

**TOQUAHT NATION GOVERNMENT**

**Enacted under the Land Act sections 4.24 and 12.1**

**TOQUAHT TITLED LANDS  
TRANSFER REGULATION**

**TNR 5/2016**



This regulation enacted on July 28<sup>th</sup>, 2016

*Anne Mack*

Signed \_\_\_\_\_  
Anne Mack, ḥaʔwił of the Toquaht Nation

DEPOSITED IN THE  
REGISTRY OF LAWS  
AND OFFICIAL  
RECORDS

ON 2016-07-28

*Kristen Johnson*

\_\_\_\_\_  
Signature of Law Clerk



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## PART 1 - INTRODUCTORY PROVISIONS

### Short title

1.1 This Regulation may be cited as the Toquaht Titled Lands Transfer Regulation.

### Application

1.2 This regulation establishes the

- (a) form of a certificate of transfer,
- (b) form of a transfer application,
- (c) requirements that must be met before the Executive may issue a certificate of transfer,
- (d) manner in which a fee simple transfer form must be completed, and
- (e) fees under section 4.24(d)(iii) of the Act.

### Definitions

1.3 In this regulation:

"Act" means the Land Act;

"applicant" means a person who applies for a certificate of transfer under section 2.2;

"application fee" means the applicable fee set out in Schedule 2;

"certificate of transfer" means a certificate of transfer referred to in section 4.24(a) of the Act;

"Director" means the Director of Lands, Public Works and Resources;

"eligible mortgage" means a mortgage approved and designated as an "eligible mortgage" by the Executive prior to its registration as an encumbrance of a Toquaht fee simple interest;

"eligible person" means a person referred to in section 7.1 of the Act;

"fee simple transfer form" means a form prescribed under this regulation;

"owner" means a person, other than the Toquaht Nation, named in an indefeasible title in the land title office as registered owner of, and indefeasibly entitled to, an estate in fee simple to a parcel of Toquaht titled lands described in the indefeasible title;

"permitted transferee" means an eligible person named as transferee in a transfer application approved by the Executive in accordance with section 2.4;

"proposed transferee" means a person named as transferee in a transfer application delivered to the Director in accordance with section 2.2;

"Toquaht fee simple interest" means an estate in fee simple to a parcel of Toquaht titled lands;

"transfer application" means an application referred to in section 4.24(d) of the Act.

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## PART 2 - TRANSFER OF INTEREST

### Transfer requirements

- 2.1** For certainty, an owner must not transfer a Toquaht fee simple interest, other than to the Toquaht First Nation, without first
- (a) obtaining the Executive's approval of a transfer application delivered to the Director in accordance with this Part for the transfer of that Toquaht fee simple interest, and
  - (b) receiving a certificate of transfer issued in accordance with this Part for the transfer of that Toquaht fee simple interest.

### Application and fee

- 2.2**
- (a) An owner may apply to the Executive for a certificate of transfer to allow the transfer of the applicable Toquaht fee simple interest to an eligible person by delivering to the Director
    - (i) a completed, signed and witnessed transfer application, and
    - (ii) the application fee.
  - (b) If
    - (i) a bank is entitled to sell a Toquaht fee simple interest in accordance with a mortgage held by the bank as mortgagee, or
    - (ii) a court of competent jurisdiction orders the sale of a Toquaht fee simple interest in proceedings brought by a bank in relation to a mortgage held by the bank as mortgagee,the bank or the person conducting the sale by court order, as the case may be, may apply to the Executive for a certificate of transfer to allow the transfer of the applicable Toquaht fee simple interest to an eligible person by delivering to the Director
    - (iii) a completed, signed and witnessed transfer application,
    - (iv) the application fee, and
    - (v) a certified copy of the court order or other document authorizing the sale of that Toquaht fee simple interest.
  - (c) For purposes of an application under subsection (b), the bank or the person conducting the sale by court order, as the case may be, is deemed to be the owner of the applicable Toquaht fee simple interest.

- (d) If an owner is deceased, the person or court with authority to carry out the terms of the deceased's will or administer the deceased's estate, as the case may be, may apply to the Executive for a certificate of transfer to allow the transfer of the applicable Toquaht fee simple interest into the name of
- (i) the personal representative of the deceased's estate, or
  - (ii) the beneficiary or heir at law entitled to become the owner of the applicable Toquaht fee simple interest if that beneficiary or heir is an eligible person,
- by delivering to the Director
- (iii) a completed, signed and witnessed transfer application,
  - (iv) the application fee,
  - (v) a certified copy of the grant of probate or letters of administration issued from the Supreme Court naming the applicant the personal representative of the deceased, or
  - (vi) if no grant of probate or letters of administration have been obtained, a certified copy of the last will of the deceased naming the applicant the executor of the deceased's estate and an affidavit sworn by the applicant stating
    - (A) to the best of the applicant's knowledge, the certified copy of the will accompanying the transfer application is the last will of the deceased and it was not revoked by the deceased prior to the deceased's death,
    - (B) the applicant is the individual identified in that will as the executor of the deceased's estate,
    - (C) the applicant is not seeking, and will not seek, a grant of probate of the will of the deceased, and
    - (D) the reasons why the applicant is not seeking, and will not seek, a grant of probate of the will of the deceased, and
  - (vii) any other supporting documents or information the Director may reasonably require.



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### Consideration by the Executive

- 2.3 (a) Upon receipt of a completed, signed and witnessed transfer application, application fee and any other required supporting document, the Director must, as soon as practicable, provide that transfer application and supporting documents, if any, to the Executive for its consideration in accordance with this section.
- (b) For certainty and in accordance with section 4.24(e) of the Act but subject to subsection (c); nothing in this Regulation obliges the Executive to consider, or make a decision on, a transfer application.
- (c) The Executive must consider and make a decision on a transfer application in accordance with section 2.4(b) if
- (i) the application is made in accordance with section 2.2(a) and the applicable Toquaht fee simple interest is encumbered by an eligible mortgage, or
  - (ii) the application is made in accordance with section 2.2(d).

### Executive approval

- 2.4 (a) Subject to subsection (b), after considering a transfer application and any matters referred to in section 4.24(f) of the Act, the Executive may, by resolution, approve a transfer application if all of the following requirements are met:
- (i) the proposed transferee is an eligible person;
  - (ii) the current use and proposed use of the parcel are the same; and
  - (iii) there are no other relevant matters the Executive decides are grounds to deny the transfer application.
- (b) If the Executive is required to consider a transfer application under section 2.3(c), the Executive must, by resolution, approve the transfer application and direct a certificate of transfer be issued if
- (i) the applicable Toquaht fee simple interest is encumbered by an eligible mortgage, and
  - (ii) the proposed transferee is an eligible person, or

- (iii) the proposed transferee is
  - (A) the personal representative of a deceased owner, or
  - (B) an eligible person who is the beneficiary or heir at law entitled to become the owner of the applicable Toquaht fee simple interest.
- (c) If the Executive, by resolution, approves a transfer application under this section, that resolution
  - (i) is deemed to issue a certificate of transfer to the owner, personal representative, beneficiary or heir at law, as the case may be; for the applicable Toquaht fee simple interest with the applicable proposed transferee named as permitted transferee in accordance with Toquaht law, and
  - (ii) authorizes and directs the Director or the director of operations to sign that certificate of transfer on behalf of the Toquaht First Nation and make that certificate of transfer available to the applicable owner, personal representative, beneficiary or heir at law, as the case may be, as soon as practicable.

#### **Sale if beneficiary or heir ineligible**

- 2.5 (a) If a Toquaht fee simple interest is intended to pass by devise or distribution from the estate of a deceased owner to a beneficiary or heir at law that is not an eligible person, the Director must
- (i) publish in accordance with Toquaht law, and
  - (ii) post in accordance with Toquaht law,  
  
a notice offering that Toquaht fee simple interest for sale to an eligible person.
- (b) The eligible person who makes the highest bid within three months after the publication of the notice, or within any further period that the Director may specify, is entitled to purchase that Toquaht fee simple interest from the estate of the deceased owner for the amount of the bid if the other terms of the sale are approved by the Executive, by resolution.
- (c) If the Executive, by resolution, approves a sale under this section, that resolution
- (i) is deemed to issue a certificate of transfer to the personal representative of the deceased owner for the applicable Toquaht fee simple interest with the

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eligible person whose bid was approved named as permitted transferee in accordance with Toquaht law, and

- (ii) authorizes and directs the Director or the director of operations to sign that certificate of transfer on behalf of the Toquaht First Nation and make that certificate of transfer available to that personal representative as soon as practicable.
- (d) The signature of the Director or the director of operations referred to in subsection (c)(ii) must be witnessed by a lawyer, notary public or other person authorized by the Evidence Act (British Columbia) to take affidavits for use in British Columbia.
- (e) If the Director does not receive a bid from an eligible person within three months after the publication and posting of a notice of sale under subsection (a) or within any further period specified by the Director under that subsection, the applicable Toquaht fee simple interest vests in the Toquaht First Nation and the personal representative of the estate of the deceased owner must transfer that Toquaht fee simple interest to the Toquaht First Nation at no cost to the Toquaht First Nation, other than land title office fees, as soon as practicable.
- (f) For certainty, no person may acquire a Toquaht fee simple interest by purchase under this section except an eligible person.

### **Restrictions on lease length**

- 2.6 (a) An owner of a Toquaht fee simple interest must not lease that interest to any lessee for a period longer than 49 years, including in that period the term of the lease and the term of any renewal of the lease.
- (b) A lease for a period longer than allowed under subsection (a) is void.



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## PART 3 - PRESCRIBED MATTERS

### Forms

- 3.1 (a) The fee simple transfer forms numbered TF-1 to TF-5 in Schedule 1 are prescribed for the purposes of the Act.
- (b) A fee simple transfer form that is
- (i) a transfer application must be in Form TF-1,
  - (ii) a certificate of transfer must be in Form TF-5,
- (c) Nothing may be attached to a fee simple transfer form except
- (i) one or more additional execution pages in Form TF-2,
  - (ii) one or more schedules in Form TF-3, and
  - (iii) an affidavit required under section 2.2(d)(vi) in Form TF-4.
- (d) Every fee simple transfer form must be executed and completed in compliance with the Act, this Regulation and any instructions on the fee simple transfer form, as applicable.

### Fees

- 3.2 An application fee is non-refundable.



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## PART 4 - FORM PREPARATION AND COMPLETION

### Completion of fee simple transfer form

- 4.1 (a) Every fee simple transfer form, including attachments, must be on durable paper of 27.9 cm x 21.5 cm in size.
- (b) A fee simple transfer form must be completed by printing or typing in
- (i) legible characters of 10 or 12 pitch, but not smaller than 12 point, and
  - (ii) black or dark ink that is compatible for electronic scanning, optical character recognition or micrographic technology of the kind used by the Toquaht government.
- (c) The fee simple transfer form must contain a blank space not less than 3 cm deep and 7.6 cm wide in the top right corner of the first page for use by the Department of Lands, Public Works and Resources.
- (d) The name, address and professional capacity of the individual witnessing the signature of a person must be typed or printed immediately below the signature of the individual.

### Format

- 4.2 The space provided for the completion of any item in Form TF-1 or Form TF-5 may be expanded or reduced as the circumstances require so long as the expansion does not make the instrument longer than one page.

### Abbreviations

- 4.3 An abbreviation of any word on a fee simple transfer form must not be used unless the abbreviation does not obscure the meaning, intent or legal effect of the fee simple transfer form.

### Use of seal

- 4.4 Where a fee simple transfer form is executed under seal, the seal must be affixed in a way that does not render the fee simple transfer form or any part of it illegible.

### English language

- 4.5 Every fee simple transfer form must be completed in the English language.





**SCHEDULE 1 – FEE SIMPLE TRANSFER FORMS**

**TF-1-Transfer Application**

**TF-2 -Additional Execution Page**

**TF-3 -Schedule**

**TF-4 – Affidavit**

**TF-5 - Certificate of Transfer**



**TF-1 - TRANSFER APPLICATION**

TOQUAHT  
 NATION  
 Land Act  
 Toquaht Titled Lands Transfer  
 Regulations. 4.24(d)  
 Form TF-1



*(This area required by the Land Act s. 3.7 for office use)*

**Transfer Application**

Page 1 of \_\_\_\_ Pages

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

Phone: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Applicant, Applicant's Solicitor or Agent*

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF AFFECTED LAND: \*  
 PID No. \_\_\_\_\_ LEGAL DESCRIPTION: \_\_\_\_\_

3. PARCEL CIVIC ADDRESS, IF ANY: \_\_\_\_\_

4. CONSIDERATION: \$ \_\_\_\_\_

5. NATURE OF INTEREST TRANSFERRED (select one only): Title No.: \_\_\_\_\_  
 Toquaht fee simple interest

6. TRANSFEROR(S): (including postal address(es) and postal code(s)) \*

[NAME]  
 [ADDRESS]  
 [OCCUPATION]

7. 7. TRANSFEREE(S): (including postal address(es) and postal code(s))

[NAME]  
 [ADDRESS]  
 [OCCUPATION]  
 Status No.: \_\_\_\_\_

8. 8. TRANSFEREE'S INTENDED PURPOSE FOR PARCEL:\*

9. EXECUTION(S): \*\* The transferor(s) accept(s) the consideration set out in Item 4 and understand(s) that this instrument operates as an irrevocable application to the Toquaht; Executive for a certificate of transfer for the interest set out in Item 5 in the land described in Item 2 to the transferee(s).

Witness Signature(s)

EXECUTION DATE

Party(ies) Signature(s) YM D

\_\_\_\_\_  
 [Print name, address and occupation below.]

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\_\_\_\_\_  
 Print Name:

\* If space is insufficient, enter "SEE SCHEDULE" and attach schedule in Form TF-3.  
 \*\* If space is insufficient, continue executions on additional page(s) in Form TF-2.



TF-2 - ADDITIONAL EXECUTION PAGE

TOQUAHT  
NATION  
Land Act  
Toquaht Titled Lands Transfer  
Regulations. 4.24(d)  
Form TF-2



*(This area required by the Land Act s. 3.7 for office use)*

EXECUTIONS CONTINUED

Page 1 of \_\_\_\_ Pages

Witness Signature(s)

EXECUTION DATE

Party(ies) Signature(s)

Y	M	D

\_\_\_\_\_  
[Print name, address and occupation below.]

\_\_\_\_\_  
Print Name:



**TF-3 - SCHEDULE**

**TOQUAHT  
NATION**  
Land Act  
Toquaht Titled Lands Transfer  
Regulations. 4.24(d)  
Form TF-3



*(This area required by the Land Act s. 3.7 for office use)*

**SCHEDULE**

Page 1 of      Pages

[ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON FORM TF-1]





**TF-4 -AFFIDAVIT**

TOQUAHT  
NATION  
Land Act  
Toquaht Titled Lands Transfer  
Regulations. 4.24(d)  
Form TF-4



(This area required by the Land Act s. 3.7 for office use)

Sworn the \_\_\_\_\_ day of \_\_\_\_\_  
[day] [year]

**AFFIDAVIT OF [FULL NAME]**

I, \_\_\_\_\_, MAKE OATH AND SAY OR AFFIRM THAT:  
[full name], of [address]

1. I am \_\_\_\_\_ and as such have personal knowledge of the  
[role in proceedings]  
facts and matters hereinafter deposed to save and except where stated to  
be based on information and belief, and where so stated, I verily believe to  
be true.
2. [additional paragraphs]
3. [additional paragraphs]

SWORN/AFFIRMED BEFORE ME at \_\_\_\_\_ )  
\_\_\_\_\_ in the Province of BC, )  
[city/town]

This \_\_\_\_\_ day of \_\_\_\_\_ ) \_\_\_\_\_  
[day] [year] [FULL NAME]

A Commissioner for taking Affidavits for \_\_\_\_\_ )  
British Columbia







**2.3 SCHEDULE 2 – FEES**

<b>Section</b>	<b>Form</b>	<b>Fee</b>
2.2(a)	Transfer application – General	\$75
2.2(b)	Transfer Application – Foreclosure	\$75
2.2(d)	Transfer Application -Estate to Personal Representative with Probate	\$25
2.2(d)	Transfer Application - Estate to Personal Representative without Probate	\$150
2.2(d)	Transfer Application – Estate to Beneficiary or Heir at Law	\$75