

FIRST NATION
PROPERTY ASSESSMENT LAW, 20__
(NEW BRUNSWICK)
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WHEREAS:

- A. Pursuant to section 5 of the *First Nations Fiscal Management Act*, the council of a first nation may make laws respecting taxation for local purposes of reserve lands and interests in reserve lands;
- B. The Council of the _____ First Nation deems it to be in the best interests of the First Nation to make a law for such purposes; and
- C. The Council of the _____ First Nation has given notice of this law and has considered any representations received by the Council, in accordance with the requirements of the *First Nations Fiscal Management Act*;

NOW THEREFORE the Council of the _____ First Nation duly enacts as follows:

PART I
CITATION

Citation

1. This Law may be cited as the _____ *First Nation Property Assessment Law, 20__* .

PART II DEFINITIONS AND REFERENCES

Definitions and References

2.(1) In this Law:

“Act” means the *First Nations Fiscal Management Act*, S.C. 2005, c. 9, and the regulations enacted under that Act;

“assessable property” means an interest in reserve lands that is liable to assessment under this Law;

“assessed value” means the value of land or improvements, or both, comprising an interest in reserve lands as if the land or improvements, or both, were held in fee simple off the reserve, as determined under this Law;

“assessment” means a valuation and classification of an interest in reserve lands;

“Assessment Notice” means a notice containing the information set out in Schedule IV;

“Assessment Review Board” means a board established by Council in accordance with Part IX;

“assessment roll” means a roll prepared under Part VI of this Law and includes an amended assessment roll;

“assessor” means a person appointed by Council under subsection 3(1);

“chair” means the chair of the Assessment Review Board;

“complainant” means a person who commences an appeal of an assessment under this Law;

“Council” has the meaning given to that term in the Act;

“First Nation” means the _____ First Nation, being a band named in the schedule to the Act;

“holder”, in relation to an interest in reserve lands, means a person

- (a) in possession of the interest,
- (b) entitled through a lease, licence or other legal means to the interest,
- (c) in actual occupation of the interest, or
- (d) who is a trustee of the interest;

“improvement” means any building, fixture, structure or similar thing, other than land, that is included in the definition of “real property” in the *Assessment Act* (New Brunswick);

“interest”, in relation to reserve lands, means any estate, right or interest of any nature in or to the lands, including any right to occupy, possess or use the lands, but does not include title to the lands that is held by Her Majesty;

“Notice of Appeal” means a notice containing the information set out in Schedule VI;

“Notice of Hearing” means a notice containing the information set out in Schedule VIII;

“Notice of Withdrawal” means a notice containing the information set out in Schedule VII;

“Order to Attend/Produce Documents” means an order containing the information set out in Schedule IX;

“party”, in respect of an appeal of an assessment under this Law, means the parties to an assessment appeal under section 30;

“person” includes a partnership, syndicate, association, corporation and the personal or other legal representatives of a person;

“property class” means those categories of interests in reserve lands established in subsection 6(1) for the purposes of assessment and taxation;

“Province” means the province of New Brunswick;

“reserve” means a reserve of the First Nation within the meaning of the *Indian Act*;

“resolution” means a motion passed and approved by a majority of Council present at a duly convened meeting;

“secretary” means the secretary of the Assessment Review Board appointed under section 23;

“tax administrator” means the person appointed by Council to that position under the Taxation Law;

“Taxation Law” means the _____ *First Nation Property Taxation Law, 20__* ;

“taxation year” means the calendar year to which an assessment roll applies for the purposes of taxation; and

“taxes” includes

(a) all taxes imposed, levied, assessed or assessable under the Taxation Law, and all penalties, interest and costs added to taxes under the Taxation Law, and

(b) for the purposes of collection and enforcement, all taxes imposed, levied, assessed or assessable under any other local revenue law of the First Nation, and all penalties, interest and costs added to taxes under such a law.

(2) For greater certainty, an interest, in relation to reserve lands, includes improvements.

(3) In this Law, references to a Part (e.g. Part I), section (e.g. section 1), subsection (e.g. subsection 2(1)), paragraph (e.g. paragraph 5(9)(a)) or Schedule (e.g. Schedule I) is a reference to the specified Part, section, subsection, paragraph or Schedule of this Law, except where otherwise stated.

PART III ADMINISTRATION

Assessor

3.(1) Council must appoint one or more assessors to undertake assessments of assessable property in accordance with this Law and such other duties as set out in this Law or as directed by Council.

(2) An assessor appointed by Council must be qualified to conduct assessments of real property in the Province.

Application of Law

4. This Law applies to all interests in reserve lands.

PART IV ASSESSED VALUE

Assessment and Valuation

5.(1) The assessor must assess all interests in reserve lands that are subject to taxation under the Taxation Law and all interests for which payments-in-lieu may be accepted by Council.

(2) For the purpose of determining the assessed value of an interest in reserve lands, the valuation date is January 1 of the year before the taxation year.

(3) Except where otherwise provided, the assessor must assess interests in reserve lands at their real and true value as if held in fee simple off the reserve.

(4) The assessor must not apply any discretionary assessment reductions.

(5) The assessor must determine the assessed value of an interest in reserve lands and must enter the assessed value of the interest in the assessment roll.

(6) Where two (2) or more persons are holders of an undivided interest in reserve lands, except where a holder is a deceased person, and where the assessor cannot ascertain the several names and proportionate shares of the holders, the assessor may assess the interest in the names of the holders known to the assessor or last registered as the holder of the interest.

(7) The assessor must assess installations, machinery, equipment, apparatus, structures, pipes or pipe lines forming part of a gas holding, storage, transportation, transmission or distribution system, or any oil pipe line, in the name of its owner.

(8) Where the owner of a mobile home does not hold the land on which it is located, the assessor may assess the mobile home in the name of its owner.

(9) Except as otherwise provided in this Law, for the purposes of assessing interests in reserve lands the assessor must use

(a) the valuation methods, rates, rules and formulas established under provincial assessment legislation existing at the time of assessment; and

(b) the assessment rules and practices used by assessors in the Province for conducting assessments off the reserve.

Property Classes

6.(1) Council hereby establishes the property classes established by the Province for provincial property assessment purposes, for the purposes of assessment under this Law and imposing taxes under the Taxation Law.

(2) The property classes established under subsection (1) are set out in Schedule I to this Law, and the assessor must use the provincial classification rules for each property class.

(3) The assessor must assess interests in reserve lands according to the property classes established under this Law.

(4) Where an interest in reserve lands falls into more than one (1) property class, the assessor must determine the share of the assessed value of the interest attributable to each class and assess the interest according to the proportion each share constitutes of the total assessed value.

PART V

REQUESTS FOR INFORMATION AND INSPECTIONS

Requests for Information

7.(1) The assessor may, for any purpose related to the administration of this Law, deliver a Request for Information containing the information set out in Schedule II, to a holder or a person who has disposed of assessable property, and that person must provide the requested information to the assessor within fourteen (14) days from the date of delivery, or a longer period as specified in the notice.

(2) The assessor may in all cases assess the assessable property based on the information available to him or her and is not bound by the information provided under subsection (1).

Inspections

8.(1) The assessor must at all reasonable times and on reasonable request be given free access to all interests in reserve lands and to all parts of every building, and to all reports, records, financial statements, statistics or other relevant information in the possession or control of the holder that the assessor considers necessary, for the purpose of making a proper assessment or to reconsider an assessment.

(2) Notwithstanding subsection (1), the assessor may at all reasonable times enter upon lands for the purpose of carrying out an inspection of the lands and allowing the assessor, without entry into any building,

to make an assessment or to reconsider an assessment of the interest in reserve lands.

(3) In assessing real property, the assessor may request, and may rely upon, reports, records, financial statements, statistics and other relevant information in the possession or control of the holder that the assessor considers necessary and that relate to the ownership, quantity, nature, location, extent and value of such real property.

PART VI ASSESSMENT ROLL AND ASSESSMENT NOTICE

Assessment Roll

9.(1) On or before December 31 of each year before the taxation year, the assessor must complete a new assessment roll containing a list of every interest in reserve lands that is liable to assessment under this Law.

(2) The assessment roll must be in paper or electronic form and must contain the following information in respect of each interest in reserve lands:

- (a) the name and last known address of the holder of the interest;
- (b) a short description of the interest;
- (c) the classification of the interest;
- (d) the assessed value by classification of the interest;
- (e) the total assessed value of the interest;
- (f) the net assessed value of the interest subject to taxation under the Taxation Law;
- (g) any other information the assessor considers necessary or desirable.

[Note to First Nation: Include this language only if this Law is repealing and replacing an existing property assessment law.]

(3) For greater certainty, an assessment roll prepared under the enactment repealed by section 55 is and continues to be an assessment roll under this Law and must be used until such time as the next assessment roll is prepared and certified in accordance with this Law.]

Certification by Assessor

10. On completion of an assessment roll and on or before December 31 in that year, the assessor must

- (a) certify in writing in substantially the form set out in Schedule X that the assessment information in the assessment roll was completed in accordance with the requirements of this Law; and
- (b) deliver a copy of the certified assessment roll to Council.

Amending the Assessment Roll

11.(1) Where the assessor amends the assessment roll to correct errors and omissions, reflect reconsideration decisions and implement decisions of the Assessment Review Board, the assessor must

- (a) date and initial amendments made to the assessment roll; and
- (b) report the change or correction to Council.

(2) Where the assessment roll is amended under this Law, the amendments are an integral part of the assessment roll and are deemed to be effective as of the date the assessment roll was certified under section 10.

(3) The assessor must not amend the assessment roll contrary to an order or direction of the Assessment

Review Board or a court of competent jurisdiction.

Validity of Assessment Roll

12. An assessment roll is effective on certification and, unless amended in accordance with this Law, by a decision of the Assessment Review Board or by an order of a court of competent jurisdiction, is

- (a) valid and binding on all parties concerned, despite any
 - (i) omission, defect or error committed in, or with respect to, the assessment roll,
 - (ii) defect, error or misstatement in any notice required, or
 - (iii) omission to mail any notice required; and
- (b) for all purposes, the assessment roll of the First Nation until the next certified assessment roll.

Inspection and Use of Assessment Roll

13.(1) On receipt by Council, the assessment roll is open to inspection in the First Nation office by any person during regular business hours.

[Note to First Nation: If the First Nation allows the assessment roll to be accessed online, consider including an additional provision that provides for that access, such as:

(2) In addition to inspection under subsection (1), Council may allow the assessment roll to be inspected electronically through an online service, provided that the information available online does not include any names or other identifying information about a holder or other person.]

(2) A person must not, directly or indirectly, use the assessment roll or information contained in the assessment roll to

- (a) obtain names, addresses or telephone numbers for solicitation purposes, whether the solicitations are made by telephone, mail or any other means; or
- (b) harass an individual.

(3) The assessor [tax administrator] may require a person who wishes to inspect the assessment roll to complete a declaration in substantially the form set out in Schedule III

- (a) specifying the purpose for which the information is to be used; and
- (b) certifying that the information contained in the assessment roll will not be used in a manner prohibited under this section.

Protection of Privacy in Assessment Roll

14.(1) On application by a holder, the tax administrator may omit or obscure the holder's name, address or other information about the holder that would ordinarily be included in an assessment roll if, in the tax administrator's opinion, the inclusion of the name, address or other information could reasonably be expected to threaten the safety or mental or physical health of the holder or a member of the holder's household.

(2) Where the tax administrator omits or obscures information under subsection (1), such information must be obscured from all assessment rolls that are available for public inspection under subsection 13(1) or are otherwise accessible to the public.

Chargeholders

15.(1) Any person holding a charge on assessable property may, at any time, give notice, with full particulars of the nature, extent and duration of the charge, to the assessor and request that his or her name be added to the assessment roll in respect of that assessable property, for the duration of the charge.

(2) On receipt of a notice and request under this section, the assessor must enter the person's name and

address on the assessment roll and provide copies of all Assessment Notices issued in respect of the assessable property.

Assessment Notice

16.(1) The tax administrator [assessor] must, on or before December 31 of each year before the taxation year, mail an Assessment Notice to every person named in the assessment roll in respect of each assessable property, at the person's address on the assessment roll.

(2) Where requested by the recipient, an Assessment Notice may be e-mailed to a person named on the assessment roll, and the Assessment Notice will be deemed to have been delivered on the date that the e-mail is sent by the tax administrator [assessor].

(3) A person whose name appears in the assessment roll must give written notice to the tax administrator [assessor] of any change of address.

(4) Any number of interests in reserve lands assessed in the name of the same holder may be included in one Assessment Notice.

(5) If several interests in reserve lands are assessed in the name of the same holder at the same value, the Assessment Notice may clearly identify the interest assessed, without giving the full description of each interest as it appears in the assessment roll.

(6) The tax administrator [assessor] must enter on the assessment roll the date of mailing an Assessment Notice and the entry is *prima facie* evidence of the delivery.

(7) Subject to subsection 13(2) and subsection (8), the tax administrator [assessor] must provide, to any person who requests it and pays the fee of ___ dollars (\$___), the information contained in the current Assessment Notice.

(8) Where information has been omitted or obscured under subsection 14(1), the tax administrator [assessor] must omit that information from a notice provided under subsection (7).

(9) The assessor may correct an Assessment Notice that contains an error, omission or misdescription and may mail an amended Assessment Notice, notwithstanding the fact that the time for issuance of the Assessment Notice has passed, and an Assessment Notice so amended is valid and effective from the date on which the original Assessment Notice was mailed.

PART VII

ERRORS AND OMISSIONS IN ASSESSMENT ROLL

Corrections of Errors and Omissions in Assessment Roll

17.(1) If at any time the assessor discovers that there is an error in any part of the assessment roll that is the result of incorrect factual information about an interest, and not in the determination of the real and true value of an interest, the assessor must correct the error and amend the assessment roll accordingly.

(2) If at any time assessable property has been in whole or in part omitted from the assessment roll, the assessor must make any assessment necessary to rectify the omission and must enter the assessable property on the assessment roll.

(3) Where the assessment roll is amended under subsection (1) or (2), the assessor must mail an amended Assessment Notice to every person named in the assessment roll in respect of the interest in reserve lands affected and must deliver an amendment to the assessment roll to the First Nation.

PART VIII

RECONSIDERATION OF ASSESSMENT

Reconsideration by Assessor

18.(1) A person named on the assessment roll in respect of an assessable property may request that the assessor reconsider the assessment of that assessable property.

(2) A request for reconsideration may be made on one or more of the grounds on which an assessment appeal may be made under this Law.

(3) A request for reconsideration of an assessment must

(a) be delivered to the assessor within twenty-one (21) days after the day that the Assessment Notice is mailed or e-mailed to the person named on the assessment roll in respect of an assessable property;

(b) be made in writing and include the information set out in Schedule V; and

(c) include any reasons in support of the request.

(4) The assessor must, no later than twenty-one (21) days after the end of the twenty-one (21) day period referenced in paragraph (3)(a), consider the request for reconsideration and advise the person who requested the reconsideration that

(a) the assessor confirms the assessment; or

(b) the assessor has determined that the assessable property should have been assessed differently, and that the assessor offers to modify the assessment.

(5) Where the person who requested the reconsideration agrees with the modification proposed by the assessor, the assessor must

(a) amend the assessment roll as necessary to reflect the modified assessment;

(b) give notice of the amended assessment to the tax administrator and to all persons who received the Assessment Notice in respect of the assessable property; and

(c) where a Notice of Appeal has been delivered in respect of the assessable property, advise the Assessment Review Board of the modification.

(6) Where the person who requested the reconsideration accepts an offer to modify an assessment, that person must not appeal the modified assessment and must withdraw any Notice of Appeal filed in respect of the assessable property.

PART IX

ASSESSMENT REVIEW BOARD

Council to Establish Assessment Review Board

19.(1) Council must, by resolution, establish an Assessment Review Board to hear and determine assessment appeals under this Law.

(2) The Assessment Review Board must consist of not less than three (3) members, including at least one (1) member who is a practising or non-practising member in good standing of the law society of the Province and at least one (1) member who has experience in assessment appeals in the Province.

[Note to First Nation: The First Nation can choose to require the appointment of a member who is also a member of the First Nation, with the following wording:

(3) The Assessment Review Board must consist of at least one (1) member who is a member of the First Nation but not a member of Council.]

(4) Each member of the Assessment Review Board must hold office for a period of three (3) years unless the member resigns or is removed from office in accordance with this Law.

(5) If a member of the Assessment Review Board is absent, disqualified, unable or unwilling to act, Council may appoint another person, who would otherwise be qualified for appointment as a member, to

replace the member until the member returns to duty or the member's term expires, whichever comes first.

Remuneration and Reimbursement

[Note to First Nation: The sample wording below provides for three levels of remuneration. The chair is paid the highest rate, members who are lawyers or have assessment experience are paid a middle rate, and members without those qualifications are paid a lower rate. First Nations can choose to implement these three levels, or can choose to have two levels of remuneration, one for the chair and one for other members.]

20.(1) The First Nation must remunerate

- (a) the chair (or acting chair) at a rate of _____ dollars (\$ _____) per hour [or day],
- (b) a member (or replacement member appointed to act), other than the chair, who meets the criteria set out in subsection 19(2), at a rate of _____ dollars (\$ _____) per hour [or day], and
- (c) a member (or replacement member appointed to act), other than those referenced in paragraphs (a) and (b), at a rate of _____ dollars (\$ _____) per hour [or day],

for time spent on activities of the Assessment Review Board required under this Law or expressly authorized by Council.

(2) The First Nation must reimburse a member of the Assessment Review Board, including a replacement member, for reasonable travel and out of pocket expenses necessarily incurred in carrying out his or her duties.

Conflicts of Interest

21.(1) A person must not serve as a member of the Assessment Review Board if the person

- (a) has a personal or financial interest in the assessable property that is the subject of an appeal;
- (b) is the Chief of the First Nation or a member of Council;
- (c) is an employee of the First Nation; or
- (d) has financial dealings with the First Nation that might reasonably give rise to a conflict of interest or impair that person's ability to deal fairly and impartially with an appeal, as required under the terms of this Law.

(2) For the purposes of paragraph (1)(a), membership in the First Nation does not in itself constitute a personal or financial interest in assessable property.

Appointment of Chair

22.(1) Council must, by resolution, appoint one of the members of the Assessment Review Board as chair.

(2) The chair must

- (a) supervise and direct the work of the Assessment Review Board;
- (b) undertake administrative duties as necessary to oversee and implement the work of the Assessment Review Board;
- (c) determine procedures to be followed at hearings consistent with this Law;
- (d) administer an oath or solemn affirmation to a person or witness before his or her evidence is taken; and
- (e) preside at hearings of the Assessment Review Board.

(3) If the chair is absent or incapacitated, Council must designate a member of the Assessment Review Board as the acting chair for the period that the chair is absent or incapacitated.

Appointment of Secretary

- 23.(1) Council must, by resolution, appoint a secretary of the Assessment Review Board.
- (2) The secretary of the Assessment Review Board must
- (a) have the custody and care of all records, documents, orders and decisions made by or pertaining to the Assessment Review Board; and
 - (b) fulfill such other duties as directed by the chair and the Assessment Review Board.

Removal of Member

24. Council may terminate the appointment of a member of the Assessment Review Board for cause, including where a member
- (a) is convicted of an offence under the *Criminal Code*;
 - (b) fails to attend three (3) consecutive hearings of the Assessment Review Board; or
 - (c) fails to perform any of his or her duties under this Law in good faith and in accordance with the terms of this Law.

Duty of Member

25. In performing their duties under this Law, the members of the Assessment Review Board must act faithfully, honestly and impartially and to the best of their skill and ability, and must not disclose to any person information obtained by them as a member, except in the proper performance of their duties.

PART X

APPEAL TO ASSESSMENT REVIEW BOARD

Appeals

26. The Assessment Review Board must hear and determine appeals made under this Part.

Notice of Appeal

27.(1) Any person, including without limitation the First Nation and the assessor, may appeal an assessment or a reconsideration of an assessment of assessable property to the Assessment Review Board by delivering

- (a) a completed Notice of Appeal,
- (b) a copy of the Assessment Notice, and
- (c) an administration fee of thirty dollars (\$30),

to the assessor within forty-five (45) days after the date on which the Assessment Notice was mailed or e-mailed to the persons named on the assessment roll in respect of the assessable property.

(2) An appeal is commenced by delivery of a completed Notice of Appeal, a copy of the Assessment Notice, and the required administration fee to the assessor at the address set out in the Assessment Notice.

(3) The grounds for an appeal may be in respect of one or more of the following:

- (a) the assessed value of the assessable property;
- (b) the assessment classification of the assessable property;
- (c) the applicability of an exemption to the assessable property;
- (d) any alleged error or omission in an assessment or Assessment Notice; and
- (e) the liability of the holder to taxation under the Taxation Law.

(4) Where an appeal is commenced with respect to an assessment amended under section 18, the appeal

must be confined to the amendment.

(5) No appeal may be brought respecting an assessment amended to reflect a decision of the Assessment Review Board or a court of competent jurisdiction.

- (6) The assessor must, as soon as possible after a Notice of Appeal is received,
- (a) deliver a copy of the Notice of Appeal to the chair and to the First Nation; and
 - (b) deliver the administration fee collected under paragraph (1)(c) to the First Nation.

Agents and Solicitors

28. Where a complainant is represented in an appeal through a solicitor or agent, all notices and correspondence required to be given to the complainant are properly given if delivered to the solicitor or agent at the address set out in the Notice of Appeal.

Scheduling of Hearing

29.(1) On delivery of a Notice of Appeal to the assessor, the chair must, in consultation with the assessor, schedule a hearing of the appeal.

(2) The chair must, at least ten (10) days before the hearing, deliver a Notice of Hearing setting out the date, time and place of the hearing, to the parties and to each person named on the assessment roll in respect of the assessable property.

Parties

30. The parties in a hearing are

- (a) the complainant;
- (b) the holder of the assessable property, if not the complainant;
- (c) the assessor; and
- (d) any person who the Assessment Review Board determines may be affected by the appeal, upon request by that person.

Delivery of Documentation

31.(1) The chair must, without delay, deliver a copy of any document submitted by a party in relation to an appeal to all other parties.

- (2) The chair may, in respect of an appeal,
- (a) require the assessor to provide any relevant document or record obtained or created in respect of an assessment that is in the custody or control of the assessor, subject to privilege;
 - (b) require a party to provide relevant documents and records in advance of a hearing.

Timing for Hearing

32. Subject to section 45, the Assessment Review Board must commence a hearing within forty-five (45) days after delivery of the Notice of Appeal to the assessor, unless all parties consent to a delay.

Daily Schedule

33.(1) The chair must

- (a) create a daily schedule for the hearings of the Assessment Review Board; and
- (b) post the daily schedule at the place where the Assessment Review Board is to meet.

(2) The Assessment Review Board must proceed to deal with appeals in accordance with the daily schedule, unless the Assessment Review Board considers a change in the schedule necessary and desirable

in the circumstances.

Conduct of Hearing

34.(1) The Assessment Review Board must give all parties a reasonable opportunity to be heard at a hearing.

(2) A party may be represented by counsel or an agent and may make submissions as to facts, law and jurisdiction.

(3) The Assessment Review Board may conduct a hearing whether the complainant is present or not, provided the complainant was given notice of the hearing in accordance with this Law.

(4) The burden of proof in an appeal is on the person bringing the appeal.

(5) In an oral hearing, a party may call and examine witnesses, present evidence and submissions and conduct cross-examination of witnesses as reasonably required by the Assessment Review Board for a full and fair disclosure of all matters relevant to the issues in the appeal.

(6) The Assessment Review Board may reasonably limit further examination or cross-examination of a witness if it is satisfied that the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the appeal.

(7) The Assessment Review Board may question any witness who gives oral evidence at a hearing.

(8) The Assessment Review Board may receive and accept information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law.

(9) The Assessment Review Board may conduct its proceedings by any combination of written, electronic and oral hearings.

(10) An oral hearing must be open to the public unless the Assessment Review Board, on application by a party, determines that the hearing should be held *in camera*.

Maintaining Order at Hearings

35.(1) The Assessment Review Board may, at an oral hearing, make orders or give directions that it considers necessary to maintain order at the hearing.

(2) Without limiting subsection (1), the Assessment Review Board may, by order, impose restrictions on a person's continued participation in or attendance at a hearing and may exclude a person from further participation in or attendance at a hearing until the Assessment Review Board orders otherwise.

Summary Dismissal

36.(1) At any time after a Notice of Appeal is received by the Assessment Review Board, the Assessment Review Board may dismiss all or part of the appeal where it determines that any of the following apply:

(a) the appeal is not within the jurisdiction of the Assessment Review Board;

(b) the appeal was not filed within the applicable time limit; or

(c) the complainant failed to diligently pursue the appeal or failed to comply with an order of the Assessment Review Board.

(2) Before dismissing all or part of an appeal under subsection (1), the Assessment Review Board must give the complainant an opportunity to make submissions to the Assessment Review Board.

(3) The Assessment Review Board must give written reasons for any dismissal made under subsection (1) to all parties.

Quorum

37.(1) A majority of the members of the Assessment Review Board constitutes a quorum, provided that there must not be less than three (3) members present at any time.

(2) Where a quorum of the members of an Assessment Review Board is not present at the time at which a hearing is to be held, the hearing must be adjourned to the next day that is not a holiday, and so on from day to day until there is a quorum.

Decisions

38. A decision of the majority of the members is a decision of the Assessment Review Board and, in the case of a tie, the decision of the chair governs.

Combining Hearings

39. The Assessment Review Board may conduct a single hearing of two (2) or more appeals related to the same assessment if the matters in each hearing are addressing the same assessable property or substantially the same issues.

Power to Determine Procedures

40.(1) The Assessment Review Board has the power to determine its own procedures during a hearing to the extent not inconsistent with this Law.

(2) The Assessment Review Board may hold a pre-hearing conference and require the parties to attend the pre-hearing conference.

(3) The Assessment Review Board may adopt written rules of practice and procedure to facilitate the just and timely resolution of the matters before it, provided such rules are

- (a) consistent with this Law;
- (b) approved by Council resolution; and
- (c) made available to the public.

Orders to Attend or Produce Documents

41.(1) At any time before or during a hearing, but before its decision, the Assessment Review Board may make an order requiring a person to

- (a) attend a hearing to give evidence, or
- (b) produce a document or other thing in the person's possession or control as specified by the Assessment Review Board,

by issuing an Order to Attend/Produce Documents and serving it on the person at least two (2) days before the person's attendance or the requested document is required at the hearing, as the case may be.

(2) Where an order is made under paragraph (1)(a), the Assessment Review Board must pay to the person a twenty dollar (\$20) witness fee plus reasonable travel expenses to attend and give evidence before the Assessment Review Board.

(3) A party may request that the Assessment Review Board make an order under subsection (1) to a person specified by the party.

(4) Where a party makes a request under subsection (3),

(a) the chair must sign and issue an Order to Attend/Produce Documents and the party must serve it on the witness at least two (2) days before the person's attendance or the requested document is required at the hearing, as the case may be; and

(b) a party requesting the attendance of a witness must pay a twenty dollar (\$20) witness fee plus reasonable travel expenses to the witness to attend and give evidence before the Assessment Review Board.

(5) The Assessment Review Board may apply to the Court of Queen's Bench of New Brunswick for an order directing a person to comply with an order under this section.

Adjournments

42. The Assessment Review Board may

- (a) hear all appeals on the same day or may adjourn from time to time until all matters have been heard and determined; and
- (b) at any time during a hearing, adjourn the hearing.

Costs

43. The Assessment Review Board may make orders requiring a party

- (a) to pay all or part of the costs of another party in respect of the appeal,
- (b) to pay all or part of the costs of the Assessment Review Board in respect of the appeal,

where the Assessment Review Board considers the conduct of a party has been improper, vexatious, frivolous or abusive.

Reference on Question of Law

[Note to First Nation: This section can provide that a reference can go to either the Court of Queen's Bench of New Brunswick or to the Federal Court of Canada, or it could specify only one of these courts if the First Nation has a preference.]

44.(1) At any stage of a proceeding before it, the Assessment Review Board, on its own initiative or at the request of one or more of the parties, may refer a question of law in the proceeding to the Court of Queen's Bench of New Brunswick or to the Federal Court of Canada in the form of a stated case.

(2) The stated case must be in writing and filed with the court registry and must include a statement of the facts and all evidence material to the stated case.

(3) The Assessment Review Board must

- (a) suspend the proceeding as it relates to the stated case and reserve its decision until the opinion of the court has been given; and
- (b) decide the appeal in accordance with the court's opinion.

Matters before the Courts

45. If a proceeding with respect to liability to pay taxes in respect of assessable property that is the subject of an appeal is brought before a court of competent jurisdiction

- (a) before the hearing is to commence, the hearing must be deferred until the matter is decided by the court;
- (b) during the hearing, the hearing must be adjourned until the matter is decided by the court; or
- (c) after the hearing has concluded but before a decision on the appeal is given, the decision must be deferred until the matter is decided by the court.

Withdrawal of Appeal

46.(1) A complainant may withdraw an appeal under this Part by

- (a) delivering a Notice of Withdrawal to the assessor if a Notice of Hearing has not been delivered in respect of the appeal; or
- (b) delivering a Notice of Withdrawal to the Assessment Review Board if a Notice of Hearing has been delivered in respect of the appeal.

(2) Upon receipt of a Notice of Withdrawal

(a) under paragraph (1)(a), the assessor must advise the chair and the First Nation that the appeal is withdrawn and will not proceed; and

(b) under paragraph (1)(b), the Assessment Review Board must dismiss the appeal and notify the parties that the appeal has been dismissed.

(3) For greater certainty, if a Notice of Hearing has been issued but not delivered, paragraph (1)(b) applies.

Delivery of Decisions

47.(1) The Assessment Review Board must, at the earliest opportunity after the day on which a hearing is completed, deliver a written decision on the appeal to all parties.

[Note to First Nation: The following alternate wording may be used where the First Nation wishes to impose a time limit on the assessment review board to deliver its written decision. Such a period must not be less than 90 days after the day the hearing is completed.]

(1) The Assessment Review Board must, not more than ninety (90) days after the day on which a hearing is completed, deliver a written decision on the appeal to all parties.]

(2) Any person may obtain a copy of a decision of the Assessment Review Board from the tax administrator [assessor] on request and payment of a fee of _____ dollars (\$___).

(3) The tax administrator [assessor] may obscure or omit personal information (other than name and address) and financial business information from decisions provided under subsection (2), provided that assessment and property tax information must not be obscured or omitted.

(4) The assessor must make any changes to the assessment roll that are necessary to reflect a decision of the Assessment Review Board and must mail an amended Assessment Notice to every person named in the assessment roll in respect of the interest in reserve lands affected.

Delivery of Documents under This Part

48.(1) Delivery of a document under this Part may be made personally or by sending it by registered mail, fax or e-mail.

(2) Personal delivery of a document is made

(a) in the case of an individual, by leaving the document with the individual or with a person at least eighteen (18) years of age residing at the individual's place of residence;

(b) in the case of a first nation, by leaving the document with the person apparently in charge, at the time of delivery, of the first nation's administrative office, or with the first nation's legal counsel; and

(c) in the case of a corporation, by leaving the document with the person apparently in charge, at the time of delivery, of the corporation's head office or a branch office, or with an officer or director of the corporation, or with the corporation's legal counsel.

(3) Subject to subsection (4), a document is considered delivered if

(a) delivered personally, at the time that personal delivery is made;

(b) sent by registered mail, on the fifth day after it is mailed;

(c) sent by fax, at the time indicated on the confirmation of transmission; or

(d) sent by e-mail, at the time indicated in the electronic confirmation that the e-mail has been opened.

(4) A document delivered on a non-business day or after 17:00 local time on a business day is considered delivered at 09:00 on the next business day.

Appeals

49.(1) An appeal lies to the Court of Queen's Bench of New Brunswick from a decision of the Assessment Review Board on a question of law.

(2) An appeal under subsection (1) must be made within thirty (30) days after the day on which the decision is delivered under subsection 47(1).

PART XI GENERAL PROVISIONS

Disclosure of Information

50.(1) The tax administrator, the assessor, a member of the Assessment Review Board, the secretary or any other person who has custody or control of information or records obtained or created under this Law must not disclose the information or records except

- (a) in the course of administering this Law or performing functions under it;
- (b) in proceedings before the Assessment Review Board, a court of law or pursuant to a court order; or
- (c) in accordance with subsection (2).

(2) The assessor may disclose to the agent of a holder confidential information relating to the interest in reserve lands if the disclosure has been authorized in writing by the holder.

(3) An agent must not use information disclosed under subsection (2) except for the purposes authorized by the holder in writing referred to in that subsection.

Disclosure for Research Purposes

51. Notwithstanding section 50,

- (a) the tax administrator may disclose information and records to a third party for research purposes, including statistical research, provided the information and records do not contain information in an individually identifiable form or business information in an identifiable form; and
- (b) Council may disclose information and records to a third party for research purposes, including statistical research, in an identifiable form, where
 - (i) the research cannot reasonably be accomplished unless the information is provided in an identifiable form, and
 - (ii) the third party has signed an agreement with Council to comply with Council's requirements respecting the use, confidentiality and security of the information.

Validity

52. Nothing under this Law must be rendered void or invalid, nor must the liability of any person to pay taxes or amounts levied under the Taxation Law be affected by

- (a) an error or omission in a valuation, or a valuation based solely on information in the hands of an assessor or the tax administrator;
- (b) an error or omission in an assessment roll, Assessment Notice, or any notice given under this Law; or
- (c) a failure of the First Nation, tax administrator or the assessor to do something within the required time.

Notices

53.(1) Where in this Law a notice is required to be given by mail, or where the method of giving the

notice is not otherwise specified, it must be given

- (a) by mail to the recipient's ordinary mailing address or the address for the recipient shown on the assessment roll;
 - (b) where the recipient's address is unknown, by posting a copy of the notice in a conspicuous place on the recipient's property; or
 - (c) by personal delivery or courier to the recipient or to the recipient's ordinary mailing address or the address for the recipient shown on the assessment roll.
- (2) Except where otherwise provided in this Law, a notice
- (a) given by mail is deemed received on the fifth day after it is posted;
 - (b) posted on property is deemed received on the second day after it is posted; and
 - (c) given by personal delivery is deemed received upon delivery.

Interpretation

54.(1) The provisions of this Law are severable, and where any provision of this Law is for any reason held to be invalid by a decision of a court of competent jurisdiction, the invalid portion must be severed from the remainder of this Law and the decision that it is invalid must not affect the validity of the remaining portions of this Law.

(2) Where a provision in this Law is expressed in the present tense, the provision applies to the circumstances as they arise.

(3) Words in this Law that are in the singular include the plural, and words in the plural include the singular.

(4) This Law must be construed as being remedial and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objectives.

(5) Reference in this Law to an enactment is a reference to the enactment as it exists from time to time and includes any regulations made under the enactment.

(6) Headings form no part of the enactment and must be construed as being inserted for convenience of reference only.

[Note to First Nation: Include this repeal provision only if this Law is repealing and replacing an existing property assessment law.]

Repeal

55. The _____ *First Nation Property Assessment By-law, 20__*, as amended, is hereby repealed in its entirety.]

Force and Effect

56. This Law comes into force and effect on the day after it is approved by the First Nations Tax Commission.

THIS LAW IS HEREBY DULY ENACTED by Council on the _____ day of _____, 20__ , at _____, in the Province of New Brunswick.

A quorum of Council consists of _____ (____) members of Council.

[Name] _____
Chief [please spell out the name]

[Name] _____
Councillor [please spell out the name]

[Name] _____
Councillor [please spell out the name]

[Name] _____
Councillor [please spell out the name]

SAMPLE

SCHEDULE I
PROPERTY CLASSES

Residential

Non-Residential

SAMPLE

SCHEDULE II
REQUEST FOR INFORMATION BY ASSESSOR
FOR THE _____ FIRST NATION

TO: _____

ADDRESS: _____

DESCRIPTION OF INTEREST IN RESERVE LANDS: _____

DATE OF REQUEST: _____

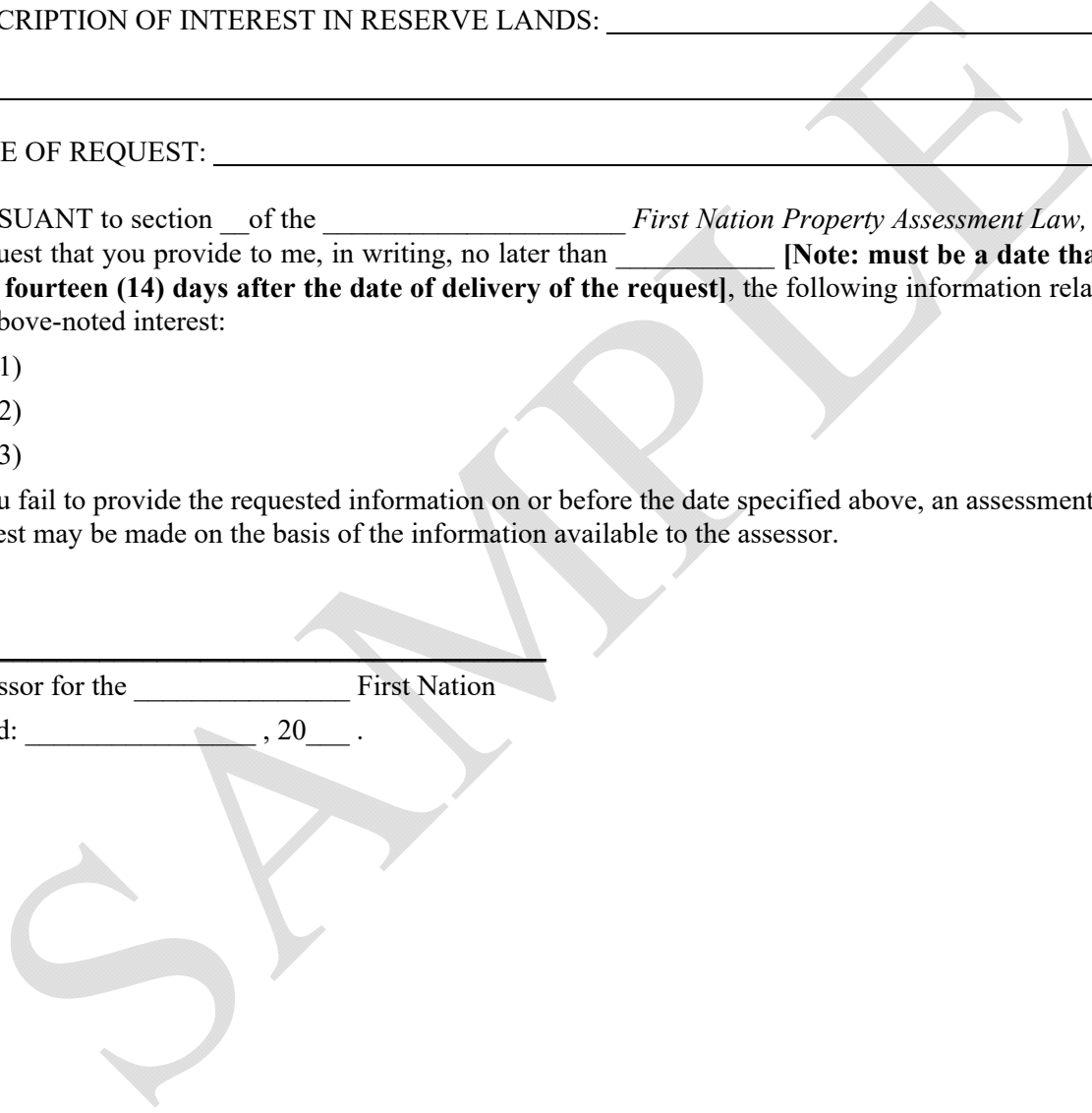
PURSUANT to section __ of the _____ *First Nation Property Assessment Law, 20__*, I request that you provide to me, in writing, no later than _____ **[Note: must be a date that is at least fourteen (14) days after the date of delivery of the request]**, the following information relating to the above-noted interest:

- (1)
- (2)
- (3)

If you fail to provide the requested information on or before the date specified above, an assessment of the interest may be made on the basis of the information available to the assessor.

Assessor for the _____ First Nation

Dated: _____, 20__ .



SCHEDULE III
DECLARATION OF PURPOSE FOR THE USE OF
ASSESSMENT INFORMATION

I, _____ [name], of _____ [address], _____ [city], _____ [province], _____ [postal code], declare and certify that I will not use the assessment roll or information contained in the assessment roll to obtain names, addresses or telephone numbers for solicitation purposes, whether the solicitations are made by telephone, mail or any other means, or to harass an individual.

I further declare and certify that any assessment information I receive will be used for the following purpose(s):

- (1) an appeal under the _____ *First Nation Property Assessment Law, 20__* ;
- (2) a review of an assessment to determine whether to seek a reconsideration or appeal of the assessment; or
- (3) other: _____ .

Signed: _____
[please print name]

Dated: _____ , 20__ .

SCHEDULE IV
ASSESSMENT NOTICE

TO: _____

ADDRESS: _____

DESCRIPTION OF INTEREST IN RESERVE LAND: _____

TAKE NOTICE that the assessment roll has been certified by the assessor for the _____
First Nation and delivered to the First Nation Council.

The following person(s) is/are the holders of the interest in reserve lands: [Name(s) & addresses]

The interest is classified as:

The assessed value by classification of the interest is:

The total assessed value is:

The total assessed value liable to taxation is:

AND TAKE NOTICE that you may, within twenty-one (21) days of the date of mailing of this notice, request a reconsideration of this assessment by delivering a written request for reconsideration in the form specified in the _____ *First Nation Property Assessment Law, 20__* . Within twenty-one (21) days after the end of the period during which you may request a reconsideration, the assessor will review the assessment and provide you with the results of the reconsideration. If the assessor determines that your interest should have been assessed differently, the assessor will offer to modify the assessment.

AND TAKE NOTICE that you may, within forty-five (45) days of the date of mailing of this notice, appeal this assessment to the Assessment Review Board. The Notice of Appeal must be in writing in the form and accompanied by the fee specified in the _____ *First Nation Property Assessment Law, 20__* , and must be delivered to the Assessor at the following address: [insert address].

Assessor [Tax Administrator] for the _____ First Nation

Dated: _____, 20__ .

SCHEDULE V
REQUEST FOR RECONSIDERATION OF ASSESSMENT

TO: Assessor for the _____ First Nation
[address]

PURSUANT to the provisions of the _____ *First Nation Property Assessment Law, 20__*, I hereby request a reconsideration of the assessment of the following interest in reserve lands:

[description of the interest as described in the Assessment Notice]

I am: ___ a holder of the interest
___ named on the assessment roll in respect of this interest

This request for a reconsideration of the assessment is based on the following reasons:

- (1)
- (2)
- (3)

(describe the reasons in support of the request in as much detail as possible)

Address and telephone number at which applicant can be contacted:

Name of Applicant (please print)

Signature of Applicant

Dated: _____, 20__.

SCHEDULE VI
NOTICE OF APPEAL TO ASSESSMENT REVIEW BOARD

TO: Assessor for the _____ First Nation
[address]

PURSUANT to the provisions of the _____ *First Nation Property Assessment Law, 20__* ,
I hereby appeal the assessment/reconsideration of the assessment of the following interest in reserve lands:

[description of the interest, including assessment roll number, as described in the Assessment Notice]

The grounds for the appeal are:

- (1)
- (2)
- (3)

(describe the grounds for the appeal in as much detail as possible)

Complainant's mailing address to which all notices in respect of this appeal are to be sent:

Name and address of any representative acting on complainant's behalf in respect of this appeal:

The required fee of thirty dollars (\$30) is enclosed with this Notice of Appeal.

Name of Complainant (please print)

Signature of Complainant (or representative)

Dated: _____, 20__ .

NOTE: A copy of the Assessment Notice must be enclosed with this Notice of Appeal.

SCHEDULE VII
NOTICE OF WITHDRAWAL

TO: Assessor, _____ First Nation

OR

Chair, Assessment Review Board for the _____ First Nation

[address]

PURSUANT to the provisions of the _____ *First Nation Property Assessment Law*, 20__
I hereby withdraw my appeal of the assessment of the following interest in reserve lands:

Description of interest:

Date of Notice of Appeal:

Name of Complainant (please print)

Signature of Complainant (or representative)

Dated: _____, 20__ .

SAMPLE

SCHEDULE VIII
NOTICE OF HEARING

TO: _____

ADDRESS: _____

DESCRIPTION OF INTEREST IN RESERVE LANDS: _____

Complainant in respect of this appeal: _____

TAKE NOTICE that the Assessment Review Board will hear an appeal from the assessment/reconsideration of the assessment of the above-noted interest at:

Date: _____, 20__

Time: _____ (a.m./p.m.)

Location: _____ [address]

AND TAKE NOTICE that you should bring to the hearing [insert # copies] copies of all relevant documents in your possession respecting this appeal.

A copy of the Assessment Notice and the Notice of Appeal are enclosed with this notice, as well as copies of:

(all submissions and documents received in respect of the appeal will be forwarded to all parties)

Chair, Assessment Review Board

Dated: _____, 20__ .

SCHEDULE IX
ORDER TO ATTEND/PRODUCE DOCUMENTS

TO: _____

ADDRESS: _____

TAKE NOTICE that an appeal has been made to the Assessment Review Board for the _____ First Nation in respect of the assessment of _____ [describe interest in reserve lands].

The Assessment Review Board believes that you may have information [OR documents] that may assist the Assessment Review Board in making its decision.

THIS NOTICE REQUIRES you to [indicate the applicable provisions below]:

1. Attend before the Assessment Review Board at a hearing at

Date: _____, 20__

Time: _____ (a.m./p.m.)

Location: _____ [address]

to give evidence concerning the assessment and to bring with you the following documents:

and any other documents in your possession that may relate to this assessment.

A twenty dollar (\$20) witness fee is enclosed. Your reasonable travelling expenses will be reimbursed as determined by the Assessment Review Board.

2. Deliver the following documents [list documents] OR any documents in your possession that may relate to this assessment, to the Chair, Assessment Review Board, at _____ [address] on or before _____.

Please contact _____ at _____ if you have any questions or concerns respecting this Order.

Chair, Assessment Review Board

Dated: _____, 20__.

SCHEDULE X
CERTIFICATION OF ASSESSMENT ROLL BY ASSESSOR

The assessor must certify the assessment roll in the following form:

I, _____, being the assessor for the _____ First Nation, hereby certify that this is the _____ First Nation assessment roll for the year 20__ and that the assessment information in this assessment roll is complete and has been prepared and completed in accordance with all requirements of the _____ *First Nation Property Assessment Law, 20__*.

(Signature of Assessor)

Dated _____, 20__ at _____, _____.
(City) (Province)

SAMPLE