



# Forest Act Tenure Transfer Overview and Procedures

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# ***FOREST ACT***

## **TENURE TRANSFER**

### **1.0 Purpose**

The purpose of this paper is to provide ministry staff, licensees, and the general public with detailed procedures to be followed when transferring a timber harvesting agreement that has been issued under Section 12 of the *Forest Act*.

The paper also provides an overview of the policy and legislation on transferring an agreement along with linkages to the applicable Acts and Regulations.

Various form letters, templates and addresses are included either in this document or can be found at the ministry's website on tenure transfers:

<http://www.for.gov.bc.ca/hth/ForestRevitalization/TenureTransfer.htm>

### **2.0 Overview**

The requirements of transfer provisions differ for the various agreement types. For larger licences such as tree farm licences (TFL), forest licences (FL) and pulpwood agreements (PA), transfers may proceed unless it is determined that the transaction would unduly compromise the market for timber, logs, or chips. In addition, the disposition of the agreement will not be recognized, unless accounts are paid in accordance with the legislation.

For smaller agreements, transfers generally will not raise competition concerns, but transfers will be without effect unless accounts are paid in accordance with the legislation.

In addition, transfers of BC Timber Sales agreements can only proceed if the intended recipient is registered in the applicable category of BC Timber Sales enterprises and the intended recipient of a woodlot licence must meet the established criteria for holding a woodlot licence.

Other sections of the *Forest Act* establish that Community Forest Agreements and direct award First Nation agreements entered into under Section 47.3 of the *Forest Act* are not transferable unless provided for under regulation. The Transfer Regulation now provides for the transfer of certain licences issued under Section 47.3 of the *Forest Act*.

Road permits cannot be transferred independently of the agreements they were issued in association with.

The following dispositions are exempt (under the *Forest Act*) from the statutory transfer requirements:

- a disposition in good faith of an agreement by way of a grant of a mortgage or security interest;
- a disposition to a trustee in the case of bankruptcy proceedings; and

- a disposition from the estate of a deceased person to that person's personal representative.

The following dispositions are exempt (under the Transfer Regulation) from the statutory transfer requirements:

- disposition of an agreement from a corporation to an affiliated corporation; and
- a disposition that has occurred prior to the Minister issuing a Notice to Proceed and the Minister is satisfied that the requirements of section 54.1 of the *Forest Act* have been met.

Other sections of the transfer legislation accomplish the following:

- To protect revenues, the liability of the transferee (new holder of the agreement) for payment of past and present rents, fees, costs and penalties associated with the agreement are clearly established. Similarly the new agreement holder takes on all obligations under the agreement.
- The disposition of private land from a tree farm licence or woodlot licence requires the minister's prior written consent, and the minister may attach conditions to that consent.

### **3.0 Legislation**

#### **3.1 Forest Act**

The *Forest Act* and its regulations can be found at:

<http://www.for.gov.bc.ca/tasb/legsregs/comptoc.htm>

Sections 54 through 54.8 of the *Forest Act* deal with the transfer of tenures and changes of control of corporations that hold a tenure.

#### **3.2 Regulations**

The *Forest Act* now provides regulation-making powers with respect to certain aspects of tenure transfers. These include:

##### **1. Market Competition**

One of the main requirements for the transfer of a tenure is that the market competition for standing timber, logs, or chips is not unduly restricted. The *Forest Act* provides for the creation of a regulation to provide additional guidance with respect to the criteria to be considered when determining whether or not a transfer would unduly restrict market competition. *To date, no regulation has been passed.*

##### **2. Transfer of a Community Forest Agreement or an Agreement issued under Section 47.3 (Direct Award to a First Nation)**

Community Forest Agreements are not transferable. The Transfer Regulation (OIC 782; July 22, 2004) provides for the transfer of certain licences issued under Section 47.3 of the *Forest Act*.

### 3. Exemptions from having to meet requirements.

The *Forest Act* provides for certain transactions to be exempted from having to meet the transfer requirements. The Act also provided for additional transactions to be added to this list through Regulation.

The Transfer Regulation (OIC 782; July 22, 2004) provides for the following additional exemptions:

1. Transfer from a corporation to an affiliated corporation.
2. Transfer where the required notification process has not been followed, the transfer complies with the other pertinent sections, and the minister is satisfied that the requirements set out in section 54.1 have been satisfied.

### 4.0 Delegation of Responsibility

The Tenure Transfer Section of the *Forest Act* makes a number of references to the Minister of Forests being responsible for certain decisions and actions. Section 1(2) of the *Forest Act* provides for the delegation of minister’s powers to an appropriate official.

Certain responsibilities with respect to tenure transfers have been formally delegated to other ministry officials. The delegations are included in the “Delegation of Minister of Forests’ Powers and Duties Under the *Forest Act*” and summarized in the following table:

Topic – <i>Forest Act</i>	Section	Delegation	Directions
<b>Part 4 – General Tenure Provisions</b> for Division 2 – Transfer and Exchange			
Transfer of agreements permitted	54 (2) (a) (i)	Director, FTB for TFLs, FLs and PAs TSM for TSLs RED for all other agreements	
	54 (2) (a) (ii)	Director, FTB for all agreements except TSLs. TSM for TSLs	
	54 (2) (e)	Director of FTB for TFLs, FLs and Pas DM for WLS TSM for TSLs RED for all other agreements.	Director of FTB delegation limited to transfers with an AAC under 100,000m <sup>3</sup>
Transfer requirements	54.1	Director of FTB for TFLs, FLs and PAs. DM for WLS. TSM for TSLs.	Director of FTB delegation limited to transfers with an AAC under 100,000m <sup>3</sup>
Change in control of a corporation that is the holder of an agreement	54.5 (1)	RED for all agreements, except TFLs, FLs, PAs, FNWLs and CFAs TSM for TSLs	
Disposition of private land subject to a tree farm licence or woodlot licence	54.7 (1), (2), (3), (4)	RED for WLS	

**Delegation Matrix** is subject to change see [Forest Act and Regulations Delegation Matrix](#) to confirm the current version

## 5.0 Procedures

The following procedures apply to agreements issued under Section 12 of the *Forest Act*. These include all agreements except non-replaceable timber sale licences and certain non-replaceable forest licences which are the responsibility of the BC Timber Sales.

For contact information regarding the transfer of agreements that are the responsibility of BC Timber Sales, See BCTS Timber Sales web page:

<http://www.for.gov.bc.ca/bcts/>

A non-refundable administrative fee of \$100.00 will be charged for each agreement (licences and road permits) being transferred.

The following detailed procedures are to be used in conjunction with the business map for Tenure Transfers that is located at the following Ministry of Forests, Lands and Natural Resource Operations website:

<http://www.for.gov.bc.ca/htl/timber-tenures/Tenure-Transfers.htm>

With respect to agreement transfers, the *Forest Act* uses the term disposition. The definition of dispose included in the *Interpretations Act* is follows:

**"Dispose"** means to transfer by any method and includes assign, give, sell, grant, charge, convey, bequeath, devise, lease, divest, release and agree to do any of those things.

Therefore, while this paper refers to the term *transfer*, this legal definition of *dispose* would be used in determining whether or not the provisions include in the *Forest Act* would apply to a particular transaction.

### 5.1 Exemptions

#### Forest Act

Section 54.3 of the *Forest Act* exempts the following transactions from the statutory requirements:

- (a) Disposition by way of security in good faith.
- (b) To a trustee in bankruptcy.
- (c) From the estate of a deceased person to the personal representative.

Under (b) and (c), the legal holder of the agreement has changed and the ministry requires written notice within three months of the disposition. The notice must be sent to the appropriate Regional Executive Director. (For address information see Appendix I.)

The notice must include the following information:

1. The type and number of each tenure involved;

2. A description of the disposition; and,
3. The name and contact information for the trustee (b) or the personal representative (c).

Under (a), the legal holder of the agreement does not change, and therefore, there is no requirement to notify the ministry.

Subsequent tenure transfers from the trustee in a bankruptcy to another party, or from the personal representative to a beneficiary are not exempt from the statutory requirements related to a tenure transfer.

### **Transfer Regulation**

The Transfer Regulation (OIC 782; July 22, 2004) provides for the following additional exemptions:

1. Transfer from a corporation to an affiliated corporation.

Transfers between affiliated corporations as defined under Section 53 of the *Forest Act* are exempt under the Transfer Regulation.

Notice of the transfer must be sent to the appropriate Regional Executive Director within 3 months of the transfer. The notice must include the following information:

- description of the disposition including name and type of the tenure involved.
  - shareholder and directorship listing of both entities (latest copy of the registered records office).
  - copy of the Corporation Title (from Registrar of Companies).
  - copy of the Online Search (indicates companies are in good standing).
2. Transfer where the required notification process has not been followed, the transfer complies with the other applicable sections of the *Forest Act*, and the minister is satisfied that the requirements set out in section 54.1 have been satisfied.

The transferee and transferor involved in a tenure transfer that has been concluded without adherence to the statutory notification process must be sent to the appropriate Regional Executive Director as soon as possible. The notice must include the following information:

1. The type and number of each tenure involved;
2. A description of the disposition; and,
3. The name and contact information for the transferee and transferor.
4. Rationale for not adhering to the notification requirements.

The ministry may require additional information depending upon the location, size and type of tenures involved.

## **5.2 Transfer of a Tree Farm Licence, Forest Licence, or Pulpwood Agreement.**

The responsibility for dealing with intended dispositions has been delegated to different ministry officials depending upon the type of agreement being transferred. For a TFL, FL or PA, the main concern for the Ministry of Forests, Lands and Natural Resource Operations is whether or not the intended transfer will unduly restrict the market for timber, logs or chips. The Director, Product Innovation and Climate Change Branch is responsible for completing the analysis of the intended disposition will respect to market concentration.

For all other types of agreements, the lead role has been delegated to the Regional Executive Director of the region in which the licence is located.

**For types of agreements other than a TFL, FL or PA (except those issued under the BC Timber Sales) proceed to Section 5.3.**

### **5.2.1 Notice of Intended Agreement Transfer (TFL, FL, PA)**

If the licence intended to be transferred is a TFL, FL or PA, a Notice of Intended Transfer (TFL, FL, PA) must be prepared and submitted to the Director, Forest Tenures Branch. This Notice must include the following:

- 1) Corporate information of the current holder and intended recipient, including officers, directors and major shareholders, and percentage of shares held by major shareholders;
- 2) A description of the proposed transaction including a list of all tenures involved, including any associated road permits that are also being transferred and if the licence is a TFL, a description of the private land subject to the licence.
- 3) Listing of the transferor's and the transferee's current timber harvesting rights, including a list of all *Forest Act* agreements held by the current holder and intended recipient and the allowable annual cut associated with each licence.
- 4) A description of the current holder's and intended recipient's milling and processing operations.
- 5) An indication of how the deposit currently held under the licence is to be dealt with.
- 6) The name, position and phone number of the transferee and transferor's contact person for the proposed transaction.
- 7) The intended completion date of the transaction.
- 8) Payment of a non-refundable administrative fee of \$100.00 per agreement (licences and road permits). A check payable to the Minister of Finance of the correct amount must be included with the Notice of Intended Agreement Transfer.



The Notice must be received from both the current holder and intended recipient. Joint submissions are encouraged. A notice will not be acted upon until notices from both parties to the transfer are received.

Copies of the incoming requests will be sent for information to the Director, Product Innovation and Climate Change Branch and the Regional Executive Director.

An example of a Notice of Intended Agreement Transfer for a TFL, FL, or PA may be found at the ministry's website for tenure transfers.

### **5.2.2 Review of Intended Transfer - TFL, FL or PA**

After receiving a copy of the Notice of an Intended Transfer, the Director, Forest Tenures Branch will be responsible for the following:

1. Resolving any outstanding issue that may exist with the licences that are intended to be transferred and potential AAC reductions under the *Forestry Revitalization Act*.
2. In cooperation with regional staff, confirm that all the road permits associated with the intended licence to be transferred has been identified in the notice, and that no road permits have been included that are not associated with the licence intended to be transferred.

Once the above issues have been resolved or confirmed, the Director, Forest Tenures Branch will notify the Director, Product Innovation and Climate Change Branch confirming that there are no issues with respect to the licence and the *Forestry Revitalization Act* and that all the appropriate road permits are included as part of the transaction.

### **5.2.3 Market Competition Determination**

Upon receipt of the notice from the Director, Forest Tenures Branch, under 5.2.2, the Director, Product Innovation and Climate Change Branch will undertake an analysis of the proposed transaction with respect to its effect on competition in the markets standing timber, logs or chips.

The analysis will be forwarded to the minister for consideration in determining in accordance with Section 54.1(a) of the *Forest Act* if the transfer will unduly restrict the competition in the markets for standing timber, logs or chips.

### **5.2.4 Issuing a Notice to Proceed / Notice Not to Proceed with Intended Transfer – TFL, FL or PA**

If the minister determines that the markets for standing timber, logs or chips would not be unduly restricted, the minister will issue a Notice to Proceed.

The Notice will be sent to both the current holder and intended recipient with copies to the Director of Forest Tenures Branch, Product Innovation and Climate Change Branch and the appropriate Regional Executive Director.

If the Minister determines that the intended transfer would unduly compromise the market for logs, timber or chips, then the minister will issue a notice that the intended transfer may not proceed. The Notice must be sent to both the current holder and intended recipient with copies to the Director, Forest Tenures Branch and the appropriate Regional Executive Director and include a rationale stating the factors that the minister considered in making the determination.

### **5.3 Agreements other than a TFL, FL, PA.**

This section deals with transfers of the following types of agreements.

Timber Sale Licence  
Licence to Cut

Woodlot Licence  
Christmas Tree Permit

#### **5.3.1 Notice of Intended Agreement Transfer**

For all agreements listed above, the Notice of Intended Agreement Transfer must be sent to the appropriate Regional Executive Director. (See Appendix A for addresses.)

The Notice of Intended Transfer must include the following information:

1. Information of the current holder and intended recipient, including officers, directors and major shareholders, and percentage of shares held by major shareholders where applicable;
2. A description of the proposed transaction including a list of all tenures involved, including any associated road permits;
3. If the agreement is a Woodlot Licence:
  - a description of the private land, if any, that is subject to the agreement;
  - confirmation that the intended holder is a person, band or corporation that is eligible to hold a woodlot licence under the *Forest Act*; and
  - confirmation that the intended recipient does not hold another woodlot licence.
4. An indication of how the deposit currently held under the licence is to be dealt with.
5. The name, position and phone number of the transferee and transferor's contact person for the proposed transaction.
6. The intended completion date of the transaction.
7. Payment of a non-refundable administrative fee of \$100.00 per agreement (licences and road permits). A check payable to the

Minister of Finance of the correct amount must be included with the Notice of Intended Agreement Transfer.

Notice must be received from both the current holder and intended recipient. Joint submissions are encouraged.

### **5.3.2 Review of Intended Transfer**

Upon receipt of a Notice of Pending Transfer, the Regional Executive Director will review the notice and confirm the following:

1. The agreement(s) to be transferred is transferable. The following agreements are not transferable:
  - i. free use permit;
  - ii. community forest agreement , or an agreement issued under Section 47.3 (1)(a). (direct award to a First Nation) unless the transfer meets the prescribed criteria;
  - iii. road permit unless the associated licence is also being transferred;
  - iv. An agreement that has been suspended under Section 69 of the *Forest Act*.
2. All road permits issued in association with the licences being transferred are also being transferred.
3. If licence is a WL, intended recipient is eligible to hold the licence.
4. Agreement has not been issued under BC Timber Sales. (If so, the request must be redirected to appropriate Timber Sales Manager.)

### **5.3.3 Issuing a Notice to Proceed/Notice Not to Proceed with Intended Transfer**

If all requirements of Section 5.3.2 are met, the Regional Executive Director must issue a notice that he/she is satisfied that the requirements of 5.4.1 have been met and that the transfer may proceed.

The notice will also include the following:

- Specify the latest date by which the transfer must be completed otherwise the Notice to Proceed would be null and void;
- Requirement to notify the Regional Executive Director of the completion of the disposition; and
- Requirement to deal with security deposits.

## **5.4 Completion of Disposition**

Upon receiving a Notice to Proceed from either the Minister, the Director of Forest Tenures Branch or the Regional Executive Director, the current holder and intended recipient may complete the disposition in accordance with the agreement between the two parties. The Ministry of Forests, Lands and Natural Resource Operations is not involved in this part of the process.

### **5.4.1 Payment of Accounts**

The *Forest Act* requires that as of the end of the day of the completion of the disposition, all money required to be paid to the government under the circumstances set out in Section 130 of the *Forest Act*, and due and payable under that section, in respect of the agreement has been paid or is the subject of an arrangement for payment approved by the minister responsible for collecting the money.

The Ministry of Provincial Revenue is responsible for collecting money owed to the Crown.

Payment can be made by cheque payable to the Minister of Finance at c/o Forest Revenue Operations, Ministry of Finance, 1802 Douglas Street, 6<sup>th</sup> floor, Victoria, BC, V8T 4K6, or by mail at PO Box 9990 Stn Prov Govt, Victoria, BC, V8W 9R7

When payment is made the credit will be applied to the account and the subsequent statement will show the payment. Upon request a receipt may be issued.

The contact number is 250-387-3376 (phone) or 250-356-5604 (fax).

## **5.5 Notification of Completion of Transfer**

Upon completion of the transfer, the current holder and intended recipient must notify the Director, Forest Tenures Branch (TFL, FL, PA) or the appropriate Regional Executive Director (all other tenures) that the transfer has been completed. While this notice must be sent within 21 days of the completion of the transfer, the parties are encouraged to provide notification as soon as possible to minimize licence administration and billing complications.

## **5.6 Licence Administration**

Upon receipt of the Notification of Completion of Transfer, regional staff will be responsible for completing the various licence administration requirements including the updating of the files and systems.

It is not a legal requirement to amend the licence to reflect a completed disposition. The Notification of Completion of Transfer must be placed on appropriate files and the licence may be updated at the earliest convenience (replacement; subdivision; consolidation etc).

The various systems (FTA; Apportionment) must be updated.

Any deposits currently held by the ministry may be released to the previous holder upon the appropriate deposits being received by the new holder of the agreement.

## **6.0 Compliance and Enforcement**

### **Compliance**

For licences that received a Notice to Proceed and have completed the disposition, regional staff will monitor the compliance with the statutory obligations associated with the disposition of certain agreements. The obligations include:

- Payment of accounts in accordance with the Act.
- The transfer of private land as part of the disposition of a TFL or Woodlot Licence.
- The transfer of the ownership or authority to occupy the land associated with an Occupant Licence to Cut.

In addition, regional staff will investigate any disposition that may have occurred without complying with the statutory obligation to notify the minister and receive a Notice to Proceed.

### **Enforcement**

Any disposition that has occurred without meeting the statutory requirements will be without effect and not recognized by the Ministry of Forests, Lands and Natural Resource Operations.

## APPENDIX A

### List of Contacts and Addresses

#### REGIONS:

Region	Address	Telephone	Fax
Coast Forest Region	2100 Labieieux Road, Nanaimo, BC, V9T 6E9 email: <a href="mailto:Forests.CoastRegionOffice@gov.bc.ca">Forests.CoastRegionOffice@gov.bc.ca</a>	(250) 751-7001	(250) 751-7190
Northern Interior Forest Region	1011 - 4 <sup>th</sup> Avenue, Prince George, BC, V2L 3H9 email: <a href="mailto:Forests.NorthernInteriorRegionOffice@gov.bc.ca">Forests.NorthernInteriorRegionOffice@gov.bc.ca</a>	(250) 565-6100	(250) 565-6671
Southern Interior Forest Region	441 Columbia Street, Kamloops, BC, V2C 2T3 email: <a href="mailto:Forests.SouthernInteriorRegionOffice@gov.bc.ca">Forests.SouthernInteriorRegionOffice@gov.bc.ca</a>	(250) 828-4131	(250) 828-4154

#### BRANCHES:

Branch	Address	Telephone	Fax
Director, Forest Tenures Branch	Location: 3 <sup>rd</sup> Floor, 1810 Blanshard Street Victoria, BC  Mailing address PO Box 9510 Stn Prov Govt Victoria, BC, V8W 9C2  Email: <a href="mailto:Forests.ResourceTenuresAndEngineeringBranchOffice@gov.bc.ca">Forests.ResourceTenuresAndEngineeringBranchOffice@gov.bc.ca</a>	(250) 387-8729	(250) 387-6445
Director, Product Innovation and Climate Change Branch	Mailing address: PO Box 9514, Stn Prov Govt Victoria, BC, V8W 9C2	(250) 387-8610	(250) 387-5050
Forest Revenue Operations	Mailing address: PO Box 9990, Stn Prov Govt, Victoria, BC, V8W 9R7	(250) 356-9802	(250) 356-5604