



Ministry of
Forests

FOREST TENURES BRANCH

Woodlot Licence Disposition Guide

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Document Change Control

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Questions or comments should be directed to: Forest Tenures Branch, Ministry of Forests at ForestTenuresBranch@gov.bc.ca

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1 PURPOSE

The purpose of this guide is to outline the process and requirements for the disposition of a woodlot licence. Users of this document are strongly encouraged to refer to the *Forest Act* and the Disposition and Change of Control Regulation for details and to obtain legal advice from their own sources if considering transferring a woodlot licence, changing the control of a company holding a woodlot licence, or amalgamating a company that holds one or more woodlot licences.

The Ministry of Forests (“the ministry”) has produced a guide titled [Disposition of an Agreement Administrative Guide](#), that outlines the overall process for the transfer of all agreements issued under the authority of the *Forest Act* (referred to in this document as the “Provincial Disposition Guide”).

2 APPLICABLE LEGISLATION AND REGULATION

The disposition of a woodlot licence is governed by the following:

- Part 4 of the *Forest Act*
- The Disposition and Change of Control Regulation
- Ministry policy

The minister has the authority to delegate his/her authority to approve or deny woodlot licence dispositions to other officials in the ministry. Refer to the most current [Forest Act Delegations](#) to determine the delegated decision maker.

3 TYPES OF DISPOSITIONS

A disposition refers to a change in the holding of an agreement (the woodlot licence), including an interest in a woodlot licence or the holding of the rights under a woodlot licence. Woodlot licence dispositions can occur in four different ways:

1. The transfer of the woodlot licence from the current holder to a new holder;
2. The disposition of an interest in a woodlot licence resulting from a change in a partnership holding a woodlot licence;
3. A change of control of a company that holds a woodlot licence; or
4. The amalgamation of a company holding a woodlot licence.

Where a woodlot licence is held jointly with one or more persons and one or more of them wish to divest themselves of their interest in the woodlot licence (either back to the group or to another individual) this is considered the same as a transfer and approval by the minister is required.

A change in control of a corporation occurs when a person or a group of persons who hold sufficient voting shares of the corporation to either elect or appoint 50% or more of the directors of the corporation or otherwise effectively control the operations and direction of the company changes. Transactions that constitute a change of control or amalgamation of a company holding a woodlot

licence do not require prior approval by the minister, but rather are reviewed once the ministry has been notified of the transaction.

The following are types of woodlot licence dispositions:

1. The granting of an interest in a woodlot licence to secure payment or performance of an obligation. This can occur when the woodlot holder borrows money and the lender's loan is secured against the woodlot licence if the woodlot licence holder fails to pay the loan;
2. The transmission of an interest in a woodlot licence to a trustee in the case of bankruptcy; and
3. The transmission of an interest in a woodlot licence from the estate of a deceased woodlot licence holder to the deceased holder's representative. The representative could be executor of the deceased's Will or someone else who is managing the deceased's estate under the *Wills Estate and Succession Act*;

*Note that 2. and 3. are transitional holders of the woodlot licence before a final disposition is made to a new woodlot licence holder. In the case of transitory dispositions, notice must be provided to the minister in writing within 3 months of the disposition, but they are exempt from the requirements to receive approval from the minister.

Dispositions from a trustee in a bankruptcy to a purchaser (i.e., the final woodlot licence holder) or from the personal representative to a beneficiary (i.e., the final woodlot licence holder) need to follow the woodlot transfer requirements detailed later in this guide.

Woodlot licences direct awarded under section 47.3 of the *Forest Act* cannot be disposed of without the approval of the Lieutenant Governor in Council. In addition, if a First Nation or its representative disposes of a woodlot licence, the First Nation must continue to comply with the First Nations agreement that relates to the licence. See the *Forest Act* and Disposition and Change of Control Regulation for additional detail.

4 LEGAL REQUIREMENTS FOR THE REVIEW OF A DISPOSITION

The disposition of a woodlot licence or an interest in a woodlot licence requires the delegated decision maker to consider the effect of the disposition on:

- The marketing of fibre in British Columbia;
- The public interest;
- Aboriginal rights or title.

More information on these considerations are provided under Section 6.

If the delegated decision maker determines that it would be detrimental to the marketing of fibre, would not be in the public interest for the intended recipient to acquire the woodlot licence or to hold the rights under the licence, or would result in unacceptable impacts to aboriginal rights or title that cannot be accommodated, then the delegated decision maker must:

- not approve the transfer; or

- in the case of a change of control or amalgamation of a company holding a woodlot licence may suspend the licence until an opportunity to be heard (OTBH) can be completed with the woodlot holder. After the OTBH the delegated decision maker can remove or confirm the suspension, require the company to dispose of a *Forest Act* agreement by a specified date, accept a proposal by the company, and impose other requirements on the corporation.

The delegated decision maker has the discretion to attach conditions to an approval of a transfer to address, to the satisfaction of the decision maker, any circumstances encountered that would otherwise cause the transfer to be refused. If conditions are not met, then the delegated decision maker may suspend and cancel the woodlot licence or road permit.

Road permit(s) may be disposed of either along with the woodlot licence to which they are associated, or independently as stand-alone agreements. If they are disposed at the same time as the woodlot licence to which they are associated, the considerations listed above can be done collectively.

5 IMPACTS ON OBLIGATIONS, LIABILITIES AND DEPOSITS

When woodlot licences are transferred, the new holder, upon the completion of the transfer, becomes liable for those obligations already accrued or accruing as of the date of completion and still outstanding as of that date, as well as being responsible for all obligations accrued from that point forward.

However, the past and new woodlot licence holder are also held "jointly and severally liable" for outstanding liabilities already accrued under the woodlot licence. This means that each person has a share of the liability, borne individually and not collectively. In the event that a new holder does not meet obligations that have already been accrued under the licence up to the date of the transfer, the province may pursue both the new holder and the previous holder to resolve unmet obligations.

The assignment of liabilities can be complex especially when a woodlot licensee goes bankrupt, when a company holding a woodlot licences changes control, or when indemnities are placed in a purchase agreement for a woodlot licence. In these cases, it is recommended that the parties involved obtain legal advice before proceeding with the disposition of the woodlot licence.

When a woodlot licence is disposed, the new holder must provide a new security deposit as required under the *Forest Act* in a form acceptable to government.

6 STEPS FOR THE TRANSFER OF A WOODLOT LICENCE

The transfer of a woodlot licence from one or more holders to one or more new holders is the most common type of woodlot licence disposition. The overall process is outlined in the flowchart in Appendix A.

The delegated decision maker must provide written approval for the transfer of a woodlot licence, otherwise the transfer will not be 'in effect'. The following steps are associated with the transfer of a woodlot licence:

1. **Transfer Notice** – A request for approval must be made and approved before a transfer can be completed. It is strongly recommended that the holder use the “Request for Approval of an Intended Transfer (RAIT) of a Woodlot Licence Agreement” template to submit the necessary details for the intended disposition to the delegated decision maker. The template can be found on the [Timber Tenure Transfers and Dispositions](#) webpage. Use of the RAIT is not mandatory but it helps to ensure that the ministry receives the information required to process the intended disposition.

Submission requirements:

- Name, signatures, and contact information of the current holder of the woodlot licence and the intended recipient.
- The number of the woodlot licence and any associated road permits requested to be transferred.
- Information on how the intended recipient is eligible to hold a woodlot licence (see the *Forest Act* for eligibility requirements).
- Information on the private land that is currently associated with the woodlot licence and is intended to be transferred (sold or leased) to the new holder of the woodlot licence.
- A list of all the timber harvesting rights held by the current holder and the intended recipient. This includes a list of all agreements held by the current holder, the intended recipient, their affiliates and subsidiaries and the allowable annual cut or total licence volume associated with each agreement.
- Indication on how to deal with existing security deposits (applying the current security deposit or a new security deposit being provided by the intended recipient).
- Information regarding any fibre supply agreements or fibre supply arrangements the parties have with other entities.
- Indication on how any existing silviculture deposits are to be dealt with for the woodlot licence.
- Payment of an Administrative Fee – when the RAIT or equivalent is submitted it should include an administrative fee of \$100 for each agreement (i.e., for the woodlot licence and for each road permit) being transferred, payable to the “Minister of Finance”.

2. **Initial Ministry Review** - Ministry staff will review the RAIT or equivalent submission to ensure:

- The proposed disposition is not exempted under the Forest Act or Disposition and Change of Control Regulation.
- The intended recipient is eligible to hold the woodlot licence; and
- That any private land included in the woodlot licence area remains subject to the woodlot licence.

A recipient must be either a Canadian citizen or permanent resident of Canada who is 19 years or older, a First Nation or a Corporation, other than a society, that is controlled by a Canadian citizen or permanent resident. In addition, prior to the transfer, an intended recipient cannot directly or indirectly hold two or more woodlot licence and acquire an additional woodlot licence. Indirectly means the control of a corporation, a corporation that is affiliated with another corporation and any combination

of the person or the corporations combined hold more than two woodlot licence. If the recipient either directly or indirectly holds one or more Woodlot Licences that together have an aggregate allowable annual cut that is greater than 10,000 m³ they also do not qualify as a recipient.

If the private land included in the woodlot licence is proposed to change as a result of the disposition, then this needs to occur prior to the disposition of the woodlot licence. Information on the removal of private land from a woodlot licence is detailed in [Policy 8.8 Woodlot Licence Program – Private Land Removal](#).

3. Additional Information to be submitted by the proponents

The *Forest Act* allows the delegated decision maker to request any information from the holder of the woodlot licence and from the intended recipient (the proponents) that is considered necessary for the purposes of reviewing a disposition.

The existing holder and intended recipient of the woodlot licence are encouraged to engage with the local public and appropriate First Nations on the details on the intended transaction, as these parties are often in an advantageous position to use existing relationships and can directly respond to requests for additional detail.

In most situations it is also recommended that the current holder of the woodlot licence and the intended recipient provide the delegated decision maker with a written submission, either jointly or individually, that details why the disposition is in the public interest. The submission should include:

- The qualifications of the intended recipient and how they are suited to manage the woodlot licence;
- Any changes to the intended management of the woodlot licence;
- Any changes to fibre supply arrangements or agreements;
- Any changes to existing or new proposed partnerships with individuals, community groups, local businesses or First Nations regarding activities on the woodlot licence;
- Any discussions and information collected related to the proposed disposition of the woodlot licence from the public and First Nations whose territory overlaps the woodlot licence area.

4. **Ministry of Forests Primary Review** – As per Section 4 of the *Forest Act* the delegated decision maker will consider the effect of the disposition on the marketing of fibre in British Columbia and the public interest.

Consideration of the Effects on the Marketing of Fibre

The *Forest Act* defines the marketing of fibre as the acquisition and disposition of rights to harvest timber in British Columbia, and the buying and selling, within British Columbia, of timber or wood residue.

To determine the impact on the marketing of fibre a review of any anticipated changes in fibre supply or fibre flow from the woodlot licence would usually be conducted. This would include a review of any fibre supply agreements/commitments that are associated with the woodlot licence and a determination if those agreements/commitments, particularly if they are in the public interest, will be maintained by the intended recipient of the agreement.

Although the Disposition and Change of Control Regulation established fibre distribution zones and two indices to assess the market concentration of timber harvesting rights on the local log market, these assessments do not apply to the disposition of a woodlot licence.

Consideration of the Public Interest (see Appendix B for details)

The delegated decision maker must consider the effect of the transfer on the public interest and must not approve the disposition if it is not in the public interest.

The determination of the public interest is not defined in the *Forest Act*, however it generally means if the disposition of the rights available under the woodlot licence will be managed in the best interests of British Columbians by the intended recipient. It is up to the delegated decision maker to determine how this is considered based on local factors relating to the woodlot licence.

To aid the delegated decision maker in determining the public interest, information may be gathered from the public, local government, community groups and First Nations. In some cases, this may include advising the public of the proposed disposition and seeking input on the intended disposition. The level of engagement is up to the delegated decision maker and will be specific to woodlot licence being disposed. Examples of when heightened engagement may be appropriate include woodlot licences:

- That are in the forestry-urban interface;
- That are used by the public or other tenure holders (i.e., areas with recreational use, trap lines, range tenures, etc.);
- With unique or sensitive areas (i.e., steep slopes, fisheries sensitive areas, old growth timber, visually sensitive areas, etc.).

First Nations

It is the government's duty to consult with potentially impacted First Nations on woodlot licence dispositions to ensure that the disposition of a woodlot licence or an associated road permit does not result in an infringement of aboriginal rights or title. The level of First Nations consultation follows government and ministry policy and may also be based on a higher level agreement (or consultation matrix) between individual Nations and the government. Accommodation may be required to address any impacts.

7 STEPS FOR THE CHANGE OF CONTROL OR AMALGAMATION OF A COMPANY THAT HOLDS A WOODLOT LICENCE

A change of control of a woodlot licence occurs when there is a purchase of shares in a corporation holding a woodlot licence that results in a new controller (or controllers) of the corporation. See the *Forest Act* for definitions of change in control.

A disposition of a woodlot licence can also occur when a company holding a woodlot licence is amalgamated with another company that holds a licence. The review of a disposition of a woodlot licence as a result of an amalgamation is the same as a change of control.

1. **Change of Control Notice** – The change of control of a corporation that holds a woodlot licence can proceed without prior approval, however the minister (or delegated decision maker) must be advised of the change in control in writing within 30 days of the transaction occurring. The written notice should include:
 - The details of the change in control of the corporation including the new corporate structure, and the controlling party or parties of the corporation. This would include share structure and information pertaining to voting and non-voting shareholders.
 - The signatures of all those who possess legal corporate signing authority for matters related to the woodlot licence.
 - Information that confirms that the corporation meets the eligibility requirements under the Forest Act.
 - In the case of an amalgamation, information should be provided that confirms that the amalgamated businesses are collectively still eligible to hold the woodlot licence.
2. **Ministry Review** – A review is conducted after the change of control notice is received. This review is similar to the transfer review detailed earlier (see Section 6 for details) and includes:
 - A review of the marketing of fibre in British Columbia;
 - A review of the public interest;
 - First Nations consultation; and
 - A determination that the new controller of the woodlot licence is eligible to hold/control the woodlot licence.
 - If immediately after the change of control all money required to be paid or due and payable to the government in respect of the woodlot licence is paid or is subject of an arrangement for payment approved by the revenue minister.

8 MINISTRY OF FORESTS APPROVAL OR REJECTION OF A DISPOSITION

Upon review of a request for approval of a transfer request, a change of control, or an amalgamation of a company that holds a woodlot licence, the delegated decision maker decides on whether or not to approve the requested transfer, or if administrative action is required as a result of a change of control or amalgamation of a company holding a woodlot licence.

Notice to Proceed for a Transfer

If the delegated decision maker approves the request for a transfer, the proponents are sent a notice to proceed, which includes the date by which the disposition must be completed, any conditions attached to the approval, any changes required to security deposits, and a requirement that the ministry be notified within 7 days of the completion of the transaction.

If a requested transfer is approved, the delegated decision maker may attach conditions to the approval in order to address any circumstances identified by the review. If the conditions are not met the woodlot licence may be suspended and eventually cancelled (see the *Forest Act* for details).

If the delegated decision maker determines that a woodlot licence disposition should not proceed then a rejection letter with a rationale in support of the decision is sent to the parties that submitted the RAIT or notice.

Despite an approval, before a transfer can be considered to be in effect, all money required to be paid or due and payable to the government in respect of the woodlot licence or road permit must be paid to government or must be subject to an arrangement for payment approved by the revenue minister.

Administrative Actions for a Change of Control

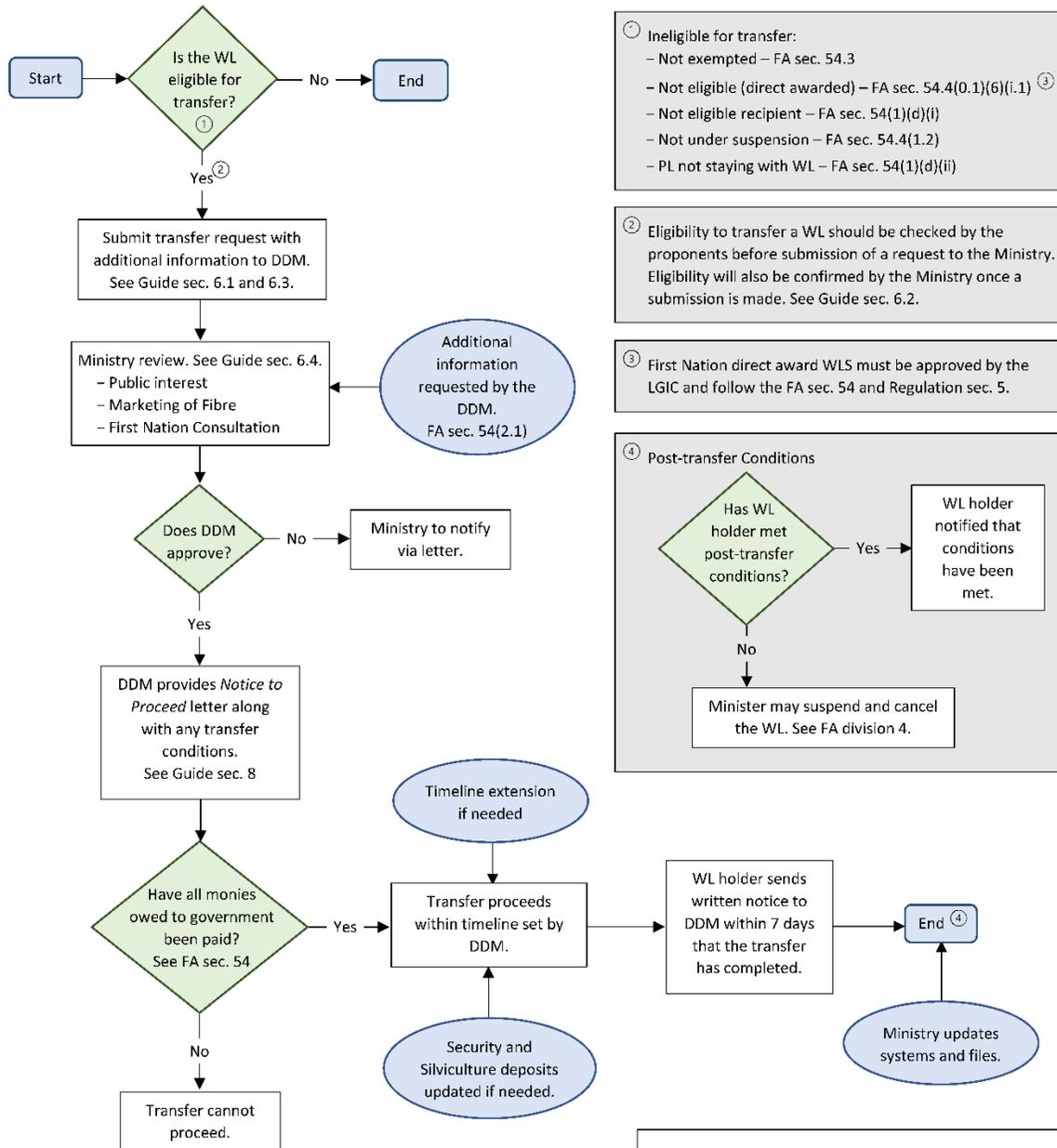
If the delegated decision maker determines, based on the review detailed in section 7, that there are no circumstances that require further administrative action then the minister will notify the proponents of this decision.

The delegated decision maker may attach conditions to their decision if there are circumstances which require administrative action. These conditions will be outlined in a letter to the woodlot licence holder.

If the delegated decision maker determines that the change in control should not have occurred, the delegated decision maker may immediately suspend the rights under the woodlot licence in whole or in part, and after giving the corporation holding the woodlot licence an opportunity to be heard, may confirm or vary the suspension of the rights under the woodlot licence in whole or in part, and may advise the corporation to dispose of the woodlot licence.

APPENDIX A – WOODLOT TRANSFER PROCESS

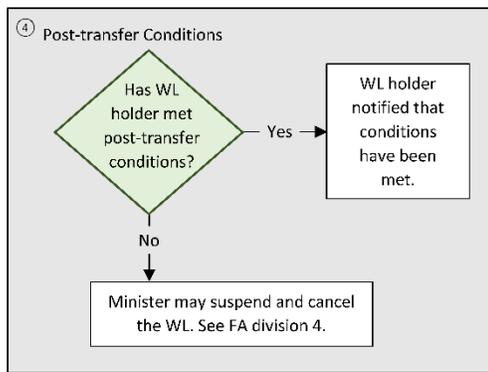
Appendix A – Woodlot License Transfer Process



① Ineligible for transfer:
 - Not exempted – FA sec. 54.3
 - Not eligible (direct awarded) – FA sec. 54.4(0.1)(6)(i.1) ③
 - Not eligible recipient – FA sec. 54(1)(d)(i)
 - Not under suspension – FA sec. 54.4(1.2)
 - PL not staying with WL – FA sec. 54(1)(d)(ii)

② Eligibility to transfer a WL should be checked by the proponents before submission of a request to the Ministry. Eligibility will also be confirmed by the Ministry once a submission is made. See Guide sec. 6.2.

③ First Nation direct award WLS must be approved by the LGIC and follow the FA sec. 54 and Regulation sec. 5.



DDM – Delegated Decision Maker
 FA – Forest Act
 LGIC – Lieutenant Governor in Control
 Ministry – Ministry of Forests
 PL – Private Land
 Regulation – Disposition and Change of Control Regulation
 WL – Woodlot License



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APPENDIX B – GUIDE TO EVALUATING THE PUBLIC INTEREST

A disposition of a woodlot licence is expected to provide a benefit to the citizens of British Columbia. **The *Forest Act* does not define the public interest, rather it is up to the delegated decision maker to make their determination based on the factors relevant to the local situation.** The table below outlines some common factors that could be considered in determining the public interest for a woodlot licence disposition.

Broad Public Interest Parameters	Factors for Consideration – not exhaustive
<p>Qualifications of the intended recipient of the woodlot Licence.</p>	<p>Does the intended recipient have adequate training, education, and experience to manage a woodlot licence?</p> <p>Does the intended recipient have experience in small scale forestry?</p> <p>Has the intended recipient detailed how they intend to use qualified individuals to manage the woodlot licence?</p>
<p>Management Plan and Woodlot Licence Plan</p> <p>This could include an examination of:</p> <p>Public and environmental areas of concern or interest (e.g., Visuals, blowdown, Old Growth, forest health, visual quality, sensitive watersheds, drinking water protection, wildfire resilience, etc.).</p> <p>The proposed management of the woodlot licence (examples- utilization of the timber resources in the woodlot licence area, protection and conservation of the non-timber values and resources in the woodlot licence area, forest fire prevention and suppression, forest health, including pest management, silviculture, and road construction, maintenance and deactivation strategies.</p>	<p>Will the management of the woodlot licence and any items of concern or interests continue or improve under the intended recipient?</p> <p>Are there outstanding issues with respect to the public interest and marketing of fibre that need to be addressed in the Management Plan and/or WLP by the intended holder of the agreement?</p> <p>Has the intended holder made a commitment to assume the existing management plan or amend the management plan to address areas of concern or interest?</p>
<p>First Nations engagement</p>	<p>Is the proposed level of engagement with First Nations adequate?</p>
<p>Public engagement</p>	<p>Is the proposed level of engagement with the public adequate?</p>