

NOTICE OF  
**PUBLIC MEETING**

TO BE HELD

**January 9, 2020 at 9:00 A.M.**

**IN THE**

**OBC Conference Room**

**2nd Floor Norbert Hill Center**

**N7210 Seminary Road, Oneida, WI 54155**

In accordance with the Administrative Rulemaking Law, the Oneida Comprehensive Housing Division (CHD), Land Management Area and Oneida Land Commission are hosting this Public Meeting to gather feedback from the community regarding the following rules.

**Real Property Rule No. 1 — Land Acquisition for Residential Leasing — This is a proposal to adopt a new rule which would:**

- ◆ Identify requirements for eligible parcels of land for residential purchases on behalf of individual homeowners for programs including but not limited to HIP and THRIFTT; and
- ◆ Set the acquisition process and any required approvals.

**Leasing Rule No. 4 — Home Building Opportunities Residential Leasing (HBO) — This is a proposal to adopt a new rule which would:**

- ◆ Modify the application/selection process for parties to apply for vacant lots for the purpose of home building; and
- ◆ Set timelines following selection to enter a residential lease and complete necessary loan, planning and construction phases.

**Leasing Rule No. 5 — Tribal Housing Reacquisition of Individual Fee and Trust Title (THRIFTT) — This is a proposal to adopt a new rule which would:**

- ◆ Set the process and requirements for the Nation to buy land from interested parties and enter a residential lease with the selling party for continued use of the homesite.

**Leasing Rule No. 6 — Home Ownership by Independent Purchase (HIP) Program — This is a proposal to amend a rule which would:**

- ◆ Modify the existing HIP process based on the division of CHD and Land Management;
- ◆ Incorporate updated residential leasing rules allowing parties to have more than 1 lease at a time; and
- ◆ Open the process up to non-Tribal Members.

To obtain copies of the Public Meeting documents for this proposal, please visit [www.oneida-nsn.gov/Register/PublicMeetings](http://www.oneida-nsn.gov/Register/PublicMeetings).

**PUBLIC COMMENT PERIOD**

**OPEN UNTIL January 16, 2020**

During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to the Comprehensive Housing Division by U.S. mail, interoffice mail, e-mail or fax.

**Oneida Comprehensive Housing Division  
2913 Commissioner Street, Oneida, WI 54155**

**tthomas@oneidanation.org Phone:920-869-2227 or Fax:920-869-2836**



## Title 6. Property and Land – Chapter 601 REAL PROPERTY Rule #1 – Land Acquisition for Residential Leasing

- 1.1 Purpose and Authority
- 1.2 Adoption, Amendment and Repeal
- 1.3 Definitions
- 1.4 Land Acquisition by Land Management for Residential Leasing with the Nation
- 1.5 Determining Eligible Properties
- 1.6 Finalizing Acquisition of an Eligible Property

### 1.1. Purpose and Authority

1.1-1. *Purpose.* The purpose of this rule is create acquisition processes and limitations for the purpose of acquiring land to enter a residential lease, including but not limited to the HIP and THRIFTT programs.

1.1-2. *Authority.* The Real Property Law delegates rulemaking authority to Land Management and the Oneida Land Commission in sections 601.12-2(d) and 601.12-3(e) pursuant to the Administrative Rulemaking law.

### 1.2. Adoption, Amendment and Repeal

1.2-1. This rule was adopted by Land Management and the Oneida Land Commission in accordance with the procedures of the Administrative Rulemaking law.

1.2-2. This rule may be amended or repealed by the Land Management and the Oneida Land Commission and/or the Oneida Business Committee pursuant to the procedures set out in the Administrative Rulemaking law.

1.2-3. Should a provision of this rule or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this rule which are considered to have legal force without the invalid portions.

1.2-4. In the event of a conflict between a provision of this rule and a provision of another rule, internal policy, procedure, or other regulation; the provisions of this rule shall control.

1.2-5. This rule supersedes all prior rules, regulations, internal policies or other requirements relating to the purchase of land for the purpose of residential leasing.

### 1.3. Definitions

1.3-1. This section shall govern the definitions of words and phrases used within this rule. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Appraisal” means a valuation or estimation of value of property compelled by a disinterested person of suitable qualifications. For trust property, the appraiser must be a Certified General Appraiser.

(b) “All Appropriate Inquiry” is the Environmental Protection Agency’s standard for environmental due diligence conducted by prospective purchasers in real estate transactions to qualify for Bona Fide Prospective Purchaser (BFPP) and/or the Contiguous Landowner (CLO) defense related to environmental liability under the

47 Comprehensive Environmental Response, Compensation and Liability Act  
48 (CERCLA).

- 49 (c) "Defect" means a condition that would have a significant adverse effect on the value  
50 of the property; that would significantly impair the health or safety of future occupants  
51 of the property; or that if not repaired, removed or replaced would significantly shorten  
52 or adversely affect the expected normal life of the premises.
- 53 (d) "Improvement" means buildings, other structures, and associated infrastructure  
54 attached to land.
- 55 (e) "Offer to Purchase" means the written agreement in which the Nation commits to  
56 purchase a seller's land under certain circumstances.
- 57 (f) "Reservation" means all the property within the exterior boundaries of the Reservation  
58 of the Oneida Tribe of Indians of Wisconsin, as created pursuant to the 1838 Treaty  
59 with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.
- 60 (g) "Residential Lease" means the legal document issued by the Tribe pursuant to its  
61 applicable leasing laws and rules which establishes a buyer's right to occupy Tribal  
62 land for residential purposes.
- 63 (h) "Survey" means the measurement of the boundaries of land and its area. A survey will  
64 reveal building setbacks as well as any encroachments.
- 65 (i) "Tax Assessed Value" means the value the local taxing authority uses to distinguish  
66 the value of the land from the improvements.
- 67 (j) "Title Commitment" means a document that reflects all of the title research done on  
68 the property. Its purpose is to inform all parties of any encroachments affecting the  
69 property and to commit to insure the property, subject to certain stated requirements.  
70  
71

72 **1.4. Land Acquisition through Land Management for Residential Leasing with the Nation**

73 1.4-1. *Nation's Acquisition Financial Responsibilities.* When the purchase involves simultaneous  
74 purchase of residential improvements, for example when using HIPP, the Nation shall pay for the  
75 tax assessed value of the land. When the purchase does not involve simultaneous purchase of  
76 residential improvements, for example THRIFTT, the Nation shall pay for the appraised value of  
77 the land, provided that the appraisal must be completed by an appraisal company approved by  
78 the Nation and, if purchasing individual trust land, must be appraisals approved by the Bureau of  
79 Indian Affairs. The Nation shall pay for any costs associated with the environmental inspection  
80 required under 1.5-1(c) and 1.5-2(a)(4) Acquisitions are subject to available funds.

- 81 (a) Homeowners Financial Responsibility. All costs not specifically noted in this section  
82 are the responsibility of the homeowner, including but not limited to any  
83 homeowners' association fees.
- 84 (b) Land Commission Approval. Oneida Land Commission approval is not required for  
85 purchases of land pursuant to this rule unless the applicable tax assessed value or  
86 appraised value of the land exceeds \$100,000.00.
- 87 (c) Exceptions. The Land Commission may grant exceptions to this rule for strategic  
88 purchases where the Land Commission shall determine the basis for defining strategic  
89 purchases.

90 1.4-2. *Nation Determines Defects.* The Nation reserves the sole right to determine whether  
91 defects exist in relation to the contingencies in the title commitment, survey and environmental  
92 investigation required under 1.5-1 and 1.5-2.

93 1.4-3. *Educational Information and Training.* Land Management shall work with other  
94 involved parties, including but not limited to Bay Bank, Bay Title and Mau and Associates, to  
95 create educational information and training for real estate agents and brokers. Real estate agents  
96 and brokers completing said training shall be placed on a list of trained agents and brokers and  
97 made available to consumers, provided that the Nation does not advocate for the representation  
98 by any specific real estate agent or broker and accepts no liability for any such agency  
99 relationship created.

100  
101 **1.5. Determining Eligible Properties**

102 1.5-1. *Eligibility Requirements.* In order for a property to be eligible for an offer to purchase  
103 pursuant to this rule, the property:

- 104 (a) Must be located within reservation;  
105 (b) Must have a residential improvement located on the property, unless a vacant parcel  
106 is otherwise permitted pursuant to a specific residential leasing program offered by  
107 the Comprehensive Housing Division or otherwise approved by the Oneida Land  
108 Commission;  
109 (c) Must be free of any and all environmental concerns to the satisfaction of the  
110 Environmental Health and Safety Division;  
111 (d) Must be free of any and all title defects to the satisfaction of the Oneida Law Office;  
112 (e) May not require refinancing or a new loan for the improvements in excess of the  
113 approved financier's ability to finance pursuant to any applicable program  
114 restrictions; and  
115 (f) May not have restrictive covenants which would prevent the Nation from having the  
116 land taken into trust status and may not be located in subdivisions which may have  
117 such restrictive covenants including but not limited to the following: Thornberry  
118 Creek subdivisions, Tailwinds, Centennial Centre, and Polo Point.

119 1.5-2. *Land Management Eligibility Confirmation.* Land Management shall confirm that all  
120 properties meet the eligibility requirements and any required approvals contained in this rule  
121 prior to finalizing any offer to purchase.

122 (a) In the course of confirmation, Land Management shall:

- 123 (1) Confirm the property is within the reservation boundaries with confirmation  
124 from the Oneida Geographic Information System Department where time  
125 permits;  
126 (2) Request a preliminary title search from Bay Title to assist in determining  
127 eligibility;  
128 (3) Where there is not purchase of improvements, for example the THRIFT  
129 program, request the appropriate appraisal for the land only from the  
130 Comprehensive Housing Division Residential Leasing Specialist;  
131 (4) Send a request for an All Appropriate Inquiry from the Nation's  
132 Environmental Health and Safety Area;  
133 (5) Review the survey to determine if any encroachments exist and if/how they  
134 may be rectified prior to closing; and  
135 (6) Send a request to the Oneida Law Office for review of the offer to purchase,  
136 deed, survey, title commitment and any other ancillary agreements.

137 (b) If Land Management determines that the property is not eligible, or if the required  
138 approvals are not granted, Land Management shall notify the Comprehensive  
139 Housing Division and any applicable real estate agent/broker. Included in such  
140 notice, Land Management shall provide instructions as to whether the issue may be  
141 corrected and, if so, how the issue may be corrected.

142 **1.6. Finalizing Acquisition of an Eligible Property**

143 1.6-1. *Approving an Offer to Purchase.* If Land Management determines a property is eligible, it  
144 shall proceed with approving the offer to purchase as necessary. The Acquisition Manager shall:

- 145 (a) Notify the accounting department that the funds should be prepared for the  
146 transaction.
- 147 (b) Provide a copy of the accepted offer to purchase to:  
148 (1) The Comprehensive Housing Division;  
149 (2) The Oneida Law Office;  
150 (3) When the homeowner requires financing, the financier;  
151 (4) Bay Title, if the property is in fee title;  
152 (5) The Land Title and Trust Manager, if the property is individual trust land; and  
153 (6) Mau and Associates.
- 154 (c) Provide a copy of any applicable Real Estate Condition Report, Home Inspection and  
155 Land History Questionnaire to the Environmental Specialist. If there are any specific  
156 environmental contingencies included in the offer to purchase, the Acquisition  
157 Manager shall provide a copy of the offer to purchase to the Environmental Specialist  
158 for review prior to signature by the Nation.

159 1.6-2. *Pre-Closing.* Prior to closing, the Acquisition Manager shall submit information related  
160 to the purchase to Risk Management to insure the property.

161 1.6-3. *Closing on the Property.* The Acquisition Manager shall attend the closing at the named  
162 location with acquisition funds and any applicable recording fees and shall sign the closing  
163 statement and the real estate tax proration sheet, as applicable.

164 1.6-4. *Post-Closing.* Following closing the Acquisition Manager shall:

- 165 (a) File all original signed documents from the closing with the Land Management File  
166 Room within twenty-four (24) hours of the acquisition;
- 167 (b) Submit information related to the purchase to the Oneida Geographic Information  
168 System Department for adding to the ownership map;
- 169 (c) Include information related to the purchase in a quarterly land acquisition for  
170 residential leasing report to the Oneida Land Commission;
- 171 (d) Deliver any checks received at closing to the Front Desk at Land Management and  
172 comply with any applicable standard operating procedures;
- 173 (e) Send the deed to be recorded in the Oneida Nation Register of Deeds after it is  
174 recorded at of the county register of deeds;
- 175 (f) Send the closing statement, deed, and asset report to central accounting for  
176 accounting to add to the assets list;

177 (g) Submit information to the Land Use Technical Unit sharepoint for land use.

178

179

180 *End.*

181 Original effective date: [add effective date established by authorized entity] (Certified by LOC on )

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## Summary Report for Land Acquisition for Residential Leasing

Original effective date: N/A

Amendment effective date: N/A

**Name of rule:** Land Acquisition for Residential Leasing

**Name of law being interpreted:** Real Property Law

**Rule number:** 1

**Other laws or rules that may be affected:**

- Tribal Housing Reacquisition of Individual Fee and Trust Title (THRIFTT)
- Home Ownership by Independent Purchase (HIP) Program

**Brief summary of the proposed rule:** The purpose of the rule is to identify requirements for eligible parcels of land for residential purchases on behalf of individual homeowners for programs including but not limited to HIP and THRIFTT and to set the acquisition process and any required approvals.

**Statement of Effect:** Obtained after requesting from the Legislative Reference Office.

**Financial Analysis:** See Attached.

### Financial Analysis for Land Acquisition for Residential Leasing

Type of Cost	Description/Comment	Dollar Amount
Start Up Costs	N/A	\$0
Personnel	N/A	\$0
Office	N/A	\$0
Documentation Costs	N/A	\$0
Estimate of time necessary for an individual or agency to comply with the rule after implementation	Immediately	\$0
Land Acquisition Fund expenditure:	Average cost of land per HIP purchase @ \$50,000 times the average # of HIP purchases @ 30	\$1,500,000
Total Cost (Annual)		\$1,500,000



## Statement of Effect

### *Real Property Law Rule No. 1 – Land Acquisition for Residential Leasing*

#### *Summary*

Real Property Law Rule No. 1 – Land Acquisition for Residential Leasing creates acquisition processes and limitations for the purpose of acquiring land to enter a residential lease, including but not limited to the HIP and THRIFTT programs. There are legal bars to the adoption of the Real Property Law Rule No. 1 – Land Acquisition for Residential Leasing as it lacks the delegation of rulemaking authority required for its promulgation under the Administrative Rulemaking law.

*Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office*

*Date: December 17, 2019*

#### *Analysis by the Legislative Reference Office*

The Real Property law (“the Law”) was adopted for the purpose of providing regulations and procedures for the transfer, control and management of the territory within the Reservation and all Tribal land; integrating these regulations and procedures with the real property laws and practices of other federal and state sovereigns which may hold jurisdiction within the Reservation; and establishing licensing and certification requirements for the Nation’s employees dealing with real property transactions. [6 O.C. 601.1-1].

The Administrative Rulemaking law provides authorized agencies the opportunity to promulgate rules interpreting the provisions of any law enforced or administered by it; provided that, a rule may not exceed the rulemaking authority granted under the law for which the rule is being promulgated. [1 O.C. 106.4-1]. An authorized agency is any board, committee, commission, department, program, or officer of the Nation that has been granted rulemaking authority. [1 O.C. 106.3-1(a)].

The purpose of the Real Property Law Rule No. 1 – Land Acquisition for Residential Leasing (“the Rule”) is to create acquisition processes and limitations for the purpose of acquiring land to enter a residential lease, including but not limited to the HIP and THRIFTT programs. [Rule 1.1-1]. The Rule states that the Real Property law delegates rulemaking authority to Land Management and the Oneida Land Commissions in sections 601.12-2(d) and 601.12-3(e). [Rule 1.1-2].

Section 601.12-2(d) of the Law provides that the Oneida Land Commission shall approve or deny all acquisitions of Tribal land, while Section 601.12-3(e) of the Law provides that Land Management shall process land acquisition transactions as approved by the Oneida Land Commission. Although both sections discuss the authority of the Oneida Land Commission and Land Management to approve, deny, and process land acquisitions, rulemaking authority is not delegated to the Oneida Land Commission or Land Management.

An authorized agency of the Nation must be delegated rulemaking authority by a law of the Nation in order to promulgate rules. [1 O.C. 106.3-1(a), 106.4-1]. The Oneida Land Commission and Land Management therefore do not have the rulemaking authority to promulgate rules related to the approval, denial, or processing of land acquisitions.

### *Conclusion*

There are legal bars to adopting the Real Property Law Rule No.1 – Land Acquisition for Residential Leasing.<sup>1</sup> The Real Property law does not delegate rulemaking authority to the Oneida Land Commission or Land Management in regard to the approval, denial, or processing of land acquisitions. Therefore, the Real Property Law Rule No.1 – Land Acquisition for Residential Leasing conflicts with the Administrative Rulemaking law which requires a delegation of rulemaking authority.

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<sup>1</sup> The Legislative Operating Committee will consider a request for emergency amendments to the Real Property law on January 15, 2020. The purpose of the emergency amendments is to add in a delegation of rulemaking authority to the Oneida Land Commission and Land Management as it relates to the approval and denial, and processing of land acquisitions. Adoption of the emergency amendments would eliminate the legal bar to adopting the Real Property Law Rule No. 1 – Land Acquisition for Residential Leasing.



## Title 6. Property and Land – Chapter 602 LEASING Rule #4 – Home Building Opportunities Residential Leasing

- 1.1 Purpose and Authority
- 1.2 Adoption, Amendment and Repeal
- 1.3 Definitions
- 1.4 HBO Residential Lease Eligibility
- 1.5 Eligible Homes for Building or Transfer
- 1.6 HBO Advertising and Application
- 1.7 Entering an HBO Residential Lease

### 1.1 Purpose and Authority

1.1-1. *Purpose.* The purpose for this rule is to provide a transparent process that expands upon the Leasing Law and the general Residential Leasing Rule for the application, selection and entrance of a Home Building Opportunity (HBO) Residential Lease through the Comprehensive Housing Division.

1.1-2. *Authority.* The Leasing Law in section 602.5-1 delegates rulemaking authority to the Comprehensive Housing Division and the Oneida Land Commission pursuant to the Administrative Rulemaking law.

### 1.2. Adoption, Amendment and Repeal

1.2-1. This rule was adopted by the Comprehensive Housing Division and the Oneida Land Commission in accordance with the procedures of the Administrative Rulemaking law.

1.2-2. This rule may be amended or repealed by the Comprehensive Housing Division and the Oneida Land Commission and/or the Oneida Business Committee pursuant to the procedures set out in the Administrative Rulemaking law.

1.2-3. Should a provision of this rule or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this rule which are considered to have legal force without the invalid portions.

1.2-4. In the event of a conflict between a provision of this rule and a provision of another rule, internal policy, procedure, or other regulation; the provisions of this rule shall control.

1.2-5. This rule supersedes all prior rules, regulations, internal policies or other requirements relating to Home Building Opportunity (HBO) residential leasing.

### 1.3. Definitions

1.3-1. This section shall govern the definitions of words and phrases used within this rule. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) “Builder’s Contract” means an agreement between the residential lessee and a contractor that outlines the construction work to be done to build the improvements upon the HBO lot.
- (b) “Business Day” means Monday through Friday from 8:00 a.m. to 4:30 p.m, excluding holidays recognized by the Nation.

- (c) “Formal Loan Commitment” means a letter from a lender stating that the applicant has met all of the qualifications for receiving a loan, and that the lender promises to lend a specific amount of money to the borrower.
- (d) “Manufactured Home” means a prefabricated housing that is largely assembled in factories and then transported to sites for use.
- (e) “Modular Home” means a prefabricated housing that consists of repeated sections called modules where the modules are constructed away from the building site and then assembled at the intended site.
- (f) “Stick-Build Home” means a housing constructed entirely or largely on site; that is built on the site which it is intended to occupy upon its completion rather than in a factory or similar facility.

#### **1.4. HBO Residential Lease Eligibility**

1.4-1. In addition to meeting the eligibility requirements of the Residential Leasing Rule and the Leasing Law, to be eligible for a residential lease through the Home Building Opportunities program, the applicant must meet the following additional requirements:

- (a) Show preapproval or available financing for a minimum of \$75,000; or
  - (1) Aside from a preapproval from a financial institution, acceptable forms to demonstrate available financing include, but are not limited to, the following:
    - (A) A letter from a financial institution demonstrating available liquid assets; or
    - (B) Proof of listing for residential sale with documentation that the home is owned outright or a copy of a mortgage statement dated within thirty (30) calendar days of the HBO application.
- (b) Proof of an available and compliant home to move to the proposed leased premises based on the requirements and assessments of applicable laws and tribal departments including but not limiting to the Oneida Zoning and Shoreland Protection Ordinance and the Building Code.

#### **1.5. Eligible Homes for Building or Transferring**

1.5-1. Any home built or transferred to the residential lease site must be affixed to a permanent foundation (stick build, manufactured, and modular homes are acceptable so long as they are affixed to permanent foundation) and:

- (a) Meet the following size requirements:
  - (1) For a one (1) to four (4) person family – five hundred seventy square feet (570 sq. ft.);
  - (2) For a five (5) to seven (7) person family – eight hundred fifty square feet (850 sq. ft.); and
  - (3) For a family of eight (8) or more – one thousand twenty square feet (1,020 sq. ft.).
- (b) Meet the requirements of all applicable laws and/or restrictive covenants including but not limiting to the Oneida Zoning and Shoreland Protection Ordinance and the Building Code.

#### **1.6. HBO Advertising and Application**

1.6-1. *Advertising.* All available HBO lots shall be advertised by CHD a minimum of once quarterly in Kalihwisaks and on available social media and shall be permanently posted on CHD's website. HBO lots that are newly available shall be advertised for a minimum of thirty (30) calendar days prior to applications for an HBO residential lease being accepted by CHD. The CHD loan officers shall be the point of contact for any parties interested in applying for an HBO lot.

- (a) Advertisement listings shall include, at a minimum, the following:
  - (1) Lot acreage;
  - (2) Fee or trust status;
  - (3) Information on available infrastructure (i.e. well and septic/sewer and water);
  - (4) Address (if available);
  - (5) Ariel photo and notice that survey information is available upon request;
  - (6) Any known permits required (i.e. culvert permit, driveway permit);
  - (7) Notice that showings are available upon request and by appointment with a loan officer;
  - (8) Notice that applicants can submit applications for multiple lots/addresses, provided that a separate complete application is required for each lot/address;
  - (9) Dates and times applications will be accepted; and
  - (10) Date and time of scheduled lottery drawing for the premium application period.
- (b) Following applicant selection, CHD shall remove all selected lots from its website.
- (c) Any lots remaining available following two (2) years of advertisements shall be placed on a Land Commission agenda for possible re-evaluation of the land's designated use.

1.6-2. *Premium Application Period and Selection.* Once a quarter, following the quarterly HBO advertising, CHD shall accept applications for a two (2) business day period, referenced as the premium application period. During the premium application period, time of application submittal does not matter.

- (a) All HBO applications submitted must be submitted in the envelope provided by CHD and must state on the outside of the sealed envelope only the address/lot for which the applicant is applying – no other personally identifying information may be included on the outside of the sealed envelope.
- (b) All application envelopes received by CHD during the premium application shall be stapled with a raffle ticket with the corresponding raffle ticket placed into the drawing bin.
- (c) If there are multiple applications received for the same lot/address during the premium application period, all such applications shall be placed into a lottery, with applicant selection based on the order assigned in the lottery drawing.
- (d) Premium period applicants may attend the lottery drawing and order assignment, but need not attend the lottery drawing to be assigned an ordering number.
- (e) In order to be selected, the applicant must meet all eligibility requirements and, if multiple applications are received for the same lot/address, must also be the applicant with the lowest assigned lottery number for the lot/address in question.

1.6-3. *Standard Application Period and Selection.* Following the premium application period, applications for any remaining lots may be submitted to the CHD front desk. The standard

application period shall last from the date following the premium application period until the next quarter's premium application period begins.

- (a) All HBO applications submitted must be submitted in the envelope provided by CHD and must state on the outside of the sealed envelope only the address/lot for which the applicant is applying – no other personally identifying information may be included on the outside of the sealed envelope.
- (b) All applications submitted during the standard application period shall be date and time stamped by CHD staff.
- (c) In order to be selected during the standard application period, the applicant must meet all eligibility requirements and must also be the applicant with the earliest date and time stamped application for the lot/address in question.

1.6-4. *Notice to Applicants.* CHD shall notice all HBO residential lease applicants of whether they are selected for the lot/address applied for. If the applicant is not selected for the lot/address they applied for, the notice shall inform in the applicant of any remaining HBO lots/addresses available.

### **1.7. Entering an HBO Residential Lease**

1.7-1. *Residential Leasing Specialist.* Following selection of the HBO residential lease applicant, the CHD Residential Leasing Specialist shall be the customer's point of contact for the remainder of HBO residential leasing process.

1.7-2. *Residential Lease Timeline.* The selected applicant has ten (10) business days from the date of the selection notice to enter an HBO residential lease by scheduling an appointment with the CHD Residential Leasing Specialist. If the HBO lot is for trust land, then within seven (7) calendar days from the date the lease is signed, the Residential Leasing Specialist shall provide both the lessee and the financial institution with a receipt stating the date the lease was sent for recording with the BIA.

1.7-3. *Noncompliance with the Residential Lease Timeline.* If an HBO residential lease is not entered within the prescribed timeframe, the applicant will be deemed noncompliant and ineligible. CHD will notice the next eligible applicant of their selection for said lot/address until an applicant successfully enters an HBO residential lease within the prescribed timeline.

1.7-4. *Builder's Contract.* Within thirty (30) calendar days from the date the residential lease is signed, the lessee shall submit both to CHD and, if financing, the financial institution, a copy of their signed builder's contract, which meets the requirements contained in section 1.5 hereof and any applicable laws, ordinances, codes.

1.7-5. *Formal Loan Commitment.* Within thirty (30) calendar days from the due date of the builder's contract, the lessee shall submit to CHD a copy of a formal loan commitment from their financial institution. In the event the formal loan commitment expires before the residential lease is recorded with the BIA, should the lot be trust land, then the lessee shall submit a new formal loan commitment within thirty (30) calendar days of the expiration date in order to ensure a continued ability to secure financing.

1.7-6. *Owner Occupied.* Unless otherwise approved by the CHD Residential and Finance Area Manager, all HBO lots must be ready to be owner occupied within two (2) years from the date the residential lease is signed.

1.7-7. *Enforcement.* Failure to comply with the timelines provided in this section shall be deemed a breach of the HBO residential lease and may result in termination of the residential lease. In the event the residential lease is terminated for noncompliance herewith, all costs and

fees paid by the lessee along with any non-movable property affixed to the lot shall be forfeited to CHD.

*End.*

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Original effective date: [add effective date established by authorized entity] (Certified by LOC on )

## **Summary Report for Home Building Opportunities Residential Leasing (HBO)**

Original effective date: N/A

Amendment effective date: N/A

**Name of rule:** Home Building Opportunities Residential Leasing (HBO)

**Name of law being interpreted:** Title 6 Property and Land Chapter 602 Leasing

**Rule number:** 4

**Other laws or rules that may be affected:** N/A

**Brief summary of the proposed rule:** The purpose of the rule is to identify requirements for eligible parcels of land for residential purchases. This will pertain to individual potential homeowners for programs including but not limited to HIP & THRIFTT.

**Statement of Effect:** Obtained after requesting from the Legislative Reference Office.

**Financial Analysis:** See Attached.

**Financial Analysis for Home Building Opportunities Residential Leasing (HBO)**

<b>Type of Cost</b>	<b>Description/Comment</b>	<b>Dollar Amount</b>
Start Up Costs	Would be absorbed within the current budget	\$0
Personnel	An additional residential leasing specialist needed to assist in the management of increased number of residential leases.	\$60,000 (including fringe)
Office	N/A	\$0
Documentation Costs	N/A	\$0
Estimate of time necessary for an individual or agency to comply with the rule after implementation	One week	\$0
Other:	N/A	\$0
Total Cost (Annual)	N/A	\$60,000



## Statement of Effect

### *Leasing Law Rule No. 4 – Home Building Opportunities Residential Leasing*

#### *Summary*

Leasing Law Rule No. 4 – Home Building Opportunities Residential Leasing expands upon the language set forth in the Nation’s Leasing law and general Residential Leasing Rule promulgated thereunder with respect to the process for applying, selecting and entering in to a Home Building Opportunity Residential Lease through the Comprehensive Housing Division. There may be a legal bar to the adoption of this Leasing Law Rule No. 4 – Home Building Opportunities Residential Leasing if it is referring to or relying upon Real Property Law Rule No. 1 – Land Acquisition for Residential Leasing, which lacks the delegation of rulemaking authority required for its promulgation under the Administrative Rulemaking law, and/or Leasing Law Rule No. 5 – Tribal Housing Reacquisition of Individual Fee and Trust Title (THRIFTT), which contains a conflict as it relies upon Real Property Law Rule No. 1 – Land Acquisition for Residential Leasing.

*Submitted by: Kristen M. Hooker, Staff Attorney, Legislative Reference Office*

*Date: December 17, 2019*

#### *Analysis by the Legislative Reference Office*

The Administrative Rulemaking law affords authorized agencies the opportunity to promulgate rules interpreting the provisions of any law enforced or administered by it; provided that, the rule does not exceed the rulemaking authority granted under the law for which the rule is being promulgated. [1 O.C. 106.4-1]. An authorized agency is any board, committee, commission, department, program, or officer of the Nation that has been granted rulemaking authority. [1 O.C. 106.3-1(a)].

The Leasing law (the “Law”) was adopted for the purpose of setting out the Nation’s authority to issue, review, approve and enforce leases. The Law delegates authority to the Oneida Land Commission and Land Management to jointly develop rules related to obtaining a residential, agricultural, or business lease. [6 O.C. 602.5-1]. Specifically, the Law provides that Land Management shall develop, and the Oneida Land Commission shall approve, the format and requirements set out in the lease document applications for different types of leases, as well as additional procedures and processes to be followed when offering and awarding lease documents. [6 O.C. 602.5-1(a)].

The purpose of this Leasing Law Rule No. 4 – Home Building Opportunities Residential Leasing (“Rule”) is to provide a Home Building Opportunity (HBO) program that expands upon the process set by the Leasing law and “general Residential Leasing Rule” for applying, selecting and entering in to a HBO residential lease with the Comprehensive Housing Division. [Rule, 1.1-1]. It appears that the HBO program applies, at least in part, to land that is owned by the Nation. If this is true, the Rule’s reference to a “general Residential Leasing Rule” and “eligibility requirements of the Residential Leasing Rule” [Rule, 1.1-1 and 1.4-1, respectively] may encompass the Leasing Law Rule No. 5 – Tribal Housing Reacquisition of Individual Fee and Trust Title (THRIFTT)

(“Leasing Law Rule No. 5”) and/or the Real Property Law Rule No. 1 – Land Acquisition for Residential Leasing (“Real Property Law Rule No. 1”).

The Real Property Law Rule No. 1 states that it was promulgated under the authority granted to the Oneida Land Commission and Land Management by the Nation’s Real Property law. The Real Property law, however, does not delegate rulemaking authority to the Oneida Land Commission or Land Management over the subject matter addressed within the Real Property Law Rule No. 1. Thus, legal bars exist with respect to its adoption.

The Leasing Law Rule No. 5 – relies upon certain requirements that are set forth within Real Property Law Rule No. 1. This creates a legal bar to the adoption of the Leasing Law Rule No. 5 as Real Property Law Rule No. 1 lacks the necessary delegation of rulemaking authority required by the Administrative Rulemaking law. Specifically, an authorized agency of the Nation must be delegated rulemaking authority by a law of the Nation in order to promulgate rules. [1 O.C. 106.3-1(a), 106.4-1]. The Real Property Law Rule No. 1 was promulgated without such authority.

### *Conclusion*

If this Rule indeed references the Leasing Law Rule No. 5 and/or the Real Property Law Rule No. 1, legal bars exist with respect to its adoption.<sup>1</sup> Although the Leasing law does delegate joint rulemaking authority to the Oneida Land Commission and Land Management for the promulgation of this Rule, any reliance this Rule places upon the Leasing Law Rule No. 5 and/or the Real Property Law Rule No. 1 creates a bar to its adoption as they conflict with the Administrative Rulemaking law.

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<sup>1</sup> The Legislative Operating Committee will consider a request for emergency amendments to the Real Property law on January 15, 2020. The purpose of the emergency amendments is to add in a delegation of rulemaking authority to the Oneida Land Commission and Land Management as it relates to the approval and denial, and processing of land acquisitions. Adoption of the emergency amendments would eliminate the legal bar to adopting the Real Property Law Rule No. 1 – Land Acquisition for Residential Leasing and the Leasing Law Rule No. 5 – Tribal Housing Reacquisition of Individual Fee and Trust Title (THRIFTT). If this Rule does refer to the Real Property Law Rule No. 1 and/or the Leasing Law Rule No. 5, adoption of the emergency amendments would clear up the conflict. If no such reference was intended, this Statement of Effect may be revised accordingly.



## Title 6. Property and Land – Chapter 602 LEASING Rule #5 – Tribal Housing Reacquisition of Individual Fee and Trust Title (THRIFTT)

- 1.1 Purpose and Authority
- 1.2 Adoption, Amendment and Repeal
- 1.3 Definitions
- 1.4 General
- 1.5 Eligible Homeowners
- 1.6 Eligible Properties
- 1.7 Required Process

### 1.1. Purpose and Authority

1.1-1. *Purpose.* The purpose for this rule is to increase the Nation's land base while maintaining individual homeownership by allowing eligible homeowners to sell their land to Nation and enter a residential lease. Upon sale, the homeowner will retain ownership of the improvements and rights to the land through a residential lease with the Comprehensive Housing Division pursuant to the Leasing Law and the requirements of the Residential Leasing Rule.

1.1-2. *Authority.* The Leasing Law section 602.5-1 delegates rulemaking authority to the Comprehensive Housing Division and the Oneida Land Commission pursuant to the Administrative Rulemaking law.

### 1.2. Adoption, Amendment and Repeal

1.2-1. This rule was adopted by the Comprehensive Housing Division and the Oneida Land Commission in accordance with the procedures of the Administrative Rulemaking law.

1.2-2. This rule may be amended or repealed by the Comprehensive Housing Division and the Oneida Land Commission and/or the Oneida Business Committee pursuant to the procedures set out in the Administrative Rulemaking law.

1.2-3. Should a provision of this rule or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this rule which are considered to have legal force without the invalid portions.

1.2-4. In the event of a conflict between a provision of this rule and a provision of another rule, internal policy, procedure, or other regulation; the provisions of this rule shall control.

1.2-5. This rule supersedes all prior rules, regulations, internal policies or other requirements relating to entering a residential lease following sale of land with maintenance of the improvements.

### 1.3. Definitions

1.3-1. This section shall govern the definitions of words and phrases used within this rule. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) "Appraisal" means a valuation or estimation of value of property compelled by a disinterested person of suitable qualifications. For trust property, the appraiser must be a Certified General Appraiser.

- (b) "Defect" means a condition that would have a significant adverse effect on the value of the property; that would significantly impair the health or safety of future occupants of the property; or that if not repaired, removed or replaced would significantly shorten or adversely affect the expected normal life of the premises.
- (c) "Improvement" means buildings, other structures, and associated infrastructure attached to land.
- (d) "Offer to Purchase" means the written agreement in which the Nation commits to purchase a seller's land under certain circumstances.
- (e) "Refinancing" means an exchange of an old debt for a new debt, as by renegotiating a different interest rate, term of the debt, or by repaying the existing loan with money acquired from a new loan.
- (f) "Residential Lease" means the legal document issued by the Tribe pursuant to its applicable leasing laws and rules which establishes a buyer's right to occupy Tribal land for residential purposes.
- (g) "Survey" means the measurement of the boundaries of land and its area. A survey will reveal building setbacks as well as any encroachments.
- (h) "Tax Assessed Value" means the value the local taxing authority uses to distinguish the value of the land from the improvements.

#### **1.4. General**

1.4-1. *Program Education.* CHD and Bay Bank shall make these rules and all relevant educational pieces and required paperwork available electronically on its website and in hard-copy format at their respective offices.

1.4-2. *Subject to Available Funding.* All offers submitted to the Nation are subject to the Nation's available funding with all purchases taking place pursuant to Real Property Rule No. 1 Land Acquisition for Residential Leasing

1.4-3. *Nation Determines Defects.* The Nation reserves the sole right to determine whether defects exist in relation to the contingencies related to the title commitment, survey and environmental investigation required under the Land Acquisition for Residential Leasing Rule.

1.4-4. *Real Estates Taxes.* If the homeowner is a Tribal member, upon signing the residential lease, they will be responsible for all taxes assessed against the improvements and not the land. The homeowner's real estate tax payment shall be the percentage of the total assessed taxes equal to the assessed value of the improvements divided by the assessed value of the improvements and the land combined plus any municipal fees and/or special assessments. If the homeowner is not a Tribal member, upon signing the lease, they will be responsible for all taxes assessed against the property and the improvements, including any municipal fees and/or special assessments.

1.4-5. *Financing.* In the event refinancing or a new loan is required for the improvements, homeowners may secure said financing from Bay Bank or the Comprehensive Housing Division Finance Department, provided that any financing secured from the Comprehensive Housing Division is subject the Mortgage and Foreclosure law and any accompanying rules.

#### **1.5. Eligible Homeowners**

1.5-1. In order to be eligible to participate in the THRIFTT Program and enter a THRIFTT Residential Lease, the homeowner must:

- (a) If the property is subject to liens, have adequate equity in the improvements to cover

- the value of the mortgaged improvements or be able to secure refinancing or a new loan from Bay Bank;
- (b) Meet any applicable minimum down payment requirements established by Bay Bank and HUD's guidelines for refinancing; and
  - (c) Meet the requirements pursuant the Residential Leasing rule.

### **1.6. Eligible Properties**

1.6-1. In order for a property to be eligible for an offer to purchase pursuant to the THRIFTT Program, it must comply with the requirements of Real Property Rule No. 1 – Land Acquisition for Residential Leasing Rule.

### **1.7. Required Process**

1.7-1. *Initial Meeting with CHD.* In order to initiate the THRIFTT process, the homeowner shall schedule a meeting with CHD Residential Leasing Specialist. At the initial meeting the Residential Leasing Specialist shall review the THRIFTT application and checklist with the homeowner. The Residential Leasing Specialist shall forward the address to the Acquisition Manager to confirm it is an eligible property in accordance with Real Property Rule No. 1 – Land Acquisition for Residential Leasing. The Residential Leasing Specialist shall collect information from the homeowner and the Acquisition Manager to determine if the homeowner and property are eligible and, if eligible, determine whether the next steps are with Bay Bank or the Land Management Acquisition Manager.

(a) The Residential Leasing Specialist shall:

- (1) Review the applicants information to determine if the homeowner is eligible for a residential lease, and collect any Land Commission approvals that may be required pursuant to the Residential Leasing Rule.
- (2) If the homeowner is eligible, forward all information to the Acquisition Manager to complete review and notify the homeowner if anything in the Acquisition Manager's review determines the property is ineligible;
- (3) If the homeowner and their property are eligible, notice the homeowner that they are tentatively eligible and direct them to obtain an appraisal for the land only with a company approved by the Nation and submit to the Residential Leasing Specialist upon receipt.
- (4) If the property is either not subject to any liens, or the appraised value of the land exceeds the amount of any liens on the property:
  - (A) Forward any offer to purchase received from the Acquisition Manager to the homeowner and notify the Acquisition Manager whether it is accepted by the homeowner; and
  - (B) Take the homeowner through the residential lease process once the offer to purchase is accepted by the homeowner.
- (5) If the homeowner and their property are eligible and the property is subject to liens that exceed the appraised value of the property:
  - (A) Forward all information and direct the homeowner to Bay Bank or the Comprehensive Housing Division Finance Department for pre-approval for refinancing or a new loan;
  - (B) Have the homeowner complete the residential lease application and complete a residential lease upon notice from Bay Bank or the

Comprehensive Housing Division Finance Department that the homeowner secured adequate financing based on final loan approval; and  
(C) Forward any offer to purchase received from the Acquisition Manager to the homeowner and notify Bay Bank or Comprehensive Housing Division Finance Department and the Acquisition Manager whether it is accepted by the homeowner.

(b) The Acquisition Manager shall:

- (1) Notify the Residential Leasing Specialist of any time acquisition funds are depleted or near depletion.
- (2) Do all checks required under Real Property Rule No. 1 – Land Acquisition for Residential Leasing to determine if the property is eligible and notify the Residential Leasing Specialist if there are any defects to title that would make the homeowner or their property ineligible pursuant to Real Property Rule No. 1 – Land Acquisition for Residential Leasing.
- (3) If the property is eligible and is either not subject to any liens, or the appraised value of the land exceeds the amount of any liens on the property, prepare an offer to purchase and forward to the Residential Leasing Specialist, provided that the Acquisition Manager shall obtain any Land Commission approvals required under Real Property Rule No. 1 – Land Acquisition for Residential Leasing.
- (4) If the property is eligible and the property is subject to liens that exceed the appraised value of the property, prepare an offer to purchase upon receipt of financing pre-approval and forward to the Residential Leasing Specialist, provided that the Acquisition Manager shall obtain any Land Commission approvals required under Real Property Rule No. 1 – Land Acquisition for Residential Leasing.
- (5) Ensure all offers to purchase which require the homeowner to secure financing include a contingency that the homeowner is able to secure adequate financing based on final loan approval.

1.7-2. *When Financing is Required.* If preapproval is required based on 1.7-1, the homeowner shall request preapproval from Bay Bank or the Comprehensive Housing Division Finance Department which will provide the maximum amount of financing available towards refinancing or a new loan. Bay Bank or the Comprehensive Housing Division Finance Department shall forward a copy of the homeowner's preapproval to the Land Management Acquisition Manager.

- (a) *Accepting an Offer to Purchase.* Offers to purchase issued by the Oneida Nation are not negotiable. Homeowners wishing to accept an offer to purchase shall sign the offer and return it to the Residential Leasing Specialist within the timeframe provided in the offer to purchase.
- (b) *Final Loan Approval.* Upon receipt of a completed offer to purchase from the Residential Leasing Specialist, Bay Bank or the Comprehensive Housing Division Finance Department shall process the loan to seek full approval and notify the Residential Leasing Specialist and provide a copy of the final loan approval or notice that the loan was not approved. If the loan is not approved, the Residential Leasing Specialist shall confirm with the homeowner that they are not eligible for a THRIFTT residential lease.
- (c) *Assignment of Lease for Financing.* If there is a refinancing or a new loan and the

property is held in fee title, upon receipt of the final loan approval, the Residential Leasing Specialist shall forward information, including the closing date, to the Senior Loan Officer to create an assignment of lease for financing using the closing date as the effective date. The Senior Loan Officer shall forward the assignment of lease for financing to the Acquisition Manager prior to the closing date.

1.7-3. *Land Commission Approval.* Land Commission approval is deemed granted based on approval of this rule and is not required for each purchase except as specifically noted in the Residential Leasing Rule or the Real Property Rule No. 1 – Land Acquisition for Residential Leasing.

1.7-4. *BIA Approval for Individual Trust Land.* For any offer to purchase individual trust title the Land Title and Trust Manager shall prepare the following to be sent for the BIA's consideration for approval:

- (a) The appraisal noting the value of the land and the improvements separately;
- (b) If refinancing or a new loan is required, a certified Title Status Report and any refinancing or loan documents;
- (c) If no refinancing or new loan is required, an informational Title Status Report;
- (d) Proof of the Tribal member's enrollment;
- (e) An application for trust deed indicating voluntary sale by the homeowner; and
- (f) The deed to restricted Indian land.

1.7-5. *Closing.* Closing responsibilities are distributed as follows:

- (a) The Acquisition Manager shall attend closing and:
  - (1) Bring the check for the value of the land to the closing;
  - (2) Bring any other documents required by the Nation to the closing, which may include affidavits; and
  - (3) Sign closing documents on behalf of the Nation.
- (b) The Residential Leasing Specialist shall attend closing and:
  - (1) Bring the residential lease documents that have been signed on behalf of the Nation to the closing; and
  - (2) If applicable, bring the assignments of lease for financing that have been signed on behalf of the Nation to the closing.
- (c) The homeowner shall sign the following documents at the closing:
  - (1) Any applicable loan documents;
  - (2) Closing statements;
  - (3) The three (3) original residential leases;
  - (4) If applicable, the assignment of lease for financing;
  - (5) The deed; and
  - (6) Any other required documents.
- (d) If there is a refinancing or new loan, Bay Bank shall bring the following to the closing:
  - (1) The loan documents and any other bank required documents; and
  - (2) Closing statements for the improvements.
- (e) If the offer to purchase is for fee title, Bay Title shall bring the following to the closing:
  - (1) Closing statements for the land and improvements;
  - (2) The deed; and
  - (3) Any other required documents.

(f) If the offer to purchase is for individual trust land, the Land Title and Trust Manager shall:

- (1) Bring the deed to restricted Indian land to the closing;
- (2) Bring the application for trust deed indicating voluntary sale by the homeowner to the closing;
- (3) Bring any other required documents to the closing; and
- (4) Send the payment check for the land to the BIA lockbox.

1.7-6. *Post-Closing*. Post-Closing responsibilities are distributed as follows:

(a) If there was a refinancing or a new loan, Bay Bank shall:

- (1) Provide Bay Title with the mortgage, the assignment of lease for financing and an original residential lease;
- (2) Ensure that Bay Title recorded the mortgage and the assignment of lease for financing; and
- (3) Provide the original recorded mortgage and assignment of lease for financing to DOLM's Finance Department.

(b) CHD shall:

- (1) Ensure that Bay Title provided a final title policy and provide said policy to the Acquisition Manager to be included in the Land Management file;
- (2) Ensure that Bay Title complied with Wisconsin's electronic transfer return requirements;
- (3) Ensure that Bay Title recorded the deed with the county register of deeds;
- (4) Once all the original recorded documents have been received, record the following with the Oneida Nation Register of Deeds:
  - (A) The deed;
  - (B) The residential lease;
  - (C) If applicable, the mortgage; and
  - (D) If applicable, the assignment of lease for financing.
- (5) If there was a refinancing or a new loan, return the original mortgage and assignment of lease for financing to Bay Bank once they have been recorded with the Oneida Nation Register of Deeds.

*End.*

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Original effective date: [add effective date established by authorized entity] (Certified by LOC on )

**Summary Report for  
Tribal Housing Reacquisition of Individual Fee and Trust Title (THRIFTT)**

Original effective date: N/A

Amendment effective date: N/A

**Name of rule:** Tribal Housing Reacquisition of Individual Fee and Trust Title (THRIFTT)

**Name of law being interpreted:** Title 6. Property and Land - Chapter 602 Leasing

**Rule number:** 5

**Other laws or rules that may be affected:** N/A

**Brief summary of the proposed rule:** The purpose of the rule is to set the process and requirements for the Nation to buy land from interested parties and also to enter a residential lease with the selling party for continued use of the homesite.

**Statement of Effect:** Obtained after requesting from the Legislative Reference Office.

**Financial Analysis:** See Attached.

**Financial Analysis for  
Tribal Housing Reacquisition of Individual Fee and Trust Title (THRIFTT)**

Type of Cost	Description/Comment	Dollar Amount
Start Up Costs	Would be absorbed within the current budget	\$0
Personnel	An additional residential leasing specialist needed to assist in the management of increased number of residential leases.	\$60,000 (fringe included)
Office	N/A	\$0
Documentation Costs	N/A	\$0
Estimate of time necessary for an individual or agency to comply with the rule after implementation	One week	\$0
Other:	N/A	\$0
Total Cost (Annual)	N/A	\$60,000



## Statement of Effect

### *Leasing Law Rule No. 5 – Tribal Housing Reacquisition of Individual Fee and Trust Title (THRIFTT)*

#### *Summary*

Leasing Law Rule No. 5 – Tribal Housing Reacquisition of Individual Fee and Trust Title (THRIFTT) provides opportunities for eligible homeowners to sell their land to the Oneida Nation, while retaining ownership of the improvements and rights to the land through entry into a residential lease with the Comprehensive Housing Division that complies with the Nation's Leasing law, as well as the requirements of Leasing Law Rule No. 1 – Residential Leasing. There are legal bars to the adoption of this Leasing Law Rule No. 5 – Tribal Housing Reacquisition of Individual Fee and Trust Title (THRIFTT) as it relies upon Real Property Law Rule No. 1 – Land Acquisition for Residential Leasing which lacks the delegation of rulemaking authority required for its promulgation under the Administrative Rulemaking law.

*Submitted by: Kristen M. Hooker, Staff Attorney, Legislative Reference Office*

*Date: December 17, 2019*

#### *Analysis by the Legislative Reference Office*

The Administrative Rulemaking law affords authorized agencies the opportunity to promulgate rules interpreting the provisions of any law enforced or administered by it; provided that, the rule does not exceed the rulemaking authority granted under the law for which the rule is being promulgated. [1 O.C. 106.4-1]. An authorized agency is any board, committee, commission, department, program, or officer of the Nation that has been granted rulemaking authority. [1 O.C. 106.3-1(a)].

The Leasing law (the "Law") was adopted for the purpose of setting out the Nation's authority to issue, review, approve and enforce leases. The Law delegates authority to the Oneida Land Commission and Land Management to jointly develop rules related to obtaining a residential, agricultural, or business lease. [6 O.C. 602.5-1]. Specifically, the Law provides that Land Management shall develop, and the Oneida Land Commission shall approve, the format and requirements set out in the lease document applications for different types of leases, as well as additional procedures and processes to be followed when offering and awarding lease documents. [6 O.C. 602.5-1(a)].

The purpose of this Leasing Law Rule No. 5 – Tribal Housing Reacquisition of Individual Fee and Trust Title (THRIFTT) (hereinafter "Rule") is to provide a program that increases the Nation's land base while maintaining individual homeownership. Through the THRIFTT program, eligible homeowners would be allowed to sell their land to the Nation, while retaining ownership of the improvements and rights to the land by entering a residential lease with the Comprehensive Housing Division that complies with the Nation's Leasing law, as well as the requirements of Leasing Law Rule No. 1 – Residential Leasing.

For a property to be eligible for sale under the THRIFTT program, however, it must satisfy the requirements of Real Property Law Rule No. 1 – Land Acquisition for Residential Leasing. This creates a conflict with the adoption of this Rule as Real Property Law Rule No. 1 – Land Acquisition for Residential Leasing lacks the necessary delegation of rulemaking authority required by the Administrative Rulemaking law. Specifically, an authorized agency of the Nation must be delegated rulemaking authority by a law of the Nation in order to promulgate rules. [1 O.C. 106.3-1(a), 106.4-1]. The Real Property Law Rule No. 1 – Land Acquisition for Residential Leasing was promulgated without such authority.

### *Conclusion*

There are legal bars to adopting this Leasing Law Rule No. 5 – Tribal Housing Reacquisition of Individual Fee and Trust Title (THRIFTT).<sup>1</sup> Although the Leasing law does delegate joint rulemaking authority to the Oneida Land Commission and Land Management for the promulgation of this Rule, this Rule contains various references to a need to follow the requirements of the Real Property Law Rule No. 1 – Land Acquisition for Residential Leasing. The Real Property law does not delegate rulemaking authority to the Oneida Land Commission or Land Management regarding the approval, denial or processing of land acquisitions. Therefore, the Real Property Law Rule No. 1 – Land Acquisition for Residential Leasing conflicts with the Administrative Rulemaking law, and thus, creates a legal bar to the adoption of this Rule.

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<sup>1</sup> The Legislative Operating Committee will consider a request for emergency amendments to the Real Property law on January 15, 2020. The purpose of the emergency amendments is to add in a delegation of rulemaking authority to the Oneida Land Commission and Land Management as it relates to the approval and denial, and processing of land acquisitions. Adoption of the emergency amendments would eliminate the legal bar to adopting the Real Property Law Rule No. 1 – Land Acquisition for Residential Leasing and would therefore eliminate the conflict in adopting this Leasing Law Rule No. 5 – Tribal Housing Reacquisition of Individual Fee and Trust Title (THRIFTT).



## Title 6. Property and Land – Chapter 602

### LEASING

#### Rule # 6 – Homeownership by Independent Purchase (HIP) Program

- 1.1. Purpose and Policy
- 1.2. Adoption, Amendment and Repeal
- 1.3. Definitions
- 1.4. General
- 1.5. Eligible Buyers
- 1.6. Eligible Properties
- 1.7. Required Process

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### 1.1. Purpose and Authority

1.1-1. *Purpose.* The purpose of the Homeownership by Independent Purchase (HIP) Program is to expand the services being offered by the Nation by providing a program in which the prospective lessee buyer initiates a purchase in which the buyer purchases the improvements and the Nation purchases the land pursuant to Real Property Rule No. 1 Land Acquisition for Residential Leasing. The buyer will then enter a HIP residential lease for the land through the Comprehensive Housing Division.

1.1-2. *Authority.* The Leasing Law section 602.5-1 delegates rulemaking authority to the Comprehensive Housing Division and the Oneida Land Commission pursuant to the Administrative Rulemaking law.

### 1.2. Adoption, Amendment and Repeal

1.2-1. This rule was adopted by the Comprehensive Housing Division and the Oneida Land Commission in accordance with the procedures of the Administrative Rulemaking law.

1.2-2. This rule may be amended or repealed by the Comprehensive Housing Division and the Oneida Land Commission and/or the Oneida Business Committee pursuant to the procedures set out in the Administrative Rulemaking law.

1.2-3. Should a provision of this rule or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this rule which are considered to have legal force without the invalid portions.

1.2-4. In the event of a conflict between a provision of this rule and a provision of another rule, internal policy, procedure, or other regulation; the provisions of this rule shall control.

1.2-5. This rule supersedes all prior rules, regulations, internal policies or other requirements relating to entering a residential lease following simultaneous purchase of improvements by the buyer and the land by the Nation.

### 1.3. Definitions

1.3-1. This section governs the definitions of words and phrases used within this rule. All words not defined herein are to be used in their ordinary and everyday sense.

- (a) “Buyer” means the potential lessee entering into the offer to purchase to purchase the improvements.
- (b) “Defect” means a condition that would have a significant adverse effect on the value of the property; that would significantly impair the health or safety of future occupants of the property; or that if not repaired, removed or replaced would significantly shorten or adversely affect the expected normal life of the premises.
- (c) “Improvement” means buildings, other structures, and associated infrastructure attached to land.

- 49 (g) "Offer to Purchase" means the written contract made by the buyer, accepted by the  
50 seller and approved by the Nation in which the buyer agrees to purchase the  
51 improvements upon the land and the Nation agrees to purchase to land.  
52 (h) "Reservation" means all the property within the exterior boundaries of the  
53 Reservation of the Nation, as created pursuant to the 1838 Treaty with the Oneida 7  
54 Stat. 566, and any lands added thereto pursuant to federal law.  
55 (i) "Residential Lease" means the legal document issued by the Nation pursuant to its  
56 applicable leasing laws and rules which establishes a buyer's right to occupy Tribal  
57 land for residential purposes.  
58 (j) "Survey" means the measurement of the boundaries of land and its area. A survey  
59 will reveal building setbacks as well as any encroachments.  
60 (k) "Tax Assessed Value" means the value the local taxing authority uses to distinguish  
61 the value of the land from the improvements.  
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#### 63 **1.4. General**

64 1.4-1. *Program Education.* CHD and Bay Bank shall make these rules and all relevant  
65 educational pieces and required paperwork available electronically on its website and in hard-  
66 copy format at their respective offices.

67 1.4-2. *Subject to Available Funding.* All offers submitted to the Nation are subject to the  
68 Nation's available funding with all purchases taking place pursuant to Real Property Rule No. 1  
69 Land Acquisition for Residential Leasing.

70 1.4-3. *Nation Determines Defects.* The Nation reserves the sole right to determine whether  
71 defects exist in relation to the contingencies related to the title commitment, survey and  
72 environmental investigation required under the Land Acquisition for Residential Leasing Rule.

73 1.4-4. *Real Estate Taxes.* If the homeowner is a Tribal member, upon signing the residential  
74 lease, they will be responsible for all taxes assessed against the improvements and not the land.  
75 The homeowner's real estate tax payment shall be the percentage of the total assessed taxes  
76 equal to the assessed value of the improvements divided by the assessed value of the  
77 improvements and the land combined plus any municipal fees and/or special assessments. If the  
78 homeowner is not a Tribal member, upon signing the lease, they will be responsible for all taxes  
79 assessed against the property and the improvements, including any municipal fees and/or special  
80 assessments.

81 1.4-5. *Financing.* In the event refinancing or a new loan is required for the improvements,  
82 homeowners may secure said financing from Bay Bank or the Comprehensive Housing Division  
83 Finance Department, provided that any financing secured from the Comprehensive Housing  
84 Division is subject the Mortgage and Foreclosure law and any accompanying rules.

85 1.4-6. *HIP Program E-Mail Address and Shared Drive.* Comprehensive Housing Division shall  
86 work with the Nation's MIS Department to establish a HIP Program e-mail, which shall be  
87 available to accept all required submittals electronically, and a shared drive so that HIP Program  
88 documents may be jointly accessed by the Comprehensive Housing Division and Land  
89 Management. The Comprehensive Housing Division Residential Leasing Specialist shall be the  
90 HIP point of contact and the administrator of the shared HIP Program e-mail and shall be the  
91 only party to respond to buyer e-mails, except that the Acquisition Manager is authorized to  
92 respond to offers to purchase that require an immediate response outside of business hours in  
93 accordance with section 1.7-4.  
94

95 **1.5. Eligible Buyers**

96 1.5-1. In order to be eligible to participate in the HIP Program, the buyer must:

- 97 (a) Meet the requirements pursuant the Residential Leasing rule;
- 98 (b) Have adequate funds available for the purchase of the improvements or be able to
- 99 secure financing;
- 100 (c) Meet any applicable minimum down payment requirements established by Bay Bank
- 101 and HUD's guidelines for refinancing; and
- 102 (d) Be eligible to enter a residential lease with the Oneida Nation based on the Leasing
- 103 law and any applicable residential leasing rules.
- 104

105 **1.6. Eligible Properties**

106 1.6-1. In order for a property to be eligible for an offer to purchase pursuant to the THRIFTT

107 Program, it must comply with the requirements of Real Property Rule No. 1 – Land Acquisition

108 for Residential Leasing Rule.

109

110 **1.7. Required Process**

111 1.7-1. *Pre-approval.* In order to initiate the HIP process, the buyer shall request a certificate of

112 pre-approval from Bay Bank and/or the Comprehensive Housing Division Finance Department

113 which expires within one hundred twenty (120) days and provides the maximum amount of

114 financing available towards a home purchase. Bay Bank and/or the Comprehensive Housing

115 Division Finance Department shall provide a copy of the pre-approval to the Residential Leasing

116 Specialist.

117 1.7-2. *Real Estate Agent Representation Optional.* Upon receipt of a certificate of pre-approval,

118 the buyer may choose to be represented by a real estate agent, but representation is not required.

119 The buyer may request a list of real estate agents familiar with the HIP Program from the

120 Residential Leasing Specialist. The Acquisition Manager shall maintain said list based on the

121 real estate agents that have completed the training pursuant to Real Property Rule No. 1 – Land

122 Acquisition for Residential Leasing Rule and shall provide updated lists to the Residential

123 Leasing Specialist as needed.

124 1.7-3. If the buyer finds a potentially eligible property they would like to purchase, the buyer

125 shall make an offer to purchase to the seller using the offer to purchase form available with

126 Comprehensive Housing Division. The Nation may not assist buyers in making and/or

127 negotiating an offer to purchase.

128 (a) The offer to purchase form available with the Comprehensive Housing Division must,

129 at a minimum, contain contingencies relating to:

- 130 (1) The real estate condition report in the format required by Wisconsin law;
- 131 (2) The home inspection, which is an examination of the improvements'
- 132 construction, condition and internal systems to establish the structural and
- 133 mechanical integrity completed by certified home inspector.
- 134 (3) The environmental inspection, which must be completed by the Nation at the
- 135 Nation's expense;
- 136 (4) The title commitment, which is the document by which a title insurer
- 137 discloses to all interested parties the liens, defects, burdens and obligations
- 138 that affect the subject property;
- 139 (5) The survey or plat map, which provides the measurement of the boundaries of
- 140 land and its area and reveals building setbacks as well as any encroachments;

- 141 (6) If the property is on a septic system, the septic system inspection;
- 142 (7) If the property is served by a well, the well water testing, which must analyze
- 143 the water's bacteria and nitrate levels, and, if in Outagamie County, the
- 144 arsenic levels, to determine whether the water is safe for human consumption;
- 145 (8) If the property is served by a well, the well system inspection, which reveals
- 146 information such as the well depth, date of construction, protective clay
- 147 layers, drilling stipulations; and
- 148 (9) The closing papers and costs.

149 (b) All terms of the offer to purchase are non-negotiable with the exception of the  
150 following:

- 151 (1) Whether the buyer or seller is responsible for paying for the reports and forms
- 152 required by the contingencies, except the environmental report, which is the
- 153 responsibility of the Nation;
- 154 (2) The closing date, provided that, it must be a minimum of sixty (60) calendar
- 155 days from the date the offer is accepted by all required approving parties
- 156 unless an alternative closing date is agreed upon by all parties;
- 157 (3) The purchase price for the improvements; the purchase price of the land must
- 158 be determined by the tax assessed value of the land;
- 159 (4) The items included in the purchase price;
- 160 (5) The amount of the earnest money; and
- 161 (6) The closing prorations.

162 1.7-4. *Nation's Approval.* If the buyer makes an offer to purchase that is accepted by the seller,  
163 the buyer shall present the accepted offer to purchase to the Leasing Specialist within five (5)  
164 calendar days from the date of acceptance; this initiates the Nation's approval process.

165 (a) Immediately upon receipt of an accepted offer, the Residential Leasing Specialist  
166 shall:

- 167 (1) Forward the offer to purchase to the Acquisition Manager along with the
- 168 buyer's pre-approval;
- 169 (2) If the offer to purchase is not submitted with the Land History Questionnaire
- 170 and/or the Real Estate Condition Report, provide notice to the buyer that said
- 171 documents must be submitted to the Comprehensive Housing Division within
- 172 five (5) business days from the date the offer to purchase is submitted; and
- 173 (3) Notice the buyer that the survey is due to the Comprehensive Housing
- 174 Division no later than twenty (20) calendar days prior to closing.

175 (b) Upon receipt of an accepted offer, the Acquisition Manager shall:

- 176 (1) Notify the Residential Leasing Specialist of any time acquisition funds are
- 177 depleted or near depletion.
- 178 (2) Do all checks required under Real Property Rule No. 1 – Land Acquisition for
- 179 Residential Leasing to determine if the property is eligible and notify the
- 180 Residential Leasing Specialist if there are any defects to title that would make
- 181 the homeowner or their property ineligible pursuant to Real Property Rule No.
- 182 1 – Land Acquisition for Residential Leasing.
- 183 (3) If the property is determined to be eligible sign the offer to purchase on behalf
- 184 of the Nation, provided that prior to signing, the Acquisition Manager shall
- 185 obtain any Land Commission approvals required under Real Property Rule
- 186 No. 1 – Land Acquisition for Residential Leasing.

- 187 (c) Upon receipt of an offer to purchase signed by the Nation, the Residential Leasing  
188 Specialist shall forward the offer to purchase received from the Acquisition Manager  
189 to the homeowner and the financing party.
- 190 (d) If, subsequent to signing the offer to purchase, the Nation has a concern related to the  
191 contingencies, Acquisition Manager or their designee shall work with relevant parties  
192 to resolve the issue and shall immediately notify the Residential Leasing Specialist  
193 and the financing party of the issue and provide instructions as whether and how the  
194 issue may be corrected so that the information is able to be communicated to the  
195 buyer and eligible is able to be confirmed in accordance with Real Property Rule No.  
196 1 – Land Acquisition for Residential Leasing Rule.
- 197 1.7-5. *Pre-Closing.* The financing party shall notify the buyer, the Residential Leasing  
198 Specialist and the Acquisition Manager of the date, time and location of the closing.
- 199 (a) Prior to the closing date, the Residential Leasing Specialist and the Acquisition  
200 Manager shall obtain any required Oneida Land Commission approvals required  
201 pursuant to any applicable rules.
- 202 (b) If Bay Bank is providing financing, then upon receipt of closing date, the Residential  
203 Leasing Specialist shall forward information, including the closing date, to the Senior  
204 Loan Officer to create an assignment of lease for financing using the closing date as  
205 the effective date. The Senior Loan Officer shall provide the assignment of lease for  
206 financing to the Residential Leasing Specialist prior to the closing date.
- 207 1.7-6. *Land Commission Approval.* Land Commission approval is deemed granted based on  
208 approval of this rule and is not required for each purchase except as specifically noted in the  
209 Residential Leasing Rule or the Real Property Rule No. 1 – Land Acquisition for Residential  
210 Leasing.
- 211 1.7-7. *Closing.* Closing responsibilities are distributed as follows:
- 212 (a) The Acquisition Manager shall attend closing and:
- 213 (1) Bring the check for the value of the land to the closing;
- 214 (2) Bring any other documents required by the Nation to the closing, which may  
215 include affidavits; and
- 216 (3) Sign closing documents on behalf of the Nation.
- 217 (b) The Residential Leasing Specialist shall attend closing and:
- 218 (1) Bring the residential lease documents that have been signed on behalf of the  
219 Nation to the closing; and
- 220 (2) Bring the assignments of lease for financing that has been signed on behalf of  
221 the Nation to the closing.
- 222 (c) The homeowner shall sign the following documents at the closing:
- 223 (1) Any applicable loan documents;
- 224 (2) Closing statements;
- 225 (3) The three (3) original residential leases;
- 226 (4) If applicable, the assignment of lease for financing;
- 227 (5) The deed; and
- 228 (6) Any other required documents.
- 229 (d) The financing party shall bring the following to the closing:
- 230 (1) The loan documents and any other bank required documents; and
- 231 (2) Closing statements for the improvements.
- 232 (e) Bay Title shall bring the following to the closing:

- 233 (1) Closing statements for the land and improvements;
- 234 (2) The deed; and
- 235 (3) Any other required documents.
- 236 1.7-6. *Post-Closing*. Post-Closing responsibilities are distributed as follows:
- 237 (a) The financing party shall:
  - 238 (1) Provide Bay Title with the mortgage, the assignment of lease for financing
  - 239 and an original residential lease;
  - 240 (2) Ensure that Bay Title recorded the mortgage and the assignment of lease for
  - 241 financing; and
  - 242 (3) Provide the original recorded mortgage and assignment of lease for financing
  - 243 to the Comprehensive Housing Division's Finance Department.
- 244 (b) The Comprehensive Housing Division shall:
  - 245 (1) Ensure that Bay Title provided a final title policy and provide said policy to
  - 246 the Acquisition Manager to be included in the Land Management file;
  - 247 (2) Ensure that Bay Title complied with Wisconsin's electronic transfer return
  - 248 requirements;
  - 249 (3) Ensure that Bay Title recorded the deed with the county register of deeds;
  - 250 (4) Once all the original recorded documents have been received, record the
  - 251 following with the Oneida Nation Register of Deeds:
    - 252 (A) The deed;
    - 253 (B) The residential lease;
    - 254 (C) If applicable, the mortgage; and
    - 255 (D) If applicable, the assignment of lease for financing.
  - 256 (5) As applicable, return the original mortgage and assignment of lease for
  - 257 financing to Bay Bank once they have been recorded with the Oneida Nation
  - 258 Register of Deeds.

259  
260 *End.*

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261  
262 Original effective date: 02-22-2016  
263 Amendment effective date:  
264

265

**Summary Report for  
Home Ownership by Independent Purchase (HIP) Program**

Original effective date: N/A

Amendment effective date: N/A

**Name of rule:** Home Ownership by Independent Purchase (HIP) Program

**Name of law being interpreted:** Title 6. Property and Land – Chapter 602 Leasing

**Rule number:** 6

**Other laws or rules that may be affected:** N/A

**Brief summary of the proposed rule:** The purpose is to amend the rule to modify the existing HIP process based on the division of Comprehensive Housing Division and Land Management, to incorporate updated residential leasing rules allowing parties to have more than 1 lease at a time and to open up the process to non-Tribal members.

**Statement of Effect:** Obtained after requesting from the Legislative Reference Office.

**Financial Analysis:** See Attached.

**Financial Analysis for  
Home Ownership by Independent Purchase (HIP) Program**

Type of Cost	Description/Comment	Dollar Amount
Start Up Costs	Would be absorbed within the current budget	\$0
Personnel	An additional residential leasing specialist needed to assist in the management of increased number of residential leases.	\$60,000 (including fringe)
Office	N/A	\$0
Documentation Costs	N/A	\$0
Estimate of time necessary for an individual or agency to comply with the rule after implementation	One week	\$0
Other:	N/A	\$0
Total Cost (Annual)	N/A	\$60,000



## Statement of Effect

### *Leasing Law Rule No. 6 – Homeownership by Independent Purchase (HIP) Program*

#### *Summary*

The purpose of the Leasing Law Rule No. 6 – Homeownership by Independent Purchase (HIP) Program is to expand the services being offered by the Nation by providing a program in which the prospective lessee buyer initiates a purchase in which the buyer purchases the improvements and the Nation purchases the land pursuant to Real Property Rule No. 1 Land Acquisition for Residential Leasing. The buyer will then enter a HIP residential lease for the land through the Comprehensive Housing Division. There are legal bars to the adoption of the Leasing Law Rule No. 6 – Homeownership by Independent Purchase (HIP) Program as it relies upon Real Property Law Rule No. 1 – Land Acquisition for Residential Leasing which lacks the delegation of rulemaking authority required for its promulgation under the Administrative Rulemaking law.

*Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office*

*Date: December 17, 2019*

#### *Analysis by the Legislative Reference Office*

The Administrative Rulemaking law provides authorized agencies the opportunity to promulgate rules interpreting the provisions of any law enforced or administered by it; provided that, a rule may not exceed the rulemaking authority granted under the law for which the rule is being promulgated. [1 O.C. 106.4-1]. An authorized agency is any board, committee, commission, department, program, or officer of the Nation that has been granted rulemaking authority. [1 O.C. 106.3-1(a)].

The Leasing law (“the Law”) was adopted for the purpose of setting out the Nation’s authority to issue, review, approve and enforce leases. The Law delegates authority to the Oneida Land Commission and Land Management to jointly develop rules related to obtaining a residential, agricultural, or business lease. [6 O.C. 602.5-1]. The Law provides that Land Management shall develop, and the Oneida Land Commission shall approve, the format and requirements set out in the lease document applications for different types of leases, as well as additional procedures and processes to be followed when offering and awarding lease documents. [6 O.C. 602.5-1(a)].

The purpose of the Leasing Law Rule No. 6 – Homeownership by Independent Purchase (HIP) Program (“the Rule”) is to expand the services being offered by the Nation by providing a program in which the prospective lessee buyer initiates a purchase in which the buyer purchases the improvements and the Nation purchases the land pursuant to Real Property Rule No. 1 Land Acquisition for Residential Leasing. [Rule 1.1-1]. Under this Rule the buyer will then enter a HIP residential lease for the land through the Comprehensive Housing Division. [Rule 1.1-1].

The Rule contains many references to following the requirements of the Real Property Law Rule No. 1 – Land Acquisition for Residential Leasing. This creates a conflict with the adoption of the Rule as the Real Property Law Rule No. 1 – Land Acquisition for Residential Leasing lacks the necessary delegation of rulemaking authority as required by the Administrative Rulemaking law. An authorized agency of the Nation must be delegated rulemaking authority by a law of the Nation in order to promulgate rules. [1 O.C. 106.3-1(a), 106.4-1]. The Real Property Law Rule No. 1 – Land Acquisition for Residential Leasing was promulgated without such authority.

### *Conclusion*

There are legal bars to adopting the Leasing Law Rule No. 6 – Homeownership by Independent Purchase (HIP) Program.<sup>1</sup> Although the Leasing law does delegate joint rulemaking authority to the Oneida Land Commission and Land Management for the promulgation of this Rule, this Rule contains many references to following the requirements of the Real Property Law Rule No.1 – Land Acquisition for Residential Leasing. The Real Property law does not delegate rulemaking authority to the Oneida Land Commission or Land Management in regard to the approval, denial, or processing of land acquisitions. Therefore, the Real Property Law Rule No.1 – Land Acquisition for Residential Leasing conflicts with the Administrative Rulemaking law which requires a delegation of rulemaking authority.

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<sup>1</sup> The Legislative Operating Committee will consider a request for emergency amendments to the Real Property law on January 15, 2020. The purpose of the emergency amendments is to add in a delegation of rulemaking authority to the Oneida Land Commission and Land Management as it relates to the approval and denial, and processing of land acquisitions. Adoption of the emergency amendments would eliminate the legal bar to adopting the Real Property Law Rule No. 1 – Land Acquisition for Residential Leasing, and would therefore eliminate the conflict in adopting the Leasing Law Rule No. 6 – Homeownership by Independent Purchase (HIP) Program.