

**CIRCULAR LETTER NO. 468**

(This letter supersedes Circular Letter No. 460)

April 21, 2015

**TO ALL BRITISH COLUMBIA LAND SURVEYORS**

**Re: Section 108 Land Title Act**

[Section 108\(2\)](#) of the *Land Title Act* sets out the conditions under which ownership of submerged land left within a remainder at the time a subdivision or reference plan is filed in the Land Title Office returns to the Crown. Based on a judicial interpretation, section 108(2) takes effect where:

1. A remainder of a parcel is created by the deposit of a subdivision or reference plan;
2. The remainder lies adjacent to provincial Crown land; and
3. The remainder is covered by water.

Section 108(2) only applies where a subdivision plan or reference plan creates a remainder of a parcel or parcels.

The Province enacted amendments to section 108 of the *Land Title Act* through section 7 of the *Forests, Lands & Natural Resource Operations Statutes Amendment Act, 2014*, which came into force on April 9, 2014. Two significant changes were made to the section:

1. First, prior to the statutory amendment, section 108(3) became redundant due to the judicial interpretation. Section 108(3) was amended so that now an order made under this section prevents section 108(2) from taking effect on the submerged portion of the remainder of a parcel or parcels created by the deposit of a subdivision or reference plan.
2. Second, there now exists a mechanism, articulated in section 108(5.1), through which the effects of section 108(2) can be retroactively negated, where the filing of a subdivision or reference plan in the past had the unintended consequence of returning ownership of submerged land to the Crown.

As the Surveyor General has been delegated the Minister's powers and duties under section 108(3), applications for an order pursuant to section 108(3) are to continue to be submitted to the Surveyor General and contain the information outlined in the [application checklist](#). Applications are submitted through the LTSA's Electronic Filing System (EFS).

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Applications for a retroactive exemption order pursuant to section 108(5.1) are to be made to government, specifically the Ministry of Forests, Lands and Natural Resource Operations. Please contact one of the Deputy Surveyor Generals for specific contact details and application requirements.

For applications made to the Surveyor General for an exemption order pursuant to section 108(3), applicants must clearly express why the application area should not be returned to the Crown, and provide detailed information explaining how the subject land became submerged.

Upon receipt of a complete application, the Surveyor General will refer it to provincial government agencies for their comment; applications may also be referred to local governments and other interested parties or agencies for their comment.

If the Surveyor General deems it necessary to carry out a site inspection, the inspection will be conducted by a Deputy Surveyor General, and the applicant will be responsible for expenses incurred to conduct the inspection.

Upon completing the adjudication of an application, the applicant will be notified of the outcome in writing. If conditional approval is granted, the final plan must be submitted to the Surveyor General for certification within six months of the date of the conditional approval.

An order under section 108(3) is plan-specific; therefore the effects of section 108(2) can be triggered every time there is a new subdivision of land that creates a remainder parcel. To negate the effect of section 108(2) on the deposit of subsequent subdivision or reference plans, a new exemption order would be required.

Yours sincerely,

A handwritten signature in black ink that reads "Michael G. Thomson". The signature is written in a cursive style with a large initial 'M'.

Mike Thomson, BCLS  
Surveyor General of British Columbia