

SKOWKALE FIRST NATION  
MINIMUM REQUIREMENTS TO CREATE AND  
REGISTER INTERESTS LAW

AUGUST, 2021



**Approved: December 2021**  
**Decision Sheet # : 2021-2022-028**

**TABLE OF CONTENTS**

**PART 1 - PURPOSE..... 2**

**PART 2 - INTERPRETATION..... 2**

**PART 3 - APPLICATION..... 3**

**Law Applies to the Creation or Transfer of Interests and Sub-Interests in Allotments  
    and CP Property ..... 3**

**Exceptions ..... 3**

**PART 4 - REGISTRATION OF INSTRUMENTS..... 3**

**PART 5 – MINIMUM REQUIREMENTS FOR INTEREST CREATION, TRANSFER OR  
REGISTRATION..... 4**

**PART 6 –FORMS, FEES AND COPIES ..... 6**

**PART 7 – OFFENCES AND PENALTIES ..... 6**

**Administrative Remedies and Penalties ..... 6**

**Order for compliance ..... 7**

**Offenses..... 7**

**PART 8 - GENERAL PROVISIONS..... 7**

**Forms ..... 8**

**Regulations..... 8**

**PART 9 - COMMENCEMENT ..... 8**

## PREAMBLE

### WHEREAS:

Skowkale has traditional Laws and teachings including:

Éy kws hákw'elestset te s'í:wes te siyólexwálh,  
Xaxastexw te mekw'stam,  
Éwe chexw qelqelit te mekw'stam lóy kw'es li hokwex yexw lamexw kwú:t,  
S'ólh téméxw te íkw'élò xólhmet te mekw' stám ít kwelát

These cannot be exactly translated into English but they include the following concepts:

It is good to remember the teachings of our ancestors;

Respect all things;

Don't waste, ruin, destroy everything, only take what you need;

This is our land we have to take care of everything that belongs to us;

- A. Skowkale First Nation has an inherent right to self-government which emanates from our people, culture and land and which is recognized and affirmed by section 35 of the *Constitution Act, 1982*;
- B. Skowkale has taken over control and management of Skowkale Reserve lands and resources pursuant to the *Framework Agreement on First Nation Land Management* and has enacted the *Skowkale Land Code* effective May 1, 2014;
- C. Under section 3.3 of the *Skowkale Land Code*, Skowkale Council is authorized to pass various Laws including Laws relating to
  - (a) The purchase, acquisition or sale of lands in accordance with the *[First Nations Land Management Act [SC 1999 c 24]]* and this Land Code;
  - (b) the regulation, control, authorization and prohibition of access and occupation of Skowkale Reserve Lands;
  - (c) fees or charges to be paid to Skowkale for the granting or transfer of Interests or Licenses in Community Lands;
  - (d) mortgages, secured interests and priorities relating to Interests and Licenses; and
  - (e) creation, regulation, transfer and registration of Interests and Licences, including priority of registration;
- D. Under section 9.19 of the *Skowkale Land Code*, Member(s) that hold an allotment or CP in Skowkale Lands may grant, transfer, devise, or transfer or grant by way of a matrimonial real property agreement, a Leasehold, Life Estate, Easement, Permit, Easement or License in those lands by a written document registered in the Registry provided that:
  - (a) The Member or Members are the sole lawful possessor of the Allotment or CP or that any other Member with an interest in the Allotment or CP states in writing that they do not oppose the granting of the sub-Interest,
  - (b) There is a proper legal description of the lands, and if required, the lands have been surveyed and the survey Registered or recorded in the Registry,
  - (c) The Member received a letter from the Lands Governance Director or, if requires by Law or regulation, a Council Resolution, stating that the sub-Interest complies with this Land Code and all Skowkale, Land Use Plans, laws and bylaws, and

- (d) The Member states in writing that the terms of the document creating the sub-Interest will not violate any agreement with a Person who has, or will have, an interest in the lands affects, or a portion thereof, or the Member has obtained the written consent of the other interest holder or holders;
- E. Council is concerned about Members and CP-holders potentially being taken advantage of or not having full information before they grant leases and other interests to third parties; and
- F. Council deems it advisable, necessary and in the best interests of Skowkale and all residents and occupiers of Skowkale Reserve Lands to enact a Law to regulate minimum requirements regarding the creation and registration of sub-interests in allotments and CPs;

**NOW THEREFORE this Skowkale *Minimum Requirements to Create and Register Interests Law* is hereby enacted at a duly convened meeting as a Law of the Skowkale First Nation.**

#### **Part 1 - PURPOSE**

- 1.1 The purpose of this law is to protect CP-holders and interest-holders and set out minimum requirements regarding the creation, transfer and registration of Interests and Licenses in their lands.

#### **Part 2 - INTERPRETATION**

##### **Title**

- 2.1 This Law may be cited as the Skowkale *Minimum Requirements to Create and Register Interests Law*.

##### **Definitions**

- 2.2 (1) For the purposes of this Law, and unless they are otherwise defined in this Law, terms have the same definition as in the *Skowkale Land Code*.
- (2) For the purposes of this Law, the following definitions apply:

**“Fair Market Value”** means an amount equivalent to the amount that would have been paid for the interest or license if it had been sold on Skowkale Lands, with all of the rights, limits and restrictions that apply to interests and licenses and transactions on Skowkale Lands, by a willing seller to a willing buyer;

**“Land Code”** means the *Skowkale Land Code*; and

**“Transferee”** means any person or entity who is receiving an Interest, License, sub-interest or portion thereof relating to an Allotment or CP.

##### **Validity**

- 2.3 Nothing under this Law shall be rendered void or invalid by:
  - (a) an error or omission in a notice, form, permit or other document given or authorized under this Law; or
  - (b) a failure of the Skowkale, a Skowkale Official or a Skowkale employee to do something within the required time.

### **Part 3 - APPLICATION**

#### **Law Applies to the Creation or Transfer of Interests and Licenses in Allotments and CP Property**

- 3.1 Except as otherwise provided by this Law, a regulation, or any other Skowkale Law, this Law only applies to:
- (a) the creation, transfer or transacting with Interests or Licenses in relation to Allotment and CPs on Skowkale Lands; and
  - (b) any other interests, licenses, transactions or types of interests, licenses or transactions prescribed by Council.

#### **Exceptions**

- 3.2 This Law does not apply to:
- (a) the creation of a Life Estate;
  - (b) the leaving or devising of an Allotment, CP, Interest or License in a will;
  - (c) the gifting of an Allotment, CP, Interest or License from one Member to another Member where no non-Members or third parties are involved;
  - (d) any transaction of the type set out directly above in paragraph (a) or (b) that only involves Members provided that the Member creating, granting or transferring or transacting signs a waiver and indemnity in a form approved by the S.A.Y. Lands Office confirming that they do not wish an appraisal or independent legal advice and indemnifying Skowkale and S.A.Y. against any liability; or
  - (e) any other interests, licenses transactions or types of interests, licenses or transactions prescribed by Council

#### **Law cannot be avoided**

- 3.3 The Transferee and the Allotment/CP Holder may not avoid or contract out of this Law or a regulation made pursuant to this Law and any attempt by the Transferee and the Allotment/CP Holder to avoid or contract out of this Law or a regulation made pursuant to this Law is of no effect.

#### **Liability for not complying with this Law or a Tenancy Agreement**

- 3.4 If the Transferee does not comply with this Law, then:
- (a) the Interest or License created is not legally valid; and
  - (b) the non-complying Transferee must compensate the Allotment/CP Holder for any damage or loss that results.

### **Part 4- REGISTRATION OF INSTRUMENTS**

#### **Limit on Registration**

- 4.1 Except for the matters set out in subsection 3.2, none of the following shall be registered until the Lands Governance Director or Council have determined that the minimum requirements under this law have been met:
- (a) the creation, grant, transfer, sale, gifting or dealing with an Interest or License by a Member in or to their Allotment or CP; and
  - (b) any similar transaction prescribed by Council.

## **Part 5 – MINIMUM REQUIREMENTS FOR INTEREST CREATION, TRANSFER OR REGISTRATION**

- 5.1 The Lands Governance Director or Council must decide if the minimum requirements for interest creation are adequately met prior to issuing a letter or resolution under subsection 9.19(c) of the *Skowkale Land Code*.
- 5.2 The minimum requirements for creating and registering an Interest or License are:
- (a) An appraisal of fair market value;
  - (b) Written confirmation that the Allotment/CP Holder has received independent legal advice; and
  - (c) Written confirmation from the S.A.Y. Lands Office or a review for compliance with the *Skowkale Land Code*, Land Use Plan(s), and applicable Laws and bylaws.

### **Responsibilities of the Transferees**

- 5.3 In addition to the requirements set out in subsection 4.2, all Transferees must facilitate and pay in full to ensure the following minimum requirements:
- (a) An appraisal of fair market value; and
  - (b) Independent legal advice for the Allotment/CP Holder pertaining to the Sub-Interest Agreement.

### **Submitting Documentation**

- 5.4 Neither Skowkale, S.A.Y. nor any Council member, employee or contractor is responsible or liable for ensuring that anything submitted under this Law:
- (a) is valid or accurate;
  - (b) complies with the Land Code; or
  - (c) will be accepted for consideration to meet the minimum requirements under this Law.
- 5.5 For any documentation or instrument required under this Law or prescribed by Council by Regulation, the Transferee must provide to the S.A.Y. Lands Governance Office:
- (a) at least one (1) original copy; and
  - (b) further original copies if required by a law or application procedure.
- 5.6 Required documentation includes:
- (a) a copy of the appraisal of fair market value;
  - (b) written confirmation that Allotment/CP Holder received independent legal advice;
  - (c) written confirmation from an authorized representative of the S.A.Y. Lands Office that they have completed the review required subsection 5.2(c); and
  - (d) any other document or instrument prescribed by Council.

### **Application to be Submitted to S.A.Y.**

- 5.7 To apply to meet the minimum requirements under this Law, the Transferee must submit an application to the S.A.Y. Lands Governance Office including the following:
- (a) a completed application form as required by the S.A.Y. Lands Governance Office, or such other forms as Council as approved by regulation or Resolution;
  - (b) the required application fee, if any, or as prescribed by Council by regulation or Resolution;
  - (c) at least one (1) original copy, or further original copies if required by a law or application procedure, of the documents listed above in subsection 5.2; and

- (d) any other related surveys, documentation or supporting information required by Law or regulation, or as requested by S.A.Y.

5.8 The application to the S.A.Y. Lands Governance Office may be submitted in person, by mail or courier or, if permitted by S.A.Y., electronically, with any required confirmations or verifications.

#### **Notarization, Witnesses and Affidavits**

5.9 Subject to subsection (a), a document submitted as part of the application to meet the minimum requirements for interest creation shall not be approved unless it meets the requirements for that particular type of document to be either notarized or witnessed by at least one person who has attained 18 years of age and who is not a party to the document, but;

- (a) This subsection does not apply to:
  - (i) a Council Resolution;
  - (ii) a document under seal of a corporation; or
  - (iii) a document which has been approved by a Council Resolution.

#### **Affidavits for Individuals Unable to Sign**

5.10 A document submitted to the S.A.Y. Lands Governance Office for an application to meet the minimum requirements for interest creation that is not executed by means of a signature in writing shall not be approved unless it is accompanied by an affidavit attesting:

- (a) that the contents and effect of the document were sufficiently made known to the person executing the document; and
- (b) that the person named in the document executed the document and appeared fully able to understand its content and effect, and voluntarily executed the document or adopted the execution of it made on his or her behalf in the manner shown on the document.

5.11 An affidavit referred to in subsection 5.10 shall only be executed in the presence of a person who is:

- (a) authorized to receive a solemn declaration under section 41 of the *Canada Evidence Act*;
- (b) a commissioner for the taking of oaths under section 108 of the *Indian Act*; or
- (c) a commissioner for the taking of oaths authorized in accordance with the Law of the province in which the affidavit was executed.

5.12 A document submitted for registration that is executed by a guardian *ad litem* or an agent under a power of attorney shall not be approved unless:

- (a) the guardian or agent has executed the document on behalf of the principal by signing his or her own name and indicating the principal on the document; and
- (b) the document is accompanied by
  - (i) the original appointment of the guardian or the original power of attorney, as the case may be; or
  - (ii) a copy of the original appointment of the guardian approved by the appropriate court or a copy of the original power of attorney, as the case may be.

### **Decision of Whether to Approve**

- 5.13 The Lands Governance Director or Council shall not find that the minimum requirements for interest creation are adequately met if:
- (a) the application is incomplete or fails to meet the requirements of this Law;
  - (b) there is evidence of potential fraud, abuse, coercion or a violation of Skowkale Law in relation to the application and Council requires more time for an investigation; or
  - (c) there is a valid court order, applicable to the interest or license, that prevents the assessment of the application.
- 5.14 Subject to receiving a completed application and to compliance with this Part 5, on receipt of a complete application, including the fee, the Lands Governance Director or Council shall examine the application and either:
- (a) reject the application and inform the Transferee and the Allotment/CP Holder in writing of the reasons for the rejection and the steps or information or revisions required to remedy the defects; or
  - (b) find the minimum requirements for interest creation adequately met and factor this into their assessment under section 9.19(c) of the Skowkale Land Code.
- 5.15 A finding that the minimum requirements have been adequately met does not guarantee that the Member will receive a letter from the Lands Governance Director or, if required by Law or regulation, a Council Resolution, stating that the interest or license complies with the Skowkale Land Code and all Skowkale Laws, Land Use Plans and bylaws.

### **No Validity Without Approval**

- 5.16 No creation, grant, transfer, transaction, document or instrument relating to or purporting to deal with an interest or license in Skowkale Land that requires approval under this Law, is valid or of legal force and effect, unless approved by the Lands Governance Director or Council in accordance with this Law and the *Skowkale Land Code*.

### **Part 6 –FORMS, FEES AND COPIES**

- 6.1 Council may, by regulation, approve forms to be used and set fees to be charged in relation to this Law.
- 6.2 Any fee for an application or approval under this Law shall be paid to the S.A.Y. Lands Governance Office, by cash, approved cheque or other method approved by Council.
- 6.3 Upon written request to the Skowkale Land Governance Office and payment of applicable fees, and provided there are no privacy or legal issues, the Skowkale Land Governance Office shall provide summaries, or copies or certified copies of a document relating to Skowkale Lands registered or recorded in the Registry.

### **Part 7 – OFFENCES AND PENALTIES**

#### **Administrative Remedies and Penalties**

- 7.1 If the Lands Governance Director determines that a Transferee has contravened this Law or the regulations, the Lands Governance Director may assess an administrative penalty payable to Skowkale or to the Allotment/CP Holder up to the maximum amount and in the manner prescribed.



7.2 Before the Lands Governance Director assesses an Administrative Penalty under this section, the Lands Governance Director must consider all of the following:

- (a) previous contraventions of a similar nature by the person;
- (b) the gravity and magnitude of the contravention;
- (c) whether the contravention was repeated or continuous;
- (d) whether the contravention was deliberate;
- (e) any economic benefit derived by the person from the contravention;
- (f) the person's cooperativeness and efforts to correct the contravention; and
- (g) any other prescribed consideration.

7.3 When assessing an Administrative Penalty under this section, the Lands Governance Director must give a notice of the determination to the person against whom the Administrative Penalty is assessed setting out all of the following:

- (a) the nature of the contravention;
- (b) the amount or nature of the Administrative Penalty;
- (c) the date by which the Administrative Penalty must be paid or the community service must be carried out.

#### **Order for compliance**

7.4 If the Council considers that a person is not complying, or has not complied, with a decision, determination, or administrative penalty of the Lands Governance Director under this Law or the regulations, the Council may apply to a Court for an order directing the person to comply.

#### **Offenses**

7.5 A person must not obstruct, interfere with or hinder the Lands Governance Director, the Council, or any authorized employee, officer, or agent in the carrying out of their duties and responsibilities under this Law.

7.6 Any person who violates any of the provisions of this Law or who suffers or permits any act or thing to be done in contravention or in violation of any of the provisions of this Law, or who neglects to do or refrains from doing any act or thing required by any of the provisions of this Law, is guilty of an offence under this Law.

7.7 Any person who is guilty of an offence under this Law is liable, on summary conviction, to a fine of not more than Ten Thousand Dollars (\$10,000.00) and to potentially losing or invalidating their interest or license.

7.8 A fine payable under this Law shall be remitted to the S.A.Y. Lands Governance Office by the Court, after reasonable Court costs have been deducted.

7.9 Council may also authorize by Resolution or regulation for the Lands Governance Director, a designated official or an Enforcement Officer to issue an order, a ticket or violation notice to impose a sanction or fine for contraventions of this Law.

### **Part 8- GENERAL PROVISIONS**

#### **No Liability for Skowkale**

8.1 No proceeding may be brought against Skowkale or S.A.Y. Lands Governance Office, including Council, Committee members, staff, contractors or Enforcement Officers, in

relation to decision-making or the discharge or purported discharge of responsibilities under this Law, either pursuant to an operational or policy decision, for anything done or omitted to be done in relation to the Law by any of the above acting in good faith.

**Severable**

8.2 All provisions of this Law are severable. If a Court determines that any provision of this Law is invalid or inapplicable, the provision shall be severed from the Law and the remainder of the Law shall remain in force with any necessary revisions.

**Forms**

8.3 Council may approve forms for the purposes of this Law.

8.4 Deviations from an approved form that do not affect its substance and are not intended to mislead do not invalidate the form used.

**Regulations**

8.5 Council may make regulations it considers necessary or advisable for purposes under this Law.

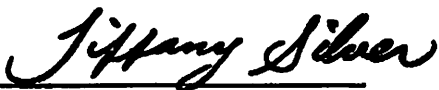
**Part 9 - COMMENCEMENT**

9.1 This Law comes into force on the date it is passed by Council Resolution.

THIS LAW IS HEREBY ENACTED by Council at a duly convened meeting held on the 14 day of December 2021.



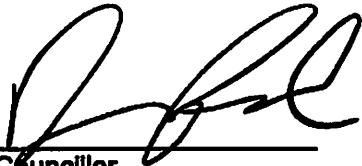
Chief Mark Point



Councillor



Councillor



Councillor



Councillor

**Schedule "A"**

**Minimum Requirements for Interest Creation Application Form**