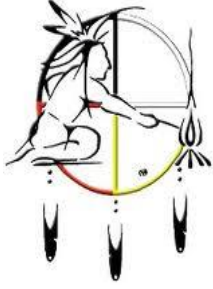


FOREST COUNTY POTAWATOMI REALTY ORDINANCE

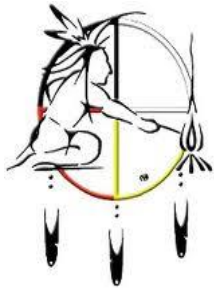
CHAPTER 1-2 (08/11/2018)



FOREST COUNTY POTAWATOMI REALTY ORDINANCE

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FOREST COUNTY POTAWATOMI REALTY ORDINANCE

PART ONE

§ 1. General

1.1. Purpose

The purposes of this ordinance are:

- (A) To protect and enhance Tribal sovereignty and self-determination over Tribal Lands and resources.
- (B) To establish the rules and regulations applicable to leases of Tribal lands.
- (C) To provide oversight of Tribal Lands through management, operations, and information systems.
- (D) To provide an authoritative source of information regarding Tribal Lands, including but not limited to information relating to ownership, possession, leases, mortgages, easements, and other encumbrances.
- (E) To provide rules governing eligibility for the occupancy of Tribal Lands.

1.2. Authority

The Forest County Potawatomi General Council enacts this ordinance pursuant to its authority granted under the Forest County Potawatomi Tribal Constitution, Article IV, Section 1(d).

1.3. Delegation of Authority

To effect the purposes of this Ordinance, pursuant to Article IV, Section 1(e) of the Constitution the General Council hereby delegates to the Executive Council its authority to control the use of Tribal Lands pursuant to Article IV, Sections 1(b) and d(2), subject to the limitations imposed by Article IV, Section 1(b), and Article V, Section 2.

1.4. Effective Date and Title

This ordinance shall be effective immediately following the majority approval from the Forest County Potawatomi General Council, and it shall be known as the Forest County Potawatomi Realty Ordinance. The provisions of this ordinance intended to implement 25 U.S.C. Section 415 (“HEARTH Act Amendments of 2012”) shall be subject to approval by the Bureau of Indian Affairs (BIA).

1.5. Effect on Existing Laws and Resolutions

With the adoption of this ordinance, Chapters 1-2 of the FCPC Tribal Code, “Control and Assignment of Tribal Lands” adopted on November 6, 1938, shall be repealed. Any provision relating to ownership in severalty contained in the Act of June 30, 1913, (38 Stat.77, 102) shall be of no force or effect.

Any General Council Resolutions concerning Tribal Lands in effect at the time of the adoption of this Ordinance shall remain in effect insofar as they do not conflict with this Ordinance.

1.6. Sovereign Immunity

The Tribe, by adoption of this ordinance, does not waive its Sovereign Immunity in any respect.

1.7. Amendment or Repeal

This ordinance may be amended or repealed by a majority vote of the Forest County Potawatomi General Council.

This Ordinance may be amended by the Executive Council as is necessary or desirable to comply with changes to applicable Federal Law or regulations, or to regulate emerging energy technologies, such as solar or wind energy, or technical amendments to address exigent circumstances as they arise. The scope of any such amendment shall be limited to the specific changes necessary to implement the change in Federal Law or regulations or as needed to regulate emerging energy technologies. Any such amendment proposed by the Executive Council shall be reported to the General Council at the next quarterly meeting of the General Council. The General Council may approve or reject the amendment by a simple majority. In the event a quorum is not present at that quarterly meeting to review the proposed amendment, a copy of the amendment shall be provided to those Members present, and a copy of the proposed amendment shall be presented at the next quarterly General Council meeting. If quorum is not attained at two consecutive General Council meetings, the proposed amendment shall be deemed approved.

1.8. Conflicts

To the extent this Ordinance conflicts with any applicable federal statutes or regulations, the federal statute or regulation shall control.

The terms and conditions of any Lease in effect at the time of the adoption of this ordinance shall control in case of any conflict between the Lease and this ordinance. All leases approved after the adoption of this ordinance shall comply with the requirements of the ordinance.

1.9. Applicability/Jurisdiction

This Ordinance shall apply to all Tribal Lands, including Tribally owned fee lands. It shall not apply to Tribal Member owned fee lands.

The Forest County Potawatomi Tribal Court shall have exclusive jurisdiction over all matters relating to this ordinance.

§ 2. Definitions

For the purpose of this ordinance, the following words and phrases shall mean:

“Agricultural Land” means Indian land or government land suited or used for the production of crops, livestock or other agricultural products, or Indian land suited or used for a business that supports the surrounding agricultural community.

“Agricultural Lease” means a Lease of Agricultural Land for farming and/or grazing purposes.

“Assignment” means an agreement between a Lessee and an assignee, whereby the assignee acquires all or some of the Lessee’s rights, and assumes all or some of the Lessee’s obligations, under a Lease.

“BIA” means the Bureau of Indian Affairs.

“Beneficiary Designation” means a document signed by a Lessee and filed with the Tribal Land Information Department that designates a person or persons to inherit the Leasehold upon the death of the person making the designation.

“Bond” means security for the performance of certain Lease obligations, as furnished by the tenant, or a guaranty of such performance as furnished by a third-party surety.

“Business Lease” means a Lease of Tribal Land or commercial/retail space for business, commercial or industrial purposes.

“Eligible Residential Lessee” means the Tribe, a Member, or a Tribal entity.

“Enforcement Officer” means a Tribal law enforcement officer or other agent of the tribe authorized by the Executive Council to enforce this ordinance.

“Executive Council” means the Forest County Potawatomi Executive Council.

“General Council” means the Forest County Potawatomi General Council.

“Household” means those who live in the same dwelling and compose a family.

“Improvements” means a valuable addition made to Tribal Land or amelioration in its condition, amounting to more than mere repairs or replacement, costing labor or capital, and intended to enhance its value, beauty or utility or to adapt it for new or further purposes.

“Indian Homestead” means any homestead under the jurisdiction of the Tribe, created in accordance with the “Indian Homestead Act of 1884.”

“Indian Homestead Act of 1884” means the act of July 4, 1884: Act of Congress (23 Stat. 96) providing that all Indians then located on public land might avail themselves of the homestead laws; that all patents therefor should be of the legal effect and declare that the United States holds the lands thus entered for a period of 25 years in trust for said Indian, or in the case of his decease, for his widows and heirs, according to the law of the state where land is located, and that at the expiration of said period the United States will convey the same by patent in fee discharged of said trust and free of all charges and encumbrances.

“Land Information Department” means the department created by the Tribe in 2011.

“Land Information Director” means the Land Information Director of the Tribal Land Information Department.

“Lease” means (1) a written contract between the Tribe and a Lessee, whereby the Lessee is granted a right to possess Tribal Land, for a specified purpose and duration. The Lessee’s right to possess will limit the Tribe’s right to possess the leased premises only to the extent provided in the Lease, or; (2) for Leases from the Tribe to a Lessee shall mean a written contract between the Tribe and the Lessee, whereby the Lessee is granted the right to possess Tribal Land, or commercial/retail space for a specified purpose and duration. The Lessee’s right to possess will limit the Tribe’s right to possess the leased premises only to the extent provided in the Lease.

“Leasehold Mortgage” means a Mortgage, deed of trust, or other instrument that pledges a Lessee’s leasehold interest as security for a debt or other obligation owed by the Lessee to a lender or other Mortgagee.

“Lessee,” except as otherwise indicated, means the occupant under a Residential Lease, Business Lease, or Rental Lease, as applicable.

“Lessor,” except as otherwise indicated, means the Tribe or any sub-lessor with an interest in Tribal Land.

“LTRO” means the Land Titles and Records Office of the BIA, or its successor agency.

“Member” means an enrolled Member of the Tribe.

“Mortgage” means an instrument that pledges a tenant’s leasehold interest as a security for a debt or other obligation owed by the Lessee to a lender or other Mortgagee.

“Mortgagee” means any lender approved by the Executive Council in writing, by memorandum of understanding, resolution, or express reference in a Lease document, to make and hold a Mortgage.

“Occupancy Right” means the right to occupy a premise on Tribal Lands under a Lease approved pursuant to this Ordinance.

“Principal Residence” means the home that a Lessee occupies and maintains as his or her permanent place of abode. A person may have only one (1) Principal Residence at a time. A person’s Principal Residence shall not be affected by the Member’s temporary absence due to military service, education, temporary relocation for employment or health reasons, incarceration, or other similar reasons, but shall not include residences used primarily as a second home or vacation home.

“Public” means Members of the Forest County Potawatomi Community.

“Residential Lease” means a conveyance of an interest in Tribal Land under this ordinance to a Member for the purpose of purchasing or building a home that the Member intends to occupy as his or her Principal Residence.

“Secretary” means the Secretary of the Interior or his or her designee.

“Spouse” means a person, to whom one is legally married under state or Tribal law, including a traditional ceremony, as attested in writing by the Tribal spiritual leader who conducted the ceremony or, if the spiritual leader is unavailable, by other credible evidence.

“Sublease” means a written agreement by which the Lessee grants to an individual or entity a right to possession no greater than that held by the Lessee under the Lease.

“Tribal Court” means the Forest County Potawatomi Tribal Court.

“Tribal Lands” or “Community Lands” means any tract of land or interest therein: the legal title to which the United States holds in trust for the benefit of the Tribe; any Indian Homesteads under the Tribe’s jurisdiction; any other land owned by the Tribe; any lands owned by a land-holding LLC or partnership controlled or owned by the Tribe.

“Tribe” or “Tribal” means the Forest County Potawatomi Community.

“Trust Land” means any tract of land, or interest therein, the legal title to which the United States holds in Trust Status for the benefit of the Tribe or individual Indian.

“Trust Status” shall mean:

- (A) That the United States holds title to the tract or interest in trust for the benefit of the Tribe or individual Indians; or
- (B) That the Tribe or individual Indian holds title to the tract or interest, but can alienate or encumber it only with the approval of the United States because of

limitations in the conveyance instrument under Federal law or limitations in Federal law.

§ 3. Administration and Applicability

3.1. Duties and Responsibilities of Executive Council

The Executive Council shall have the authority to:

- (A) Designate appropriate uses of Tribal Lands.
- (B) Designate lot sizes, except for Indian Homesteads or any lots created prior to the adoption of this Ordinance.
- (C) Protect environmentally or culturally sensitive areas.
- (D) Approve all Leases, subject to the restrictions found in Article IV of the Constitution (mining).
- (E) Approve easements, rights of way, utility licenses, land use permits, and other interests relating to Tribal Land.
- (F) Adopt rules, regulations, policies, forms, and procedures to effect the purposes of this Ordinance.
- (G) Manage and otherwise deal with Tribal Lands, timber, waters, mineral rights, interests in lands, or other Tribal assets.
- (H) Acquire, exchange, and sell fee lands pursuant to policies that assure appropriate due diligence to protect the Tribe's interests.
- (I) Apply to the Secretary of the Interior to transfer fee lands into Trust Status.
- (J) Otherwise manage Tribal Lands, including the removal of any structure that threatens the health, safety, and welfare of the community.

3.2. Tribal Land Information Department

Under the supervision of the Land Information Director, the Land Information Department shall:

- (A) Process applications for Leases for Executive Council approval.
- (B) Develop Tribal leasing regulations for Executive Council approval, consistent with the Tribe's environmental and cultural review process and the 2012 Amendments to the Indian Long-Term Leasing Act of 1955, 25

USC §415 (the HEARTH Act of 2012), any amendments thereto, and any other applicable federal laws and regulations.

- (C) Assist in the development and updating of a comprehensive Land Use Plan.
- (D) Facilitate the approval and recording of documents by the BIA to the extent required by federal law.
- (E) Maintain an inventory of Tribal Lands and develop and maintain a land records system for the filing and recording of documents that affect interests in Tribal Land.
- (F) Recommend policies and procedures related to the duties of the Land Information Department for Executive Council approval.
- (G) Assist with land acquisitions and fee-to-trust applications as requested by Executive Council or Tribal Administration.
- (H) Such other duties as the Executive Council or Tribal Administration deems appropriate.

3.3. Recording and Approvals

- (A) BIA Approval and Recording. The Land Information Department shall forward land related documents to BIA for approval and recording at the BIA's Land Titles and Record Office (LTRO), to the extent required by federal law.
- (B) Tribal Recording. The Land Information Department shall record all Agricultural Leases, Residential Leases, Business Leases, Business Leases on Agricultural Land, Mortgages, encumbrances and other documents affecting these and other interest in Tribal Lands.
- (C) County Register of Deeds Recording. The Tribe may record documents relating to Tribal Land at the office of a county Register of Deeds where such recording facilitates mortgage lending or otherwise serves the interests of the Tribe and its Members.

§ 4. General Leasing Provisions

At its discretion, the Executive Council shall have the authority to approve the following types of Leases on Tribal Lands: Agricultural, Business, Residential, Recreational, Religious, Educational, Wind and Solar Resources, and other Leases deemed necessary.

Any Mineral Leases or mining related activity shall be subject to approval by the General Council pursuant to Article IV §1(b) of the Constitution.

4.1. Process for Obtaining a Lease or Lease Related Document (including an Amendment, Assignments, Leasehold Mortgage, and Subleases)

All Lease documents (i.e. Amendments, Assignments, Leasehold Mortgages, Subleases, etc.) shall require the Executive Council's approval via an official Executive Council Resolution which authorizes execution by the Chairman or Vice Chairman.

4.2. Specific Lease Requirements

All Tribal Leases shall include, at a minimum:

- (A) Provisions for enforcing trespass laws
- (B) Provisions for addressing Lease violations
- (C) Property description and/or address
- (D) Effective date and length of Lease
- (E) Purpose and authorized uses of leased premises
- (F) Identification of parties
- (G) Rent payment terms, including rate adjustments and dispute resolution
- (H) Applicable insurance requirements
- (I) Whether there will be rental reviews
- (J) Whether performance or other Bond is required
- (K) A requirement to provide the BIA with all leases and Lease documents, except residential Subleases, for recording in the LTRO
- (L) Lease cancellation or termination process and effective date
- (M) Provisions for Improvements including whether they may be constructed; insuring; ownership of Improvements; responsibility for constructing, operating, maintaining, managing, and removal of Improvements, if applicable.

4.3. Tribe's Reserved Rights

- (A) Right of Tribe to Grant Easements and Rights of Way. All Leases are subject to the right of the Tribe to grant easements and rights of way for public purposes.
- (B) Tribe's Right to Subsurface. The Tribe shall own, and have the right to exploit, all subsurface minerals and other natural resources, subject to the occupant's right of quiet enjoyment.

§ 5. Environmental Review Process

5.1. Trust Lands

All Leases shall be subject to any Tribal land use or Tribal environmental policy that provides for an environmental review process that includes:

- (A) The identification and evaluation of any significant effects of the proposed action on the environment; and

- (B) A process for ensuring that:
 - (1) The Public is informed of, and has a reasonable opportunity to comment on, any significant environmental impacts of the proposed action identified by the Community; and
 - (2) The Community provides responses to relevant and substantive public comments on any such impacts before the Community approves the Lease.

Consistent with approved Tribal policies, areas designated for Tribal housing development shall be subject to an environmental and cultural review process, including Public input; however, Public input shall not be required for individual home sites within such a designated area.

PART TWO

§ 6. Residential Leases

6.1. General Requirements

A Residential Lease may be granted pursuant to Executive Council Resolution provided:

- (A) The requirements of applicable federal law, state law, and Tribal law have been satisfied.
- (B) All applicable Land Information Department regulations have been satisfied.
- (C) The requirements of this ordinance have been satisfied.
- (D) Leases on Trust Land shall be limited to no more than 1.5 acres.
- (E) Mobile homes and manufactured homes that are subject to the provisions of the National Manufactured Housing Construction and Safety Standards Act (42 U.S.C. Sec. 5401 et. seq) shall be prohibited on Trust Lands.

6.2. Title to Leasehold

- (A) Eligibility. Title to Leasehold in Trust Lands (including Subleases) may be held only by the Tribe, a Member, or a Tribal entity; Leases to Tribal Members shall be limited to one per Household. Pursuant to a valid Court Order, a parent, trustee or legal guardian, or receiver may hold Leasehold for the benefit of a Member or a Mortgagee. Title to Leasehold to fee lands may be held by any person.
- (B) Multiple Ownership of Leasehold. Title to Leasehold to Trust Lands may be held by one or more Tribal Members, provided at least one of the owners uses the Leasehold as a Principal Residence. Leasehold title for trust or fee lands held between Spouses or between parents and children shall be deemed to be held in joint tenancy with Right of Survivorship unless the Residential Lease states that it is held as a tenancy in common. Title held between anyone else shall be deemed

to be held as tenants in common unless the Residential Lease states that it is as a joint tenancy with Right of Survivorship.

- (C) Occupancy Pre-Dating Enactment. A Tribal Member occupying a property with the approval of the Executive Council prior to the enactment of this ordinance may continue to occupy the property but shall not have the rights of a Lessee holding title to a Leasehold until all requirements for a valid Lease are satisfied, a Residential Lease is executed, and all required approvals obtained.

6.3. Lessee's Obligations

- (A) Relationship to Residential Lease. The obligations imposed by this ordinance shall be in addition to the obligations imposed by the Residential Lease.
- (B) Occupancy of Leasehold as Principal Residence. A Trust Land Lessee must occupy Leasehold as his or her Principal Residence, except that:
 - (1) If a Member acquires Leasehold in Trust Land through Assignment, purchase or inheritance, the Member must, within one year, either (i) occupy the Leasehold as his or her Principal Residence, or (ii) transfer title to another Eligible Residential Lessee.
 - (2) Construction of a single-family residence must be commenced within 12 months and completed within 36 months after title to the Leasehold is acquired and must be occupied as the Member's Principal Residence within 30 days after substantial completion of the residence.
 - (3) At its sole discretion, the Tribe may approve a Sublease for a term not to exceed one year in cases in which the Lessee is not utilizing the property as a Principal Residence.
- (C) Occupancy within 45 days. A Trust Land Lessee must occupy an existing home within 45 days after the Lease has been approved by the Executive Council.
- (D) Construction of Improvements. A Lessee shall construct all Improvements in compliance with all applicable laws and subject to the Lease terms.
- (E) Maintenance. A Lessee shall maintain the Leasehold in good condition and in compliance with all applicable laws.
- (F) Compliance with Other Laws. A Lessee shall use the Leasehold in compliance with all applicable laws and such use shall not interfere with the Lessee's neighbors' use of their property. Engaging in conduct that harms or threatens the health or safety of others, or permitting others to engage in such conduct, may result in Lease termination.
- (G) Payment for Emergency Services. A Lessee shall pay reasonable charges for fire and other emergency services provided by the Tribe and/or town or county.

- (H) Insurance. A Lessee shall maintain liability and casualty insurance as required by the Lease.

§ 7. Leasehold Interests and Transfer of Leaseholds at Death

7.1. Generally. Leasehold interests shall be held as provided in this section, subject to any additional restrictions in the Residential Lease, Mortgage (if applicable) and any applicable federal regulations. In addition, the following provisions apply to all Residential Leases:

- (A) Form. A Residential Lease shall be in writing and on a form acceptable to the Tribe, shall include the agreement to all of the Lessee's obligations under the Residential Lease, and shall be executed accordingly. The Land Information Department will make the forms available.
- (B) BIA Approval. Leases of Trust Land shall be submitted to BIA to the extent required by federal law.
- (C) Recording. Leases shall be recorded in accordance with Tribal and federal law.

7.2. Persons to Whom the Lessee May Assign Leasehold. Subject to the restrictions in 7.1, a Trust Land Lessee may voluntarily assign his or her Leasehold interest as follows:

- (A) By Assignment, sale, or Beneficiary Designation to an Eligible Residential Lessee, who shall have the right to apply for a Residential Lease in his or her own name;
- (B) In lieu of foreclosure, upon default, in accordance with applicable law.

7.3. Transfer of Leasehold upon Trust Land Lessee's Death. When a Trust Land Lessee dies during the term of the Lease, the Lease shall be assigned as follows:

- (A) If the Lessee has designated a valid beneficiary by Beneficiary Designation, to the person so designated, in accordance with Tribal law, outside of probate.
- (B) If the Lessee has not designated a valid beneficiary by Beneficiary Designation, in accordance with Tribal law, by Tribal Court proceedings.
- (C) To the Tribe, if the Lessee has not designated a valid beneficiary by Beneficiary Designation, and there are no heirs at law who are valid beneficiaries as determined by Tribal Court. For purposes of this paragraph, a valid beneficiary shall be an Eligible Residential Lessee.

7.4. Transfers of Leasehold upon Fee Land Lessee's Death. When a Fee Land Lessee dies during the term of the Lease, the Lease shall terminate.

§ 8. Life Estates and Rights of Occupancy on Trust Land

- 8.1. A Lessee may, by testamentary disposition or Beneficiary Designation, grant a Member's Spouse a life estate in Lessee's Leasehold provided that:
- (A) The conveyance shall be in writing, in a form approved by the Attorney General, and shall conform to such requirements as the tribe may prescribe.
 - (B) No life estate may be created for a non-member Spouse who has not attained the age of 55.
 - (C) The life estate shall terminate upon the life estate holder's remarriage or cohabitation with a non-member.
 - (D) The life estate holder shall comply with the Lessee's obligations under this ordinance and the Residential Lease.
 - (E) The life estate shall not affect the right of an Eligible Residential Lessee who inherits the Leasehold Interest under §7 to apply for a new Residential Lease, pursuant to §7.2(A), but the Leasehold Interest shall be subject to the life estate holder's continuing right of occupancy.
- 8.2. Any life estates created pursuant to this section shall be subject to the following additional restrictions:
- (A) If a non-member acquires a life estate in Trust Land, the life estate shall be conditioned upon any home thereupon being the Principal Residence of the life estate holder;
 - (B) If a life estate holder marries or cohabitates with a non-member during the term of the life estate, the life estate holder forfeits the estate and must vacate within 90 days;
 - (C) Upon the life estate holder's death, the leasehold interest and any Improvements shall transfer in accordance with Tribal Law by Tribal Court proceedings.
- 8.3. Upon the Trust Land Lessee's death, the following restrictions shall apply in the absence of a life estate:
- (A) A cohabitant not married to the Trust Land Lessee, or any other person residing upon the leasehold who is not an Eligible Residential Lessee, shall vacate the leasehold within 30 days, except as provided in §8.3(B) and §8.3(C);
 - (B) A non-member surviving Spouse or co-habitant residing on the leasehold with a child under the age of 18 years old who is enrolled or eligible for enrollment in the Forest County Potawatomi Community, shall have a right of occupancy in the leasehold until 90 days after the youngest of such child(ren) reaches 18 years of age;

(C) A non-member surviving Spouse co-habitant residing on the leasehold with no child who is either: (1) under the age of 18 years old and enrolled or eligible for enrollment in the Forest County Potawatomi Community or (2) an Eligible Residential Lessee, shall vacate the leasehold within 90 days of the Trust Land Lessee's death.

8.4. In order to avoid undue hardships and promote the reasonable application of this Section 8, the Executive Council may grant variances to the restrictions in accordance with such procedures and conditions as it may prescribe. The Executive Council may consider the following when evaluating a variance request:

- (A) Age of surviving Spouse/cohabitant;
- (B) Length of residency;
- (C) Economic hardship;
- (D) Availability of alternative housing;
- (E) Tribal Culture and Tradition; or
- (F) Any other circumstances preventing full compliance.

§ 9. Mortgages of Trust Land Leasehold Interests

9.1. Right to Mortgage. Unless the Residential Lease provides otherwise, the Lessee's interest in Leasehold may be mortgaged in accordance with Tribal law. No Mortgage may modify the terms of an approved Residential Lease or the provisions of this ordinance.

9.2. Tribes' Right to Deny Residential Lease to Eligible Residential Lessee. The Tribe will not grant a Residential Lease that includes a right to Mortgage if the Tribe determines that the Lessee's ability to comply with the Residential Lease would be adversely affected by a loan obligation.

9.3. Restriction on Mortgagee's Rights. Upon default, a Mortgagee shall have such rights as set forth in applicable Tribal law, but in no event may a person or entity who is not an Eligible Residential Lessee acquire the Leasehold.

9.4. Recording of Mortgages. All Mortgages shall be recorded as provided by Tribal and federal law.

9.5. The regulations contained in this ordinance may allow for Mortgages of the leasehold interest and any Improvements thereto, but may not allow for Mortgages of Tribal Land.

§ 10. Rights of Lessee's Family in the Event Lessee Ceases to Occupy the Leasehold

10.1. Applicability. This section applies when a Lessee ceases to occupy Leasehold as his or her Principal Residence.

- 10.2. Rights of Member's Family. If a Lessee ceases to occupy a Leasehold as his or her Principal Residence, a Spouse and/or child(ren) who is/are a Member(s) may apply to have the Leasehold transferred to them upon such terms as the Executive Council may impose after due consideration of the interests of all of the interested parties. Before transferring the Leasehold under this paragraph, the Executive Council shall provide reasonable notice to the Lessee and other interested parties. The Tribe must obtain a Tribal Court judgment that the Lessee has ceased to occupy the Leasehold before transferring the Residential Lease.
- 10.3. Non-Member Family. Once the Tribe has obtained a Tribal Court judgment that the Lessee has ceased to occupy the Leasehold, and if the remaining Spouse/cohabitant is a nonmember, and none of the children are enrolled or eligible for enrollment in the Tribe, the non-member family must vacate the leasehold within 90 days of the Tribal Court judgment.
- 10.4. Variances. In order to avoid undue hardships and promote the reasonable application of Section 10, in the case of non-member Spouse and/or children, the Executive Council may grant variances to the restrictions in accordance with such procedures and conditions as it may prescribe. The Executive Council may consider the following when evaluating a variance request:
- (A) Age of non-Member Spouse/cohabitant and children;
 - (B) Length of residency;
 - (C) Economic hardship;
 - (D) Availability of alternative housing;
 - (E) Tribal Culture and Tradition; or
 - (F) Any other circumstances preventing full compliance.

§ 11. Rights of Multiple Owners of a Single Leasehold Interest

- 11.1. Applicability. This section applies if more than one person is entitled to occupy a single Leasehold for any reason, including, but not limited to, Assignment of a single Leasehold interest to more than one Member or inheritance of a single Leasehold interest by more than one Member.
- 11.2. Agreement on Occupancy. If multiple owners of a leasehold interest agree that one or more of them shall occupy the leasehold, such occupant(s), shall pay the fair market value of the Improvements to each of the non-occupying title holders, on such terms and in such amount as the parties may agree or Tribal Court may establish. Upon completion of such payments, the non-occupying titleholders shall transfer their interests to the person(s) occupying the Leasehold. Tribal Court shall have exclusive jurisdiction over an action for a determination of value. In determining value, the Tribal Court shall rely on a creditable appraisal whose costs shall be borne by all owners jointly. In the event any owner challenges the appraisal, such owner shall have the right to obtain a second appraisal at his or her own expense. Tribal Court shall give a second appraisal such weight as the Tribal Court deems appropriate.

- 11.3. No Agreement on Occupancy. In the event multiple owners of a leasehold interest are unable to agree which of them shall occupy the leasehold, the Tribal Court shall have exclusive jurisdiction to determine occupancy rights, determine compensation due to the non-occupying title holders, and/or sale of leasehold interest and distribution of proceeds pursuant to 11.2.
- 11.4. No Occupancy - Sale and Distribution of Proceeds. Multiple owners of a Leasehold Interest may, either privately or under the supervision of Tribal Court sell the Leasehold to an Eligible Residential Lessee and divide the proceeds equally. Tribal Court shall have jurisdiction over an action brought by an owner for supervision by the Tribal Court of a sale of a Leasehold and distribution of proceeds.
- 11.5. Executive Council Approval. Any Lease issued pursuant to this Section shall be subject to approval by Executive Council.

§ 12. Term and Expiration

The maximum term for Residential Leases shall be up to 50 years, with the Lessee's option to renew for 25 years.

- 12.1. Notice of Term Expiration. The Tribal Land Information Department shall provide two written notices to Lessees; first notice 180 days and second notice 90 days prior to the term expiration date.
- 12.2. Lessee's Right upon Expiration. A Lessee may, upon expiration or near expiration (as applicable) of a Residential Lease:
- (A) Request, at any time prior to the expiration of the term, that a new Residential Lease for the Leasehold be granted to the Lessee, his or her Member Spouse and/or Member children;
 - (B) Sell the Improvements to an Eligible Residential Lessee or, at the Lessee's sole cost, remove the Improvements within 120 days after the expiration of the term to a new location and repair any damage to the Leasehold caused by such removal;
 - (C) Abandon the Leasehold, in which case title to the Leasehold and all Improvements thereon shall automatically revert to the Tribe without compensation to the Lessee. Abandonment shall be defined as the Lessee failing to request a new Residential Lease prior to the expiration of the Lease term or failing to remove any Improvements within 120 days after the expiration of the Lease term.
 - (D) The Tribe may recover the cost of damage repair or removal of Improvements, including any associated expenses incurred by the Tribe, from the Lessee pursuant to the Debts Owed to the Tribe Ordinance or other applicable law.

§ 13. New Residential Lease Preference for Previous Lessee

The Tribe, when granting a new Residential Lease for the same property, shall give preference to a Residential Lease application made by the Lessee under the previous Residential Lease, or the previous Lessee's Member heirs, provided that the previous Lessee was not in violation of the Residential Lease, or this ordinance, at the time of expiration.

§ 14. Business Leases

The maximum term for Business Leases on Trust Lands (including Agricultural Leases), shall be 25 years with an option to renew for two additional terms of up to 25 years each at the Tribe's discretion. The term for Business Leases on Tribal fee land shall be at the Tribe's discretion.

14.1. General Requirements

A Business Lease may be granted provided:

- (A) The requirements of any applicable federal laws have been satisfied.
- (B) All Tribal environmental, historic preservation, and land use laws, ordinances, and policies have been satisfied.
- (C) The proposed use of the leased premises as described in the Business Lease does not unduly affect the neighboring lands.
- (D) Documents describing any planned improvement have been submitted to the Tribe and approved. Any such Improvements shall be completed within the timeframe approved by the Executive Council. The Executive Council reserves the right to terminate the Business Lease if such Improvements are not completed within the approved timeframe.
- (E) The Lessee has provided a Bond in an amount acceptable to the Tribe to secure (i) payment of one year of rent, (ii) construction of planned Improvements, (iii) payment of any additional Lease obligations, operation and maintenance charges or other legal obligations, and (iv) restoration of the Leasehold to its condition before issuance of the Lease or restoration to such conditions as may be agreed upon by the parties. The Tribe may waive the requirements of this paragraph if the Executive Council determines it is in the Tribe's best interest.

14.2. Lease Approval

A Lease may be granted pursuant to an Executive Council resolution that includes findings that the Lease is in the best interest of the Tribe, and all requirements of Section 14.1 have been satisfied.

14.3. Lease Provisions

Every Lease shall provide that:

- (A) The Lessee constructs all Improvements in compliance with all applicable laws.
- (B) The Lessee maintains the Leasehold in good condition and in compliance with all applicable federal, Tribal, state and local laws, ordinance regulations and other requirements.
- (C) The Lessee not use the Leasehold for any unlawful conduct, create waste, cause nuisance, or interfere with his or her neighbors' use of their properties.
- (D) The Lessee maintains insurance on the Leasehold that is sufficient to (i) protect any Improvements on the Leasehold, (ii) cover losses arising from liability for personal injury or death, (iii) identify the Tribe as an additional insured, and (iv) identify the United States as an additional insured if the Lease is on Trust Land.
- (E) The obligations of the Lessee and its sureties to the Tribe are also enforceable by the United States if the Lease is on Trust Land.
- (F) The Lessee indemnifies and holds harmless the Tribe and the United States from any loss, liability, or damages resulting from the Lessee's use or occupation of the Leasehold and indemnifies and holds harmless the Tribe and the United States from all liabilities or costs relating to the use handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous materials that occurs during the Lease term, regardless of fault, unless the liability or costs arises from the gross negligence or willful misconduct of the Tribe.

14.4. Lease Payment

- (A) Lease payments shall be based on fair market rental value or a percentage of business revenues except that the Executive Council may grant a Lease at a lesser amount if the resolution granting the Lease identifies a public interest that the Lease will promote and finds that such public interest justifies a below market Lease payment.
- (B) "Public interest" for purposes of Subsection 14.5(A) includes, but is not limited to, a business use of leased premises that will provide (i) employment opportunities for Members, (ii) needed goods and services not otherwise readily available to Members, (iii) entrepreneurship opportunities for a Member or a business entity owned wholly by the Tribe or one or more Members, or (iv) affordable leasing opportunities for charitable or educational entities.
- (C) Fair market rent for purposes of Subsection 14.5(A) may be (i) a sum certain per month or per year, (ii) a percentage of revenue or profit generated by the business conducted on the leased premises, or (iii) a combination of (i) and (ii).

- (D) The Tribe may require an appraisal, at Lessee's expense, for the purpose of determining fair market rent.

14.5. Subleases

- (A) Tribal Approval. A Lease may be subleased only with the express written consent of the Tribe, except where a Lease expressly permits subleasing without the Tribe's consent or expressly approved a future Sublease.
- (B) Form of Sublease. A Sublease shall be in writing, in a form acceptable to the Tribe, shall require sublessee's performance of all the Lessee's obligations under the Lease, and shall be executed by the sublessor and sublessee.
- (C) Sublessor's Obligations. A Sublease shall not relieve the sublessor of its obligations under a Lease.
- (D) Recording. All Subleases shall be recorded with the Land Information Department and in accordance with other applicable laws.

14.6. Mortgages of Leasehold Interests

- (A) Tribal Approval. A Lease may be mortgaged only with the express written consent of the Executive Council, except that a Lease may expressly permit a future Mortgage without the Tribe's consent.
- (B) Recording. All Mortgages of leasehold interests shall be recorded with the Land Information Department and in accordance with other applicable laws.

PART THREE

§ 15. Enforcement

15.1. Jurisdiction

Tribal Court shall have exclusive jurisdiction over disputes arising under this Ordinance and actions involving interests created pursuant to this Ordinance, provided that nothing in this Ordinance may be construed to be a waiver of the Tribe's immunity from suit.

15.2. Tribe's Right to Recoup

- (A) The Tribe shall have the right to seek payment of any amounts a Member may owe to the Tribe pursuant to the Debts Owed to the Tribe Ordinance.
- (B) For any amounts owed to the Tribe by a non-member, the Tribe may seek redress in any appropriate forum.

15.3. Termination of Occupancy Right

- (A) Initiation of Termination Proceedings. Upon violation of the terms of a Residential Lease, Business Lease, or this Ordinance, and expiration of any cure rights, a Lessor may initiate proceedings in Tribal Court or other appropriate forum to terminate the Occupancy Right of the person or entity in violation.
- (B) Notice. If the Leasehold is subject to a Mortgage, the Lessor shall provide notice of the violation to the Mortgagee, which shall have such cure rights as may be provided in the Mortgage and/or under other applicable law.
- (C) Complaints Filed in Tribal Court. A Lessor may initiate an action to terminate Occupancy Rights by filing a complaint, which shall include:
- (1) The name of the person or entity holding the Occupancy Right and each person or entity claiming an interest in the Leasehold, including any Mortgagee, as defendant(s).
 - (2) A concise statement of the facts concerning the alleged default(s) and such other facts as may be necessary to constitute a cause of action.
 - (3) True and correct copies of the document, by which the Occupancy Right was conferred, and any related note, Mortgage, or other recorded real property security instrument.
 - (4) A list of any allegations concerning non-compliance with any requirements and conditions prescribed in (i) federal statutes and regulations, (ii) Tribal law, and/or (iii) provisions of the document by which the Occupancy Right was conferred.
- (D) Service of Process. A copy of the summons and complaint shall be served on all defendants in accordance with Tribal law.
- (E) Trial and Judgment. An action to terminate an Occupancy Right shall be heard and decided within thirty (30) days from the date of service of the complaint on the defendant(s). Subject to Section 15.4, if the Lessor proves, by a preponderance of the evidence, that sufficient grounds exist to terminate the Occupancy Right, the Tribal Court shall enter judgment, which shall include, as appropriate:
- (1) Declaration of the Lessor's right to recover the Premises.
 - (2) Termination of the document by which the Occupancy Right was conferred and reversion of the Lessor's interest to the Lessor.
 - (3) If the Lease is subject to a Mortgage, then, following foreclosure, the rights of the Lessee shall not merge with the Lessor's rights as beneficial owner as long as the Mortgage continues.

- (4) A Writ of Possession to an Enforcement Officer to immediately remove the defendant(s) and all other occupants, and their personal property.
- (5) Monetary damages in the event that removed occupant(s) have damaged the premises beyond normal wear and tear or Tribal Court otherwise finds the Lessor entitled to such damages. Tribal Court may order deduction of the judgment amount pursuant to the Debts Owed to the Tribe Ordinance. Tribal Court may order that payments by Members be made by installment over time to avoid hardship to the defendant.
- (F) Emergency Expedited Hearing. In the event that activities or conditions on Tribal Land pose an imminent threat to the health, safety, or welfare of the Community, Lessor may initiate proceedings without regard to otherwise applicable procedural requirements. In such event, the Court shall expedite proceedings and the Court shall order such interim or permanent relief as may be necessary, including, if warranted, termination of the Lease, removal of the defendant from the premises, and/or immediate cessation of threatening activities or conditions.

15.4. Tribe's Termination Rights when Leasehold is subject to a Mortgage

In the event the Leasehold is subject to a lawful Mortgage, then, except where the Tribe is the Mortgagee, the Tribe may not terminate the Lease but may (i) with the Mortgagee's consent, take a Lease and assume borrower's obligations under the note and Mortgage, or (ii) regardless of the Mortgagee's consent, pay off the outstanding balance on the loan secured by the Mortgage before entry of judgment, terminating the Lease.

15.5. Termination in the Absence of Lease Terms

Notwithstanding any other remedies provided in this Section 15, termination of a Lease may be pursued as provided in the Lease or, in the absence of provisions in the Lease, as follows:

- (A) The Lessor shall provide the Lessee with a notice of intent to terminate, including a description of the alleged default(s) of the Lease; actions, if any, that the Lessee must take to cure the default; and the Lessor's intention to terminate the Lease if the default is not cured within fourteen (14) calendar days.
- (B) In the event the Lessee fails to cure the default, the Lessor shall serve on the Lessee a notice of termination of Lease, including notice to the Lessee that the Lease has been terminated and a demand that the Lessee vacate the premises.
- (C) In the event a Lessee fails to vacate the premises following termination of a Lease, the Lessor may file an action in Tribal Court pursuant to Section 15.3.
- (D) Nothing in the Section shall prevent a Lessor under a Lease from pursuing remedies under Section 15.

- (E) Upon termination of a Lease because of default, title to the Leasehold and all of its Improvements shall automatically revert to the Tribe without compensation to the Lessee.

15.6. Remedies for Holdover or Trespass

- (A) Leases of Tribal Lands shall include a process for remedying trespass by either a holdover tenant or third party trespasser.
- (B) If a Lessee remains in possession after the expiration or cancellation of a Lease the tribe may take all appropriate legal action to recover possession and pursue additional remedies.
- (C) The Tribe shall have the authority to seek all available legal remedies to remove unauthorized occupants of Tribal Land.
- (D) For trespass or Lease violations on Tribal Trust Land, the tribe may request assistance from the BIA to enforce the provisions of or cancel the Lease document or remove trespassers and seek any additional remedies.
- (E) The Tribe may, at its discretion, negotiate remedies for Lease violations or trespass.

§ 16. Proceedings to Collect Fees for Payment of Emergency Services

In order to assure the willingness of public authorities to respond to fires and other emergencies on Tribal Trust Lands, the towns and counties that provide such services are authorized to bring actions in Tribal Court against a person holding an Occupancy Right to recover reasonable charges incurred in responding to fires and other emergencies at the home of such occupant provided the town or county has provided the occupant with a written statement of charges and the occupant has failed to pay for more than ninety (90) days. In the event the plaintiff prevails, the Tribal Court may order payment of amounts owed by the Lessee. The Tribal Court may order that payments be made by installment over time to avoid hardship to the Member.

Legislative History for Forest County Potawatomi Realty Ordinance:



Recommended by the Ordinance Department	(11/04/2010)
Approved by Executive Council.....	(11/04/2010)
Ordinance pulled from General Council for revisions due to enactment of the HEARTH Act.....	(01/31//2013)
Recommended by the Ordinance Department	(07/26/2017)
Approved by Executive Council.....	(07/26/2017)
Revised & Approved by Executive Council	(08/07/2018)
Approved by General Council	(08/11/2018)

This Ordinance amends and supersedes the following Control and Assignment of Tribal Lands:

Enacted by the General Council.....(11/06/1938)