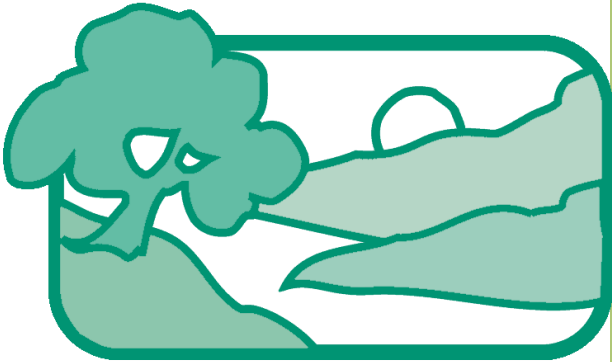


Bylaw Compliance & Enforcement  
*Best Practices Manual*

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**Islands Trust**

July-September 2024

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## Definitions

**Bylaw Notice** means a ticket, with penalty, issued under the Local Government Bylaw Notice Enforcement Act

**Formal eComplaints** are limited to those submitted in writing and directed to the Chief Administrative Officer (CAO).

**Islands Trust** refers to the following decision-making bodies: Trust Council, a local trust committee and the Executive Committee, as well as trustees or staff.

**Ombudsperson Office** referrals of complaints should be directed to the [Islands Trust Chief Administrative Officer \(CAO\)](#). Review Bodies include the CAO and the Executive Committee whose roles are explained in Section B.

**Respondent** means those responding to allegations of bylaw contraventions

**Vexatious Complaint** means frivolous, repeat or false complaints, or ones made in bad faith that are meant to harass, annoy, or irritate any person, or are for retaliatory purposes.

## **Roles and Responsibilities**

### **Trustees**

- Policy Development and Approval: Trustees of the Islands Trust are primarily involved in the governance aspects, including setting policies that guide bylaw enforcement. They approve bylaws that regulate land use and community planning within the Trust Area.
- Strategic Oversight: Trustees oversee the general strategic direction of the Trust, ensuring that bylaw enforcement aligns with the broader goals of conservation and sustainable community development.
- Community Representation: Trustees also represent the interests and concerns of their constituents in matters related to bylaws and their enforcement, acting as a liaison between the community and enforcement officers.

### **Staff**

- Bylaw Compliance and Enforcement Officers: These are specialized staff responsible for the practical aspects of enforcing the bylaws approved by the Trustees. Their duties include investigating complaints, gathering evidence, and ensuring compliance through educational and regulatory means.
- Planning Staff: While not directly involved in enforcement, planning staff play a critical role in interpreting the bylaws and providing recommendations to both the public and enforcement officers. They ensure that the enforcement practices align with the planning objectives set by the Trustees.
- Administrative Support: This includes staff members who assist in the administration of bylaw enforcement, such as processing complaints, maintaining records, and supporting communication between the public, trustees, and enforcement officers.

### **Roles in Context**

- Cooperation and Communication: Effective bylaw enforcement within the Islands Trust requires ongoing communication and cooperation between Trustees and staff. While Trustees provide the legislative framework and policy direction, staff members carry out these policies through direct enforcement and support roles.

## Introduction

### What is the purpose of the Islands Trust Bylaw Compliance & Enforcement program?

The **purpose** of the Bylaw Compliance and Enforcement program is to support the object of the Islands Trust to preserve and protect the trust area and its unique amenities and environment for the benefit of residents of the trust area and of the province generally by ensuring compliance with Local Trust Committees' Bylaws. The policy is to establish the procedures for effectively and fairly receiving, reviewing, recording, and responding to bylaw complaints, and addressing possible and confirmed bylaw violations within the Islands Trust. The **goal** of the Bylaw Compliance & Enforcement process is for the violator to gain compliance with these regulations through the relevant action (for example, by moving a structure, obtaining a variance permit, or discontinuing a use that is not permitted).

The goal of the policy is to establish the procedures for effectively and fairly receiving, reviewing, recording, and responding to bylaw complaints, and addressing possible and confirmed bylaw violations within the Islands Trust. The Islands Trust has legal authority to enforce bylaws under several pieces of legislation, primarily the Islands Trust Act and the Local Government Act of BC.

The Bylaw Compliance & Enforcement program **investigates alleged or apparent contraventions** of the land use bylaws of the Local Trust Committees (LTCs) comprising the Islands Trust. The regulations are found in LTC Land Use Bylaws; in Development Permit Areas within Official Community Plans; siting and use permit bylaws for Denman and Hornby; and and in the Salt Spring Island Soil Deposit and Removal Bylaw. For an overview of the BCE Process, refer to the BCE Process Overview Flow Chart.

Islands Trust Council policy 5.5.1 Bylaw Compliance & Enforcement can be found [here](#).

Item B.2.1 of the policy indicates that the Manager of Compliance and Enforcement (Manager) will maintain this best practices and procedures operating manual in accordance with the administrative fairness principles outlined in the [BC Ombudsperson's report "Bylaw Enforcement: Best Practices Guide for Local Governments", March, 2016](#).

### What initiates a Bylaw Compliance & Enforcement case file?

Like all local governments [in British Columbia](#), the Islands Trust uses a '**complaint-based**' Bylaw Compliance & Enforcement process. This means that almost all case files result from complaints from individuals in the community. This system gives priority to those bylaw infractions of greatest concern to island communities. There is no residency nor citizenship requirement to be a complainant.

Trust Council's policies also allow a Bylaw Compliance & Enforcement Officer (BCEO) to initiate a case file **without a complaint if:**

- bylaw contraventions appear to cause health and safety issues;
- bylaw contraventions appear to occur in setbacks from water bodies;
- bylaw contraventions appear to occur in development permit areas;
- bylaw contraventions appear to occur as part of a building permit process or other permitting process administered by a local government or the Islands Trust;
- a referral is received from a permitting agency that identifies alleged land use bylaw contraventions associated with the permit request;
- advertisements exist for apparently unlawful uses;
- a Local Trust Committee directs staff to commence an investigation

### How can complaints be sent to the Islands Trust?

Anyone who wishes to make a complaint can:

- complete the Bylaw Compliance & Enforcement Complaint form on the Islands Trust web site at <https://islandstrust.bc.ca/mapping-resources/report-a-concern/>;
- send an e-mail to [bylawenforcement@islandstrust.bc.ca](mailto:bylawenforcement@islandstrust.bc.ca) ;
- mail or deliver a letter to any of the Islands Trust offices;
- complete a [complaint form](#) at any of the Islands Trust offices.

**Complaints must be submitted in writing.** verbal complaints are not sufficient to open a file. Staff will support anyone with language issues, such as English as their second language or illiteracy, by transcribing the complainant's information.

### Confidentiality

Complainants must identify themselves. Anonymous complaints will not be accepted. Every effort will be made to ensure confidentiality to the complainant. However, confidentiality cannot be guaranteed should litigation proceed against the violator or where a request for information is received under Freedom of Information legislation.

Note that we also receive referrals from other agencies (typically regional districts) when they receive a complaint in which that agency recognizes that the nature of the complaint is within the jurisdiction of the Islands Trust.

### What is not a complaint?

Many common queries or messages from the public are not complaints [about an unlawful use or activity](#). Some individuals simply want to understand an aspect of the pertinent land use bylaw or OCP. They may be considering taking some action on their property and want to know if the LUB allows such activity. In this case, a case file is not opened.

A sample response:

You can find the Land Use Bylaws for Denman Island here:

<http://www.islandstrust.bc.ca/islands/local-trust-areas/denman/bylaws/>

If you would like assistance in understanding any particular aspect of the Denman Island Land Use Bylaw #186, please call the Gabriola Island office of the Islands Trust to ask to speak with a planner: 250-247-2063 or email [denmanplanner@islandstrust.bc.ca](mailto:denmanplanner@islandstrust.bc.ca)

However, if the person is wondering if their issue or concern in regards to a property within the Islands Trust Area is an apparent contravention of a LUB, then it should be treated as a complaint as BCE work or investigation will be required to be able to answer that question. Essentially, all complaints result in a case file being opened.

Note also that once informed of a possible contravention or offence against a Local Trust Committee bylaw, Islands Trust cannot decline to open a case file or decline to conduct an investigation because a complainant has changed their mind. Complainants cannot “withdraw” their complaint as they are not victims of the offence.

### Vexatious or Frivolous complaints-

If complaints or complainants are designated as vexatious or frivolous by policy, the decision will be communicated to the complainant in writing, outlining the nature of any restrictions on communications, reasons for the restrictions, and when the restrictions would be reconsidered. Any such restriction does not prevent or limit other necessary contact with staff that is unrelated to the person’s complaints.

### How is compliance achieved?

Compliance is sought through a **combination of education, mediation and enforcement** techniques. Bylaw compliance is primarily sought through an attempt to achieve voluntary compliance. Voluntary compliance is indicated by a commitment to corrective action as soon as reasonably possible and the cessation of unlawful activity.

### How are Bylaw Compliance and Enforcement case files closed?

Case files can be closed in one or more of the following circumstances:

- if no contravention exists ~~as determined by according to the judgement of the investigating assigned~~ BCEO;
- if compliance has been achieved ~~as determined by the investigating according to the judgement of the assigned~~ BCEO;
- on direction of a Local Trust Committee;
- ~~as directed by Trust Council or Local Trust Committee policies;~~
- if the Director ~~of~~ Planning Services (DPS) concurs with the Manager that the contravention is of a minor character and does not suit the public interest to enforce.

## A.-General Bylaw Compliance & Enforcement Practices

1. **All written complaints** directed to the Bylaw Compliance & Enforcement office **are acknowledged and recorded**, whether they result in an investigation file being opened or not. Note that the date of the complaint is the date that Islands Trust receives the complaint. It is not the date on the letter or other paper submitted. It is also not the date that staff review the material. For example, if a complaint is sent on a weekday evening or a weekend when the office is not open, it is not the date that staff return to the office the following day or Monday but rather the date of the submission.

A Tapis file and an e-file on the EDM will be created for all written complaints received with an identified complainant except those that are seen to be malicious. No physical file will be created for complaints to be referred to another agency. A physical file will be created for all other complaints.

2. **A preliminary review of the complaint is undertaken** to identify if the complaint is within the jurisdiction of the land use bylaws for the respective Local Trust Area (LTA).
  - 2.1 If no apparent or potential contravention exists, the Complainant is asked to supply further pertinent information or is advised that no apparent or potential contravention exists and a record of the enquiry filed. The Complainant is referred to the appropriate agency where possible.
  - 2.2 If an apparent or possible violation exists, the Manager of Compliance and Enforcement (Manager) will direct the Bylaw Compliance & Enforcement Administrative Assistant (BCEAA) to open a Bylaw Compliance & Enforcement file and will assign it to a BCEO.



3. On receipt of a file, **the BCEO will conduct a file analysis** to determine the extent of the apparent or potential violation and what may be required to achieve compliance with the bylaw. They may consult with the Manager, Islands Trust planners, and the DLPS or seek legal advice when necessary. If case file analysis cannot begin within 3 working days due to workload, the officer will consult with the Manager.

3.4. [BCEO will review all relevant compliance and enforcement policies that have been adopted by Local Trust Committees or Trust Council.](#)

4.5. Typically, **the assigned BCEO will conduct a site inspection** of the property, the purpose of which is to:

4.4.5.1 establish a relationship with the Respondent.

4.2.5.2 gain an awareness and visual understanding of the property and surrounding neighbourhood.

4.3.5.3 acquire photographs of the property and the possible contravention.

4.4.5.4 gather information such as what has been built on the property, if anything, and/or what is occurring on the property that would draw a complaint. This means asking questions and investigating. BCEOs have the legal authority to conduct an inspection, sometimes with notice, but for most of the land use bylaws, no notice is required. Stating this authority to inspect is the only firm message that a Respondent needs to receive.

5.6. **What BCEOs do not do:**

5.4.6.1 be confrontational, over-bearing or disrespectful.

### What is a case file analysis?

Research conducted to answer the following:

- What are the issues relevant to the Islands Trust?
- What does the applicable bylaw state regarding the issue(s)?
- What are the specific circumstances (setback, height requirement, permitted uses, issues of non-conformity, etc.)?
- What questions need to be asked and answered?

~~5.3.6.2~~ issue orders. BCEOs have no authority to issue stop work orders or order a property owner what they can do with their property. Ultimately, only the Local Trust Committee can do this through the passing of bylaws. However, BCEOs can request that all work stop until they have had time to fully review the regulations and investigate the work done, or until the Respondent applies for a permit. Respondents will comply with a request the majority of the time.

~~5.4.6.3~~ give on-site determinations or decisions about contraventions. Making decisions on site can lead to Respondents believing that BCEOs are not reviewing all of the evidence; or are biased; or are pre-disposed to accuse them of a contravention or wrong-doing. As well, BCEOs are not qualified like a biologist, or some other qualified environment professional, to determine if such works are doing environmental damage in a sensitive ecosystem.

~~5.5.6.4~~ issue Bylaw Violation Notices or Bylaw Violation Warning Notices. This may be seen as showing pre-judgement of the facts, can lead to confrontation, and reduces the likelihood of open communication.

~~6.7.~~ When visiting properties, **BCEOs should refrain from making determinations or decisions on the spot.** Respondents should be informed that BCEOs are there to gather information only, and that they will receive a written response regarding their case.

~~7.8.~~ **Compliance and Enforcement for Islands Trust has developed into a multi-stage process** which means there are multiple contacts with Respondents before they receive a determination that they are contravening a land use bylaw. This process reduces conflict with Respondents and encourages voluntary compliance. Progressive discipline or enforcement measures should be followed with a verbal warning, a written warning, and then assess penalties only if necessary or pursue legal action.

~~8.9.~~ Based on evidence collected and a review of the pertinent LUB or OCP, the **BCEO will determine if there is, or has been, a contravention.**

~~8.19.1~~ If no contravention of local trust committee bylaws exists, the Respondent and the Complainant is so advised and the case file is closed.

~~8.29.2~~ If a contravention exists, the Respondent will be asked to cease the activity, land use or construction immediately.

~~9.10.~~ The **BCEO will attempt to achieve voluntary compliance** with the bylaw by negotiation within 90 days if possible. –The BCEO may issue a bylaw violation warning notice (**BWN**) or a bylaw violation notice (**BVN**) in local trust areas where a Bylaw Enforcement Notification (**BEN**) bylaw has been adopted by the local trust committee. See the Bylaw Compliance & Enforcement Notice and Dispute Adjudication section for more detailed information.

~~9.4.10.1~~ If an administrative application such as a land use variance application has been submitted by the Respondent and there is a reasonable likelihood of success, the BCEO will refrain from enforcement during the application process.

~~10.11.~~ **Where activity has not ceased or where compliance is not achieved:**

~~10.4.11.1~~ The BCEO will escalate to appropriate next steps which may include issuing a BVN, sending a ~~Notice of Unpaid BVN~~[Notice of Unpaid BVN](#), sending a demand letter via lawyers, or recommending legal action to the Local Trust Committee.

~~10.211.2~~ If legal action is contemplated, the Director of Planning Services will need to approve a ~~Legal Services Request~~[Legal Services Request](#).

~~10.311.3~~ If injunctive action is recommended by the lawyers, the Manager will present a staff report to the Local Trust Committee and Executive Committee recommending whether or not injunctive proceedings should proceed. The report will include the lawyer's file analysis, the estimated costs for litigation, and the likelihood of success.

~~10.411.4~~ Upon Executive Committee approval, the DLPS, through legal counsel, will initiate legal proceedings.

## B. Case File Management Practices

### Complete record of activities, communications, evidence, events and reports

BCEOs will include in the Bylaw Compliance & Enforcement case file a record of all pertinent activity including photos from site visits, correspondence (letters and emails) and conversation notes. A Bylaw Compliance & Enforcement case file consists of all material within a physical file folder, electronic documents on the area network (EDM) and [relevant databases](#).

For the management of photographic records, all site visit or site inspection photographs should be placed in a folder documenting the date taken and the identity of the bylaw officer who took the photographs.

Any photographs received from either the complainant or the respondent should be placed in a folder that documents who submitted the material.

### Documents – electronic & physical files

Any physical document, received or created, relating to a bylaw investigation will be included in the physical Bylaw Compliance & Enforcement case file folder. Any electronic document, received or created, relating to a Bylaw Compliance and Enforcement case file will be included on the EDM.

Bylaw Compliance & Enforcement case files will be retained as per the Islands Trust Records Management policy. That policy states that the case files are selectively retained after 10 years of being closed. The criteria for retaining case files are whether they set precedents or are significant. Those case files that do not set precedents or are not significant can be deleted (e-files) or destroyed (physical files). At the time of closing a file, the BCEO and the Manager of Compliance and Enforcement will indicate on the physical file their recommendation of retention or destruction. After 10 years of storage, the Manager decides whether to retain or destroy the record.

### Public access to records

As Bylaw Compliance & Enforcement files contain confidential information and pertain to law enforcement, a member of the public is required to submit a Freedom of Information and Protection of Privacy [request](#) in order to obtain any information from a file.

Note that Section 19 of the *Local Government Bylaw Notice Enforcement Act* indicates that “Hearings must be open to the public”.

## C. Case File Communications Practices

### Communications with Complainants

1. When a Complainant completes an [online complaint form](#), they receive an automatic response which thanks them for their complaint and advises them that they will be contacted shortly with an update.
2. Once the complaint has been received and reviewed by the Manager, Complainants are advised whether a Bylaw Compliance & Enforcement case file has been opened (and therefore an investigation will occur); or if their information is added to a currently open file; or if a file is not opened. The BCEAA sends this message (letter or email) using the signature block of the assigned BCEO. If the Complainant has provided an email address, they will be notified by email; if they have only provided a mailing address, they will be notified by mail.

See the Response to Complainant template used when a case file is opened. It is adapted for communication with a Complainant when a file is reopened or there is a currently open file or is not opened.

Note, however, that a complaint received by another agency (typically regional districts) and referred to Islands Trust does not result in a response to the original complainant, as they may not have provided explicit permission to share their personal information (name/ mailing address/email address). As well, there is no need to provide a formal response to the other agency that provided the referral. The BCEO will communicate with that referral agency if appropriate.

3. Complainants will be updated by the BCEO at the time of significant activities such as:
  - a. a file is put on hold (and the reason for the abeyance is provided);
  - b. an LTC decision;
  - c. a file has moved to litigation (and the significance that the identity of the complainant may become public information);
  - d. a file is closed;
  - e. upon request.

### Communications with Respondents

1. When a file is opened, the BCEAA will send an email (using the signature block of the assigned BCEO) to the property owner/respondent except when a file is opened which will result in a referral to another agency in which case no communication with the property owner is necessary.
2. Once a BCEO has confirmed by inspection or other means that a contravention of a bylaw has occurred or is occurring, the BCEO will send a letter to the Respondent. This letter includes the following:
  - a. The **reason** the letter is being sent (“Pursuant to my inspection/telephone call of [date]”);

- b. What the **problem** is using a statement of what has been observed;
- c. An **explanation** how the pertinent bylaw is being or has been contravened by quoting the bylaw—including the sections that are being violated and the definitions of words from the bylaw;
- d. Outline of the **solutions** available to comply with the bylaw;
- e. Explanation of the possible **consequences** for not complying;
- f. A **deadline** for taking next step or fully complying—this deadline may have already been negotiated with the Respondent but in any case should be reasonable and not excessive;
- g. Written in an **easily readable** manner including a clear and logical flow.

### Communications with Trustees

1. A Local Trust Committee or any individual local trustee is not to be involved in any aspect of the investigation of a complaint or the preparation of any Bylaw Compliance & Enforcement report. However, a local trustee may file a bylaw violation complaint just as any member of the public can.
2. Upon opening a case file, the BCEAA will send an email to the relevant local trustees advising of the general nature of the complaint, the name of the street/road (not the complete address), and the case file number unless the complaint is to be referred to another agency in which case no communication with the local trustees will be made. A print and a PDF of the email will be placed in the file.

Sample Email:

XX Island Local Trustees,

Bylaw Compliance & Enforcement file XX-BE-20XX.X regarding XX [Violation Type] on XX [Road/Street Name], XX Island, was opened today [or on X DATE].

3. The Local Trust Committee will be kept informed about the status of an investigation only at the Committee’s request.

### Biannual Reporting to Trust Council

The DLPS submits two reports to Trust Council biannually. These reports will contain information that the local trust committees may place on their LTC agenda if desired. Trust Council reports are reviewed at the Executive Committee meeting prior to the Trust Council meeting.

The two reports presented to every second Trust Council meeting are the Bylaw Compliance & Enforcement Statistical Report and the confidential Bylaw Compliance & Enforcement Litigation Report. These two reports are presented at the March meeting for the reporting period August to December of the previous year and at the September meeting for the reporting period January to July of the same year.

Report	Purpose
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<b>Bylaw Compliance &amp; Enforcement Statistical Report</b>	Provides a summary of ongoing Bylaw Compliance & Enforcement projects as well as statistics for the number of open, new and closed files; the violation types of the open files; and the length of time the open files have been opened.
<b>Bylaw Compliance &amp; Enforcement Litigation Report</b> (In Camera)	Provides the status and other details of current Bylaw Compliance & Enforcement litigation activities (but not legal opinions). This staff report includes the report from the Litigation database in the Local Planning Services section of the Islands Trust applications. Costs are not captured as any financial information needs to be obtained from Finance.

### Local Trust Committee Reports

Local Trust Committees may request, by resolution, Bylaw Compliance & Enforcement staff to report on specific issues. Upon such a request, the DLPS will coordinate with the Manager, the relevant BCEO and the RPM on how and when to report.

### Communications with Planning Staff

1. The BCEAA will send an email at the time the file is opened to the relevant Regional Planning Manager (RPM), the relevant Planner and the assigned BCEO advising of the general nature of the complaint or alleged contravention, the name of the street/road, and the case file number. A print and PDF of the email will be placed in the file. This email message can be combined with the email to the local trustees.
2. The RPM will be notified of joint investigations conducted with other agencies (including bylaw investigations originating with another agency).
3. The RPM will be advised of any Executive Committee directions to approve litigation.
4. The BCEAA will email the biannual statistical report for Trust Council to the RPMs.

### Communications with Potential Property Buyers / Real Estate Agents

Potential property buyers or Real Estate Agents or the general public occasionally contact the Islands Trust Bylaw Compliance & Enforcement office to ask if there are any Bylaw Compliance & Enforcement issues associated with a specific property. The following standard replies from the BCEAA should be used to answer these questions:

**If there are No Current Violations:**

Thank you for contacting the Islands Trust. I can confirm that there are no current Bylaw Compliance & Enforcement proceedings at XXX Street/Road, XXX Island.

**If there are Current Violations:**

Thank you for contacting the Islands Trust.

There is a bylaw investigation underway at XXX Street/Road, XXX Island. You may wish to contact the current owner for details.

Please note that once an investigation has been initiated, the disclosure of information by Islands Trust is subject to the *Freedom of Information and Protection of Privacy Act*. If you wish to submit a request under that *Act*, please see this webpage for information: <http://www.islandstrust.bc.ca/how-do-i/make-an-foi-freedom-of-information-request/>.

Note that we do not provide information about previous complaints or investigations. That information would require a Freedom of Information/Protection of Privacy request.

DRAFT



## D. Bylaw Enforcement Notices and Dispute Adjudication System

### Overview

#### *Local Government Bylaw Notice Enforcement Act*

In October 2003, British Columbia enacted legislation providing an alternative approach for processing and resolving minor bylaw contraventions: the [Local Government Bylaw Notice Enforcement Act](#). As well, the [Bylaw Notice Enforcement Regulation](#) provides direction.

Prior to the *Local Government Bylaw Notice Enforcement Act* there were four main strategies used by local governments to deal with a contravention of a bylaw:

1. seek voluntary compliance;
2. issue an “offence notice” for infractions which seeks voluntary payment of a prescribed penalty;
3. issue a municipal ticket information (MTI) and initiate formal court proceedings by swearing an information and issuing a summons;
4. initiate litigation through the Supreme Court.

The legislation is designed to enable the creation of a simple, cost-effective administrative system for enforcing bylaw contraventions. The two main features of this system are a simple “front-end” notification (ticket) process for initiating enforcement, and a locally managed “back-end” venue for a quasi-judicial adjudicator to hear ticket disputes.

Under the *Act*, local governments may establish a local government Bylaw Enforcement Notice and Dispute Adjudication system which replaces the provincial court as the venue for resolving disputes of bylaw contraventions. The *Act*, and the authority it provides to establish an adjudication system, applies to municipalities, regional districts and Local Trust Councils by regulation.

#### **Implementation Bylaw**

Section 3 of the *Act* allows a local government to use a notice to impose administrative penalties for designated bylaw contraventions. In order to do so, the local government must pass a bylaw that implements a Bylaw Enforcement Notice and Dispute Adjudication (BEN) system. For an example, see the Galiano Island Local Trust Committee [Bylaw Enforcement Notification Bylaw No. 228, 2011](#).

#### *This bylaw must:*

- designate the **bylaw contraventions** that may be dealt with by a bylaw notice;
- establish the amount of the administrative **penalty** for each contravention;
- set the **period** within which a recipient may **pay** the administrative penalty **or dispute a bylaw notice/request a review**;
- establish a bylaw notice **dispute adjudication system** to resolve bylaw notice disputes.

#### *Local government may also include the following in the implementation bylaw:*

- establish a position of **Screening Officer** (SO);

- designate classes of persons that may be appointed as SOs and specify their **powers, duties and functions**;
- provide the SO the **authority to enter into compliance agreements** for specified bylaw contraventions and any terms to be included in the compliance agreement;
- establish the **grounds** on which the SO **may reduce the amount** of the administrative penalty;
- establish a means of calculating the **amount of the reduction** of the administrative penalty;
- establish **a fee payable to file a request for adjudication**;
- provide for an **early payment discount** of administrative penalties;
- set out **any additional grounds** on which an SO or adjudicator is authorized **to cancel a penalty notice**;
- set the **period** within which a **recipient must respond** to a SO's decision.

#### Islands Trust Areas that have adopted a BEN Bylaw:

Ballenas-Winchelsea – Bylaw 34 (adopted 2019)  
 Denman – Bylaw 232 (adopted 2019)  
 Gabriola – Bylaw 263 (adopted 2012)  
 Galiano – Bylaw 228 (adopted 2012)  
 Gambier – Bylaw 116 (adopted 2013)  
 Hornby – Bylaw 159 (adopted 2020)  
 Mayne – Bylaw 156 (adopted 2016)  
 North Pender – Bylaw 188 (adopted 2011)  
 Salt Spring – Bylaw 446 (adopted 2012)  
 South Pender (adopted 2019)  
 Thetis – Bylaw 90 (adopted 2011)

#### Islands Trust Areas that have not adopted a BEN Bylaw:

Lasqueti  
 Saturna (pending)

#### Ownership of Records

All records produced pursuant to the implementation and administration of the BEN system are owned by Islands Trust, which is responsible for preserving these records in accordance with existing obligations imposed by provincial legislation. These records include, but are not limited to:

- copies and records of issued Bylaw Violation Notices (BVNs) and Bylaw Warning Notices (BWNs);
- records of paid administrative penalties;
- copies of adjudicator decisions;
- copies of documents relating to the collection of any unpaid penalty, such as Certificates of Amounts Owed.

## Procedures

### Management of the Bylaw Enforcement Notice process within TAPIS

The BCEAA and the BCEOs maintain information within the TAPIS database of all Bylaw Violation Notices issued. TAPIS includes a record of:

- BVNs (ticket numbers/issuing officer/date issued/BE file number/respondent name/respondent address/ deadline dates)
- penalty amounts and due dates (including early and late payment amounts and dates);
- compliance agreement dates (request received/signed/final term);
- adjudication dates (requests received/hearing);
- SO decisions and dates;
- Notice of Unpaid BVN dates (sent/received by respondent/ corresponding payment due date);
- Certificate of Amounts Owing dates (issued/suspension deadline/suspension request received/court appearance);
- debt collection dates (sent to and returned from collection agency);
- payment amounts and date received.

The BCEOs are responsible for monitoring of all Bylaw Violation Notices issued and identifying BVNs that are eligible to be moved to the next step in the process. There currently is no ability within TAPIS to search for a BVN or to generate reports of the status of BVNs.

## Enforcement of Bylaws with Bylaw Violation Notices

### Bylaw Violation Warning Notices (BWN)

A warning notice is an informal tool which may be used instead of a letter.

Warning notices should be issued with a compliance deadline of no less than 45 days prior to a Bylaw Violation Notice being issued. Ideally, a warning letter in the form of a determination letter or demand letter, should be sent first with a compliance deadline of no less than 90 days.

On rare occasions there may be a serious bylaw contravention (such as garbage dumping), and therefore the issuing of a BVN before a warning, but those will have to be dealt with on a case by case basis, and with the consultation and approval of the Manager.

However, for Salt Spring, the enforcement of the Soil Removal and Deposit Bylaw may require that no warnings be issued, especially if dumping and removal occurs when a permit is required and not just registering of the work, and the contravention involves work done within required setbacks from watercourses and waterbodies.

### Bylaw Violation Notices (BVN)

A violation notice is a formal enforcement tool. Booklets of BVN tickets are administered by the BCEAA.

#### *When to Issue a BVN*

In local trust areas which have adopted a BEN bylaw, a BVN may be issued after any of the following:

- a verbal warning;
- a demand letter;
- a warning notice;
- exceptional circumstances as outlined by the Manager.

Note that BVNs must be written within six months of the occurrence of a contravention.

#### *Commencing the Process*

Formal Bylaw Compliance & Enforcement action begins with the completion of a BVN by a BCEO.

The penalty notice informs the recipient of:

- the bylaw contravention;
- the penalty for the contravention; and
- how to pay the penalty or dispute the notice.

#### *A BVN must contain the following information:*

- the name of the person;
- the specific bylaw contravention alleged to have occurred;
- the amount of the penalty that the recipient is liable to pay;
- the amount of a discount for early payment;
- the amount of a surcharge for late payment;
- the consequences of failing to respond to the BVN;

- methods of paying the penalty;
- how to dispute the notice.

Although the *Local Government Bylaw Notice Enforcement Act* requires that the above information be included on a penalty notice, local government may organize or supplement this information as they see fit. The penalty notice may also be electronically generated or hand written on a pre-printed form. A BVN is not invalid if it is not signed by the BCEO.

***Criteria to consider when deciding to issue a BVN are:***

- Might the BVN prompt the recipient to comply with the bylaw? Sometimes subjecting a recipient to any formal procedure, however simple, will encourage compliance. If in the judgement of the BCEO issuing a BVN may result in compliance then it may be appropriate to issue one. In making this decision the BCEO should consider the size of the penalty relative to the potential revenue the violator may collect by continuing the violation or the costs that may be incurred by complying. If either the revenue or the costs are significant some other Bylaw Compliance & Enforcement procedure may be warranted.
- If the likely defence is something that a BCEO cannot easily dispute or there is some complicated argument on a point of law, the BCEO should consider deferring ticket issuance with support from the Manager.
- The notice may not be issued more than six months after the contravention is alleged to have occurred.
- The BCEO should be able to explain the reasons that a BVN was considered an effective enforcement tool in any particular situation where it is utilized.

***Delivering the BVN***

The penalty notice may be delivered by personal delivery or by mailing it to the person responsible for the contravention.

If mailed, the local government may presume that it was received by the person on the 7th day after mailing. In the event that the intended recipient claims not to have received the BVN, the BCEO must verify the address and reissue a copy of the BVN.

***On receipt of BVN***

Once the BVN is received or is presumed to have been received, it becomes legally effective. There are four possible scenarios:

- a. The recipient does not respond.
- b. The recipient claims that the BVN was not received.
- c. The recipient pays the BVN.
- d. The recipient disputes the BVN.

**a. If a recipient does not respond:**

If a recipient does not respond within 28 days they are levied a surcharge for being late in payment. As well, the penalty amount, including the surcharge, is immediately due and payable and can be recovered. In this case a Notice of Unpaid BVN must be delivered to the recipient that indicates the amount owing under the bylaw notice and how and where payment may be made.

Collection procedures may not be started until 28 days after this Notice of Unpaid BVN is received or presumed to have been received.

**b. If a recipient claims that the BVN was not received:**

If a recipient of a Notice of Unpaid BVN indicates within 21 days after the date the notice is received or presumed received that the BVN was not received, then a copy of the original BVN is reissued and delivered.

**c. If the recipient pays the BVN:**

- For penalties paid within 14 days of receiving notice, the penalty is reduced by 25%.
- Penalties paid after 14 days are for the full penalty amount.
- For penalties paid more than 28 days after receiving notice, a late payment surcharge of 50% is added.
- Finance clerk needs the BVN information to complete the payment; including the file number and copy of the BVN.
- Bylaw staff need to contact the Finance Clerk before completing any E-Transfers for payment as the security question and password details are required and backup paperwork is required for audit purposes.
- Where a member of the public wants to pay a BVN ticket by E-transfer please do the following:
  - Send them an email and cc [accountsreceivable@islandstrust.bc.ca](mailto:accountsreceivable@islandstrust.bc.ca) with the information below (blue information adjusted to provide the correct information) and attach a copy of the BVN ticket to the email:
  - As requested, here is the information you need for your e-transfer:
    - Payee: John Doe
    - Amount: \$225.00
    - Security Question: What is the file number?
    - Security Password: GBBE2020 (all caps, no punctuation or spaces)
    - Click on the URL link below when you are ready to proceed. The instructions are provided once the link is open.
    - <http://www.islandstrust.bc.ca/how-do-i/make-a-payment/>
    - Upon our receipt of your e-transfer, you will receive notification that funds have been received by Islands Trust. That notification is your receipt.

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**d. If the recipient disputes the BVN:**

The person named on the notice has 14 days to request to dispute the penalty notice (BVN). They cannot dispute the BVN after 14 days unless the Manager allows an exception. The

process starts with the recipient of a BVN (typically the property owner) requesting to dispute the BVN. Upon receiving such a request, the BCEAA or BCEO notifies the Manager and indicates whether the request arrived within the two-week “window” after the disputant has received, or is deemed to have received, a BVN.

The *Interpretation Act* has an impact on determining the dates when a notice is deemed received and when a period for responding or paying has come to an end. Note that “at least” 14 days is, in effect, 1 day longer than “within” 14 days. As well, if the resulting due date should fall on a weekend or public holiday when the office is not normally open to the public, then the effective due date is the Monday after the weekend or the next day that the office would normally be open to the public.

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## Dispute Adjudication of Bylaw Violation Notices

### Overview

The BVN Dispute Adjudication system provides for the determination of disputes in respect of whether:

- the contravention alleged in a BVN occurred as alleged; or
- the terms and conditions of a compliance agreement were observed or performed.

A challenge to the validity of the local government bylaw or a claim that enforcement of the bylaw infringed on the Charter Rights of the disputant must be initiated as a separate matter in the Supreme Court of BC.

Also refer to the [Local Government Toolkit for Bylaw Dispute Adjudication](#) presentation which provides detailed information for a local government to implement a dispute adjudication system. The [Local Government Bylaw Notice Enforcement Act](#) and the [Bylaw Notice Enforcement Regulation](#) provide direction as well.

### Parties Involved

The process of disputing a notice involves five parties:

1. The Disputant (the individual disputing the notice)
2. The Bylaw Compliance & Enforcement Officer (the Islands Trust employee authorized to issue the notice)
3. The Screening Officer (the Islands Trust employee designated as a Screening Officer under the relevant Local Trust Council's BEN bylaw)
4. The Bylaw Compliance & Enforcement Administrative Assistant (the Islands Trust employee who arranges the dispute adjudication hearing)
5. The Adjudicator (the independent adjudicator with authority to determine if the notice is dismissed or upheld)

### General Dispute Procedure

#### Step One

A recipient of a BVN notifies Islands Trust in writing of their request to dispute the BVN.

They can do this in a number of ways:

1. They can complete and submit the Adjudication Request Form that is on the bottom of the BVN. Forms can be delivered, mailed or faxed to any of the Islands Trust offices on Salt Spring Island, Gabriola Island or in Victoria.
2. The request can also be completed online at [disputing a bylaw violation notice](#).
3. The recipient can send correspondence (letter or email) indicating that they wish to dispute the BVN.

#### Step Two

An individual will be designated as the SO for the dispute. Normally this would be the Manager except for BVNs issued by the Manager in which case the respective RPM would be the SO. Currently, disputes in the Ballenas-Winchelsea, Denman, Gabriola, Galiano, Gambier, Mayne, North Pender, South Pender and Thetis LTAs are the LTAs that have a BEN



bylaw and the Manager is the officer that is normally assigned to any file opened for that LTA.

The SO will review the BVN, including possible discussions with the relevant BCEO. The SO may request a formal Issuing Officer Report from the BCEO. The SO will review the dispute request and will cancel or confirm the BVN.

#### Step Three

If the SO confirms the BVN:

- The SO will discuss their decision with the disputant by phone, in person or in writing.
- The SO may offer a Compliance Agreement with the recipient and subsequently reduce or cancel the penalty when the terms of the agreement are fulfilled.

#### Step Four

If the disputant continues to want a formal dispute adjudication, then the SO:

- requests an Issuing Officer Report (if not already created);
- creates a Screening Officer Report (if not already created);
- provides the two reports to the BCEAA and requests the BCEAA to arrange a formal dispute adjudication hearing.

At the formal adjudication hearing, evidence is presented and the adjudicator decides if an offence did or did not occur.

#### The Role of the Screening Officer

Screening Officers provide a first opportunity to respond to a BVN dispute in an informal setting. An SO may conduct the review based on discussion or correspondence with the disputant, and will typically explain the process and potential consequences of formal dispute adjudication.

Each Local Trust Committee (LTC) that has adopted a BEN bylaw has also developed an SO policy in order to provide guidelines for SOs during the BVN screening process. SOs are required to provide recipients with a fair opportunity to be heard. They may choose to take notes of their conversation with the recipient. The SO Checklist template provides information in regards to the essential aspects of such a conversation.

The following are some guidelines for SOs that are included in the checklist:

- identify yourself as a Screening Officer;
- clarify that your authority to make a determination is based upon authority granted by the local government;
- listen carefully to the recipient's information and make notes that summarize the information that is provided;
- make a decision to cancel or uphold the notice and explain this to the recipient;
- record your decision in the file.

### **The Decision of the SO**

As stated in Step 2, when a recipient of a BVN requests to dispute it, the SO reviews the BVN and may:

1. **cancel** the notice for various reasons; or
2. **confirm** the notice and either :
  - o refer it to an **adjudicator** unless the request for dispute adjudication is withdrawn; or
  - o enter into a **compliance agreement** with the person.

The decision of the SO is documented in the Screening Officer Report.

The SO must inform the recipient of the decision. The *Act* does not specify how this is to be done. It could be done orally, if that makes sense in the circumstances. For example, if the penalty notice is to be cancelled, directly informing the recipient of that is probably sufficient. However, if the penalty is being confirmed and the recipient is still expressing dissatisfaction, providing a written notice of the decision would be required.

### **Cancellation of a BVN**

The **SO may cancel a BVN** as prescribed in the LTC cancellation policy if:

- 1) Compliance is achieved
- 2) Is not consistent with established policies
- 3) the contravention did not occur as alleged;
- 4) the penalty notice does not meet the requirements set out in the *Act*;
- 5) the BVN was issued to the wrong person;
- 6) an exception specified in the bylaw or related enactment exists;
- 7) a permit exists which authorises the alleged violation;
- 8) the grounds for cancellation authorized by a local trust committee are satisfied;
- 9) there is poor likelihood of success at adjudication for the Local Trust Committee. For example:
  - a) the evidence is inadequate to show a contravention;
  - b) the BCEO relied on incorrect information in issuing the BVN;
  - c) the BVN was not completed properly.
- 10) it is not in the public interest to proceed to adjudication for one of the following reasons:
  - a) the Bylaw has changed since the BVN was issued, and now authorizes the contravention;
  - b) the offence occurred as a result of a circumstance that made it impossible for the person to reasonably comply with the bylaw.

### **Compliance Agreement (CA)**

The local government may also authorize by bylaw an SO to enter into a Compliance Agreement with a person who has received a BVN.

A Compliance Agreement will include:

- acknowledgement of the contravention of the bylaw and acceptance of the liability for the contravention;

- remedies or conditions on future actions to be performed within a designated period of time;
- a mechanism for confirming that the terms of the agreement have been complied with;
- a reduction or waiving of the penalty at the conclusion of that period if the terms of the agreement are fulfilled; and
- the duration of the compliance agreement.

If a recipient of a BVN enters into a compliance agreement and observes or performs all the terms of the agreement, including payment of the reduced amount, then the amount of the penalty is deemed to have been paid in full.

If the SO believes that the terms have not been complied with, he or she may rescind the compliance agreement. The SO must notify the recipient of that fact by regular mail. Within 14 days of receiving, or presumed to have received, that notice of rescission from the SO, the recipient may pay the penalty or request that an adjudicator determine whether the recipient has complied with the terms of the Compliance Agreement. If the recipient does neither within that period of time, the full penalty plus the surcharge for late payment is immediately due and payable by the recipient to the local government.

#### **Formal Dispute Adjudication**

Islands Trust operates its own Dispute Adjudication Registry by contracting directly with the current agency designated by the Province, that being the Ministry of Attorney General (MAG), to provide adjudicators. MAG has created a sub-roster of adjudicators who are comfortable with local government land use bylaws.

Once a disputant confirms that they wish to have a formal Dispute Adjudication Hearing, the Manager or the BCEO will notify the BCEAA who will arrange the dispute adjudication hearing. The Islands Trust adjudication 'package' typically includes the BVN, the request to dispute the BVN, the Issuing Officer Report and the Screening Officer Report. The package is to be sent to the Disputant at least one week prior to the adjudication hearing date. The package is also to be sent to the Adjudicator at least one week prior to the adjudication hearing. Refer to the BCEAA Office Procedures Manual for details.

#### **Adjudicators**

The Adjudicator has no discretion to reduce or waive the penalty amount. The Adjudicator also has no jurisdiction to deal with challenges to the bylaw or claims of infringements of rights under the Charter of Rights and Freedoms. The Adjudicator must proceed on the basis that the bylaw is legally valid.

An Adjudicator may not be an employee or an elected official of a municipality and may not hear a matter if he or she is reasonably apprehended to have a bias or an interest in relation to the outcome of that matter.

#### **Adjudication Procedures**

Section 18 of the *Local Government Bylaw Notice Enforcement Act* provides some direction in regards to Adjudication Procedures.

For example, the adjudicator must provide the parties to the dispute with an opportunity to be heard:

- in person or by an agent,
- in writing (including by fax or email), or
- by video conference, audio conference, telephone or other electronic means. If the disputant chooses this method, they must pay the LTC the amount by which the LTC's adjudication cost is increased because of this manner of hearing.

Section 19 of the *Local Government Bylaw Notice Enforcement Act* states that "Hearings must be open to the public". The Ministry of Attorney General has confirmed that local governments have total discretion on how to interpret and apply Section 19. They have suggested that this may take the form of online publication or other means of public access depending on the capacity of the local government and the volume of decisions.

#### *Evidence*

The technical and legal rules of evidence do not apply and an adjudicator may accept any evidence the adjudicator considers to be credible, trustworthy and relevant to the dispute, including the evidence of any person. The adjudicator may accept evidence in any manner, such as orally, in writing or electronically.

The standard of proof for resolving a dispute is proof on a balance of probabilities.

#### *Determination*

The adjudicator can determine one of four possibilities:

1. If the contravention identified in the BVN occurred as alleged (BVN confirmed), the penalty set out in the BVN is immediately due and payable.
2. If the contravention identified in the BVN did not occur as alleged, the BVN is dismissed (cancelled).
3. If the disputant did not observe or perform the terms of the compliance agreement, the penalty set out in the BVN is immediately due and payable.
4. If the disputant did observe or perform the terms of the compliance agreement, the penalty set out in the BVN is deemed to have been paid.

If the disputant fails to appear, the adjudicator must order that the BVN is upheld and that the penalty is immediately due and payable to the LTC. Note that the amount is the full amount of the penalty, not the reduced amount they would have paid if they had paid within the same 14 day window of opportunity. In other words, once the disputant requests formal adjudication and the adjudication hearing is set, the early discount is lost.

#### *Notice of Adjudication Outcomes*

**An adjudicator** who hears a dispute in respect of a bylaw notice or the rescission of a compliance agreement **must provide their written decision to the local government** that issued the bylaw notice,

- (a) for a hearing in person or a hearing by telephone, **within one business day** after deciding the dispute, and

(b) for a hearing in writing, **within 5 business days** after the date the adjudicator receives the written materials for the dispute.

The adjudicator's decision **must be in writing and should include:**

- the name of the disputant;
- the facts relating to the penalty notice;
- a summary of the screening officer's decision;
- the issues raised by the parties;
- a summary of the evidence provided by each party in support of each issue;
- the adjudicator's assessment of each issue; and
- the adjudicator's final decision.

There are no provincial standards for the adjudicator's written decisions and there is no provincial or Islands Trust form to use at this point. Islands Trust can create a form if desired.

The BCEAA will then provide to the Disputant a **Notice of Decision** of the adjudication outcome that:

- identifies the BVN;
- provides the Adjudicator's decision;
- states that the fine that is due and payable;
- states that the administrative fee is also due and payable;
- provides methods of payment; and
- states that if the property remains non-compliant that further BVNs may be issued.

As previously stated, the *Local Government Bylaw Notice Enforcement Act* states that "Hearings must be open to the public" but the *Act* doesn't specifically indicate that the adjudication hearing decisions must be made public. Islands Trust has not developed a best practices in this regards at this point.

#### **Cost**

The Islands Trust Registry is responsible for the administrative work and costs of the dispute adjudication system including the remuneration and expenses of adjudicators and the securing of venues. The Islands Trust Registry charges an administrative fee of \$25 payable by a disputant who is unsuccessful in a dispute adjudication. The fee is added to the debt only when and if the disputant is unsuccessful. If the disputant is successful, no fee is charged.

#### **Judicial Review**

The determination of an adjudicator is final and conclusive and is not open to review in a court except on a question of law or lack of jurisdiction. If a failed disputant or the Islands Trust believes that the adjudicator exceeded his or her authority, or made an error at law, the person or local government may seek relief in the Supreme Court of British Columbia under the *Judicial Review Procedure Act*. An application for judicial review must be made within 30 days of the adjudication decision.

## E. Collection of BVN Penalties

The local government may collect a penalty that has become due and payable, which occurs in the following circumstances:

- the recipient did not pay the penalty within the fixed period of time (28 days) as determined in the applicable bylaw and 28 days have passed since a Notice of Unpaid BVN is received (hand delivery) or presumed to have been received (7 days after mailing);
- the SO confirmed the penalty and the recipient did not seek adjudication;
- the adjudicator ordered that the penalty is immediately due and payable to the local government.

## Certificate of Amounts Owning

An amount due and payable to a local government may be recovered by filing a Certificate of Amounts Owning (CAO) in the prescribed form in the Provincial Court. The local government may not obtain a certificate if the amount became due and payable more than two years prior.

The certificate must be signed by the corporate officer or delegate of the corporate officer and must include all of the following information:

1. the details of the bylaw notice, including the date and place of the contravention;
2. the total amount owing and, separately, the amount of the penalty, any surcharges that apply (late payment) and the \$25 fee for adjudication if applicable;
3. the name of the person;
4. the date that the penalty became due and payable;
5. whether the amount outstanding is payable because of:
  - a. a determination of an adjudicator
  - b. a default such as:
    - i. the person not responding to a BVN;
    - ii. the person to whom a copy of a BVN is reissued and delivered does not respond within the required period;
    - iii. the person not requesting adjudication upon receiving notice that the compliance agreement is rescinded;
    - iv. the person who requests or requires a dispute adjudication fails to appear at the adjudication or fails to respond to the adjudication notice.

A Notice letter is mailed to the Respondent (property owner) conveying the CAO. The named person has 30 days from the filing date of this certificate to make an application to the court to suspend it.

Section 26(4) states that a Certificate of Amounts Owning is of the same effect, and proceedings may be taken on it, as if it were a judgment of the Provincial Court for the recovery of a debt.

## Registration of Judgments Arising from a Bylaw Notice

Registering a Certificate of Judgment against land owned by a Debtor prevents the Debtor from selling or mortgaging the land unless the debt owed to the Creditor is paid off. A Certificate of Judgment is effective for two years, after which a new Certificate of Judgment must be obtained and filed.

A Certificate of Judgment is obtained from the court registry for a fee of \$30.00. That Certificate of Judgment is registered against the debtor's property for a fee of \$25.00 at the Land Title and Survey Authority. To register a Provincial Court Judgment on title to land, the court registrar signs the bottom half of the "Application Registration" form. The top half of the form is filed in the land title office.

The procedural details (including fees) need to be discussed with the local Provincial Court registry. They may not be familiar with section 26 of the Local Government Bylaw Notice Enforcement Act.

The Legislative Clerks are Commissioners for taking Affidavits and have electronic accounts to file documents (such as covenants and permits) with Land Titles.

To release the registration of the Certificate of Judgment, a Trustee is the authorized signatory for Form C of the Land Title Act, Section 233 – Release, General Instrument.