

CIRCULAR LETTER NO. 460

(This letter supersedes Circular Letter No. 421)

August 13, 2012

TO ALL BRITISH COLUMBIA LAND SURVEYORS

**Re: Applications to the Surveyor General Pursuant to
Section 108(3) of the *Land Title Act***

Land Title Act section 108 sets out a process for the return of water-covered land to the Crown upon registration of a subdivision plan or reference plan. Based on judicial interpretations, section 108 applies only where:

1. A remainder of a parcel is created;
2. The remainder lies adjacent to Crown land; and
3. The remainder is covered by water.

Section 108 does not apply where a subdivision plan or reference plan does not create a remainder of a parcel or parcels.

A landowner may be exempted from the application of 108 by order of the Minister.

The Minister's powers and duties relating to exemptions have been delegated to the Surveyor General.

An exemption order applies only to the land within the heavy outline on a subdivision or reference plan.

An exemption order is specific to the subdivision or reference plan and does not run with the land. Section 108 is triggered every time there is a subdivision of land in the circumstances to which it applies; accordingly, any further subdivision of land that results in a new remainder parcel will return the water covered land to the Crown unless a new exemption order is obtained.

Should a land surveyor or their client wish to make application for an exemption order pursuant to section 108(3) *Land Title Act*, the following outlines the process.

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Applications for exemption orders must be submitted to the Surveyor General and contain the information outlined in the application checklist (<http://www.ltsa.ca/cms/application-checklist>). Applications are submitted through the LTSA's Electronic Filing System (EFS).

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.

If an application is disallowed, the Surveyor General will consider any new information provided by the applicant that is received within three months after the date of notification to the applicant. If no new information is received within this time period the file will be closed.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Mike Thomson".

Mike Thomson, BCLS
Surveyor General of British Columbia