



Title 6. Property and Land – Chapter 612

MORTGAGE and FORECLOSURE

Rule # 1 – Mortgage Programs, Guidelines and Requirements

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1.1. Purpose and Effective Date

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

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

1.2. Adoption, Amendment and Repeal

1.2-1. This rule was jointly adopted by the Comprehensive Housing Division and Land Commission in accordance with the procedures of 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 This rule may be amended or repealed by the joint approval of the Comprehensive Housing Division and Land Commission pursuant to the procedures set out in the Administrative Rulemaking law.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 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 control.

1.2-5. This rule supersedes all prior rules, regulations, internal policies or other requirements relating to the Mortgage and Foreclosure 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) “Appraisal” means the valuation of real property by the estimate of an authorized person.

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

(c) “Cosmetic” means a renovation that improves the appearance of a building without

changing its size, or improving its structure, safety, or code integrity and doesn't correct a problem that interrupts the use of the home or threatens to cause permanent damage. Examples include, but are not limited to: painting, flooring, fixtures, landscaping.

(d) "Home Inspection" means an examination of a property's condition.

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

(f) "Mortgagor" means the borrower in a mortgage.

(g) "Nation" means the Oneida Nation.

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

(i) "Refinance" 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.

(j) "Title" means legal evidence of a person's ownership rights in real property.

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

1.4. Mortgage Eligibility Requirements

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

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

1.4-3. *Debt to Income Ratio.* In order to be eligible, mortgage applicants are required to have a debt to income ratio of thirty-six percent (36%) or lower.

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

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

(1) May not include child support payments;

(2) May not include education grants/scholarships; and

(3) Shall include per capita payments to the extent that receipt of per capita payment may be verified for each of the five (5) years prior to mortgage application.

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

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

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

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

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

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

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

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

1.5. Mortgage Application

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

1.6. Appraisal, Inspection and Closing Costs

1.6-1. Mortgagors are responsible for paying all appraisal and inspection costs.

1.6-2. The Comprehensive Housing Division shall assess administrative closing fees against mortgagors at the rate of one percent (1%) of the total mortgage amount, provided that the Comprehensive Housing Division shall offer a discounted rate of one-half percent (0.5%) to mortgagors that complete a home ownership informational session from the list approved by the Land Commission by written resolution.

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

1.7. Interest Rates and Payment Terms

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

1.7-2. *Modifying the Interest Rate Program Wide.* The Land Commission may approve a program-wide interest rate change at any time, by written resolution. The Comprehensive

Housing Division shall ensure that such interest rate changes are applied to all mortgages offered.

1.7-3. *Payment Terms.* The Comprehensive Housing Division shall base payment terms on the mortgagor's monthly income and expenses and the amount of the total purchase price of the property, provided that the Comprehensive Housing Division staff shall use the same calculation of income that was used for determining the debt to income ratio.

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

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

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

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

1.7-4. *Individual Modifications to Interest Rates and/or Payment Terms.* If the market inhibits the sale, by either the Nation or an individual Tribal member, of a home appraised at \$250,000 or more, the Land Commission may adjust the offered mortgage rate and/or the mortgage duration as applied to an individual piece of real property.

1.8. Subordination Agreement

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

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:

- (a) The purchase of a home upon land owned by the Nation, where the selling party may be either by the Nation or an individual Tribal member;
- (b) The purchase of a home upon land owned by the Nation with financing included for required/recommended home repairs;
- (c) A down payment to purchase land and/or improvements except where a Comprehensive Housing Division mortgage is financing the purchase;
- (d) Construction of a new home upon land owned by the Nation;
- (e) Home repairs or upgrades on an existing home already owned by the Tribal member; and
- (f) To borrow against the homeowner's equity in the property.

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

1.10-3. *Requirements when Simultaneously Financing the Purchase of a Home and Home*

Repairs. When simultaneously financing the purchase of a home and home repairs, the loan to value ratio may be a maximum of one hundred percent (100%) of the value subject-to the scheduled repairs plus a construction contingency of five percent (5%) of the amount of the mortgage allocated to the scheduled repairs.

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

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

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

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

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

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

1.10-4. *Requirements for Financing Mobile, Modular or Pre-fabricated Homes.* In order for the purchase of a mobile, modular or pre-fabricated home that is not a permanent poured foundation/basement to be eligible for a TLC loan, it must be less than five (5) years old based on model year. A mobile, modular or pre-fabricated home that is on a permanent poured foundation/basement is eligible for a TLC loan regardless of the home's model year.

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

(1) A permanent poured foundation/basement;

(2) Four foot (4') frost walls with eight inch (8") blocks; or

(3) An anchored floating slab.

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

(a) The following additional documents are required to be submitted to the

Comprehensive Housing Division in order for an applicant to be eligible for a TLC construction loan:

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

1.10-6. *Limitation on Equity Loans.* Tribal members with equity in their home and improvements may borrow a maximum amount of \$50,000 against the equity in their home, provided that equity loans are only available if the home and improvements are located on land owned by the Nation.

1.11. Refinancing a Loan Held by the Nation

1.11-1. *No Refinancing of Individual Fee Land Mortgages.* Refinancing is not available for mortgages of property that are individual fee lands. For purposes of this section, “individual fee land” means real property held in fee status by an individual or group of individuals.

1.11-2. *When Refinancing is Available.* Refinancing is only available for the consolidation of mortgages or if the refinancing is required to reflect a change in property rights and responsibilities or to maintain home health and safety. Where a refinancing is completed in the case of divorce, any amount required to be paid by the spouse whose name will remain on the mortgage to the spouse whose name is to be removed from the mortgage may be included in the new loan amount.

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

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

1.12. Final Decision

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

End.

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