

NISGA'A LISIMS GOVERNMENT

WILP SI'AYUUKHL NISGA'A

**NISGA'A LANDHOLDING
TRANSITION ACT**

Wilp Si'ayuukhl Nisga'a enacted this legislation on _____.

Signed _____
Nelson Leeson, President of the Nisga'a Nation

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NISGA'A LANDHOLDING TRANSITION ACT

PART 1 – INTERPRETATION**Definitions**

1. In this Act:

“**charge**” has the same meaning as in the *Nisga'a Land Title Act*;

“**entitlement**” means a Nisga'a Village entitlement or a Nisga'a Nation entitlement;

“**Nisga'a Nation entitlement**” has the same meaning as in the *Nisga'a Nation Entitlement Act*;

“**Nisga'a Village entitlement**” has the same meaning as in the *Nisga'a Village Entitlement Act*;

“**parcel**” has the same meaning as in the *Nisga'a Land Title Act*;

“**records**” has the same meaning as in the *Nisga'a Land Title Act*;

“**register**” means

- (a) as a noun, that part of the records in which information respecting fee simple titles is stored, and
- (b) as a verb, to register under the *Nisga'a Land Title Act*;

“**registrar**” has the same meaning as in the *Nisga'a Land Title Act*.

PART 2 – FEE SIMPLE OFFERS FOR PARCELS SUBJECT TO ENTITLEMENTS**Nisga'a Village Governments may offer fee simple to entitlement holders**

2. (1) Subject to section 4, if
- (a) a Nisga'a Village is registered as the owner of the estate in fee simple to a parcel of Nisga'a Lands, and
 - (b) a Nisga'a citizen is registered as the holder of an entitlement to the parcel,
- the Nisga'a Village Government of the Nisga'a Village may, by adopting a resolution in the prescribed form, offer the estate in fee simple to the parcel to the Nisga'a citizen, without charge to the Nisga'a citizen.
- (2) If
- (a) a Nisga'a Village is registered as the owner of the estate in fee simple to a parcel of Nisga'a Lands, and
 - (b) the Nisga'a Nation is registered as the holder of an entitlement to the parcel,
- the Nisga'a Village Government of the Nisga'a Village may, by adopting a resolution in the prescribed form, offer the estate in fee simple to the parcel to the Nisga'a Nation, without charge to the Nisga'a Nation.
- (3) As soon as practicable after adopting a resolution under subsection (1) or (2) offering the estate in fee simple to a parcel of Nisga'a Lands to the registered holder of an entitlement, a Nisga'a Village Government must
- (a) file a signed original of the resolution with the registrar, and
 - (b) deliver a copy of the resolution to the registered holder.

Entitlement holders may request fee simple

3. (1) If a Nisga'a citizen is the registered holder of an entitlement to a parcel of Nisga'a Lands and a Nisga'a Village is registered as the owner of the estate in fee simple to the parcel, the Nisga'a citizen may, by submitting the prescribed form to the Nisga'a Village Government of the Nisga'a Village, request that the Nisga'a Village Government offer the Nisga'a citizen the estate in fee simple to the parcel under section 2(1).

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- (2) If the Nisga'a Nation is the registered holder of an entitlement to a parcel of Nisga'a Lands and a Nisga'a Village is registered as the owner of the estate in fee simple to the parcel, the Executive may, by submitting the prescribed form to the Nisga'a Village Government of the Nisga'a Village, request that the Nisga'a Village Government offer the Nisga'a Nation the estate in fee simple to the parcel under section 2(2).
 - (3) If under subsection (1) or (2) the registered holder of an entitlement to a parcel of Nisga'a Lands submits a request for the offer of an estate in fee simple to the parcel to a Nisga'a Village Government, the Nisga'a Village Government must consider the request as soon as practicable and must not unreasonably refuse the request.
 - (4) Without limitation, for the purposes of subsection (3) it is not unreasonable for a Nisga'a Village Government to refuse a request made under subsection (1) by a Nisga'a citizen if the Nisga'a citizen owes money to or is otherwise indebted to a Nisga'a Village or the Nisga'a Nation.
 - (5) If a Nisga'a Village Government decides to refuse a request submitted by the registered holder of an entitlement under subsection (1) or (2),
 - (a) the Nisga'a Village Government must provide the registered holder with written reasons for the decision as soon as practicable after making the decision, and
 - (b) the registered holder may request a review of the decision under the *Nisga'a Administrative Decisions Review Act*.

Requirements for fee simple offers

4. The estate in fee simple to a parcel of Nisga'a Lands may, under section 2(1), be offered to a Nisga'a citizen who is the registered holder of an entitlement to the parcel only if
 - (a) the entitlement is not subject to a registered mortgage,
 - (b) the parcel is not greater than 0.2 hectares in area, and
 - (c) the principal use of the parcel permitted under a zoning law enacted by the Nisga'a Village Government having jurisdiction over the parcel is residential.

Limitations on fee simple offers

5. (1) An offer of the estate in fee simple to a parcel of Nisga'a Lands made by a Nisga'a Village Government under section 2(1) or (2)
- (a) cannot be assigned by the offeree to another person,
 - (b) unless accepted by the offeree under section 7(1)(a) or (2)(a), does not give the offeree any estate, interest, right, privilege or title in respect of the parcel,
 - (c) expires 90 days after the adoption of the resolution by which the offer is made if the offeree does not accept or decline the offer under section 7(1) or (2) within that time, and
 - (d) is not a representation or warranty by the Nisga'a Village Government that the parcel
 - (i) can be built on,
 - (ii) has or will have access, or
 - (iii) is not susceptible to flooding or erosion.
- (2) For certainty, the estate in fee simple to a parcel of Nisga'a Lands which is offered by a Nisga'a Village Government under section 2(1) or (2)
- (a) is subject to the rights of the Nisga'a Nation, or any person acting for it or under its authority, as referred to in section 9(1)(a) of the *Nisga'a Land Act*, and
 - (b) confers no interest in mineral resources, forest resources or roads, as referred to in section 9(1)(b)(i) to (iii) of the *Nisga'a Land Act*.

Notation of offers by registrar

6. On the filing under section 2(3) of a resolution offering the estate in fee simple to a parcel of Nisga'a Lands to a Nisga'a citizen or the Nisga'a Nation, the registrar
- (a) must endorse in the register a notation of the offer, and
 - (b) must not accept for deposit, filing or registration any other instrument affecting the parcel until the earliest of

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- (i) the offeree's acceptance of the offer under section 7(1)(a) or (2)(a),
- (ii) the offeree's decline of the offer under section 7(1)(b) or (2)(b), or
- (iii) the expiry of the offer under section 5(1)(c).

Offers may be accepted or declined

7. (1) If the estate in fee simple to a parcel of Nisga'a Lands is offered to a Nisga'a citizen under section 2(1), the Nisga'a citizen may
- (a) accept the offer by submitting the prescribed form and any prescribed registration fee to the registrar within 90 days after the adoption of the resolution by which the offer is made, or
 - (b) decline the offer by submitting the prescribed form to the registrar within 90 days after the adoption of the resolution by which the offer is made.
- (2) If the estate in fee simple to a parcel of Nisga'a Lands is offered to the Nisga'a Nation under section 2(2), the Executive may
- (a) accept the offer by submitting the prescribed form to the registrar within 90 days after the adoption of the resolution by which the offer is made, or
 - (b) decline the offer by submitting the prescribed form to the registrar within 90 days after the adoption of the resolution by which the offer is made.
- (3) An offeree of the estate in fee simple to a parcel of Nisga'a Lands who under subsection (1)(a) or (2)(a) accepts the offer is deemed to be fully aware of
- (a) the condition of the parcel, and
 - (b) all laws respecting the use and development of the parcel.

Registration of title on acceptance of offer

8. (1) If under section 7(1)(a) a Nisga'a citizen accepts an offer of the estate in fee simple to a parcel of Nisga'a Lands by submitting to the registrar the prescribed form and any prescribed registration fee, the registrar must
- (a) register the Nisga'a citizen as the owner of the estate in fee simple to the parcel,

- (b) cancel the registration of the Nisga'a citizen's entitlement to the parcel as a charge against the estate in fee simple to the parcel, and
 - (c) cancel the notation of the offer endorsed in the register under section 6(a).
- (2) If under section 7(2)(a) the Executive accepts an offer of the estate in fee simple to a parcel of Nisga'a Lands by submitting to the registrar the prescribed form, the registrar must
- (a) register the Nisga'a Nation as the owner of the estate in fee simple to the parcel,
 - (b) cancel the registration of the Nisga'a Nation's entitlement to the parcel as a charge against the estate in fee simple to the parcel, and
 - (c) cancel the notation of the offer endorsed in the register under section 6(a).
- (3) For certainty, the registration of a Nisga'a citizen or the Nisga'a Nation as the owner of the estate in fee simple to a parcel of Nisga'a Lands under subsection (1) or (2) does not affect any charge registered against the estate in fee simple to the parcel other than an entitlement referred to in subsection (1)(b) or (2)(b).

Cancellation of notation on decline or expiry of offer

- 9.** The registrar must cancel the notation of an offer endorsed in the register under section 6(a) if
- (a) the offeree declines the offer under section 7(1)(b) or (2)(b), or
 - (b) the offer expires under section 5(1)(c).

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PART 3 – FEE SIMPLE TRANSFERS OF PARCELS NOT SUBJECT TO ENTITLEMENTS**Fee simple transfers by Nisga'a Village Governments**

- 10.** (1) Subject to section 11, if
- (a) a Nisga'a Village is registered as the owner of the estate in fee simple to a parcel of Nisga'a Lands, and
 - (b) an entitlement is not registered as a charge against the parcel,
- the Nisga'a Village Government of the Nisga'a Village may, by adopting a resolution in the prescribed form, transfer the estate in fee simple to the parcel to a Nisga'a citizen.
- (2) If
- (a) a Nisga'a Village is registered as the owner of the estate in fee simple to a parcel of Nisga'a Lands, and
 - (b) an entitlement is not registered as a charge against the parcel,
- the Nisga'a Village Government of the Nisga'a Village may, by adopting a resolution in the prescribed form, transfer the estate in fee simple to the parcel to the Nisga'a Nation.

Requirements for fee simple transfers

- 11.** The estate in fee simple to a parcel of Nisga'a Lands may, under section 10(1), be transferred to a Nisga'a citizen only if
- (a) the parcel is not greater than 0.2 hectares in area, and
 - (b) the principal use of the parcel permitted under a zoning law enacted by the Nisga'a Village Government having jurisdiction over the parcel is residential.

Limitations on fee simple transfers

- 12.** (1) A transfer of the estate in fee simple to a parcel of Nisga'a Lands made by a Nisga'a Village Government under section 10(1) or (2)

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- (a) cannot be assigned by the transferee to another person,
 - (b) is not effective until the transferee, on making an application under section 13, is registered as the owner of the estate in fee simple to the parcel, and
 - (c) is not a representation or warranty by the Nisga'a Village Government that the parcel
 - (i) can be built on,
 - (ii) has or will have access, or
 - (iii) is not susceptible to flooding or erosion.
- (2) For certainty, the estate in fee simple to a parcel of Nisga'a Lands which is transferred by a Nisga'a Village Government under section 10(1) or (2)
- (a) is subject to the rights of the Nisga'a Nation, or any person acting for it or under its authority, as referred to in section 9(1)(a) of the *Nisga'a Land Act*, and
 - (b) confers no interest in mineral resources, forest resources or roads, as referred to in section 9(1)(b)(i) to (iii) of the *Nisga'a Land Act*.

Applications for registration of fee simple transfers

- 13.** (1) If the estate in fee simple to a parcel of Nisga'a Lands is transferred to a Nisga'a citizen under section 10(1), the Nisga'a citizen may apply to register the transfer by submitting to the registrar the prescribed form and any prescribed registration fee.
- (2) If the estate in fee simple to a parcel of Nisga'a Lands is transferred to the Nisga'a Nation under section 10(2), the Executive may apply to register the transfer by submitting to the registrar the prescribed form.
- (3) A transferee of the estate in fee simple to a parcel of Nisga'a Lands who under subsection (1) or (2) applies to register the transfer is deemed to be fully aware of
- (a) the condition of the parcel, and
 - (b) all laws respecting the use and development of the parcel.

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Registration of title on application by transferee

14. (1) If under section 13(1) a Nisga'a citizen applies to register the transfer of the estate in fee simple to a parcel of Nisga'a Lands by submitting to the registrar the prescribed form and any prescribed registration fee, the registrar must register the Nisga'a citizen as the owner of the estate in fee simple to the parcel.
- (2) If under section 13(2) the Executive applies to register the transfer of the estate in fee simple to a parcel of Nisga'a Lands by submitting to the registrar the prescribed form, the registrar must register the Nisga'a Nation as the owner of the estate in fee simple to the parcel.
- (3) For certainty, the registration of a Nisga'a citizen or the Nisga'a Nation as the owner of the estate in fee simple to a parcel of Nisga'a Lands under subsection (1) or (2) does not affect any charge registered against the estate in fee simple to the parcel.

PART 4 – GENERAL

Regulations

- 15.** (1) The Executive may make regulations it considers necessary or advisable for the purposes of this Act.
- (2) Without limiting subsection (1), the Executive may make regulations establishing
- (a) the forms of documents to be used under this Act, and
 - (b) the fee to be paid for registration of fee simple ownership under this Act.

Commencement

- 16.** This Act comes into force by regulation of the Executive.