

Chuck Salmon



Estate Planning and the *Land Surveyors Act*

The spring 2002 session of the Legislature found the Corporation of Land Surveyors of BC finally achieving an amendment to the *Land Surveyors Act*. For the past seven years, this had been an insurmountable task; fortunately, the changes were in line with the new government direction. As a result, the government included our request for legislative change in Bill 54 *Miscellaneous Statutes Amendment Act* (No 2) 2002.

One of the sections included in the amendment was a change to the rules of incorporation for land surveyors. This change ties in with the theme of this edition of *The Scrivener* because it allows members to establish a company or a trust, and to include that company or trust as a non-voting shareholder in their land surveying company.

All voting shares of a land surveying company must be owned by a member in good standing of the corporation. This section protects the public by ensuring that the professional land surveyor is responsible for all actions of the company and for all surveys. If a voting shareholder was not a member in good

standing and if that person directed the land surveyor on how a survey should be done, that individual might influence the outcome of that survey. The section was amended this spring to permit a land surveying company to be a voting shareholder of another land surveying company. Because land surveyors are making the decisions in both companies, this situation will not impact the outcome of any survey-related issues.

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Prior to the amendment, non-voting shares could only be owned by

- members;
- the spouse of a member who is a shareholder;
- a child, as defined in the *Family Relations Act*, of a member who is a shareholder; or

- any other relative of a member who is a shareholder, if the relative resides with that member.

This was very restrictive and provided limited opportunities for taxation and estate planning. The previous statute allowed a child of the member to be a non-voting shareholder, but a child of a spouse from a previous marriage was not allowed. The statute now permits a child of a member or the child of the spouse of a member to be a non-voting shareholder. Because Land Surveying Company “A” can be a shareholder of Land Surveying Company “B,” a child of a Company “A” shareholder can also hold non-voting shares in Company “B.” These changes significantly expand the options available to land surveyors wanting to:

- incorporate; and
- nominate a child as a non-voting shareholder.

Also prior to the amendment, other relatives were permitted to be non-voting shareholders if they resided with the shareholder member. The residency requirement has now been dropped,

allowing additional relatives to be included as non-voting shareholders. In addition, relatives of shareholders in land surveying companies that are shareholders in the company being incorporated can be non-voting shareholders of that company. This very broad amendment opens the door to many opportunities for members wanting to include relatives in their companies.

The amended statute allows members to establish a trust or a company to be a non-voting shareholder in the land surveying company. The statute sets out the rules that designate which family members can be included in the company or the trust. The only restriction is that those mentioned in the two paragraphs above, as well as the member and the spouse of the member, must be the beneficiary of the trust. The same individuals must be the beneficial owners of all shares in the company that is a non-voting shareholder in the land surveying company.

What does this mean to land surveyors actively conducting their business as a land surveying company in British Columbia? I would recommend that those interested in taking advantage of these new rules talk to an accountant to determine the benefits afforded by these new rules. This amendment brings our statute in line with the rules for other professionals, and offers significant opportunity to land surveyors for planning the future for themselves and their families. ▲

Chuck Salmon, BCLS, is the Secretary, Treasurer, Registrar of the Corporation of Land Surveyors of the Province of British Columbia. He was instrumental in promoting the foregoing changes within government, and ensuring that the changes were included in the amendments.

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