
Land Title Act Part 23.1 (ss. 365.1 to 365.3)—Execution of Instruments by or on behalf of First Nations

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I. OVERVIEW OF PART 23.1 [§26.1]

Part 23.1 of the *Land Title Act* and s. 44 of the *Property Law Act*, R.S.B.C. 1996, c. 377 establish the authority of First Nations to acquire, hold, and dispose of land in British Columbia and to have their ownership of land and interests in land registered in the land title office in their First Nation name.

Section 44 of the *Property Law Act* declares that a First Nation has the power and capacity of a natural person to acquire and dispose of land in British Columbia, including in joint tenancy.

Part 23.1 of the *Land Title Act* establishes:

- (1) administrative requirements for First Nations to be registered in the land title office in the name of the First Nation as owners of land and interests in land; and
- (2) the authority of the registrar to rely and act on applications that have been executed and witnessed in accordance with Part 23.1.

II. LEGISLATION AND COMMENTARY [§26.2]

365.1 Definition [§26.3]

365.1 In this Part, “**First Nation**” means the following:

- (a) the Nisga’a Nation;
- (b) a Nisga’a Village;
- (c) a treaty first nation;
- (d) a band as defined in the *Indian Act* (Canada);
- (e) a successor to a band as defined in the *Indian Act* (Canada) that, under an Act of Canada, is established as a legal entity;
- (f) any other body of Indians that, under an Act of Canada, is established as a legal entity.

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365.2 Execution of instrument by or on behalf of First Nation [§26.4]

365.2 (1) In this section, “**officer**” has the same meaning as in Part 5.

(2) An instrument executed by or on behalf of a First Nation is conclusively deemed to be properly executed if

- (a) the execution of the instrument by an authorized signatory of the First Nation is witnessed by an officer who is not a party to the instrument, and
- (b) the execution is proved under section 44 as if the First Nation were a corporation.

(3) An instrument executed and proved in compliance with subsection (2) constitutes conclusive evidence to the registrar that the requirements of the laws of the First Nation relating to the execution of the instrument and the transaction or dealing contemplated by it have been fulfilled.

(4) If an instrument executed by or on behalf of a First Nation is presented for registration or filing under this Act, the registrar need not act on, inquire into or give effect to the laws of the First Nation or make any inquiry into the capacity of the First Nation or make any other inquiry into whether or not

- (a) any law of the First Nation is in force,
- (b) the transaction or dealing contemplated by the instrument was duly authorized in accordance with the laws of the First Nation,
- (c) all rules and procedures established by the First Nation respecting the disposition of an estate or interest in land have been complied with, or
- (d) the First Nation subsists as a legal entity.

(5) In addition to the limitations of liability established under sections 294.6 and 303 of this Act, none of the following are, under any circumstances, liable for compensation for loss, damage or deprivation occasioned by an ultra vires or unlawful act of a First Nation:

- (a) the assurance fund under Part 19.1 of this Act;
- (b) the assurance fund under Part 20 of this Act;
- (c) the Land Title and Survey Authority;
- (d) the minister.

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PRACTICE

Registrar Does Not Make Further Inquiry Regarding the Execution by a First Nation

Pursuant to the authority of s. 365.2, the registrar does not make further inquiries regarding the execution by a First Nation.

365.3 First Nation powers assumed [§26.5]

365.3 (1) For the purpose of this Act, a First Nation is deemed to have the power and capacity of a natural person of full capacity in acquiring and disposing of land despite a stipulation, restriction or qualification expressed or imposed in any other Act or law, or in any other document.

(2) Subsection (1) does not relieve a person who under an Act or law is responsible for or in control of a First Nation from liability for acts of the First Nation that, despite subsection (1), are beyond the powers of the First Nation.

(3) If a First Nation holds land in a fiduciary capacity, subsection (1) is subject to section 180 and does not

- (a) extend the powers of the First Nation in respect of that land, or

- (b) relieve the First Nation or a person who by statute or law is responsible for or in control of the First Nation from liability to the beneficiaries for an act of the First Nation that is beyond its powers, or is contrary to the trusts under which the First Nation holds the land.

(4) Subsection (5) applies despite

- (a) any other Act or law, or
- (b) any other document.

(5) An instrument executed by or on behalf of a First Nation is, in favour of all persons dealing in good faith with the First Nation, conclusively deemed to be properly executed and the instrument takes effect accordingly if

- (a) the instrument is executed for the First Nation by an individual whose signature is represented in the instrument as the signature of an authorized signatory of the First Nation, and
- (b) the execution of the instrument is witnessed or proved in accordance with Part 5.

(6) The registrar may accept the signature of an officer under Part 5 or an affidavit under section 49 as sufficient evidence that a First Nation existed at the time an instrument was executed by it, or the registrar may require further evidence of that fact.

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PRACTICE

First Nation Power to Acquire and Dispose of Land

Pursuant to the authority of s. 365.3, a First Nation is deemed to have the power of a natural person to acquire and dispose of land.

Proof of Existence

The registrar relies on the authority in s. 365.2 and s. 365.3 that a First Nation existed at the time an instrument was executed by it.

CROSS REFERENCES AND OTHER SOURCES OF INFORMATION

Property Law Act

See also s. 44, *Property Law Act*, which states a First Nation has the power and capacity of a natural person to acquire and dispose of land in British Columbia.