

NOTICE OF
PUBLIC MEETING

TO BE HELD

June 21, 2018 at 3:00 P.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 Comprehensive Housing Division and the Oneida Land Commission are hosting this Public Meeting to gather feedback from the community regarding the following rule:

**Mortgage and Foreclosure Rule No. 1 -
Mortgage Programs, Guidelines and Requirements**

This is a proposal to amend the rule by:

- ◆ Changing the debt-to-income ratio so the Land Commission approves it annually;
- ◆ Extending the timeframe for satisfaction of judgments from prequalification to closing;
- ◆ Adding a maximum loan amount;
- ◆ Adding the loan deferral agreement option and requirements; and
- ◆ For veterans, allowing equity loans and refinancing regardless of land status, only where the Nation is the original servicer of the loan and where the land is within the Nation's boundaries.

To obtain copies of the Public Meeting documents for this proposal, please visit www.oneida-nsn.gov/Register/PublicMeetings.

**PUBLIC COMMENT PERIOD
OPEN UNTIL June 28, 2018**

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.

**Comprehensive Housing Division
2913 Commissioner Street, Oneida, WI 54155
jhill@oneidanation.org
Phone: 920-869-2227
Fax: 920-869-2836**



Title 6. Property and Land – Chapter 612

MORTGAGE and FORECLOSURE

Rule # 1 – Mortgage Programs, Guidelines and Requirements

- 1.1. Purpose and Effective Date
- 1.2. Adoption, Amendment and Repeal
- 1.3. Definitions
- 1.4. Mortgage Eligibility Requirements
- 1.5. Mortgage Application
- 1.6. Appraisal, Inspection and Closing Costs
- 1.7. Interest Rates Maximum Loan Amount and Payment Terms
- 1.8. Subordination Agreement
- 1.9. Reports and Documents Required Prior to Entering a Mortgage
- 1.10. Tribal Loan Credit (TLC) Program
- 1.11. Loan Deferral Agreement
- 1.12. Refinancing a Loan Held by the Nation
- 1.13. Final Decision

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21 **1.1. Purpose and Effective Date**

22 1.1-1. *Purpose.* The purpose of this rule is to provide the various mortgage programs offered by
23 the Comprehensive Housing Division and to provide additional requirements for participating in
24 such programs than the minimum requirements found in the Mortgage and Foreclosure law.

25 1.1-2. *Delegation.* The Mortgage and Foreclosure law delegated the Comprehensive Housing
26 Division and Land Commission joint rulemaking authority pursuant to the Administrative
27 Rulemaking law.

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29 **1.2. Adoption, Amendment and Repeal**

30 1.2-1. This rule was jointly adopted by the Comprehensive Housing Division and Land
31 Commission in accordance with the procedures of the Administrative Rulemaking law.

32 1.2-2. This rule may be amended or repealed by the joint approval of the Comprehensive
33 Housing Division and Land Commission pursuant to the procedures set out in the Administrative
34 Rulemaking law.

35 1.2-3. Should a provision of this rule or the application thereof to any person or circumstances
36 be held as invalid, such invalidity shall not affect other provisions of this rule which are
37 considered to have legal force without the invalid portions.

38 1.2-4. In the event of a conflict between a provision of this rule and a provision of another rule,
39 internal policy, procedure, or other regulation; the provisions of this rule control.

40 1.2-5. This rule supersedes all prior rules, regulations, internal policies or other requirements
41 relating to the Mortgage and Foreclosure law.

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43 **1.3. Definitions**

44 1.3-1. This section governs the definitions of words and phrases used within this rule. All
45 words not defined herein are to be used in their ordinary and everyday sense.

46 (a) “Appraisal” means the valuation of real property by the estimate of an authorized
47 person.

48 (b) “Comprehensive Housing Division” means the division within the Nation under the
49 direction of the Comprehensive Housing Division Director which consists of all

50 residential services offered by the Nation, including but not limited to, all rental
51 programs, the rent-to-own program, and the residential sales and mortgages
52 programs.~~means the entity responsible for housing matters~~
53 ~~specifically related to mortgages and foreclosures as defined by Oneida Business~~
54 ~~Committee Resolution.~~

55 (c) “Cosmetic” means a renovation that improves the appearance of a building without
56 changing its size, or improving its structure, safety, or code integrity and doesn’t correct a
57 problem that interrupts the use of the home or threatens to cause permanent damage.
58 Examples include, but are not limited to: painting, flooring, fixtures, landscaping.

59 (d) “Home Inspection” means an examination of a property’s condition.

60 (e) “Mortgage” means a lien, held by the Nation, on a real property interest that is given
61 as security for the payment of a debt and/or the performance of a duty, including the
62 refinancing of an original conveyance, that will become void upon the payment and/or
63 performance according to the stipulated terms.

64 (f) “Mortgagor” means the borrower in a mortgage.

65 (g) “Nation” means the Oneida Nation.

66 (h) “Non-Cosmetic” means a renovation that changes the size, improves the structure,
67 safety or code integrity of a structure or corrects a problem that interrupts the use of the
68 home or threatens to cause permanent damage. Examples include, but are not limited to:
69 roof repairs, water damage or mold repairs.

70 (i) “Refinance” means an exchange of an old debt for a new debt, as by renegotiating a
71 different interest rate, term of the debt, or by repaying the existing loan with money
72 acquired from a new loan.

73 (j) “Title” means legal evidence of a person’s ownership rights in real property.

74 (k) “Title Report” means the written analysis of the status of title to real property,
75 including a property description, names of titleholders and how the title is held, tax rate,
76 encumbrances and any real property taxes due.

77 78 **1.4. Mortgage Eligibility Requirements**

79 1.4-1. *Ineligible Properties.* Mortgages are not available for properties with condominiums,
80 twinodos and/or duplexes.

81 1.4-2. *Credit Rating.* In order to be eligible, mortgage applicants are required to have a
82 minimum Trans Union credit rating of 550.

83 1.4-3. *Debt to Income Ratio.* In order to be eligible, mortgage applicants are required to have a
84 debt to income ratio ~~of thirty six percent (36%) or lower~~that is no greater than the ratio
85 determined by the governing Oneida Land Commission resolution. The Comprehensive
86 Housing Division shall submit recommendations related to the debt to income ratio for the
87 Oneida Land Commission’s consideration, at a minimum, once every three (3) years. The debt
88 to income ration may not be amended except by Land Commission resolution. shall approve, by
89 written resolution, the applicable debt to income ratio for all mortgages offered by the
90 Comprehensive Housing Division annually no later than September 30th.

91 (a) Comprehensive Housing Division staff shall calculate the debt to income ratio by
92 dividing the mortgagor’s monthly debt by the mortgagor’s gross monthly income.

93 (b) For purposes of calculating income for the debt to income ratio, the Comprehensive
94 Housing Division staff:

- 95 (1) May not include child support payments;

- 96 (2) May not include education grants/scholarships; and
97 (3) Shall include per capita payments to the extent that receipt of per capita
98 payment may be verified for each of the five (5) years prior to mortgage
99 application.

100 (A) For per capita payments paid by the Nation, the Comprehensive
101 Housing Division staff shall verify with the Trust Enrollment Department
102 that the applicant received the full eligible amount of the per capita
103 payments for each of the five (5) years prior to mortgage application.

104 (B) For per capita payments paid by other tribes the Comprehensive
105 Housing Division staff shall verify that the applicant received per capita
106 payments for each of the five (5) years prior to mortgage application using
107 the applicant's tax return.

108 (C) When per capita payments qualify to be considered as part of the
109 income calculation, Comprehensive Housing Division staff shall use an
110 average of the payments the applicant received for the five (5) years prior
111 to mortgage application.

- 112 (4) If mortgage applicants include an unmarried couple in which one (1) party is a
113 Tribal member and the other is not, the Comprehensive Housing Division staff
114 shall only include the Tribal member's income.

115 1.4-4. *Loan to Value Ratio.* Except as provided otherwise in this rule, the Comprehensive
116 Housing Division may not offer mortgages if:

117 (a) For a cash-out mortgage or a refinancing, the loan to value ratio exceeds ninety
118 percent (90%) of the value of the improvements;

119 (b) For a mortgage to purchase a home, regardless of cash-out, or for home repairs, the
120 loan to value ratio exceeds one hundred percent (100%) of the value of the real property
121 subject to the mortgage.

122 1.4-5. *Total Amount of all Judgments.* In order to be eligible, mortgage applicants shall have a
123 maximum total of \$20,000 in money judgments and/or collections. At the time of
124 ~~prequalification~~ closing, all money judgments and/or collections must either be satisfied in full or
125 subject to current payment agreements with proof of payments being received under the payment
126 agreements for each of the six (6) months prior to the request for prequalification.

127
128 **1.5. Mortgage Application**

129 1.5-1. *Application Form.* Tribal members wishing to receive a residential mortgage from the
130 Comprehensive Housing Division may submit a mortgage application to the Comprehensive
131 Housing Division, using the mortgage application form available on the Nation's website and at
132 the Comprehensive Housing Division, which includes any requirements for supplemental
133 information required to verify eligibility. Mortgage applications that do not use the form
134 provided by the Nation will not be accepted by the Comprehensive Housing Division.
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136 **1.6. Appraisal, Inspection and Closing Costs**

- 137 1.6-1. Mortgagors are responsible for paying all appraisal and inspection costs.
138 1.6-2. The Comprehensive Housing Division shall assess administrative closing fees against
139 mortgagors at the rate of one percent (1%) of the total mortgage amount, provided that the
140 Comprehensive Housing Division shall offer a discounted rate of one-half percent (0.5%) to
141 mortgagors that complete a home ownership informational session from the list approved by the

142 Land Commission by written resolution.

143 1.6-3. Payment may be accepted from a source other than a Comprehensive Housing Division
144 loan for appraisal, inspection and closing costs if including such costs in the mortgage would
145 cause the mortgage to exceed to allowable loan to value ratio provided in article 1.4-4.

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147 | **1.7. Interest Rates Maximum Loan Amount and Payment Terms**

148 1.7-1. *Setting the Interest Rate Annually.* The Land Commission shall approve, by written
149 resolution, the applicable interest rate for all mortgages offered by the Comprehensive Housing
150 Division annually no later than September 30th, provided that veteran loan rates are subject to
151 input from the Oneida Nation Veteran's Affairs Committee.

152 1.7-2. *Modifying the Interest Rate Program Wide.* The Land Commission may approve a
153 program-wide interest rate change at any time, by written resolution. The Comprehensive
154 Housing Division shall ensure that such interest rate changes are applied to all mortgages
155 offered.

156 1.7-3. Maximum Loan Amount. Except where the loan is for a home for sale by the Nation, the
157 maximum loan amount shall not exceed \$250,000.

158 | 1.7-~~34~~. *Payment Terms.* The Comprehensive Housing Division shall base payment terms on the
159 mortgagor's monthly income and expenses and the amount of the total purchase price of the
160 property, provided that the Comprehensive Housing Division staff shall use the same calculation
161 of income that was used for determining the debt to income ratio.

162 (a) The Comprehensive Housing Division staff shall calculate mortgage payments using
163 the standard requirements provided as follows, provided that nothing in this section may
164 be interpreted as preventing a mortgagor from agreeing to an earlier payoff date.

165 (1) For mortgages with a total amount less than \$30,000, the loan duration is
166 calculated by providing one (1) payment year for each \$1,000 of the mortgage.
167 For example, a mortgage for \$14,000 would be required to be paid off in fourteen
168 (14) years.

169 (2) For mortgages with a total amount of \$30,000 or more, mortgage duration is
170 set at thirty (30) years.

171 (b) Late payments shall be assessed a late payment fee equal to five percent (5%) of the
172 mortgagor's required monthly principal and interest payment.

173 | 1.7-~~45~~. *Individual Modifications to Interest Rates and/or Payment Terms.* If the market inhibits
174 the sale, by either the Nation or an individual Tribal member, of a home appraised at \$250,000 or
175 more, the Land Commission may adjust the offered mortgage rate and/or the mortgage duration
176 as applied to an individual piece of real property.

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178 | **1.8. Subordination Agreement**

179 1.8-1. *Subordination of the Nation's Loan to Secure Refinancing.* The Comprehensive Housing
180 Division may subordinate the Nation's first position mortgage interest to second position
181 mortgage interest in order to allow a mortgagor to secure refinancing through a lender outside of
182 the Nation if the amount financed through the second mortgage from the outside lender is greater
183 than the balance of the Nation's mortgage balance. For example, if a mortgagor has a mortgage
184 balance of \$10,000 with the Nation and is getting an equity loan from Bay Bank in the amount of
185 \$40,000, the Comprehensive Housing Division may agree to subordinate the Nation's mortgage
186 interest from first to second position to allow the mortgagor to secure the equity loan from Bay
187 Bank.

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1.9. Reports and Documents Required Prior to Entering a Mortgage

1.9-1. *Required Reports and Documents.* The following reports and documents are required prior to the Comprehensive Housing Division entering any mortgage, provided that when the Nation is the seller, the Comprehensive Housing Division shall provide (a) through (f). When the Nation is not the seller, the buyer and seller may negotiate which parties are responsible for providing the required reports and documents.

- (a) Clear title report, where for purposes of this section clear title is synonymous with good title, merchantable title and marketable title and means that the land is free from encumbrances, "good title" being one free from litigation, palpable defects, and grave doubts, compromising both legal and equitable titles and fairly deducible of record;
- (b) Survey or lease site information;
- (c) Passed well test (for all sites with wells);
- (d) Passed septic test (for all sites with septic systems);
- (e) Appraisal dated within one (1) year from the Comprehensive Housing Division's approval of the mortgage, provided that, where the home and improvements are upon land leased by the Nation, the appraisal may not include the value of the land;
- (f) Home inspection dated within one (1) year from the Comprehensive Housing Division's approval of the mortgage;
- (g) Agreement or offer to purchase; and
- (h) If the Nation is not the seller, a real estate condition report.

1.9-2. The following reports and documents are optional at the buyer's discretion:

- (a) Level 1 environmental report;
- (b) Asbestos report;
- (c) Lead based paint report; and/or
- (d) Mold report.

1.9-3. The Comprehensive Housing Division may deny financing of a property offered for sale by a party other than the Nation if there are issues with any of the required reports and documents identified in section 1.8-1.

- (a) In the event that health and safety issues are identified in the home inspection, the Comprehensive Housing Division shall deny financing in the current condition and shall provide the parties with the following options:
 - (1) The seller may complete the required repairs to correct the health and safety issues prior to closing;
 - (2) The seller may lower the purchase price in order to offset the cost of the repairs required to correct the health and safety issues so that the buyer may finance the repairs;
 - (3) The seller may provide the buyer with an allowance upon closing which would allow the buyer to complete the required repairs to correct the health and safety issues; or
 - (4) The buyer may rescind the offer to purchase and walk away from the transaction based on the health and safety issues identified in the home inspection.

1.10. Tribal Loan Credit (TLC) Program

1.10-1. *Purpose.* The purpose of the TLC program is to provide Tribal members with available financing for the following:

234 (a) The purchase of a home upon land owned by the Nation, where the selling party may
235 be either by the Nation or an individual Tribal member;

236 (b) The purchase of a home upon land owned by the Nation with financing included for
237 required/recommended home repairs;

238 (c) A down payment to purchase land and/or improvements except where a
239 Comprehensive Housing Division mortgage is financing the purchase pursuant to section
240 1-10-2;

241 (d) Construction of a new home upon land owned by the Nation;

242 (e) Home repairs or upgrades on an existing home already owned by the Tribal member;
243 and

244 (f) To borrow against the homeowner's equity in the property where the home and
245 improvements are located on land owned by the Nation subject to section 1.10-6.

246 1.10-2. *Down Payments.* Tribal members applying for a TLC loan for the purpose of securing a
247 down payment may receive a maximum loan amount of the 2.25% of the total purchase price, as
248 required by HUD's section 184 loan program.

249 1.10-3. *Requirements when Simultaneously Financing the Purchase of a Home and Home*
250 *Repairs.* When simultaneously financing the purchase of a home and home repairs, the loan to
251 value ratio may be a maximum of one hundred percent (100%) of the value subject-to the
252 scheduled repairs plus a construction contingency of five percent (5%) of the amount of the
253 mortgage allocated to the scheduled repairs.

254 (a) *Construction and Payment Plan.* Within five (5) calendar days of an appraisal paid
255 for by the selected mortgagor or mortgagor selection, whichever is later, the mortgage
256 applicant shall submit a construction and payment plan to the Comprehensive Housing
257 Division. The Comprehensive Housing Division may offer extensions for submitting the
258 construction and payment plans provided that, in all circumstances, the construction and
259 payment plan must be submitted within twenty-one (21) days of the date the mortgagor is
260 selected/approved for a mortgage.

261 (1) The construction plan must provide for cosmetic and non-cosmetic
262 improvements to be completed in different phases of construction.

263 (2) Licensed contractors are required for all non-cosmetic work. Mortgage
264 applicants shall submit copies of signed contracts with licensed contractors for all
265 non-cosmetic work at the time of submission of the construction plan or, at a
266 minimum, before payments may be released for a non-cosmetic construction
267 phase.

268 (3) The first payment provided in the payment plan may not exceed one third
269 (1/3) of the total amount of the mortgage allocated towards the improvements.

270 (b) *Contingency.* The Comprehensive Housing Division shall issue contingency checks
271 in the form of a one-time lump sum check to the mortgagor. It is the mortgagor's
272 responsibility to manage the contingency as needed for the entire project.

273 (c) *Release of Payments Subsequent to the First Payment.* Prior to releasing payments
274 subsequent to the first payment for the first phase of construction, a representative of the
275 Comprehensive Housing Division shall verify that the previous phase of construction has
276 been satisfactorily completed. In addition, if the prior phase of construction included
277 non-cosmetic work, prior to releasing payment for the next phase, the mortgagor shall
278 submit lien waivers to the Comprehensive Housing Division.

279 1.10-4. *Requirements for Financing Mobile, Modular or Pre-fabricated Homes.* In order for

280 the purchase of a mobile, modular or pre-fabricated home that is not a permanent poured
281 foundation/basement to be eligible for a TLC loan, it must be less than five (5) years old based
282 on model year. A mobile, modular or pre-fabricated home that is on a permanent poured
283 foundation/basement is eligible for a TLC loan regardless of the home's model year.

284 (a) In order for a mobile, modular or pre-fabricated home to be eligible for a TLC loan,
285 regardless of whether it is purchased or newly constructed, it must be placed on one (1)
286 of the following:

- 287 (1) A permanent poured foundation/basement;
- 288 (2) Four foot (4') frost walls with eight inch (8") blocks; or
- 289 (3) An anchored floating slab.

290 1.10-5. *Requirements for Financing Construction of New Home.* In order for construction of a
291 new home to be eligible for a TLC loan, the beginning construction date must be within ninety
292 (90) calendar days of the loan's closing date and construction must be completed within six (6)
293 months of the construction start date. Construction completion dates may be extended by the
294 director of the Comprehensive Housing Division on a case-by-case basis.

295 (a) The following additional documents are required to be submitted to the
296 Comprehensive Housing Division in order for an applicant to be eligible for a TLC
297 construction loan:

- 298 (1) Copies of the blueprints and/or plans for the construction;
- 299 (2) Copies of construction contracts with certified contractors;
- 300 (3) A passed percolation test on the vacant land if municipal sewer and water is
301 not available;
- 302 (4) Copies of all Oneida zoning and building permits; and
- 303 (5) Once construction is complete, a copy of the occupancy permit issued by
304 Oneida Zoning.

305 1.10-6. *Limitation on Equity Loans.* Tribal members with equity in their home and
306 improvements may borrow a maximum amount of \$50,000 against the equity in their home,
307 provided that, except for loans for veterans, equity loans are only available if the home and
308 improvements are located on land owned by the Nation. Veterans may receive equity loans
309 where the loan is held by the Nation, regardless of land status, provided that the land must still be
310 within Nation's boundaries.

311 312 **1.11. Loan Deferral Agreement**

313 1.11-1. *Loan Deferral Agreement.* A loan deferral agreement is available to assist mortgagees in
314 a time of financial crisis by deferring all loan payments for a fixed period of time and
315 transferring the principal and interest balance for the deferral term to the end of the loan to
316 extend the loan duration.

317 1.11-2. *Escrow Balances.* Any escrow balance included in a mortgagee's monthly payment may
318 not be included in the loan deferral agreement – regardless of any agreement mortgagees must
319 continue to pay all escrow amounts due monthly. A failure to pay escrow balances as they
320 become due may result in termination of the loan deferral agreement and potentially foreclosure
321 of the loan.

322 1.11-3. *Eligibility.* In order to be eligible for a loan deferral agreement, the mortgagee must have
323 no more than three (3) loan payments that are past due and be able to demonstrate at least one (1)
324 of the following:

- 325 (a) The loss of a mortgagee's income;

- 326 (b) A significant reduction in a mortgagee's income;
327 (c) An unforeseen ~~medical need~~ circumstance within the immediate family which
328 significantly financially impacts the mortgagee.

329 (1) For the purpose of this section, immediate family means an individual's
330 husband, wife, mother, father, step mother, step father, son, daughter, step son,
331 step daughter, brother, sister, step brother, step sister, grandparent, grandchild,
332 mother-in-law, father-in-law, daughter-in-law, son-in-law, brother-in-law or
333 sister-in-law and any of the these relations attained through legal adoption. For
334 purposes of this definition, in-laws are considered immediate family only if there
335 is a current legal marriage.

336 1.11-4. Loan Deferral Agreement Part I and Part II. A loan deferral agreement is available only
337 twice within the duration of the loan as either a part I or part II agreement. Upon entering the
338 agreement, any months for which the mortgagee has a past due balance shall be subtracted from
339 the available duration of the loan agreement to cure. Mortgagees must first enter a part I
340 agreement and, if the financial crisis has not subsided or if the mortgagee experiences financial
341 crisis at a different time throughout the duration of the loan, the mortgagee may enter a part II
342 agreement.

343 (a) Part I. A part I loan deferral agreement is available for a maximum of a six (6)
344 month period.

345 (b) Part II. A part II loan deferral agreement is available for a maximum of a twelve
346 (12) month period.

347 1.11-5. Loan Deferral Agreement Minimum Requirements. A loan deferral agreement shall at a
348 minimum contain the following:

349 (a) The duration of the agreement;

350 (b) The loan number that is the subject of the agreement;

351 (c) The amount of any escrow balance which will remain due monthly;

352 (d) A disclaimer related to credit reporting to explain that late payments will continue
353 to be reported as late regardless of the deferral;

354 (e) The mortgagee's information including name, address and contact information;

355 (f) The next date payment is due under the loan and notice that the mortgagee is
356 responsible for resuming payment without any additional notice from the
357 Comprehensive Housing Division;

358 (g) Notice that upon expiration of the agreement, principal and interest payments shall
359 resume as noted in the consumer universal note and that the total payment will fluctuate
360 based on modifications to the escrow balance due for taxes and insurance costs; and

361 (h) The loan's new maturity date.

362 **1.12. Refinancing a Loan Held by the Nation**

364 1.12-1. No Refinancing of Individual Fee Land Mortgages. Except for loans for veterans,
365 Refinancing refinancing is not available for mortgages of property that are individual fee lands.
366 For purposes of this section, "individual fee land" means real property held in fee status by an
367 individual or group of individuals. Veterans may refinance any loan held by the Nation,
368 regardless of land status, provided that the land must be within the Nation's boundaries.

369 1.11-2. When Refinancing is Available. Refinancing is only available for the consolidation of
370 mortgages or if the refinancing is required to reflect a change in property rights and
371 responsibilities or to maintain home health and safety. Where a refinancing is completed in the

372 case of divorce, any amount required to be paid by the spouse whose name will remain on the
373 mortgage to the spouse whose name is to be removed from the mortgage may be included in the
374 new loan amount.

375 1.11-3. *Removing a Mortgagor from the Mortgage.* The only way a mortgagor's named may be
376 removed from a loan is through refinancing.

377 1.11-4. *Refinancing Interest Rate.* The interest rate applicable to the refinancing is the current
378 Land Commission approved interest rate.

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380 | **1.132. Final Decision**

381 1.12-1. *No Appeal.* The decisions made in regard to Comprehensive Housing Division
382 mortgages are final. Neither the Oneida Judiciary nor any administrative body, including a
383 board, committee or commission is authorized to hear a complaint in regard to Comprehensive
384 Housing Division decisions related to mortgagor selection, the decision of whether or not to
385 provide financing and the terms of the financing.

386

387

388 *End.*

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390 Original effective date: 03-09-2017

391 Amendment effective date:

392

Summary Report for Mortgage Programs

Original effective date: 03/09/2017

Amendment effective date: TBD

Name of rule: Mortgage Programs, Guidelines and Requirements

Name of law being interpreted: Mortgage and Foreclosure

Rule number: 1

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

Brief summary of the proposed rule: The purpose of the amendments to this rule are to:

- Change the debt-to-income ratio so the Land Commission approves it by resolution and considers recommendations from Comprehensive Housing Division once every 3 years at a minimum;
- Extend the timeframe for satisfaction of judgments from prequalification to closing;
- Add a maximum loan amount;
- Add the loan deferral agreement option and requirements; and
- For veterans, allow equity loans and refinancing regardless of land status, only where the Nation is the original servicer of the loan and where the land is within the Nation's boundaries.

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

Financial Analysis: See Attached.



Statement of Effect

Mortgage and Foreclosure Law Rule No. 1 – Mortgage Programs, Guidelines and Requirements

Summary

This rule provides the various mortgage programs offered by the Comprehensive Housing Division and provides additional requirements for participating in such programs than the minimum requirements found in the Mortgage and Foreclosure Law.

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

Date: June 5, 2018

Analysis by the Legislative Reference Office

The Mortgage and Foreclosure law (“the Law”) delegates administrative rulemaking authority to the Comprehensive Housing Division and the Land Commission as authorized by the Administrative Rulemaking Law. The Law delegates the responsibility to provide mortgage programs and establish rules which name said programs and provide the specific requirements for each program to the Comprehensive Housing Division. [6 O.C. 612.4-1]. The Comprehensive Housing Division is required to provide programs for financing the purchase or down payment of existing homes and lands, construction of new homes, repairs and improvements to existing homes, and the refinancing of existing mortgages. [6 O.C. 612.4-1(a)-(d)]. The Law then later requires that the Oneida Land Commission and the Comprehensive Housing Division jointly develop rules governing the selection of applicants for the issuance of a mortgage, and lists the minimum requirements that the mortgage selection rules shall require of that mortgagor. [6 O.C. 612.4-3(a)-(d)]. The Law also requires that the Oneida Land Commission and the Comprehensive Housing Division jointly develop rules governing the requirements of mortgages entered into by the Comprehensive Housing Division, and sets the minimum requirements for what shall be included in the rules. [6 O.C. 612.4-4(a)-(g)].

Mortgage and Foreclosure Law Rule No. 1 – Mortgage Programs, Guidelines and Requirements (“the Rule”) was originally made effective by the Comprehensive Housing Division and the Oneida Land Commission on March 9, 2017. The Rule provides the various mortgage programs offered by the Comprehensive Housing Division and provides additional requirements for participating in such programs than the minimum requirements found in the Mortgage and Foreclosure Law. The Rule provides for:

- Mortgage eligibility requirements [see Rule section 1.4];
- Mortgage application [see Rule section 1.5];
- Appraisal, inspection and closing costs [see Rule section 1.6];
- Interest rates, maximum loan amounts, and payment terms [see Rule section 1.7];
- Subordination agreement [see Rule section 1.8];
- Reports and documents required prior to entering a mortgage [see Rule section 1.9];
- Tribal Loan Credit program [see Rule section 1.10];

- Loan deferral agreement [see Rule section 1.11];
- Refinancing a loan held by the Nation [see Rule section 1.12]; and
- The finality of a decision of the Comprehensive Housing Division [see Rule section 1.13].

The Law requires that at a minimum the mortgage selection rules that are developed by the Oneida Land Commission and the Comprehensive Housing Division require that all delinquent debts to the Nation be paid in full before the mortgage documents can be signed. As drafted, the Rule does not speak to this requirement specifically. [6 O.C. 612.4-3(c)].

Although the Rule does generally address various requirements of a mortgage the Comprehensive Housing Division enters into, the Rule does not address every minimum standard that is required by the Law to be included in the rule.

- The requirement of a mortgage document to identify the source of the ownership interest in the real property as attributable either to a deed or a residential lease entered into pursuant to the Leasing law is not addressed by the Rule. [6 O.C. 612.4-4(a)].
- The Rule does not address the requirement that the real property that is the subject of the mortgage be insured under a homeowner's insurance policy paid for by the mortgagor and include enforcement provisions in the event of noncompliance herewith. [6 O.C. 612.4-4(b)].
- Although the Rule does address the requirement that the mortgage be for real property located within the reservation in regards to the Tribal Loan Credit program [see Rule section 1.10], the Rule is not clear whether this requirement applies to all other mortgage programs, as required by Law. [6 O.C. 612.4-4(f)].

Additionally, there are other provisions of the Law that set requirements that the Comprehensive Housing Division and the Oneida Land Commission must promulgate to address, that are not addressed by this rule, or any other rule of the Nation, including:

- The requirement that the Comprehensive Housing Division and the Land Commission jointly create rules further governing the disposition of personal property [6 O.C.612.7-5(a)(3)(B)]; and
- The requirement that Comprehensive Housing Division and the Land Commission shall jointly develop rules to govern the razing of a foreclosed upon property that the Comprehensive Housing Division determines is in the best interest of the Nation after a home inspection. [6 O.C. 612.7-5(d)(2) (2)].

Conclusion

The Administrative Rulemaking law requires that a rule not exceed its rulemaking authority granted under the law for which the rule is being promulgated, or conflict with any other law, policy, rule, or resolution of the Nation. [1 O.C. 106.4-1].

The provisions that are currently contained in the proposed amendments to the Mortgage and Foreclosure Law Rule No. 1 - Mortgage Programs, Guidelines and Requirements do not in

themselves exceed the rulemaking authority granted by the Mortgage and Foreclosure law, or conflict with any law, policy, resolution, or rule of the Nation.

However, the currently proposed amendments to the Mortgage and Foreclosure Law Rule No. 1 - Mortgage Programs, Guidelines and Requirements do not meet the minimum standards set by the Mortgage and Foreclosure law for what the Comprehensive Housing Division and the Oneida Land Commission are required to include and address in the rules that they promulgate. The exclusion of minimum standards for rules required by the Mortgage and Foreclosure law may be deemed a conflict between the Mortgage and Foreclosure law and the Mortgage and Foreclosure Law Rule No. 1 - Mortgage Programs, Guidelines and Requirements.

Financial Analysis for Mortgage Programs Rule (Comprehensive Housing Division)

Type of Cost	Description/Comment	Dollar Amount
Start Up Costs	Would be absorbed within the current budget.	\$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	One week.	\$0
Other, please explain	N/A	\$0
Total Cost (Annual)		\$0