



TO: Legislative Operating Committee (LOC)
FROM: Krystal L. John, Staff Attorney
DATE: August 17, 2016
RE: Eviction and Termination Law: Public Meeting Comment Review

On August 4, 2016, a public meeting was held regarding a new Eviction and Termination law, which:

- Contains the minimum framework for the Nation’s termination and eviction processes.
- Delegates rulemaking authority to the Comprehensive Housing Division to develop rules to further govern the processes contained in this law [see 709.4].
- Details early contract termination, including causes and notice requirements, and names domestic abuse as defense to eviction [see 709.6].
- Details the process regarding failure to vacate following the notice of eviction or contract expiration [see 709.6].
- Details the withholding from and return of security deposits [see 709.7].
- Provides an appeal process to the Oneida Judiciary [see 709.8].

This memorandum is submitted as a review of the oral comments received during the public meeting process; there were not any written comments received within the public comment period. The public meeting draft with comments is attached for your review.

Comment 1 – Definition of Nuisance

709.3-1(d) “Nuisance” means an occupant’s interference with another occupant’s use and enjoyment of the premises. Nuisance activities include, but are not limited to, allegations of harassment, disorderly conduct, battery, lewd and lascivious behavior, prostitution, theft, possession of stolen property, arson, illegal drug activity, gambling, animal violations, trespassing, weapons violations, noise violations, execution of warrants, alcohol violations, obstruction/resisting, inspection related calls in which a law enforcement agency responds.

Comment

Rae Skenandore: The last one is on the definition of nuisance; it includes a noise violation which seems to be on a totally different level than the other ones listed here, such as battery and drug activity, because if you go further to the evictions under Line 139, see eviction for violation of applicable law or rule or nuisance by occupant. Essentially if I play my music too loud and my neighbor calls OPD, I can be evicted within five days. So I totally understand the rest of the definition of things under nuisance, but I think that noise is on a different level and I don’t know if it should necessarily be included in there, but that’s at the discretion of the LOC. I believe that’s all I have. Thank you.

Response

Mrs. Skenandore is correct that a noise violation is a less extreme nuisance than the other examples provided in the definition. The noise violations were included in the definition of nuisance based on the Division of Land Management’s current Due Process standard operating procedure’s definition of “Chronic Nuisance Activity.” That SOP defines “Chronic Nuisance Activity” as “Harassment, disorderly conduct, battery, lewd and lascivious behavior, prostitution, theft, possession of stolen property, arson, illegal drug activity, gambling, animal violations, trespassing, weapons violations, noise violations, execution of warrants, alcohol violations, obstructing/resisting, inspection related calls in which the police department responds.” The decision of whether or not “noise violations” should be included in the definition of “nuisance” is a policy call for the Legislative Operating Committee.

Comment 2 – Delegation of Rulemaking Authority

709.3-1(j) “Rule” means a set of requirements, including citation fees and penalty schedules, enacted by the Comprehensive Housing Division in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this law.

Comment

Rae Skenandore: The first comment is on the rulemaking authority being delegated to the Comprehensive Housing Division. While the Division of Land Management may be a part of that, rentals are also under the Land Commission and there should be joint authority just like there is in the Mortgage and Foreclosure Law. This also ties to the Leasing Law, which we have one provision for residential, but also for agricultural and business, so it should be a joint rule making authority with the Land Commission. And I have some concerns that the Comprehensive Housing Division does not exist and it is the only one stated in this law.

Response

Mrs. Skenandore has a valid point that rentals currently managed by the Division of Land Management would continue to contribute towards the Land Commission’s land acquisition budget and accordingly they have a direct interest in the policy setting related to such rentals. The sponsor and I discussed this item with Mrs. Skenandore and explained that the only consideration against a blanket joint delegation of such authority is that the Land Commission currently has no authority over Oneida Housing Authority Rentals and a blanket delegation would expand the Commission’s scope of authority, which is not the intent of this law. The sponsor and Mrs. Skenandore agreed that a fair compromise would be to delegate joint rulemaking authority in all instances except where the rule is specifically related to rental administered using federal funding. In order to incorporate this compromise, I recommend revisions the definition of “Rule” as follows:

“Rule” means a set of requirements, including citation fees and penalty schedules, enacted jointly by the Land Commission and the Comprehensive Housing Division in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this law, provided that where such requirements relate solely to premises administered pursuant to federal funding, the Comprehensive Housing Division has sole authority.

This would also require additional revisions throughout the document to change all rulemaking references to joint authority.

In response to the Mrs. Skenandore’s concern that rulemaking authority has been delegated to the Comprehensive Housing Division which is still under development as part of the Oneida Business Committee’s reorganization, I recommend that a definition of Comprehensive Housing Division be included in the law. This was also done for the Mortgage and Foreclosure law. The definition would read as follows:

“Comprehensive Housing Division” means the entity responsible for housing matters specifically related to mortgages and foreclosures as defined by Oneida Business Committee Resolution.

The Business Committee resolution for the Eviction and Termination law would then define that the Comprehensive Housing Division means:

For purposes of all leases and general rental agreements, the Division of Land Management; for purposes of elder rental agreements, Elder Services; and for purposes of income-based rental agreements, the Oneida Housing Authority.

This approach allows the Comprehensive Housing Division to be incorporated into the law right away without requiring immediate amendments upon implementation, which is anticipated for FY 2017.