



ISLANDS TRUST FUND

TRUST FUND BOARD POLICY

Policy number: 2.8

Title: Covenant Enforcement Policy

Approved By: Trust Fund Board

Date: April 9, 2009

Resolution #: TFB 09/1054

PURPOSE

To establish a covenant enforcement policy for covenants held by the Trust Fund Board in order 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 the Trust Fund Board retains its ability to enforce the covenant should legal action become necessary. Currently, the Trust Fund Board and its staff conduct breach investigations and respond to violations on a case by case basis. This policy will provide guidelines to the Trust Fund Board and its staff for covenant enforcement.

Policy

A. Policy - Breach Investigation

1. The Trust Fund Board 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 the Trust Fund Board's responsibility to investigate the suspected breach.
2. The Trust Fund Board may undertake a covenant breach investigation in the following circumstances:
 - (a) a covenant breach is observed through an annual monitoring visit;
 - (b) a written or oral complaint of a breach by any person is submitted to the Trust Fund Board;

- (c) the Islands Trust Fund staff or contractors to the Islands Trust Fund observe a breach;
- (d) a referral is received from a permitting agency that identifies covenant breaches associated with the permit request; or
- (e) the Trust Fund Board receives information from any other reliable source that there may be a covenant breach.

3. Breach investigation will follow the Breach Investigation and Covenant Enforcement Procedure, TFB 09002.
4. In the case of jointly held covenants, the co-covenant holder will be contacted immediately and a course of action for investigation of the breach will be determined collaboratively whenever possible.
5. 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.

B. Policy – Voluntary Compliance and Enforcement Remedies

1. The Trust Fund Board will in all cases attempt to seek voluntary compliance and remediation by the landowner, in accordance with the Breach Investigation and Covenant Enforcement Procedure, TFB 09002.
2. If the parties are unable to reach an agreement regarding voluntary compliance, the Trust Fund Board 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, the Trust Fund Board may choose to pursue arbitration.
3. The Trust Fund Board, in consultation with the co-covenant holder, will establish a time period for the landowner to remedy the breach, in accordance with the covenant.
4. If the landowner does not remedy the breach within the acceptable time period, the Trust Fund Board, in consultation with the co-covenant holder, may enter the land and remedy the breach, at the owner's expense, in accordance with the terms of the covenant.
5. Where attempts to achieve voluntary compliance fail, and where legal proceedings are proposed, and upon approval by the Trust Fund Board and upon approval by the Executive Committee in relation to financial implications, the Trust Fund Manager will instruct legal counsel to commence covenant enforcement proceedings.

C. Policy - Rent Charge Enforcement

1. 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 the Trust Fund Board, as covenant holder.
2. A decision to enforce a rent charge will be made by the Trust Fund Board, in consultation with the Chief Administrative Officer of the Islands Trust and legal counsel, and carried out by the Manager, in accordance with the Breach Investigation and Covenant Enforcement Procedure, TFB 09002.

Note: If the rent charge is to be enforced, the full amount must be charged.

D. Policy – Rent Charge Enforcement and Jointly Held Covenants

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

E. Policy – Natural Area Protection Tax Exemption Program Covenants

1. Where a breach is identified on a Natural Area Protection Tax Exemption Program Covenant, the Trust Fund Board may ask Trust Council to cancel the Natural Area Exemption Certificate. The Islands Trust may then proceed to recapture exempted property taxes in accordance with the *Islands Trust Act*.
2. Where the Trust Fund Board wishes to cancel a Natural Area Exemption Certificate, Islands Trust Fund staff, in consultation with the Trust Area Services Director, will prepare a staff report and Request for Decision for Trust Council outlining the nature of the breach and the reasons for requesting the cancellation.
3. If Trust Council elects to proceed with cancellation of the Natural Area Exemption Certificate and recapture of exempted property taxes, this activity will be the responsibility of the Trust Area Services Director.

F. Policy – Covenants that have received tax receipts through the Ecological Gifts Program

1. Where a breach occurs on a property which was covenanted through the Ecological Gifts Program, Trust Fund Board will direct 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:

2.4 Conservation Covenants

Islands Trust Fund Plan

Islands Trust Act

Land Title Act

Trust Council 5.3v Best Practices for Local Trust Committees in Holding Conservation Covenants
Canadian Land Trust Standards and Practices 2005

Hillyer, A. and J. Atkins, 2005. Greening your title: a guide to best practices for conservation covenants. Second Edition. Published by West Coast Environmental Law Research Foundation. Vancouver, B.C.

Related Procedure

2.8.1 Breach Investigation and Covenant Enforcement Procedure