

HUU-AY-AHT FIRST NATIONS



RESIDENTIAL LEASE REGULATION

Provisions of the *Financial Administration Act*, HFNA 2011, relevant to the enactment of this regulation: section 83.

REGISTRY OF LAWS CERTIFICATION

I certify that the *Residential Lease Regulation* was passed by Executive Council on:

Chief Councillor Jeff Cook

I certify that the *Residential Lease Regulation* is enacted as law on:

Ta'yii Hawilth Derek Peters

I certify that the *Residential Lease Regulation* came into force on:

Law Clerk Connie Waddell

RESIDENTIAL LEASE REGULATION

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Purpose

- 1 The purpose of this regulation is to establish a fair and effective system for the disposition of residential leases and other residential interests in Huu-ay-aht Lands.

Definitions

- 2 In this regulation:
 - “**Act**” means the *Land Act*;
 - “**committee**” means Citizen Development Committee;
 - “**director**” means the Director of Lands and Natural Resources;
 - “**eligible person**” means a person or entity eligible under section 4 to apply for a residential lease or other residential interest;
 - “**other residential interest**” means a residential interest other than a residential lease;
 - “**residential interest**” means an interest in Huu-ay-aht Lands for residential purposes under section 10 or 11 of the Act;
 - “**residential lease**” means a lease interest in Huu-ay-aht Lands for residential purposes;
 - “**residential lease holder**” means an eligible person who holds a residential lease on Huu-ay-aht Lands;
 - “**residential lot**” means a lot set out in a residential lot plan;

“residential lot plan” means a residential lot plan under section 19;

“tribunal” means the Huu-ay-aht Tribunal.

Restriction

- 3 A residential interest in Huu-ay-aht Lands may only be acquired in accordance with this regulation.

Eligibility for residential interests

- 4 The following are eligible to apply for a residential interest in Huu-ay-aht Lands:
- (a) a Huu-ay-aht citizen who is at least 19 years of age;
 - (b) a person or entity acting on behalf of either
 - (i) a Huu-ay-aht citizen who is under 19 years of age, or
 - (ii) an adult under paragraph (a) whose affairs the person or entity has the legal authority to manage;
 - (c) other persons or entities specified by Executive Council.

Limitation

- 5 Despite section 4, Executive Council may do any of the following:
- (a) prohibit
 - (i) a category of eligible persons from applying for more than one residential lease under section 6, or
 - (ii) residential lease holders or a category of residential lease holders from applying for another residential lease under section 6;
 - (b) specify each lot available in a residential lot plan for which a category of eligible persons may apply under section 6.

Residential lease application

- 6
- (1) An eligible person may apply for a residential lease by delivering an application in the form specified by the director on or before February 28 in the year following Executive Council’s approval of a residential lot plan.
 - (2) An application under subsection (1) must
 - (a) specify each lot available in the approved residential lot plan for which the applicant wishes to apply for a residential lease,
 - (b) include proof in affidavit form satisfactory to the director that the applicant
 - (i) has the financial capacity to fulfill the terms of a residential lease, including residential construction, and
 - (ii) is prepared to execute a residential lease for the lot or lots and comply with the lease terms, and
 - (c) include any other information that the director believes advisable in an application for a residential lease.

- (3) An application under this section must be accompanied by
 - (i) a non-refundable fee of \$500, and
 - (ii) a down payment in an amount determined by the director for the rent payable on the residential lease.
- (4) The applicant is responsible for submitting a complete application.

Other residential interest application

- 7 (1) An eligible person may apply for other residential interests by delivering the following to the director:
 - (a) an application in the form specified by the director;
 - (b) a non-refundable fee of \$50;
 - (c) a down payment, in an amount determined by the director, for any rent or fee payable for the other residential interest;
 - (d) other information that the director believes advisable in an application for the other residential interest.
- (2) The eligible person is responsible for submitting a complete application.

Effect of application

- 8 An eligible person does not obtain a residential interest in Huu-ay-aht Lands or priority to acquire a residential interest in Huu-ay-aht Lands by making an application under section 6 or 7.

Director acknowledgement of application

- 9 (1) After receiving an application under section 6 or 7, the director must promptly deliver a written acknowledgement of its receipt to the applicant.
- (2) As soon as practicable, the director must review the application and notify the applicant that the application
 - (a) is complete,
 - (b) is incomplete and will not be reviewed further until specified information is provided, or
 - (c) will not be considered because
 - (i) the applicant is not an eligible person,
 - (ii) the applicant is ineligible under section 5 (a),
 - (iii) the residential lot is not an available lot under section 5 (b), or
 - (iv) the interest in Huu-ay-aht Lands has been withdrawn from disposition.

Disposition of complete applications

- 10 (1) By March 31 of each year, the director must provide the chair of the tribunal with any complete applications for residential leases.
- (2) Parts 4 and 5 of the Act apply to the disposal of complete applications for other residential interests.

Allocating residential leases

- 11** (1) In this section and section 12, “**chair**” means chair of the tribunal.
- (2) By April 30 of each year, the chair must review applications for residential leases received from the director.
- (3) The chair must recommend Executive Council grant a residential lease to a qualified applicant if the applicant is the only applicant for a specified residential lot.
- (4) If more than one residential lease application is made for a specified residential lot,
- (a) a tribunal member must place the names of the qualified applicants on separate pieces of paper of uniform size and shape in a receptacle that ensures the pieces of paper cannot be seen when a draw is made,
 - (b) the chair, in the presence of at least 2 other tribunal members, must draw one piece of paper from the receptacle, and
 - (c) the chair must recommend that Executive Council grant the residential lease for the specified residential lot to the applicant whose name appears on the paper drawn under paragraph (b).
- (5) If no application is made for a specified residential lot, the chair must offer qualified applicants who were not recommended for a lot under subsection (4) an opportunity to apply for the residential lot.
- (6) The chair must follow the process set out in subsections (3) and (4) for recommending an applicant for a specified residential lot under subsection (5).
- (7) If no applications are made for a specified residential lot under subsection (5), Executive Council may
- (a) restart the application process under section 6 with a new deadline for residential lease applications,
 - (b) make the specified residential lot available in a residential lot plan in another year, or
 - (c) withdraw the specified residential lot from a residential lot plan.
- (8) The chair may make rules the chair considers appropriate to ensure the fairness and effectiveness of selecting residential lease applicants for recommendation to Executive Council.

Granting residential lease

- 12** As soon as practicable, Executive Council must approve the residential lease application recommended by the chair and grant a residential lease to the applicant in accordance with section 28 of the Act.

Refund

- 13** If a residential interest is not granted to an applicant, the director must refund the down payment made by the applicant under section 6 or 7.

Residential lease application fee waiver

- 14** If an applicant for a residential lease is not granted a residential lease, the director may apply the applicant's fee to another residential lease application made by that applicant.

Form and content of residential lease

- 15** Executive Council may establish the form and content of a residential lease and may vary the form and content of a residential lease for
- (a) different categories of eligible persons, or
 - (b) different lots in a residential lot plan.

Director may sign

- 16** If an application for a residential interest is approved under section 10 (2) or 12, the director may sign on behalf of the Huu-ay-aht for the grant of the residential interest.

Residential lease cycle

- 17** The following timetable sets out the tasks for completion before a residential lease may be granted:

TIME REQUIRED	RESIDENTIAL LEASING CYCLE TASKS		SECTION
September 30	Lot plan	Committee develops or amends a residential lot plan for recommendation to Executive Council	18
November 30	Lot plan	Executive Council approves a residential lot plan	19
January 1	Application process notice	Director gives public notice of application process for residential leases	20
February 28	Application deadline	Completed residential lease applications received by director	6
March 31	Applications processed	Director forwards complete applications to chair of tribunal	10
April 30	Lot allocation	Lots allocated to applicants by chair of tribunal	11
After April 30	Residential lease granted	Residential leases granted	12

Residential lot plan recommended by committee

- 18**
- (1) By September 30 of each year, the committee must recommend a residential lot plan to Executive Council.
 - (2) Before providing Executive Council with the residential lot plan under subsection (1), the committee must consult with
 - (a) the Finance Committee on the financial implications of the plan,
 - (b) the Lands and Natural Resources Committee on the land management implications of the plan,

- (c) the Ha'wiih Council, and
 - (d) HUU-ay-aht citizens on their housing needs on HUU-ay-aht Lands.
- (3) The following must be set out for each residential zone in the residential lot plan:
- (a) the number of residential lots available for leasing by April 30 in the following year;
 - (b) the location of the residential lots under paragraph (a);
 - (c) an estimate of government infrastructure and ongoing operating expenditures incurred or to be incurred, by location in the residential lot plan, for the creation of the residential lots;
 - (d) committee recommendations on
 - (i) options for recovering government expenditures under paragraph (c) from residential lot lease holders;
 - (ii) terms and conditions for the residential leases including the length of the term and the rent payable under the leases;
 - (iii) social and market rental housing units including
 - (A) the number of units by residential lot location, and
 - (B) the development of any required infrastructure to support such housing;
 - (e) other information that will assist Executive Council in its deliberations;
 - (f) any other recommendations of the committee.

Residential lot plan approval by Executive Council

- 19** By November 30 of each year, Executive Council must consider the residential lot plan recommended by the committee, and
- (a) approve a plan setting out the residential lots which will be made available for residential leases by April 30 the following year,
 - (b) specify the rent to be paid and the term of the lease for each lot to be made available under the approved plan,
 - (c) specify other residential lease terms under section 15,
 - (d) give public notice of the plan as soon as practicable after it is approved, and
 - (e) provide any other direction Executive Council considers advisable.

Public notice of residential lots

- 20** By January 1 in the year a residential lot is available for disposition, the director must give public notice of the application process for residential leases.

Committee report

- 21** By April 1, 2014, the committee must provide Executive Council with a report on the operation of this regulation including the following:
- (a) an assessment of whether the process established under this regulation is a fair and effective system for the disposition of residential leases and other residential interests in HUU-ay-aht Lands;

- (b) any recommended amendments to this regulation or other related Huu-ay-aht legislation;
- (c) any other recommendations to facilitate achievement of the purposes of this regulation.

Transitional – existing residential use exception

- 22** (1) In this section:
- “**eligible person**” means an eligible person who is the undisputed user or occupier of an existing residential use;
 - “**existing residential use**” means a residential use or occupation of a parcel on Treaty Lands that existed on April 1, 2011.
- (2) An eligible person may notify Executive Council in writing by April 30, 2012 that the eligible person wishes to obtain a residential lease for an existing residential use.
- (3) Despite the provisions of this regulation, Executive Council may grant a residential lease to an eligible person in subsection (2).
- (4) Executive Council must specify the form and content of a residential lease for an existing residential use by March 31, 2012.
- (5) An eligible person must execute a residential lease under subsection (4) by May 31, 2012.
- (6) The director may sign on behalf of the Huu-ay-aht for a residential lease.
- (7) Executive Council must register an executed residential lease granted under this section by June 30, 2012.
- (8) After June 30, 2012,
- (a) Executive Council may designate a parcel with an existing residential use as part of a residential lot plan, and
 - (b) an eligible person has no priority to acquire a residential interest in Treaty Lands.

Validity of disposition of existing interests

- 23** Each disposition made under section 22 is
- (a) of the same force and effect as if it had been made in the manner and form provided for in this regulation, the *Land Act*, the Treaty or under Huu-ay-aht law, as applicable, authorizing the disposition,
 - (b) valid despite not fulfilling requirements in this regulation, the *Land Act* and other Huu-ay-aht law, as applicable, to authorize the disposition, and
 - (c) effective on the date specified in the instrument of disposition or otherwise by law.
