Land Procedure
Tenure Administration

NAME OF LAND PROCEDURE: Tenure Administration

APPLICATION: Applies to all tenures issued pursuant to the *Land Act*

ISSUANCE: Assistant Deputy Minister, Tenures, Competitiveness and Innovation

IMPLEMENTATION: Ministry of Forests, Lands and Natural Resource Operations

REFERENCES: *Land Act* (Ch. 245, R.S.B.C, 1996)
*Ministry of Lands, Parks and Housing Act* (Ch.307, R.S.B.C, 1996)

RELATIONSHIP TO PREVIOUS LAND PROCEDURE: This procedure replaces the previous Tenure Administration Procedure in effect August 16, 2004.


Dave Peterson, ADM
Tenures, Competitiveness and Innovation
Ministry of Forests, Lands and Natural Resource Operations

MAY 26, 2011

Date:

EFFECTIVE DATE: June 1, 2011

FILE: 11710-00

AMENDMENT:
## APPROVED AMENDMENTS:

<table>
<thead>
<tr>
<th>Effective Date</th>
<th>Briefing Note /Approval</th>
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<tr>
<td>June 1, 2011</td>
<td>BN 175892</td>
<td>Policy and Procedure update to reflect reorganization of resource ministries April 2011</td>
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| July 10, 2013    | --------------          | • Descriptions of security types and associated requirements were updated by Risk Management Branch, Ministry of Finance.  
|                  |                        | • Previous references to the Pooled Security Fund were deleted as the concept was no longer deemed viable. |
| July 10, 2013    | BN 196546             | Clarified information regarding replacement of tenures.                              |
| December 10, 2013| BN 202357             | Updated Financial Guarantees section, removing Safekeeping Agreements as a form of acceptable security. |
| October 28, 2014 | BN 209751             | Comprehensive amendments included updating and ensuring consistency of terms and references, clarification of content and processes, improving administrative efficiency, and reflecting current best practices. Key subject areas include: assignments, sub-tenuring, abandonment and cancellation. |
| September 22, 2015| BN 217947             | Land Act Reform phase 1 changes                                                      |
| December 17, 2018| 235998                 | Amendments to clarify public input processes                                         |
Table of Contents

1. PURPOSE ...................................................................................................................... 1
2. DEFINITIONS ............................................................................................................... 1
3. INSURANCE .................................................................................................................. 2
4. FINANCIAL GUARANTEES ............................................................................................ 3
   4.1 Security Deposits ....................................................................................................... 3
   4.2 Determining Security Amounts .................................................................................. 3
   4.3 Types of Securities ................................................................................................... 4
   4.3.1 Irrevocable Letter of Credit ................................................................................. 4
   4.3.2 Cash, bank drafts, certified cheques, money orders ............................................. 5
   4.4 Surety Bonds (Performance Bonds) ......................................................................... 5
5. ADMINISTRATION OF FINANCIAL GUARANTEES ..................................................... 6
   5.1 Blanket Security Deposits ....................................................................................... 6
   5.1.1 Determining Blanket Security Amounts .............................................................. 7
   5.2 Prescribed Land Development ................................................................................. 7
   5.3 Collateral Agreement ............................................................................................... 8
   5.4 Draw Down, Top Up and Modification of Securities ................................................ 8
   5.4.1 Draw Down and Top Up ...................................................................................... 8
   5.4.2 Modification of Security ..................................................................................... 8
   5.5 Invoking Security Deposits ..................................................................................... 9
   5.6 Returning Security Deposits .................................................................................. 11
6. ASSIGNMENT AND SUB-TENURING ........................................................................ 11
   6.1 Assignment ............................................................................................................. 12
   6.1.1 Assignment processing activities ....................................................................... 14
   6.2 Sub-tenures ........................................................................................................... 15
   6.2.1 Sub-tenure Processing Activities ..................................................................... 16
7. TENURE ABANDONMENT ............................................................................................ 16
8. TENURE REPLACEMENT/EXPIRY ............................................................................. 17
   8.1 Tenure Expiry Activities ......................................................................................... 18
   8.2 Unsatisfactory Site Condition ................................................................................. 19
   8.3 Replacement Tenures Covered by Mineral/Petroleum Tenures ............................... 19
9. CONSENT TO MORTGAGE ......................................................................................... 19
   9.1 Consent and Non-Disturbance Agreements ............................................................. 20
10. MONITORING ............................................................................................................. 21
    10.1 Site Inspections .................................................................................................... 21
    10.2 Environmental Stewardship .................................................................................. 22
11. CANCELLATION OF TENURES ................................................................................. 23
    11.1 Overdue Rentals ................................................................................................... 24
    11.2 Application of Interest on Overdue Accounts ....................................................... 25
    11.3 Outstanding Taxes ............................................................................................... 25
    11.4 Failure to Perform Covenants or Conditions ....................................................... 26
    11.5 Clerical Error, Land Not Available, Incorrect Survey, Incorrect Applicant Information ........................................................................................................... 26
    11.6 Overlapping Tenure Status/Clearance Error ....................................................... 26

EFFECTIVE DATE: June 1, 2011
FILE: 11710-00
AMENDMENT NO: December 17, 2018
12. ESCHEATS ..............................................................................................................28
13. CANCELLATION OF PLANS.............................................................................28
   13.1 General Procedure ......................................................................................29
   13.2 Outside a Municipality ..............................................................................29
   13.3 Inside a Municipality .................................................................................30
14. FIRST NATIONS .................................................................................................30

APPENDICES

Appendix A: Risk Assessment and Security Amount
Appendix B: Invoking Surety Bonds
Appendix C: Approved Endorsements for Recording Assignments on Legal Documents
Appendix D: Assignment, Name Change and Change of Control
1. PURPOSE
To establish procedures for:

a) insurance and financial guarantees (securities);
b) administration of financial guarantees (securities);
c) processing assignments and sub-tenures;
d) processing tenure abandonments, replacements and expiration;
e) consenting to mortgages;
f) tenure monitoring and cancellation;
g) issuance of rental, fee or royalty billing;
h) levying interest rates on overdue accounts;
i) administering escheated land for government use; and,
j) processing cancellations or partial cancellations of plans pursuant to the Land Title Act.

2. DEFINITIONS
Assignment means, in the context of Crown land dispositions, the transfer of the holder’s interest in the disposition to a third party by sale, sub-lease, conveyance or otherwise.

Authorizing Agency means the Provincial ministry or agency responsible for the specific land use authorization.

Escheat means a reversion of property back to the Crown resulting from the last owner of the property dying intestate and without lawful heirs.

First Nations is a term that refers to the Indian peoples in Canada, both Status and non-Status. Although the term First Nation is widely used, no legal definition of it exists. Some Indian peoples in British Columbia have adopted the term “First Nation” to replace the word “band” in the name of their community.

Joint Tenants is a type of ownership of land by two or more persons, which meets all of the following requirements: (1) Unity of Title (all rights acquired by the same conveyance); (2) Unity of Interest (all rights of equal duration); (3) Unity of Possession (possession of the whole land); and (4) Unity of Time (all rights acquired at the same time). The principal characteristic of Joint tenancy is the right of survivorship, i.e. on the death of one tenant, interest passes to the surviving tenant and not the title heirs of the deceased tenant. While it is open to a Joint Tenant to convey their interest by a transfer inter vivos, they cannot make testamentary disposition of it.
The Minister – means Minister of Forests, Lands and Natural Resource Operations.


Notice of Final Review is a letter sent from the Authorizing Agency to the applicant outlining that the Authorizing Agency’s review of the application has reached a stage where a final decision is anticipated once the requirements outlined in the letter have been completed by the applicant. Requirements include, but are not limited to, the Province’s receipt of signed tenure agreements and all monies payable (e.g. rent and security).

Sub-Tenuring means an interest in the Crown land granted by a tenant of that Crown land rather than the owner (the Province) to a third party for a period of time less than the term of the original tenure.

Tenants in Common is a type of co-ownership in real (or personal) property whereby each of the co-tenants has a distinct and separate interest in the property but the right to possession is common to all the co-tenants. On the death of one of the co-owners their share descends to their heirs or passes under their will.

3. INSURANCE

In order to ensure that the Province is indemnified against any liability associated with the use and occupancy of Crown land, most land use program policies require tenure holders to obtain, and maintain, a minimum $2,000,000 commercial general liability insurance. Individual land use program policies may specify higher minimum insurance amounts, or additional types of insurance, depending on the risk associated with the type of activity on the land. Examples of additional types of insurance include: environmental pollution liability insurance, aircraft liability insurance, and watercraft liability insurance.

Tenure agreements clearly identify the amounts and types of insurance required. Often the tenure agreement language allows the Authorizing Agency to revise both the amounts and types of insurance required during the term of the tenure.

In the case of non-commercial activities for private residential uses (e.g. recreational residential and private moorage) if the program area requires insurance, the tenure must be included in the homeowner’s insurance policy. Proof of insurance (see BC Certificate of Insurance) must be provided by the tenure holder, as per the terms and conditions of the tenure.
4. FINANCIAL GUARANTEES

4.1 Security Deposits

A security deposit is collateral provided by the tenure holder prior to tenure issuance. Each tenure agreement will identify the conditions under which security deposits may be accessed by the Province to fulfill outstanding obligations of the tenure holder in accordance with the tenure agreement, and/or to pay overdue fees associated with the tenure agreement.

For example, tenure language may allow the Province to access security funds under the following situations:

a) restoration of an area to a safe, clean and sanitary state;

b) obtaining legal advice, and costs to secure contractors and acquire new tenants (e.g. through advertising);

c) noncompliance with tenure Management Plan requirements;

d) rent owing;

e) taxes owing (i.e. if a tax notice is provided by the province’s Surveyor of Taxes); and,

f) failure to pay fees.

Section 4.3 outlines acceptable forms of security deposits. Legal restrictions or lack of protection for government prevent the Province from accepting certain forms of security deposits. The following forms of security are not accepted:

a) assignable bonds and notes;

b) bearer bonds and notes and Canada Savings Bonds; and

c) cheques in the name of a third party (a name other than the tenure holder’s).

Unless specifically provided for in a program policy, approval from the Regional Executive Director is required in order to waive the requirement to post a security deposit prior to tenure issuance. This should be completed as a minor variance in accordance with the Policy Variance Procedure.

4.2 Determining Security Amounts

Security amounts can vary depending on risk to the Province. While a minimum security deposit is normally required for most tenures (see Appendix A, Table 1), the Authorizing Agency has discretion to assign a higher security amount as risk increases.
In particular, the tenure holder’s business situation, along with the potential costs of site clean-up, will help determine risk. For high risk situations the amount of security is largely based on the potential cost of site clean-up and restoration, which will vary depending on such things as the proposed use and the number, size, and scale of improvements. Further details are provided in Appendix A: Risk Assessment and Security Amount.

There may be situations where it is appropriate to phase-in large securities over a reasonable period (e.g. three to five years) to reduce financial hardships for some tenure holders. In such situations, an agreed amount would be added to the security each year until the full amount is in place (refer to section 5.4.2 Modification of Security). The Authorizing Agency may ask tenure holders for a description and cost breakdown of future site restoration, clean-up or decommissioning efforts, particularly for sites identified as having a moderate to high risk. This information can be used to estimate costs of clean-up and assist in determining an appropriate amount of security. By requiring this information to be included in Management Plans, tenure holders and Authorizing Agency staff will be provided with clearer expectations about what the condition of the site should be at the termination of the tenure.

4.3 Types of Securities

4.3.1 Irrevocable Letter of Credit

An Irrevocable Letter of Credit (ILoC) is a non-negotiable security that is issued by a financial institution, payable to the Minister of Finance. It must be held in a secure place by the Authorizing Agency.

All letters of credit must be irrevocable and must include the following:

a) the beneficiary as “Her Majesty the Queen in Right of the Province of British Columbia as represented by the Minister of Finance”;
b) the gross amount that may be claimed;
c) the description of the tenure(s) being secured;
d) that a claim must be paid by the financial institution at any time and from time to time upon written demand from the Minister of the Authorizing Agency;
e) that partial drawings are permitted;
f) a clause allowing for automatic extension or renewal on an annual basis until the tenure is surrendered, contract completed, or a termination date at least 120 days beyond the required term of the tenure; and,
g) a provision obligating the financial institution to provide at least 90 days written notice to the Province prior to the letter of credit term ending (and not being extended) or being cancelled.

If the financial institution will not extend the term of an existing ILoC, the Authorizing Agency must take one of two courses of action:
a) require the tenure holder to provide an acceptable alternate financial guarantee prior to the expiry of the ILoC. Failure to do so could result in tenure cancellation; or,

b) require the tenure holder to provide a bank draft payable to the Minister of Finance in the amount of the ILoC value. The amount of the bank draft must be deposited as per section 4.3.2.

Where both the tenure holder and the financial institution are unable or unwilling to proceed as described above, but the Authorizing Agency wishes to maintain the tenure, the Authorizing Agency must convert the ILoC to cash prior to the expiry date. The guidelines below, regarding cash, will apply.

### 4.3.2 Cash, bank drafts, certified cheques, money orders

Cash is an acceptable, but not a preferred, form of security deposit, as are the following cash alternatives:

a) personal cheques received and converted to cash immediately to be treated as cash;
b) bank drafts issued by a financial institution, payable to the Minister of Finance;
c) certified cheques issued by a financial institution, payable to the Minister of Finance; and
d) personal money orders issued by a financial institution or postal money orders issued by Canada Post Corporation, payable to the Minister of Finance.

These securities must be deposited promptly into the consolidated revenue fund. These funds are recorded as provincial liabilities, refundable deposits, until returned to the tenure holder or accessed by the Province under the terms of the tenure agreement. The funds must be confirmed prior to tenure commencement. Interest on these securities must be paid only where a statutory obligation or contractual agreement so stipulates. In such cases, the interest component must be the responsibility of the Authorizing Agency. The Province will not pay interest otherwise and the depositor must acknowledge this at the time of deposit by way of acknowledgment that “No Interest is Payable on Cash Deposits”. Receipts should be written for all cash and cheque transactions.

### 4.4 Surety Bonds (Performance Bonds)

Before undertaking a surety bond, contact the Risk Management Branch for guidance.

Unlike security deposits, a surety bond is a financial guarantee “product” that is purchased in the commercial surety market. When a surety company sells a guarantee that “the contractor will promptly and faithfully perform the contract in accordance with its terms and specifications” this is a performance bond, which is a type of surety. Performance bonds are usually associated with construction contracts.
The form and amount of surety bonds must be specified in the Notice of Final Review and tenure agreement (usually 50% of the contract value if a performance bond, or 10% of the value if any other form of surety bond). Evidence of this type of financial guarantee should be received before the work commences.

The two types of surety bonds that are most applicable to Crown lands are:

- Performance bonds – used to ensure compliance with development requirements in Management Plans or specifications of the specific tenure agreement; and
- Reclamation Bonds – usually held by the Minister of Energy, and Mines and Petroleum Resources for quarry tenures.

5. ADMINISTRATION OF FINANCIAL GUARANTEES

5.1 Blanket Security Deposits

Individuals, companies or groups holding multiple Land Act tenures may arrange to deposit a single security amount to cover all or a portion of their tenures rather than provide an individual deposit for each. This single security amount used to cover multiple tenures is referred to as a blanket security deposit. Blanket security deposits can be either regional or provincial in scope.

Crown Corporations holding multiple tenures generally deposit a blanket security deposit to cover their entire tenure portfolio. Provincial blanket security deposits are administered by the Director, Land Tenures Branch only if the tenure holder has tenures in more than one region.

Blanket security deposits that cover multiple tenures within a single region, or multiple tenures for a single tenure holder within a single region are administered by the Authorizing Agency regional office.

Acceptable forms of blanket security deposits for multiple tenures are limited to:

a) irrevocable letters of credit (ILoC); and
b) bank drafts, money orders and cash.

An Association Agreement may be entered into between the Province and an association, which is a legal entity, to guarantee the performance and obligations of the association’s members. All Association Agreements are negotiated and administered by the Director, Land Tenures Branch. Acceptable forms of security deposits for Association Agreements are limited to:

a) irrevocable letters of credit (ILoC); and
b) bank drafts, money orders and cash.
In cases where the Association Agreement covers only program-specific tenures, a tenure holder may be required to provide separate security deposits for tenures issued to them under other program areas. It is the responsibility of the Authorizing Agency staff to determine if separate security deposits are required.

5.1.1 Determining Blanket Security Amounts

The amount of blanket security deposits will need to be determined on a case by case basis. The minimum amount of a blanket security for a company should be approximately the same as the estimated clean-up cost of a single tenure to be covered by the bond. However, when a high number of tenures are involved, risk may increase warranting a larger security. Over time, as more tenures are added to a company’s blanket security deposit, the Authorizing Agency may consider adjusting the bond amount to account for the increase in risk.

The amount of a blanket security deposit under an Association Agreement should be approximately the same as the highest clean-up cost of any single tenure covered by the agreement (refer to Appendix A: Risk Assessment and Security Amount for information on determining clean-up costs). Changes to risk over time may warrant changes to the security deposit amount, subject to the conditions of the agreement.

5.2 Prescribed Land Development

Prescribed land development refers specifically to prescribed development requirements that must be achieved (i.e. restrictions on the placement of improvements, specified rate of development, etc.) in direct sale situations. Re-purchase options are NOT used as a means of securing performance. Where prescribed land development is a condition of disposition, it is secured by performance guarantee, enforced with a collateral agreement for security.

Prescribed land development is a condition of Crown land disposition in the following circumstances only:

a) where specially required by a particular Crown land use program i.e. extensive agriculture;

b) in compliance with an approved inter-agency agreement;

c) as a result of an express request from a referral agency with a legitimate land development requirement that cannot be enforced through that agency’s own licencing or regulatory mandate;

d) in compliance with statements concerning development of specific Crown land areas in an approved land use plan or planning study; or

e) where a particular type of Crown land is in short supply in an area, and there is a known demand for that land from other potential tenants or purchasers.
5.3 **Collateral Agreement**

A Collateral Agreement for Development is a contractual arrangement between the Authorizing Agency and an applicant for fee simple disposition which commits the applicant to undertake specific developments or improvements to the land within a specified time period as a means of securing performance.

All applications for direct sales for agricultural dispositions and for residential dispositions are to be accompanied by a proposed plan containing information prescribed in individual land use policies. This information is used in the preparation of a Collateral Agreement for Development performance when specified by land use policies.

The completed Collateral Agreement for Development is attached with other pertinent materials to the Letter of Commitment or Notice of Final Review forwarded to the applicant for signature.

5.4 **Draw Down, Top Up and Modification of Securities**

5.4.1 **Draw Down and Top Up**

If the tenure holder fails to perform their obligations and the Authorizing Agency uses all or part of the security to remedy the situation, the Authorizing Agency will request, in writing, that the tenure holder restore the security to its full amount, within 30 days. The tenure holder must deliver further security in an amount equal to the amount drawn down.

5.4.2 **Modification of Security**

If provided for in the terms and condition of the tenure the Authorizing Agency may, during the term of the tenure, require the tenure holder to:

a) change the amount of the financial guarantee; and/or

b) provide and maintain another form of financial guarantee in replacement of, or in addition to, the guarantee already posted.

Changing the security amount may be desirable to address the following:

a) increases in the estimated clean-up costs over time (e.g. due to inflation, or changes in the type and condition of the improvements);

b) changes in risk at the site; e.g. due to additional uses, change of tenant, introduction of hazardous materials on-site, a contamination incident; or change in operations and on-site activities;

C) accommodating the phase-in of a large security, if warranted by demonstrable financial hardships; or

d) any other similar circumstances.

In addition, consider changing amounts, adding other securities, or requiring other types of financial guarantees during the different phases of development; e.g. pre-construction, construction, operational / maintenance.
5.5 Invoking Security Deposits

At the early termination or expiry of a tenure the Authorizing Agency may retain the securities to fulfill any outstanding obligations of the tenure holder specified in the tenure agreement (see Section 4.1 for examples). Security deposits should only be accessed after all reasonable efforts have been made to have the tenure holder remedy the deficiency. If multiple deficiencies exist the decision maker will need to prioritize based on the risk and amount of security available. Any unused portion of the security is returned to the tenure holder (see section 5.6).

Where costs of clean-up and other obligations exceed the security deposit the tenure holder needs to be advised that they are liable for these additional costs. These will be considered as a debt owing to the Crown pursuant to the Land Act.

As tenure language has changed over time tenure agreements should be reviewed to determine which of the following processes can be followed when collecting these additional funds,

1. The Authorizing Agency incurs the cost before the tenure holder is billed:
   - This option is to be used if tenure language does not allow the Province to bill a client prior to incurring the cost or if the cost cannot be determined ahead of time.
   - The Authorizing Agency regional office (or in some cases district office) incurs the cost in their operating budget; however, an invoice is immediately sent to the tenure holder for the amount the region has incurred, and the cost nets to $0 in the region’s books once the invoice is sent.
   - There is a risk to the regional office if the tenure holder does not pay the cost and it has gone through the collections process, as the amount will be charged to the region’s budget

2. The tenure holder is invoiced before the Authorizing Agency incurs any cost (deferred revenue):
   - This option must be provided for in the tenure agreement.
   - A reasonable estimate of cost must be determined.
   - Steps to be taken:
     - Send the invoice to the client
     - Ensure payment is received by the Authorizing Agency (considered as deferred revenue)
     - The Authorizing Agency initiates clean up within 2 years from receipt of payment unless exceptional circumstances force a delay
     - If clean-up is not carried out, money is sent to the Consolidated Revenue Fund and can no longer be used for clean-up or fulfilling other obligations

Both options require a site assessment to determine the costs of fulfilling any outstanding obligations.
For further guidance contact the Financial Services Branch of Corporate Services for the Natural Resource Sector.

The Authorizing Agency responsible for issuing the tenure must ensure that the security deposits are accessed as follows:

For securities held external to government:
   a) Inform the holder of the security (e.g. financial institution) that the tenure holder has forfeited the security.
   b) Convert the security instrument to cash and apply it to outstanding obligations, as per Section 4.1
   c) Update Tantalis and the accounts receivable system to reflect the security forfeiture.

For securities held by the Authorizing Agency:
   a) Apply the security to satisfy any outstanding obligations of the tenure agreement; and
   b) Update Tantalis and the accounts receivable systems to reflect the security forfeiture.

A tenure holder continues to be bound by all outstanding tenure obligations, and associated costs, even after the security deposit has been accessed by the Authorizing Agency.

A surety bond is forfeited if:
   a) in a lease, licence, temporary licence or right-of-way, the site is not cleaned up or restored to the satisfaction of the Authorizing Agency; or
   b) performance obligations are not completed to the standards outlined in the tenure agreement.

For further guidance refer to Appendix B: Invoking Surety Bonds.

Any part of the surety bond remaining, after meeting all obligations to the Authorizing Agency, is returned to the tenure holder in accordance with the tenure agreement (see Section 5.6).

Where use and clean-up of the land do not meet the requirements set by the Authorizing Agency, the tenure may be cancelled, and future applications for tenures under the Land Act may be rejected. In addition, the tenure holder will still be liable for any costs that the Authorizing Agency would need to incur to remedy the situation.
5.6 Returning Security Deposits

Except where a security deposit has been accessed for a purpose permitted by legal process, contractual provision or statute, it must be returned to the depositor where:

a) the security term ends or the security has been replaced with another security; and,

b) the Authorizing Agency is satisfied that no valid claims exist on the security.

If the tenure holder fails to meet their tenure obligations (as noted in Section 4.1) the security may be used as per the terms and conditions of the tenure. Any unused amount will be returned to the tenure holder once the Province is satisfied that all obligations have been met.

Adequate time will be needed to allow verification of site condition, and/or to conduct clean-up of a site. Normally this should not exceed 2 years from the date the tenure was terminated. However, in some cases clean-up may take longer (e.g. for site decontamination). Security is not to be held for more than 5 years unless approved by the Regional Executive Director.

Securities associated with tenures administered by the Authorizing Agency are not available to other ministries, except where it is legally allowed, and specifically agreed to by the Authorizing Agency.

For situations where the security is to be returned but the Province is unable to locate the tenure holder, and the security deposit meets the legislated definition of unclaimed property (as per the Unclaimed Property Act), the funds will be remitted to the BC Unclaimed Property Society using the Society’s procedure for remitting the money.

If the tenure holder no longer exists because a company has dissolved, the deposit would immediately and automatically vest in the government, as per the Business Corporation Act. However, since a security deposit must be returned if the corporation is restored, a waiting period should be set for up to 3 years, during which time no action is taken on the security. These orphan deposits would continue to be held by the Ministry and would be considered trust funds under the Financial Administration Act.

6. ASSIGNMENT AND SUB-TENURING

Assignment is the transfer of the tenure holder’s entire rights and interest regarding the use of Crown land to a third party. Assignment will be the normal administrative means for the transfer of tenures. Sub-tenuring is the granting of rights or an interest in Crown land by the tenant of that Crown land rather than by the Province. Sub-tenuring may be allowed where it encourages the sharing of common land and infrastructure in order to minimize the impact of multiple uses, or where it allows commercial operations to diversify and strengthen their business by sub-tenuring some activities.
The following general conditions apply to both assignment and sub-tenures:

- Prior written consent of the Authorizing Agency is required.
- No assignment or sub-tenure will be considered until the lease, licence or statutory right of way has been issued.
- The assignee or sub-tenure holder must meet eligibility requirements.
- The Authorizing Agency may refuse the assignment or sub-tenuring if the details of the assignment or sub-tenure are not acceptable to the Authorizing Agency
- Any assignment or sub-tenure made in contravention of this section is void and the Authorizing Agency may cancel the Crown land disposition

Refer to Appendix D: Assignment, Name Change and Change of Control for additional information.

6.1 Assignment

Assignments will be considered in accordance with the Land Act and the criteria and eligibilities set out in current land use policies. Tenure agreements may have specific additional requirements for assignment.

The Authorizing Agency may refuse the assignment of a tenure to any existing tenure holder who is not using their current tenures diligently.

A Crown land tenure must be assigned in its entirety. The Authorizing Agency will not assign a portion of a tenure.

Requests for assignment must be submitted, in writing, to the appropriate Authorizing Agency office. The following is required:

a) the original or certified true copy of the tenure document held by the assignor which must contain the date of issuance of the tenure and the correct legal description of the land;

b) the full names, addresses and occupations of the assignor and assignees;

c) a statutory declaration attesting that the assignment satisfies the current eligibility and policy requirements related to the land use involved (e.g. age and citizenship of the assignee);

d) the assignment processing fee;
   • a replacement security deposit or surety bond (if one is required by the original tenure); and,
   • a new BC Certificate of Insurance;
e) acceptable evidence of no outstanding property taxes, such as:
   • a tax clearance certificate from the Provincial Collector, or copy of the receipt; or
   • a tax certificate or other proof from a municipal office, if the property is within a city, village, town or Municipality; or
   • screen print of automated land tax information system data for the tenure.

f) the tenure must also be in good standing with respect to rental and royalty payments (if appropriate), as well as other taxes, including GST;

g) if the assignee is a company or society, the number of the certificate of incorporation or amalgamation or other proof of authority to hold land must be provided; and,

h) if the assignment is to two or more individuals, their intended legal status as Joint Tenants or Tenants in Common must be stated.

This information will be used to draft an assignment/assumption agreement. The new tenure holder will be required to commit to, and be responsible for, operating under the terms and conditions of the original tenure(s), including all provisions of the Management Plan. The Authorizing Agency may require the assignee to agree to additional terms, covenants or stipulations that reflect current program policy. The tenure holder is responsible for ensuring that all tenures and permits necessary to support the operation are transferred concurrently.

The original tenure document submitted by the assignor with the request for assignment will be forwarded to the assignee along with the executed assignment document.

Notification of an assignment must be provided to:

   a) the appropriate local government;
   b) BC Assessment; and,
   c) Financial Services Branch.

In some circumstances, notification of an assignment should also be provided to:

   a) the holder of a right of way, who obtained consent to cross the tenure which is now being assigned;
   b) the upland owner, or any person who provided consent to the issuance of a foreshore tenure, should be advised of any assignment of the foreshore tenure; and,
   c) the appropriate First Nation.

Transfer of Crown Land Disposition Upon Death

No assignment is required to transfer a tenure to an estate pursuant to a probated will or letters of administration. No fee is charged.
If the tenure was originally held by one person, the submission of the Will and Letters of Probate are required or, if intestate, the Letters of Administration are required. The tenure is recorded in the name of the Executor or Administrator. It is not mandatory to probate a Will under certain circumstances (e.g. dependent on the value of the Estate.) In such cases, only the Will and Death Certificate are required.

If the tenure was originally held by tenants in common and one dies, the requirements are the same as above except the tenure is recorded in the names of the Executor/Administrator and the surviving tenure holder.

If the tenure was held by joint tenants, only the Death Certificate is required. The tenure is recorded in the name of the surviving tenure holder only.

6.1.1 Assignment processing activities

Unregistered Lease or Licence of Occupation

If the assignment is in order, the assignment/assumption form is completed and sent to the assignor (current tenure holder) and assignee (3\textsuperscript{rd} party new tenure holder) for signature. Once signed by the assignor and assignee, the originals are executed by the appropriate Authorizing Agency staff.

A covering letter with the assignment/assumption agreement and the original tenure agreement, are sent to the assignee. A copy of the letter is provided to the assignor, unless they specifically request the documents be sent to another party (e.g. lawyer). A copy of the covering letter is also sent to BC Assessment.

Upon completion of an assignment, the Crown Land Registry (Tantalis) is updated and the original copy of the tenure should be endorsed accordingly (examples of endorsements in Appendix C: Approved Endorsements for Recording Assignments on Legal Documents).

Registered Leases

The procedure for processing an assignment of a registered lease is the same as that described above, with the exception that only copies of the relevant documents are used, since the original of the lease document and the Authorizing Agency’s consent form will be held by the Land Title Office.

In the case of a lease which has been registered in the Land Title Office, it is the responsibility of the assignee to forward to the appropriate Land Title Office an original of the Authorizing Agency’s consent to the assignment and an original of the executed assignment document.

Statutory Rights of Way

Assignment of a statutory right of way is processed in the same manner as a lease except as noted below.
Statutory rights of way granted by Order in Council require a special addendum which is signed by the delegated signing authority and is to state:

I, the undersigned, hereby give my licence and authority to an assignment dated __________ by ________ of all right, title, estate, and interest in and to the right of way granted to ________ pursuant to order in Council #____ approved ________ unto ________ subject to the conditions and provisions contained in the said order in Council without prejudice to any rights which Her Majesty the Queen has or may have against the said under the conditions and provisions in the said order in Council PROVIDED that this licence is restricted to the particular Assignment hereby authorized and save as aforesaid the conditions and provisions contained in the said order in Council shall remain in full force and effect.

DATED AT __________ BRITISH COLUMBIA THIS ___ day of ____.

6.2 Sub-tenures

The tenure holder will be required to refer all sub-tenure proposals to the Authorizing Agency to seek consent prior to the issuance of sub-tenures, unless otherwise stipulated by the Authorizing Agency.

It should be the responsibility of the tenure holder to inform the Authorizing Agency of any relevant changes with regards to the sub-tenure holder (e.g. change of business name).

The following is required for a sub-tenure application:

a) the original or certified true copy of the tenure document held by the tenure holder; and

b) a Statutory Declaration attesting that the sub-tenant and the sub-tenure satisfy the current eligibility and policy requirements related to the land use involved (e.g. age and citizenship requirements).

The Authorizing Agency will review the tenure agreement to determine any sub-tenure limitations or restrictions.

Sub-tenures may not be issued for a term longer than the unexpired term of the original tenure. If the sub-tenure use is for activities not covered in the original tenure then the original tenure must be amended to include the purpose of a proposed sub-tenure. This would be considered a major amendment, and be processed accordingly. Based on the terms and conditions of the tenure agreement, this can be in the form of a Modification Agreement or may require a new tenure agreement.

A revenue-sharing agreement may be required by, and negotiated with, the Authorizing Agency reflecting appropriate consideration for some sub-tenured uses. The tenure
holder may be required to submit financial statements to the Authorizing Agency which also account for the finances of the sub-tenant (e.g. for some programs where rents are based on gross revenues).

A sub-tenure holder MAY NOT sub-tenure, i.e., no sub-sub-tenuring will be approved.

All requirements for the sub-tenant(s) are the responsibility of the tenure holder.

### 6.2.1 Sub-tenure Processing Activities

If the sub-tenure is in order, a Consent and Endorsement Schedule is prepared. The original copies of the tenure agreement are appropriately endorsed (examples of endorsements in Appendix C: Approved Endorsements for Recording Assignments on Legal Documents).

The original copy of the Consent and Endorsement Schedule, with a covering letter and the original tenure agreement, are forwarded to the person who submitted the request to sub-tenure. A copy of the covering letter is sent to BC Assessment.

Upon completion of a sub-tenure, Tantalis is updated.

### 7. TENURE ABANDONMENT

In accordance with the *Land Act*, tenure abandonment is when a tenure holder notifies the Authorizing Agency in writing of their intention to abandon their disposition.

The written notification is to include a rationale for abandonment and related details (e.g. date of abandonment, clean-up activities, etc.). The Authorizing Agency will review the specific tenure agreement to confirm tenure termination conditions.

Prior to abandonment, the tenure must be in good standing with respect to rentals and evidence should be obtained that there are no outstanding taxes. Acceptable evidence of no outstanding taxes includes:

a) a tax clearance certificate from the Provincial Collector, or copy of the receipt; or
b) a tax certificate or other proof from a municipal office, if the property is within a city, village, town or Municipality; or
c) screen print of automated land tax information system data for subject tenure.

Along with the request to abandon, the tenure holder must provide a Statutory Declaration that the site has been left in a safe, clean and sanitary condition. The Authorizing Agency may conduct a site inspection to confirm this condition in situations of high risk. Security deposits will not be returned until clean-up has been confirmed or the Statutory Declaration is accepted. If the tenure holder has failed to return the site to a safe, clean and sanitary condition, the security may be used as per the terms and conditions of the tenure to cover the costs of cleaning up the site (see section 5.6).
If the site has not been cleaned and improvements have not been removed in accordance with the tenure agreement the proponent will be subject to occupational rent until the land is deemed to be in a satisfactory condition. Upon abandonment of a tenure, Tantalis must be updated.

8. TENURE REPLACEMENT/EXPIRY

Replacement tenure means a subsequent tenure agreement issued to the tenure holder for the same purpose and area. Replacements mostly occur at the time of tenure expiry, however, in some cases, tenure holders may apply for an early replacement at any time following the mid-term of the tenure. Generally this is done for business reasons.

Replacement of tenures is at the Authorizing Agency’s discretion. The Authorizing Agency may decline to replace a tenure, or may issue a new tenure agreement which could have modified terms and conditions (i.e. when compared to the original tenure agreement).

Replacements will generally be carried out without the need for the tenure holder to submit an application package. However, if significant change is being proposed or has taken place on the site, an application will normally be required.

The Authorizing Agency will review information on file, conduct status, and may carry out agency referrals. First Nations consultation may also be required as per government’s consultation guidelines, or any engagement frameworks in place. Other replacement considerations may include:

- whether the existing tenure is in good standing;
- whether the development proposed in the existing management/development plan has been completed;
- whether further assessments or modifications are required for development which was not completed during the term of the expiring tenure;
- whether any additional authorizations related to their use of the land are in good standing;
- any Land Use Objectives that may have come into effect since the original tenure was issued; and
- any other relevant matters identified by staff or the decision maker during the review.

Additional information and/or professional reports may be requested from the tenure holder. The Authorizing Agency may develop their own checklists to help ensure that staff reviews are comprehensive and take all relevant information into consideration. A written report of the recommendations will be prepared which describes the information considered, the rationale/justification for the recommendation and, if approval is recommended, suggested terms and conditions of the disposition.
Tenure replacement is to be initiated well before tenure expiry to allow adequate time for processing. The Authorizing Agency should review files to determine how best to interact with the tenure holder. Staff may send a letter to tenure holders requesting that they provide the replacement fee and updated file information up front if the tenure holder wishes to initiate the tenure replacement review process; or the Authorizing Agency may send tenure holders a Notice of Final Review that will include a new tenure agreement, which the tenure holder is asked to sign and submit along with appropriate payment, if they wish to replace the tenure. In this latter situation, before sending the Notice of Final Review, staff would have already conducted a replacement review process to address any file issues, and determine if a replacement is appropriate.

Authorizing Agency staff should determine which of the above approaches is most efficient. This may be done with a quick risk assessment on individual replacement files, or operational guidelines may be developed, which consider such things as program area and type of tenure and tenure holder when deciding whether replacement is likely to be requested by the tenure holder.

When the tenure replacement is offered, the tenure holder must sign and return the Notice of Final Review and tenure agreement.

Temporary licences are issued for a single term of up to two years, and are not replaceable during the term. In situations where the client requires additional occupancy beyond the expiry date, they can re-apply through Virtual Frontcounter BC for the appropriate type of tenure. The applicant should supply the previous file number and will be required to upload an updated Investigative Plan or Management Plan.

Prior to replacement, evidence should be obtained that there are no outstanding taxes. Acceptable evidence of no outstanding taxes includes:

a) a tax clearance certificate from the Provincial Collector, or copy of the receipt; or
b) a tax certificate or other proof from a municipal office, if the property is within a city, village, town or Municipality; or
c) screen print of automated land tax information system data for subject tenure.

8.1 Tenure Expiry Activities

If replacements are not completed the tenure holder is informed that the tenure will expire, and that improvements must be removed and the land restored to a satisfactory condition by a specified time. After the term for removing improvements has expired, the Authorizing Agency may inspect the property to verify that all subject improvements have been removed and that the site has been left in satisfactory condition. Alternatively, the Authorizing Agency may require the tenure holder to provide a Statutory Declaration that the site has been left in a safe, clean and sanitary condition (see Section 10.1). Similar to an abandonment, if the site has not been adequately
cleaned and improvements have not been removed, the proponent will be subject to occupational rent until the land is deemed to be in a satisfactory condition.

In the case where the site has been left in satisfactory condition, a letter is forwarded to the tenure holder confirming expiry and that any security deposits held by the Authorizing Agency will be returned. Prior to noting a tenure as expired it should be determined that no delinquent rental or royalty payments exist. Copies of the letter should be forwarded to:

- BC Assessment; and
- the applicable Municipality or Regional District.

Upon expiry, Tantalis must be updated to reflect the new status.

### 8.2 Unsatisfactory Site Condition

In the case where the site has not been left in a satisfactory condition, the Authorizing Agency will forward a letter to the tenure holder requiring clean-up to be completed within a specified time period. Failure to comply with the clean-up requirements may result in further actions according to the terms and conditions of the tenure agreement, which can include payment of occupational rent until such time as the site has been left in a clean and tidy state. Alternatively, the clean-up may be undertaken by the Authorizing Agency in which case the clean-up costs will be considered as a debt owing to the Crown. If a security deposit is held by the Authorizing Agency, the Authorizing Agency may access the deposit to cover the costs incurred in cleaning up the site (refer to section 4.1 and 5.5).

Upon completion of clean-up of the site the tenure is recorded as “expired” in Tantalis.

### 8.3 Replacement Tenures Covered by Mineral/Petroleum Tenures

Replacement applications should be processed expeditiously. This protects the prior rights of Land Act tenure holders from mineral or petroleum tenures which could be established between Land Act tenure expiry and replacement. The commencement date of the replacement tenure should coincide with the expiry date of the Land Act tenure.

### 9. CONSENT TO MORTGAGE

The Province will consent to mortgages of leases or statutory rights of way and this consent will extend certain rights. The Province may enter into a non-disturbance agreement (NDA) with a financial institution (see 9.1).
The Province will not consent to mortgages of licences of occupation, operating and master development agreements or temporary licences of occupation. See 9.1 regarding consent and non-disturbance agreements associated with licences and operating and master agreements.

When consenting to a mortgage of a lease or a statutory right of way, the mortgagee must be made aware that any future assignee must meet the Province’s criteria prevailing at that time.

9.1 Consent and Non-Disturbance Agreements

The Province may enter into consent and non-disturbance agreements (NDAs) with eligible lenders and tenure holders where lenders require the assignment of tenure rights for security purposes. These agreements are only to be used for capital intensive major projects on Crown land.

The decision to enter into such agreements will be made by the Authorizing Agency on a case-by-case basis. Criteria to consider when making the decision to enter a NDA include, but are not limited to:

a) the level of new investment on Crown land (examples of major projects where a NDA may be required include those that require an environmental assessment including: large clean energy projects; All Seasons Resorts; mines; Liquefied Natural Gas development; and any other major development requiring significant new investments on Crown land);

b) whether there are acceptable alternative methods of providing security of investments to investors (e.g. consent to mortgages of leases or Statutory rights of Way as per 9 above), that do not put additional obligations on the Authorizing Agency and,

c) provincial priorities for investments on Crown land where it may be necessary to provide this additional security to investors in order to meet Government objectives.

When a senior decision maker determines the Authorizing Agency is willing to enter into a NDA, an approved NDA template is available. It is a tripartite agreement between a lender, the tenure holder and the Authorizing Agency. Forms of NDAs or comfort agreements with lenders that are not approved, are not to be used. In the case of All Seasons Resorts, a special template developed for use with operational and master development agreements may be used. Applicants should contact the specific office dealing with their application to get the correct form of NDA.

It is important that the Authorizing Agency is made aware at the time of application if a NDA will be required. Applicants should include as much information as is possible regarding their requirement for a NDA at the time of application submission for the major
Crown land developments. Specific Crown land policies may contain specific instructions and requirements regarding the application for a NDA.

The Crown Land Fees Regulation consent to Assignment fee applies ($250 fee per assignment – see the Fees Regulation for most up-to-date information and requirements for multiple assignments). Where the need for a NDA is identified as a part of the Land Act application these additional fees should be collected at the time of the application. Where the need for a NDA is identified later, the fee should be collected when the NDA is requested.

10. MONITORING

Tenure terms and conditions, including requirements contained in approved Management Plans, act as the basis for monitoring and enforcing specific performance requirements over the term of the tenure.

All complaints regarding land applications or existing land tenures must be recorded on the Authorizing Agency’s Complaint Form, to ensure consistency in reporting and to help organize a response.

Where the tenure holder is required to perform monitoring, either under the Management Plan or the terms and conditions of the tenure agreement, the cost will be borne by the tenure holder.

If addressed in the tenure conditions, or if specifically identified in the Management Plan, tenure holders may be requested to produce evidence of diligent use by providing the following, or similar, items:

a) dated recent photos of the site submitted on the anniversary date (or every two years whichever period is deemed appropriate given the site use and history);

b) an update regarding changes in operational use outlined in the Management Plan;

c) a Statutory Declaration indicating the site is being maintained in a safe, clean and sanitary condition;

d) an operational inspections schedule demonstrating that the tenure holder is inspecting the site for potential contamination;

e) satellite images or air photos of the site with site boundaries identified; and/or

f) updated site plan/s and map/s of the site.

10.1 Site Inspections

Issues relating to valuation, purpose, and use of land may arise once a tenure is in place. Site inspections allow for the monitoring and resolution of issues within existing tenures, including at the termination of a tenure (which includes cancellation and abandonment).
The Authorizing Agency may conduct site inspections, when and where deemed appropriate, to ensure obligations under the tenure are being met and to confirm that the site is maintained in accordance with conditions in the tenure agreement and Management Plan. Site inspections may be initiated by the increased risk at a site for the following or similar concerns:

a) change of purpose or additional uses;
b) change of tenure holder;
c) new contaminants being introduced to the site;
d) a contamination incident occurs; and/or,
e) change in operations and on-site activities.

At the discretion of the Authorizing Agency, a site inspection may be conducted to determine if a tenure holder has satisfied performance requirements.

Where the Authorizing Agency determines that a site inspection to review an existing disposition is not practical or is unnecessary, the tenure holder can be requested to supply information indicating that performance requirements have been met. This information can be in the form of a Statutory Declaration or any of the items listed in section 10. The tenure holder can be required to supply this information if it is a condition of the tenure agreement.

Site inspections should be carried out where any unauthorized activities threaten the environment or human health and safety, and where the Authorizing Agency intends to take compliance and enforcement action. Site inspections should be carried out in a safe and cost effective way, with the least impact to tenure holder operations.

Where issues of noncompliance are identified through a site inspection, appropriate compliance and enforcement procedures must be followed (see Compliance and Enforcement of Compliance procedure).

**10.2 Environmental Stewardship**

Environmental stewardship of Crown land includes management of environmental risks associated with use. Tenure documents may include obligations of tenure holders associated with environmental risks such as contamination or degradation of Crown land. These include, but are not limited to:

a) requirements for bringing hazardous substances (any substance which is hazardous to a person, property or the environment) on Crown land;
b) obligations on how hazardous substances are treated during the tenure term; and

c) obligations the tenure holder may have regarding reporting and cleaning up of hazardous substances both during the term and upon termination.
Tenure document templates contain several provisions (standard provisions and pick provisions for specific circumstances) that protect the Province against possible environmental risks. Where there are significant risks to environmental values and the standard environmental provisions do not adequately reduce potential liabilities and risks to the Province (e.g. where there is a known high risk of contamination as a result of past use or current tenure holder activities), additional obligations may be added to standard tenure documents to ensure good environmental stewardship and to reduce impacts to future land use opportunities.

The need for additional environmental provisions should be considered on a case-by-case basis when processing new or replacement tenures or tenure assignments. In circumstances where additional requirements are being considered staff should contact the Land Tenures Branch.

Tenure holders should be aware of their obligations and manage such substances to ensure no impacts to future Crown land use, and to ensure no future costs to the Province. They are also responsible for meeting all requirements under all applicable environmental legislation and regulations associated with their use of Crown land. The Environmental Management Act (EMA) establishes requirements regarding which industries and activities require EMA authorization, in addition to requirements regarding site contamination.

Where obligations are not being met, the Authorizing Agency, may require tenure holders to cure such defaults. Failure to do so can result in termination of rights, and could result in the use of security and any other tools available to the Authorizing Agency to complete such obligations.

11. CANCELLATION OF TENURES

All Land Act tenures may be cancelled. Cancellation can be initiated for reasons including, but not limited to, the following:

Uncured Defaults (generally Section 43 of the Land Act)

a) rental payments, taxes or other monies due the Crown are in arrears;  
b) the tenure, or any interest in it, has been assigned or otherwise alienated without the written consent of the Authorizing Agency;  
c) the tenure area is not being used in compliance with the Management Plan;  
d) unauthorized activities are being conducted on the Crown land by the tenure holder;  
e) the tenure holder otherwise breaches the terms and conditions of the tenure agreement.

Other (generally Section 44 of the Land Act)
a) a clerical error occurred in issuing the tenure;
b) the land is subsequently determined ‘to be not available for disposition;
c) the survey is incorrect;
d) the information furnished by the applicant is incorrect

e) the tenure holder becomes unable to continue use of the Crown land (e.g. due to insolvency.

In addition, tenure cancellation may be necessary to resolve a situation in which the Crown inadvertently issues an overlapping Land Act tenure that creates a conflict which impacts human safety, or that has a significant negative impact on an existing tenure holder’s contractual rights.

A written rationale for cancellation and details of cancellation facts must be prepared and approved by the Authorizing Agency. The Authorizing Agency will review the specific tenure agreement to confirm tenure cancellation/termination conditions.

A letter is forwarded to the tenure holder confirming cancellation. Copies of the letter are forwarded to:

   a) BC Assessment;
   b) applicable municipality or Regional District; and
   c) all mortgage holders.

When the tenure being cancelled is registered in the Land Title Office, a certificate signed by the Minister, or delegate, pursuant to Section 43(5) of the Land Act is forwarded to the Registrar of Land Titles who will cancel or amend the registration accordingly. A copy of the certificate is sent to BC Assessment.

For statutory rights of way tenures that are cancelled, all monies previously paid are forfeit to the Crown. All monies still owing at the time of cancellation are considered a debt to the Crown and every effort is to be made to recover them.

The applicant may apply for a new tenure, which requires payment of an application fee. All past indebtedness to the Crown must be liquidated before such an application will be considered.

Upon cancellation, Tantalis must be updated.

11.1 Overdue Rentals

The first billing is mailed to the tenure holder 30 to 60 days prior to the anniversary date of the tenure. The notice will show the rental amount and advise the tenure holder that interest will be charged on overdue accounts.

If unpaid, an overdue notice is generally sent 30 days after the anniversary date by the Corporate Services for the Natural Resource Sector. This notice includes notification of
outstanding interest due, as well as a statement of the Authorizing Agency's policy respecting cancellation.

A second overdue notice is sent 60 days after the anniversary date, if required. When the account is 90 days or more overdue, cancellation proceedings, pursuant to Section 43 of the *Land Act*, are instituted and a Notice to Vacate may be sent unless extenuating circumstances warrant the granting of an extension of time.

Cancellation is completed as per Section 11 above.

Activities for handling payments received and collecting monies owed to the Crown are described in the [Core Policy and Procedure Manual](#), issued by the Office of the Controller General.

### 11.2 Application of Interest on Overdue Accounts

Interest is charged on all accounts where payment of the rental, royalty or gross receipts is not received on the due date of any *Land Act* tenure.

This procedure applies to all Crown land dispositions issued under the *Land Act* which are levied a rental fee, royalty or gross receipts.

Interest is calculated at the rate prescribed pursuant to Section 26 of the *Land Act* from the anniversary date of the term until payment is received.

Where royalty or gross receipts are payable as a condition of the tenure, and where a Statutory Declaration and royalty payment are not received within 15 days of the tenure anniversary date (or due date specified in the tenure agreement), the royalty or gross receipt payment are to include interest.

Where a rental or royalty payment is received after the due date, the account is considered in arrears for the interest owed, provided the amount of interest owing exceeds $5.00 and the proceedings outlined in 11.1 have been initiated.

### 11.3 Outstanding Taxes

If taxes are in arrears the Surveyor of Taxes or Municipality notifies the Authorizing Agency. The Authorizing Agency also checks for outstanding taxes if a tenure is being assigned or renewed/replaced.

The Authorizing Agency may send out a warning letter advising that payment of outstanding taxes is required within 30 days, and non-payment may result in the Authorizing Agency initiating cancellation proceedings by issuing the registered letter described below.
To commence proceedings, the Authorizing Agency forwards a letter by registered mail requesting payment of the outstanding monies within 60 days. A copy of the letter is sent to all mortgage holders and BC Assessment.

If the requested funds or suitable representations are not received within the allotted time, the Authorizing Agency forwards another registered letter cancelling the disposition. Cancellation is completed as per Section 11 above.

11.4 Failure to Perform Covenants or Conditions

Should it be determined that a covenant or condition of a tenure is not being observed the Authorizing Agency forwards a registered letter to the tenure holder requesting that compliance be made within 60 days upon penalty of cancellation. A copy of the letter is sent to BC Assessment and all mortgage holders.

If compliance or suitable representation is not made within the allotted time, security deposits and surety bonds may be invoked as applicable, and cancellation is completed as per Section 11 above.

11.5 Clerical Error, Land Not Available, Incorrect Survey, Incorrect Applicant Information

In accordance with Section 44 of the Land Act, any one of the following errors may be justification to cancel a disposition:

a) a clerical error in the names or description of the application, the description of Crown land, or any other material part of the approval or disposition;

b) that the Crown land is not available for disposition;

c) that the survey is incorrect; or

d) that the information provided by the applicant is incorrect.

Prior to making a final decision on tenure cancellation, the Authorizing Agency will provide the tenure holder with notice of the issues together with an opportunity to provide comment. If the disposition is to be cancelled, the tenure holder will be advised by registered mail of the particular error, and the cancellation decision.

11.6 Overlapping Tenure Status/Clearance Error

The Authorizing Agency will address conflicts/issues that may result from the overlapping of Land Act tenures that are caused by mapping, data input and statusing errors or omissions made by the Crown.

When a potential overlap is identified the following procedure should be followed.

1. Determine the extent of the overlap.
2. The Authorizing Agency notifies both parties of the matter and, where reasonable, encourages them to:
   a) reach agreement on the joint use of the overlap area by entering into a joint use agreement; or
   b) agree to a tenure boundary amendment that eliminates the overlap.

   The Authorizing Agency monitors the progress of the tenure holders and obtains written confirmation of any agreements. The Authorizing Agency determines what other steps, if any, may be advisable to implement the resolution (e.g. amendments to Management Plans or tenure agreements).

3. If the tenure holders cannot reach agreement within an adequate period of time, as determined by the Authorizing Agency, the Authorizing Agency advises the tenure holders that the Province will impose a resolution. The following steps should be carried out.
   a) Invite tenure holders to provide information that they consider relevant to the issue to the Authorizing Agency by a specified date.
   b) The Authorizing Agency may arrange a meeting with both tenure holders to:
      i. assess the extent and nature of any operational conflict;
      ii. determine if a mediator, facilitator or other third party negotiator is required to assist in resolving the overlap; and/or,
      iii. explore issues that arise during the process that may be clarified or resolved through a joint meeting.
   c) The Authorizing Agency provides a written explanation of the decision and anticipated impact of the change to all parties involved. Tenure holders should be provided with an opportunity to comment on the decision. Where possible, reasonable notice should be provided to both parties before a solution is implemented.
   d) The tenure agreement language is reviewed to determine if:
      i. the tenure agreements contain legal clauses which provide specific direction related to managing overlapping Land Act tenure conflicts (e.g. Adventure Tourism tenures).
      ii. one of the tenants involved in the conflict has been granted priority rights.
   e) Before implementing a decision, the Authorizing Agency considers all relevant facts including:
      i. the historical background of the overlapping tenures;
      ii. recommendations provided by employees; and,
      iii. any information provided by the tenure holders.
   f) The Authorizing Agency should make an effort to minimize the impact of the change and provide incentives that may encourage tenant collaboration.
   g) Historically, the first tenure holder has usually been given precedence and the boundaries of the latter tenure have been adjusted. However, all
decisions must consider the case-specific circumstances before a resolution is implemented.

h) If the Authorizing Agency determines that amending the boundary(s) will not result in an adverse material impact, the Authorizing Agency may amend the tenure area on one or both tenures in accordance with any requirements of the tenure agreement(s).

i) The matter must be referred to the ADM Regional Operations for direction before a decision is implemented if:

i. it is determined that either tenure holder may suffer a material adverse effect if boundaries are altered to eliminate the overlap; and,

ii. either tenure holder takes the position that they are entitled to compensation as a result of proposed change(s) to the tenure area boundaries.

12. ESCHEATS

The Ministry of Justice (JAG) administers the Escheat Act, and therefore, any land which escheats to the Crown vests with JAG. JAG normally deals with escheated land only when a claim is forthcoming, rather than seeking out escheated land. All enquiries concerning escheated land are to be referred to the Escheat Officer, Legal Services Branch, Ministry of Justice, Victoria.

In situations where land has escheated to the Crown due to dissolution of its corporate owner, and the Authorizing Agency requires the land for Government use, the Authorizing Agency must, not less than 24 months from the date of the company's dissolution:

a) provide evidence of the Escheat;

b) set out the basis for the acquisition; and

c) address the issue of any other potential claimants.

Once satisfied, the Escheat Officer seeks instructions to vest the land in the name of the JAG for subsequent transfer to the Authorizing Agency.

Note that there may be situations where private property forfeits to the Crown for non-payment of property taxes. The process and requirements for administration of these properties is provided in the Forfeitures Procedure.

13. CANCELLATION OF PLANS

This section applies to cancellation or partial cancellation of parcels and/or roads defined by a subdivision or reference plan deposited in the Land Title Office.
13.1 General Procedure

a) Crown ownership of all parcels must be verified by completion of a clearance and status.

b) All parcels must be free of encumbrances.

c) All proposals to cancel roads or lanes outside of a Municipality must be referred to the Ministry responsible for the Transportation Act.

d) All parcels, roads and lanes to be cancelled must have been dedicated by the same plan.

All proposals for cancellation must be referred to the Surveyor General Division, Land Title and Survey Authority for confirmation of process before commencement of the procedures. The Surveyor General Division will prepare the necessary documents and will deposit all documents and plans, if required, into the Land Title Office.

Certain cancellations will require that a plan or plans be prepared by a British Columbia land surveyor. Seek direction from the Surveyor General Division. The Authorizing Agency will be responsible for all survey costs.

Where two or more contiguous parcels within a plan are owned by the Crown the interior lot line or lines can be cancelled pursuant to Sections 137 of the Land Title Act. Section 136 of that act can be used to cancel both parcels and roads and lanes.

It is significant whether the subject parcels, roads and lanes are located within or outside of a Municipality.

13.2 Outside a Municipality

If no roads or lanes are involved:

- lot lines between two or more contiguous Crown owned parcels shown on a plan can be cancelled under Section 137 of the Land Title Act;

- a Land Title Act Form 14 (Application for Cancellation of Interior Lot Lines) is filed with the Land Title Office and a new title is created; and,

- an explanatory plan is required in some cases.

Where Roads or Lanes are involved:

- parcels and roads or lanes can be cancelled pursuant to Section 136 of the Land Title Act; and,

- an explanatory plan and order by designated authority (being the Surveyor General) is required,
13.3 Inside a Municipality

If no Roads or Lanes are involved:

- proceed under Section 137 of the Land Title Act in the same manner as stated above.

Where Roads or Lanes are involved:

- the roads and lanes must first be closed by a municipal bylaw;
- the Municipality must transfer the closed roads and lanes to the Crown via the Land Act, Form A (Freehold Transfer);
- the now closed roads and lanes can be cancelled, along with any Crown owned parcels pursuant to Section 136 of the Land Title Act; and,
- an explanatory plan and order by designated authority (being the Surveyor General) is required.

14. FIRST NATIONS

The Authorizing Agency is responsible for ensuring the Province’s obligations to First Nations are met in the disposition of Crown land. Provincial staff carry out consultations in accordance with the consultation guidelines of the Province to identify the potential for aboriginal rights or title over the subject property and to determine whether infringement of either might occur.
Appendix A: Risk Assessment and Security Amount

The following steps provide a guide for staff when assessing risk and assigning an appropriate tenure security amount.

Steps
1. Determine clean-up cost grouping (Negligible (N), Low (L), Moderate (M), High (H))

   The following will need to be considered when estimating the costs of clean-up:
   - Type and size of improvements to be removed
   - Type of site impact and area impacted
   - Form of site restoration required
   - Presence of hazardous material and contaminants
   - Material disposal – dumping costs, potential for on-site disposal (e.g. burying pipes or foundations)
   - Transportation – form and condition of access, and travel distance

   Mitigating factors that may be used to adjust clean-up costs:
   - Likelihood of other operators taking over the tenure area and on-site improvements (e.g. only minimum clean-up may be necessary)
   - Ability for the Authorizing Agency to sell improvements left on-site to off-set clean-up costs
   - Selling recycling material to off-set clean-up costs

2. Determine likelihood of needing to use security (N, L, M, H)¹

   Consider the following:
   - Past experience with, or history of, the applicant /tenure holder
   - Current financial condition of the applicant/tenure holder
   - Past experience with or history of similar businesses and uses
   - Economic health of the sector

3. Assess risk

   Clean-up cost class (i.e. consequence) X Likelihood of security being used = Risk

<table>
<thead>
<tr>
<th>Clean-up cost class</th>
<th>Likelihood of security being used</th>
</tr>
</thead>
<tbody>
<tr>
<td>N (&lt;$1k)</td>
<td>N</td>
</tr>
<tr>
<td>L ($1k – $10k)</td>
<td></td>
</tr>
<tr>
<td>M ($11k – $50k)</td>
<td></td>
</tr>
<tr>
<td>H ($50k +)</td>
<td></td>
</tr>
</tbody>
</table>

¹ Comprehensive risk assessments are often limited by not being able to access financial information of potential tenure holders, and by Authorizing Agencies not having the expertise available to properly assess such information. As a consequence risk will often be more heavily weighted by the potential clean-up costs which are largely a factor of the extent and type of on-site improvements (proposed or existing).
4. **Assign security amount based on risk**

<table>
<thead>
<tr>
<th>Risk ranking</th>
<th>Basis for Security Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>N – L</td>
<td>Minimums table (see attached table below)</td>
</tr>
<tr>
<td>M</td>
<td>Select a proportion of estimated clean-up cost; e.g. 30 – 60% (see step 1 above)</td>
</tr>
<tr>
<td>H</td>
<td>Adjusted clean-up cost estimate (see step 1 above)</td>
</tr>
</tbody>
</table>

**Table 1. Minimum Security Amounts by Program**

<table>
<thead>
<tr>
<th>Land Use Program Area</th>
<th>Minimum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aggregate and Quarry Materials</td>
<td>Security is only charged IF the use is not covered by a Ministry of Energy and Mines (MEM) Reclamation Bond based on Cost Estimates: $3,500/ha minimum.</td>
</tr>
<tr>
<td>Adventure Tourism</td>
<td>Security is determined on a case by case basis. $1,000 minimum. A security may not be required from the tenure holder if they are a member in good standing of an applicable association which has negotiated an Association Agreement with the Province (see sec. 5.1)</td>
</tr>
<tr>
<td>Agriculture - Extensive</td>
<td>10% estimated timber or 10% estimated market value of land, with a minimum of $2,000</td>
</tr>
<tr>
<td>Agriculture - Intensive</td>
<td>$2,000</td>
</tr>
<tr>
<td>Airports</td>
<td>$1,000 to $5,000³</td>
</tr>
<tr>
<td>All Season Resorts</td>
<td>$10,000 for small ski hills and non-ski resorts $50,000 for ski resorts with Master Development Agreement that allows base area developments.</td>
</tr>
<tr>
<td>Aquaculture - Shellfish</td>
<td>$1,000 beach $2,000 deep water [0-5 ha] $5,000 deep water [5-10 ha] $10,000 deep water [over 10 ha]</td>
</tr>
<tr>
<td>Aquaculture – Fin Fish</td>
<td>$25,000</td>
</tr>
<tr>
<td>Commercial - General</td>
<td>$1,000 to $5,000 minimum</td>
</tr>
<tr>
<td>Communication Sites</td>
<td>$1,000 to $5,000 minimum</td>
</tr>
<tr>
<td>Community/Institutional Use of Crown Land</td>
<td>No security required for Local Government. $1000 for all non-local government applications.</td>
</tr>
<tr>
<td>Film (see Commercial - General)</td>
<td>$5,000</td>
</tr>
</tbody>
</table>

² Individual land use (program) policies may provide additional detail or guidance on tenure securities. If there are any discrepancies staff should rely on guidance provided in the individual land use policy.

³ Minimum amount will depend on the size, scale and intensity of the development.
<table>
<thead>
<tr>
<th>Land Procedure: Tenure Administration</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Floating Home Community</strong></td>
</tr>
<tr>
<td><strong>Golf Courses (see Commercial - General)</strong></td>
</tr>
<tr>
<td><strong>Industrial - General</strong></td>
</tr>
<tr>
<td><strong>Grazing (Range Branch, MFLNRO)</strong></td>
</tr>
<tr>
<td><strong>Log Handling</strong></td>
</tr>
<tr>
<td><strong>Marinas and Yacht Clubs</strong></td>
</tr>
<tr>
<td><strong>Mining</strong></td>
</tr>
<tr>
<td><strong>Ocean Energy</strong></td>
</tr>
<tr>
<td><strong>Oil &amp; Gas</strong></td>
</tr>
<tr>
<td><strong>Private Moorage</strong></td>
</tr>
<tr>
<td><strong>Residential</strong></td>
</tr>
<tr>
<td><strong>Roadways</strong></td>
</tr>
<tr>
<td><strong>Utilities</strong></td>
</tr>
<tr>
<td><strong>Waterpower</strong></td>
</tr>
<tr>
<td><strong>Wind Power</strong></td>
</tr>
</tbody>
</table>
Appendix B: Invoking Surety Bonds

The Authorizing Agency should inform the surety company if a risk that the project obligations will not be met is identified. Giving the surety company early warning of a potential claim allows the opportunity for the surety company to contribute to a solution before a default occurs. In the event of a default the surety company will complete the contract or pay the ministry in accordance with the terms of the bond.

Upon default of the contractor, any payments owed to the contractor by the Province under the contract become the property of the surety company. This situation may occur if the Province hires a contractor to undertake a large project (e.g. the construction of an industrial site) for which the Province requires the contractor to provide a surety bond.

In the event of a default there are usually several courses of action available to the Ministry dependent on the term of the bond agreement. Contact the Risk Management Branch for specific advice.
Appendix C: Approved Endorsements for Recording Assignments on Legal Documents

ASSIGNMENTS

Assigned unto (name), (date)
Mortgage dated …. assigned unto (name), (date)
Assigned by way of Deed of Trust and Mortgage dated … unto …
Assigned by way of Supplemental Trust Deed dated … unto …
Modified by an Assignment by way of Supplemental Deed of Trust and Mortgage dated …
The interest of … assigned unto…
Assigned by way of Mortgage dated … unto …subject to the prior Mortgage dated … unto …
Mortgage dated …. discharged pursuant to an Indenture dated …
Trust Deed dated … discharged in accordance with an indenture dated …
Mortgage dated … released pursuant to an Indenture dated …

SUB-LEASES

Portions sub-let … unto … for a term expiring …
*(Sub-lease must expire one day prior to the expiry of the head lease.)
Portion sub-let … unto … for a period of … years from …
Sub-lease dated … unto …. terminated pursuant to an Indenture dated …

SUB-LEASE EXTENSION

Expiry of sub-lease dated … unto … extended from …. to …. 

LEASE HELD IN TWO NAMES - ONE DIES

Interest of … recorded in the name of … Executor/Executrix of the Last Will and Testament of … deceased.

LEASE HELD IN JOINT TENANCY - ONE DIES

Lease recorded in the name of … by reason of the death of … Interest of …, deceased, recorded in the name of …by reason of the transmission of an Estate by death.
Appendix D: Assignment, Name Change and Change of Control

As defined in the Interpretation Act s. 29 – a person is:

“person” includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law;

A physical person is recorded on applications and tenure agreements by their full legal name. Any other kind of person, such as an organization, will have an incorporation number assigned by BC’s Corporate Registry. This number is the unique identifier for applications and tenure agreements, therefore applications and tenure agreements must have a full legal name of an individual or an incorporation number.

When there is a change requested by an applicant or tenure holder, or required by the Authorizing Agency, there are a number of situations to consider:

Applications:

1. When an individual person requests a name change on their application from one full legal name to another full legal name (as in the case of marriage, death, change of heart), it results in a Name Change. Legal documentation such as a name change certificate is required and the application is processed in the new name. There is no fee for this.

2. When an entity with an incorporation number requests a name change on their application, but the incorporation number DOES NOT change, legal documentation such as a name change certificate is required. The application will be processed in the new name and no fee will be charged.

3. When an individual person requests a name change on their application from one full legal name to another full legal name in the case of transferring assets, it requires a new application and accompanying fees in keeping with Section 98 of the Land Act.

4. When an entity with an incorporation number requests a name change on their application and the incorporation number CHANGES, it requires a new application and accompanying fee in keeping with Section 98 of the Land Act.

Tenures:

5. When an individual person requests a name change on their tenure from one full legal name to another full legal name, as in the case of marriage, death, change of heart, it results in a Name Change and legal documentation such as a name change certificate is required. There is no fee for this. We record and endorse the change in keeping with the tenure agreement language.

6. When an entity with an incorporation number requests a name change on their tenure but the incorporation number DOES NOT change, legal documentation such as a name change certificate is required. There is no fee for this. We record and endorse the change in keeping with the tenure agreement language.

7. When an individual person requests a name change on their tenure from one full legal name to another full legal name in the case of transferring assets, it requires the Minister’s approval, and the appropriate fee. This is in keeping with Section 99 of the Land Act; Article 7 (generally of the tenure agreement), and the
Crown Land Fees Regulation. Minister’s approval can be in the form of a Consent Addendum or Assignment/Assumption agreement.

8. When an entity with an incorporation number requests a name change on their tenure and the incorporation number CHANGES, it requires the Minister’s approval and accompanying fee. This is in keeping with Section 99 of the Land Act; Article 7 (generally of the tenure agreement), and the Crown Land Fees Regulation. Minister’s approval can be in the form of a Consent Addendum or Assignment/Assumption agreement.

Change of Control:

9. At application stage when shares in a private entity change hands resulting in a change in control but the entity does not change the incorporation number, generally, there is no action taken.

10. When a tenure exists, and the tenure language includes a requirement for a written consent from the Province related to a change in control, and shares in a private entity change hands resulting in a change in control but the entity does not change the incorporation number, the Minister’s approval is required as well as the appropriate fee. Minister’s approval can be in the form of a Consent Addendum.

11. If at any time the change of control results in a new incorporation number, the rules above (4,8) apply.

As a guide, when an entity can be described differently but doesn’t change, it is a name change. When enough change occurs to create a new or separate entity, then it requires additional consent/approvals and fees.
### Appendix D - Table 1

<table>
<thead>
<tr>
<th>Statements above</th>
<th>Type of Change</th>
<th>Examples</th>
<th>Proof</th>
<th>Trigger</th>
<th>Our document</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1, 5 Application, Tenure</td>
<td>Individual person</td>
<td>Name change</td>
<td>Birth, death, change of heart</td>
<td>Death Certificate, Marriage Certificate, Passport, D.L., other</td>
<td>N/A</td>
<td>Endorsement statement added to tenure</td>
</tr>
<tr>
<td>2, 6 Application, Tenure</td>
<td>Organization</td>
<td>Name change</td>
<td>Bob’s Pizza Inc. to Bob’s Pizza and Steak Inc.</td>
<td>Certificate of Name Change</td>
<td>N/A</td>
<td>Endorsement statement added to tenure</td>
</tr>
<tr>
<td>9 Application</td>
<td>Private Organization</td>
<td>Name change</td>
<td>Bob’s Pizza Inc. to Bob’s Pizza Inc.</td>
<td>Legal document showing same incorporation number</td>
<td>Change of control through trade in shares</td>
<td>No action taken</td>
</tr>
<tr>
<td>3 Application</td>
<td>Individual person</td>
<td>Name change</td>
<td>Joe to Bob</td>
<td>Letter of Withdrawal from original applicant</td>
<td>Different legal entity, different SIN #</td>
<td>New application</td>
</tr>
<tr>
<td>4 Application</td>
<td>Organization</td>
<td>Name change</td>
<td>Sale, Merger, Amalgamation</td>
<td>Corporate documents</td>
<td>Different Incorporation #</td>
<td>New application</td>
</tr>
<tr>
<td>7 Tenure</td>
<td>Individual person</td>
<td>Name change</td>
<td>Sale, transfer of assets</td>
<td>Sales/Purchase agreement, Assignment/Assumption Agreement</td>
<td>Different legal name, different SIN #</td>
<td>Assignment/Assumption agreement</td>
</tr>
<tr>
<td>10 Tenure</td>
<td>Private Organization</td>
<td>Shares change hands</td>
<td>Corporate documents</td>
<td>Same Incorporation # and change in control⁴</td>
<td>Consent Addendum (Article 7)</td>
<td></td>
</tr>
<tr>
<td>8 Tenure</td>
<td>Organization</td>
<td>Sale, transfer of assets</td>
<td>Sales/Purchase Agreement – Assignment/Assumption Agreement Corporate doc.’s</td>
<td>Different Incorporation #</td>
<td>Assignment/Assumption agreement</td>
<td>$250</td>
</tr>
</tbody>
</table>

⁴ Tenure agreements should be reviewed to determine if tenure language includes a requirement for a written consent from the Province related to a change in control, as tenure language was changed in 2012.