

Title 6. Property and Land – Chapter 612
MORTGAGE and FORECLOSURE
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612.1. Purpose and Policy.

612.1-1. *Purpose.* It is the purpose of this law to set the standards and requirements for participation in the mortgage programs and to prescribe the foreclosure process required to be used in the event of a default of a mortgage.

612.1-2. *Policy.* It is the policy of this law to administer mortgage programs aimed at maintaining and improving the standard of living for Tribal members, while protecting the Nation’s assets and expanding the Tribal land base.

612.2. Adoption, Amendment, Repeal.

612.2-1. This law is adopted by the Oneida Business Committee by Resolution BC-08-10-16-K.

612.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

612.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

612.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

612.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

612.3. Definitions.

612.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Abandoned” means the relinquishment of possession or control of a mortgaged premises whether or not the mortgagor or the mortgagor’s assigns have relinquished equity and title to the mortgaged interest.

(b) “Agreement to Cure Default” means a signed contract between a customer of a mortgage program and the Comprehensive Housing Division on behalf of the Nation whereby the parties agree upon a temporary payment schedule to allow the mortgagor to cure a default.

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

(d) “Business Day” means Monday through Friday from 8:00 a.m. - 4:30 p.m., excluding holidays recognized by the Nation.

- (e) “Comprehensive Housing Division” means the entity responsible for housing matters specifically related to mortgages and foreclosures as defined by Oneida Business Committee Resolution.¹
- (f) “Default” means a failure to comply with the payment terms of a mortgage.
- (g) “Foreclosure” means a legal proceeding initiated by the Nation to terminate a mortgagor’s interest in real property, by taking possession of the real property as a partial or complete satisfaction of a default.
- (h) “Home Inspection” means an examination of a property’s condition.
- (i) “Judiciary” means the judicial system established by General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.
- (j) “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.
- (k) “Mortgagor” means the borrower in a mortgage.
- (l) “Nation” means the Oneida Nation.
- (m) “Notice of Default” means a formal and dated notice of default.
- (n) “Personal Property” means any property that does not fit the definition of real property and is generally movable.
- (o) “Real Property” means land and anything growing on, attached to, or erected on the land, excluding anything that may be severed without injury to the land.
- (p) “Redemption Period” means the timeframe during which a defaulting mortgagor may recover a mortgaged interest that is the subject of a judgment of foreclosure by paying the outstanding debt owed.
- (q) “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.
- (r) “Reservation” means all the property within the exterior boundaries of the reservation of the Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.
- (s) “Rule” means a set of requirements, including citation fees and penalty schedules, jointly enacted by the Land Commission and the Comprehensive Housing Division in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this law.
- (t) “Title” means legal evidence of a person’s ownership rights in real property.
- (u) “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 See BC Resolution 09-27-17-H providing that the Comprehensive Housing Division means the division within the Oneida Nation under the direction of the Comprehensive Housing Division Director which consists of all residential services offered by the Nation, including but not limited to, all rental programs, the rent-to-own program, and the residential sales and mortgages programs.

(v) “Tribal Land” means any land held in fee or trust status by the Nation within the reservation.

(w) “Tribal Member” means an enrolled member of the Nation.

612.4. Mortgage Programs.

612.4-1. *Available Mortgage Purposes.* Consistent with available funds, the Comprehensive Housing Division shall provide mortgage programs for the following purposes and shall establish rules naming said programs and providing the specific requirements for each program:

- (a) Financing the purchase or down payment of existing homes and lands;
- (b) Construction of new homes;
- (c) Repairs and improvements to existing homes;
- (d) Refinancing existing mortgages.

612.4-2. *Mortgage Eligibility Requirements.* In order to be eligible for a mortgage, applicants shall meet the following conditions:

- (a) Be at least eighteen (18) years of age at the time of the application;
- (b) Be a Tribal member(s);
 - (1) If the application is for joint applicants, at least one (1) applicant shall be a Tribal member.
 - (2) For married joint applicants, both spouses shall be named applicants on the application and joint mortgagors.
- (c) Not have a discharged bankruptcy within two (2) years from the date of the application;
- (d) Not be involved in a bankruptcy proceeding that has not yet been discharged at the time of the application; and
- (e) Not have had a mortgage foreclosed upon within the seven (7) years from the date of the application.

612.4-3. *Mortgage Selection.* The Land Commission and the Comprehensive Housing Division shall jointly develop rules governing the selection of applicants for the issuance of a mortgage. At a minimum, the Land Commission and the Comprehensive Housing Division shall ensure that the mortgage selection rules require that the mortgagor:

- (a) Have an acceptable credit rating as defined in the rules;
- (b) Have an acceptable debt to income ratio as defined in the rules;
- (c) Have all delinquent debts owed to the Nation paid in full prior to signing the mortgage document;
- (d) Have no more than the allowable amount of accumulated judgments, collections and/or profit and loss write-offs based on the rules, and, if any debts are being paid through a debt collector, the monthly payment must be listed as a monthly debt on the application;
 - (1) In the rules, the Land Commission and the Comprehensive Housing Division shall provide the allowable timeframe, in relation to the date of selection, for applicants to bring any judgments, collections and/or profit and loss write-offs within the allowable amount.
 - (2) Applicants failing to bring said debts within the allowable amount based on the timeframe provided become ineligible for the mortgage.

612.4-4. *Mortgage Requirements.* The Land Commission and the Comprehensive Housing Division shall jointly develop rules governing the requirements of mortgages entered into by the

Comprehensive Housing Division. At a minimum, the Land Commission and the Comprehensive Housing Division shall ensure that the mortgage requirement rules:

- (a) Require the 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;
- (b) Require 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;
- (c) Require that the mortgage be the first or second secured interest on the real property;
- (d) Require proof of clear title, as defined by the rules, prior to entering into a mortgage;
- (e) Establish which administrative fees, if any, that may be assessed in the mortgage;
- (f) Require that the mortgage be for real property located within the reservation;
- (g) Require the mortgage include interest at a rate provided in the rules.

612.4-5. *Non-Tribal Member Spouses.* The following applies when one of the mortgagors is a non-Tribal member:

- (a) *Death of the Tribal Member Spouse.* So long as the mortgage is not defaulted upon, the death of the Tribal member spouse does not affect a mortgage. If the non-Tribal member spouse defaults on the mortgage, the mortgage is subject to the regular foreclosure proceedings as outlined in this law.
- (b) *Refinancing due to Death or Divorce.* In the event that a mortgagor seeks refinancing due to the death or divorce of a spouse, the mortgagor shall comply with the refinancing rules established pursuant to Section 612.4-1(d).

612.5. Default.

612.5-1. *Notice of Default.* The mortgage officer shall send a notice of default to mortgagors by first class mail for each month for which the mortgagor defaults on the subject mortgage, provided that the mortgage officer shall send the notices of default a minimum of thirty (30) calendar days apart and ensure that the notice contains the following information:

- (a) The notice number;
- (b) The dates of the default;
- (c) The amount of the default;
- (d) The requirement to cure the default, including important dates affecting the mortgagor's rights;
- (e) The mortgagor's available options to cure a default; and
- (f) The actions that may be taken by the Nation if the default is not timely cured.

612.6. Agreement to Cure Default.

612.6-1. *Entering into an Agreement to Cure Default.* The Comprehensive Housing Division may, in its full discretion, work with mortgagors able to pay a mortgage default over time to enter into an agreement to cure default over a reasonable time not to exceed one (1) year.

- (a) A mortgagor may enter into one (1) agreement to cure default per twelve (12) month period. A mortgagor may request more than one (1) agreement to cure the default in a twelve (12) month period if the mortgagor is able to demonstrate the additional agreement is necessary due to extenuating circumstances faced by the mortgagor, provided that, the director of the Comprehensive Housing Division shall approve any such agreements before said agreement may become effective.

(b) The Comprehensive Housing Division may not permit mortgagors to increase payroll deduction payments to cure a default without first entering into an agreement to cure default.

(c) In the event a mortgagor violates the terms of an agreement to cure default, the Comprehensive Housing Division shall enforce the remedies afforded the Nation in the agreement to cure default and may not amend the terms of an unsatisfied agreement to cure default without the approval of the director of the Comprehensive Housing Division.

612.6-2. *Elements of an Agreement to Cure Default.* All agreements to cure default entered into by the Comprehensive Housing Division are required to contain the following elements:

(a) The effective date of the agreement;

(b) The parties to the agreement;

(c) The amount of payments under the mortgage and any agreements to cure default previously entered into;

(d) A statement that the mortgage and, if applicable, any previous agreement to cure default are in default;

(e) The amount of the increased payments under the agreement;

(f) The terms of the agreement, including the remedies available to the Nation in the event that the mortgagor violates the terms of the agreement; and

(g) Notice that a failure to follow the terms of the agreement may result in the immediate filing of a foreclosure.

612.7. Foreclosure.

612.7-1. *Decision to Foreclose.* Any mortgage that is in default for two (2) consecutive months may be subject to foreclosure, provided that the Nation has complied with the notice of default requirement in section 612.5-1.

(a) After the two (2) notices of default have been sent, the Comprehensive Housing Division shall determine whether initiating foreclosure proceedings would be in the best interest of the Nation, provided that the Comprehensive Housing Division shall abide by the foreclosure determination standard operating procedure approved by both the director of the Comprehensive Housing Division and the Land Commission.

(1) Should the Comprehensive Housing Division determine that initiating a foreclosure is in the best interest of the Nation, the Comprehensive Housing Division shall submit a complaint to the Judiciary in compliance with the Nation's laws and the Judiciary's requirements. The complaint may not be submitted until after thirty (30) calendar days from the date of the second notice of default.

(2) The Comprehensive Housing Division shall include in all complaints a demand judgment for any deficiency that may remain due to the Nation after the Nation's reclamation of title against every party who is personally liable for the debt secured by the mortgage that is the subject of the foreclosure.

612.7-2. *Mortgage Satisfaction or Agreement to Cure Default Prior to Judgment of Foreclosure.* If the mortgagor satisfies the mortgage that is the subject of a foreclosure complaint or the parties reach an agreement to cure default prior to the Judiciary's entering of a judgment of foreclosure, the Judiciary shall dismiss the foreclosure complaint.

(a) *Mortgage Satisfaction.* A mortgagor named in a foreclosure complaint may satisfy the subject mortgage at any time prior to the Judiciary's entering of a judgment of foreclosure. Under such circumstances, the mortgagor shall submit to the Judiciary proof

of payment in full of the mortgage principal, any interest owed and any court costs incurred by the Nation. Upon receipt of verified proof of satisfaction, the Judiciary shall dismiss the foreclosure complaint based on satisfaction of the mortgage.

(b) *Agreement to Cure Default.* Should the Nation and the mortgagor reach an agreement to cure default in accordance with section 612.6 after foreclosure proceedings have been initiated, which may include provisions requiring the mortgagor to reimburse the Nation for any court costs incurred, the mortgagor shall submit to the Judiciary a copy of the executed agreement to cure default. Upon receipt of an executed agreement to cure default, the Judiciary shall dismiss the foreclosure complaint without prejudice based on the agreement to cure default.

612.7-3. *Judgment of Foreclosure.* If the Judiciary finds in favor of the Nation, it shall issue a judgment of foreclosure. At a minimum, the Judiciary shall include the following in each judgment of foreclosure:

- (a) A description of the mortgaged premises;
- (b) The amount of the mortgage debt due;
- (c) The mortgagor's redemption period;
- (d) An order to vacate the mortgaged premises within thirty (30) calendar days of the judgment;
- (e) An order transferring title of the mortgaged premises to the Nation as partial or full payment of the amount of mortgage debt then due;
- (f) So long as the Nation's complaint reserves the right to demand a judgment of deficiency for costs that may remain due after the transfer of title to the Nation pursuant to foreclosure, an order recognizing the Nation's reserved right, which may include sums advanced by the Nation for insurance, necessary repairs, inspection costs, appraisal fees and other costs; and
- (g) An order that within seven (7) months of receipt of a judgment of foreclosure, the Nation submit either a motion demanding a judgment of deficiency or a motion to enforce the judgment of foreclosure, each of which are required to include a final accounting and a confirmation of appraisal.

612.7-4. *Redemption Period.* The Judiciary shall afford all mortgagors subject to a judgment of foreclosure a redemption period. To redeem a real property interest, the mortgagor shall pay the full amount of the mortgage debt due and any costs incurred by the Nation for insurance, necessary repairs, inspection costs, appraisal fees and other costs.

(a) *Occupied Premises.* The required redemption period for occupied premises is six (6) months. Absent an affirmative finding of abandonment, the Judiciary shall presume that premises are occupied premises.

(b) *Abandoned Premises.* The required redemption period for abandoned premises is, at a minimum, five (5) weeks. A redemption period based on abandoned premises requires an affirmative finding of abandonment by the Judiciary based on evidence submitted by the Comprehensive Housing Division on behalf of the Nation.

(1) In determining whether the mortgaged premises have been abandoned, the Judiciary shall consider the totality of the circumstances, including the following:

- (A) Boarded, closed or damaged windows or doors to the premises;
- (B) Missing, unhinged or continuously unlocked doors to the premises;
- (C) Terminated utility accounts for the premises;
- (D) Accumulation of trash or debris on the premises;

(E) At least two (2) reports to law enforcement officials of trespassing, vandalism, or other illegal acts being committed on the premises when the mortgagor is not present; and

(F) Conditions that make the premises unsafe or unsanitary or that make the premises in imminent danger of becoming unsafe or unsanitary.

(2) The Comprehensive Housing Division may include testimony from a representative of the city, town, village or county where the mortgaged premises is located as part of its evidence of abandonment.

(c) *Redeemed Premises.* Should the mortgagor successfully redeem the mortgaged interest that is the subject of a judgment of foreclosure, the Nation shall issue the mortgagor a certificate of redemption. Upon receipt of a certificate of redemption, the mortgagor shall file a motion to vacate the judgment of foreclosure with the Judiciary. Upon receipt from the Judiciary, the mortgagor shall duly record the order to vacate the judgment of foreclosure with the Oneida Nation Register of Deeds.

612.7-5. *Mortgage Holder's Responsibilities upon Receipt of a Judgment of Foreclosure.* Upon receipt of a judgment of foreclosure, the Comprehensive Housing Division, on behalf of the Nation as the mortgage holder, shall:

(a) Secure and take possession of the real property once the timeframe in the order to vacate has expired.

(1) The Comprehensive Housing Division shall provide the mortgagor notice of when the property's locks are scheduled to be changed, which, at a minimum, includes the following:

(A) The property address;

(B) The date and time the locks are scheduled to be changed;

(C) Notice to mortgagor that an Oneida Police Officer will be present while the locks are being changed;

(D) Information on how the disposition of personal property will be managed based on section 612.7-5(a)(3);

(E) The contact information for Comprehensive Housing Division staff whom the mortgagor may contact in regards to the property; and

(F) A copy of the judgment of foreclosure.

(2) The Comprehensive Housing Division shall contact the Oneida Police Department to request that an Oneida police officer be on the scene while the locks are being changed.

(3) In the event the mortgagor has left personal property in the home, he or she may retrieve said personal property by contacting the Comprehensive Housing Division staff listed on the work order. The Comprehensive Housing Division shall hold personal property for a minimum of five (5) business days.

(A) The Comprehensive Housing Division shall keep a written log of the date and the work time the Nation's staff expends storing and/or removing personal property and/or removing/disposing of debris left at the property after the expiration of the timeframe provided in the order to vacate.

(B) The Comprehensive Housing Division and the Land Commission shall jointly create rules further governing the disposition of personal property.

(b) Order a title report from the Land Title and Trust Department with specific instructions to contact the Accounting Department to verify whether the mortgagor owes any outstanding debts to the Nation and based on the title report shall:

(1) Seek payment of outstanding water bills and/or other liens or charges appearing on the tax rolls from the mortgagor. In the event of a failure to pay, the Nation shall make payment and include such costs in the Nation's final accounting required by the judgment of foreclosure and as explained in section 612.7-5(e);

(2) Request proof of payment of any judgments noted on the title report which can be attached to the real property;

(3) Request proof of satisfaction of any mortgage liens issued by an outside financial institution other than the Nation, provided that, said mortgage liens may not be satisfied by the Nation until the redemption period has either expired or been terminated by the Judiciary.

(c) Order an appraisal of the real property to be completed;

(d) Order a home inspection, including a well and septic inspection, of the real property to be completed and based on the findings of the home inspection shall coordinate which repairs will be completed.

(1) In order for repair costs to be included in a judgment of deficiency 612.7-3(f), the Nation shall include the following in its demand for the said judgment:

(A) A record of all receipts for materials and invoices for services related to the said repairs;

(B) A record of all hours expended by the Nation's staff related to the said repairs; and

(C) Photographic evidence demonstrating the condition of the real property both before and after the repairs were made.

(2) If, based on the home inspection, the Comprehensive Housing Division determines it to be in the best interest of the Nation to raze a foreclosed upon property, it may do so in accordance with the rules which the Comprehensive Housing Division and the Land Commission shall jointly develop. Any costs related to the razing of a property may be included in the Nation's demand for a judgment of deficiency.

(e) Wrap up the foreclosure by filing with the Judiciary either a motion demanding a judgment of deficiency or a motion for enforcement of the judgment of foreclosure.

(1) *Demand for a Judgment of Deficiency.* The Nation shall file a demand for a judgment of deficiency if the total of the amount of the mortgage debt due in the judgment of foreclosure and the sums advanced by the Nation for insurance, necessary repairs, inspection costs, appraisal fees and other costs exceeds the value of the real property based on the appraisal. A demand for a judgment of deficiency is required to include a confirmation of appraisal and an accounting of all sums advanced by the Nation.

(2) *Motion for Enforcement of the Judgment of Foreclosure.* The Nation shall file a motion for enforcement of the judgment of foreclosure if the total of the amount of the mortgage debt due in the judgment of foreclosure and the sums advanced by the Nation for insurance, necessary repairs, inspection costs, appraisal fees and other costs are less than or equal to the value of the real property based on the

appraisal. If the total of the amount of the mortgage debt due in the judgment of foreclosure and the sums advanced by the Nation for insurance, necessary repairs, inspection costs, appraisal fees and other costs are less than the value of the real property based on the appraisal, the Comprehensive Housing Division shall include in the motion to enforce a copy of the signed apron issued to the mortgagor providing the refunded amount.

612.7-6. *Resale Following Foreclosure.* The Comprehensive Housing Division may begin advertising a foreclosed upon property for re-sale immediately following its receipt of an order to enforce the judgment of foreclosure, provided that it may not complete a sale of said property until the mortgagor's appeal rights have expired.

612.8. Appeal Rights.

612.8-1. *Decisions of the Comprehensive Housing Division are Final.* All decisions made by the Comprehensive Housing Division in regards to the mortgage programs provided under this law are final decisions and are not subject to appeal.

612.8-2. *Appeal of a Foreclosure.* A mortgagor whose real property has been foreclosed upon may appeal a determination made by the Judiciary in accordance with the Judiciary law and the Rules of Appellate Procedure.