

CHAPTER 4 LAND TITLE

FEDERAL TITLE LEGISLATION

1. Federal land title or land registry laws do not apply to any parcel of Nisga'a Lands, other than laws in respect of the survey and recording of estates or interests that are owned by Canada and are in Nisga'a Lands.

PROVINCIAL TORRENS SYSTEM

2. The provincial Torrens system does not apply to a parcel of Nisga'a Lands for which:
 - a. no application has been made under the *Land Title Act* in accordance with this Agreement for the registration of an indefeasible title;
 - b. an application has been made under the *Land Title Act* in accordance with this Agreement for the registration of an indefeasible title and, that application has been withdrawn or rejected; or
 - c. the indefeasible title under the *Land Title Act* has been cancelled under that Act in accordance with this Agreement.
3. If the Nisga'a Nation applies under the *Land Title Act* in accordance with this Agreement for the registration of an indefeasible title to a parcel of Nisga'a Lands, effective from the time of application and until:
 - a. the application has been withdrawn or rejected; or
 - b. the indefeasible title for that parcel is cancelledthe provincial Torrens system, but not any Nisga'a law in respect of land title or land registration made under paragraph 50 (a) of the Nisga'a Government Chapter, applies to the parcel, subject to paragraph 4.
4. Notwithstanding the application of the provincial Torrens system to a parcel of Nisga'a Lands as set out in paragraph 3, a Nisga'a land title or land registration law that relates only to *in personam* rights of a person deprived of an estate, interest, condition, proviso, restriction, exception, reservation, or certificate of possession as a result of the application of the provincial Torrens system in accordance with this Agreement applies to the parcel, to the extent that the law does not conflict with paragraph 11 of this Chapter.

APPLICATION FOR INDEFEASIBLE TITLE

5. The Nisga'a Nation, and no other person, in its own name or on behalf of another person may apply under the *Land Title Act* for the registration of an indefeasible title to a parcel of Nisga'a Lands for which no indefeasible title is registered at the time of application.

LAND TITLE FEES

6. If the Nisga'a Nation applies for the registration of an indefeasible title to a parcel of Nisga'a Lands for which no indefeasible title has been registered after the effective date, and the proposed registered owner in fee simple is the Nisga'a Nation, a Nisga'a Village, or a Nisga'a Corporation, no land title fees are payable in respect of the application by which the proposed owner becomes the registered owner.

NISGA'A CERTIFICATE

7. The Nisga'a Nation, when applying for the registration of an indefeasible title to a parcel of Nisga'a Lands under paragraph 5, will provide to the Registrar:
 - a. a description of the boundaries of the parcel;
 - b. a certificate of Nisga'a Lisims Government certifying that, on the date of the Nisga'a Certificate, the person named as the owner in fee simple in the Nisga'a Certificate is the owner of the estate in fee simple of the parcel, and certifying that the Nisga'a Certificate sets out the only:
 - i. subsisting conditions, provisos, restrictions, exceptions, and reservations contained in the original or any other conveyance or disposition from the Nisga'a Nation that are in favour of the Nisga'a Nation, or that are in favour of another person,
 - ii. estates or interests, and
 - iii. charges in respect of a debt owed to the Nisga'a Nation or a Nisga'a Village to which the estate in fee simple of the parcel is subject; and
 - c. registrable copies of all charges referred to in subparagraphs (b) (ii) and (b) (iii).
8. A Nisga'a Certificate will expire unless:
 - a. within seven days of the date of the Nisga'a Certificate, the Nisga'a Nation applies for registration of an indefeasible title to the parcel referred to in the Nisga'a Certificate; and
 - b. the Registrar issues an indefeasible title to the parcel.

REGISTRATION OF INDEFEASIBLE TITLE

9. If the Nisga'a Nation makes an application for the registration of indefeasible title to a parcel of Nisga'a Lands under paragraph 5, the Registrar, on being satisfied that:
 - a. a good safe holding and marketable title in fee simple for the parcel has been established by the Nisga'a Nation;
 - b. the boundaries of the parcel are sufficiently defined by the description provided by the Nisga'a Nation;
 - c. all of the estates, interests, and other charges set out in the Nisga'a Certificate are registrable as charges under the *Land Title Act*; and
 - d. the Nisga'a Certificate is dated not more than seven days before the date of application for registration of an indefeasible title to the parcelwill:
 - e. register the indefeasible title to the parcel;
 - f. make a note on the indefeasible title that the parcel is Nisga'a Lands and may be subject to conditions, provisos, restrictions, exceptions, and reservations in favour of Nisga'a Nation;
 - g. register as charges the estates and interests set out in subparagraph 7 (b) (ii) and the other charges set out in subparagraph 7 (b) (iii); and
 - h. provide a copy of the indefeasible title to Nisga'a Lisims Government.

10. The Registrar is entitled to rely on, and is not required to make any inquiries in respect of, the matters certified in the Nisga'a Certificate.

DEPRIVATION OF ESTATE

11. A person deprived of an estate, interest, condition, proviso, restriction, exception, or reservation, or a certificate of possession referred to in paragraph 33 or 34 of the Lands Chapter, in or to a parcel of Nisga'a Lands as a result of the reliance by the Registrar on a Nisga'a Certificate, and the issuance by the Registrar of an indefeasible title based on the Nisga'a Certificate, will have no recourse, at law or in equity, including no action for possession or recovery of land, against the Registrar, the Assurance Fund, or any person named in the Nisga'a Certificate, and the indefeasible title issued by the Registrar in reliance on the Nisga'a Certificate as the owner of the estate in fee simple or as the owner of an estate, interest, condition, proviso, restriction, exception, or reservation, subject to the right of a person to show:
 - a. fraud, including forgery, in which the owner of the estate in fee simple or the owner of the estate, interest, condition, proviso, restriction, exception, or reservation as set out in the Nisga'a Certificate and the indefeasible title issued by the Registrar in reliance on the Nisga'a Certificate has participated in any degree; or
 - b. that the owner of the estate in fee simple or the owner of the estate, interest, condition, proviso, restriction, exception, or reservation as set out in the Nisga'a Certificate and the indefeasible title issued by the Registrar in reliance on the Nisga'a Certificate has derived their right or title otherwise than in good faith and for value.
12. No title adverse to, or in derogation of, the title of the registered owner of a parcel of Nisga'a Lands under the *Land Title Act* will be acquired by length of possession and, for greater certainty, subsection 23 (4) of the *Land Title Act* does not apply in respect of Nisga'a Lands.

CANCELLATION OF INDEFEASIBLE TITLE

13. The Nisga'a Nation, and no other person, may apply under the *Land Title Act* in accordance with this Chapter for cancellation of the registration of an indefeasible title to a parcel of Nisga'a Lands.
14. The Nisga'a Nation, when applying under the *Land Title Act* in accordance with this Chapter for the cancellation of the registration of an indefeasible title to a parcel of Nisga'a Lands, will provide to the Registrar an application for cancellation of registration and will deliver to the Registrar any duplicate indefeasible title that may have been issued in respect of that parcel.
15. Upon receiving an application from the Nisga'a Nation for cancellation of the registration of an indefeasible title to a parcel of Nisga'a Lands in accordance with the provisions of paragraphs 13 and 14, and if:
 - a. the registered owner of the estate in fee simple to the parcel is the Nisga'a Nation, a Nisga'a Village, or a Nisga'a Corporation, and consents; and
 - b. the indefeasible title to the parcel is free and clear of all charges, except those in favour of the Nisga'a Nation or a Nisga'a Villagethe Registrar will cancel the registration of the indefeasible title.

APPLICATION OF PROVINCIAL TORRENS SYSTEM

16. When the provincial Torrens system applies to a parcel of Nisga'a Lands:
- a. the jurisdiction of Nisga'a Lisims Government or a Nisga'a Village Government is not diminished, except to the extent set out in this Agreement;
 - b. with respect to the *Land Title Act*, the powers, rights, privileges, capacities, duties, and obligations, set out in or pursuant to this Agreement, of:
 - i. the Nisga'a Nation or a Nisga'a Village under the *Land Title Act* will be analogous to those of the Crown, a municipality, or regional district, as the case may be, under that Act, and
 - ii. Nisga'a Lisims Government or a Nisga'a Village Government under the *Land Title Act* will be analogous to those of the provincial government or a municipal council, regional district board, or improvement district trustee, as the case may be, under that Act, and
 - c. the status and treatment of Nisga'a Village Lands, or Nisga'a Lands other than Nisga'a Village Lands, under the *Land Title Act* will be analogous to that of municipal lands or rural areas, as the case may be, under that Act.
17. The following are a limited number of examples of proposed amendments to the *Land Title Act*, as that Act was on August 1, 1998, required to give effect to paragraph 16:
- a. the following paragraphs will be added to subsection 23 (2):
 - “(k) the subsisting conditions, provisos, restrictions, exceptions, and reservations, including royalties, contained in the original disposition or any other disposition from the Nisga'a Nation or a Nisga'a Village;”
 - “(l) a Nisga'a Nation tax, rate, or assessment at the date of the application for registration imposed or made a lien or that may after that date be imposed or made a lien on the land;”
 - b. in paragraph 23 (2) (f) the word “Act” will, with reference to a right of expropriation but not with reference to an escheat, include any Nisga'a law;
 - c. Division 3 of Part 7 will be modified to provide for the appointment of an approving officer by Nisga'a Lisims Government for Nisga'a Lands;
 - d. in paragraph 83 (1) (a) the word “municipality” will include a Nisga'a Village, and in paragraph 83 (1) (b) the words “rural area” will include Nisga'a Lands other than Nisga'a Village Lands;
 - e. in paragraphs 99 (1) (f) and 218 (1) (a) the word “Crown” will include Nisga'a Nation or Nisga'a Village;
 - f. in paragraphs 99 (1) (h) and 218 (1) (b) the word “municipality” will include Nisga'a Village;
 - g. in paragraph 107 (1) (d) the word “enactment” will include any Nisga'a law, and the words “Crown in right of the Province” in respect of a highway, park or public square within Nisga'a Lands will include Nisga'a Nation or a Nisga'a Village but in respect of land covered by water will not include Nisga'a Nation or Nisga'a Village; and

- h. in subsection 262 (1) the word “Act” will include Nisga’a laws, and the word “Crown” will include Nisga’a Nation, and the words “Crown in right of the Province” will include Nisga’a Nation.