



# Land Mortgages

## Legal Framework

The use and development of Westbank Lands is subject to Part XI of the WFN Constitution (the "Land Rules").

It is no longer necessary to designate Community Lands to create leasehold interests, they can be granted by WFN.

Two types of Westbank Lands:

1. Community Lands (include any past designated lands)
2. Allotted Lands (have been allotted to individual Westbank Members)

Allotments & leasehold interests can be mortgaged under s.107 of WFN Constitution. The mortgaging clauses were designed to modify seizure provisions under s.89 of the Indian Act. This gives the lender the security to lend against interests on Westbank Lands without a guarantee by WFN Government.

## Westbank Lands

Since April 1st 2005 Westbank Lands have been governed pursuant to the WFN Self Government Agreement and Community Constitution that came into effect when the Westbank First Nation Self Government Act was proclaimed in force.

## Requirements of Mortgages:

### SECTION 107.4

"A Mortgage may be granted by a Written Instrument registered in the Westbank Lands Register provided that:

- a. the land is in the sole lawful possession of the Member granting the Mortgage or, the Leaseholder or Licence holder granting the Mortgage holds the entire legal and beneficial interest in the Leasehold or Licence;
- b. the granting of the Mortgage and the terms of the Mortgage are permitted by the provisions of the Allotment, Lease or Licence;
- c. there is a proper legal description of lands that are to be subject to the Mortgage and, if required, the lands have been surveyed and the survey registered or recorded in the Westbank Lands Register; and
- d. in the case of a Mortgage of a Leasehold or Licence, the Mortgage term does not exceed the duration of the Leasehold or Licence."





FN Retail Mortgages



FN Commercial Mortgages



Residential Mortgages



A to A Mortgages

### Interests In Westbank Lands:

- Mortgage (s.107.4)
- Sublease (s.106.2)
- Lease Community Lands (s.104)
- Lease Allotted Lands (s.106.1)
- Allotted Lands (s.103)
- Community Lands

### Mortgaging of Interests

#### HELD BY A MEMBER OF WESTBANK:

A WFN Member can contract with themselves to create a leasehold interest (s.106.1).

S. 106.1.1 mimics s.18 of the Property Law Act allowing an "A to A" conveyance. This is a statutory exception to common law rule that a person cannot contract with themselves.

#### HELD BY A STATUS ABORIGINAL PERSON:

A Status Aboriginal person may grant a mortgage of their leasehold interest. The mortgagee has the same legal and equitable rights as if the leasehold interest was held by a non-aboriginal person (s.107.2.1).

#### HELD BY AN ABORIGINAL OR NON-ABORIGINAL PERSON:

Never has there been greater protection for lenders on First Nation reserve lands. Mortgages are subject to usual legal and equitable rights of the mortgagee and constitutional amendments recognize priority of registration.

### WFN Constitution "Land Rules"

#### SECTION 106.1.1

"A Member granting a Leasehold, Easement, Permit or Licence under s.106.1 may grant that interest to himself or herself in the same manner as to another person."

#### SECTION 107.2.1

"For greater certainty:

- a. the holder of an Allotment who has been granted a Leasehold pursuant to section 106.1.1 may grant a Mortgage of the Leasehold interest to any person;
- b. A Leasehold Interest held by an Indian, as that term is defined in the Indian Act, in Westbank Lands, including allotted lands, is subject to charge, pledge, mortgage, attachment, levy, seizure, distress, and execution, and the mortgagee has all the same legal and equitable rights it would have if the Leasehold interest was held by a non-Indian; and
- c. A Leasehold interest in Community Lands is subject to "charge, pledge, mortgage, attachment, levy, seizure, distress and execution by a mortgagee."