



## Title 6. Property and Land – Chapter 602 LEASING LAW

### Rule # 1 – Residential Leasing

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#### **1.1. Purpose and Policy**

1.1-1. *Purpose.* The purpose of the Residential Leasing rule is to expand upon the information provided in the Leasing Law regarding eligibility, administration, inheritability, and enforcement related to residential leases.

1.1-2. *Policy.* The policy behind the Residential Leasing program is to provide Tribal member's with access to Tribal land for the purpose of homeownership through policies that build strong, safe, and healthy Oneida neighborhoods and provide a consistent and fair process by which residential lease applications will be reviewed and residential leases awarded.

#### **1.2. Adoption and Authority**

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

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 This rule may be amended or repealed by the joint approval of the Comprehensive Housing Division and Land Commission pursuant to the procedures set out in the Administrative Rulemaking law.

1.2-3. Should a provision of this rule or the application of this rule 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 controls.

1.2-5. This rule supersedes all prior rules, regulations, internal policies or other requirements relating to the Leasing Law.

#### **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) "CHD" means the Nation's Comprehensive Housing Division.
- (b) "Department" means the CHD's Residential Leasing Department.
- (c) "Descendant" means the son or daughter of an enrolled Tribal member.
- (d) "Fee Land" means land held in fee status by the Nation.<sup>1</sup>

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<sup>1</sup> Although the Real Property law indicates that leases for tribal fee land will follow the procedures set forth in the Leasing Law, CHD shall not record residential leases for fee land with the Land Title Records Office as that office only accepts recordings pertaining to trust land.

- (e) “Guardian” means a person who has been appointed by a court of competent jurisdiction to be legally responsible for someone who is unable to manage their own affairs, particularly for minors and/or persons declared legally incompetent.
- (f) “Improvement” means buildings, other structures, and associated infrastructure attached to land.
- (g) “Lessee” means the party to an executed and effective residential lease.
- (h) “Nation” means the Oneida Nation.
- (h) “Premises” means the real property subject to a residential lease.
- (i) “Residential Lease” means the legal document issued by the Nation pursuant to the Leasing Law and this rule which establishes a lessee’s right to occupy Tribal land for residential purposes.
- (j) “Tribal land” means fee land and/or trust land.
- (k) “Tribal Member” means an individual who is an enrolled member of the Nation.
- (l) “Trust land” means the surface estate of land or any interest therein held by the United States in trust for the Nation; land held by the Nation subject to federal restrictions against alienation or encumbrance; land reserved for federal purposes; and/or land held by the United States in trust for the Nation under Section 17 of the Indian Reorganization Act, 25 U.S.C §477, et. seq.
- (m) “Ward” means a person under the care and control of a guardian appointed by a court of competent jurisdiction, usually due the person’s status as a minor or a declaration of legal incompetence.

**1.4. Residential Lease Eligibility, Cost, Duration, and Application**

1.4-1. *Eligibility.* In order for an applicant to be eligible to enter a residential lease, the applicant must satisfy all of the following:

- (a) Be a Tribal member. Non-Tribal members may be a party to a residential lease under the following circumstances:
  - (1) The non-tribal member is married to a Tribal member party to the residential lease;
  - (2) The non-tribal member spouse is awarded the residential lease through a legal separation or divorce judgment;
  - (3) The Oneida Land Commission has approved the CHD to enter a residential lease with a non-Tribal member party;
  - (4) The non-Tribal member is a descendant that inherited the residential leasehold interest; or
  - (5) as otherwise specified in this rule.
- (b) Have a maximum of two (2) residential leases provided that a second residential lease is only permitted in circumstances where any required residential subleasing meets the requirements provided in this rule.
- (c) Either:
  - (1) Be in good standing with any mortgage/encumbrance upon the improvements which would be subject to the residential lease; or
  - (2) Demonstrate financial ability to secure improvements upon the premises.

1.4-2. *Residential Lease Cost and Duration.* Unless approved otherwise by the Oneida Land Commission, the initial residential lease term shall be for a period of fifty (50) years with one (1) twenty-five (25) year extension available for a maximum term of seventy-five (75) years.

- (a) Tribal members and non-Tribal members who qualify under sections 1.4-1(a)(1), (2),

(4), or (5) of this rule shall pay a non-refundable residential lease cost prior to execution of the lease of three dollars (\$3.00) per year plus an administrative fee of twenty-five dollars (\$25.00).

(b) Where the lessee is a non-Tribal member that enters into a residential lease pursuant to section 1.4-1(a)(3) of this rule, the cost of the residential lease is as follows:

(1) *Fair Market Value.* Non-Tribal members shall pay a one-time twenty-five dollar (\$25.00) administrative fee plus an annual rate which is the lesser of one thousand five hundred dollars (\$1,500.00) and fair market value of the premises. Payment for residential lease costs may be paid up front or broken down into monthly or quarterly payments.

(A) For the purposes of this section, fair market value is determined by dividing the current appraised value of the premises (excluding any improvements) by fifty (50), which represents the standard residential lease term of fifty (50) years.

(B) Once the annual fair market value is set, it shall be locked in for the term of the residential lease.

(C) Where an updated appraisal is required to calculate the current fair market value, lessee shall pay CHD's cost of appraisal, provided that CHD shall select the appraisal provider.

1.4-3. *Application.* In order to apply for a residential lease, applicants shall submit to the Department a residential lease application, which CHD shall make available in hard copy format at CHD and on its website. When submitting the application, applicants shall submit a copy of their Tribal or state identification card as applicable and, if married, a certified copy of the marriage certificate.

## **1.5. Application Review and Residential Lease Approval**

1.5-1. *Application Review.* Upon receipt of a residential lease application, the Department shall:

(a) Initiate the National Environmental Protection Act (NEPA) and cultural reviews required by the Leasing Law with the Environment, Health, Safety and Land Division and the Cultural Heritage Department respectively;

(b) Pull the legal description for the proposed residential lease premises from the title report, if available, and if not, from the warranty deed, including any potential amendments thereto, with the assistance of the Environment, Health, Safety and Land Division as may be needed;

(c) Pull the legal description for the proposed residential lease premises from the survey map;

(d) Confirm the proposed residential lease premises' legal description in the title report/warranty deed and the legal description in the survey match one another. In the event the legal descriptions do not match, the Department shall use the legal description from the most recent document;

(e) Confirm that the minimum terms and conditions required by the Leasing Law are included in the proposed residential lease; and

(f) If any exceptions have been granted by the Oneida Land Commission, confirm such exceptions with a copy of the Oneida Land Commission minutes.

1.5-2. *Residential Lease Approval.* The CHD shall create a checklist for residential lease review. Upon the Department's completion of the checklist, the Department shall forward the residential lease application, residential lease, and associated review documents to the

Department's Area Manager for review and approval.

(a) Should the Area Manager approve the satisfaction of the checklist and the residential lease, the Area Manager shall forward the residential lease application, residential lease, and associated review documents to the CHD Director for signature of the residential lease on behalf of the Nation.

(b) Upon signature on behalf of the Nation, the Department shall schedule a meeting with the lessee to review the residential lease terms and to facilitate signature of the lessee, provided that the residential lease may not be signed until the cost of the residential lease has been paid with receipt documented in the residential lease file.

(c) The CHD shall provide the Oneida Land Commission with a quarterly report listing approved residential leases.

### **1.6. Residential Lease by Guardian**

1.6-1. CHD shall permit a guardian to enter a residential lease on behalf of a ward who has either not yet reached the age of majority or who has been deemed incompetent provided that:

(a) The ward must meet the eligibility requirements contained in section 1.4-1 of this rule;

(b) The guardian must provide the Department with a copy of the order appointing them as guardian issued by a court of competent jurisdiction;

(c) The residential lease must require the guardian to provide any updates regarding the scope and status of the guardianship; and

(d) The residential lease must either stay in the name of the ward or transfer to the ward in the event the guardianship is terminated.

### **1.7. Residential Lease Transfer**

1.7-1. *Residential Lease Transfer Outside of Death.* Transfer of a residential lease outside of death may only occur either if all parties involved in the transfer approve of said transfer in writing or if an order from a court of competent jurisdiction requires transfer of the residential lease to an eligible party as defined by this rule.

(a) *Mortgaged Premises.* If the premises is mortgaged, all mortgage parties on the residential lease must remain on the residential lease. Mortgage parties may be removed from the residential lease only if action is taken to remove a party or the parties from the mortgage.

(b) *Residential Lease Transfer Process.* In order to initiate a residential lease transfer, the requesting party must submit a transfer application, which CHD shall make available in-person at CHD and electronically on its website, and pay the twenty-five dollar (\$25.00) transfer fee.

1.7-2. *Residential Lease Transfer Upon Death of Lessee.* Where the lessee dies before the end of the residential lease, the residential lease may be transferred either in reliance on an executed residential lease successor designation form or upon an order from either the Nation's probate hearing body or court of competent jurisdiction assigning the leasehold interest to an eligible heir.

(a) *Eligible Successors.* Unless approved otherwise by the Oneida Land Commission, when assigning a leasehold interest, whether through a successor designation form or a will/probate, in order to be eligible, the successor must meet the requirements of section 1.4-1 of this rule. If the successor has not yet reached the age of majority at the time the lessee becomes deceased, the successor will be required to enter a residential lease by

guardian until he/she reaches eighteen (18) years of age.

(1) *Successor Designation Form.* CHD shall make successor designation forms available in-person at CHD and electronically on its website. Executing a successor designation form demonstrates intent of the lessee to remove the residential leasehold interest from the estate's probate assets in order to shorten and simplify the transfer process to an eligible successor upon the death of a lessee. Successor designation forms are only available to lessees where the premises is not subject to a mortgage. If a mortgage is entered after executing a successor designation form and the mortgage is not satisfied at the time the lessee dies, the successor designation form shall be invalid.

(A) The successor designation form shall provide an opportunity for the lessee to name up to a maximum of a three (3) successors.

(B) Upon death of a lessee with a successor designation form on file, the Department shall contact the named successors in the order designated by the lessee and shall inform them of their option to accept the leasehold interest, either for the purpose of personal occupancy or for sale of the residence.

(2) *Probate.* Lessees may also chose to transfer a residential leasehold interest upon their death by having it go through the probate process. The probate process will be used to assign a leasehold interest where there is no valid successor designation form on file or where a successor designation form is on file but a will has been executed after the successor designation form was executed which includes the residential leasehold interest. Where the premises is on trust land, the estate must use the Nation's probate process, whereas a premises on fee land may either be handled through the Nation's or the State of Wisconsin's probate process.

(3) *No Eligible Successors.* Where there are no eligible successors to the residential leasehold interest, the CHD shall terminate the residential lease and shall issue payment to the lessee's estate for any improvements upon the premises in accordance with section 1.10 of this rule. The leasehold interest shall then revert to CHD.

(b) *Married Persons.* When a Tribal member spouse predeceases the term of the residential lease:

(1) If both married parties are parties to the residential lease, the remaining lessee shall continue in effect undisturbed; or

(2) If only the deceased Tribal member was a party to the residential lease and the residential lease was not amended to include the spouse, the CHD, absent a valid marital property agreement stating otherwise, will consider the residential lease marital property and the spouse may sign on to the residential lease.

## **1.8. Residential Sublease**

1.8-1. *Eligibility.* In order to enter a residential sublease agreement, the party assuming the premises through the sublease must meet the eligibility requirements contained in section 1.4-1 of this rule.

1.8-2. *Approval of CHD and Lender Required.* Approval of CHD and, if the premises is subject to a mortgage also the lender, is required prior to entering any sublease agreement.

1.8-3. *Sublessee to Consent to Terms of Residential Lease.* In order to enter a sublease

agreement, the sublessee shall consent to the terms of the residential lease provided that the parties to the sublease agreement may negotiate payment provisions differing from payment terms included in the residential lease.

1.8-4. *Original Lessee Remains Responsible.* In terms of residential lease enforcement and compliance with the residential lease, the original lessee shall at all times remain responsible for ensuring compliance with the terms of the residential lease and any and all enforcement actions taken by CHD and/or the Nation shall be taken against the original lessee. Any dispute as to who is responsible for the non-compliance constitutes a private dispute between the sublease parties and shall exclude CHD and the Nation as a party to the dispute.

### **1.9. Residential Lease Termination**

1.9-2. *Termination.* Any termination of a residential lease is subject to requirements of the Eviction and Termination law and shall require CHD to compensate the lessee for any improvements located upon the premises upon said termination in accordance with section 1.10 of this rule.

### **1.10. Compensation for Improvements Upon Residential Lease Termination**

1.10-1. Any time CHD terminates a residential lease which has improvements fixed to the premises, the Nation shall provide the lessee/lessee's estate with compensation for said improvements upon termination.

(a) *Determining Compensation Amount.* The amount of compensation required for any improvements fixed to the premises shall be calculated using a current appraisal of the improvements only and deducting the following from the appraisal value:

- (1) The cost to satisfy any mortgage/encumbrance upon the premises and/or improvements;
- (2) The cost of the appraisal and home inspection, provided that CHD shall select the service providers;
- (3) The cost to bring the improvements to a minimal health and safety standard in accordance with the determination of the Zoning Department and/or the home inspection; and
- (4) Any debts and/or other administrative costs owed to the Nation by the lessee.

### **1.11 Residential Leasing Actions**

1.11-1. The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this rule.

1.11-2. No administrative hearing body, including a board, committee or commission, is authorized to hear a complaint regarding actions taken pursuant to this rule.

1.11-3. In regards to taking actions authorized under this rule, complaints filed with the Oneida Judiciary shall name the CHD's Residential Leasing Department.

*End.*

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