



**LANDS DEPARTMENT  
ASSIGNMENT OF LEASE - INSTRUCTIONS &  
CHECKLIST (VENDOR)**

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**FOR THE VENDOR'S LAWYER OR NOTARY PUBLIC**

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**GENERAL:** If you are not familiar with First Nations Lease Agreements and the process of registering an Assignment of Lease in the Indian Land Registry System ("ILRS") you may want to consider recommending your client deal with a Lawyer or Notary in the Kamloops/Shuswap area that is familiar with such transactions. If you decide to act on behalf of your client in the transaction you should:

**PROCEDURES:**

- A. REVIEW THE TERMS OF THE ASSIGNMENT OF LEASE PURCHASE AGREEMENT IN DETAIL:
  - a) confirm that the Assignment of Lease Purchase Agreement is the latest form of Assignment recommended by the Kamloops Real Estate Board or Okanagan Mainline Real Estate Board.
  - b) ensure that the Purchase Agreement contemplates an Assignment of Lease rather than a transfer of Fee Simple Title.
  - c) ensure the Closing of the Purchase and Sale will be by way of the use of Title Insurance.
  
- B. IF YOUR CLIENTS' REAL ESTATE AGENT HAS NOT PROVIDED THEM:
  - a) obtain a copy of the Lease and Assignment of Lease into the Vendor's name from the ILRS or the Vendor;
  - b) obtain a search of the Abstract of Title. If you have an account with the ILRS you can do this yourself. Otherwise, you should contact the Band and obtain a copy of the Abstract. The Band will charge a fee for conducting this search. This fee, and others charged by the Band for searches and copies of land documents, is set out in a Schedule which is available from the Band;
  - c) obtain a copy of a Survey Certificate from your client – if available - and provide it to the Purchaser's Lawyer or Notary.
  
- C. MOBILE HOMES: If the structure on the Property is a mobile home you will need to conduct the same searches and inquiries in the provincial system that you would with a regular mobile home transaction as the Lawyer or Notary for a Vendor.
  
- D. CHECK THE ABSTRACT OF TITLE: Review the Abstract to determine which charges are registered against the title of the Lease. Note that the ILRS operates on a historical land title system rather than a Torrens land title system. Charges registered against the title of the Lease remains on the title permanently. Generally the charges on the title are registered in date order – but occasionally this is not the case. Review the title and work through the charges to see which charges are still in effect. This can be a bit complicated – especially if the title is old – as the title

can be many pages long. The purpose of this review is to determine if there are any charges on the title that your client is obliged to have discharged prior to or at the time of the Closing.

- E. TYPE OF LEASE: Review the terms of the Assignment of Lease Purchase Agreement in detail to ensure that it reflects the terms of the Agreement as understood by your client. Confirm the Term of the Lease and whether it is a Prepaid Lease or a Periodic Payment Lease with annual lease payments.
- F. PERMITTED USES: Review the Lease to determine the permitted uses allowed under the terms of the Lease. In addition, the Lease might contain a Schedule which shows the buildings and/or structures permitted on the Property at the time the Lease was granted. If there are additional buildings or structures presently on the Property you will want to ensure that they have been approved by the Band through the issuance of a Building Permit or other Band document.
- G. EXECUTION OF DOCUMENTS: Attend to the execution of the following Assignment documents by your clients, as prepared by the Purchaser's Lawyer or Notary:
  - a) Assignment of Lease (4 copies);
  - b) Consent Assignment Agreement (4 copies) – Note- not required for an Assignment of a Scotch Creek No. I.R.#4 Lease;
  - c) Assessment of Matrimonial Real Property and Statutory Declaration Document (4 copies);
  - d) Vendor's Statement of Adjustments.

All 4 copies of the Assignment of Lease, Consent Assignment Agreement (where required) Matrimonial Declaration and must be signed and returned to the Purchaser's Lawyer or Notary. The Affidavit of Witness must be completed on all four copies and your notary seal must be affixed to all of them. The documents must be returned to the Purchaser's Lawyer or Notary in a timely fashion to allow for the Closing.

- H. DISCHARGING AND PAYING OUT CHARGES: The Vendor is responsible to obtain and register a discharge of any charge on the title that the Purchaser has not agreed to accept. In general this will be any Mortgages registered on the title. It is your responsibility to payout the Vendor's Mortgage from the sale proceeds;
  - a) Prepare the Discharge of Mortgage and Affidavit of Execution;
  - b) Provide the Discharge of Mortgage and Affidavit of Execution to the Vendor's financial institution for execution;
  - c) Provide the four copies of the Discharge to LSLB Lands Department along with the appropriate fees. The Band will forward the discharge documents to the Indian Land Registry for registration.
  - d) Provide a copy of the registered Discharge of Mortgage to the Purchaser's Lawyer or Notary in due course.

IN AN EFFORT TO CLARIFY AND EXPEDITE THE PROCESSING OF SALES AT LITTLE SHUSWAP, THIS CHECKLIST HAS BEEN PREPARED BY THE LANDS DEPARTMENT AS A GUIDE AND FOR INFORMATIONAL PURPOSES ONLY. THE CHECKLIST IS SUBJECT TO CHANGE FROM TIME TO TIME AND MAY NOT BE ALL ENCOMPASSING.

IT IS THE RESPONSIBILITY OF THE PARTIES TO ENSURE THAT THEY HAVE CONDUCTED THE SEARCHES AND COMPLETED THE DOCUMENTATION NECESSARY TO COMPLETE THE PURCHASE AND SALE OF THE LEASEHOLD PROPERTY. THE PARTIES SHOULD OBTAIN ADVICE FROM THEIR PROFESSIONAL ADVISERS IN THIS REGARD. IF A PARTY HAS ANY QUESTIONS OR IS UNCERTAIN AS TO THE PROCESS OR DOCUMENTATION REQUIRED BY THE BAND WITH RESPECT TO THE REGISTRATION OF AN ASSIGNMENT OF LEASE OR MORTGAGE, THEY SHOULD CONTACT THE LANDS DEPARTMENT AT THE CONTACT INFORMATION ABOVE.