

CHAPTER 1. TRIBAL MEMBER LAND LEASING CODE

§37-1-1 Citation; Authority and Purpose

This Chapter may be referred to as the “Tribal Member Land Leasing Code” and is enacted pursuant to Article VIII, Section 1, Subsection (i) of the Revised Constitution and Bylaws of the Tribe. The purposes of this Chapter is to expand upon information provided in the HEARTH Act regarding eligibility, administration, inheritability, and enforcement related to leasing of Tribal Lands for use and occupancy by Tribal Members.

§37-1-2 Definitions

- (1) “Agricultural Land” means Tribal Lands suited for Agricultural Purposes.
- (2) “Agricultural Purposes” means the right to use and occupy Tribal Lands for the purpose of producing food, feed, and fiber commodities, livestock and poultry, bees, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced as well as the raising of domestic animals and wildlife in domestication or a captive environment.
- (3) “Community” means one of the Choctaw communities recognized in the Tribe’s Revised Constitution and Bylaws, the geographical boundaries of which are described in Title XXXIII of the Choctaw Tribal Code. Tribal Lands in Lauderdale County, Tennessee are considered a “Community” for the purposes of this Chapter.
- (4) “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 or persons declared legally incompetent.
- (5) “HEARTH Act” means the Helping Expedite and Advance Responsible Tribal Home Ownership Act of July 30, 2012, Pub. L. 112-151, 126 Stat. 1150, 25 U.S.C. § 415, as implemented by the Mississippi Band of Choctaw Indians HEARTH Act Leasing Regulations, adopted by Tribal Council Resolutions CHO 17-038 and CHO 19-039 and approved by the Department of the Interior on March 5, 2019 with notice published in the Federal Register on April 10, 2019, Vol. 84, No. 69, pages 14390-14391.
- (6) “Inoperable Motor Vehicle” means a motor vehicle which cannot be self-propelled because of a mechanical defect or malfunction.
- (7) “Legally Emancipated Minor” means a person who is under the age of eighteen (18) and is emancipated by virtue of a court order or enlistment in the United States Military.
- (8) “Lessee” means the Tribal Member(s) to whom a Tribal Land Lease is made.
- (9) “Mobile Home” means any non-permanent structure constructed in conformance with the National Manufactured Housing Construction and Safety Standards Act of August 22, 1974, Pub. L. 93-383, 88 Stat. 700, 42 U.S.C. §§ 5401-5426.

- (10) “Portable Building” means any non-permanent structure which does not qualify as a Mobile Home and is assembled in one location for delivery and installation in another location.
- (11) “Premises” means Tribal Lands subject to a Tribal Land Lease.
- (12) “Real Estate Program” means the executive office the Tribe charged with Tribal Land Lease administration.
- (13) “Residential Purposes” means the right to use and occupy Tribal Lands for the purpose of constructing or installing one (1) single-family residence.
- (14) “Tribal Chief” means the chief executive of the Tribe whose powers and duties are described in Article IX of the Revised Constitution and Bylaws of the Tribe.
- (15) “Tribal Council” means the legislative body of the Tribe whose powers and duties are described in Article VIII of the Tribe’s Revised Constitution and Bylaws.
- (16) “Tribal Court” means the Choctaw Tribal Court System, the powers and duties of which are described in Title I of the Choctaw Tribal Code.
- (17) “Tribal Land Lease” means a legal document issued by the Tribe pursuant to the HEARTH Act or by the Bureau of Indian Affairs pursuant to 25 C.F.R. Part 162 which establishes a Lessee’s right to use and occupy Tribal Lands.
- (18) “Tribal Lands” means Mississippi Choctaw Reservation Lands as recognized Acts of the United States Congress and the United States Supreme Court in *U.S. v. John*, 437 U.S. 634 (1978).
- (19) “Tribal Member” means an enrolled member of the Tribe.
- (20) “Tribe” means the Mississippi Band of Choctaw Indians, a federally-recognized Indian tribe.

§37-1-3 Conversion of Certain Instruments to Tribal Land Leases

All unexpired instruments purporting to convey possessory interests in Tribal Lands to Tribal Members which required Bureau of Indian Affairs approval pursuant to 25 C.F.R. Part 162 and did not receive such approval are deemed to be Tribal Land Leases under and subject to the terms and conditions of the HEARTH Act and this Chapter without change in their duration or date of expiration.

§37-1-4 Renewal of Previously Approved Tribal Land Leases

Tribal Land Leases which required Bureau of Indian Affairs approval pursuant to 25 C.F.R. Part 162 and received such approval shall otherwise remain in effect through the expiration or cancellation of their terms. At the expiration of such leases, the Lessee must apply for a Tribal Land Lease in accordance with the procedures set forth in this Chapter.

§37-1-5 Eligibility for Tribal Land Leases

To be eligible for a Tribal Land Lease, an applicant must meet all of the following requirements at the time of the application:

- (1) the applicant must be a Tribal Member;
- (2) the applicant must be at least eighteen (18) years of age or a Legally Emancipated Minor;
- (3) the applicant must be a resident of Mississippi or Lauderdale County, Tennessee or intend to establish residency in Mississippi or Lauderdale County, Tennessee within one hundred and eighty (180) days of the date the Tribal Land Lease is executed; provided, however, that this subsection does not apply to continuations of Tribal Land Leases that predate this Chapter, and further provided that this subsection does not apply to active duty members of the U.S. military who are either deployed overseas or stationed in a location other than Mississippi or Lauderdale County, Tennessee;
- (4) the applicant must not be formally adjudicated to be excluded from Tribal Lands;
- (5) the applicant must provide proof of ownership of any permanent structure or Mobile Home already existing on the Tribal Lands for which the applicant is seeking a Tribal Land Lease;
- (6) applicants seeking a Tribal Land Lease for Residential Purposes cannot already be a party to more than two (2) Tribal Land Leases approved for Residential Purposes; provided, however, that married applicants are deemed to be a party to all Tribal Land Leases held by their spouse, and further provided this subsection also does not apply to both continuations of Tribal Land Leases that predate this Chapter and Tribal Land Leases awarded to applicants by process of law;
- (7) applicants seeking a Tribal Land Lease for Agricultural Purposes must reside in the Community where the Tribal Lands for which they are seeking Tribal Land Lease are located; provided, however, that this subsection does not apply to Tribal Lands which are not located in a Community, and further provided that this subsection also does not apply to continuations of Tribal Land Leases that predate this Chapter; and
- (8) applicants seeking a Tribal Land Lease for more than three (3) acres of Agricultural Land must have a preliminary conservation plan developed in consultation with the U.S. Department of Agriculture's Natural Resources Conservation Service.

§37-1-6 Applications for Tribal Land Leases

- (1) When Required. All persons requesting a Tribal Land Lease must make written application to the Real Estate Program.
- (2) Contents. In addition to the requirements set forth in Part 3, Section 9 of the HEARTH Act, applications for Tribal Land Leases must set forth the name and address of the person applying for the land, sufficient information to show that the applicant meets all of the eligibility requirements set forth in this Chapter, and as accurate a description of the land as circumstances will permit.

- (3) Application Fee. All applicants must pay an application fee at the time of application. The amount of the application fee will be equal to the amount of the annual fees owed for the entire duration of the Tribal Land Lease sought by the applicant. For the purpose of calculating application fees, the “entire duration” of a Tribal Land Lease will not exceed twenty-five (25) years. Application fees will be refunded upon denial of an application or withdrawal of an application by an applicant within thirty (30) days of submission to the Real Estate Program. Application fees for successful applications will be credited to the balance of annual fees owed for the approved Tribal Land Lease.
- (4) Processing. The priority for processing applications for Tribal Land Leases shall be on a first-in first-out basis. The Real Estate Program shall recommend that the Tribal Council approve a Tribal Land Lease for applicants who meet the eligibility requirements set forth in this Chapter and whose desired land is vacant and available for a Tribal Land Lease. A cultural resource survey must be carried out in accordance with the procedures set forth in Tribal Council Resolution CHO 73-94 prior to approval of any Tribal Land Lease which would result in a major change in the use of Tribal Lands.
- (5) Permits for Undeveloped and Abandoned Sites. Prior to recommending that the Tribal Council approve a Tribal Land Lease for an undeveloped or abandoned site, the Real Estate Program will first recommend that the Tribal Council approve a one-year land use permit for that site; provided, however, that a one-year land use permit is not required for applicants whose financing source submits a written statement that a lease is required to obtain financing.

§37-1-7 Approval of Tribal Land Leases

Approval of a Tribal Land Lease shall be in the form of a resolution adopted by the Tribal Council.

§37-1-8 Limitations on Size and Location of Tribal Land Leases

- (1) Tribal Land Leases for Residential Purposes shall not exceed either one (1) acre or the minimum area required to accommodate an adequate wastewater treatment system as determined by the Tribe’s Office of Environmental Protection.
- (2) There shall be a minimum riparian setback for all boundary lines of at least twenty-five (25) feet from any live or intermittent stream.
- (3) There shall be no Tribal Land Leases of areas which the Tribal Council has designated or set-aside for another purpose.

§37-1-9 Duration of Tribal Land Leases

- (1) Tribal Land Leases for three (3) or more acres of Agricultural Land shall not exceed five (5) years.
- (2) Tribal Land Leases for less than three (3) acres of Agricultural Land shall not exceed (1) year.

- (3) Tribal Land Leases for the purpose of erecting a permanent structure to serve as a single-family residence shall not exceed twenty-five (25) years with the option to renew for no more than two (2) additional terms not to exceed twenty-five (25) years each.
- (4) Tribal Land Leases for the purpose of installing a Mobile Home to serve as a single-family residence shall not exceed five (5) years unless the Lessee's finance source submits a written statement that a longer duration is required to obtain financing.
- (5) Tribal Land Leases for business, religious, educational, recreational, cultural, or other public purposes not including mineral leases shall not exceed twenty-five (25) years, subject to reevaluation of the rental terms at five (5) year intervals

§37-1-10 Annual Fees for Tribal Land Leases

- (1) The annual fee for Tribal Land Leases for Agricultural Purposes shall be fifty cents (\$0.50) per acre.
- (2) The annual fee for Tribal Land Leases for Residential Purposes shall be seven dollars (\$7.00) per acre.
- (3) The annual fee for Tribal Land Leases for all other purposes not including mineral leases shall be twenty-five dollars (\$25.00) per acre.
- (4) Prior to executing a Tribal Land Lease, the Lessee shall sign an agreement to assign funds from their bi-annual tribal distribution payments to satisfy past due annual fees.

§37-1-11 Limitations on Use of Premises

Use of Premises is subject to the following limitations:

- (1) no Premises is to be used for unlawful, illegal, or otherwise unauthorized purposes;
- (2) no Portable Building on any Premises is to be equipped with electricity without first being issued documentation of building code compliance by the Tribe's Office of Construction Management;
- (3) no more than one (1) Mobile Home is to be installed on any Premises subject to a Tribal Land Lease approved for the purpose of installing a Mobile Home to serve as a single-family residence;
- (4) no Mobile Homes are to be installed on any Premises subject to a Tribal Land Lease approved for the purpose of erecting a permanent structure to serve as a single-family residence;
- (5) no more than one (1) structure on Premises subject to a Tribal Land Lease approved for Residential Purposes is to be used as sleeping quarters;
- (6) no structures are to be used as sleeping quarters on Premises subject to a Tribal Land Lease approved for purposes other than Residential Purposes;

- (7) Lessees are not to accept payment in exchange for permitting any person to use and occupy Premises subject to a Tribal Land Lease approved for Residential Purposes;
- (8) all Premises are to be maintained in a clean and orderly manner;
- (9) Inoperable Motor Vehicles are to be stored within an entirely enclosed garage, completely shielded from view by a fence that cannot be seen through, or covered with a cloth or plastic cover specifically and solely manufactured for the purpose of covering motor vehicles;
- (10) no Premises is to be left vacant for a period of longer than one hundred and eighty days (180). Evidence of vacancy shall include any condition that on its own, or combined with other conditions present, would lead a reasonable person to believe that the Premises are vacant. Such conditions include, but are not limited to: overgrown or dead vegetation; accumulation of newspapers, flyers or mail, past due utility notices or disconnected utilities, and accumulation of trash, junk or debris;
- (11) all Premises are to be used in a careful, economical, and conservation minded manner in accordance with local and accepted soil conservation practices;
- (12) no permanent dwellings are to be constructed within any one hundred (100) year flood way;
- (13) there shall be a minimum setback of at least twenty (20) feet from the closest property boundary line for constructing fixed improvements other than fences;
- (14) green and merchantable timber is not to be cut without a permit duly authorized by the Tribal Council. Dead, down, and unmerchantable timber may be cut and removed only for personal domestic purposes;
- (15) disposal of slash, debris, and other materials removed from any Premises are to occur only at government designated dump sites;
- (16) the Tribe reserves the right to approve rights-of-way and service lines over any Premises in accordance with applicable laws and regulations; and
- (17) the Tribe reserves all timber, water, the subsurface estate, and minerals.

§37-1-12 Transfer of Tribal Land Leases

- (1) Transfer by Living Lessee. Transfer of a Tribal Land Lease by a living Lessee may only occur if said transfer is authorized by a resolution adopted by the Tribal Council or if an order from a court of competent jurisdiction requires transfer of the Tribal Land Lease to an eligible Tribal Member. Approval of the lender is required prior to removal of a mortgage party from a Tribal Land Lease.
- (2) Transfer Upon Death. Upon the death of a Lessee, Tribal Land Leases may be transferred either in reliance on an executed beneficiary designation form or upon an order from the Tribal Court assigning the Tribal Land Lease to an eligible heir.

- (a) Beneficiary Designation Form. Prior to executing a Tribal Land Lease, the Lessee shall name a beneficiary to the Tribal Land Lease by completing a beneficiary designation form. Executing a beneficiary designation form demonstrates intent of the Lessee to remove the Tribal Land Lease from the estate's probate assets in order to shorten and simplify the transfer process to an eligible Tribal Member upon the death of a Lessee. Upon the death of a Lessee with a beneficiary designation form on file, the Real Estate Program shall contact the first designated beneficiary listed by the Lessee and inform that person of their option to accept the Tribal Land Lease. If the first designated beneficiary is deceased, declines to accept, or is ineligible to receive the Tribal Land Lease, then the Real Estate Program shall contact the two other designated beneficiaries in the order listed by the Lessee. Beneficiary designation forms are only available for Tribal Land Leases which are not subject to a mortgage. If a mortgage is entered into after executing a beneficiary designation form and the mortgage is not satisfied at the time the Lessee dies, the beneficiary designation form shall be invalid.
- (b) Probate. The probate process will be used to transfer a Tribal Land Lease to one or more eligible parties where there is no valid beneficiary designation form on file or where a beneficiary designation form is on file but a will has been executed after the beneficiary designation form was executed which includes the Tribal Land Lease. The following provisions shall apply to the surviving spouses of a married Lessee who dies without a will and does not have a beneficiary designation form on file:
- (i) If the surviving spouse is also a party to the Tribal Land Lease, the Lessee shall continue in effect undisturbed.
- (ii) If the surviving spouse is a Tribal Member, the Real Estate Program, absent a valid marital property agreement stating otherwise, will consider the Tribal Land Lease marital property and the spouse may be substituted as a party to the Tribal Land Lease.
- (iii) If the surviving spouse is not a Tribal Member and obtains a permit allowing them to continue residing on Tribal Lands, then the surviving spouse may enter into a new Tribal Land Lease on behalf of a minor child of the Lessee who meets the eligibility requirements set forth in this Chapter.
- (3) Effect of Transfer. Transfer of a Tribal Land Lease has the effect of substituting the transferee as a party to the Tribal Land Lease for the remaining duration of the Tribal Land Lease. Transfer of a Tribal Land Lease does not create a new leasehold interest.

§37-1-13 Voluntary Relinquishment of Tribal Land Leases

Any person holding an interest in a Tribal Land Lease may voluntarily relinquish their interest by giving written notice to the Real Estate Program on a form prescribed by the Real Estate Program. Such notice may include a request to transfer the Tribal Land Lease to an eligible Tribal Member. Upon relinquishment, a person officially terminates all of their interest in the Premises, including any improvements thereon, as of the date specified in the written notice.

§37-1-14 Cancellation of Tribal Land Leases

Cancellation of Tribal Land Leases which received Bureau of Indian Affairs approval under 25 C.F.R. Part 162 shall occur in accordance with the procedures set forth in those regulations. Cancellation of all other Tribal Land Leases shall occur in accordance with the procedures set forth in Part 8, Section 34 of the HEARTH Act.

§37-1-15 Appeals of Cancellations of Tribal Land Leases

Appeals of cancellations of Tribal Land Leases which received Bureau of Indian Affairs approval under 25 C.F.R. Part 162 shall occur in accordance with the procedures set forth in those regulations. Appeals of cancellations of all other Tribal Land Leases shall occur in accordance with the procedures set forth in Part 9, Section 38 of the HEARTH Act.

§37-1-16 Compensation for Structures Upon Cancellation or Expiration

- (1) Title to permanent structures fixed to the Premises shall automatically revert to the Tribe upon cancellation or expiration of a Tribal Land Lease. The Tribe shall provide the former Lessee with compensation for those structures so long as their appraised value is greater than the cumulative value of the following:
 - (a) the cost to satisfy any mortgage upon the Premises or any permanent structures fixed thereto;
 - (b) the cost of the appraisal, which shall be provided by the Tribe;
 - (c) the cost to bring the structures to a minimal health and safety standard in accordance with the Choctaw Building Code, as determined by the Tribe's Office of Construction Management; and
 - (d) any debts owed to the Tribe by the Lessee.
- (2) Mobile Homes, Portable Buildings, recreational vehicles, and other non-permanent structures shall be considered the movable personal property of the former Lessee upon cancellation or expiration; provided, however, that title to such property shall automatically revert to the Tribe without compensation to the former Lessee if not removed within sixty (60) days after cancellation or expiration.

§37-1-17 Severability

If any provision of this Chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable.

§37-1-18 Repealer

This Chapter repeals and supersedes Tribal Council Resolution CHO 01-89.