Kwanlin Dün First Nation

RETURN OF EQUITY POLICY

Initial Approval Date: 2022-07-14	**Revised Date:**
Legislative Authority: *Lands Act* and *Regulations*	**Policy Authority:** OIC-2022-39
Administrative Authority: Heritage, Lands and Resources Department	

INTERPRETATION & DEFINITIONS

Terms and phrases used in this policy are to be interpreted in a manner that is consistent with their meaning under the *Lands Act* (the "Act"} unless that term or phrase is defined by this policy or its use in this policy reasonably requires a different interpretation.

In this policy

"allocation" means an allocation or a fully paid future right to be granted an allocation on certain terms;

"creditor" means a person who has established a proven debt in accordance with this policy;

"equity" means the actual or assessed market value of an allocation less any proven debt and less any amount owing to KDFN in connection to that allocation;

"proven debt" means a debt recognized under this policy; and

"residual value" means the actual or assessed market value of an allocation less any amount owing to KDFN in connection with that allocation as determined in accordance with this policy;

OBJECTIVE

Kwanlin Dün First Nation ("KDFN") may grant a residential allocation in settlement land pursuant to the Act. KDFN may terminate an allocation before the expiry of its term, either in accordance with the Act or pursuant to an agreement between KDFN and an allocation holder. In other cases, an allocation may terminate by operation of the Act. When an allocation terminates before the expiry of its term, the interest in land reverts to KDFN free and clear of all claims, including claims of creditors and the former allocation holder. Accordingly, creditors

(who have relied on the value of the land as security for payment of a debt) and former allocation holders (who may have paid for or further increased the value of the land) may forfeit value to KDFN without any right of compensation. Where appropriate and desirable, KDFN wishes to compensate creditors and former allocation holders for the value lost upon the termination of the allocation in a manner that is fair to creditors, former allocation holders and KDFN.

PURPOSE

This policy defines the circumstances in which KDFN will pay an amount of money to a former allocation holder or creditor upon termination of an allocation and informs the process for determining the amount of that payment in a manner that is fair to the former allocation holder, creditors and KDFN.

SCOPE

This policy applies when a residential allocation is terminated before the expiry of its term, but this policy does not apply

- to the extent that the terms of an agreement between the former allocation holder and KDFN or between a creditor and KDFN expressly provide for an alternative method of determining compensation, regardless of whether that agreement is made before or after the allocation is terminated;
- if the termination of an allocation proceeds by way of an expropriation;
- to the extent that the director determines that it would be unfair or otherwise inappropriate to apply this policy in the circumstances; or

to the termination of an allocation unless the director has adopted procedures respecting the implementation of this policy that are applicable to that allocation or class of allocations.

GUIDING PRINCIPLES

- KDFN shall be made whole before any distribution of residual value;
- The process for determining the market value of an allocation and the distribution of residual value must reasonably balance administrative efficiency with fairness to KDFN, the former allocation holder and creditors;
- Among other things, KDFN may include in the amount required to make it whole any discount provided at the time of initial grant of allocation and any estimated future expenses that may be incurred by KDFN in connection with the allocation after termination of the allocation;

POLICY

1. DISTRIBUTION OF RESIDUAL VALUE

Upon the termination of an allocation before the expiry of its term, KDFN will pay the residual value of that allocation, if any, as follows:

- First to creditors in priority of recorded caveats; and
- Second to the former allocation holder.

2. *VALUATION OF RESIDENTIAL ALLOCATION*

The market value of the terminated allocation will be the final sale price of an allocation, provided that:

- the allocation sold is substantially identical to the terminated allocation;
- the allocation is sold within a reasonable time after the termination of the terminated allocation; and
- KDFN takes steps to ensure that the sale of the allocation proceeds in a manner that reasonably would be expected to capture the market value.

Despite the above, KDFN may, at any time before accepting an offer and for any reason, cancel any offer to sell an allocation that might be used to determine the market value of the terminated allocation.

If the sale of an allocation will not determine the market value of the terminated allocation, the market value of the terminated allocation will be determined in accordance with procedures adopted by the director, which may provide for any matter relating to the appraisal of the assessed market value of the terminated allocation. Without limiting the foregoing, such procedures may prescribe methods, assumptions, discounts or calculations related to an appraisal of market value that differ from industry norms if adopted for the purpose of facilitating or simplifying an appraisal or in order to ensure fairness to any person affected by this policy, including KDFN.

3. AMOUNTS OWING TO KDFN

Amounts owing to KDFN in connection to an allocation include:

- Any tax, fee or charge owing to KDFN in respect of the allocation;
- Any expenses incurred or estimated future expenses that may be incurred by KDFN in connection to the allocation, whether arising before or after the termination of the allocation; and
- Any other amount that KDFN determines to be required to be paid in order to be made whole.

4. AMOUNTS OWING TO CREDITORS

A proven debt is a debt, or a part of a debt that is confirmed by a court order to be

- based on an estate or interest in the allocation, and
- special damages.

KDFN will not recognize under this policy the value of an encumbrance affected by the termination of an allocation unless it gives rise to a proven debt.

KDFN may include in a proven debt an amount for costs and interest, having regard to the court order giving judgment and any procedures developed by the Director.

KDFN will provide notice of its intention to terminate an allocation to a caveator having a caveat recorded in the Lands and Resources Registry against the allocation at issue.

KDFN may provide notice of its intention to terminate an allocation to any known taxing authority.

Potential creditors will be provided a reasonable opportunity to establish a proven debt after KDFN has given notice of its intention to terminate.

Despite anything else in this policy, a creditor will not be eligible to receive any payment under this policy in respect of a proven debt if that creditor fails abide by this policy or any procedures adopted by the director.

5. *ADMINISTRATION*

The director shall be responsible for the administration of this policy and is authorized to make any decision or take any step on behalf of KDFN under this policy.

The director may establish procedures respecting the administration, operation, or interpretation of any aspect of this policy, including procedures that may affect substantive rights, provided they are not contrary to this policy.

Despite anything else in this policy, the director is authorized to vary the application of this policy when, in the director's judgment, the circumstances warrant it.