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Land Leasing Presentation

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Canada



What is a Land Designation?

- When a First Nation wants to lease out reserve land, the *Indian Act* requires the land to be designated for leasing;
- A designation identifies an area of land for a certain use or purpose, for a certain amount of time;
- The procedure for designating land is set out in sections 37 through 41 of the *Indian Act*.



What is a Lease?

- A Lease is a legal agreement which conveys the legal right to use and occupy reserve land;
- A lease grants exclusive use of the land to the lessee for a specified amount of time;
- Once the land is designated, it is then ready to be leased at any time;
- The person or company leasing the land is called the lessee.



Why Lease?

- Reserve land is not subject to seizure, and so cannot be pledged as security for loans or mortgages;
- While the land cannot be used as security for a loan, a leasehold interest can be pledged as security for a loan;
- However, before lands can be leased the *Indian Act* requires that the land must first be designated;
- A lease can be for any length of time (10, 20, 30 yrs. etc.) but cannot exceed the length of the designation.





Departmental requirements for a Lease

- Land Appraisal Report – Determining fair market rent
- Environmental Assessment Report– Assessing the condition of the land
- Survey – Defining the area that is intended to be designated.
- BCR - requesting the lease
- Corporate Search
- Area Development Plan (ADP)
- Construction plan
- Proof of insurance
- Security deposit - for Construction





Common Types of Leases

The Designation allows for the lands to be leased for economic development opportunities, examples of which include, but are not limited to the following:

- Commercial: Truck stop, gas station and/or convenience store, Automotive service centres, Restaurant and food sales facilities including kiosks, Hotels and motels, Retail or wholesale establishments or shopping centres, Office, business or commercial establishments, Parking areas, Light manufacturing, fabricating, processing and packaging goods or products, Movement or storage of goods, etc.
- Recreational: Houses / Cottages
- Oil and Gas Exploration (Indian Oil & Gas Canada {IOGC})



A Lease Needs to Include:

- Term: cannot be longer than the term of the designation)
- Purpose: what the land can be used for
- Land description: must be within the designation area
- Rent: amount of money to be paid using the land
- Rent Review: the lessee should pay enough rent to ensure fair price for use of the land over time
- Determination of fair market rent is based on an appraisal
- Insurance: construction, liability, fire, etc.



Benefits of a Land Designation and Lease

- By providing an opportunity for all members to vote, the majority of the members can have a say on what happens on reserve lands;
- Environmental Protection - Environmental provisions in the lease can help ensure that businesses don't pollute or contaminate the lands;
- Enhances a First Nation's ability to attract investment in businesses on reserve by offering secure legal land tenure.
- Banks and Government programs require the security of legal land tenure before businesses and the Nation can access loans and/or grants.
- Ensures that all members will benefit from Economic Development through rent paid on leases and subleases (funds go into the FN revenue account).



Lease Expiry Considerations

- Prior to a lease's expiry, the removal of any improvements are addressed as per the terms and conditions of the lease;
- Once the term of a lease expires or the lease is terminated prior to its expiry date, the lands can be re-leased;
- No lease term can exceed the designation's term;
- Should plans for the land change, a designation can be revoked (changed) from designation status provided that the land has not been leased;
- Once the term of a designation ends or the designation is revoked, the lands revert back to common band lands.



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Further Information:

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