

- (b) the applicant and Registrar are notified within 45 days of the date the acquisition is filed with the settlement administrator.

### **5.5 Settlement council authority**

A settlement council can establish additional rules governing the acquisition of interests in land in the settlement area, provided the rules are set out in a land management by-law that is consistent with this Policy.

## **PART 6 - LOSING AN INTEREST IN LAND**

### **6.1 Purpose and scope**

- (1) The purpose of this Part is to provide guidelines for the process of terminating a person's interests in land so that there is a fair balance of the rights of the individual and the rights of the community.
- (2) In this Part, unless the context requires a different interpretation,
  - (a) **interest** means a Metis title, provisional Metis title, or allotment;
  - (b) **settlement council** means the settlement council of the settlement area in which the affected land is located.

### **6.2 Cancelling interests in land**

- (1) The settlement council can require the sale of an interest in a parcel, or apply for the subdivision of a parcel and require the sale of interests in subdivided parcels, if the holder of the interest, in spite of warnings, fails to pay charges, levies or taxes that are owed to the settlement in relation to the ownership of the interest.
- (2) The settlement council cannot decide to require a subdivision or sale of an interest under this section without first giving the holder at least 60 days notice of when and where it will meet to consider the matter, and a chance to be heard.
- (3) If the settlement council decides that a subdivision or sale is necessary, the settlement council must notify the holder and the Registrar.
- (4) The settlement's right to have the land subdivided or sold is an interest that may be recorded in the Registry.
- (5) Once the settlement's notice of required subdivision or sale has been recorded, and until it has been cancelled, the interest holder cannot grant any rights in the parcel unless the grant is approved in writing by the

settlement council.

- (6) On receiving a notice under subsection (3), the interest holder has 60 days to appeal to the Appeal Tribunal and no appeal of the decision can be made after that.
- (7) The termination of a person's interest in land under subsection (1) does not affect the status of any registered or recorded interests acquired from that person.

### **6.3 Sale of interest**

- (1) An interest holder receiving a notice under 6.2(3) to sell an interest has 1 year to arrange the sale.
- (2) The interest can be sold to the settlement if the holder and the settlement council can agree to terms.
- (3) If, within that year, the interest holder pays all the charges, levies, taxes and related costs that are the basis for the settlement's notice the settlement's related right to require sale or subdivision ends and the settlement must request the cancellation of the corresponding recording.

### **6.4 Auction**

- (1) If a person has not sold the interest within 1 year of receiving notice under section 6.2(3), the settlement council can inform the Registrar and the Registrar must cancel the existing registration of the interest and register the interest in the name of the settlement.
- (2) The settlement council must auction the interest<sup>33</sup> as soon as reasonably possible after it has been registered in the name of the settlement.
- (3) The settlement council can retain the interest and refuse any bid unless:
  - (a) the bid is from a member eligible to acquire the interest, and
  - (b) the bid would allow the settlement to recover debts owed to it by the former interest holder in relation to that interest.
- (4) Any proceeds left from the auction of the interest, after the costs of the auction and the debts registered against the interest have been paid, must be paid to the person who has lost the interest.

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<sup>33</sup> Because of the limitations on who can hold a Metis title, provisional Metis title, or allotment, only members eligible to hold the interest would be able to bid at the auction.

## **PART 7 - DESCENT OF PROPERTY**

### **7.1 Purpose and scope**

- (1) The purpose of this Part is to provide basic rules governing the transfer of a member's interests in land when he or she dies.<sup>34</sup>
- (2) As far as possible this Part should be applied in a way that:
  - (a) recognizes the communal interests of the settlement, and
  - (b) enables settlement members to determine who will receive the benefit of their interests in land when they die.
- (3) This Part applies only to Metis settlement land and interests held by members.

### **7.2 Definitions**

In this Part

- **deceased's spouse** means an individual who at the time of the deceased's death
  - (a) was lawfully married to the deceased, or
  - (b) lived with the deceased as husband or wife and was treated as such by the community.
- **estate instructions** means written instructions, filed with the Registrar, saying what should be done with a member's interests in land when he or she dies;
- **extended family** means all living persons who
  - (a) are in the deceased's immediate family,
  - (b) are descended from someone in the deceased's immediate family, or
  - (c) are the deceased's brother, sister, father, mother or grandchild;

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<sup>34</sup> This Policy does not deal with what happens to a member's personal things when he or she dies. If the member leaves a will the things should be dealt with according to the will and the Wills Act. If the member dies without a will the things should be dealt with according to the Intestate Successions Act.

- **heirs list** means a list of persons named in estate instructions in order of priority for consideration to receive interests in land when the holder dies;
- **homestead** means the parcel of land where the house in which the Metis title holder lives is located;
- **immediate family** means the spouse and children of the deceased;
- **land trustee** means the person holding a deceased member's interests in land while the estate instructions are carried out;

### 7.3 Staying on the homestead

- (1) Nothing in this Part affects any rights provided by the *Dower Act* or settlement bylaw that would enable a deceased's spouse to continue living on the homestead when the Metis title holder dies.
- (2) For the purposes of the *Dower Act*, a deceased's spouse, whether a member or not, may acquire "an estate for the life of the spouse" in the homestead.
- (3) A non-member who holds an "estate for the life of the spouse" cannot grant any interest in the homestead without the approval of the settlement council.

### 7.4 Family Relief Act

Nothing in this part affects the rights of a deceased's family under the *Family Relief Act*.

### 7.5 Wills not effective

- (1) No provision of a will relating to a member's interest in Metis settlement land has any effect.
- (2) The *Wills Act*, the *Devolution of Real Property Act*, and the *Administration of Estates Act* do not apply to the interests of a member in Metis settlement land.

### 7.6 Estate instructions

- (1) The owner of an interest in land may at any time file with the Registrar
  - (a) estate instructions, or
  - (b) changes in estate instructionsfor that interest.

- (2) The Registrar must accept the instructions or changes for filing if they are in the form set out in Schedule 1, or any other form recommended by the Registrar and approved by the General Council.
- (3) Estate instructions may
  - (a) name a land trustee;
  - (b) provide an heirs list stating, in order of preference, who is to get the deceased's interest in the land and what to do with the interest if no one on the list takes it; or
  - (c) give directions to sell the interest and put the money from the sale in the deceased's estate.
- (4) The Registrar may accept estate instructions that are not made on the required form, if the instructions contain enough of the information set out in subsection (3) to provide direction.

### **7.7 Confidentiality**

All estate instructions received by the Registrar are confidential and may only be released at the written request of the interest holder, or on that person's death, at the written request of a member of the deceased's immediate family, the settlement council, the land trustee or the administrator of the deceased's estate.

### **7.8 Effect of instructions**

Any estate instruction providing for the transfer of part, but not all, of the deceased's interest in the land has no effect.

### **7.9 Appointing a land trustee**

- (1) Instructions to the Registrar to register an interest in land may name a member, or the settlement, as land trustee to hold the interest when the applicant dies and arrange for its transfer to the proper person.
- (2) When the registered holder of an interest dies, and there is a land trustee capable of holding the interest shown in the Registry, the interest passes to the land trustee.
- (3) If an interest holder dies without appointing a land trustee, or if when the holder dies the person appointed is unable or unwilling to serve, the settlement is the land trustee unless the settlement council appoints someone else.

**7.10 Trustee's duties**

- (1) The land trustee holds the deceased's interest only for the purpose of dealing with the land according to the estate instructions, settlement by-laws, and this Policy.
- (2) The land trustee must administer the interest and arrange for its transfer in a way that will, as far as possible, give effect to the wishes of the deceased as set out in the estate instructions.
- (3) The settlement council can replace land trustees who fail to carry out their duties.

**7.11 Registration of trustee**

On application, the register must be changed to show the land trustee as holder of the land interests of the deceased for the purpose of administering the estate.

**7.12 Referral to council**

- (1) The land trustee must apply to the settlement council for direction
  - (a) if there are no estate instructions;
  - (b) if for any reason the estate instructions are uncertain or impossible to carry out; or
  - (c) if the interest held by the trustee has not been transferred to a person on the heirs list by the 21st anniversary of the deceased's death.
- (2) On receiving an application for direction the settlement council can either decide who should receive the deceased's interest or refer the matter to the Appeal Tribunal.

**7.13 Guiding principles**

- (1) When an application has been made under section 7.12, any determination of the question, whether by the settlement council or the Appeal Tribunal, must be guided by the following principles in the stated order of priority:
  - (a) as far as possible, and to the extent that they can be clearly determined, the last wishes of the deceased should be met;<sup>35</sup>

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<sup>35</sup> As indicated in the opening words of this section, each subsection only comes into play if the matter is not resolved by the subsections ahead of it. So, for example, if it is clear that the deceased wanted the land to go to a particular underage child, the body making the decision would have to try to make arrangements so that could happen. The next subsection would not come into play if the deceased's wishes are clear.

- (b) the interest must be transferred to the deceased's spouse if it can be registered in his or her name, and if there is more land than can be registered in the spouse's name the spouse can specify the order in which the interests should be considered for registration;<sup>36</sup>
  - (c) if there is one or more living adults on the heirs list and they agree on what should be done with the interest, the agreement should be followed;
  - (d) if it is not possible to get an agreement from the persons on the heirs list but, in the opinion of the body making the decision, there is substantial agreement among adult members of the deceased's family as to what should be done with the interest, that agreement should be followed;
  - (e) if there are no adult members of the deceased's family, but the deceased leaves living children, the land interest should be given to the child who, in the opinion of the settlement council, is best able to use it for the purpose intended;
  - (f) if it is not possible within a reasonable time to decide who should receive the interest in accordance with the above principles, the land should be sold and the money made part of the deceased's estate.
- (2) In this section "deceased's family" means the adult members of the deceased's immediate family, if there are any, and otherwise the adult members of the deceased's extended family.

## **PART 8 - APPEALS AND REFERENCES**

### **8.1 Right to appeal**

- (1) Wherever this Policy requires the General Council or a settlement council to make a decision related to the granting, transfer, or termination of interests in land in the settlement area, any person affected by the decision, or lack of a decision, can appeal in writing to the Appeal Tribunal.

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<sup>36</sup> As indicated in the opening words of this section, each subsection is subject to the subsections ahead of it. So, for example, in this subsection the spouse must be guided by the last wishes of the deceased if those wishes can be clearly determined. Similarly, in the next subsection, if the deceased left clear written instructions that the eldest son was to get the interest, but died before the son was an adult, the family would have to respect those wishes when agreeing on what should be done with the land.

- (2) The appeal must be filed with the Appeal Tribunal, and a Notice of Appeal filed with the Registrar, within 30 days of the settlement council's decision, or, if the settlement council did not make a decision, within 30 days of the date by which it was required to have made the decision.
- (3) There is no right of appeal if the proper documents are not filed with the Appeal Tribunal and the Registrar within the specified time limit.<sup>37</sup>

## **8.2 References**

Any question or dispute as to the ownership or extent of an interest in land in a settlement area may be referred to the Appeal Tribunal for an advance ruling or for a decision.<sup>38</sup>

## **PART 9 - GENERAL**

### **9.1 Informing the Registrar**

When a settlement council makes a bylaw, or the General Council makes a Policy, affecting registerable interests in land they must inform the Registrar as soon as possible.

### **9.2 Previous Policy rescinded**

This Policy rescinds and replaces all previous General Council Land Policies.

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<sup>37</sup> Under section 202 of the Act, the Appeal Tribunal may extend the time in special circumstances and this could allow it to make sure people with real problems are heard.

<sup>38</sup> Section 189 of the Act sets out the conditions under which a dispute or reference can be made to the Appeal Tribunal.



# ESTATE INSTRUCTIONS

state instructions of \_\_\_\_\_

for the land described in the land register as \_\_\_\_\_

I want \_\_\_\_\_ to be my Land Trustee for this land and if that's impossible, then I want, in order  
 \_\_\_\_\_ or \_\_\_\_\_ or \_\_\_\_\_.

**CROSS OUT ONE OF OPTION A OR OPTION B**

**OPTION A - TRANSFER MY INTEREST**

**Instructions to my Land Trustee:**

**Who should get the land**

My preference as to who should get my interests in this land is:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

[If you don't name anyone here, the council will have to decide according to the Policy who should get the land. You can name as many people as you want but if the land has not been transferred within 21 years the council will have to decide who gets it.]

**How to decide who gets it**

Offer the interest to the first person on the list when they are old enough to take it. Give them some time to become eligible to hold the interest and get it registered in their name. If for any reason they don't get it registered within a reasonable time, take their name off the list and start the process over with the next person on the list. Keep doing this until someone gets the interest.

**What to do if no one on the list can get it**

If no one in the list can take the interest then do one of the following: **[Circle only one]**

- sell this interest and treat the money as part of my estate;
- ask the settlement council to decide who should get it.

**What to do with money paid for using the land**

Make sure that any money paid for using the land before the land is transferred is accounted for, keep a fair amount for your expenses in taking care of the land and carrying out these instructions, and pay the rest to

[If you don't say who the money should go to it will go to the person getting the land when it is transferred.]

**OPTION B - SELL MY INTEREST**

**Instructions to my Land Trustee:**

As soon as you can, sell my interest for as much as you can get, keep enough to pay for your expenses, and treat the rest of the money as part of my estate.

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

Witness: \_\_\_\_\_

# MEMORANDUM OF ALLOTMENT

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MA#: \_\_\_\_\_

The settlement, as holder of the Metis title, grants you, \_\_\_\_\_, an allotment in the land legally described as

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## ON THE FOLLOWING TERMS:

### 1 Possession

- (1) You have the exclusive right to use and occupy the land for 10 years, starting \_\_\_\_\_ and ending \_\_\_\_\_, as long as you are farming, ranching, or operating a business on it.
- (2) If you are still operating your farm, ranch or business on the land at the end of the term, and have made permanent improvements to the land for that purpose, you can apply to renew this allotment or any extension of it for 5 more years and you will have priority over other applicants.

### 2 Limits on interest

This grant of an allotment does not give you any rights to non-renewable resources, timber, roadways or the beds and shores of bodies of water or waterways.

### 3 Conditions

- (1) The basic rules for keeping this allotment are:
  - (a) you must remain a member of the settlement;
  - (b) you can only use the land as a place where you farm, ranch or operate an approved business;
  - (c) you cannot build a permanent house on this land;
  - (d) you cannot do anything to the land that does long term damage to it or other land in the settlement area;
  - (e) if there is a settlement by-law putting levies, user fees or taxes on the land, improvements or interest, you must make the payments required by the by-law;
  - (f) you cannot give anyone else an interest in the land<sup>1</sup> without the settlement's written consent;
  - (g) you must obey settlement by-laws when making improvements on the land or operating a business.
- (2) If you break one of these basic rules the settlement can end this allotment 60 days after they have given you written notice saying why the allotment is being ended, and when it will end.
- (3) Your allotment ends on the date specified in the notice unless before then you file a Notice of Appeal with the Appeal Tribunal.

### 4 Community need

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<sup>1</sup> For example by leasing it or signing over part of your interest.

**MEMORANDUM OF ALLOTMENT**

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If the settlement has passed a by-law saying that part or all of this land is needed for some other purpose, this allotment can be ended as far as the needed part goes.

**5 Returning the land**

- (1) Within 60 days of the end of this allotment you must return the land to the settlement in no worse condition than you received it.
- (2) Any improvements on the land that are not removed after 60 days become the property of the settlement.
- (3) It is completely up to the settlement council to decide whether you should be paid compensation for the improvements you leave, and if it decides you should receive compensation it will decide how much by taking into account how much you paid for the improvements and how much you owe the settlement (including cleanup costs if there are any).

**6 Legal matters**

- (1) If we have a dispute about the terms of this allotment we agree to ask the Metis Settlements Appeal Tribunal to appoint an arbitrator to resolve the matter and we agree to be bound by the arbitrator's decision.
- (2) If there are any law suits because of what you do on this land, you, and not the settlement, will be responsible.
- (3) If you transfer or leave this allotment to someone else, their rights and duties are the same as yours.

**7 Special conditions**

This allotment is subject to the following special conditions.

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Signed \_\_\_\_\_, 19 \_\_ by

\_\_\_\_\_  
Applicant

\_\_\_\_\_  
Settlement

# MEMORANDUM OF PROVISIONAL METIS TITLE

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MPMT#: \_\_\_\_\_

The settlement, as holder of the Metis title, grants you, \_\_\_\_\_, provisional Metis title to the land legally described as \_\_\_\_\_.

## ON THE FOLLOWING TERMS:

### 1 Possession

- (1) You have the exclusive right to use and occupy the land for 5 years, starting \_\_\_\_\_ and ending \_\_\_\_\_, as long as you are making the improvements needed to get Metis title and are using the land for the purpose of \_\_\_\_\_.
- (2) If you have not received Metis title to the land at the end of the first 5 year term, but in the settlement's opinion you are productively using the land and have made satisfactory progress on improvements, you can renew this grant for one more 5 year term.

### 2 Limits on interest

This grant does not give you any rights to non-renewable resources, timber, roadways or the beds and shores of bodies of water or waterways.

### 3 Conditions

- (1) The basic rules for keeping this grant are:
  - (a) you must remain a resident member of the settlement;
  - (b) you can only use the land to build a house or operate a farm, ranch or an approved business;
  - (c) you cannot do anything to the land that does long term damage to it or other land in the settlement area;
  - (d) if there is a settlement by-law putting levies, user fees or taxes on the land, improvements or interest, you must make the payments required by the by-law;
  - (e) you cannot give anyone else an interest in the land<sup>1</sup> without the settlement's written consent.
  - (f) You must obey settlement by-laws when making improvements on the land or operating a business.
- (2) If you break one of these basic rules the settlement can end this allotment 60 days after they have given you written notice saying why the allotment is being ended, and when it will end.
- (3) Your provisional Metis title ends on the date specified in the notice unless before then you file a Notice of Appeal with the Appeal Tribunal.

### 4 Community need

If the settlement has passed a by-law saying that part or all of this land is needed for some other purpose, this grant can be ended as far as the needed part goes.

### 5 Returning the land

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<sup>1</sup> For example by leasing it or signing over part of your interest.

**MEMORANDUM OF PROVISIONAL METIS TITLE**

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- (1) Within 60 days of the end of this grant, unless you are waiting on a decision on an application for Metis title to this land, you must return the land to the settlement in no worse condition than you received it.
- (2) Any improvements on the land that are not removed after 60 days become the property of the settlement.
- (3) It is completely up to the settlement council to decide whether you should be paid compensation for the improvements you leave, and if it decides you should receive compensation it will decide how much by taking into account how much you paid for the improvements and how much you owe the settlement (including cleanup costs if there are any).

**6 Obtaining title**

- (1) While this grant is in effect you can claim the Metis title to the land if
  - (a) you have made the improvements required by by-law;
  - (b) you meet the land holding conditions set by by-law;
  - (c) you have paid all the user fees, levies and other charges on the land or required for the issuing of Metis title; and
  - (d) you can be registered as the holder of the Metis title.
- (2) In subsection (1) "by-law" means the settlement land use by-law in effect when this grant was given, or if the grant is renewed, in effect when the renewal was given.
- (3) The Metis title you get will be subject to the interests registered on it at the Metis Settlements Land Registry.

**7 Legal matters**

- (1) If we have a dispute about the terms of this grant we agree to ask the Metis Settlements Appeal Tribunal to appoint an arbitrator to resolve the matter and we agree to be bound by the arbitrator's decision.
- (2) If there are any law suits because of what you do on this land, you, and not the settlement, will be responsible.
- (3) If you transfer or leave this grant to someone else, their rights and duties are the same as yours.

**8 Special conditions**

This grant is subject to the following special conditions.

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Signed \_\_\_\_\_, 19\_\_ by

\_\_\_\_\_  
Applicant

\_\_\_\_\_  
Settlement