this is only an option and that they should seek independent legal advice before entering into this kind of agreement or another viable option.

1.2 This directive summarizes the procedures to follow in case of default of a First Nation member mortgage using the sample attached at Annex "A".

1.3 Definitions

a) **Mortgage**: an interest in land created by a written instrument or consent as defined in the directive on the Approval and Management of Ministerial Loan Guarantees for Housing, where the Mortgagor (a member of the First Nation) gives his/her lawful possession of Indian reserve land as security for a loan of money.

b) **Mortgagee**: to loan money to a First Nation council or a registered First Nation member that agrees to loan “lends” money to another registered First Nation member (Mortgagor) in exchange for the pledge of the lawful possession of the Mortgagor.

c) **Mortgagor**: a registered First Nation member that enters into a mortgage agreement with a First Nation council or a registered First Nation member (Mortgagee) in order to borrow money from the Mortgagee.

d) **Quit Claim**: a written document used by the Mortgagor to transfer his/her lawful possession of Indian reserve land to the Mortgagee (here the First Nation or a registered First Nation member).
e) **Power of sale**: an action taken by the Mortgagee to sell the lawful possession of the mortgaged property to a purchaser, free and clear of the interest of the Mortgagor or any other person having an interest subsequent to the Mortgage.

f) **Purchaser**: a registered member of the First Nation that acquires, by purchase, the lawful possession of the mortgaged property.

g) **Foreclosure**: an action before the Court where the mortgagee asks the Court that he becomes the owner of the mortgaged property.

h) **Statement of Claim**: the document beginning the action in Court.

i) **Statement of Defense**: the document which answers the Statement of Claim.

2. **General**

2.1 According to subsection 89(1) of the *Indian Act*, a First Nation member in lawful possession of reserve land can enter into a mortgage agreement with a First Nation Council or a First Nation member using his lawful possession of Indian reserve land as security to obtain a loan.

2.2 If the First Nation member (Mortgagor) defaults in carrying out his obligation under the mortgage, the Mortgagee may undertake to carry out one of the following remedies: obtain a quit claim, file for foreclosure or begin power of sale proceedings.

3. **Authorities**

3.1 Relevant statutory authorities include:

*Indian Act*, s. 24 and ss. 89(1):

24. *An Indian who is lawfully in possession of lands in a reserve may transfer to the band or another member of the band the right to possession of the land, but no transfer or agreement for the transfer of the right to possession of lands in a reserve is effective until it is approved by the Minister.*
89(1). Subject to this Act, the real and personal property of an Indian or a band situated on a reserve is not subject to charge, pledge, mortgage, attachment, levy, seizure, distress or execution in favour or at the instance of any person other than an Indian or a band.

4. Policy - General

4.1 The Department of Indian Affairs and Northern Development (INAC) will not get involved in the drafting of a mortgage between the Mortgagee and the Mortgagor. However, if INAC is consulted by a First Nation, INAC representatives can provide samples of standard mortgage default remedy clauses such as the ones included in Annex “A”, for the information of the First Nation. It is up to the First Nation to determine the provisions of the mortgage document.

4.2 The mortgage document should be registered in the Indian Land Registry (ILR) in accordance with its rules and guidelines.

4.3 Upon default of the Mortgagor, the Mortgagee has three options to obtain lawful possession or to recoup his loss. These options are:

a) a quit claim deed signed by the Mortgagor and obtained after default;

b) a foreclosure action;

c) a power of sale.

4.4 Any transfer of a right to possession of the mortgaged property can only be made to the First Nation or a registered member of that First Nation in accordance with the Indian Act.

5. Policy - Quit Claim Deed

5.1 A quit claim deed must be obtained and signed after the default of the Mortgagor and it must be registered in the ILR in accordance with its requirements.
5.2 The following should be included in the quit claim document:

a) a reference to the registered mortgage in default, such as its registration number, and the date it was executed;
b) the name and number of the First Nation member (the Mortgagor) as shown in the Indian Registry System;
c) the most current legal description of the mortgaged land;
d) an affidavit of witness.

5.3 The quit claim deed, in order to be registered, must be approved in accordance with section 24 of the *Indian Act*.

6. Policy - Foreclosure

6.1 An action of foreclosure may commence immediately upon default by the mortgagor of a payment of principal and/or interest.

6.2 An action of foreclosure must begin with a Statement of Claim that must be served to the following persons:

a) the lawful possessor of the property;
b) the lawful possessor’s spouse including common law spouse;
c) the original Mortgagor and the guarantor where applicable;
d) every person having a registered interest in the property subsequent to the mortgage;
e) any person having an unregistered interest in the property subsequent to the mortgage and of which the Mortgagee has been notified.

6.3 The Statement of Claim should be registered in the ILR to notify interested parties and to protect the interest of the Mortgagee.
6.4 Upon receiving the statement of claim, the Mortgagor has several options which are:

   a) putting the mortgage in good standing which means making the payments that were not paid in time;
   b) paying the mortgage debt in full;
   c) serving and filing with the Court a Statement of Defense;
   d) filing with the Court a request to redeem;
   e) filing with the Court a request for sale.

6.5 Following the option chosen by the Mortgagor, the Mortgagee should send to INAC:

   a) a discharge of mortgage if the debt has been paid in full;
   b) a notice stating that the mortgage is in good standing if the Mortgagor makes the payments due to the Mortgagee; or
   c) an order from the Court foreclosing the mortgage interest, or converting the procedure to a power of sale.

6.6 If a final order of foreclosure is issued by the Court, the Mortgagee should submit the order to INAC for approval under section 24 of the Indian Act. A discharge of mortgage document should be submitted at the same time.

7. **Policy - Power of Sale**

7.1 Before executing the power of sale the Mortgagee must give notice.

7.2 The notice must be given 15 days or more after the default occurred.

7.3 The notice should be registered in the ILR.

7.4 The notice must contain the following:

   a) the date of the mortgage;
   b) the registration number of the mortgage;
   c) the name and registration number, as shown in the Indian Registry System, of the First Nation member receiving the interest in the land;
   d) the most current legal land description of the mortgaged land.
7.5 The notice must be served to the following persons:

a) the lawful possessor(s) of the property;
b) the lawful possessor's spouse including common law spouse;
c) the original Mortgagor and the guarantor where applicable;
d) every person having a registered interest in the property subsequent to the mortgage. The Mortgagee should check the ILR for any registered interests in the mortgaged property;
e) any person having an unregistered interest in the property subsequent to the mortgage and of which the Mortgagee has been notified.

7.6 The notice should set out the nature of the default, and the amount required for principal, interest and any costs the Mortgagee is entitled to claim under the mortgage agreement such as legal fees or costs to serve the notice. It should also notify the Mortgagor of the date when the amount is required.

7.7 The notice should be accompanied by a statutory declaration attesting that the notice was served as required above, as well as how it was served.

7.8 The sale or the transfer to the First Nation or First Nation member can occur only 35 days or more after the notice has been given. This term can be longer if the mortgage document provides for a longer period of time.

7.9 When the sale is completed, a discharge of mortgage and a First Nation Council Resolution (BCR) explaining that the mortgage is in default, what procedure has been followed, and requesting the transfer of the lawful possession, should be sent by the First Nation council to INAC, for approval.

7.10 The BCR described above must also contain the following:

a) the date of the mortgage and the number under which the mortgage is registered in the ILR;
b) the most current legal description of the property;
c) the registration number of the notice and statutory declarations;
d) name and Band number, as shown in the Indian Registration System, of the First Nation member who is purchasing the property and;
e) a request for the approval of the transfer of lawful possession pursuant to section 24 of the Indian Act.
7.11 INAC will accept and register, subject to ministerial approval under section 24 of the *Indian Act*, a transfer signed by the Mortgagor in favor of the First Nation and executed before the mortgage default, provided that the First Nation has completed all of the steps set out in sections 7.1 to 7.9 and 7.13 to 7.15 inclusive.

7.12 If the First Nation has a Transfer of Land transferring lawful possession of the land to the First Nation, it should submit a discharge of mortgage with the Transfer. If a discharge of mortgage is not provided at this time, it must be provided for registration before lawful possession of the land can be re-allotted in the future.

7.13 The BCR or the transfer under section 24 of the *Indian Act* should be accompanied by a statutory declaration attesting that the default of the mortgage continued up to the date of sale and that the Mortgagee has complied with the law in completing the power of sale proceedings.

8. **Process**

8.1 If a Lands Officer is consulted by a First Nation on the drafting of a mortgage document, he can provide the sample default remedy clauses included in this policy as Annex “A”. The Lands Officer should also advise the First Nation to obtain independent legal advice, as it is up to the First Nation to determine the content and legal effect of its mortgage document.

8.2 Once the mortgage document is finalized and signed by the parties, the Mortgagee should submit the document to INAC for registration.

9. **Process - Quit Claim**

9.1 Except for 53/60 First Nations, the Mortgagee should send the quit claim deed to the regional or district office of INAC.

9.2 Upon receiving a quit claim deed, the Lands Officer should verify that it meets the requirements of this policy.
9.3 The Lands Officer should ensure that the quit claim was signed after the default has occurred.

9.4 The Lands Officer should also ensure that reference is made to:

a) the date and the registration number of the mortgage in default;
b) the name and number of the Mortgagor as shown in the Indian Registry System; and
c) the most current legal land description of the mortgaged land.

9.5 The Lands Officer should verify that an affidavit of witness is attached to the Quit Claim deed.

9.6 If the Quit Claim meets all requirements, the Lands Officer will forward the document for approval under section 24 of the Indian Act to the person who has delegated authority to approve such a transaction.

9.7 Once approved, the document will be submitted to the ILR for registration.

10. Process - Foreclosure

10.1 If an action of foreclosure is commenced, the Mortgagee should forward a copy of the Statement of Claim to the ILR for registration.

10.2 If the Mortgagor chooses to pay his debt or put the Mortgage in good standing, the Mortgagee should send to the ILR a discharge of Mortgage or a notice advising the ILR that the mortgage is in good standing.

10.3 Except for 53/60 First Nations, whenever a final order of foreclosure is given by the Court, the Mortgagee should send a certified copy of the Order to the regional or district office of INAC.

10.4 Upon receiving an order of foreclosure, the Lands Officer will verify that it meets the ILR requirements for registration and that a Statement of Claim and a notice in good standing were registered.

10.5 The Lands Officer will also verify that the Court order refers to the mortgage agreement that was registered and that it orders the transfer of lawful possession of the reserve land to the Mortgagee.
10.6 If it meets the requirements, the Lands Officer will forward the Court order for approval under section 24 of the *Indian Act* to the person in INAC who has delegated authority to approve the document.

10.7 Once the document is approved, the Lands Officer will forward it to the ILR for registration.

11. **Process - Power of Sale**

11.1 If a power of sale procedure is chosen by the Mortgagee to recoup his/her loss, he/she has to serve a notice.

11.2 The Mortgagee should conduct a search of title of the mortgaged property to determine the interested parties that should receive a notice in accordance with section 7.5 of this policy.

11.3 The notice should be forwarded for registration to INAC by the Mortgagee along with the required Statutory Declaration regarding service of the Notice of Sale.

11.4 The Indian Lands Registry (ILR) Officer will verify that the notice meets the requirements of the ILR and then she/he will register the document.

11.5 If a sale is completed, the First Nation council should send a BCR along with the required statutory declaration and a discharge of mortgage to INAC regional or district office for ministerial approval and registration.

11.6 If a transfer of land under section 24 of the *Indian Act* was executed by the Mortgagor, the First Nation council should send the transfer for approval along with the required statutory declaration and the discharge of mortgage if applicable.

11.7 The Lands Officer will verify that the BCR or the transfer of land under section 24 of the *Indian Act* and the discharge of mortgage, if applicable, meet the requirements of this directive and of the ILR policy.

11.8 If the BCR or the section 24 transfer meets the requirements, the Lands Officer will forward it to the person in INAC who has delegated authority to approve the document under section 24 of the *Indian Act*. 
11.9 Once the BCR or the transfer is approved, the Lands Officer will send the BCR or the transfer with the discharge of mortgage if applicable to the ILR for registration.

11.10 The ILR Officer will verify and register the BCR or the transfer under section 24 and the discharge of mortgage in accordance with the ILR requirements.

12. Implementation

12.1 This directive will come into force upon distribution.

13. References

a) Indian Lands Registration Manual
b) Land Management Manual
c) Indian Act
### STEPS IN THE QUIT CLAIM PROCESS

<table>
<thead>
<tr>
<th>STEPS IN THE QUIT CLAIM PROCESS</th>
<th>Organizations involved</th>
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<tbody>
<tr>
<td></td>
<td>FN Council</td>
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<tr>
<td>1- Send the quit claim to INAC.</td>
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<tr>
<td>2- Verify that the quit claim meets the ILR.</td>
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<tr>
<td>3- Forward the quit claim for approval.</td>
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<tr>
<td>4- Submit the quit claim for registration.</td>
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<tr>
<td>5- Registration.</td>
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### STEPS IN THE FORECLOSURE PROCESS

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<tr>
<th>STEPS IN THE FORECLOSURE PROCESS</th>
<th>Organisations involved</th>
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<tbody>
<tr>
<td></td>
<td>FN Council</td>
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<tr>
<td>1- File a statement of claim.</td>
<td></td>
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<tr>
<td>2- Serve the statement of claim.</td>
<td></td>
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<tr>
<td>3- Forward the statement of claim for registration.</td>
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<tr>
<td>4- Verify and register the statement of claim.</td>
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<tr>
<td>STEPS IN THE FORECLOSURE PROCESS</td>
<td>Organization Involved</td>
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<td></td>
<td>First Nation</td>
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<tr>
<td>5- Decision of the mortgagor to file a statement of defence, pay the debt or put the mortgage in good standing.</td>
<td>U</td>
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<tr>
<td>6- Send the appropriate document to INAC (ie: notice, discharge or Court order).</td>
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<tr>
<td>7- Registration</td>
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<tr>
<th>STEPS IN THE POWER OF SALE PROCESS</th>
<th>Organization Involved</th>
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<tbody>
<tr>
<td></td>
<td>First Nation</td>
</tr>
<tr>
<td>1- Conduct a title search</td>
<td>U</td>
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<tr>
<td>2- Serve a notice (15 days or more after default)</td>
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<tr>
<td>3- Forward notice to ILR (with statutory declaration)</td>
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## STEPS IN THE POWER OF SALE PROCESS

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<tr>
<th>STEPS IN THE POWER OF SALE PROCESS</th>
<th>Organization Involved</th>
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<tr>
<td></td>
<td>First Nation</td>
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<tr>
<td>4- Sale (35 days or more after the notice has been served)</td>
<td></td>
</tr>
<tr>
<td>5- If sale is completed, send a BCR for approval with statutory declaration and a discharge of mortgage to INAC. If a transfer of land was executed by the Mortgagor, send the transfer to INAC for approval along with the statutory declaration and a discharge of mortgage if applicable.</td>
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<tr>
<td>6- Verify that the BCR or the transfer and the discharge of mortgage if applicable, meet the Indian Land Registry requirements.</td>
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<tr>
<td>7- Forward BCR or transfer for approval.</td>
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<tr>
<td>8- Forward BCR or transfer with the discharge of mortgage if applicable, and the statutory declaration to the ILR for registration.</td>
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Annex “A”
Sample Mortgage Default Remedy Clauses

NOTE: It is recommended that the First Nation obtain independent legal advice in the drafting of any mortgage agreement in order to ensure that the appropriate enforcement mechanisms are provided in the mortgage to suit the particular circumstances, requirements and needs of the First Nation.

Sample #1:

ENFORCING OUR RIGHTS

A. Default in Payment

If you default in making any regular monthly loan payment or any other payment that you are obliged to make to us under the mortgage, we may enforce any one or more of the following remedies in any order and without prejudicing our right to exercise any other remedy we may have:

1. Sue you

   We may take such action as is necessary to obtain payment of the loan amount.

2. Foreclose on or sell your property

   We may commence court proceedings to foreclose your right, title and equity of redemption to all or part of your property. If we obtain a final order of foreclosure, your property will by law become our property. We may also ask the court to order the sale of your property. If the court makes such an order it will supervise the sale proceedings. The net proceeds of the sale will be applied to reduce the loan amount. Any balance remaining after all claims have been satisfied will be paid to you. If the amount we receive from the sale of your property is less than the loan amount, you must pay us the difference.
3. **Power of sale**

If you default in making any payment for 15 days, we can on 35 days notice to you enter on your property and:

a) Take possession of it;
b) Sell all or part of your property (for cash or on credit, or partly for cash and partly on credit) by private sale or public auction for the price and on those terms that can be obtained;
c) Lease it on such terms and for whatever period we may decide upon; or
d) Take any other remedy available to us under law. Notice shall be given to you and to such other persons in the manner and as required by law at the time it is given. Where there are no such requirements, notice may be given to you, at our option, by one or more of the following means:

i) Personal service at your last known address;
ii) Registered mail at your last known address;
iii) Publication in a local newspaper;
iv) Leaving it with an adult person on your property; or
v) Posting it on your property.

If default continues for three months, we may enter on, sell or lease your property without any notice unless notice is required by law. We may apply the net proceeds of the sale or lease to reduce any part of the loan amount. Any balance remaining after all claims have been satisfied will be paid to you. If the amount we receive from the sale or lease of your property is less than the loan amount, you must pay us the difference.
B. Default in your obligations including default in payment

If you default in any obligation under the mortgage (including any default referred to in paragraph A), we can enforce our above rights and we can enter on your property at any time, without the permission of any person, and make all arrangements that we consider advisable to:

1. Inspect, lease, collect rents or manage your property;
2. Repair or put in order any building on your property; or
3. Complete the construction of any building on your property. We can also take whatever action is necessary to take possession, recover and keep possession of your property.

C. You will not interfere

You will not interfere with our possession of your property (if we go into possession of your property in enforcing our above rights) nor with the possession of anyone to whom your property is sold or leased by us or any receiver. You agree not to make any claim concerning the sale or lease of your property against anyone who buys or leases it from us or any receiver, or anyone who buys or leases it after that time.

D. Our expenses

You will immediately pay all our expenses of enforcing our rights. Our expenses include our costs of taking or keeping possession of your property, an allowance for the time and services of our employees utilized in so doing, our legal fees on a solicitor and client basis and all other costs related to protecting our interest under that mortgage.
E. **Judgments**

If we obtain a court judgment against you for your failure to comply with any of your obligations to us under the mortgage, the judgment will not result in a merger of the terms of the judgment with our other remedies or rights to enforce your other obligations under the mortgage. We will continue to be entitled to receive interest on the loan amount at the rate payable on the loan amount and at the same times as provided for in the mortgage. The rate of interest payable on any judgment shall be calculated and payable in the same way as interest is calculated under the mortgage and at the same rate that interest is payable on the loan amount until the judgment has been paid in full.

F. **Delay in enforcement of our rights**

No delay or extension of time granted by us to you or any other person in exercising the enforcement of our rights under the mortgage nor any agreement made pursuant to any other provisions of this mortgage agreement shall affect our rights to:

1. Receive all payments you are obliged to make to us, when they are due and payable;
2. Demand that you repay the loan amount which is due and payable, on any default by you;
3. Have you comply with all of your obligations to us under the mortgage; or
4. Have any other person comply with the obligations that person has to us under the mortgage.
Sample #2:

A. Power of Sale

The Mortgagee on default of payment for at least fifteen (15) days may, on at least thirty-five (35) days’ notice in writing given to the Mortgagor, enter on and lease the land or sell the land. Such notice shall be given to such persons and in such manner and form and within such time as provided by law and the policies of the Department of Indian and Northern Affairs Canada, as amended from time to time, which are currently contained in the Indian Lands Registration Manual and the Land Management Manual.

In the event that the giving of such notice shall not be required by law or to the extent that such requirements shall not be applicable, it is agreed that notice may be effectually given by leaving it with a grown-up person on the land, if occupied, or by placing it on the land if unoccupied, or at the option of the Mortgagee, by mailing it in a registered letter addressed to the Mortgagor at his last known address, or by publishing it once in a local newspaper; and such notice shall be sufficient although not addressed to any person or persons by name or designation; and notwithstanding that any person to be affected thereby may be unknown, not ascertained or under disability.

It is hereby further agreed that the whole or any part or parts of the land may be sold by auction or private contract, or partly one or partly the other; and that the proceeds of any sale hereunder may be applied first in payment of any costs, charges and expense incurred in taking, recovering or keeping possession of the land or by reason of non-payment or procuring payment of monies, secured by the Mortgage or otherwise, and secondly in payment of all amounts of principal and interest owing under the Mortgage; and if any surplus shall remain after fully satisfying the claims of the Mortgagees as aforesaid same shall be paid as required by law.
Power of Sale (continued)

The Mortgagee may sell any of the land on such terms as to credit and otherwise as shall appear to him most advantageous and for such prices as can reasonably be obtained therefor and may make any stipulations as to title or evidence or commencement of title or otherwise which he shall deem proper, and may buy in or rescind or vary any contract for the sale of the whole or any part of the land and resell without being answerable for loss occasioned thereby, and in the case of a sale on credit the Mortgagee shall be bound to pay the Mortgagor only such monies as have been actually received from the purchaser after the satisfaction of the claims of the Mortgagee and for any of said purposes may make and execute all agreements and assurances as he shall think fit. Any purchaser or lessee shall not be bound to see to the propriety or regularity of any sale or lease or be affected by express notice that any sale or lease is improper and no want of notice or publication when required hereby shall invalidate any sale or lease hereunder.

B. Quiet Possession

Upon default in payment of principal and interest under the Mortgage or in performance of any of the terms or conditions hereof, the Mortgagee may enter into and take possession of the land hereby mortgaged and where the Mortgagee so enters on and takes possession or of the land on default as described in paragraph A herein the Mortgagee shall enter into, have, hold, use, occupy, possess and enjoy the land without the let, suit, hindrance, interruption or denial of the Mortgagor or any other person or persons whomsoever.

C. Right to Distrain

If the Mortgagor shall default in payment of any part of the interest payable under the Mortgage at any of the dates or times fixed for the payment thereof, it shall be lawful for the Mortgagee to distrain therefor upon the land or any part thereof, and by distress warrant, to recover by way of rent reserved, as in the case of a demise of the land, so much of such interest as shall, from time to time, be or remain in arrears and unpaid, together with all costs, charges and expenses

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1 Distrain means to impose distrain, i.e., to seize chattels (tangible personal property/goods and leasehold interests) to make the mortgagor meet his/her obligations under the mortgage, or to obtain satisfaction of the arrears owing by their sale.

2 Distress Warrant means a court order authorizing an officer (eg, a sherriff or bailiff) to make a distrain.
attending such levy or distress, as in like cases of distress for rent. The Mortgagee may distrain for arrears of principal in the same manner as if the same were arrears of interest.

D. Further Assurances

From and after default in the payment of the principal amount secured by the Mortgage or the interest thereon or any part of such principal or interest or in the doing, observing, performing, fulfilling or keeping of some one or more of the covenants set forth in the Mortgage then and in every such case the Mortgagor and all and every other person whosoever having, or lawfully claiming, or who shall have or lawfully claim any estate, right, title, interest or trust of, in, to or out of the land shall, from time to time, and at all times thereafter, at the proper costs and charges of the Mortgagor make, do, suffer and execute, or cause or procure to be made, done, suffered and executed, all and every such further and other reasonable act or acts, deed or deeds, devises, conveyances and assurances in the law for the further, better and more perfectly and absolutely conveying and assuring the land unto the Mortgagee as by the Mortgagee or his solicitor shall or may be lawfully and reasonably devised, advised or required.