

**WOODLOT LICENCE TRANSFER,  
SUCCESSION  
and TAX PLANNING GUIDE**

Revised September 2022

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## Acknowledgments:

Some of the information contained in this Guide was taken by permission from:

- the Ministry of Agriculture Family Farm Business Succession Plan Guide: [“www.smartfarmbc.ca”](http://www.smartfarmbc.ca)
- the *Forest Act, Forest and Range Practices Act* and accompanying *Regulations*.
- the Ministry of Forests, (MOF) Forest Tenures Branch Website: <https://www2.gov.bc.ca/gov/content/industry/forestry/forest-tenures>

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The following Organizations may have more detailed information if required:

- BC Ministry of Agriculture
- BC MOF
- BC Ministry of Finance
- Farm Credit Canada
- Agriculture Alliance of New Brunswick
- Canadian Agriculture Human Resource Council
- Canada Revenue Agency
- Canada Department of Finance

The Guide was produced by **John McClary**, Forester; **Brett Squair**, Lawyer; **Mike Delves**, Tax Accountant; and **David Haley**, RPF; jointly who contributed their expertise in the parts related to their specific fields of practice.

**Note:** *The information contained in the Modules is subject to continual change, especially legislation, sometimes on a retroactive basis. Should the law or its interpretation change, the information contained in this Guide may be out of date. All websites were accessible as of November 2020.*

**Note:** *The WPDC will attempt to keep the on-line version of this document current.*

## Document Changes September 2022:

(List of revisions to align with the wording in the 2022 Ministry of Forests Disposition Guide)

- All references to MFLNRORD changed to MOF
- Change wording on Page 6 to list 4 types of Dispositions
- Add on Page 6 “Request for Approval of Intended Transfer” (RAIT) template to be used

- MOF clarified that marketing of fibre assessments do not apply to disposition of woodlot licences; the word “probably” from Page 6 was removed.
- Replace weblink under Forest Tenures Transfers on Page 8 with new link
- On Page 8 under Woodlot Licence Tenure Transfer Considerations: It is the Government’s duty to consult with First Nations
- Page 13 a fourth exemption was added.
- The **Note** on Page 19 was changed to: MOF advises that these assessments do not apply to Woodlot Licences

## EXECUTIVE SUMMARY

The Woodlot Product Development Council (WPDC) in 2019 identified a need for guidance amongst woodlot licensees regarding succession and tax planning related to retiring and the transfer of their woodlot tenure to another family member and/or sale to an independent 3<sup>rd</sup> party. As over 80% of the woodlot licensees are 50 years of age or older, the WPDC contracted a group of subject matter experts to produce this Woodlot Licence Transfer, Succession and Tax Planning Guide.

The Guide is comprised of five Modules:

- Module 1 Introduction and Overview of Succession and Tax Planning
- Module 2 Forestry Tenure Transfer Guidance
- Module 3 Guidance Reflecting Applicable Legislation
- Module 4 Taxation Guidance, and
- Module 5 Private (Schedule A) Land Guidance.

**Note:** *The Modules are presented as guidance only and are not intended as a “how to do it” manual.*

Each Module is designed to be an overall source of general information on the subject with references and weblinks that can be referred to for further information and guidance. The weblinks were active as of November 2020. A Checklist of Questions to ask Qualified Professionals is provided in Appendix 1.

Woodlot Licences are transferable with the approval of the Minister (with a few exceptions such as Woodlot Licences that were direct awarded under Section 47.3 of the *Forest Act* unless the disposition is made with the approval of the Lieutenant Governor in Council or as permitted by the regulations). A Notice of Disposition must be given to the Ministry of Forests, Lands, Natural Resource Operations and Rural Development (MOF). Dispositions can occur in three ways: the transfer of an agreement; a change of control; or an amalgamation of a corporation that holds an agreement. For a Woodlot Licence transfer request, the licensee may be asked for specific information to support an informal public interest test and the Woodlot Licence program goals. Woodlot Licences can only be transferred to a person or corporation that is eligible to hold that particular licence under certain conditions, such as Ministerial approval, all monies owing is paid, all contractual obligations are met, etc.

Several factors need to be considered when determining the disposition of Woodlot Licences. The first being what is a disposition (i.e. what will trigger the legislation requiring the MOF approval). This Guide will simplify the language of the legislation and provide direction for the holder of a Woodlot Licence on the steps they must take to complete a disposition. Some of the larger concerns that a holder of a Woodlot Licence should consider (e.g. continued liability) are also highlighted.

As with the transfer of any asset, the tax implications of transferring Woodlot Licences are a significant consideration. The application of tax is dependent on several factors. These include how the woodlot has been operated; structure of ownership; assets transferred such as the licence, land, timber inventory, operating assets and shares of corporations; and form of the transfer be it a sale to third party, family transition or as part of an estate on death. Taxes are levied by Canada Revenue Agency for Federal and British Columbia (B.C.) Provincial income tax and by the Ministry of Finance for B.C. logging tax. Awareness of the tax implications on transfer allows for informed decisions on how best to proceed with the transaction to minimize tax cost and be prepared for what must be paid.

Many Woodlot Licences contain Private (Schedule A) land. When considering a transfer of a Woodlot Licence that includes Private (Schedule A) land, there will be two general steps to the transfer process: dealing with the Private land component of the Woodlot Licence and dealing with the Crown (Schedule B) portion of the Woodlot Licence.

For Woodlot Licences that contain Private (Schedule A) land there are three options:

- remove existing Private (Schedule A) land from the Woodlot Licence,
- existing Private (Schedule A) land remains attached to the Crown (Schedule B) land and is either purchased or leased by the new woodlot licensee, or
- existing Private (Schedule A) land is removed or modified, and new Private (Schedule A) land is substituted.

**Note:** *Private land must have been held by the licensee or his/her family for at least the last ten (10) consecutive years if a removal is being pursued.*

While this Guide covers a range of topics associated with the transfer of a Woodlot Licence, for answer to specific questions the woodlot licensee should contact qualified professionals including the local MOF office to ask for advice to ensure their unique concerns are dealt with.

## Definitions:

**Amalgamation:** When a corporation holding an agreement is merged into another corporation, but the ownership of both corporations is the same.

**Bill 22:** Means Bill 22 – 2019 the *Forest Amendment Act, 2019*

**Commercial Woodlot:** A woodlot (Private or Crown) operated as a business with a reasonable expectation of profit.

**Crown (Schedule B) lands:** Land owned by the B.C. Crown and included in a Woodlot Licence tenure agreement.

**Disposition:** A transfer by any method (see Transfer below) such as a change of control resulting from the change in ownership of the corporation that holds the agreement.

**Estate Plan:** A comprehensive document dealing with all factors affecting a transfer of a person's estate assets.

**Holder:** The woodlot licensee whether a person, partnership, First Nation, or a corporation.

**Farming:** The focus of the business is planting, nurturing, and harvesting (trees for Woodlot Licences) according to a forestry management or similar resource plan.

**Logging Tax:** Fee charged by the B.C. government on the sale of the standing timber on Private land and the rights to cut timber when logging on the Crown Woodlot Licence.

**Marketing of fiber:** The acquisition and transfer of rights to harvest timber in British Columbia and the buying and selling, within British Columbia, of timber or wood residue. <sup>1</sup>

**Minister:** The Minister of Forests, Lands, Natural Resource Operations and Rural Development.

**Outstanding Liabilities:** Means those liabilities which accrued or are accruing on the date the transfer of the Woodlot Licence is completed. <sup>2</sup>

**Person:** Includes a corporation, a partnership and the personal or other legal representatives of a person. <sup>3</sup>

**Personal representative:** The person named in the deceased's will or someone who applies to manage the deceased's estate under the *Wills Estate and Succession Act*.

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<sup>1</sup> Section 53 (1) of the *Forest Act* RSBC 1996 c 157

<sup>2</sup> Section 54.6 of the *Forest Act* RSBC 1996 c 157

<sup>3</sup> Section 29 of the *Interpretation Act* 1996 c 238.



**Private (Schedule A) lands:** Land owned in “fee simple” and included in the Woodlot Licence tenure agreement.

**Related person:** In relation to a Corporation, means

- a) a person who controls the Corporation,
- b) a person who controls a holding Corporation whose subsidiary is the Corporation, or
- c) an affiliate of the corporation;<sup>4</sup>

**Recipient:** The potential receiver or purchaser of a transferred Woodlot Licence:

- a Canadian citizen or permanent resident of Canada who is 19 years or older,
- a First Nation, or
- a corporation, other than a society, that is controlled by a Canadian citizen or permanent resident of Canada who is 19 years or older.

**Succession Plan:** An ongoing process to ensure management and skills, processes, knowledge, ownership, and control of a business transition properly from one generation to the next.

**Transfer:** Any method of transfer and includes assign, give, sell, grant, charge, convey, bequeath, divide, lease, divest, release, and agree to any of these things.<sup>5</sup> *Note: The Forest Act refers to a Transfer as the “disposition”.*<sup>6</sup>

**Transferee:** An eligible individual, First Nation or Corporation to whom a Woodlot Licence may be transferred.

**Transferor:** Holder of a Woodlot Licence who seeks to transfer it to an eligible recipient.

**Woodlot Licence:** A Forest Tenure agreement where the B.C. government grants rights to the Woodlot Licensee to manage and harvest timber and other resources on Crown land to Corporations, First Nations, and individuals.

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<sup>4</sup> Section 53(1) of the *Forest Act* RSBC 1996 c 157

<sup>5</sup> Section 29 of the *Interpretation Act* 1996 c238

<sup>6</sup> Section 53 of the *Forest Act* RSBC 1996 c 157

# **MODULE 1: INTRODUCTION AND OVERVIEW**

## Introduction

The Woodlot Product Development Council (WPDC) represents and is accountable to about 850 Woodlot License Holders in British Columbia (B.C.). The WPDC mission is to benefit and promote the woodlot industry throughout B.C.

**Note:** For more information on WPDC see: <https://woodlot.bc.ca>

In 2018, the annual woodlot licensee survey identified a need for guidance amongst woodlot licensees regarding succession and tax planning related to retiring and the transfer of their woodlot tenure to another family member and/or sale to an independent third party. Succession planning benefits the woodlot community as over 80% of the woodlot licensees are 50 years or older, with many over 65 years old, and many have held their Woodlot Licences for more than 15 years. To this end, the WPDC contracted a group of forestry, legal and tax experts to produce this Guide.

The Guide is comprised of five Modules:

- Module 1 Introduction and Overview of Succession and Tax Planning
- Module 2 Forestry Tenure Transfer Guidance
- Module 3 Guidance Reflecting Applicable Legislation
- Module 4 Taxation Guidance
- Module 5 Private (Schedule A) Land Guidance

**Note:** The Modules are presented as guidance only and are not intended as a “how to do it” manual.

A list of Questions to ask Qualified Professionals is included in Appendix 1. These provide the licensee a starting point when asking their own independent knowledgeable sources for advice and guidance.

**Note:** The information contained in the Modules is subject to change, especially legislation, sometimes on a retroactive basis. Should the law or its interpretation change, the information contained in this Guide may be out of date. The WPDC will attempt to keep the on-line version of this document current.

## Woodlot Licence Transfer Overview

Woodlot Licences are forest tenure agreements. The B.C. government grants rights to woodlot licensees to manage and harvest Crown timber to Corporations, First Nations, and individuals. Each Woodlot Licence is a legally binding agreement that provides the contract holder with specific rights to manage and harvest timber over a specific period of time in exchange for meeting government objectives, including forest management obligations and the payment of fees including annual rent and stumpage. Woodlot Licences are replaceable, with a few exceptions, providing licensees with a long-term supply of timber, management authority,

sustainability, security of tenure, fulfilment of commitments to neighbours, etc., provided all obligations are met.

Woodlot Licences are transferable (with a few exceptions) and the process is explained in this and the following Modules.

For each individual Woodlot Licence transfer, there are many issues that a Woodlot Licence Holder must consider and deal with: Family and Business obligations, Tenure transfer process, existing and future Licence obligations, Private (Schedule ) land ownership, Taxation issues, Legislation requirements and ongoing financial and business management.

An important issue for all Woodlot Licence holders whether they are currently considering a transfer (or not) is Estate Planning.

**Note:** *This guide does not deal with Estate Planning. However, every woodlot licensee should consider the future management of their Woodlot Licence as part of their Estate Plan.*

### Succession Planning Overview

A succession plan is an ongoing process to ensure management and skills, processes, knowledge, ownership, and control transition properly from one generation to the next. The key is to develop a comprehensive plan that addresses the diverse needs of the business, person and/or family on an ongoing basis. Succession plans can be as unique and varied as the entity that creates them with the overriding objective being to minimize uncertainty.

A succession plan's primary function is to minimize uncertainty in the transition from the current to next generation for the Woodlot Licence or sale to a potential purchaser. The following Modules discuss this in detail. Failure to deal with succession planning (and Estate Planning) while you are alive can result in unnecessary consequences: taxation, interruption in management and hard feelings amongst family members, business partners, licence partners. Succession plans encourage identifying skills, processes, knowledge, and ownership options best suited to each circumstance. Succession plans can be as unique and varied as the family or business that create them. The best succession plans are those that are reviewed and refreshed on a regular basis.

### Transfer, Succession and Tax Planning Guide Overview Format and Contents

Each Module is designed to be an overall source of general information on the subject with references and links attached that can be referred to for further information and guidance. The WPDC's intent is to update the on-line Guide when new information becomes available such as new Legislation. This Woodlot Transfer Guide is mainly for existing Woodlot Licensees considering a transfer of their Woodlot Licence but could be used as general planning information for prospective Woodlot Licence buyers.

Various Woodlot Licence tenure holder's scenarios are: One or more licensees names on the licence; Husband and Spouse named on the licence, registered BC Partnership or tenants in common; Limited BC company (see division 2.1 of the *Forest Act* for Corporations change in control and agreements); and held by a First Nation.

The following four Modules will present guidance for any woodlot licensee considering transferring their Woodlot Licence including forestry tenure, legislation, tax planning and Private land considerations.

# **MODULE 2: FOREST TENURE TRANSFER GUIDANCE**

## Introduction

This Module deals with the specific Forest Tenure portions of a Woodlot Licence transfer. For more detail on the history of Woodlot Forest Tenures in B.C., refer to:

<https://www2.gov.bc.ca/gov/content/industry/forestry/forest-tenures/timber-harvesting-rights/woodlot-licence>

## Woodlot Licence Tenure Transfer and Dispositions

Woodlot licensees can request a transfer of their Woodlot Licences to another party, with a Notice of Disposition given to the Ministry of Forests, Lands, Natural Resource Operations and Rural Development (MOF). All transfer requests undergo review to assess the impact on the public interest, Indigenous communities, and the marketing of fibre in B.C. in order to obtain the Minister's permission. See *Forest Act* Section 54 for more detail:

[https://www.bclaws.ca/civix/document/id/complete/statreg/96157\\_04#section54](https://www.bclaws.ca/civix/document/id/complete/statreg/96157_04#section54)

## Transfer/Dispose Definition

The Guide refers to the “transfer” of a Woodlot Licence. The *Forest Act* refers to a transfer as a “disposition”.<sup>7</sup> To avoid confusion, the term transfer will be used here. A transfer includes any method of transfer and includes assign, give, sell, grant, charge, convey, bequeath, divide, lease, divest, release and agree to any of these things”.<sup>8</sup> Furthermore, the transfer includes any interest (i.e. any portion) of the Woodlot Licence. Thus, the term transfer is broad. It can vary from a Holder gifting (whether in your Will or before you pass-away) a share of their Woodlot Licence to their spouse or child to selling the entire Woodlot licence.

The MOF recommends a “Request for Approval of Intended Transfer” (RAIT) template to be used. This template can be found on the MOF Timber Tenures Transfers and Dispositions webpage.

Transfers (Dispositions) can occur in four ways:

1. The transfer of the woodlot licence from the current holder to a new holder;
2. The disposition of an interest in a woodlot licence resulting from a change in a partnership holding a woodlot licence;
3. A change of control of a company that holds a woodlot licence; or
4. The amalgamation of as company holding a woodlot licence.

To “dispose” of an agreement means to transfer by any method. A change of control results from the change in ownership of the corporation that holds the agreement. An amalgamation is when a corporation holding an agreement is merged into another corporation, but the ownership of both corporations is the same.

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<sup>7</sup> Forest Act

<sup>8</sup> Section 29 of the *Interpretation Act* RSBC 1996 c. 238 4  
Forest Act – s. 53

A disposition of a Forest Licence, Tree Farm Licence or Pulpwood Agreement requires prior written approval to proceed and must undergo a market concentration and public interest test. This test does not apply to Woodlot Licence transfers (according to the MOF). However, a Woodlot Licensee may be asked for more specific information to support an informal public interest test and the Woodlot Licence program goals.

Woodlot Licences, First Nations Licences, or Community Forest Agreements, can only be transferred to a person, corporation or First Nation that is eligible to hold that type of licence. See Module 3 Legislation for more detail.

Transfer of a Woodlot Licence is permitted under the following conditions:

- The Woodlot Licence holder may dispose of the agreement to another person if the Minister, in writing, approves the disposition.
- All money that is due and payable to the government in respect of the Woodlot Licence has been paid or is the subject of an arrangement for payment approved by the Minister of Finance.
- The intended recipient is a company, person, or First Nation that, under section 44 of the *Forest Act*, is eligible to enter into a Woodlot Licence.
- The Private land, if any, in the Woodlot Licence area remains subject to the Woodlot Licence after the transfer concludes for a minimum of 10 consecutive years after the date of the transfer approval. This only pertains if the holder does NOT remove private land from the tenure before sale.

**Note:** *In unique situations, such as additional Private land added after award date of the Woodlot Licence, there may be some flexibility. Contact the MOF Delegated Decision Maker for clarification.*

### Woodlot Licence Tenure Transfer Procedures

Transfer of ownership of a Woodlot Licence can be complicated and somewhat confusing depending on the licensee's experience with similar processes. Using the services of a qualified forestry professional experienced in these matters should be considered if in doubt about how to proceed. A Checklist with questions to ask forest and other professionals is included in Appendix 1.

The following weblinks give an overview of some sources to consult for assistance and guidance in Woodlot Licence Tenure issues for a transfer:

#### **Transfer of Woodlot Licence Obligations:**

[https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/forestry/timber-tenures/transfers/notice\\_intended\\_transfer\\_woodlot\\_licence.pdf](https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/forestry/timber-tenures/transfers/notice_intended_transfer_woodlot_licence.pdf) .

#### **Removal of Private land:**

[https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/forestry/timber-tenures/woodlots/private\\_land\\_removal\\_policy\\_finaldraft\\_april\\_12\\_2018\\_ds.pdf](https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/forestry/timber-tenures/woodlots/private_land_removal_policy_finaldraft_april_12_2018_ds.pdf) --



**Forest Tenure transfers:**

[https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/forestry/timber-tenures/transfers/wltransferguide\\_final\\_2022-05.pdf](https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/forestry/timber-tenures/transfers/wltransferguide_final_2022-05.pdf)

**Woodlot consolidation procedures:**

[https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/forestry/timber-tenures/woodlots/woodlot\\_consolidation\\_procedures.pdf](https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/forestry/timber-tenures/woodlots/woodlot_consolidation_procedures.pdf)

For more information on Requests for Transfer Approval, refer to Forest Tenures Branch website:

<https://www2.gov.bc.ca/gov/content/industry/forestry/forest-tenures>

### Woodlot Licence Tenure Transfer Considerations

When transferring a Woodlot Licence, the existing licensee (Holder) should consider advising the new licensee (Recipient) of any existing or future Forest Tenure obligations. These may include but are not limited to: road maintenance, silviculture, free growing, credits to stumpage, First Nation's agreements, road access agreements, Road Permits, bridges, right of ways, and other commitments in the Management Plan or any clauses in Schedule C of the Woodlot Licence document that the new licensee will assume as these could affect the potential for a successful transfer. It is the Government's duty to consult with First Nations. See Section 56.6 of the *Forest Act* for more explanation.

**RESULTS data entry is complete and up-to date:**

<https://www2.gov.bc.ca/gov/content/industry/forestry/managing-our-forest-resources/silviculture/silviculture-reporting-results>

### Summary

Woodlot licensees can request a transfer their Woodlot Licences to another party, with a Notice of Disposition given to the MOF. A transfer includes any method of transfer and includes assign, give, sell, grant, charge, convey, bequeath, divide, lease, divest, release and agree to any of these things.

Transfers (Dispositions) can occur in three ways: the transfer of an agreement; a change of control (refer to Module 3 for more detail); or an amalgamation of a corporation that holds an agreement. All transfer requests undergo a review in to obtain the Minister's permission. A Woodlot Licensee seeking to transfer a Woodlot Licence may be asked for specific information to support an informal public interest test and the Woodlot Licence program goals. Woodlot Licences can only be transferred to a person, corporation or First Nation that is eligible to hold that type of licence.

When transferring a Woodlot Licence, the existing licensee (Holder) should consider advising the new licensee (Recipient) of any existing or future Forest Tenure obligations. Transfer of ownership of a Woodlot Licence tenure can be complicated and somewhat confusing depending on the licensee's experience.

Using the services of a qualified forestry professional experienced in these matters should be considered if in doubt about how to proceed. A Checklist with questions to ask forest and other professionals is included in Appendix 1.

**MODULE 3:  
GUIDANCE REFLECTING  
APPLICABLE LEGISLATION**

## Introduction

Every Holder (woodlot licensee), whether considering succession planning or deciding to sell their Woodlot Licence will need to consider the legislation and regulations which pertain to a transfer. The *Forest Act* deals with the transfer of several different types of licences. In this Guide we are limiting discussions to dealing with the transfer of a Woodlot Licence (excluding those Woodlot Licences granted in accordance with section 47.3 of the *Forest Act*). The goals of this Module are: to provide an interpretation of the *Forest Act*; delineate the changes made by Bill 22; and to highlight some of the more important issues that a Holder will encounter before/during negotiations to transfer a Woodlot Licence.

Every Holder will have different factors which can impact the way they transfer their Woodlot Licence. In addition, any information herein is based on the current statutes and regulations. This legislation is subject to continual change, and sometimes on a retroactive basis. Should the law or its interpretation change, the information provided herein may be outdated. For that reason, it is strongly recommended to consult your own legal advisor, accountant, and forestry team to determine a plan that is best for you.

## Terms in the *Forest Act*

Legislation frequently defines terms differently than the general public's consensus of a term. For example, the term "person" is generally considered by the public as a human being. In most British Columbia legislation, including the *Forest Act*, the term "person" includes a corporation, a partnership and the personal or other legal representatives of a person. For that reason, it is important to ensure you have a basic understanding of certain terms which can have an impact on the transfer of a Woodlot Licence. Refer to the Definitions section at the beginning of this Guide and the explanation below.

## Transfer/Dispose Definition

The Guide refers to the "transfer" of a Woodlot Licence. The *Forest Act* refers to a transfer as the "disposition". To avoid confusion, the term transfer will be used. A transfer means to "transfer by any method and includes assign, give, sell, grant, charge, convey, bequeath, divide, lease, divest, release and agree to any of those things". Furthermore, the transfer includes any interest (i.e. any portion) of the Woodlot Licence. This means that the term transfer is broad. It can vary from a Holder gifting (whether in your Will or before you die) a share of their Woodlot Licence to their spouse or child, to selling the entire Woodlot Licence. Bequeathing a Woodlot Licence can be done in several ways. For example, if a Woodlot Licence is owned through a Corporation and the licensee bequeaths the shares of the Corporation to other people then this is not a transfer rather this is a "change of control" which causes a similar process to a transfer but not exactly. If the licensee owns the Woodlot Licence personally and bequeaths it in their Will, then it is a transfer.

*Some examples of potential transfers:*

Types of Woodlot Licence Holders	Examples of Situations	Is this a Transfer? Yes/ No
Individual/ Sole Proprietorship	Adding your spouse or child to the woodlot licence	Yes
Individual	Selling a 25% share of the woodlot licence	Yes
Individual	Selling a Woodlot Licence to any person (includes a human or a corporation)	Yes
Partnership	One of the partners dies leaving his share of the partnership to his spouse	Yes
Corporation	Selling the majority control of the Corporation to a purchaser	No this is not a transfer this is a “change of control of the corporation” which would trigger a transfer like process. This process is discussed below under Change of Control of the Corporation section.
Corporation	Selling the Woodlot Licence	Yes
Corporation	Shareholder transfers minority share of the Corporation to a third party	No, this may be a “change of control of the corporation” which would trigger a transfer like process but that would depend on factors described below

**Control of a Corporation**

Control of a corporation is a person or a group of persons who have a relationship with one another (whether that relationship is professional or personal) who hold sufficient shares of the corporation to either elect or appoint 50% or more of the directors of the corporation or otherwise effectively control the operations and direction of the company.<sup>9</sup>

**Note:** With respect to societies, the section regarding Recipients specifically excludes societies. For that reason, a society would not be an eligible to hold a standard woodlot tenure. However, there exist some societies that hold Woodlot Licences. MOF has advised that these are grand-parented and will be allowed to continue. However, no new Woodlot Licences may be awarded or transferred to societies.

<sup>9</sup> Section 53 of the *Forest Act* RSBC 1996 c 157

## Marketing of Fibre

The term marketing of fiber means the acquisition and transfer of rights to harvest timber in British Columbia and the buying and selling, within British Columbia, of timber or wood residue.<sup>10</sup> This is a new term introduced to the Forest Act by Bill 22. Specifically, this is one of the new terms which may require a mandatory refusal of certain Tenures in the *Forest Act*. We will discuss the changes caused by Bill 22 later. As we are dealing with the transfer of Woodlot Licences, the marketing of fibre test should not apply.

## Related Person

The term “Related Person” deals with individuals who have some connection to a Holder that is a corporation. The Related Person’s ownership of a Woodlot Licence could make a Recipient ineligible to own a Woodlot Licence due to the number of Woodlot Licences owned by the Recipient or the Related Person.

The term “Related Person” encompasses a broad scope of individuals who may be connected to a Transfer. A Related Person can be a person who controls shares in a corporate Holder, a person who controls a corporation that owns shares in the corporate Holder, and an affiliate of the Holder. An affiliate is an even broader term where it looks to the relationship between one corporation and another. For example, a corporation is affiliated with another corporation if there is some connection related to the control of the company (i.e. the two companies are owned by the same person).<sup>11</sup>

The following chart provides examples of companies who are considered Related Persons or not:

<b>Ownership of Holder</b>	<b>Related person? Yes or No</b>
Company A owns Woodlot Licence A. John owns the majority of shares in Company A.	John would be considered a Related Person.
Company A owns the majority of shares in Company B. Company B owns Woodlot Licence A. John owns Company A.	Company A, Company B and John are considered Related Persons.
John owns the majority of shares in Company A and Company B.	Company A and Company B would be considered affiliate corporations due John being the majority shareholder of both Company A and Company B.

<sup>10</sup> Section 53 (1) of the *Forest Act* RSBC 1996 c 157

<sup>11</sup> Section 53.2(2) of the *Forest Act* RSBC 1996 c 157

## Legal Considerations

The legal matters elaborated below are for the most part identified in the flowchart in Appendix 2 “Woodlot Licence Disposition Chart”. This flowchart outlines the general process a Holder will follow to transfer the Woodlot Licence to a Recipient.

### Woodlot Transfers that are exempt

The following transfers of a Woodlot Licence are exempt from the statutory requirements of a transfer:

1. If the Woodlot Licence is transferred to a Trustee in bankruptcy.
2. The transfer of the Woodlot Licence from the estate of a deceased person to the person appointed by the court to be the executor of the deceased’s estate (the “personal representative”). The personal representative could be the person named as the executor in the deceased’s will or someone who applies to manage the deceased’s estate under the *Wills Estate and Succession Act*.
3. The granting of a security interest over the Woodlot Licence. For example, this means a transfer does not occur when the Holder borrows money and the lender’s loan is secured against the Woodlot Licence if the Holder fails to pay.
4. Where there is Joint Tenancy and one of the parties dies. There is no actual transfer instead the Woodlot Licensee name should be changed to the survivors upon proof of the other party dying.

However, if a Woodlot Licence is transferred to a Trustee in bankruptcy or to the personal representative of an estate the trustee or personal representative must provide notice of the transfer to the Minister within three (3) months after the transfer occurred.<sup>12</sup>

This makes transfers for personal representatives and Trustees in Bankruptcy a two-step process if their intent is to dispose of the Woodlot Licence. Step one: the individual takes control of the Woodlot Licence based on their authority by providing notice to the Minister within three (3) months of the transfer. Step two: The personal representative or Trustee in bankruptcy follows the normal procedure for a transfer.

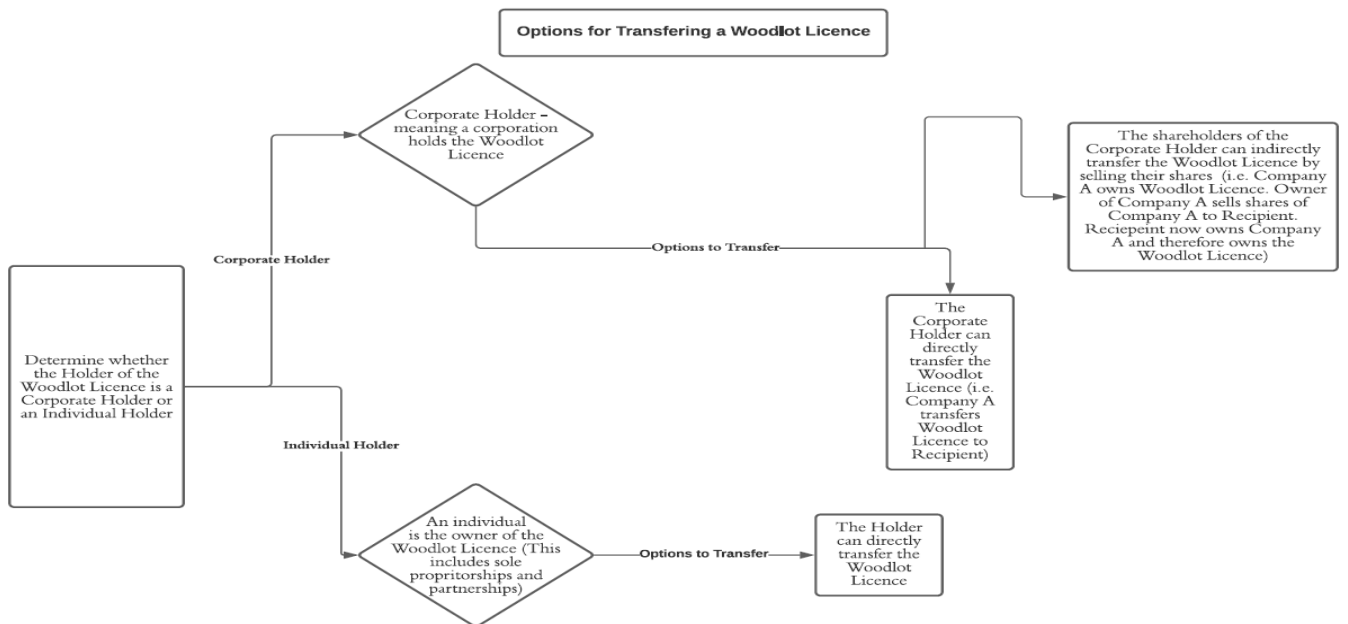
### Transferring a Woodlot Licence

There are two ways to transfer a Woodlot Licence. For simplicity, these are defined as a direct transfer and an indirect transfer. A direct transfer is the transfer of the Woodlot Licence from Holder to Recipient. I.e. John Doe holds Woodlot Licence and transfers the Woodlot Licence to Jane Doe. An Indirect Transfer is a process utilized by corporate Holders whereby the shareholders of the corporate Holders sell the shares of the Company making someone else the shareholder of the corporate Holder. I.e. John Doe owns Company A. Company A is the corporate Holder of a Woodlot Licence. John Doe sells his shares in Company A to Jane Doe. This makes Jane Doe the owner of Company A and indirectly transfers the Woodlot Licence to Jane Doe.

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<sup>12</sup> Section 54.3 of the *Forest Act* RSBC 1996 c 157

The flowchart below provides a visual aid for the Holder's options when considering how they can transfer the Woodlot Licence:



Download above document via the following .pdf:



Module 3 Options for Holder to Transf



**Note:** *If the Holder proceeds with an indirect transfer of the Woodlot Licence through the sale of shares of the corporate Holder then this is considered a “change of control” The application for a change of control uses a similar application for a disposition of a Woodlot Licence as a direct transfer. The differences will be addressed below. While this is similar to those when a Holder transfers the Woodlot Licence directly to the Recipient, there are some distinct differences between a “change of control” and a direct transfer which are addressed under the Change of Control section.*

### **Direct Transfer to the Recipient**

The Holder can directly transfer their Woodlot Licence to another person so long as they comply with the requirement of the *Forest Act* and satisfy any conditions set out by the Minister. These include:

- The Woodlot Licence rights are not under suspension, in whole or in part.<sup>13</sup>
- Written approval of the transfer from the Minister.
- The payment (or arrangement for payment approved by the Minister of Finance) of all money due and payable to the government including that portion required to be paid under section 130(1.1.) of the *Forest Act* and any other money due and payable under section 130(1.1.)
- The intended purchaser is an appropriate recipient (further described below under: “Recipient”)
- If there is Private (Schedule A) land in the Woodlot Licence, it remains subject to the Woodlot Licence or alternative arrangements are made as outlined in Module 5; and
- The transfer is completed within a period set out by the Minister in giving approval or by a prescribed period.

**Note:** *The following text gives a more detailed explanation of the points listed above.*

### **Suspension of Woodlot Licence Rights in Whole or in Part**

Section 76 of the *Forest Act* gives the Minister the authority to suspend licences (including Woodlot Licences) in whole or in part for specific reasons. The suspension and hearing process are beyond the scope of this Guide, however, it is important that before a Woodlot Licence can be suspended the Minister must have served notice on the Holder setting out the reasons for the suspension and that the suspension will take effect on the date provided in the notice. If a Holder’s Woodlot Licence is subject to a suspension, they will be unable to dispose of it. A suspension may include Road Permits or Cutting Permits; thus, no harvesting may occur.

### **Approval of the transfer from the Minister**

Recent changes to the *Forest Act*, implemented by Bill 22, require transfers to be reviewed and approved by the Minister or their delegate.

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<sup>13</sup> Section 54.4 of the *Forest Act* RSBC 1996 c 157

The *Forest Act* provides the Minister with broad discretion for granting approval. The Minister has the option to approve the transfer, refuse the transfer, or approve a transfer with conditions.

To assist the Minister in determining whether to approve a transfer, the Holder will be required to provide documentation as set out in regulations. Since the implementation of Bill 22 into the *Forest Act*, no regulations have been made setting out the documentation required by the Minister.

However, the Minister has provided a “Notice of Intended Disposition of a Woodlot Licence form. See following weblink: [https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/forestry/timber-tenures/transfers/notice\\_intended\\_transfer\\_woodlot\\_licence.pdf](https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/forestry/timber-tenures/transfers/notice_intended_transfer_woodlot_licence.pdf) .

**Note:** *Factors impacting the marketing of fibre are beyond the scope of this guide. As of November 2020, the marketing of fibre test may not be applicable to the disposition of a Woodlot Licence. This section of the Guide will be updated when confirmed.*

### Documents required to assist the Minister with approval

The Notice of Intended Disposition of a Woodlot Licence as referred to above requires the following information:

- Woodlot Licence #
- Information of the Intended Recipient:
  - If the Intended Recipient is an individual/ *partnership* (Note: They require the information for each individual):
    - Full legal names of the individuals (no initials)
    - Address of Individuals
    - Contact Information of Individuals (including Phone #, fax and e-mail)
    - Birth Date of the Individuals
    - BC Driver’s Licence Number
    - Social Insurance Number (optional)
  - If the Intended Recipient is a Corporation
    - Jurisdiction of Incorporation
    - Incorporation number
    - Registered Address
    - Contact Information (including phone #, fax and e-mail)
    - List of the Directors and Officers
    - List of the Major Shareholders (including the % of voting shares held)
    - Workers Compensation Board (WCB) Number
    - Full legal names, birth dates and Driver’s Licence Number of each of the Directors and Shareholders of the Corporation
    - address, phone # and e-mail (if different than above) of each of the Directors and Shareholders of the Corporation
  - If the Intended Recipient is a First Nations Band
    - Name
    - Address
    - Contact information (phone # and e-mail)

- A description of the proposed transaction including a list of all tenures involved, including any cutting permits and road permits associated with the Woodlot Licence.
- Confirmation that the intended recipient is a person, First Nation or a corporation that is eligible to hold a Woodlot Licence as described below under “*Recipient.*”
- Confirmation that the Private land, if any, that is subject to the Woodlot Licence will remain subject to the agreement (see Module 5 for more information).
- Confirmation that the Intended Recipient does not hold or control a corporation that holds more than one other Woodlot Licence.
- An indication of how the deposit(s) currently held under the agreement are to be dealt with.
- Payment of the non-refundable transfer fee. This will depend on the number of licences and associated permits being transferred.
- Contact information for the person authorized to deal with this transfer on behalf of the current Holder (including name, address, telephone number, and e-mail address).
- Contact information for the person authorized to deal with this transfer on behalf of the Intended Recipient (including name, address, telephone number, and e-mail address).
- The intended date of the disposition.

**Note:** *The Minister can always request additional information at any stage during the approval process. Furthermore, the Minister has delegated this decision to the Regional Executive Directors (RED). Depending on how the process is dealt with each RED may customize their approval process.*

### Specific Circumstances for Minister Refusal

In certain instances, the Minister may even require a potential purchaser or a related person of the intended purchaser to transfer one of their existing licences.<sup>14</sup> Further to the Minister’s broad discretion, the *Forest Act* specifies circumstances when the Minister must refuse the transfer of a Woodlot Licence or in the Minister’s discretion set conditions on the transfer.<sup>15</sup> These circumstances are:

- The marketing of fibre in British Columbia, and
- The public interest.

### The test for the Marketing of fibre in British Columbia

Considerations for the marketing of fibre are found in Part 3 of the *Disposition and Change of Control Regulation*<sup>16</sup> and are beyond the scope of this Guide:

<https://www.canlii.org/en/bc/laws/regu/bc-reg-351-2004/latest/bc-reg-351-2004.html>

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<sup>14</sup> Section 54.01 of *Forest Act* RSBC 1996 c 157

<sup>15</sup> Section 54.02 of the *Forest Act* RSBC 1996 c 157

<sup>16</sup> <https://www.canlii.org/en/bc/laws/regu/bc-reg-351-2004/147150/bc-reg-351-2004.html> (Part 3)

**Note:** MOF advises that these assessments do not apply to Woodlot Licences.<sup>17</sup>

### The test for matters affecting the public interest

Currently there is some uncertainty with respect to what the Minister may consider when conducting the test for matters affecting the public interest. However, when there is uncertainty with respect to a test it is a generally accepted principal of interpretation to look at why the changes to the Forest Act, through Bill 22, were implemented. To do this we need to understand the history of the British Columbia forestry industry.

In British Columbia, major forest licensees have had and do have significant control over the log and fibre markets. As a result, smaller industry operators are struggling to compete. Several small lumber manufactures, including First Nations groups and B.C. communities that rely on the forest industry expressed their concerns that the larger organizations were merely selling their agreements to other large organizations when a mill closed. This caused hardships for smaller lumber manufacturers to secure adequate fiber to maintain their mills.

The Government's response to these concerns was Bill 22. According to the Minister, the "amendments to the Forest Act will enhance public trust and ensure public forests are managed in the best interest of British Columbians"<sup>18</sup>

From the government's intentions, we can make the assumption that the type of transfers which will most likely be restricted based on the public interest test will be those transfers which impact the smaller/ medium lumber manufacturers from being able to continue operating.

### Payment of all money due and payable to the government

The money which could potentially be owed is any money that is required to be paid:

- under the *Forest Act*, the *Ministry of Forests Act*, the *Range Act*, the *Forest and Range Practices Act* or the *Wildfire Act*.
- under an agreement entered under the *Forest Act*, the *Ministry of Forests Act*, or the *Range Act*.
- under a permit issued under the *Forest and Range Practice Act*, the *Forest Practices Code of British Columbia Act*, or the *Wildfire Act*; or
- for goods, services or both provided by the Ministry.<sup>19</sup>

### Recipients

The Recipient must be one of the following:

- a Canadian citizen or permanent resident of Canada who is 19 years or older;
- a First Nation; or

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<sup>17</sup>Section 11(1) of *Disposition and Change of Control Regulation* BC Reg 151

<sup>17</sup><https://news.gov.bc.ca/releases/2019FLNR0067-000623>

<sup>19</sup> FA – ss. 130 (1.1) and s. 54

- a Corporation, other than a society, that is controlled by a Canadian citizen or permanent resident of Canada who is 19 years or older.<sup>20</sup>

With respect to societies, the section regarding Recipients specifically excludes societies. For that reason, a society would not be an eligible to hold a standard woodlot tenure. However, there exist some societies that hold Woodlot Licences. MOF has advised that these are grand-parented and will be allowed to continue. However, no new Woodlot Licences may be awarded or transferred to societies.

An intended Recipient, before the transfer, cannot directly or indirectly hold two or more Woodlot Licences when acquiring another Woodlot Licence.<sup>21</sup>

The term “indirectly” means the control of a corporation, a corporation that is affiliated with another corporation and any combination of the person or the corporations combined hold more than two Woodlot Licences. If the intended Recipient directly or indirectly holds two or more Woodlot Licences they do not qualify as a Recipient. Furthermore, if the Recipient either directly or indirectly hold one or more Woodlot Licences that together have an aggregate allowable annual cut that is greater than 10,000 m<sup>3</sup> they do not qualify as a Recipient. The Minister has the discretion to set a condition that the Recipient can still qualify on the condition that the Recipient transfer one of their existing licences. It is possible that the Recipient could purchase the Woodlot Licence if they intend on transferring one of their current licences.

### Private (Schedule A) land

Any Private land which was subject to the Woodlot Licence, and not removed before the transfer process began, will remain subject to the new Woodlot Licence. Therefore, any changes with respect to Private (Schedule A) land, e.g. Change in land, change in boundary or deletion, must be completed before the Notice of Intended Disposition is submitted and the Minister’s permission to transfer sought. This will be discussed in more detail in Module 5.

### The transfer is completed within a specific period

The transfer of the Woodlot Licence must be completed before a specific date so specified by the Minister in the approval or by regulations.

### Suspension of a Woodlot Licence

If the Holder directly transfers the agreement without meeting the conditions set out above, the Minister will have the discretion to suspend in whole or in part the rights under the Woodlot Licence.<sup>22</sup>

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<sup>20</sup> Section 44(4) of the *Forest Act* RSBC 1996 c 157

<sup>21</sup> Section 44 of the *Forest Act* RSBC 1996 c 157

<sup>22</sup> Section 54.61 of the *Forest Act* RSBC 1996 c 157

## Indirect Transfer - Change of Control of the Corporation

When a Holder changes control, they are required to provide written notice to the Minister within 30 days after the event occurs. Upon receiving notice, the Minister will consider several factors of the change of control, such as:

- The payment (or arrangement for payment approved by the Minister of Finance) of all money due and payable to the government including that portion required to be paid under section 130(1.1.) of the *Forest Act* and any other money due and payable (above);
- That the transfer is to an appropriate recipient;
- The effects of the change of control on the marketing of fibre in British Columbia; and
- The effect of the change of control on the public interest.<sup>23</sup>

**Note:** *The factors listed above are like those factors set out when a Holder transfers the Woodlot Licence directly.*

If the Minister determined that the indirect transfer was not transferred appropriately (e.g. the Recipient is under the age of 19), the Minister has the discretion to suspend the rights of the Woodlot Licence, without notice. The Minister does not have the authority to stop the transfer of the Company, only the right to suspend the rights of the Woodlot Licence. This makes it imperative that any purchaser's and sellers ensure they comply with the requirements set out above.

Whether the Minister suspends the Woodlot Licence or not, the Minister has the discretion to give the corporate Holder the opportunity to be heard. After hearing from the corporate Holder, the Minister may:

- (1) reconfirm the suspension of the Woodlot Licence,
- (2) suspend the Woodlot Licence, if the Minister did not suspend the Woodlot Licence in the first place,
- (3) require the corporate Holder to dispose of the Woodlot Licence to an arms length recipient,
- (4) accept a proposal from the corporation or a related person of the corporation to transfer a different Woodlot Licence owned by the corporation or a related person of the corporation, or
- (5) impose other requirements.

If the Minister accepts a proposal from the corporate Holder as referred to in (4) above, the Minister cannot impose a suspension of the rights of the Woodlot Licence.<sup>24</sup>

## Liability during a Woodlot Transfer

One of the questions everyone concerns themselves with, when transferring a Woodlot Licence, is liability. The *Forest Act* sets out specifics with respect to the liability of the Holder and the recipient.

Before the transfer is completed the Holder is responsible for:

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<sup>23</sup> Section 54.65 of the *Forest Act* RSBC 1996 c 157

<sup>24</sup> Sections 54.66 and 54.67 of the *Forest Act* RSBC 1996 c 157

- payment of all money in respect of the Woodlot Licence that is required to be paid:
  - under the *Forest Act*, the *Ministry of Forests Act*, the *Range Act*, the *Forest and Range Practices Act*, or the *Wildfire Act*,
  - under an agreement entered under the *Forest Act*, the *Ministry of Forests Act*, or the *Range Act*,
  - under a permit issued under the *Forest and Range Practice Act*, the *Forest Practices Code of British Columbia Act*, or the *Wildfire Act*,
  - for goods, services or both provided by the Ministry; or
  - there exists an arrangement for payment approved by the Ministry of Finance.
- To perform all obligations in respect of the Woodlot Licence, including obligations imposed by the *Forest Act*, the *Forest and Range Practice Act* or the *Wildfire Act*.

Once the transfer is complete, and the Recipient becomes the Holder of the Woodlot Licence, the Recipient and the seller are jointly liable for all outstanding liabilities in relation to the Woodlot Licence which accrued or are accruing on the date the transfer of the Woodlot Licence is completed.<sup>25</sup> Meaning only the Recipient (new Holder) will be liable for those liabilities which occur after the transfer date of the Woodlot Licence.

The joint liability is for those liabilities incurred up to the transfer date. After the transfer, the actions of the new Holder would trigger liabilities that only the new Holder is responsible for. This issue should be dealt with by identifying obligations pre and post the date of transfer.

If the seller was a Trustee in bankruptcy or the personal representative of the Holder's estate, they are not held responsible for any liability, but the person (i.e. bankrupt or deceased) who held the Woodlot Licence before the Trustee in bankruptcy or the personal representative will still be responsible.

It is important to note that although the act in effect makes both the seller and the purchaser jointly liable for outstanding obligations of the Woodlot Licence, the recipient and seller can incorporate indemnities into the purchase agreement. An indemnification would allow the indemnified party the ability to sue the other party for any damages they may suffer related to their outstanding liabilities with the Woodlot Licence. This is only a beneficial protection if the other party has sufficient assets to cover the indemnified party's damages.

One significant difference with an indirect transfer instead of the direct transfer of the Woodlot Licence is liability. When an owner sells their shares of the corporation which holds the Woodlot Licence, there has not been a transfer of the Woodlot Licence. Therefore, the liability stays with the corporation. The seller should not have any statutory liability as set out in the *Forest Act*.

The sale of the corporation will likely involve a purchase agreement. Most purchase agreement will have terms where the seller indemnifies the purchaser for certain obligations such as the representations made by the seller in the agreement. One of those representations will

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<sup>25</sup> Section 54.6 of the *Forest Act* RSBC 1996 c 157

undoubtedly be that the corporation was in good standing and in compliance with all obligations under the *Forest Act* and other relevant legislation such as the *Ministry of Forests Act*, the *Range Act*, the *Forest and Range Practice Act*, or the *Wildfire Act*.



# MODULE 4: TAXATION GUIDANCE

## Introduction

When looking at succession planning and how to exit any business, there are multiple ways of doing so. Every plan and sale will look different depending on a host of factors. If you own it in a corporation, you could either sell the assets of the corporation or sell the shares of the corporation. If you are selling shares of a corporation, you will need to consider if they qualify for the lifetime capital gains exemption. In addition, who you are selling to will come into play. Will you be selling to a third-party purchaser or transitioning it to the next generation of your family? These scenarios are discussed.

It should be noted that there is no one-size-fits-all plan when it comes to estate and tax planning. Everyone's situation is unique. Tax planning needs to contemplate all relevant factors for each scenario. Consult with your tax advisor to determine a plan and the tax implications for your specific situation. In addition, any information herein is based on current tax law including judicial and administrative interpretation. Tax law is subject to continual change, at times retroactively. Should the law or its interpretation change, our information may be inappropriate. The online version of this document may have the most recent changes.

**Note:** *There is a distinction between a privately owned woodlot (land and timber owned in fee simple) and a Crown Woodlot Licence (where the BC Crown owns the Crown land and the Crown timber) where the value of the land and timber may not be applicable for Taxation purposes. This will be explained below.*

## Taxation Issues

It is important to understand what happens from a tax perspective if no planning is done. If you were to die while still owning your Woodlot Licence, or the shares of your corporation that owns the Woodlot Licence, there may be tax implications. On death you are deemed to have disposed of your assets at their fair market value. This means that you or your estate will be taxed on your final personal tax return as if you had sold your assets at fair market value. Because it is a deemed disposition and not an actual disposition, your estate may have taxes to pay but no cash to do so as the value is tied up in the assets, in this case your Woodlot Licence. Therefore, it is critical to factor in the income tax consequences when doing estate planning. One exception to this is that if you die before your spouse and your will specifies that your assets are to go to your spouse, then your assets automatically roll tax-free to your spouse. However, if your Spouse is not a joint owner of the Woodlot Licence, there may be requirements to transfer the Woodlot Licence ownership.

**Note:** *The information outlined throughout this Module refers to commercial woodlots. Examples have been provided for scenarios in which privately owned lands included in a Crown Woodlot Licence are sold as well as scenarios where only a Crown Woodlot Licence (no Private land) is sold.*

The Canada Revenue Agency ("CRA") has indicated that where a woodlot is operated as a business with a reasonable expectation of profit, it would be considered a commercial woodlot. Factors in determining if the woodlot is a commercial woodlot could include, but is not limited to:

- i) Existence of a forestry management plan
- ii) Amount of time spent compared to other sources of income

- iii) Size of woodlot
- iv) Your personal forestry qualifications
- v) Are you part of an association?

More information can be found in CRA's Income Tax Bulletin on Woodlots, IT-373R2:

<https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/it373r2-consolid/archived-woodlots.html>

### Sale of a Crown Woodlot Licence owned personally

If you own your Woodlot Licence personally, you would be selling it directly to the purchaser. If your woodlot contains Private lands that are being disposed with the licence, there could be two components to consider for tax purposes on the sale: (1) the sale of the Private (Schedule A) land and timber on it, and (2) the right to harvest timber (from the Crown Woodlot Licence).

Some of the value of the woodlot would be attributable to the standing timber while some would be attributable to the land and the licence. The sale of the timber would likely be considered a sale of inventory and as such would be taxed as income. The sale of the land and licence would be a capital disposition and would be taxed on account of capital. Income you earn would be taxed at your marginal tax rate in the year of the sale, whereas, only 50% of the capital gain is included as income and then taxed at your marginal rate in the year of the sale.

As the assets are owned personally, the tax would apply in the year of the disposition and would be payable with your personal tax return for that year.

#### *Logging Tax Implications*

Logging tax would apply on the sale of the standing timber on the Private land portion and the rights to cut timber (Cutting Permits) on the Crown Woodlot Licence. As the Woodlot Licence would be on account of capital, the logging tax applies only to the taxable portion of the capital gain (50%). The amount of logging tax paid is a credit that reduces the amount of income tax payable. Generally, any capital gain on the bare land would not be subject to logging tax so long as any standing timber has been considered.

**Note:** *The intricacies of the Logging Tax applying to standing timber on the Crown land portion a Woodlot Licence are beyond the scope of this Guide. Discuss the details with a qualified Tax Specialist.*

#### *Examples:*

John personally owns a Crown Woodlot Licence and a parcel of Private (Schedule A) land to which the Woodlot Licence applies. John would like to retire and sell his Woodlot Licence. John has no kids to whom he can pass the Woodlot Licence on to so he would like to sell it to a third party. An agreement has been reached with a purchaser and approval from the Minister has been obtained. The purchase price is \$1 million, with \$200,000 of the value being attributed to the standing timber, \$300,000 to the licence and \$500,000 to the private land. The land was originally purchased for \$200,000 with \$100,000 being allocated to the standing timber and \$100,000 to the land itself,

these are the respective cost bases for the standing timber and the land. The licence has no cost basis unless the Woodlot Licence was purchased.

On the sale, John would have income of \$100,000 associated with the standing timber (\$200,000 less \$100,000), a capital gain of \$300,000 on the licence and a capital gain of \$400,000 on the land (\$500,000 less \$100,000). The capital gains are only included in income at 50%, therefore John would have taxable income of \$450,000 due to the sale. Assuming John is in the highest tax bracket<sup>26</sup>, he would have to pay total tax of \$240,750 on the disposition, leaving him with \$759,250 of cash available, summarized as follows:

Proceeds	\$1,000,000
Tax on standing timber disposition	(\$53,500)
Tax on capital gains	<u>(\$187,250)</u>
Net cash	<u>\$759,250</u>

### *Sale of Crown Woodlot Licence*

Adam personally owns a Crown Woodlot License. He does not own the land to which the Woodlot License applies, it is owned by the Crown. Adam is in a similar situation as John and would like to sell his license and a purchaser has offered him \$500,000 for the license. Adam has no cost basis on the license as there was no purchase price.

On the sale, Adam would have a capital gain of \$500,000 on the license. As the capital gain is only included in income at 50%, Adam's taxable income would be \$250,000. Assuming Adam is in the highest tax bracket, he would have to pay tax of \$133,750 and his net cash would be \$366,250.

**Note:** Any logging tax owing is included in the tax owing for this example.

### **Sale of a Crown Woodlot Licence owned by a corporation**

In a situation where a Crown Woodlot Licence is owned within a corporation there are two different ways a sale could take place – either by selling the assets held by the corporation, or by selling the shares of the corporation. Both scenarios are discussed below. Often sellers would prefer to sell the shares of their corporation whereas purchasers would rather purchase assets. This can lead to some bargaining between the seller and purchaser.

#### **Asset Sale:**

Under an asset sale, the purchaser is only buying the assets of the corporation. As a result, the exposure to unknown liabilities is limited compared to when shares of a corporation are purchased. Purchasers often want to buy assets so that they can 'step-up' the depreciable basis of the assets they are buying which can provide tax-savings when those assets are amortized. However, if land is

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<sup>26</sup>The highest tax bracket in British Columbia for 2020 is for income over \$220,001 and the tax rate is 53.5%.

sold, property transfer tax applies when the legal name on the land is changed which can be a disincentive to a purchaser buying assets if land is involved.

On the sale of assets from a corporation, there are two layers of tax to be paid by the vendor. Firstly, the sale would be taxed within the corporation. As discussed above on the sale of a Woodlot Licence owned personally, the component of the sale allocated to the timber would be taxed as inventory and the land and licence would be a capital disposition. The second layer of tax would be on the distribution of assets from the corporation to its shareholders. This would be taxed as a dividend to the individual shareholder at dividend tax rates. Tax rules generally try to achieve integration, so that the tax you pay would be similar if you were to sell the assets personally or within a corporation.

### *Logging Tax Implications:*

Logging tax would apply to the corporation in the same way it would if the assets were sold by an individual, on the sale of the standing timber and the Crown Woodlot Licence. Logging tax is only payable when there is a Cutting Permit as the timber is a possible asset of unknown value but once it's scaled it has a value and logging tax is paid.

**Note:** *The intricacies of the Logging Tax applying to standing timber on the Crown land portion a Woodlot Licence are beyond the scope of this Guide. Discuss the details with a qualified Tax Specialist.*

### *Sale of a Crown Woodlot Licence and Private land owned by a Corporation*

#### *Example:*

Jane owns 100% of the shares of a corporation that owns a Woodlot Licence and Private (Schedule A) land associated with the woodlot. She has received an offer to purchase the assets of the corporation and the purchaser has indicated that they will not consider purchasing the shares of the corporation. The offer is for \$1 million, with \$200,000 of the value being attributed to the standing timber, \$300,000 to the licence and \$500,000 to the Private land. The Private land was originally purchased for \$200,000 with \$100,000 being allocated to the standing timber and \$100,000 to the land itself, these are the respective cost bases for the standing timber and the land. The licence has no cost basis unless the Woodlot Licence was purchased.

On the sale, the corporation would have income of \$100,000 associated with the standing timber (\$200,000 less \$100,000), a capital gain of \$300,000 on the licence and a capital gain of \$400,000 on the land (\$500,000 less \$100,000). The capital gains are only included in income at 50%, therefore the corporation would have taxable income of \$450,000 from the sale. Assuming the corporation has no other income for that year and has access to the small business deduction<sup>27</sup>, the tax incurred

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<sup>27</sup> The small business deduction reduces the corporate income tax a company would otherwise have to pay in a taxation year throughout which it was a Canadian-controlled private corporation. The small business deduction rate for British Columbia for 2020 is 11%.

at the corporate level will be \$188,300<sup>28</sup>. When dividends are paid out to Jane the corporation would receive a refund of \$107,300, leaving net taxes in the corporation of \$81,000. Here is a summary of tax in the corporation:

Proceeds	\$1,000,000
Tax on standing timber	\$ - (11,000)
Tax on capital gains	\$ - <u>(177,300)</u>
Net cash in corporation	<u>\$ 811,700</u>

There would also be an additional level of tax when Jane pulls the remaining cash out of the corporation as a dividend. However, she will also receive a refund of some of the corporate tax when she does pay herself a dividend. If she does not need the cash right away, she could leave it in the corporation and either reinvest it or withdraw it as she needs it. This would be advisable if she does not need the cash personally so that she can access her marginal tax brackets rather than pay tax at the highest rate if it is pulled out all at once.

Assuming the only other item on the balance sheet of the company was a payable to Jane of \$200,000 that she originally contributed to purchase the land, Jane would be left with \$811,700 (\$1,000,000 less net tax of \$188,300) after corporate tax to pull out of the company personally. When she pays out a sufficient dividend, the corporation will receive a dividend refund of \$107,300, which will increase her available cash in the corporation to \$919,000. If Jane is in the highest tax bracket and decides to remove the cash all at once, she would pay personal tax of approximately \$180,000<sup>29</sup> leaving her with \$739,000 in her pocket. This is summarized as follows:

Net cash in corporation	\$811,700
Dividend refund	<u>107,300</u>
Total cash available	919,000
Shareholder loan repaid	(200,000)
Capital dividend	(350,000)
Taxable dividend	<u>(369,000)</u>
Net cash in corporation	<u>\$0</u>

<sup>28</sup> Capital gains are taxed at a rate of 25.33% within a corporation

<sup>29</sup> Top personal tax rate for non-eligible dividends for British Columbia for 2020 is 48.89%. A portion of the proceeds would be pulled out tax-free using the capital dividend account.

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Cash to Jane	\$919,000
Personal tax	<u>(\$180,000)</u>
Net cash to Jane	<u>\$739,000</u>

### *Sale of Crown Woodlot Licence (no Private land) owned by a Corporation*

Alice owns 100% of the shares of her corporation. The only asset in the corporation is a Crown Woodlot License. Someone has offered to purchase the Crown Woodlot License from the corporation for \$500,000. The license has no cost basis unless the Woodlot Licence was purchased.

On the sale, the corporation would have a capital gain of \$500,000 on the license, of which only 50% is included in income, therefore the corporation would have taxable income of \$250,000. Assuming the corporation has no other income for the year the tax incurred at the corporate level will be \$126,667. When dividends are paid out to Alice the corporation would receive a refund of \$76,667, leaving net taxes in the corporation of \$50,000.

There would also be an additional level of tax when Alice pulls the remaining cash out of the corporation as a dividend, but she will also receive a refund of some of the corporate tax as outlined above. Assuming there were no other items on the balance sheet of the company, when Alice pays out a sufficient dividend, the corporation will receive a dividend refund of \$76,667 which will increase her available cash in the corporation to \$450,000. If Alice is in the highest tax bracket and decides to remove the cash all at once, she would pay personal tax of approximately \$98,000 leaving her with \$352,000.

### *Share Sale:*

As indicated, a share sale is generally preferred by a seller. A reason for this is that it can be simpler because once the shares are sold, the seller no longer has a corporation to deal with. In addition, if the shares qualify, the seller may be able to take advantage of their lifetime capital gains exemption ("LCGE") as discussed below.

A sale of shares is taxed as a capital disposition, therefore only 50% of the net proceeds would be included in the seller's income. As outlined above, integration generally tries to make it so that a seller would be indifferent from a tax perspective if they were to sell assets within a corporation or sell shares of the corporation. However, the LCGE is one tool within the Canadian tax system that provides a benefit to individuals if they sell shares of a qualified small business corporation ("QSBC").

The LCGE allows an individual to sell shares of a QSBC and to have the net gain be tax-free, except for the Alternative Minimum Tax (AMT)<sup>30</sup>. The current LCGE limit is \$883,384 (for 2020) and will be

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<sup>30</sup> The capital gain may still be subject to Alternative Minimum Tax, which is an alternative way of calculating tax that limits the tax advantages you can receive in a year. Alternative Minimum Tax is a refundable tax that can be recuperated over the seven years following its payment.

indexed to inflation every year until it reaches \$1 million. This means that you could realize a capital gain of up to \$883,384 on qualifying shares and pay no tax on that disposition, other than AMT.

There are specific criteria that must be met for the shares to be considered QSBC shares<sup>31</sup>:

- The company must be a Canadian Controlled Private Corporation (CCPC).
- At the time of the sale, all or substantially all (90% or more) of the fair market value of the company's assets are used in an active business carried on primarily in Canada.
- For the 24 months prior to the sale, more than 50% of the fair market value of the company's assets were used in an active business carried on primarily in Canada; and
- For the 24 months prior to the sale of shares, no one owned the shares other than you or a related person.

When considering if the shares of a company which owns a Woodlot Licence could qualify as QSBC shares, you need to consider what assets are in the corporation and if they are used in an active business. If there are assets not used in an active business, often called passive assets, such as excess cash not needed for operations or portfolio investments, these may result in the company not qualifying for the LCGE.

The Woodlot Licence itself and any property owned by the company that is associated with the Woodlot Licence would likely be considered active assets. Equipment used in the operations, prepaid expenses and accounts receivable would all also be considered active assets. For 24 months prior to the sale of shares, 50% of the fair market value of the assets must be used in an active business and at the time of the sale 90% of the fair market value of the assets must be used in an active business.

### *Logging Tax Implications:*

If the shares of the corporation are sold, there would be no logging tax implications to the individual who sells the shares as income was not derived from logging operations, as defined in the Logging Tax Act.

**Note:** *If the individual who owned the corporation also personally owned any right to cut standing timber, such as a Crown Woodlot Licence, that is generally harvested by the corporation, and that right to cut is sold as part of the sale, there may be logging tax implications to the individual. The Corporation does not owe logging tax as it is a sale of shares not assets within the Corporation.*

### *Sale of shares of a corporation owning a Crown Woodlot Licence and Private (Schedule A) land*

#### *Examples:*

Jane's offer to purchase the assets held in her corporation fell through, but she now has an offer to purchase the shares of her corporation. Jane incorporated her company and started her business

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<sup>31</sup> Definition of Qualified small business corporation share in Section 110.6 of the ITA and definition of Small Business Corporation in 248(1) of the ITA



from scratch, putting in \$200,000 so the company could purchase the land. Therefore, the company owes her \$200,000. The offer to purchase her shares is for \$1,000,000, of which the first \$200,000 will go towards her shareholder loan. Jane will have a gain of \$800,000 (\$1,000,000 less \$200,000 repayment of shareholder loan), 50% of which will be taxable.

If Jane's shares do not qualify for the LCGE, for example, if she had additional cash in the company over the past two years which meant less than 50% of the assets were used in an active business carried on in Canada, then she would pay tax of \$214,000 on the gain, leaving her with cash of \$786,000.

If her shares do qualify for the LCGE (because for the past two years more than 50% of the fair market value of the assets in the corporation were used in an active business carried on in Canada and at the time of sale 90% or more of the fair market value of the assets in the corporation were used in an active business carried on in Canada), then Jane can shelter the gain so that there are no taxes on the first \$883,384 of capital gain. Ignoring alternative minimum tax, since Jane's capital gain is \$800,000 Jane would have no tax on the sale and would end up with \$1,000,000 cash.

### *Sale of shares of a corporation owning a Crown Woodlot Licence*

The sale of the Crown Woodlot License in Alice's corporation did not go through, but someone is now interested in buying the shares of her corporation. The only asset in the company is the Crown Woodlot License and the company does not owe Alice anything and Alice's share have no cost basis. The offer to purchase the shares is \$500,000. Alice will have a gain of \$500,000, 50% of which will be taxable.

If Alice's shares do not qualify for the LCGE, then she would pay tax of \$133,750, leaving her with cash of \$366,250. If her shares do qualify for the LCGE, then Alice can shelter the gain so that there are no taxes on the sale so long as she still has at least \$500,000 of her LCGE remaining. Ignoring alternative minimum tax, since Alice's capital gain is \$500,000, she would have no tax on the sale and would end up with \$500,000 cash.

### *Transition of corporation to family:*

You may not want to sell your Woodlot Licence to a third party, rather you prefer to transition it within your family. In doing so, you want to minimize the family's tax impacts on the transition. A solution in dealing with these concerns is to undertake an estate freeze. This is a process where the current value of the corporation is frozen into preferred shares that the parent(s) receives and allows the next generation to subscribe for common shares of the corporation at a nominal amount. Any future growth of the woodlot business attributes to the new shareholders. The parent(s) value is fixed at the amount of the preferred shares. The preferred shares owned by the parent(s) would be drawn down over time to fund their retirement and taxed as dividends. This also reduces their estate liability over time.

As part of an estate freeze, you may consider including a family trust. A trust is not an actual legal entity. It is a taxpayer for income tax purposes. Rather than have individuals subscribe for new shares after the parent(s) shares have been frozen into preferred shares, the family trust could

subscribe for shares instead. The trustee(s) of the trust would generally be the parent(s) and the beneficiaries of the trust. It could include the parent(s) as well as their children, grandchildren, and anyone else they may wish to include.

A family trust provides flexibility. The next generation does not own shares directly in the corporation. It is up to the trustee(s) to decide when they want to transfer those shares to the beneficiaries, and which beneficiaries are the recipients. The future growth would still attribute to the family trust. It achieves the goal of having future growth accrue to the next generation, while allowing the parent(s) time to determine when and to whom they transfer control of the woodlot. It also provides flexibility. If the parent(s) determine that they do not want to transfer the woodlot to the next generation, they can transfer the shares back out of the family trust to themselves, provided they were included as beneficiaries of the trust.

*Example:*

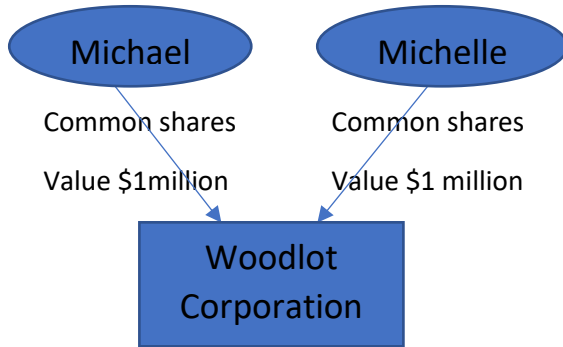
Michael and Michelle are in their 50s and are starting to think about transitioning their woodlot and corporation to their children who are in their 20s. Michael and Michelle do not want to give full control to their children yet. They want to ensure that they have access to the value they have built up in their corporation as this will make up a significant portion of their retirement income.

Michael and Michelle decide to undergo an estate freeze and have a family trust settled. They decided they will both be trustees so that they will retain control over the corporation for the time being. The beneficiaries of the family trust will be Michael, Michelle and their two children.

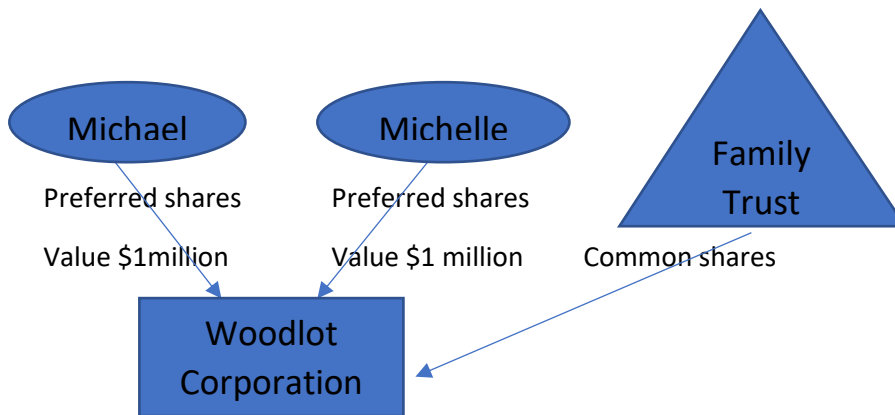
The common shares that Michael and Michelle own in the corporation have a value of \$2,000,000 and they will exchange these shares on a tax-deferred basis for preferred shares with the same value. When these preferred shares are redeemed, over time to fund their retirement, they will be taxed to Michael and Michelle as dividend income. The family trust subscribes for the common shares of the corporation which will allow any future growth of the corporation to accrue to the beneficiaries of the family trust. When Michael and Michelle are ready to fully transition control of the company to their children, they can transfer shares from the family trust to the children. If structured correctly, all of this can be accomplished on a tax-deferred basis, other than the tax on the redemption of Michael and Michelle's preferred shares over time.

This is what the shareholdings would look like before and after the estate freeze:

Before:



After:



### What if I die while still owning my Woodlot Licence?

As indicated earlier, there may be tax owing if you die while owning your Woodlot Licence, or the shares of your corporation which owns the licence. On death, you are deemed to have disposed of your Woodlot Licence or the shares of your corporation based on their fair market value at the time of your death. Depending on the terms of your will, if the woodlot continues to operate and is not transferred to the beneficiaries of your will immediately, your estate could continue to earn income from the woodlot. If assets still exist in your estate, you are required to file a Trust income tax return, or T3.

Your executor can elect to have your estate considered to be a graduated rate estate if it meets the necessary criteria. You should consult with a tax advisor to determine if an estate meets the criteria of a graduated rate estate. For example, there can be more than one Estate: husband and wife die at same time or close together and their Wills are not combined, or one or both have no Will.

Graduated rate estates have access to benefits that other trusts do not, such as marginal tax rates for 36 months after death. If your estate retains the shares of the corporation that owns the Woodlot Licence, there may be tax planning opportunities. This should be discussed with your Tax accountant.

## Farming status for Income Tax Purposes: Use of LCGE for Farm Property and Intergenerational Rollover Rules

### *Qualified Farming Property:*

A commercial woodlot, including either Private land or Crown Woodlot Licence, could also be operated as a farm as “farming” can include growing trees<sup>32</sup>. It would be a question of fact as to whether a woodlot would be considered farming. In determining if it would be considered farming, you need to look at whether the focus of the business was planting, nurturing, and harvesting trees according to a forestry management or similar resource plan. On the other hand, if the focus of the operation is logging as opposed to growing, nurturing, and harvesting trees, it would not be considered a farming operation even if reforestation activities are carried out. Planting, caring for and harvesting Christmas trees could also be considered farming.

If a woodlot is determined to be a farm woodlot by the approval authority, different rules apply on the sale of shares of the company for use of the LCGE. In addition, the LCGE for disposition of qualified farming property (“QFP”) is higher than for QSBC shares, at \$1,000,000. The rules vary depending on the timing of when the property was acquired, but for property acquired after June 17, 1987 one of the following must be met<sup>33</sup>:

- In at least two years while the property was owned, income from the farming business must have been the chief source of income of the person who owned the property, and the property must have been used principally in a farming business in which the owner was actively engaged on a regular and continuous basis; or
- The property was used by a family farm corporation or partnership in the course of carrying on a business of farming in Canada for at least 24 months, while owned, during which the owner, spouse, child, or their parent were actively engaged on a regular and continuous basis in the farming business in which the property was used.

### *Intergenerational rollover:*

There are also specific rules that apply to farms that allow for an intergenerational tax-deferred transfer of assets, called a rollover. These rules are easier to meet than those for the LCGE. The criteria include that the property must be transferred by the individual to their child, grandchild or stepchild, the property must be held in Canada, and the child/grandchild/stepchild must be a resident of Canada immediately before the transfer. In addition, the property must have been used principally (more than 50%) in a farming business in which the individual, their spouse, their child or their parent was engaged to the extent required by a prescribed forest management plan<sup>34</sup>. The property that can be rolled to the next generation include land and depreciable property, such as a Woodlot Licence. If considering an intergenerational rollover, you should consult with your accountant to determine if your woodlot assets qualify.

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<sup>32</sup> As per CRA Bulletin IT-373R2

<sup>33</sup> Definition of Qualified farm or fishing property in Section 110.6 of the ITA and 110.6(1.3) of the ITA

<sup>34</sup> Per 73(3) of the ITA and 7400 of the Income Tax Regulations

# MODULE 5: PRIVATE (SCHEDULE A) LAND GUIDANCE

## Introduction

Many Woodlot Licences contain Private (Schedule A) land. The *Forest Act*, section 54(2)(d)(ii) says that for the disposition of a Woodlot Licence to have effect, the Private (Schedule A) land subject to the Woodlot Licence must remain subject to the Woodlot Licence. Consequently, the holder of a Woodlot Licence that includes Private (Schedule A) land, must decide how they wish to deal with the Private (Schedule A) land before initiating the transfer process, i.e. submit a Notice of Intended Disposition.

When considering a transfer of a Woodlot Licence that includes Private (Schedule A) land, there are two steps to the transfer process:

- The first step, decide how to deal with the Private (Schedule A) land component of the Woodlot Licence, and
- The second step is dealing with the Crown (Schedule B) land portion of the Woodlot Licence.

**Note:** *Private (Schedule A) land associated with a Crown Woodlot Licence may be classified by B.C. Assessment for tax purposes in various ways. It may be farmland, Managed Forest land or other. If the Private land is removed from a Woodlot Licence agreement, the owner may wish to consider applying to have the Private land classified as Managed Forest land. This would be done if the owner wishes to continue to manage the forested land. It would then be managed according to the Private Managed Forest Act and the associated Regulations. There may be tax and other advantages to the owner. For more detail:*

[https://www.bclaws.ca/civix/document/id/complete/statreg/03080\\_01](https://www.bclaws.ca/civix/document/id/complete/statreg/03080_01)

## Overview

For Woodlot Licences that contain Private (Schedule A) land, and when the Private (Schedule A) land has been held by the licensee or his/her family for at least the last ten (10) consecutive years, there are three options:

- 1) Remove existing Private (Schedule A) land from the Woodlot Licence; or
- 2) Existing Private (Schedule A) land is included with the Crown (Schedule B) land and is either purchased or leased by the new woodlot licensee; or
- 3) Existing Private (Schedule A) land is removed or modified, and new Private (Schedule A) land is substituted.

**Note:** *Removal of the Private (Schedule A) land portion of the Woodlot Licence should be considered and must be completed before proceeding with a transfer.*

If a transfer occurs without properly dealing with the Private (Schedule A) land, the Minister may cancel the Woodlot Licence or add conditions that the Holder must complete. The Minister may also suspend rights held under the Woodlot Licence.

**Option 1: Existing Private (Schedule A) land is removed from the Woodlot Licence:**

The Private land will be removed (either in whole or in part). See Private land removal policy: [https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/forestry/timber-tenures/woodlots/private\\_land\\_removal\\_policy\\_finaldraft\\_april\\_12\\_2018\\_ds.pdf](https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/forestry/timber-tenures/woodlots/private_land_removal_policy_finaldraft_april_12_2018_ds.pdf) --

Under this option, certain detail must be provided. The Woodlot Licence Private Land Removal Guidelines provide detail on all the items that must be addressed when applying for Private land removal. Private land removal should be dealt with first, followed by a separate request for a transfer. This ensures that all items that may be affected by the removal of the Private land are identified and dealt with prior to the removal of the Private Land and subsequent Woodlot Licence transfer.

**Option 2: Existing Private (Schedule A) land remains attached to the Crown (Schedule B) land and is either purchased or leased by the new woodlot licensee:**

All obligations and authorities will remain in place. The ownership of the Private land must be dealt with prior to the transfer being completed. If the Private land is sold by the original licensee to the new licensee, this will be a change of title.

If the Private land is leased, the original owner must understand that the land is still part of the Woodlot Licence and any future use of the land including selling may be restricted.

A restriction is that the new holder (new licensee) would not be able to apply to remove the Private land until 10 years have passed, dated from the transfer approval date.

**Note:** *In unique situations, such as additional Private land added after award date of the Woodlot Licence, there may be some flexibility. Contact the MOF Delegated Decision Maker for clarification.*

Any lease or assignment of management rights concerning Private (Schedule A) land must contain the following key points:

- Before a term identical to the term of the Woodlot Licence;
- Be replaceable at the same time as the Woodlot Licence is replaceable; and
- Provide full management authority for all management rights associated with operating the Woodlot Licence.

This includes all aspects of planning, harvesting, silviculture and other management activities. It also includes the right for the woodlot licensee to apply for, hold, use and transfer a timber mark over the private land for the purposes of harvesting and transporting timber. These three mandatory requirements are designed to ensure that the Private land component continues to be managed as part of the Woodlot Licence area and the lease or assignment of management rights is replaced at the same time as the Woodlot Licence.

Breaking the lease may be interpreted as failing to meet a condition of transfer. It could lead to suspension and cancellation of the Woodlot Licence.

See following weblink for details:

[https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/forestry/timber-tenures/woodlots/woodlot\\_private\\_land\\_deletion\\_request.pdf](https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/forestry/timber-tenures/woodlots/woodlot_private_land_deletion_request.pdf)

**Option 3: Existing Private (Schedule A) land is removed or modified, and new Private land is substituted:**

Like Option 2 above, certain detail must be provided regarding the Private land to be removed. In addition, similar detail must be provided for the new, substitute Private land.

The principal regarding the new, substitute land is that it should make an equivalent or better contribution to the overall management of the Woodlot Licence as the deleted land. Here are two scenarios to consider:

Scenario 1: As the original Private land is not remaining with the Woodlot Licence, then the 10-year rule is probably applicable. The 10-year rule is to maintain the original award conditions and have the Private land managed for a 10-year period to achieve whatever benefits it contributed. The second or subsequent Woodlot Licence holder would have a new 10 year period applying to the new Private land beginning on the date that the transfer is approved or whatever commitments were made at the time of the application and subsequently incorporated into the Woodlot Licence document.

If the original Private land had no/minimal conditions related to any award criteria or commitments made in the application, the 10-year rule could be waived. A new 10-year period would apply to the new Private land. If the original Private land involved commitments to outside (third) parties, then the 10-year rule must apply to the original Private land to achieve those commitments.

Alternatively, an outside (third) party could release the original licensee from the stated commitment, or the new licensee could assume the commitment and have it included in the new Woodlot Licence document.

Scenario 2: The transfer is handled as one transaction with one of the conditions being that the old Private land is removed and that the new Private land is added to the Woodlot Licence but under new ownership.

**Private (Schedule A) land Removal Considerations:**

To proactively resolve any upcoming issues, the following actions could include, but are not limited to:

- Having a general overview of the proposed Private land removal including a suitable map.
- Documentation that the Woodlot Licence has been held by the licensee for at least 10 years and that the private land has been in the Woodlot Licence for at least 10 years.
- Support from all parties named on both the Private land title and the Woodlot Licence agreement.
- Information on all activities that have been conducted on the Private land, including:
  - Obligations on the proposed removal lands that will not be met.
  - Impacts upon the Management Plan and Allowable Annual Cut (AAC).



- Any overdue or outstanding licence obligations on the Crown (Schedule B) lands, and any remaining Private (Schedule A) lands, that must be addressed.
- Existing Cutting Permit(s) obligations.
- Roads and whether this will impact access to other properties or tenures.
- Notification to the:
  - Public
  - Local government
  - First Nations
- Any obligations or working arrangements between the licence holder and neighbours or other interested parties. This might concern items such as notifications of activities, use by animals or non-licensee people, impacts upon un-registered wells or water sources, trap lines and range tenures, etc.

### Summary

Requesting a transfer may be a complicated process, depending on whether Private (Schedule A) land is part of the Woodlot Licence. Where Private (Schedule A) land is involved, the owner of the Private (Schedule A) land must decide how to handle the Private (Schedule A) land. This should be done before applying for a transfer. Seek professional legal and financial assistance when dealing with any specific Private (Schedule A) land issues.

# APPENDICES

## Appendix 1: Questions to ask Qualified Professionals when transferring a Woodlot Licence

### 1. General questions to ask when contemplating a transfer:

- Was your Woodlot Licence awarded under Section 47.3 of the Forest Act? (If no, your woodlot is transferable. If yes, the disposition could still proceed with the approval of the Lieutenant Governor in Council or as permitted by the regulations. Contact your local MOF office for more information.)
- How do you consider and deal with issues such as: Family and Business obligations, Tenure transfer process, existing and future Licence obligations, Schedule A private land ownership, Taxation issues, Legislation requirements and ongoing financial and business management?
- Have you considered removing your Private (Schedule A) Land before proceeding with a transfer?
- Do you have an Estate Plan?
- Do you have a Succession Plan?
  - Who is taking over the woodlot?
  - Is control of the woodlot going to be shared?
  - If not shared (i.e. is this an immediate transition or is the Holder wanting to keep some control) then what are conditions of transfer?

### 2. Forestry disposition questions to ask when proceeding with a transfer:

- Have you and the intended recipient notified the MOF that you are considering a transfer?
- Have you ensured that the transfer of your Woodlot Licence meets the following requirements?
  - The Woodlot Licence holder may dispose of the agreement to another person if the Minister, in writing, approves the disposition.
  - All money required to be paid to the government that is due and payable to the government in respect of the Woodlot Licence has been paid or is the subject of an arrangement for payment approved by the Minister of Finance.
  - The intended recipient is a company, person, or First Nation that, under section 44 of the *Forest Act*, is eligible to have a Woodlot Licence.
  - The Private land, if any, in the Woodlot Licence area remains subject to the Woodlot Licence after the transfer concludes for a minimum of 10 consecutive years. This only pertains if the holder does NOT remove Private land before sale.
- Have you discussed with the new licensee any existing or future Forest Tenure obligations that may include but are not limited to: road maintenance, silviculture and other commitments in the Management Plan or any clauses in Schedule C of the Woodlot Licence document that the new Licensee will assume as these could affect the potential for a successful transfer?

### 3. Legislation questions to ask when proceeding with a transfer:

- Have you considered how you will transfer the Woodlot Licence (i.e. transfer the shares of the corporation or transfer the Woodlot Licence tenure)?
- Is the disposition of the Woodlot Licence exempt? i.e. is this a transfer to a trustee in bankruptcy or from the estate of a Deceased Holder to the Deceased Holder's Personal Representative?
- Are there Road Permits associated with the Woodlot Licence?
- Has the Woodlot Licence been suspended in whole or in part?
- Does the Intended Recipient qualify to hold a Woodlot Licence?
- Is there Private land in the Woodlot Licence? If so, will the Private Land be leased, transferred, substituted, or removed from the Woodlot Licence?
- If transferring shares – has a change of control occurred?
- Have you completed the transfer in the time set out by the Minister?

#### **4. Taxation questions to ask when proceeding with a transfer:**

- How do I minimize tax implications?
- What is the cost base of the asset(s) intended to be transferred?
- If multiple assets are included i.e. land, timber, licence etc., what is the allocation of cost between the assets?
- If shares, is the ownership, operations and corporation structured to access Lifetime Capital Gains Exemption (LCGE)
- Could the operations of the woodlot allow it to qualify as farm property to increase the amount of the LCGE, flexibility in assets to be transferred, and potential for intergenerational rollover?

#### **5. Private (Schedule A) land issues to consider when proceeding with a transfer:**

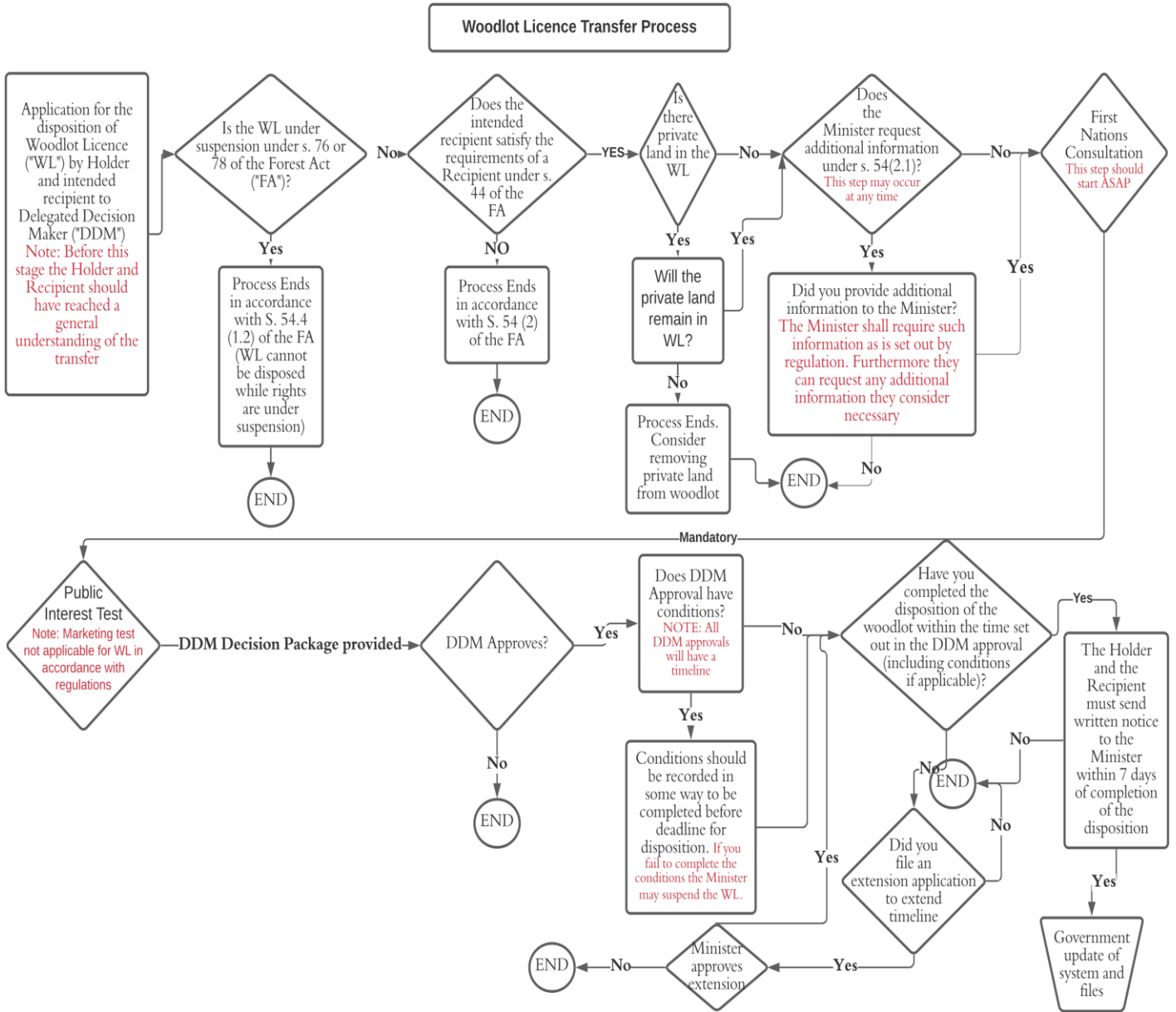
- Have you decided how to deal with your Private (Schedule A) land?
- Do you know that a lease or assignment of management rights concerning Private (Schedule A) land must contain the following key points: be for a term identical to the term of the Woodlot Licence; be replaceable at the same time that the Woodlot Licence is replaceable; and provide full management authority for all management rights associated with operating the Woodlot Licence? (NOTE: This includes all aspects of planning, harvesting, silviculture and other management activities).
- Have you considered the right for the new woodlot licensee to apply for, hold, use and transfer a timber mark over the Private land for the purposes of harvesting and transporting timber?

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Appendix 1  
Questions to ask Qu

## Appendix 2: Woodlot Licence Tenure Disposition Chart



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Woodlot Transfer Flowchart - August :