



Float Homes *and* Foreshore Leases

A "Floating Home" is defined as a structure that is used as a residence and that has a floatation system; it is not intended for navigation or for use as a water craft.

Getting permission to create a floating home development is very complex. Approval must be obtained from the Land and Water British Columbia Inc. (LWBC) office. Float homes or floating recreational cottages are generally only issued a tenure under the *Land Act* where consultation with various

government agencies, non-government organizations, First Nations, and local governments has resulted in a planning process that designates specific areas as suitable and acceptable for float cabins.

This article will focus on "existing" floating homes and transfers of ownership, etc.

In the geographical area where I practise, we are often involved in transferring ownership of float homes situated in the canal to Port Alberni. Some of these float homes fall under the jurisdiction of the Harbour Commission and/or Port Authority. Approval of any sale to a new owner must be obtained from the

Harbour Commission/Port Authority prior to completion of the sale.

A number of float cabins are also situated in Barclay Sound outside of the area administered by the Port Alberni Port Authority. None of the float homes in either area has legal authorization to occupy the Crown land covered by water where they are situated.

Although discussions on restricting float cabin development and legalizing it in certain designated areas is under discussion in the Barclay Sound area, local government and government agencies have not reached any agreement. There is no guarantee that float cabins will continue to be permitted in the future.

New owners must be made aware of certain policies.

- All float homes may have a folio number for property taxation purposes.
- Owners pay annual property taxes.
- With a change of owner, a transfer of ownership must be registered with the Assessment Authority of British Columbia.
- In most areas, float cabins are occupying Crown land without legal authorization.
- Payment of property taxes does not convey any legal authorization to occupy Crown land.



Float homes located within the boundaries of the Port Alberni Port Authority cannot be altered, added to, or moved without the written authority of the Harbour Commission or Port Authority. Some float homes are strictly for recreational purposes and are not intended for use as a principal residence or as a commercial enterprise.

- The rules for transfer of ownership of float homes on private land, such as Great Central Lake, BC, are similar to the rules for a float home on Crown land in that the landlord must consent to the transfer of ownership. An assignment of lease must be approved and executed.
- Where a *Land Act* tenure exists, assignment from one party to another requires the written consent of Land and Water British Columbia Inc. (LWBC).

The legal professional must be very careful when researching the lease and advising his or her clients.

On privately owned land, a new lease is not usually created for a new purchaser. I have been involved with very old existing leases that have been assigned over and over, with each new purchaser. It is important to follow the lease back through to its origin and try to obtain copies of all past assignments. This can get fairly messy. The legal professional must be very careful when researching the lease and advising his or her clients.

Rather than monthly rent, an annual rent fee is normally paid to the landlord.

Often there are no written lease renewals; there is simply a verbal understanding between landlord and tenant that the lease will continue for another year.

Registering a lien against a float home is done through the Personal Property Security Registry. Mortgages and liens cannot be registered against a Licence of Occupation issued under the *Land Act*.

Foreshore Leases

Foreshore is defined as the land covered by water, below the natural boundary of streams, rivers, lakes, and the ocean.

In British Columbia, the province (the Crown) owns nearly all freshwater and saltwater foreshore. Exceptions on Vancouver Island include Cowichan Lake, Shawnigan Lake, and many other smaller lakes and streams within the boundaries of the original E & N Railway land grant. Individuals cannot build on or develop Crown foreshore without authorization from the province. Although the upland bordering on foreshore may be privately owned, generally the public retains the privilege of access along the foreshore below the high-water mark, provided the province has not issued a lease to a third party for some other use.

A small seasonal private dock, wharf, or pier that is free of boathouses does not require authorization. This kind of a structure must be for private use only—not a permanent structure fixed to the land. The structure must be removed and stored on private property during the winter season.

A **lease** or a **licence of occupation** may be issued for private moorage facilities and recreational uses.

Lease

A lease is normally granted if there is to be a substantial investment or improvements or if the lessee requires long-term security of tenure. The lease period is usually 30 years, although it may be only 15 years for seasonal recreational cottages.

Licence of Occupation

If you simply want to build a private dock, you need a “licence,” not a lease. A licence of occupation normally covers less than 600 square metres of foreshore. The licence is usually granted for a period of 10 years.

Application

An Application Package for applying for a foreshore lease or “Private Moorage” can be obtained online at www.lwbc.bc.ca. The application must be accompanied by a site plan—top view and side view; a document print showing the exact perimeter boundaries of the area with written dimensions; a general location map and a side profile for any improvements; a management plan; and three photographs showing the view of the shoreline in each direction and the site the dock will occupy.

There is no guarantee that float cabins will continue to be permitted in the future.

LWBC also sends a copy of the application to the regional district or municipality of the land in question, as well as the Federal Department of Fisheries and Oceans, the Canadian Coast Guard, and local First Nations, as part of a formal referral process, for their comments. The Alberni Clayoquot Regional District looks at the zoning for the property, use, information on the site surrounding the waterline, and the local impact of the structure.

The local advisory planning commission may review the application and make recommendations for or against approval. One example is Gorge Harbour in Victoria. The by-laws of the municipality say “no more docks.” I suggest that a person begin by obtaining approval from the local authorities before submitting an application and obtaining the site plans, etc.

Applications can be made only by Canadian Citizens, permanent residents of Canada, companies, not-for-profit groups, and governments, or by the upland owner of the property where the application is for a tenure over land covered by water.

Fees

Varying fees and rents apply, depending on the use of the tenure. For Crown foreshore, LWBC charges an application fee, an annual rent fee, and a cost to secure a minimum of \$1 million in liability insurance and to provide a copy of that insurance to Land and Water British Columbia Inc. A table of application fees can be found on the LWBC Website: www.lwbc.bc.ca.

The Website is very helpful; the people on their HELPLINE are happy to provide information. ▲

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