

NISGA'A VILLAGE ENTITLEMENT ACT

NISGA'A LISIMS GOVERNMENT

WILP SI'AYUUKHL NISGA'A

NISGA'A VILLAGE ENTITLEMENT ACT

**UNOFFICIAL CONSOLIDATION
CURRENT TO JUNE 1, 2016**

NISGA’A VILLAGE ENTITLEMENT ACT

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NISGA'A VILLAGE ENTITLEMENT ACT

Definitions

1. In this Act,

“**director**” means the Director of Lands and Resources;

“**eligible recipient**” means, in respect of a Nisga'a Village entitlement,

- (a) a person who
 - (i) is a Nisga'a citizen, and
 - (ii) immediately before the effective date, was a member of the Indian band to which the particular Nisga'a Village is a successor under paragraph 11 of the Indian Act Transition Chapter of the Nisga'a Treaty,
- (b) the Nisga'a Nation,
- (c) a Nisga'a settlement trust established by the Nisga'a Nation, or
- (d) a Nisga'a housing services provider;

“**Nisga'a housing services provider**” means a housing services provider as defined in the *Nisga'a Programs and Services Delivery Act*;

“**Nisga'a settlement trust**” means a Nisga'a settlement trust as defined in the Nisga'a Treaty;

“**Nisga'a Village entitlement**” means a right to possession of a particular parcel of Nisga'a Village Lands evidenced by a certificate in the prescribed form, and includes any interest of a tenant in common or joint tenant in that right;

“**particular Nisga'a Village**” means, in respect of a Nisga'a Village entitlement, the Nisga'a Village whose Nisga'a Village Lands include the parcel;

“**registered holder**” means, in respect of a Nisga'a Village entitlement, the person registered under the *Nisga'a Land Title Act* as the holder of the Nisga'a Village entitlement;

“**registrar**” means the Registrar appointed under the *Nisga'a Land Title Act*.

Grant by Nisga'a Village

2. (1) After the effective date, a Nisga'a Village may grant to an eligible recipient a Nisga'a Village entitlement for land within its Nisga'a Village Lands in which the Nisga'a Village owns the estate in fee simple.

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- (2) No person may acquire a Nisga'a Village entitlement by grant under subsection (1) except an eligible recipient.
- (3) A grant of a Nisga'a Village entitlement under subsection (1) is not effective until the grant is approved by the registrar and registered under the *Nisga'a Land Title Act*.
- (4) The registrar must not approve a grant of a Nisga'a Village entitlement under subsection (1) or register the grant under the *Nisga'a Land Title Act* unless the registrar is satisfied that the grantee is an eligible recipient.

Transfer by registered holder

3. (1) A person registered under the *Nisga'a Land Title Act* as the holder of a Nisga'a Village entitlement may transfer the Nisga'a Village entitlement to an eligible recipient or the particular Nisga'a Village.
- (2) No person may acquire a Nisga'a Village entitlement by transfer under subsection (1) except an eligible recipient or the Nisga'a Village.
- (3) A transfer of a Nisga'a Village entitlement under subsection (1) is not effective until it is approved by the registrar and registered under the *Nisga'a Land Title Act*.
- (4) The registrar must not approve a transfer of a Nisga'a Village entitlement under subsection (1) or register the transfer under the *Nisga'a Land Title Act* unless the registrar is satisfied that the transferee is an eligible recipient or the Nisga'a Village.

Disposition from estate

4. (1) No person may acquire a Nisga'a Village entitlement by disposition under a will or by distribution from the estate of an intestate except an eligible recipient or the particular Nisga'a Village.
- (2) The disposition of a Nisga'a Village entitlement under a will or the distribution of a Nisga'a Village entitlement from the estate of an intestate is not effective until the disposition or distribution is approved by the registrar and registered under the *Nisga'a Land Title Act*.
- (3) The registrar must not approve the disposition of a Nisga'a Village entitlement under a will or the distribution of a Nisga'a Village entitlement from the estate of an intestate, or register the disposition or distribution under the *Nisga'a Land Title Act*, unless the

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registrar is satisfied that the beneficiary or heir is an eligible recipient or the Nisga'a Village.

If beneficiary or heir ineligible

5. (1) If
- (a) the estate of a deceased person includes a Nisga'a Village entitlement,
 - (b) but for this Act, a person other than an eligible recipient or the particular Nisga'a Village would acquire the Nisga'a Village entitlement by
 - (i) disposition under the will of the deceased person, if the deceased person left a will, or
 - (ii) distribution from the estate of the deceased person, if the deceased person died intestate,
 - (c) a grant of
 - (i) letters probate in respect of the deceased person's will, or
 - (ii) letters of administration in respect of the deceased person's estate

has been made by a court of competent jurisdiction to the personal representative of the deceased person, and
 - (d) the personal representative is the registered holder of the Nisga'a Village entitlement,
- the personal representative may, by submitting an application in the form specified by the director and paying any prescribed fee, apply to the director for assistance in inviting offers to purchase the Nisga'a Village entitlement.
- (2) If the director receives an application for assistance from the personal representative of a deceased person under subsection (1), the director may, in a notice published in accordance with Nisga'a law, invite offers from eligible recipients and the particular Nisga'a Village to purchase the relevant Nisga'a Village entitlement from the personal representative.

If personal representative does not transfer

6. (1) If

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- (a) the estate of a deceased person includes a Nisga'a Village entitlement,
 - (b) but for this Act, a person other than an eligible recipient or the particular Nisga'a Village would acquire the Nisga'a Village entitlement by
 - (i) disposition under the will of the deceased person, if the deceased person left a will, or
 - (ii) distribution from the estate of the deceased person, if the deceased person died intestate,
 - (c) a grant of
 - (i) letters probate in respect of the deceased person's will, or
 - (ii) letters of administration in respect of the deceased person's estatehas been made by a court of competent jurisdiction to the personal representative of the deceased person, and
 - (d) the personal representative does not, within five years after receiving the grant of letters probate or letters of administration, transfer the Nisga'a Village entitlement to an eligible recipient or the particular Nisga'a Village,

the particular Nisga'a Village may, by submitting an application in the form specified by the director, apply to the director to invite bids for the Nisga'a Village entitlement in accordance with subsection (3).

- (2) A Nisga'a Village must serve on the personal representative of the deceased person a copy of any application that the Nisga'a Village submits to the director under subsection (1).
- (3) If the director receives an application from the particular Nisga'a Village to invite bids for a Nisga'a Village entitlement under subsection (1), the director may, unless satisfied that the personal representative of the deceased person will transfer the Nisga'a Village entitlement to an eligible recipient or the particular Nisga'a Village within a reasonable further time,
 - (a) file in the Nisga'a land title office a notice of the proposed taking of the Nisga'a Village entitlement in the prescribed form,
 - (b) serve a copy of the notice filed under paragraph (a) on the personal representative of the deceased person, any registered mortgagee of the Nisga'a Village entitlement and the particular Nisga'a Village, and

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- (c) in a notice published in accordance with Nisga'a law, offer the Nisga'a Village entitlement for sale to the person from among the eligible recipients and the Nisga'a Village who, in accordance with the conditions specified by the director, makes the highest eligible bid within six months after the publishing of the notice.
- (4) On the filing of a notice of the proposed taking of a Nisga'a Village entitlement under subsection (3)(a), the registrar
- (a) must endorse in the register of the Nisga'a land title office a notation of the proposed taking, and
- (b) while the notice remains uncanceled, must not accept for deposit, filing or registration another instrument affecting the Nisga'a Village entitlement, except under this section.
- (5) If the director receives one or more eligible bids for a Nisga'a Village entitlement within six months after offering the Nisga'a Village entitlement for sale under subsection (3)(c), the director must
- (a) accept the highest eligible bid received, and
- (b) on receiving from the highest eligible bidder payment in the amount of that bid,
- (i) file in the Nisga'a land title office a notice of transmission in the prescribed form, transmitting the Nisga'a Village entitlement to the highest eligible bidder, and
- (ii) serve a copy of the notice filed under subparagraph (i) on the highest eligible bidder, the personal representative of the deceased person, any registered mortgagee of the Nisga'a Village entitlement and the particular Nisga'a Village.
- (6) On the filing of a notice of transmission of a Nisga'a Village entitlement under subsection (5)(b)(i),
- (a) the registrar must
- (i) register the person to whom the Nisga'a Village entitlement is transmitted under the notice of transmission as the holder of the Nisga'a Village entitlement,
- (ii) cancel the relevant notice of proposed taking filed under subsection (3)(a) by endorsing a suitable notation on that notice, and

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- (iii) cancel the relevant notation of proposed taking endorsed in the register under subsection (4)(a),
 - (b) the Nisga'a Village entitlement vests in the person to whom the Nisga'a Village entitlement is transmitted under the notice of transmission, and
 - (c) the director must pay the amount received under subsection (5)(b) to the personal representative of the deceased person.
- (7) If the director does not receive any eligible bid for a Nisga'a Village entitlement within six months after offering the Nisga'a Village entitlement for sale under subsection (3)(c), the director must
 - (a) file in the Nisga'a land title office a notice of transmission in the prescribed form, transmitting the Nisga'a Village entitlement to the particular Nisga'a Village, and
 - (b) serve a copy of the notice filed under paragraph (a) on the personal representative of the deceased person, any registered mortgagee of the Nisga'a Village entitlement and the particular Nisga'a Village.
- (8) On the filing of a notice of transmission of a Nisga'a Village entitlement under subsection (7)(a),
 - (a) the registrar must
 - (i) register the particular Nisga'a Village as the holder of the Nisga'a Village entitlement,
 - (ii) cancel the registration of any mortgage registered against the Nisga'a Village entitlement,
 - (iii) cancel the relevant notice of proposed taking filed under subsection (3)(a) by endorsing a suitable notation on that notice, and
 - (iv) cancel the relevant notation of proposed taking endorsed in the register under subsection (4)(a), and
 - (b) the Nisga'a Village entitlement vests in the particular Nisga'a Village, free and clear of any mortgage.

7. [Repealed by NLGSR 2016/02, s. 31(1)(a)]

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8. [Repealed by NLGSR 2016/02, s. 31(1)(a)]**Loans and defaults**

- 9. (1)** In accordance with this section, a particular Nisga'a Village may take a Nisga'a Village entitlement
- (a) if
 - (i) before the effective date, the registered holder of the Nisga'a Village entitlement obtained a loan, the proceeds of which were used in whole or in part to make improvements to land that is subject to the Nisga'a Village entitlement,
 - (ii) the Nisga'a Village was, is or becomes obligated to make any payment in respect of that loan because of a default in repayment of the loan by the registered holder,
 - (iii) the Nisga'a Village entitlement is not subject to a registered mortgage, and
 - (iv) the registered holder has not paid to the Nisga'a Village the amount of the Nisga'a Village's obligation referred to in subparagraph (ii), or
 - (b) if
 - (i) before the effective date, the Indian band to which the Nisga'a Village is a successor under paragraph 11 of the Indian Act Transition Chapter of the Nisga'a Treaty obtained a loan the proceeds of which were used in whole or in part to make improvements to land that is subject to the Nisga'a Village entitlement,
 - (ii) under an agreement or otherwise at law or in equity, the registered holder of the Nisga'a Village entitlement failed to make any payment that was due and owing to that Indian band or fails to make any payment that is due and owing to the Nisga'a Village in relation to that land or to repayment of that loan,
 - (iii) the Nisga'a Village entitlement is not subject to a registered mortgage, and
 - (iv) the registered holder did not pay to the Indian band and has not paid to the Nisga'a Village the amount of the registered holder's obligation referred to in subparagraph (ii).

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- (2) If a Nisga'a Village proposes to take a Nisga'a Village entitlement under this section, the Nisga'a Village must
- (a) file in the Nisga'a land title office a notice of the proposed taking in the prescribed form, and
 - (b) serve on the registered holder a copy of the notice filed under paragraph (a) and a written demand that the registered holder pay to the Nisga'a Village the amount of the obligation referred to in subsection (1)(a)(iv) or (1)(b)(iv).
- (3) On the filing under subsection (2)(a) of a notice of the proposed taking of a Nisga'a Village entitlement, the registrar
- (a) must endorse in the register of the Nisga'a land title office a notation of the proposed taking, and
 - (b) while the notice remains uncanceled, must not accept for filing or registration another instrument affecting the Nisga'a Village entitlement, except under this section.
- (4) If within 60 days after a Nisga'a Village serves a written demand for payment under subsection (2)(b) the registered holder does not pay to the Nisga'a Village the amount demanded, the Nisga'a Village may serve on the registered holder a written demand that the registered holder
- (a) enter into an agreement with the Nisga'a Village, in a form acceptable to the Nisga'a Village, to pay to the Nisga'a Village an amount up to the amount demanded under subsection (2)(b), in such instalments, over such time and with such interest as the Nisga'a Village reasonably requires, and
 - (b) grant to the Nisga'a Village a mortgage of the Nisga'a Village entitlement acceptable to the Nisga'a Village as security for the payments demanded under paragraph (a).
- (5) While a notice of the proposed taking of a Nisga'a Village entitlement is filed under subsection (2)(a) and remains uncanceled,
- (a) if the Nisga'a Village serves a written demand on the registered holder under subsection (4) and within 60 days after the service of that written demand the registered holder fails to enter into an agreement with the Nisga'a Village or grant a mortgage of the Nisga'a Village entitlement to the Nisga'a Village in accordance with the written demand, the Nisga'a Village may issue in the prescribed form a notice of transmission of the Nisga'a Village entitlement,
 - (b) if the registered holder

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- (i) pays to the Nisga'a Village the amount demanded by the Nisga'a Village under subsection (2)(b), or
 - (ii) enters into an agreement with the Nisga'a Village and grants a mortgage of the Nisga'a Village entitlement to the Nisga'a Village in accordance with a written demand made by the Nisga'a Village under subsection (4),
- the Nisga'a Village must issue in the prescribed form a notice of abandonment of the proposed taking, and
- (c) if the Nisga'a Village elects not to proceed with the proposed taking, the Nisga'a Village may issue in the prescribed form a notice of abandonment of the proposed taking.
- (6) If a Nisga'a Village issues a notice of transmission under subsection (5)(a) or a notice of abandonment of a proposed taking under subsection (5)(b) or (c), the Nisga'a Village must
- (a) file the notice in the Nisga'a land title office, and
 - (b) serve a copy of the notice on the registered holder of the Nisga'a Village entitlement.
- (7) If within one year after a Nisga'a Village files a notice of the proposed taking of a Nisga'a Village entitlement under subsection (2)(a) the Nisga'a Village does not file under subsection (6) a notice of transmission of the Nisga'a Village entitlement or a notice of abandonment of the proposed taking, the notice of the proposed taking expires.
- (8) If
- (a) a Nisga'a Village files in the Nisga'a land title office a notice of abandonment of the proposed taking of a Nisga'a Village entitlement under subsection (6), or
 - (b) a notice of the proposed taking of a Nisga'a Village entitlement expires under subsection (7),
- the registrar must
- (c) cancel the notice of the proposed taking of the Nisga'a Village entitlement filed under subsection 2(a) by endorsing a suitable notation on the notice, and
 - (d) cancel the notation of the proposed taking endorsed in the register under subsection (3)(a).

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- (9) If a Nisga'a Village files in the Nisga'a land title office a notice of transmission of a Nisga'a Village entitlement under subsection (6),
- (a) the Nisga'a Village entitlement vests in the Nisga'a Village, clear of all rights or interests of the former registered holder or any person claiming under the former registered holder, and
 - (b) the registrar must
 - (i) register the Nisga'a Village as the holder of the Nisga'a Village entitlement,
 - (ii) cancel the notice of the proposed taking of the Nisga'a Village entitlement filed under subsection 2(a) by endorsing a suitable notation on the notice, and
 - (iii) cancel the notation of the proposed taking endorsed in the register under subsection (3)(a).

Mistake or misnomer

10. If in the opinion of the registrar a Nisga'a Village entitlement was granted to or in the name of the wrong person, through mistake, or contains any clerical error or misnomer or wrong description of any material fact, the executive may by order cancel the Nisga'a Village entitlement and grant a corrected Nisga'a Village entitlement in its place.

Fraud or error

11. The executive may by order cancel any Nisga'a Village entitlement that in the opinion of the registrar was granted through fraud or in error.

Instrument void

12. Any deed, lease, contract, instrument, document or agreement of any kind, whether written or oral, by which a person who holds a Nisga'a Village entitlement purports to permit a person other than an eligible recipient or the particular Nisga'a Village to occupy, use, reside on or otherwise exercise rights on the land that is subject to the Nisga'a Village entitlement, is void.

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Lease of land

13. If land in which a Nisga'a Village owns the estate in fee simple within its Nisga'a Village Lands is subject to a Nisga'a Village entitlement, the Nisga'a Village may, on application by the registered holder of the Nisga'a Village entitlement, lease the land for the benefit of the registered holder.

Protection from charge

14. A Nisga'a Village entitlement is not subject to charge, pledge, mortgage, attachment, levy, seizure, distress or execution in favour or at the instance of any person other than an eligible recipient or the particular Nisga'a Village.

Exchange for Nisga'a Nation entitlement

15. If land in which a Nisga'a Village owns the estate in fee simple within its Nisga'a Village Lands is subject to a Nisga'a Village entitlement, the registered holder of the Nisga'a Village entitlement may apply to the Nisga'a Village to discharge the Nisga'a Village entitlement in exchange for a grant to the registered holder by the Nisga'a Village of a Nisga'a Nation entitlement for the same land under the *Nisga'a Nation Entitlement Act*.

Review of administrative decisions

16. A person who is affected by
- (a) a decision by the registrar as to the approval and registration of a grant, transfer, disposition or distribution of a Nisga'a Village entitlement under section 2, 3, or 4,
 - (b) a decision by the director to invite bids for a Nisga'a Village entitlement under section 6,
 - (c) **[Repealed by NLGSR 2016/02, s. 31(1)(a)]**
 - (d) a decision by a Nisga'a Village to take all or part of a Nisga'a Village entitlement under section 9, or
 - (e) an order made by the executive under section 10 or 11

may request a review of that decision, determination or order under the *Nisga'a Administrative Decisions Review Act*.

Regulations

17. The executive may make regulations it considers necessary or advisable for carrying out the purposes of this Act.

Service

18. (1) If under this Act a notice or other document is required to be served, a copy of the notice or other document may be served
- (a) personally, or
 - (b) by registered mail to the person's last known address.
- (2) A notice or other document is deemed to have been served under this Act
- (a) on the date of service, if the notice or other document is personally served, or
 - (b) 14 days after the date on which it is mailed, if the notice or other document is served by registered mail.

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LEGISLATIVE HISTORY

Nisga'a Village Entitlement Act, NLGSR 2000/13, in force May 11, 2000

Amendments

Section	Amendment	In Force
1	amended [2001/02, s. 3] amended [2005/04, s. 3(1)]	May 11, 2000 [2001/02, s. 8] March 31, 2005
3	amended [2005/04, s. 3(2)]	March 31, 2005
5	repealed and replaced [2005/04, s. 1]	March 31, 2005
6	repealed and replaced [2005/04, s. 1]	March 31, 2005
7	repealed and replaced [2005/04, s. 1] repealed [2016/02, s. 31(1)(a)]	March 31, 2005 June 1, 2016 [2016/03]
8	repealed and replaced [2005/04, s. 1] repealed [2016/02, s. 31(1)(a)]	March 31, 2005 June 1, 2016 [2016/03]
9	repealed and replaced [2003/14, s. 2(1)]	October 9, 2003
16	amended [2003/14, s. 2(2)] amended [2005/04, s. 2] (c) repealed [2016/02, s. 31(1)(a)] (d) amended [2016/02, s. 31(1)(b)]	October 9, 2003 March 31, 2005 June 1, 2016 [2016/03] June 1, 2016 [2016/03]
18	added [2003/14, s. 2(3)]	October 9, 2003

Amending Acts:

NLGSR 2001/02	<i>Nisga'a Statute Amendment Act #2</i>
NLGSR 2003/14	<i>Nisga'a Statute Amendment Act #11</i>
NLGSR 2005/04	<i>Nisga'a Village Entitlement and Nisga'a Nation Entitlement Amendment Act, 2005</i>
NLGSR 2016/02	<i>Nisga'a Expropriation Act</i> [In force June 1, 2016; NLGSR 2016/03]

Regulations:

NLGSR 2001/03	<i>Nisga'a Village Entitlement Regulation</i>
NLGSR 2005/01	<i>Nisga'a Village Entitlement Regulation Amendment Regulation, 2004</i>
NLGSR 2005/05	<i>Nisga'a Village Entitlement Regulation Amendment Regulation, 2005</i>