



Statement of Effect

Petition: L. Elm – Real Property Law Eviction and Termination

Summary

This Petition requests a General Tribal Council (“GTC”) meeting be held, either virtually or in-person, to address certain concerns the Petitioner raises with respect to the Real Property law; more specifically, the Nation’s process for evicting/terminating residential occupants for activities often fueled by the AODA epidemic that plagues many families within the community.

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

Date: May 26, 2021

Analysis by the Legislative Reference Office

On April 7, 2021, the Petition: L. Elm – Real Property Law Eviction and Termination (“Petition”) was submitted to the Business Committee Support Office by Lori Elm (“Petitioner”) and has since been verified by the Oneida Trust Enrollment Department. On April 14, 2021, the Oneida Business Committee (“OBC”) acknowledged receipt of the Petition and directed the Law, Finance and Legislative Reference Offices to complete, respectively, the legal review, fiscal impact statement and statement of effect (“SOE”) with status updates to be submitted for the June 9, 2021, regular OBC meeting agenda and the first OBC meeting of the month thereafter or until the final documents are submitted.

The purpose of this Petition is for a *“General Tribal Council (GTC) meeting be held by virtual or in-person, regarding the Real Property Law, concerning **Eviction and termination** including residential leases. With our current pandemic of addiction in the community, the stipulation of vacating your home in five (5) days, from the time of the incident is or should be considered and Unconstitutional, furthermore we need a due process to protect the heads of household leases, from losing their homes, an include procedures in the case they do. Including timeframes for them to sell their homes; implementation of a chart of penalties, (Drugs and type, Violence, Sexual abuse or assault, human trafficking and all unlawful activities) including intent of eviction Notice with timelines, from the date of the incident as well as date of Notice and including Due Process; Request an advocated board be created between Oneida Land Commission, Oneida Police Commission, with representatives from Behavior Health, and Comprehensive Housing Division Area; Request if the head of household is not the occupant in violation, a compliance agreement be done with them, outline, behavior or property for a period of time, before termination (eviction) of lessee is implemented; also requesting occupant of violation must be removed from residence and if a successful treatment plan and stability review is approved by advocate board, they may be able to enter into their own lease or reside back at residence; Evaluation of how one can be held responsible of activities: address on citation, activity at residence, accusations and/or any other ways; Timeline(s) for getting another lease and how; The reasoning for this petition is to*

protect families from their loved one's addiction, and so they do not lose their home after all the other family suffering, they already, have consumed over the addiction.”

All applicable laws, rules and policies of the Nation were reviewed in developing this statement of effect, including the Legislative Procedures Act and Administrative Rulemaking law, as well as the Real Property law, Leasing law, Landlord-Tenant law, Eviction and Termination law and any relevant rules promulgated thereunder.

Petition Comments and Requested Actions

In her Petition, the Petitioner makes various suggestions regarding the Real Property law, but more specifically, the process for evicting/terminating occupants of residential leases, entered into under a housing program of the Nation, for infractions often related to the drug/alcohol epidemic that plagues many families within the community. For purposes of the SOE, the suggestions have been broken down as follows:

- That, the stipulation of vacating your home in five (5) days, from the time of the incident is or should be considered unconstitutional;
- That, there should be due process to protect the heads of household leases from losing their homes and include procedures in case they do, including timeframes for them to sell their homes;
- That, there should be implementation of a chart of penalties (i.e. drugs and type, violence, sexual abuse or assault, human trafficking and all unlawful activities), including intent of eviction, notice with timelines, from the date of the incident as well as date of notice and including due process;
- That, when the head of household is not the occupant in violation, an advocate board, made up of representatives from the Oneida Land Commission, Oneida Police Commission, Behavioral Health and Comprehensive Housing Division, be created to consider entering into a compliance agreement that:
 - outlines behavior or property for a period of time before termination/eviction of lessee is implemented; and
 - removes the occupant in violation, but provides an opportunity for him or her to enter into a new lease or reside back at the original residence upon successful treatment plan and stability review approval by the advocate board; and
- That, there is an evaluation of how one can be held responsible for activities, including address on citation, activity at residence, accusations and/or any other ways, with timelines for getting another lease and how.

Real Property Law

The Real Property law was established to provide regulations and procedures for the transfer, control and management of the territory within the Reservation and all Tribal land; to integrate 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 to establish licensing and certification requirements for the Nation's employees dealing with real property transactions. [6 O.C. 601.1-1].

With respect to the leasing of residential property, section 601.9-1 of the law provides that the Comprehensive Housing Division (“CHD”) shall administer and process all leasing of Tribal land for residential purposes pursuant to the Nation’s Leasing law. [6 O.C. 601.9-1]. Section 601.12-1 further provides that the CHD shall oversee all residential transactions within the Reservation and shall process and administer such transactions consistent with the Landlord-Tenant law, Mortgage and Foreclosure law, Leasing law, Eviction and Termination law, and any rules promulgated in accordance therewith. [6 O.C. 601.12-1].

The Petitioner’s suggestions do not conflict with any express language and/or provision of the Real Property law. If, however, the Petitioner is requesting that the Real Property law be amended to specifically address one or more of the issues raised within her Petition, amendments to the law would have to be developed in accordance with the Legislative Procedures Act and approved by the OBC. [6 O.C. 601.2-2].

Because the Real Property law directs the CHD to administer/process residential leases consistent with the Nation’s Landlord-Tenant law, Mortgage and Foreclosure law, Leasing law, Eviction and Termination law, as well as any rules promulgated thereunder, a complete analysis of the Petition requires a review of the aforementioned laws/rules that are relevant to the Petitioner’s suggestions.

Leasing Law

The Leasing law sets forth the Nation’s authority to issue, review, approve, as well as enforce, leases and was established in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2021 (HEARTH Act) so that the Nation can approve leases on its land without having to obtain additional approval from the Secretary of the Interior. [6 O.C. 602.1-1]. The policy behind the law is to codify the expectations and responsibilities of the lessor and lessee when leasing Tribal land and to ensure that the leasing of Tribal land results in minimal risk to the Nation. [6 O.C. 602.1-2].

With respect to evictions/terminations of leases entered into in accordance therewith, the Leasing law provides, in pertinent part, as follows:

- That, the Division of Land Management or other entity responsible for entering into leases of Tribal land (“Land Management”) is delegated all powers necessary to enforce the lease, the law, and any rules developed thereunder, including the power to enter premises, assess late fees/penalties and cancel leases [6 O.C. 602.11-1];
- That, if a lessee or other party causes or threatens to cause immediate and significant harm to the premises, or undertakes criminal activity thereon, Land Management or another interested party may take appropriate emergency action, which may include cancelling the lease and/or securing judicial relief [6 O.C. 602.11-2]; and
- That, if Land Management determines a lessee is in default, it shall take action to have lessee cure the default or, if the default is not cured, cancel the lease pursuant to the Eviction and Termination law [6 O.C. 602.11-4].

And, with respect to the due process rights of lessees who disagree with decisions that Land Management makes when exercising its delegated authority, including, but not limited to canceling leases, the Leasing law provides as follows:

- That, the Oneida Judiciary has jurisdiction to hear complaints regarding actions taken pursuant to the law and/or a lease document [6 O.C. 602.12-1];
- That, no administrative hearing body, including a board, committee or commission, is authorized to hear a complaint regarding actions taken pursuant to the law and/or a lease document [6 O.C. 602.12-2]; and
- That, the lessor is Land Management for purposes of registering grievances authorized under the law and complaints filed with the Oneida Judiciary shall name Land Management, as well as the specific lease program at issue [6 O.C. 602.12-3].

The Petitioner’s suggestions do not conflict with any express language and/or provision of the Leasing law. If, however, the Petitioner is requesting the Leasing law be amended to specifically address one or more of the issues raised within her Petition, like the Real Property law, amendments to the Leasing law would have to be developed in accordance with the Legislative Procedures Act and approved by the OBC. [6 O.C. 602.2-2].

Landlord-Tenant Law

The Landlord-Tenant law was established to “provide mechanisms for protecting the rights of landlords and tenants of the Nation’s rental programs.” [6 O.C. 611.1-1]. Its underlying policy is to afford a “fair process to all landlords and tenants of the Nation’s rental programs that preserves the peace, harmony, safety, health, general welfare and the Nation’s resources.” [6 O.C. 611.1-2].

The Landlord-Tenant law delegates authority to the CHD and Oneida Land Commission (“OLC”) to develop rules, pursuant to the Administrative Rulemaking law, as well as citation fees and penalty schedules, for the implementation, interpretation and/or enforcement of the law; provided, where such rules relate solely to premises administered with federal funding, the CHD has sole rule-making authority. [6 O.C. 611.3-1(g)].

With respect to the Nation’s rental programs, the Landlord-Tenant law states, in relevant part, that the CHD shall provide residential rental programs for the Nation’s elder members, low-income members and members in general. [6 O.C. 611.4-1]. To be eligible to participate in such programs, the law requires that applicants:

- Have no felony or drug convictions within the past two (2) years from the date of application, provided that a pardon or forgiveness received pursuant to the Pardon and Forgiveness law may provide an exception to this condition;
- Meet any other eligibility requirements set by the rental program’s rules, which may not be less strict than the law, but may be stricter; provided, rules developed for low-income members and families:
 - May not contain eligibility requirements that consider debt owed or evictions from entities other than the CHD; but
 - May contain eligibility requirements that consider debt owed to utility providers if the debt owed is two hundred dollars (\$200) or more. [6 O.C. 611.4-2(b) & (f)].

Like the Leasing law, the Landlord-Tenant law provides a process for grieving decisions made by the CHD under its delegation of authority. Said process is as follows:

- That, the Oneida Judiciary is granted jurisdiction to hear complaints filed for actions taken under the law and/or rental agreement;

- That, no administrative hearing body, including a board, committee or commission, is authorized to hear a complaint regarding actions taken under the law and/or rental agreement; and
- That, the landlord is CHD for purposes of registering grievances authorized under the law and complaints filed with the Oneida Judiciary shall name the CHD, as well as the specific program at issue. [6 O.C. 611.10-1 – 611.10-3].

The Landlord-Tenant law does restrict eligibility to participate in CHD’s rental programs when a previous eviction by CHD or a more recent felony/drug conviction exists; however, an exception is written into the law for a pardon or forgiveness from the Nation under its Pardon and Forgiveness law that could lift said restriction. In addition, the Landlord-Tenant law allows the CHD to set other eligibility requirements by rule so long as they are not less strict than that which is required under the law.

Although the Landlord-Tenant law does provide a process to overcome eligibility restrictions related to drug convictions, if the Petitioner is suggesting that the restrictions be lessened or the exceptions be expanded, it would likely require an amendment to the law, as opposed to any rule promulgated by the CHD on the issue because the CHD is only allowed to promulgate rules relating to eligibility that are consistent with or stricter than that which is provided for in the law. If this is Petitioner’s intent, amendments to the Landlord-Tenant law would have to be developed in accordance with the Legislative Procedures Act and approved by the OBC or, if applicable, the GTC. [6 O.C. 611.2-2].

Eviction and Termination Law

The Nation’s Eviction and Termination law was established to provide consistent procedures for terminating contracts and evicting occupants under the Nation’s rental and/or leasing programs that include due process and other protections for all parties involved. [6 O.C. 610.1-1]. The law’s underlying policy is to “provide fair termination and eviction processes that preserves the peace, harmony, safety, health, general welfare and the Nation’s resources.” [6 O.C. 610.1-2].

According to the Eviction and Termination law, the Nation, as the owner, may terminate a contract prior to the contract term and evict the occupant, if the occupant:

- Violates the terms of the contract;
- Is alleged to have violated any applicable law or rule; and/or
- Is alleged to have committed one or more nuisance activities. [6 O.C. 610.5-1].

The law defines nuisance as an occupant’s interference with another occupant’s use and enjoyment of the premises, including, but not limited to, harassment, disorderly conduct, battery, lewd and lascivious behavior, prostitution, theft, possession of stolen property, arson, illegal drug activity, gambling, animal violations, trespassing, weapons violations, habitual noise violations, execution of warrants, alcohol violations, obstruction/resisting and inspection related calls in which a law enforcement agency responds. [6 O.C. 610.3-1].

With respect to the eviction process, section 610.5-3 of the Eviction and Termination law governs the form and amount of notice that must be afforded to an occupant, as well as the manner in which notice must be served, before an eviction/termination may be carried out. For example:

- When due to non-payment of rent, the law states “the occupant’s contract is terminated if the owner gives the occupant notice requiring the tenant to pay rent or vacate on or before a date at least thirty (30) calendar days after the giving of the notice and if the occupant fails to pay accordingly.” [6 O.C. 610.5-3(a)].
- When due to waste or a non-payment related contract breach, the law states “the occupant’s tenancy is terminated if the owner gives the occupant a notice requiring the occupant to remedy the default or vacate the premises on or before a date at least thirty (30) calendar days after the giving of the notice, and if the occupant fails to comply with such notice....” [6 O.C. 610.5-3(b)].
- When due to a violation of law/rule or nuisance, the law states that the owner must have received a report of the violation/nuisance from, among other plausible sources, another occupant, law enforcement agency, or local district attorney’s office and then given the occupant written notice requiring the occupant to vacate on or before a date at least five (5) calendar days after the giving of the notice. [6 O.C. 610.5-3(c)(1)(A)-(B)].

When the eviction is based on a violation of law/rule or the creation of a nuisance, the Eviction and Termination law requires that the notice of eviction contain, at a minimum:

- The violation of law/rule, type of nuisance and/or breach of contract, with citations to the applicable law, rule and/or contract clause;
- A statement that the occupant may request a hearing with the Oneida Judiciary prior to the effective date of the termination provided on the notice, and that, if the occupant timely files for a hearing, there is an automatic stay on the eviction pending the determination of the Oneida Judiciary; and
- The contact information for CHD staff available to answer questions and/or hear concerns of the occupant related to the notice. [6 O.C. 610.5-3(d)(1)(A), (D) and (E)].

If the occupant does request a hearing with the Oneida Judiciary as noted within the eviction notice, the Eviction and Termination law allows the “Oneida Judiciary, in its discretion, to stay an eviction by honoring any alternative agreement regarding pending actions entered into by the occupant and a court of competent jurisdiction pending successful completion of the alternative agreement.” [6 O.C. 610.5-3(c)(4)]. This is true even if the owner met the burden of proof to support an eviction. [Id.].

In addition to the above, the Eviction and Termination law provides further due process relief for decisions rendered by the CHD under its delegated authority, as follows:

- That, the Oneida Judiciary is granted jurisdiction to hear complaints filed for actions taken under the law;
- That, no administrative hearing body, including a board, committee or commission, is authorized to hear a complaint regarding actions taken pursuant to the law and/or a rental agreement; and
- That, the owner is CHD for purposes of registering grievances authorized under the law and complaints filed with the Oneida Judiciary shall name CHD, as well as the specific program at issue. [6 O.C. 610.8-1 – 610.8-3].

The Eviction and Termination law sets the minimal amount of notice required for evictions relating to violations of laws/rules and/or creations of nuisances at five (5) calendar days. In her Petition, the Petitioner suggests that this is unconstitutional. Changes to the minimal amount of notice for

this type of infraction, as well as any other amendments to the process and/or notice governing evictions that would contradict any current provision, would have to be approved by the OBC and developed pursuant to the Legislative Procedures Act to avoid a conflict. [6 O.C. 610.2-2].

Legislative Procedures Act

The Legislative Procedures Act (“LPA”), enacted by the GTC in 2013, sets forth the requisite process for adopting laws of the Nation. [1 O.C. 109.2-2]. The requirements apply to all legislation considered by the OBC or forwarded for consideration to the GTC. [1 O.C. 109.1-1(a)].

The LPA established the Legislative Operating Committee (“LOC”), comprised of the five (5) OBC council members, to develop the Nation’s laws in accordance therewith. [1 O.C. 109.3-1(h) and 1 O.C. 109.4-2]. It further established the Legislative Reference Office (“LRO”) to support the LOC with the development of legislation and other items related thereto. [1 O.C. 109.3-1(i)].

Per section 109.5-1 of the LPA, any interested person may submit a request to the LRO for the development, amendment or repeal of a law. [1 O.C. 109.5-1]. From there, the request would have to be processed as follows to comply with the law:

- The LRO would place the request for legislation on the agenda of the next duly called LOC meeting wherein the LOC would decide whether to:
 - Accept the request and direct it be developed in accordance with the LPA; or
 - So long as the request did not come from a GTC directive by motion or resolution, deny the request in writing and include the reason therefor. [1 O.C. 109.5-2].
- If accepted, the following would have to occur before the legislation could be introduced to the OBC or, if applicable, the GTC, for consideration of adoption:
 - *Fiscal Impact Statement.* The agency/agencies selected by the LOC would have to prepare a fiscal impact statement for the proposed legislation, which is an estimate of the total fiscal year financial effects associated with the legislation to include startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an individual or agency to comply with the law after implementation [1 O.C. 109.6-1 and 109.3-1(c)];
 - *Legislative Analysis.* The LRO would have to prepare a legislative analysis, which is a plain language analysis, describing the important features of the legislation being considered and factual information to enable the LOC to make informed decisions regarding the legislation [1 O.C. 109.7-1 and 1 O.C. 109.3-1(g)];
 - *Public Review – Public Comment Period.* The LOC would have to approve and provide a public comment period that:
 - Shall remain open for no less than five (5) business days after the public meeting is held; and
 - Shall be noticed in accordance with section 109.8-2 of the LPA and shall provide interested persons a reasonable opportunity to submit data, views or arguments on the legislation [1 O.C. 109.8-1].
 - *Public Review – Public Meeting.* The LOC would have to hold a public meeting during the public comment period to solicit oral comments, the meeting of which:
 - Would have to be presided over by at least one (1) LOC member; and

- Would have to register all persons who attend and present oral comments [1 O.C. 109.8-3].
- *Public Review – Comments and Testimony.* The LOC would have to fully consider all written and oral comments that were received during the public comment period [1 O.C. 109.8-4];
- *Consideration.* Contingent upon satisfaction of the public review requirements, the LOC would have to decide whether to approve the adoption packet, consisting of, at least, the draft legislation, legislative analysis and fiscal impact, for forwarding to the OBC for consideration of adoption or, if applicable, forwarding on to GTC for possible adoption [1 O.C. 109.9-1]; and
- *Adoption.* If approved by the LOC, the OBC would have to decide whether to:
 - Adopt the legislation, which requires a majority vote of the OBC and an adopting resolution;
 - Deny/defer the legislation; or
 - Forward the legislation to the GTC for consideration of possible adoption in accordance with the laws governing GTC action [1 O.C. 109.9-2].

Unless specified otherwise in the resolution or legislation at issue, the law, amendment or repeal would become effective within ten (10) business days of adoption. [1 O.C. 109.9-3].

But for the five (5) day minimal notice requirement for evictions relating to unlawful activities/ nuisances, the Petitioner’s suggestions regarding the eviction process, including opportunities for redemption, may be attainable without amendment to the Nation’s laws using some of the due process protections already set forth therein. However, changes to the five (5) day notice period or the current processes/relief set forth within the laws that govern the Nation’s rental programs, as well as evictions therefrom, would have to occur in accordance with the LPA.

Administrative Rulemaking.

The OBC adopted the Administrative Rulemaking law to provide a process for the adoption and amendments of the Nation’s administrative rules. [1 O.C. 106.1-1]. Its underlying policy is to ensure there exists an efficient, effective and democratic process for enacting and revising administrative rules, and that authorized agencies act in a responsible and consistent manner when enacting and revising administrative rules. [1 O.C. 106.1-2].

Per the Administrative Rulemaking law, only authorized agencies may promulgate rules. [1 O.C. 106.4-1]. An authorized agency is defined as “any board, committee, commission, department, program or officer of the Nation that has been granted rulemaking authority.” [1 O.C. 106.3-1(a)]. And, rulemaking authority is defined as “the delegation of authority to authorized agencies found in the Nation’s laws, other than this law, which allows authorized agencies to implement, interpret and/or enforce a law of the Nation.” [1 O.C. 106.3-1(i)].

Under the Administrative Rulemaking law, authorized agencies may promulgate rules interpreting the provisions of any law enforced or administered by it; provided that, it does not exceed the rulemaking authority granted under the law for which the rule is being promulgated.” [1 O.C. 106.4-3]. When developing rules under the Administrative Rulemaking law, the following applies:

- Rules developed pursuant to the law have the same force and effect as the law which delegated the authorized agency rulemaking authority and shall be followed by both the general public and the authorized agency promulgating the rule; and
- Rules developed pursuant to the law shall not conflict or supersede a law, policy or rule of the Nation or a resolution passed by the OBC or the GTC. [1 O.C. 106.4-1(a) and (b)].

In addition, authorized agencies are required to adhere to the following process when promulgating rules under the Administrative Rulemaking law:

- That, the proposed rule shall be preceded by a public comment period that includes a public meeting to be held, in pertinent part, as follows:
 - *Notice.* The authorized agency shall set a date for the public meeting and have a public meeting notice published in the Kalihwisaks and on the Oneida Register not less than ten (10) business days prior to the meeting.
 - *Requirements for Public Meeting Notice.* The public meeting notice shall include:
 - The date, time and location of the scheduled public meeting;
 - Information for electronically accessing the proposed rule and summary report and a statement that hard copies of the materials will be available with the authorized agency; and
 - The name, address, phone number and other appropriate information to submit written comments on the rule and the time period during which the authorized agency shall accept written comments.
 - The authorized agency shall audio record the public meeting and persons who provide oral comments shall state their name for the record; and
 - The authorized agency shall hold the record open for the submission of written comments for a minimum of five (5) business days following the public meeting. [1 O.C. 106.6-1 and 106.6-2].
- That, after the public comment period has expired and the authorized agency has considered all public comments received, the authorized agency shall submit the proposed rule and all items contained in the administrative record to the LOC [1 O.C. 106.7-1];
- That, the LOC is then responsible for certifying that the proposed rule meets the following requirements:
 - That promulgation of the rule complies with the procedural requirements contained in the Administrative Rulemaking law;
 - That the administrative record is complete; and
 - That the rule does not exceed its rulemaking authority or conflict with any other law, policy, rule or resolution of the Nation. [1 O.C. 106.7-2].
- That, upon receipt of a complete rule certification submission, the LOC shall take one (1) of the following actions:
 - If it determines the authorized agency complied with the certification requirements, the LOC shall certify the proposed rule and forward the administrative record to the OBC; or
 - If it determines the authorized agency has not complied with the certification requirements, the LOC shall not certify the proposed rule and shall return it to the authorized agency with specific feedback as to which requirements were not met. [1 O.C. 106.7-3].

- That, the OBC shall review and consider the proposed rule, administrative record, as well as the LOC’s certification of compliance, and either:
 - Adopt the proposed rule through a motion approved by a majority vote of the OBC; or
 - Deny adoption of the proposed rule if the OBC has any concerns and/or requested revisions to the rule. [1 O.C. 106.8-1 and 106.8-2].

Once an administrative rule is adopted, the authorized agency is required to conduct a review of the rule at least once every two years following the date of adoption by the OBC. [1 O.C. 106.12-1]. During said review, the authorized agency may consider, but is not limited to the consideration of, whether the rule continues to serve its intended purpose and if any amendments to the rule are necessary. [1 O.C. 106.12-2]. The authorized agency has the authority to decide if amendments to a rule are necessary to pursue and the OBC shall not compel an authorized agency to amend a rule. [1 O.C. 106.12-3].

With respect to due process protections, the Administrative Rulemaking law provides:

- Any entity of the Nation hearing an appeal or contest of an action taken pursuant to rules created under the authority delegated to an authorized agency and the requirements of this law, upon consideration of the rule and the circumstances regarding the action taken may take any one (1) of the following actions:
 - Uphold the action taken,
 - Reverse or modify the action taken, or
 - If at the second level of appeal, remand the matter for further consideration. [1 O.C. 106.14-1(a)-(c)].

And, when hearing an appeal or contest of an action taken pursuant to rules created under the authority delegated to an authorized agency, the hearing body shall recognize that the authorized agency is accepted by the Nation as the subject matter expert in the given field and shall provide the authorized agency with deference by upholding the action unless it finds that the action:

- Amounts to a violation of the Nation’s Constitution;
- Was in excess of the authorized agency’s rulemaking authority or is otherwise unlawful;
- Was clearly erroneous in view of the entire administrative and factual records;
- Was arbitrary or capricious; or
- Exhibited a procedural irregularity which would be considered a harmful error that may have contributed to the final decision and if said irregularity were not present, the decision would have been different. [1 O.C. 106.14-2(a)-(e)].

Rules Promulgated Under the Administrative Rulemaking Law.

Per the Landlord-Tenant law’s delegation of rule-making authority, the following rules, of possible relevance to the Petition, were promulgated in accordance with the Administrative Rulemaking law:

- Title 6. Property and Land – Chapter 611, Landlord-Tenant, Rule # 1 entitled, *General Rental Program Eligibility, Selection and Other Requirements* (“Rule No. 1”);
- Title 6. Property and Land – Chapter 611, Landlord-Tenant, Rule # 2 entitled, *Income Based Rental Program Eligibility, Selection and other Requirements* (“Rule No. 2”); and

- Title 6. Property and Land – Chapter 611, Landlord-Tenant, Rule # 4 entitled, *Income Based Rent to Own Program Eligibility, Selection and Other requirements* (“Rule No. 4”).

Rule No. 1 was established to provide additional eligibility requirements, selection procedures and general requirements to govern the CHD’s general rental programs. [Rule No 1, 1.1-1]. It provides, in part, that applicants who have had a rental agreement with the CHD subject to an eviction and termination within two (2) years from the date of the application are not eligible to participate in the general rental program. However, a grant of a pardon or forgiveness pursuant to the Nation’s Pardon and Forgiveness law may result in an otherwise ineligible tenant becoming eligible. [Rule No. 1, 1.4-6]. Amendments to the rule may only occur if jointly approved by the CHD and OLC pursuant to the procedures set forth in the Administrative Rulemaking law. [Rule No. 1, 1.2-2].

The purpose of Rule No. 2 is to provide additional eligibility requirements, selection procedures and general requirements to govern the CHD’s income-based rental programs. [Rule No. 2, 2.1-1]. Like Rule No. 1, Rule No. 2 provides, in pertinent part, as follows with respect to eligibility:

- Applicants that have had a rental agreement with the CHD subject to an eviction and termination within two (2) years from the date of the application are not eligible to participate in the income-based rental program [Rule No. 2, 2.4-5];
- Applicants with any of the following types of convictions are not eligible for participation in the income-based rental program:
 - A drug conviction within three (3) years from the date of application;
 - A felony conviction within five (5) years from the date of application; and/or
 - A criminal conviction based upon an act of violence within two (2) years from the date of application. [Rule No. 2, 2.4-6(a)-(c)].
- A grant of a pardon or forgiveness pursuant to the Nation’s Pardon and Forgiveness law may result in an otherwise ineligible tenant becoming eligible. [Rule No. 2, 2.4-7].

If, following review of a complete application or annual renewal, an applicant is deemed ineligible to participate in the income-based rental program based on the Landlord-Tenant law and/or rules, the CHD shall notify the applicant of the cause of the ineligibility and how the applicant may become eligible in the future. [Rule No. 2, 2.5-3]. At such time, the CHD is also required to inform the applicant of other housing opportunities offered by the Nation for which the applicant may be eligible, if applicable. [Rule No. 2, 2.5-3].

Rule No. 4 was established to provide additional eligibility requirements, selection procedures and general requirements to govern the CHD’s income-based homeownership program. [Rule No. 4, 4.1-1]. Its policy is to afford members of the Nation homeownership opportunities without requiring credit checks or down payments and to develop, maintain and operate affordable housing in safe, sanitary and healthy environments within the Reservation. [Id.]. Rule No. 4 contains eligibility requirements much like Rule Nos. 1 and 2, with the same exception when a pardon or forgiveness has been granted by the Nation pursuant to its Pardon and Forgiveness law. [Rule No. 4, 4.4-6 and 4.4-7].

Depending upon how the Petitioner’s suggestions are interpreted or explained by the Petitioner, amendments to one or more of the rules governing the Nation’s rental programs may be necessary to avoid a conflict. If amendments are necessary, they would have to be developed in accordance with the Nation’s Administrative Rulemaking law.

Conclusion

After a review of all applicable laws and policies of the Nation, it has been determined that the adoption of the Petition: L. Elm – Real Property Law Eviction and Termination would not have a legislative impact; provided, if any of the Petitioner’s suggestions would require changes to any law of the Nation and/or rule promulgated thereunder, it would have to occur in accordance with the Legislative Procedures Act and Administrative Rulemaking law, respectively.

Requested Action

Accept the statement of effect for Petition: L. Elm – Real Property Law Eviction and Termination.