

## **Covenant Enforcement Policy**

### **Purpose**

To establish a covenant enforcement policy for covenants held by The Land Conservancy of British Columbia (TLC) to maintain continued covenant compliance.

### **Background**

The Canadian Land Trust Alliance Standards and Practices for Land Trusts requires land trusts to have a policy detailing how they will respond to potential violations of conservation covenants, including the role of all parties involved (such as Board Members, volunteers, staff and partners) in any enforcement action. Taking a consistent approach to enforcement is critical to both protect the ecological values of the covenanted land, and to ensure TLC retains its ability to enforce the covenant should legal action become necessary. Currently, TLC's staff conduct breach investigations and respond to violations on a case by case basis. This policy will provide guidelines to TLC's Board and its staff for covenant enforcement.

### **A: Policy – Breach Investigation**

1. TLC's staff has both the authority and the responsibility, as a covenant holder, to monitor and enforce compliance with the terms of its covenants. Where there may be a breach of a covenant, it is staff responsibility to investigate the suspected breach.
2. TLC's staff may undertake a covenant breach investigation in the following circumstances:
  - a. A covenant breach is observed through an annual monitoring visit by TLC staff or contractors;
  - b. A written or oral complaint of a breach by any person is submitted to TLC;
  - c. A referral is received from a permitting agency that identifies covenant breaches associated with the permit request; or
  - d. TLC's Board or staff received information from any other reliable source that there may be a covenant breach.
3. In the case of jointly held covenant, the co-covenant holder will be contacted immediately and a course of action for investigation of the breach will be determined collaboratively whenever possible.
4. Persons whose actions are being investigated in relation to covenant breaches will be instructed to cease the activity and will be given the opportunity, where possible, to achieve voluntary compliance before further action is taken.
  - a. Instructions will be written and sent via email or mail to ensure a record exists of the landowner being alerted to the alleged breach.

### **B: Policy: Voluntary Compliance and Enforcement Remedies**

5. TLC will in all cases attempt to seek voluntary compliance and remediation by the landowner.

6. If the parties are unable to reach an agreement regarding voluntary compliance, TLC may wish to follow the dispute resolution provisions of the covenant, or engage a mediator to assist in dispute resolution. If mediation does not result in an agreement satisfactory to all parties, TLC may choose to pursue arbitration.
7. TLC, in consultation with the co-covenant holder if applicable, will establish a time period for the landowner to remedy the breach, in accordance with the covenant.
8. If the landowner does not remedy the breach within the acceptable time period, TLC, in consultation with the co-covenant holder if applicable, may enter the land and remedy the breach, at the owner's expense, in accordance with the terms of the covenant.
9. Where attempts to achieve voluntary compliance fail, and where legal proceedings are proposed, and upon approval by TLC's Board and upon approval by staff in relation to financial implications, TLC's Board will instruct legal counsel to commence rent charge enforcement proceedings.

### **C. Policy: Rent Charge Enforcement**

10. The rent charge is granted under section 219 of the *Land Title Act* and may be enforced against the landowner in accordance with the terms of the covenant. Rent charge enforcement is the responsibility of TLC's Board, as covenant holder.
11. A decision to enforce a rent charge will be made by TLC's Board, in consultation with the Executive Director of TLC and legal counsel, and carried out by TLC staff.  
Note: if the rent charge is to be enforced, a partial or full amount may be charged.

### **D. Policy: Rent Charge Enforcement and Jointly Held Covenants**

12. Rent charge enforcement of jointly hold covenants will be conducted in accordance with the terms of the covenant.

### **E. Policy: Covenants that have received tax receipts through the Ecological Gifts Program**

13. Where a breach occurs on a property which was covenanted through the Ecological Gifts Program, TLC's Board will direct TLC staff to advise the appropriate federal government department in writing of the breach and actions taken to remedy the breach and enforce the covenant.

### **References**

Land Title Act

Canadian Land Trust Standards and Practices (2019)

Greening Your Title: A Guide to Best Practices for Conservation Covenants. West Coast Environmental Law (2013)

TLC Covenant Policy