

TOQUAHT NATION GOVERNMENT

LAND ACT AMENDMENT ACT

TNS 3/2023



This law enacted on September 6th, 2023

Signed *Anne Mack*
Anne Mack, taayii ḥawil of the Toquaht Nation

DEPOSITED IN THE
REGISTRY OF LAWS

ON 2023/09/25

Kristen Johnson

Signature of Law Clerk

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PART 1 - INTRODUCTORY PROVISIONS

Short title

1.1 This Act may be cited as the Land Act Amendment Act, TNS 3/2023.

Executive oversight

1.2 The member of the Executive holding the lands, public works and environmental protection portfolio is responsible for the executive oversight of this Act.

PART 2 - LAND ACT AMENDMENTS

Land Act amendments

2.1 The Land Act, TNS 12/2011 is amended as follows:

- (a) section 1.1 is amended by adding the words “, TNS 12/2011” after the words “Land Act”;
- (b) section 1.4 is amended by:
 - (i) striking out the definition of “community lands” and substituting the following:

““community lands” means Toquaht lands that are not

 - (a) Toquaht titled lands, the owner of which is a person other than the Toquaht Nation, or
 - (b) subject to a lease;”;
 - (ii) striking out the definition of “devise”;
 - (iii) striking out the definition of “eligible recipient” and substituting the following:

““eligible person” means the Toquaht Nation or a person eligible to hold an estate in fee simple under section 7.1;”;
 - (iv) striking out the definition of “holder” and substituting the following:

““holder” means, in relation to an interest in, or licence in relation to, Toquaht lands,

 - (a) the person registered in the land title office as the holder of the interest or licence, or
 - (b) if the interest or licence is not registered in the land title office, the person legally entitled to hold the interest or licence;”
 - (v) adding the words “, TNS 9/2011” after the words “Referendum Act” in the definition of “information meeting”;
 - (vi) striking out the words “natural resources” and substituting the words “a natural resource” in the definition of “licence of occupation”;
 - (vii) striking out the definition of “prescribed individual”;

- (viii) adding the words “, TNS 9/2011” after the words “Referendum Act” in the definition of “ratification meeting”;
- (ix) adding the words “, TNS 9/2011” after the words “Referendum Act” in the definition of “referendum”;
- (x) striking out the definition of “Toquaht housing service provider”;
- (xi) striking out the definition of “Toquaht residential interest”;
- (c) section 2.2(b)(iii) is amended by adding the words “TNS 4/2011” after the words “Integrity Act.”;
- (d) section 2.2(b) is amended by adding a colon “:” after the phrase “duties or powers of the Executive”;
- (e) section 2.8(b)(iii) is amended by adding the word “or” after the words “Toquaht enactment.”;
- (f) by repealing section 2.8(c) and substituting the following:

“For certainty, a delegation by the Executive to a body or person under subsection (a)

 - (i) may include all or any part of a duty or power of the Department of Lands, Public Works and Resources relating to the management or administration of Toquaht lands,
 - (ii) may pertain to all or a specified area of Toquaht lands,
 - (iii) is subject to any terms or conditions established by the Executive under the regulation making the delegation, and
 - (iv) does not restrict the Executive from delegating any additional duties or powers of the Department of Lands, Public Works and Resources to the body or person under another regulation.”;
- (g) section 2.8 is amended by inserting the following subsection:

“(d) A body or person to which the Executive delegates a duty or power under subsection (a) may only perform the duty or exercise the power in accordance with this Act, the regulation making the delegation and all other applicable laws.”;
- (h) by repealing section 2.10 and substituting the following:

“The mandate of the lands registry office is to maintain

- (a) an inventory of Toquaht lands, and
- (b) the lands register,

in accordance with this or any other Toquaht enactment or as required by the director.”;

- (i) by repealing section 2.13;
- (j) by repealing Part 3 and substituting the following:

“PART 3 – LANDS REGISTER

Lands register

3.1 The registrar must maintain a lands register that records

- (a) any disposition or transfer by or with authorization from the Toquaht Nation of
 - (i) a licence,
 - (ii) an interest in Toquaht titled lands that is not registered in the land title office, or
 - (iii) an interest in Toquaht lands that are not Toquaht titled lands, and
- (b) any other information the director requests, in writing, to be registered in the lands register.

Interests in Toquaht titled lands

3.2 For certainty, the Land Title Act (British Columbia) applies in respect of registration of

- (a) an estate in fee simple to Toquaht lands, and
- (b) an interest in the land title office.

Registration of disposition and transfers

3.3 The registrar must register in the lands register a disposition or transfer under section 3.1(a) if the instrument purporting to dispose of or transfer the appurtenant lands

- (a) is in the prescribed form,

- (b) has been authorized by the Executive in accordance with this Act, and
- (c) has been fully executed, with each execution witnessed by a third-party, to the satisfaction of the registrar.

Record keeping and maintenance

- 3.4** (a) Upon registering in the lands registry a disposition or transfer under section 3.1(a), the registrar must
- (i) assign a registration number to the interest or licence being registered, and
 - (ii) store in the records of the lands registry office
 - (A) the registration number,
 - (B) the original or a duplicate of the instrument purporting to dispose of or transfer the appurtenant lands, and
 - (C) the name of the holder of the interest or licence being registered.
- (b) The registrar may cause a record in the lands registry to be repaired or copied if
- (i) the record, from use or age, is becoming unfit for future use, or
 - (ii) in the opinion of the registrar, convenience of reference requires.
- (c) The registrar may, on any evidence the registrar considers sufficient, correct clerical or typographical errors in the records of the land registry, subject to the following:
- (i) the registrar must not destroy, erase or render illegible the original entry; and
 - (ii) the registrar must sign and date the corrected entry.

Effect of registration

- 3.5** (a) A holder of

- (i) an interest in Toquaht lands that are not Toquaht titled lands, or
 - (ii) a licence in relation to community lands,
- is entitled to that interest or licence regardless of whether it is registered in the lands register.
- (b) The priority of
 - (i) interests in Toquaht lands that are not Toquaht titled lands, and
 - (ii) licences in relation to community lands,as between or among themselves, is not affected by registration in the lands register.
 - (c) Registration in the lands register lands is not a determination by the registrar that the interest or licence being registered is enforceable or otherwise creates or evidences an interest in, or licence in relation to, Toquaht lands.

Accuracy

- 3.6** Toquaht Nation makes no representation as to the accuracy or completeness of the records of the lands register and a person may not recover from the Toquaht Nation any loss or damage that the person suffers by reliance on the records of the lands register.

Inspection

- 3.7** (a) During regular business hours, any person may examine and inspect the records of the lands register
- (i) after completing an application in the form that the registrar requires, and
 - (ii) on the conditions that the registrar imposes.
- (b) The registrar must provide to any person who completes an application in the form that the registrar requires, a copy of the lands register records for a parcel of Toquaht lands.

Transition

- 3.8** An interest in, and a licence in relation to, Toquaht lands referred to in section 4.2(a) is deemed to be registered in the lands register as of the

Maa-nulth Treaty effective date on the terms provided for in the Maa-nulth Treaty.”;

- (j) by inserting the following between sections 4.2(a) and 4.2(b):
- “(a.1) An existing and valid interest in Toquaht lands referred to in subsection (a) must be registered concurrently when title to the applicable parcel of Toquaht lands is raised under the Land Title Act (British Columbia) in accordance with section 12.1.1.”;
- (k) by repealing section 4.3(b) and substituting the following:
- “For purposes of subsection (a), the Executive may
- (i) make a fee simple grant in accordance with section 7.1,
 - (ii) grant a lease for up to 99 years,
 - (iii) grant a statutory right of way for so long as required,
 - (iv) grant an easement for so long as required,
 - (v) grant a utility licence for so long as required,
 - (vi) grant a licence of occupation for up to 10 years,
 - (vii) grant a public purpose licence of occupation for so long as required,
 - (viii) grant a natural resource licence for up to 50 years,
 - (ix) grant a mortgage of lease for the term of the lease, and
 - (x) grant a mortgage of Toquaht titled lands registered in the name of the Toquaht Nation for up to 35 years.”;

(l) by repealing section 4.6 and substituting the following:

“The Executive may only make a disposition with a surface area greater than five ha at any one time or on any one application if the proposed disposition is first publicized at an information meeting.”;

(m) section 4.8(a) is amended by striking out the words “other than a Toquaht residential interest”;

(n) by repealing section 4.10(a) and substituting the following:

“If, after a disposition, other than a fee simple grant, has been made under this or any other Toquaht enactment, the Executive finds that a condition, proviso,

restriction, exception or reservation in the disposition is no longer required in the interest of the Toquaht Nation, the Executive may, by directive, direct that the condition, proviso, restriction, exception or reservation be deleted from the disposition.”;

- (o) section 4.10(b) is amended by striking out the word “orders” and substituting the word “directs”;
- (p) section 4.13 is amended by adding the words “of a licence, a lease or rental agreement not exceeding three years, or an interest in Toquaht lands that are not Toquaht titled lands,” after the words “A disposition”;
- (q) section 4.13(a) is amended by striking out the word “30” and replacing it with the word “60”;
- (r) section 4.16(a) is amended by striking out the words “section 4.3(b)(xi)” and substituting the words “section 4.3(b)(x)”;
- (s) section 4.18(b)(ii) is amended by striking out the words “address and occupation,”;
- (t) section 4.18(b)(iii) is amended by striking out the words “Toquaht residential interest,”;
- (u) section 4.18(b)(iv) is amended by adding the words “that are the subject of the application” after the words “Toquaht lands”;
- (v) section 4.18 is amended by inserting the following subsection:
 - “(d) For certainty, the requirement in subsection (a) to “post in accordance with Toquaht law” is satisfied if the requirements of section 3.11 of the Interpretation Act, TNS 17/2011 have been satisfied.”;
- (w) section 4.23(b) is amended by striking out the word “disposing” and substituting the word “disposition”;
- (x) by repealing section 4.24(f)(iv) and substituting it with the following:
 - “whether or not the proposed transferee is an eligible person;”;
- (y) by repealing Part 5 and Part 6;
- (z) by repealing section 7.1(b) and substituting the following:
 - “The Executive may grant or transfer an estate in fee simple to community lands designated as Homelands in the Official Community Plan Act, TNS 1/2016 to

- (i) a Toquaht citizen, or
- (ii) a Toquaht citizen and the spouse of a Toquaht citizen

without first publicizing at information meetings and without approval by referendum or by vote at a ratification meeting.”;

- (aa) by repealing section 7.1(c) and substituting the following:

“(c) The Executive may

- (i) by regulation, designate certain community lands as unrestricted fee simple lands if the proposed regulation is first publicized at an information meeting, and
- (ii) grant or transfer an estate in fee simple to lands prescribed under paragraph (i) to any person without additional information meetings and without approval by referendum or by vote at a ratification meeting.”;

- (bb) section 7.1(d) is amended by:

- (i) striking out the words “Toquaht community lands” and substituting the words “community lands”;
- (ii) striking out the words “only if the proposed grant is first publicized at an information meeting and approved by vote at a ratification meeting” and substituting the words “without approval by referendum or by vote at a ratification meeting if the proposed grant is first publicized at an information meeting”;

- (cc) by inserting the following between sections 7.1(d) and 7.1(e):

“(d.1) Except as provided in subsections (b) to (d), the Executive may only grant or transfer an estate in fee simple to community lands if the proposed grant is first publicized at two information meetings and approved by a referendum.”;

- (dd) by repealing section 7.2(a)(i) and substituting the following:

“an estate in fee simple to Toquaht titled lands under section 7.1.”;

- (ee) section 7.7(b) is amended by:

- (i) striking out the words “Despite subsection (a), the” and substituting the word “The”;

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- (ii) striking out the words “possible term of greater” and substituting the words “possible term greater”;
 - (ff) the heading to section 7.9 is amended by deleting the word “resources” and replacing it with the word “resource”;
 - (gg) by repealing section 7.12;
 - (hh) section 7.13(i) is amended by striking out the words “the execution of which is witnessed or proved in accordance with this Act”;
 - (ii) by repealing section 7.13(j);
 - (jj) section 8.3(f) is amended by adding the words “, TNS 7/2011” after the words “Administrative Decisions Review Act”;
 - (kk) section 8.3 is amended by inserting the following subsection:
 - “(g) For certainty, a person that requests a review under subsection (f) may also apply for an order staying the directive in accordance with the Administrative Decisions Review Act, TNS 7/2011.”;
 - (ll) section 9.3(f) is amended by adding the words “, TNS 7/2011” after the words “Administrative Decisions Review Act”;
 - (mm) section 9.3 is amended by inserting the following subsection:
 - “(g) For certainty, a person that requests a review under subsection (f) may also apply for an order staying the directive in accordance with the Administrative Decisions Review Act, TNS 7/2011.”;
 - (nn) section 9.4(e) is amended by adding the words “, TNS 7/2011” after the words “Administrative Decisions Review Act”;
 - (oo) section 9.4 is amended by inserting the following subsection:
 - “(f) For certainty, a person that requests a review under subsection (e) may also apply for an order staying the directive in accordance with the Administrative Decisions Review Act, TNS 7/2011.”
 - (pp) section 11.1 is amended by inserting a comma immediately after the words “(British Columbia)”;
 - (qq) section 11.16(c) is amended by adding the words “, TNS 7/2011” after the words “Administrative Decisions Review Act”;

- (rr) section 11.17 is amended by striking out the words “by section 3.10” and substituting the words “under section 3.3”;
- (ss) section 11.36(c) is amended by adding the words “, TNS 7/2011” after the words “Administrative Decisions Review Act”; and
- (tt) by repealing section 12.3 and substituting the following:
 - “(a) For the purpose of performing their duties under this Act, and subject to subsection (b), the following individuals may, at reasonable times, enter any Toquaht lands and premises on Toquaht lands:
 - (i) the director;
 - (ii) the registrar; and
 - (iii) an authorized Toquaht employee who has identification from the Toquaht Nation for the purpose.
 - (b) The Toquaht Nation must provide the occupier of a premises with at least 24 hours’ notice prior to entry into that premises by an individual under subsection (a), except where the occupier consents or in case of emergency.”.

Consequential amendments

- 2.2** (a) The Building and Development Act, TNS/2013, is amended as follows:
- (i) section 2.2(a)(iii) is amended by striking out the words “a certificate from the lands registry office provided under section 3.21 of the Land Act” and substituting “the lands register records provided under section 3.7(a) of the Land Act, TNS 12/2011”;
- (b) the Interpretation Act, TNS 17/2011, is amended as follows:
- (i) the definition of “lands register” in section 3.3 is amended by striking out the words “containing a record of all dispositions under the Land Act and any transfers of an interest in, or licence in relation to, Toquaht lands”;
- (c) the Planning and Land Use Management Act, TNS 13/2011 is amended as follows:
- (i) section 4.5(d)(iv) is amended by striking out “7.13” and substituting “7.12”;
 - (i) section 4.14(f)(iii) is amended by striking out “7.13” and substituting “7.12”; and

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- (ii) section 7.3(c)(i) is amended by striking out “7.13” and substituting “7.12”;
and
 - (d) the Real Property Tax Act, TNS 18/2011 is amended as follows:
 - (i) section 4.3(c)(ii)(C) is amended by striking out “7.13” and substituting “7.12”;
 - (ii) section 4.3(c)(iii)(B) is amended by striking out “7.13” and substituting “7.12”;
 - (iii) section 4.3(e)(i) is amended by striking out “7.13” and substituting “7.12”;
and
 - (iv) section 4.3(e)(ii)(B) is amended by striking out “7.13” and substituting “7.12”.

PART 3 - GENERAL PROVISIONS

Commencement

3.1 This Act comes into force on the date it is enacted.