



Tulo Centre of Indigenous Economics

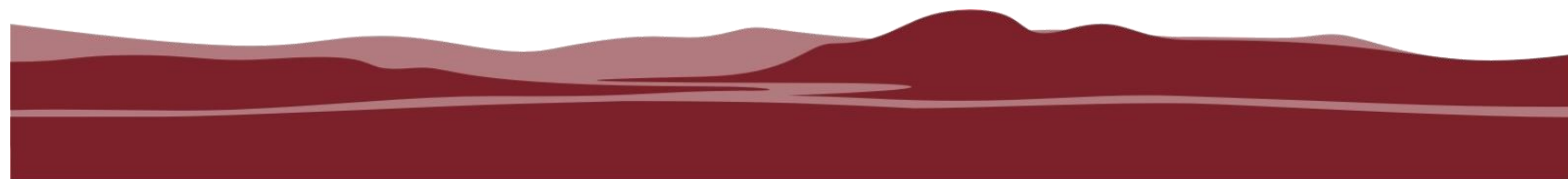
UNDERSTANDING THE FMA NOTICE REQUIREMENTS

October 2020



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UNDERSTANDING THE FMA NOTICE REQUIREMENTS

All local revenue laws (e.g. laws enacted under section 5(1) of the FMA) enacted under the [First Nations Fiscal Management Act](#) are subject to public notice requirements, except delegation laws. The specific requirements that apply vary depending on the type of local revenue law the First Nation intends to enact.

There are three sources for the specific notice requirements that will apply:

- Sections 6 and 7 of the FMA, and
- The Commission [Standards Respecting Notices Relating to Local Revenue Laws, 2018](#), and,
- For borrowing laws, notices requirements are set out in the [Standards Establishing Criteria for the Approval of First Nation Borrowing Laws, 2018](#).

SECTIONS 6 AND 7 FMA

Section 6 of the FMA requires a First Nation to notice of a proposed law at least 30 days before the law is enacted by Chief and Council. The First Nation creates a “section 6 notice” that:

- describes the proposed law,
- states where a copy of the law can be obtained,
- invite representations regarding the proposed law to be made, in writing, to the council within the 30 day period, and
- if the council is to review the law at a meeting, state the time and place of the meeting.

The First Nation must

- publish the section 6 notice in the First Nations Gazette,
- post the section 6 notice in a public place on the reserve, and
- send or email the section 6 notice to the Commission.

After the 30 day notice period, Chief and Council can then enact the law, but they must first consider any representations that were made to them in writing or at a meeting held to review the law. A representation is a letter or feedback received regarding the proposed law.

Section 7 then provides for a further process that applies if the First Nation received written representations under the section 6 process. If written representations were received, the First Nation must

- provide a copy of the enacted law to each person who made a written representation on the law, and

- invite those persons to make written representations to the Commission within 30 days after the day on which they receive a copy of the law.

In reviewing the law for approval, the Commission will first consider any representations made to it under section 7.

The requirements in section 6 and 7 of the FMA do not apply to all local revenue laws. These requirements apply only to

- property tax laws,
- property assessment laws,
- development cost charges laws,
- service tax laws,
- business activity tax laws,
- property transfer tax laws,
- fee laws, and
- taxpayer representation to council to laws.

THE COMMISSION STANDARDS RESPECTING NOTICES RELATING TO LOCAL REVENUE LAWS, 2018

The Commission [*Standards Respecting Notices Relating to Local Revenue Laws, 2018*](#) (the “Notice Standards”) create notification requirements that apply when a First Nation is making a local revenue law under the FMA. The requirements created by the Notice Standards

- are in addition to the requirements set out in sections 6 and 7 of the FMA,
- create different requirements for different types of local revenue laws, and
- apply to making a new law and to amending or repealing an existing law.



EXEMPTIONS FROM NOTICE REQUIREMENTS

Under section 6(2) of the FMA, a First Nation can ask the Commission for an exemption from the notice requirements of section 6 for an amendment to an existing law. If the Commission exempts the First Nation from the notice requirements in section 6 of the FMA for that amending law, the First Nation is automatically exempted from the requirements in the Notice Standards. No additional exemption request is required.

COMPLIANCE WITH NOTICE REQUIREMENTS

Every First Nation needs to comply with sections 6 and 7 of the FMA and the applicable parts of the Notice Standards when making a law under section 5(1) of the FMA. When a First Nation submits a law for review and approval to the Commission, the Commission will confirm that the First Nation complied with the Notice Standards as part of its review of the law.

SEASONAL PROPERTIES

First Nations who have taxable seasonal properties must also comply with section 8 of the Notice Standards. First Nations have two options:

1. The First Nation must begin and complete the section 6 notification period **AND** fulfill all notice requirements set out in the Standards, during a time of year when the seasonal properties are intended for occupation.

OR

2. The First Nation must, in addition to all other notice requirements, deliver the section 6 notice to each taxpayer who holds a seasonal property and has provided to the First Nation an e-mail address or permanent mailing address.

**A seasonal property is a cottage or other vacation or recreational residential property that is intended for occupation only for a portion of each taxation year.*



PROPERTY ASSESSMENT LAW

SECTIONS 6 AND 7 OF THE FMA APPLY.

Where a First Nation is implementing real property taxation **FOR THE FIRST TIME**, the Notice Standards requirements are steps 1 and 2:

1

Provide a section 6 notice period of at least 45 days.

2

If there are taxpayers on the reserve, publish the section 6 notice in at least one of the following ways before the first day of the section 6 notice period:

- in the local newspaper with the largest circulation;
- in a prominent place on the First Nation's website; or
- in a newsletter delivered to each taxpayer on the reserve.

Note: If a First Nation is already implementing real property taxation, including under section 83 of the Indian Act, no additional notices are required by the Notice Standards.

PROPERTY TAXATION LAW

SECTIONS 6 AND 7 OF THE FMA APPLY.

Where a First Nation is implementing real property taxation **FOR THE FIRST TIME**, the Notice Standards requirements are steps 1 and 2:

1

Provide a section 6 notice period of at least 45 days.

2

If there are taxpayers on the reserve, publish the section 6 notice in at least one of the following ways before the first day of the section 6 notice period:

- in the local newspaper with the largest circulation;
- in a prominent place on the First Nation's website; or
- in a newsletter delivered to each taxpayer on the reserve.

Note: If a First Nation is already implementing real property taxation, including under section 83 of the Indian Act, no additional notices are required by the Notice Standards.

ANNUAL TAX RATES LAW

SECTIONS 6 AND 7 OF THE FMA DO NOT APPLY.

Before submitting the law to the Commission for review and approval, the First Nation must give notice of the law in **ONE** of the following ways (A, B or C):

A

Post a copy of the law on the *First Nations Gazette* website or in a prominent place on the First Nation's website.

OR

B

Follow the procedures set out in the First Nation's taxpayer representation to council law if the First Nation has such a law.

OR

C

Hold a public meeting at which taxpayers may meet with the tax administrator or members of Council to discuss the proposed law.

Note: If the First Nation is justifying a tax rate, a description of the justification has to be included in the notice.

ANNUAL EXPENDITURE LAW

SECTIONS 6 AND 7 OF THE FMA DO NOT APPLY.

Before submitting the law to the Commission for review and approval, the First Nation must give notice of the law in **ONE** of the following ways (A, B or C):

A

Post a copy of the law on the *First Nations Gazette* website or in a prominent place on the First Nation's website.

OR

B

Follow the procedures set out in the First Nation's taxpayer representation to council law if the First Nation has such a law.

OR

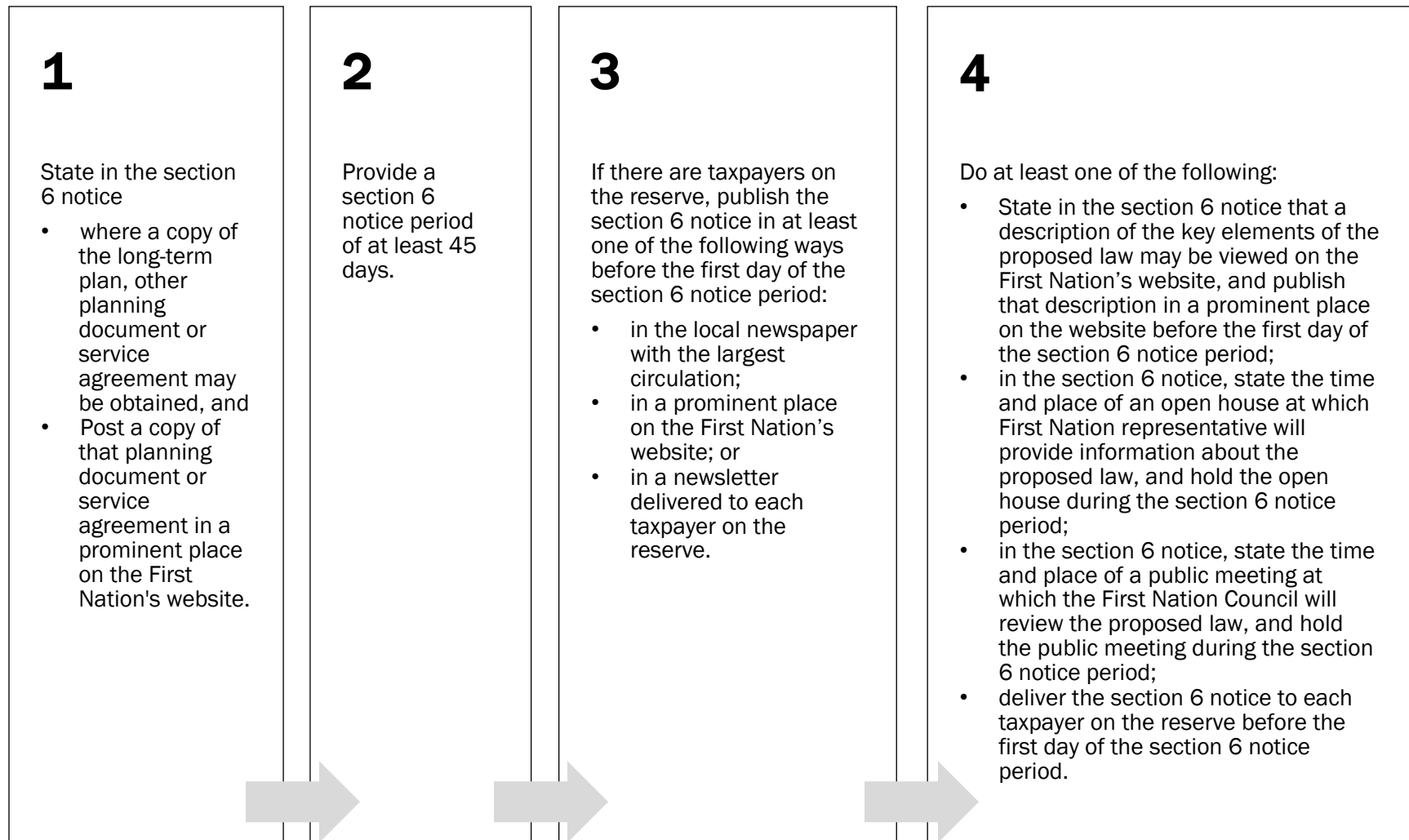
C

Hold a public meeting at which taxpayers may meet with the tax administrator or members of Council to discuss the proposed law.

DEVELOPMENT COST CHARGES LAW

SECTIONS 6 AND 7 OF THE FMA APPLY + NOTICE STANDARDS REQUIREMENTS.

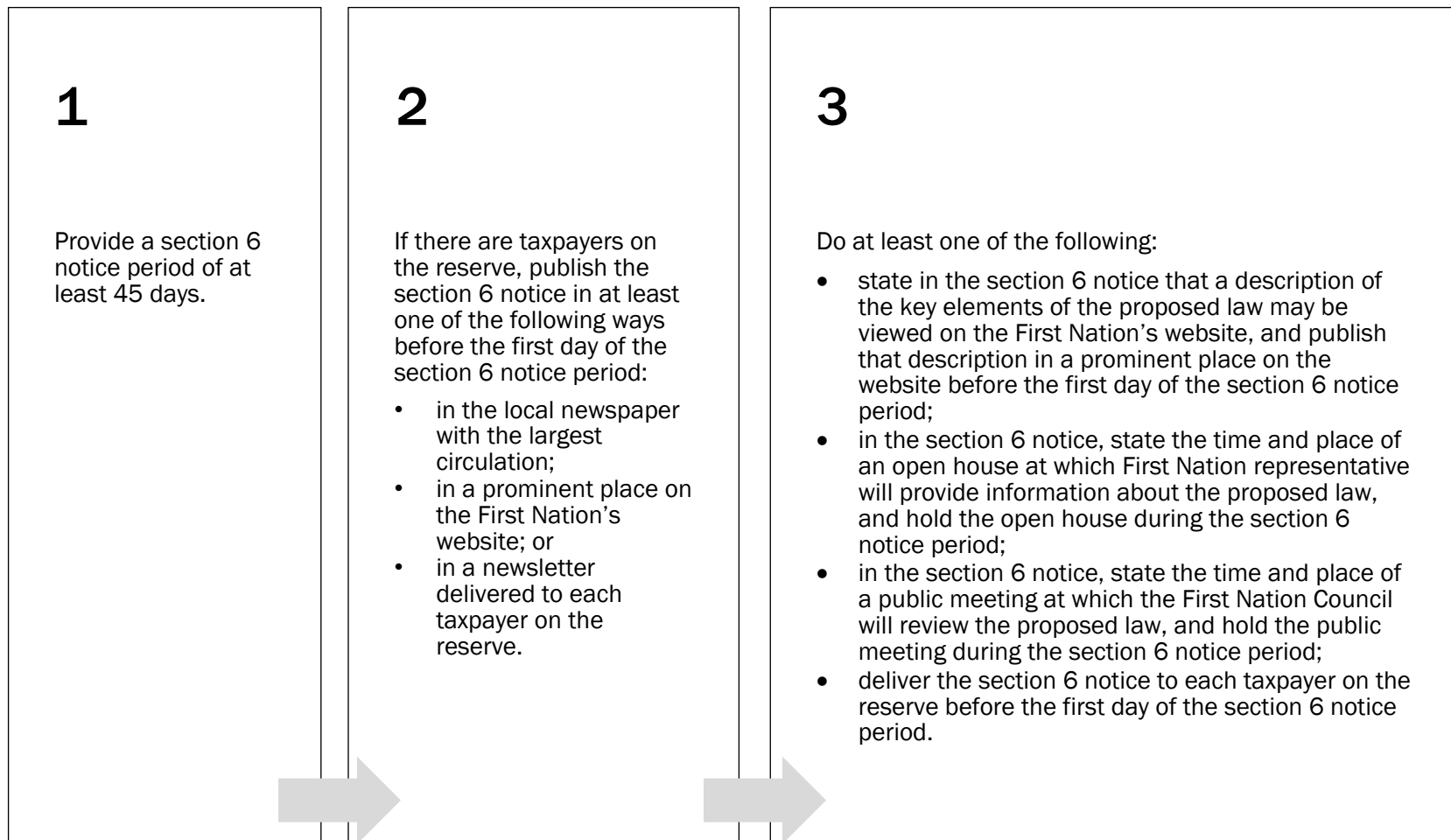
The Notice Standards requirements are steps 1, 2, 3 and 4:



PROPERTY TRANSFER TAX LAW

SECTIONS 6 AND 7 OF THE FMA APPLY + NOTICE STANDARDS REQUIREMENTS.

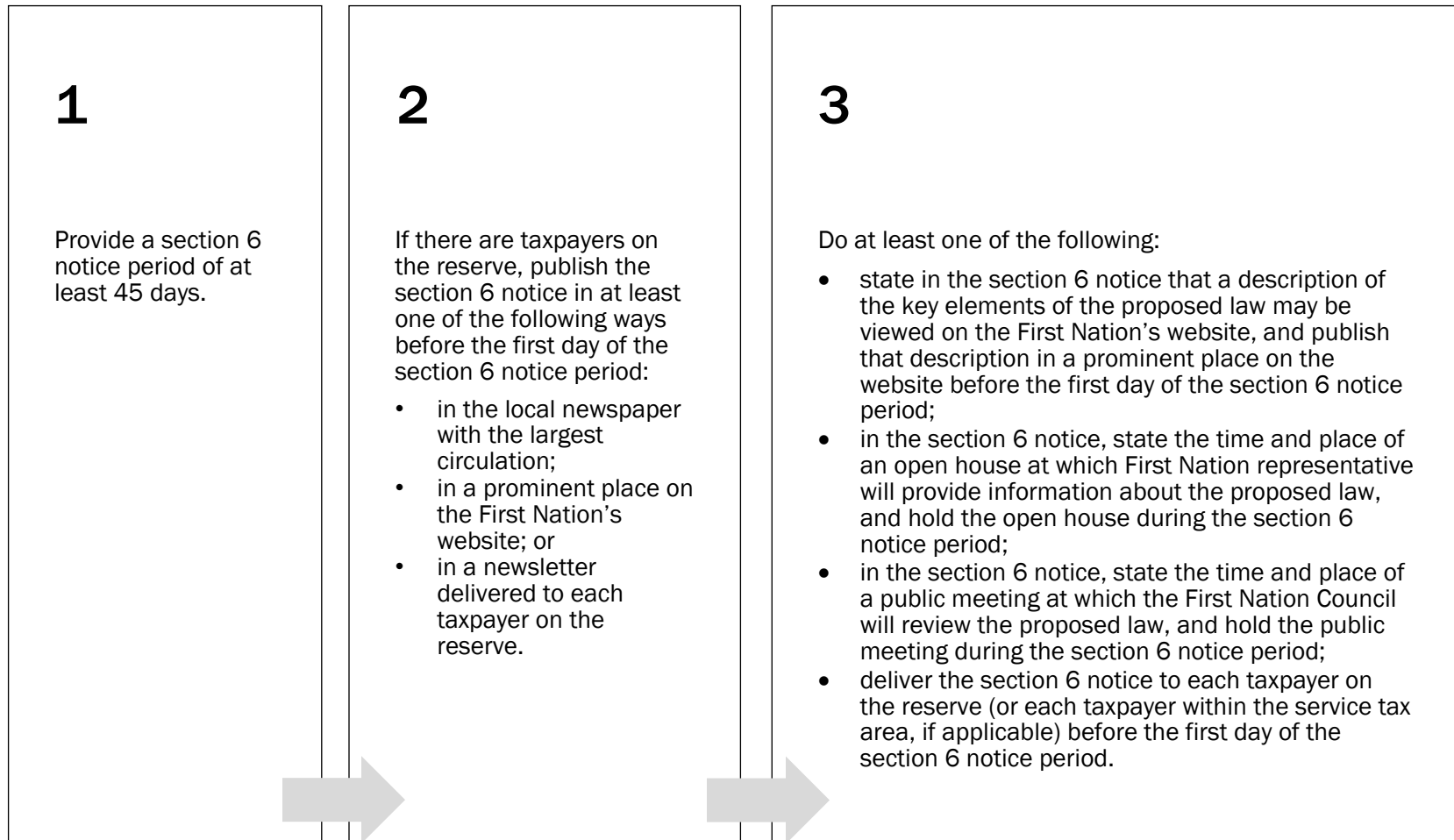
The Notice Standards requirements are steps 1, 2 and 3:



SERVICE TAX LAW

SECTIONS 6 AND 7 OF THE FMA APPLY + NOTICE STANDARDS REQUIREMENTS.

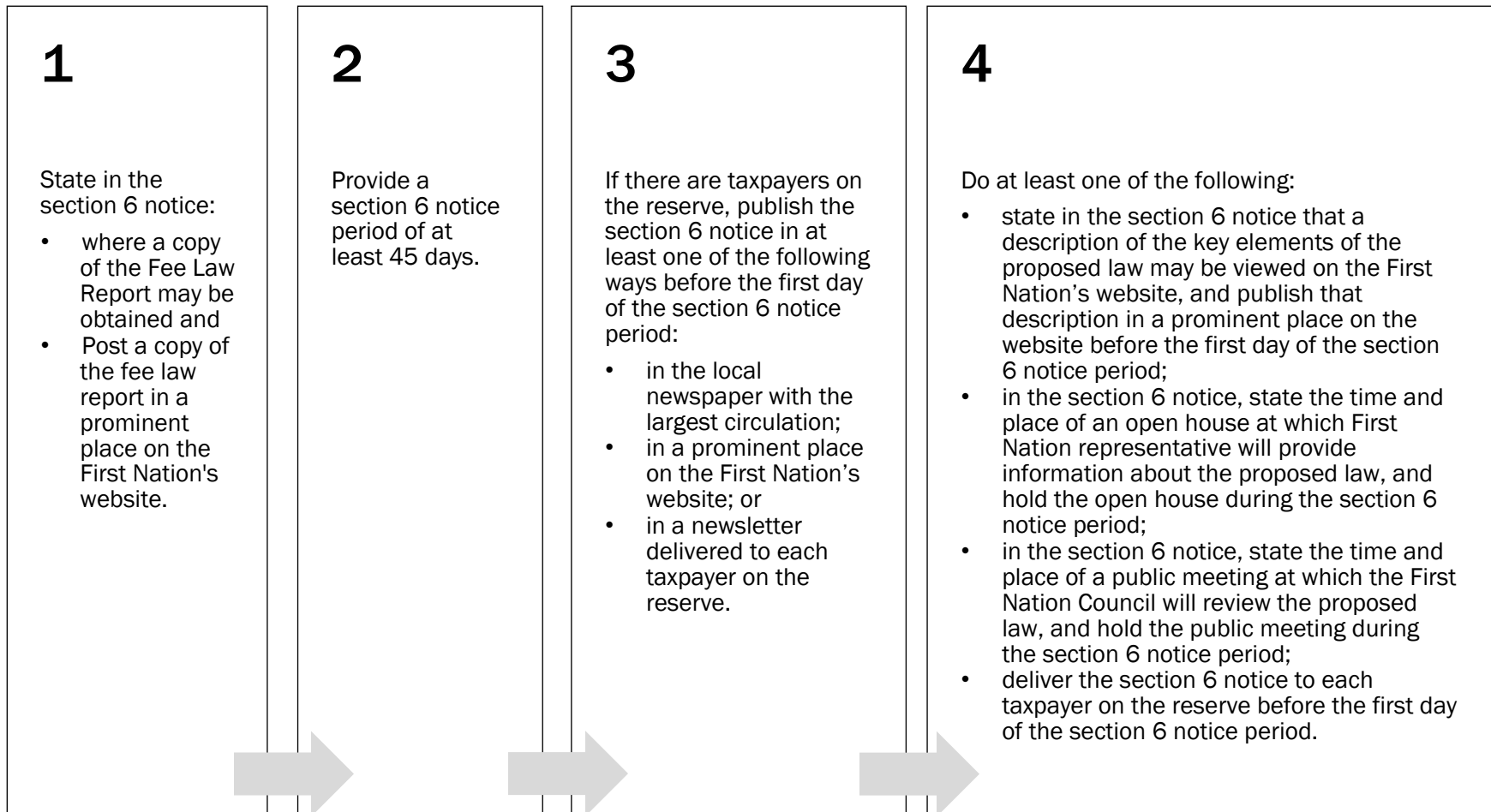
The Notice Standards requirements are steps 1, 2 and 3:



FEE LAW

SECTIONS 6 AND 7 OF THE FMA APPLY + NOTICE STANDARDS REQUIREMENTS.

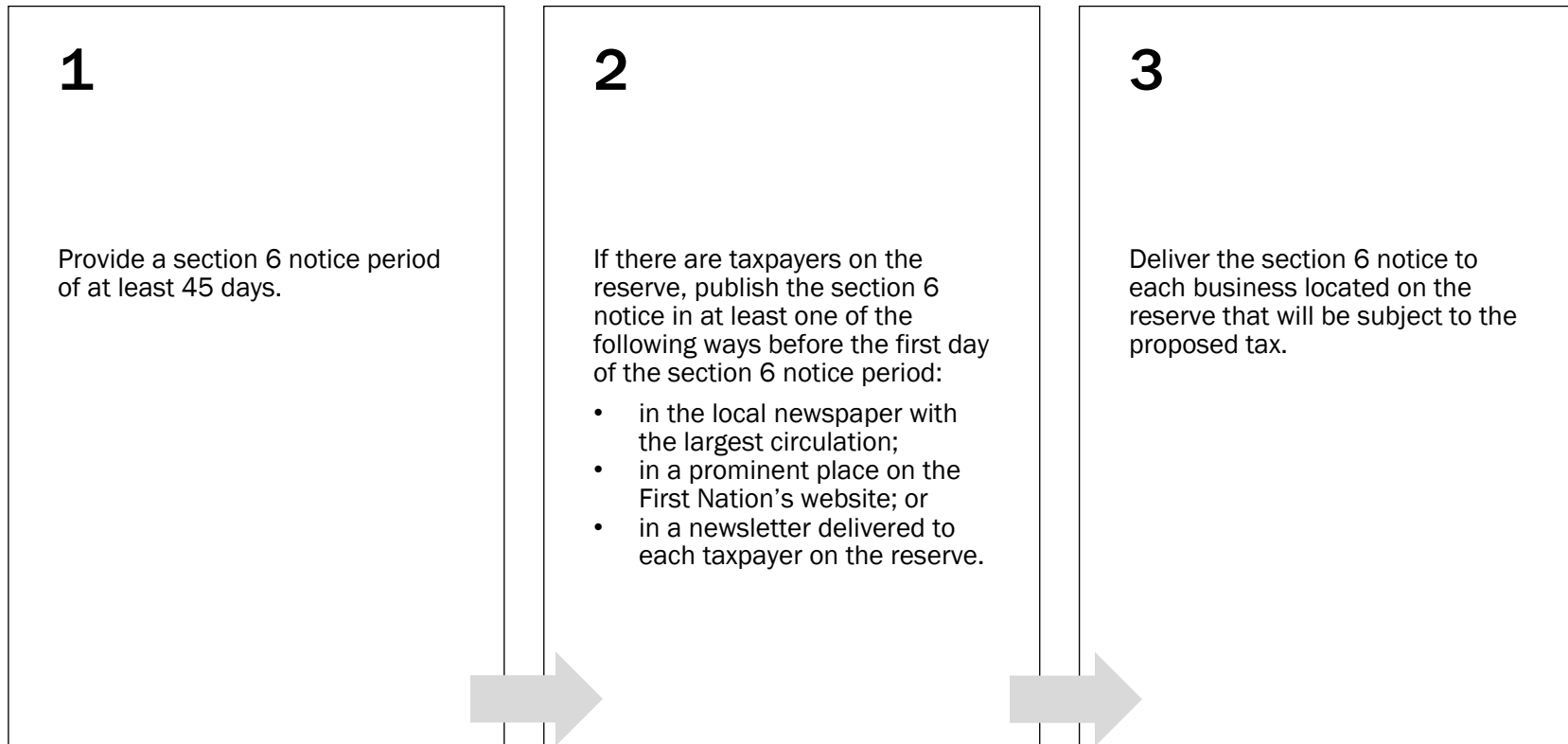
The Notice Standards requirements are steps 1, 2, 3 and 4:



BUSINESS ACTIVITY TAX LAW

SECTIONS 6 AND 7 OF THE FMA APPLY + NOTICE STANDARDS REQUIREMENTS.

The Notice Standards requirements are steps 1, 2 and 3:



TAXPAYER REPRESENTATION TO COUNCIL LAW

SECTIONS 6 AND 7 OF THE FMA APPLY.

The Notice Standards do not create any additional notice requirements.



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