



**P O R R E L L I L A W**  
a l a w c o r p o r a t i o n

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May 16, 2013

**OSOYOOS COTTAGES LIMITED PARTNERSHIP**

202 – 45793 Luckakuck Way  
Chilliwack, BC  
V2R 5S3

Attention: Eric Van Maren

Dear Sir:

**Re: COTTAGES ON OSOYOOS LAKE**

This will confirm you had requested that we review the above development from a purchaser's perspective. We enclose herewith a question and answer sheet which we hope prospective buyers will find informative. This is not a legal opinion and is not to be relied upon as such.

This will confirm we represented the Landholders with respect to the Headlease. You used your usual legal counsel in that regard and will have your conveyancing counsel represent you with respect to sales.

Because of our particular expertise in First Nation land development you did allow us input into the drafting of the Sublease documents from a buyer's perspective to ensure they contained protections typically seen in a development of this nature.

We would be pleased to accept referrals for purchasers at the Cottages on Osoyoos Lake. Of course they are free to use a lawyer or notary of their choosing but they should be experienced in Native land transactions.

Porrelli Law is a firm based in West Kelowna, BC whose offices are on the lands of the Westbank First Nation reserve. The writer has been assisting buyers and sellers on leased land transactions for many years and has completed literally hundreds upon hundreds of conveyances on First Nation lands.

For more information on our background and reserve land expertise visit [www.porrelli.ca](http://www.porrelli.ca).

Yours truly,

**PORRELLI LAW**

Per:



**Barry M. Porrelli**

BMP/dts

# COTTAGES ON OSOYOOS LAKE

## QUESTIONS & ANSWERS

This paper is intended to provide general information only, in order to answer some of the more common questions that arise in dealing with First Nations lands. Errors and omissions excluded.

### **I UNDERSTAND THAT I AM "BUYING" A 99 YEAR LEASE ON INDIAN RESERVE LAND OWNED BY THE CROWN - can you explain what that means to me?**

Firstly, the land on which the Cottages on Osoyoos Lake are located is on Okanagan Indian Reserve No. 1, part of the lands of the Osoyoos Indian Band. The land is owned by Her Majesty the Queen in Right of Canada and has been set aside as reserve land.

Secondly, the individual band members who had possession of this land, described as the "Locatees", requested that the Federal Government enter into a 99 year lease with the Developer, now Osoyoos Cottages Limited Partnership, for the benefit of the Locatees. Essentially, those band members agreed to suspend their use and occupation of the land for the 99 year period in return for payment to them of the prepaid rent for the term of the lease. The lease is a direct agreement between the Federal Government and the Developer.

Thirdly, the Developer's lease is described as a "Headlease", since it allows subdivision of the land and the issuance of subsidiary leases, or "Subleases", to people like yourselves. Your interest would be as holder of a Sublease from the Developer to you, which, subject to the terms of the Headlease and Sublease, will entitle you to the use and occupation of the premises for the remainder of the 99 year lease, less one day. So long as you fulfill your obligations (payment of rent, common costs, taxes, etc.) and the terms of the Headlease and Sublease are otherwise fulfilled by all parties, you should be entitled to the use of the property for the term in much the same manner as if you owned a lot in a bare land strata development.

Fourthly, since this is a leasehold situation, the terms we usually use to describe a land transaction are different. While you can "Buy" from the Developer, you are actually acquiring a "Sublease" and when you "Resell" you will be "Assigning" your Sublease.

### **I'M TOLD THAT THE HEAD LEASE IS A FULLY PREPAID LEASE? - What does that mean?**

A prepaid lease is simply a lease that has had rent paid fully in advance instead of paying the rent over a period of time. In this case the Developer has already paid the rent that is to be charged under the Headlease for the full term, therefore the Headlease is said to be a "Fully Prepaid Lease" for the full 99 years. This is similar to many of the developments of this nature in this region and thereby avoids the problems that some prior developments have had where rents were not prepaid.

### **WHAT ARE THE TERMS OF MY SUBLEASE?**

Your Sublease gives you the right to the use and occupation of the premises for the remainder of the 99 years and creates some obligations that must be honoured. The following are some of the highlights of the Sublease that you will be asked to sign. (Please consult the Sublease for actual wording):

1. The Sublease is for the remainder of the Headlease, less one day (i.e. the year 2109).
2. The Rent (i.e. the purchase price) is fully prepaid at closing. Do not confuse this with the Headlease – it is prepaid.



3. You must pay your share of common costs and these Homeowner Association fees are paid monthly, based on a proposed budget, and any variation in actual costs is adjusted at the end of each year. You must abide by the Bylaws.
4. A number of services are to be provided to you as part of your common costs, including upkeep of common areas, snow removal, street lighting, property management, etc.
5. Upon completion of subleasing all of the units in the development, all of the purchasers (that is, all the sublessees) will take over the development and be responsible in much the same manner as under the Strata Property Act. That is, a company has been formed which, once all units are sold, will be controlled by the sublessees and it then is to function similar to a Strata Corporation.
6. You will pay for all utilities supplied to the premises.
7. You are responsible for repairs to your premises.
8. You must pay for insurance on your home.
9. You can only use the premises for residential purposes.
10. Rentals must be for periods of at least 5 days.
11. You must pay your taxes when due.

### **WHAT ARE THE TERMS OF THE HEADLEASE?**

The Headlease entered into by the Developer is the primary document giving the Developer and sublessees use of the land. The Headlease contains many important requirements relating to many preliminary matters which we will not address here. (Please consult the Headlease for full details) Important continuing obligations of the Developer under the Headlease are to pay taxes, maintain the property, maintain insurance, adhere to environmental requirements, and abide by all applicable laws. Each of these continuing obligations will be passed on to the individual sublessees in their Subleases.

### **WHAT HAPPENS IF THE DEVELOPER SHOULD FAIL TO MEET ITS OBLIGATIONS UNDER THE HEADLEASE?**

The Headlease contains various provisions which are designed to protect homeowners in the event of a default under the Headlease. The lease provides that if the Developer should be in default, then the Headlease for all subleased lands will be assigned by the Lessor to the Homeowner Corporation. The sublessees as a group could then remedy any default. Keep in mind the major obligation under a Headlease is to pay rent, and the rent has been prepaid.

### **I'VE HEARD SOME THINGS ABOUT LEASING ON INDIAN LAND – Can the Aboriginal people take my home away, include it in a land claim or raise the rent unfairly?**

Since this land is already part of an Indian reserve, it is not involved in any lands claims and should not be affected by any land claims.

You may talk to someone who will tell you about a problem someone has had either with long term leases on Provincial Land or with Indian Land Leases. While there have been some serious situations that have arisen in other developments in the province, the flaws in the lease arrangements that created those problems should not occur here. Problems have arisen where a

Developer has purported to sublease lands to individuals for a long term, but has not prepaid his Headlease for the same period of time. As noted above the Cottages on Osoyoos Lake Headlease are fully prepaid for the full 99 years.

Another problem that we have seen is rent increases required when renewing leases of twenty or thirty years that were made in the sixties or seventies when land values were only a fraction of what they are today. Those percentage rent increases can't happen here because there are no renewal terms for this lease and the rent was set and fully paid for 99 years.

Both the Headlease and Sublease have been written in such a manner that we believe the problems that have arisen elsewhere have been resolved.

### **CAN I RESELL OR MORTGAGE MY HOME IF I WANT?**

You have the right to "assign" (sell) or mortgage your sublease at any time, subject to obtaining the Federal Crown's consent which is generally forthcoming. The Sublease does provide for an administration fee to be paid to the Developer on the resale of a unit. The Developer has obtained project pre-approval from several lenders. Please contact the Developer to find out which lenders are prepared to provide mortgages for the Cottages. CMHC advises the project complies with their lending requirements.

### **TITLE INSURANCE**

The Developer has agreed to provide title insurance for buyers at its cost through First Canadian Title. Title insurance is always recommended.

### **I'M STILL CONCERNED ABOUT BEING ON LEASED INDIAN LAND – Where can I get more information?**

There are many other valid questions that simply cannot be covered in what is intended to be a short paper. Prospective purchasers will be offered a short informational meeting (in person or by telephone).

Porrelli Law is a law firm based in Westbank, British Columbia with their offices on the reserve of the Westbank First Nation. We have been favoured with many of the referrals for Native land transactions in the region and would be pleased to assist purchasers at the Cottages on Osoyoos Lake.

This paper is intended to provide general information only in order to answer the more common questions that arise in dealing with First Nations Lands. For every question we answer we find that another one is often raised. This paper is not to be relied upon as legal advice. For a complete dialogue please contact the writer. **The information herein is based upon circumstances that exist only as at the date set out below.**

For more information on Porrelli Law and the depth of our experience visit [www.porrelli.ca](http://www.porrelli.ca)

### **BARRY M. PORRELLI PORRELLI LAW**

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**May 16, 2013**