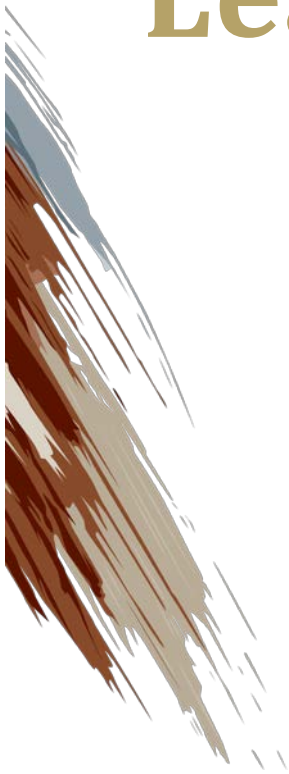




**FORT MCKAY**  
FIRST NATION

# Long-Term Leasing Law



# **LONG-TERM LEASING LAW FOR HOUSING OWNERSHIP ON FIRST NATION RESERVE LAND FORT MCKAY FIRST NATION**

## *Table of Contents*

1	Context and Purposes
2	Definitions
3	Survey of Lots
4	Eligibility to Acquire a Lease
5	Process to Acquire a Lease
6	Lease Periods and Payments
7	Assignments
8	Other Obligations of the Member Leaseholder
9	Acts of Forfeiture or Surrender
10	Expropriation
11	Matrimonial Property
12	Status of Lands
13	General Provisions
14	Policies and Procedures

## **1 Context and Purposes**

- 1.1 The purpose of this Law is to create the opportunity for Fort McKay First Nation Members to enjoy benefits akin to home ownership through the granting of long-term leases.
- 1.2 Under a long-term lease, a Member may acquire a legal interest in a home as well as other improvements and fixtures such as garages and sheds plus certain rights in respect of the parcel of land on which those buildings are located.
- 1.3 As a leaseholder, the Member can make improvements including building their own home, garage, shed or fence and to renovate those buildings to suit the individual Member's needs and circumstances. As a lease is a recognized legal interest, the Member can obtain bank financing to help pay for these improvements.

- 1.4 A lease includes rights of assignment and testamentary disposition. This means that the Member can “sell” or assign the lease to another Member or they can have the lease rights transferred to another Member in their will or, without a will, as property governed by the Alberta *Wills and Succession Act*, S.A. 2010, c. W-12.2 as amended or replaced from time to time;
- 1.5 Along with the legal rights associated with a long-term lease are certain legal obligations to care for and maintain the property.
- 1.6 This Law describes how a Member can acquire a long-term lease, the basic contents of the lease agreement, and the rules that will govern lands in the Reserve that have been leased to a Member. In particular, this Law will ensure a balance between the collective rights of all the Members and the individual rights of a leaseholder Member by ensuring that lands are used in a way that is consistent with community interests and standards and subject to an orderly and planned use.

## **2 Definitions**

- 2.1 In this Law:
  - (a) “Chief and Council” means the Chief and Council elected to public office pursuant to the Election Code of Fort McKay First Nation as amended or replaced from time to time;
  - (b) “First Nation” means collectively all the Members of Fort McKay First Nation being a band recognized as such by Her Majesty the Queen in Right of Canada and as defined in the *Indian Act*, R.S.C. 1985, c. I-5 as amended from time to time and any successor to the “First Nation”;
  - (c) “Housing Manager” means the person appointed by the Chief Executive Officer to administer this Law and includes any person delegated authority to act by the Housing Manager;
  - (d) “Lease” means a written agreement signed by a Member and the First Nation conferring certain rights and obligations in respect of a Lot as defined in that agreement and this Law;
  - (e) “Lease Payment” means the consideration paid by the Member to the First Nation under the terms of the Lease including the following:

- (i) A rental amount payable on an annual basis which is specified in the Lease and which must be paid to the First Nation on or before January 15<sup>th</sup> in each and every calendar year in order to keep the Lease in good standing;
  - (ii) The book value of any improvements on land made by or financed by the First Nation such as a housing unit, garage, shed or other permanent fixture;
  - (iii) Less the amount of any rents paid by the Member in respect of the family dwelling or housing unit prior to the grant of the Lease;
  - (iv) Less the amount of \$25,000.00 or such other amount of the grant provided to Members under the Home Ownership Grant Policy as amended from time to time. For greater certainty, no Member may obtain a grant under the Home Ownership Grant Policy more than once and no deduction from or reduction of the Lease Payment shall be made if any grants have been received by the Member from the First Nation in respect of the acquisition of any other residential property;
- (f) “Life Estate” means the right of a non-Member spouse to the rights and privileges granted in a Lease held by a now deceased Member during the natural life of the non-Member spouse;
- (g) “Lot” means a plot or parcel of land within the First Nation’s Reserves which:
- (i) Has been surveyed and which is identifiable by reference to a lot number assigned by the First Nation as well as a metes and bounds description which includes the size of the land parcel in hectares and acres;
  - (ii) May or may not have a family dwelling or housing unit or other permanent fixtures constructed on it as of the date it is made subject to a Lease under this Law;
  - (iii) Is exclusively designated or zoned for single detached residential homes or one family dwelling units;
  - (iv) Does not include any right, title or interest in natural resources such as minerals, water, forests or other aspects of the land which could be used for economic gain;

- (h) “Member” means a person admitted to membership or citizenship with the First Nation pursuant to the Fort McKay First Nation Membership Code as amended or replaced from time to time;
- (i) “Member Leaseholder” means a Member who has entered into a Lease pursuant to this Law; and
- (j) “Spouse” means a person who is a party to a legal marriage or a person who is a party in an adult independent relationship similar to marriage or otherwise as defined under the Alberta *Wills and Succession Act*, S.A. 2010, c. W-12.2.

### **3 Survey of Lots and Registry of Lots**

- 3.1 The Housing Manager shall cause to be surveyed, and a plan of survey produced, for each and every parcel of land within Fort McKay Reserve 174 designated or zoned by the Chief and Council for Leasing as single family detached residential developments which shall thereafter be a Lot as defined in this Law.
- 3.2 In respect of each and every Lot designated for Leasing, the Housing Manager shall cause to be created the Lot Certificate in respect thereof containing a description of the geographic location of the land by reference to the Lot number assigned by the First Nation as well as a metes and bounds description which includes the size of the land parcel in hectares and acres.
- 3.3 The Housing Manager shall cause to be created a Registry into which all information respecting Lot Certificates and Leases related thereto are recorded and archived in a central filing system.
- 3.4 The Housing Manager shall be responsible for maintaining the Registry and, in particular, to register Leases and record any changes in the leasehold interests respecting the Lots.

### **4 Rights Granted in a Lease**

- 4.1 Under this Law a Lease may be granted in respect of a Lot and gives the Member Leaseholder a form of land tenure which includes the following rights:
  - (a) The right to exclusive use and occupation of the Lot for the term of the Lease;
  - (b) The right to construct or renovate buildings and structures on the Lot in accordance with this Law;

- (c) The right to use the interests granted in the Lease as security for financing to acquire the Lease or to construct or renovate buildings and structures on the Lot;
  - (d) The right to sell or assign their interests in the Lot in accordance with this Law;
  - (e) The right to assign their interests in the Lot pursuant to a will or testamentary disposition or to have the interest assigned pursuant to intestate succession laws and otherwise in accordance with this Law; and
  - (f) The right of a Spouse of a Member Leaseholder to a Life Estate in the Lot.
- 4.2 Member Leaseholders have sole responsibility for maintaining their Lots and any buildings on the Lots including the family dwelling unit or housing unit.
- 4.3 Member Leaseholders take possession of the Lot and any buildings on the Lot “as is” and the First Nation provides no representations or warranties in respect of the Lot and any buildings on the Lot including any family dwelling units or housing units.

## **5 Eligibility to Acquire a Lease**

- 5.1 A lease may only be acquired or held by an individual who is:
- (a) 18 years of age or older; and
  - (b) a Member.
- 5.2 An exemption to section 5.1 may be granted in the discretion of the Chief and Council in the following circumstances:
- (a) Where the exemption is to permit a mature minor to hold the Lease;
  - (b) Where the exemption is to permit a non-Member to hold the Lease on a temporary basis pursuant to a trust agreement for the benefit of a minor Member until the minor comes of age and can accept an assignment of the Lease;

- (c) Where the exemption is to permit a non-Member to hold the Lease pursuant to the trust agreement for the benefit of a Member who is the subject of a guardianship or trusteeship order under the *Alberta Adult Guardianship and Trusteeship Act*, S.A. 2008, c. A-4.2 and the rights or interests will expire or be validly assigned to another Member upon the death of the Member;
- (d) Where the exemption is to give effect to a Life Estate and the rights or interests expire or will be validly assigned to a Member upon the death of the holder of that Life Estate; or
- (e) Where the exemption is to give effect to an occupation order that has been granted by a court of competent jurisdiction under the *Family Homes on Reserves and Matrimonial Interests or Rights Act*, S.C. 2013, c. 20 and the grant of occupation by the non-Member will be terminated upon a specified event including but not limited to:
  - (i) The expiry of the term of occupation designated in the court order;
  - (ii) Valid assignment of the Lease to a Member;
  - (iii) The death of the non-Member; or
  - (iv) The non-Member ceasing to occupy the home as their principal residence.

5.3 Notwithstanding anything else in this Law, if the Chief and Council determine that there are reasonable grounds to expect that granting a Lease to a Member may result in harm to the First Nation or to a Member, the Chief and Council may reject the application and decline to enter into a Lease with the Member. Without limiting the generality of this section or the Chief and Council's scope of discretion, grounds for rejecting an application to Lease may include:

- (a) A reasonable belief that the Member has been or may become involved in illegal activities including trafficking in drugs contrary to the *Criminal Code*, R.S. 1985, c. C-46 as amended, the *Controlled Drugs and Substances Act*, 1996, c. 19 as amended or any other like legislation;

- (b) A reasonable belief that the Member has been or may become involved in gang related activities; or
- (c) Any other facts or circumstances upon which a reasonable person could conclude that the Member would be unable or unwilling to fulfil the terms and conditions of this Law or a Lease.

## **6 Process to Acquire a Lease**

- 6.1 A Member seeking to acquire a Lease must file a complete application in the prescribed form.
- 6.2 Within one month of receiving an application, the Housing Manager shall advise the applicant as to whether the application is complete and, if the application is complete, shall confirm formal acceptance of the application
- 6.3 An application which is incomplete shall be returned to the applicant and no record of it shall be retained by the Housing Manager.
- 6.4 The Housing Manger shall forward all applications for lease that are complete to the Chief and Council for consideration.
- 6.5 The Chief and Council shall, in the exercise of their discretion, determine whether or not an application is approved. If an application is approved, the Chief and Council shall give instructions to the Chief Executive Officer (who is responsible to instruct the Housing Manager) to present a Lease in the prescribed form to the Member and do such further or other things as may be necessary to execute on the Chief and Council's decision.
- 6.6 The following rules apply to the decision of the Chief and Council as to whether to grant a new Lease:
  - (a) Generally, a Member who already holds a Lease in a Lot located in the same geographic area of the Reserve will not be permitted to acquire another Lease unless proof is provided that the Member has entered into an enforceable agreement for a valid assignment of their current Lease; and



- (b) A Member may hold a Lease in the main town site of Fort McKay and also maintain an industrial lease and a recreational lease. The primary concern for Chief and Council shall be the risk or degree of risk that a significant number of Leases intended to provide home ownership opportunities to as many Members as possible will be concentrated in the hands of a small number of Members, thereby defeating the general purposes of this Law.

## **7 Lease Periods and Payments**

- 7.1 All Leases shall be for a term of not more than 99 years and may be renewed for successive terms of not more than 99 years provided that the Member Leaseholder has not breached the terms of the Lease Agreement.
- 7.2 Lease Payments shall be calculated in accordance with this Law and must be paid by the Member to keep the Lease in good standing.
- 7.3 That part of the Lease Payment calculated under subsections 2.1(e)(i) to (iii) shall be paid by:
  - (a) Lump sum payment at the start of the Lease;
  - (b) Lump sum payments at intervals negotiated between the First Nation and the Member; or
  - (c) At monthly intervals in an amount not less than the average amount of rent payable under a residential tenancy.

## **8 Assignments**

- 8.1 The Member may, with the consent of the Chief and Council which shall not be unreasonably withheld, assign their Lease to another Member or to the First Nation so that the Member who accepts the assignment takes over any remaining payments required by the Lease Agreement and acquires all the rights provided for under the Lease.
- 8.2 The Member may, with the consent of the Chief and Council which shall not be unreasonably withheld, assign the Lease Agreement to another Member in a will so that the Member who receives the assignment takes over any remaining payments required by the Lease Agreement and acquires all the rights provided for under the Lease. If the Member dies without making a will, then the Lease may be transferred to another Member in accordance with Part 3 of the *Wills and Succession Act*, S.A. 2010, c. W-12.2 as amended subject always to the consent of the Chief and Council which shall not be unreasonably withheld.

- 8.3 The refusal to consent of the Chief and Council to the assignment of a Lease shall be deemed to be reasonable if the Member who proposes to accept the assignment and enter into the Lease is already a Member Leaseholder. In determining the reasonableness of any withholding of consent, the risk or degree of risk that Leases will be concentrated in the hands of a small number of Members shall be a valid and overriding consideration for the Chief and Council.
- 8.4 All assignments or transfers of a Lease shall be recorded by the Housing Manager in the Registry.

## **9 Other Obligations of the Member Leaseholder**

- 9.1 A Member who has been granted a Lease has the responsibility to maintain the property including the housing unit or family dwelling and if the housing unit or family dwelling is occupied it must at all times meet the minimum standards prescribed for housing premises under the *Alberta Public Health Act*, RSA 2000, P-37, as amended or replaced from time to time.
- 9.2 A Member who has been granted a Lease and obtains a building permit must comply with this Law and must meet the standards contained in the *Alberta Building Code 2014* as amended or replaced from time to time, the *National Building Code of Canada 2015* as amended or replaced from time to time, and any building codes or standards for construction (including architectural guidelines) enacted by the Chief and Council as a law, regulation or policy of the First Nation. If there are different standards in any of the applicable building codes or standards, then the superior or greater standard shall apply to any new construction.
- 9.3 A Member who has been granted a Lease must occupy the housing unit or family dwelling as a place of residence and may not rent or sub-lease the housing unit or family dwelling to any other person for financial gain unless a permit to rent has been obtained from the Housing Manager before any rental arrangements have been made. The Housing Manger may impose conditions on a permit granted under this section which conditions may include:
- (a) The need for tenants to be approved by the First Nation;
  - (b) The tenant entering into a good conduct agreement; or
  - (c) Payment of a bond, guarantee, or security deposit to the First Nation.
- 9.4 A Member shall not cause or permit a nuisance to exist on the property and without limiting the generality of the foregoing, must not allow a housing unit unfit for human habitation to remain on the Lot.

- 9.5 A Member Leaseholder may not do anything which would impede or interfere with rights of public passage within the Reserve including blocking or interfering with roads or sidewalks as well as impeding passage to watercourses or harvesting areas that have been part of the traditional land uses of the First Nation.
- 9.6 A Member Leaseholder shall provide the First Nation with rights of access to the Lot and any buildings or structures on the Lot for the purposes of enforcing laws, ensuring public safety, protecting human life, or safeguarding the ecological integrity of the Reserve lands.
- 9.7 A Member who undertakes construction of a building on a Lot, including a family dwelling must obtain a permit from the Housing Manager before undertaking construction and shall proceed with any construction in a timely manner. The permit may prescribe a period in which the construction must be completed. Open excavations, incomplete buildings, long-term storage of construction materials and any other activities which are not resolved or dealt with in a timely manner or which may constitute a danger are not permitted.
- 9.8 All Leases and Lots eligible for leasing are zoned and designated exclusively as one-family dwellings.
- 9.9 No person may carry on any business or for profit enterprise from a Lot subject to a Lease under this Law unless a permit has been obtained from the First Nation permitting a home business occupation and further only if the home business occupation does not:
- (a) require any parking or involve anything more than brief and incidental traffic from passenger vehicles into the area;
  - (b) involve any exterior displays or advertising other than a single name plate not exceeding two square feet in area;
  - (c) involve unenclosed storage of materials, finished products, mechanical or other equipment on the Lot other than the unenclosed storage of such material, products or equipment as are ordinarily used for housekeeping purposes or hobbies;
  - (d) involve undue noise, vibration, fumes, smoke, dust or odour emanating from the home occupation; or
  - (e) employ more than one person who must also be resident on that Lot.
- 9.10 All Leases and Lots are subject to the following general zoning rules:

- (a) No Lot may be subdivided or in any way reduced in size and area for the purposes of assigning a portion of the original Lot to another person;
- (b) Only one (1) housing unit or one-family dwelling may be erected on a Lot;
- (c) The housing unit or one-family dwelling must be at least 5 feet from the Lot line;
- (d) The height of a housing unit or one-family dwelling may not exceed two (2) storeys or 30 feet, whichever is the lesser;
- (e) Detached accessory buildings such as garages or sheds are permitted but must meet the following criteria:
  - (i) The area of the building must cover no more than 10% of the Lot area;
  - (ii) The building must be at least 5 feet from the housing unit or one-family dwelling;
  - (iii) The building must be at least 3 feet from the Lot line;
  - (iv) The building must not unreasonably interfere with the use or enjoyment of the residents of an adjacent Lot; and
  - (v) The height of the building may not exceed one story or 15 feet, whichever is lesser;
- (f) A fence may be erected along the Lot lines but must meet the following criteria:
  - (i) The fence cannot exceed a height of six (6) feet above the grade of the lot at the side and back of the Lot line; and
  - (ii) The fence cannot exceed a height of three and a half (3.5) feet above the grade of the lot at the front of the Lot line;
- (g) No person may erect, reconstruct, structurally alter, enlarge or use any structure of any kind or for any use on a Lot subject to this Law other than for the use permitted by this Law and in connection with a housing unit or one-family dwelling;
- (h) No person may erect, reconstruct, structurally alter, or enlarge a structure on a Lot without first obtaining a permit from the Housing Manager allowing such construction to take place;

- (i) No person may move a structure or any part thereof onto a Lot unless that structure conforms to the provisions of this Law and only upon first obtaining a permit from the Housing Manger allowing the structure or part thereof to be moved onto a Lot;
- (j) No person may store or display any goods or materials in any yard on a Lot in the nature of items such as heavy equipment, industrial equipment or other items not reasonably associated with normal household habitation of a housing unit or one-family dwelling; and
- (k) Recreational vehicles and holiday trailers may be stored on a Lot provided that such storage does not interfere with the use and enjoyment of property by neighbors or occupy more than ten (10%) of the Lot area. No person may use a holiday trailer as a place of residence for any duration.

## **10 Acts of Forfeiture or Surrender**

- 10.1 The holder of a Lease who fails to comply with this Law or a Lease Agreement including failing to make the Lease Payments required as part of the terms and conditions of this Law and the Lease Agreement shall be deemed to have forfeited the Lease and all interests and rights associated with the Lease revert to the First Nation.
- 10.2 The holder of Lease who ceases to be a Member after acquiring the Lease shall be deemed to have forfeited the Lease Agreement and all such interests and rights associated with the Lease Agreement revert to the First Nation.
- 10.3 A person who is deemed to have forfeited their Lease is not entitled to any compensation and:
  - (a) Any and all payments received by the First Nation in respect of the acquisition of the Lease shall be deemed to have been paid as rent to the First Nation for the occupation of residential premises; and
  - (b) The Member Leaseholder shall be required to repay to the First Nation the sum of \$25,000.00 or such further or other sum being the value of the grant provided for under the Home Ownership Grant Policy credited to the Member Leaseholder pursuant to section 2.1(e)(iv) of this Law.
- 10.4 A person who has forfeited their entitlements under a Lease shall give over vacant possession of the property no later than 30 days following delivery of a notice of forfeiture from the First Nation.

10.5 A Member Leaseholder may surrender the Lease to the First Nation upon any terms and conditions as may be agreed to between the parties.

## **11 Expropriation**

11.1 The First Nation may expropriate lands subject to a Lease for community purposes but no expropriation may take place until the following conditions have been met:

- (a) The First Nation has enacted a law to govern the expropriation process, including notice to the Member; and
- (b) The law provides for or the parties have agreed to a method for determining fair compensation for improvements to the Member Leaseholder.

## **12 Matrimonial Property**

12.1 Unless the First Nation enacts a law governing matrimonial property rights on First Nation lands, the provisional rules set forth in the *Family Homes on Reserves and Matrimonial Interests or Rights Act*, S.C. 201, c. 20 shall apply to Leases under the Housing Law.

## **13 Status of Lands**

13.1 The Grant of Lease does not change the status of the lands as Reserves and all lands comprising the First Nation's Reserves remain subject to the laws governing Reserve lands in Canada.

13.2 The grant of a Lease and the existence of a Lease between a Member and the First Nation shall not constitute an allotment as contemplated by section 20 of the *Indian Act*.


## 14 General Provisions

- 14.1 This Law governs privileges that are intended to provide benefits to Members and constitutes a right or freedom of an aboriginal people in respect of which no person who is not a Member may claim any right including the right not to be subjected to discrimination based on race, national or ethnic origin pursuant to any law or statute of Canada or Alberta.
- 14.2 Members seeking to enter into a Lease with the First Nation shall be entitled to have their application considered solely on the basis of the merits of their application and otherwise in accordance with the rules outlined in this Law. There shall be no discrimination against any applicant on the basis of family status or any other personal characteristic protected by human rights laws that are not relevant to the assessment of the Member's application.
- 14.3 Headings form no part of this Law and shall be construed as being inserted for convenience of reference only.

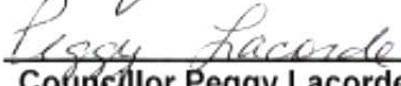
## 15 Policies and Procedures

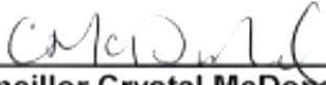
- 15.1 The Housing Manager may establish:
- (a) Forms that may be used in connection with this Law;
  - (b) Forms of Lease Agreement; and
  - (c) Policies and procedures providing for any other matter reasonably necessary to give effect to this Law.

**APPROVED AND PASSED** at a duly convened meeting of the Chief and Council of Fort McKay First Nation held at Fort McKay in the Province of Alberta this 29<sup>th</sup> day of November, 2017.


  
\_\_\_\_\_  
Chief Jim Boucher

  
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Councillor Gerald Gladue

  
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Councillor Peggy Lacorde

  
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Councillor Crystal McDonald

  
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Councillor Raymend Powder

 <b>FORT MCKAY</b> <small>FIRST NATION</small>		<b>Site No.:</b>	On & Off Reserve	<b>Revision:</b>	2
	<b>Housing Operations</b>	<b>Doc #:</b>	FMFN-LAW-LONG-TERM LEASING-001	<b>Date Effective:</b>	11/29/17
		<b>Policy Owner:</b>	Admin Dept	<b>Approved By:</b>	C&C
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	<b>Title:</b> Long-term Leasing Law				

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