

CHAPTER 26A
RESIDENTIAL LEASE APPROVAL ACT

26A-1 AUTHORITY

This Residential Lease Approval Act ("Act") is adopted pursuant to the Act to Implement the Federal Helping Expedite and Advance Responsible Tribal Home Ownership with Regard to Residential Leases enacted by the Kootenai Tribal Council on April 25, 2016 and the authority vested in the Tribal Council of the Kootenai Tribe of Idaho under Article IV, Section 1(d) of the Constitution of the Kootenai Tribe of Idaho.

26A-2 PURPOSE & DEFINITIONS

26A-2.01 The purpose of this Act is to streamline approval of residential leases of Tribal housing sites. This Act applies only to those Tribal housing sites located on Tribal Land held in Trust or Restricted Status and does not apply to housing sites located on unrestricted fee or individually owned land.

26A-2.02 This Act shall be liberally interpreted and construed to implement the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 ("HEARTH Act"), amended 25 U.S.C. 415, by establishing a process by which a Lease Agreement with the Tribe will not require the approval of the Secretary of the Interior ("Secretary") if the Lease Agreement is executed under this Act. Nothing in this Act is intended to expand the authority or responsibility of the Secretary beyond that provided under applicable federal statutes or regulations.

26A-2.03 Definitions. Definitions from Chapter 26A will apply to this Act unless otherwise noted in the text.

(1) "Tribal Land" shall mean any tract, or interest therein, in which the surface estate is owned by the Tribe in trust or restricted status, and includes such lands reserved for Bureau of Indian Affairs (BIA) administrative purposes. The term also includes the surface estate of lands held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 477).

(2) "Trust" or "Restricted Land" shall mean any tract, or interest therein, held in trust or restricted status.

(3) "Trust" or "Restricted 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 Indians hold 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.

26A-3 GOVERNING LAW

The laws of the Kootenai Tribe and applicable laws and regulations of the United States shall govern all leases authorized by this Act.

26A-4 AMENDMENT

This Act may be amended by majority vote of the Tribal Council, provided that no major substantive amendment hereto shall be effective unless approved by the Secretary in accordance with applicable federal laws and regulations.

26A-5 EFFECTIVE DATE

This Act shall become effective on the date of enactment by the Tribal Council and approval by the Secretary.

26A-6 SEVERABILITY

If any provision or provisions of this Act shall in the future be declared invalid by the Tribal Court or another court of competent jurisdiction, the invalid provision or provisions shall be severed and the remaining provisions shall continue in full force and effect.

26A-7 APPROVAL OF LEASES

26A-7.01 All leases shall be subject to the approval of the Tribal Council.

26A-7.02 All leases shall be signed by the Chairperson or the Vice-Chairperson in the absence of the Chairperson.

26A-7.03 After the Secretary approves this Act, all leases approved and executed under this Act shall be effective without federal approval under 25 U.S.C. 415, unless the Secretary rescinds approval of this Act and reassumes responsibility for such approval.

26A-7.04 Any lease approved and executed under this Act shall refer to this Act as authority for its execution on behalf of the Tribe.

26A-8 LEASE REQUIREMENTS

All Leases shall be in writing, and at a minimum, shall:

26A-8.01 Describe the tract or parcel that is being leased, or on which the residential unit being leased is located with reference to a public or private survey plan, if available, in terms sufficient to determine the location;

26A-8.02 State the purpose of the Lease and authorized uses of the premises;

26A-8.03 Identify the parties to the Lease;

26A-8.04 State the effective date and term of the Lease, which shall not exceed twenty-five (25) years;

26A-8.05 If a Lease authorizes the Lessee to make permanent improvements during the term of the Lease, the Lease shall identify the general type and location of each improvement, and the responsibility for constructing, operating, maintaining, and managing the permanent improvements during the Lease term. The Lessee shall be required to provide reasonable notice to Lessor of the construction of any permanent improvements not described in the lease.

26A-8.06 Specify all rent and payment requirements, including payment due dates, payee, place of payment, and any interest;

26A-8.07 State the due diligence, performance bond, and insurance requirements that apply, if any;

26A-8.08 State the process for amendment, which shall be in writing, signed by both parties, and with the consent of any Mortgagee as defined in Chapter 26;

26A-8.09 State the governing law, which shall include the Tribe's laws and applicable federal statutes and regulations; and

26A-8.10 Include or attach all other provisions required under any applicable federal statutes or regulations, including without limitation, each of the required terms for leases set forth in 25 C.F.R. 162.313 such as, but not limited to:

(1) Use of Premises. It is herein agreed that during the lease term that there must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use of waste on Leased Premises.

(2) Violations of Lease. The Lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements under 25 CFR § 162.014.

(3) Historic Preservation. If historic properties, archaeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with this lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the Lessee will contact the Tribe and the Bureau of Indian Affairs to determine how to proceed and appropriate disposition.

(4) Inspection of Premises. The Secretary, lender, applicable Federal Agency, and the Lessor and their authorized representatives shall have the rights, at any reasonable times during the term of this lease, and with reasonable notice, to enter upon the Leased Premises, or any part thereof, to inspect the same and all buildings and other improvements erected and placed thereon.

(5) Inspection of Records. The Lessor and the appropriate agencies may treat any failure by the Lessee to cooperate with a request to make appropriate records, reports, or information available for inspection and duplication as lease violation.

(6) Hold Harmless. The Lessee holds the Lessor and the United States harmless from any loss, liability, or damages resulting from the Lessee's use or occupation of the Leased Premises.

(7) Hazardous Materials. The Lessee indemnifies the Lessor and the United States against all liabilities or costs in relation to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or release or discharge or any hazardous material from the Leased Premises that occurs during the lease term, regardless of fault, with the exception that the Lessee is not required to indemnify the Lessor for liability or cost arising from the Lessor's negligence or willful misconduct.

(8) Improvements. All permanent improvements and responsibility for constructing, operating, maintaining, and managing permanent improvements under 25 CFR § 162.315 are of the Lessee during the term of this Lease including any renewal or extension thereof.

26A-9 LEASE APPLICATION AND APPROVAL PROCESS

26A-9.01 Individuals seeking residential leases at Housing Sites shall make application to the Tribal Council in person or in writing.

26A-9.02 The Tribal Council shall consider the application and approve or deny the application based on all relevant factors within sixty (60) days. Tribal Council may table the application pending additional information, if needed.

26A-10 TRUST RESPONSIBILITY OF UNITED STATES MAINTAINED

For any Lease requiring payments to be made to the Tribe, the Tribe shall provide the Secretary with such documentation of the lease payments that are sufficient to enable the Secretary to discharge the trust responsibility of the United States such that:

26A-10.01 The United States shall not be liable for losses sustained by any party to a lease executed; or

26A-10.02 Pursuant to the authority of the Secretary to fulfill the trust obligation of the United States to the Tribe under Federal law (including regulations), the Secretary may, upon reasonable notice from the Tribe and at the discretion of the Secretary, enforce the provisions of, or cancel, any lease executed by the Tribe.

26A-11 TERMINATION OF LEASE

Leases executed under this Act may be terminated for non-compliance with applicable laws, ordinances, rules, regulations, and other legal requirements under 25 C.F.R. § 162.014 and the Kootenai Law and Order Code or any other provisions of the Lease.

26A-12 FORFEITURE OF LEASE

A Lessee may forfeit their lease by obtaining a Land Lease Cancellation Form from the Realty Department and submitting a signed, notarized original of such to the Realty Department. The Realty Department will forward the form rescinding the land lease to the Tribal Council for action. The property will then be offered in accordance with the Section 26A-9.

26A-13 LEASE EXTENSIONS

The Tribal Council will review requests for lease extensions on a case-by-case basis.

26A-14 ASSIGNMENT AND SUBLEASE

Assignments and subleases are prohibited, unless made pursuant to written consent of the Tribal Council and any federal agency providing mortgage assistance or guarantee as described in Chapter 26.

26A-15 RECORDING

26A-15.01 The Realty Department will provide the completed Lease and the Designation of a Beneficiary of Lease Form for signature by applicant. Lessee shall be required to pay lease rent as is indicated by the lease agreement prior to lease issuance. Following signing and payment of rent, the Realty Department will record and provide a certified copy to the Lessee. Original documents will be maintained by the Realty Department and provided to the Bureau of Indian Affairs Land Titles and Records Office with jurisdiction over the Tribe.

26A-15.02 In the case(s) where, under the lease terms, the Lessee is required to pay an amount equal to the property taxes, Lessee shall be required to pay a security deposit equal to the amount of the taxes for the previous year plus agree to pay any increase that may occur. Further, Lessee shall complete a waiver form authorizing future payments to be escrowed or automatically

deducted from payments owed to the individual by the Tribe.

26A-16 ENVIRONMENTAL REVIEW

The purpose of this Section is to establish an environmental review process that satisfies the requirements of 25 U.S.C. 415(h)(3)(B)(ii).

26A-16.01 The Tribal Council shall not approve a Lease under Section 26A-9 of this Act unless the Environmental Department has reviewed the Lease and such other information as may be necessary to identify and evaluate any substantial or potentially substantial change on the environment that could be construed as a significant effect on the environment, and has:

(1) Made a determination that the uses authorized by the Lease are included within the categorical exclusion stated in Section 26A-17 and provided that determination in writing to the Realty Department;

(2) Issued a final decision after following the procedure set forth in Section 26A-18; or

(3) Provided the Realty Department with notice that the Tribe has carried out a project or activity funded by a federal agency and that it has relied on the Environmental Review Process of the applicable federal agency rather than the procedures set forth in Section 26A-18.

26A-17 CATEGORICAL EXCLUSIONS

26A-17.01 The Tribal Council hereby finds that the following actions do not individually or cumulatively have a significant effect on the environment and, therefore, except as otherwise provided in subsection 26A-17.02, are categorically excluded from the procedures set forth in Section 26A-18:

(1) Approval of a Lease for residential use of an existing housing unit, including any associated improvements, access roads, and utilities;

(2) Approval of a Lease for five (5) acres or less of contiguous land for construction and residential use of a single structure of one (1) to four (4) dwelling units and any associated improvements, access roads, and utilities.

26A-17.02 Notwithstanding subsection 26A-17.01, the Environmental Department shall follow the procedures set forth in Section 26A-18 if it determines that extraordinary circumstances exist under which the residential use of the Premises may, individually or collectively, have a significant effect on the environment, including without limitation, as set forth below:

(1) Substantial controversy on environmental grounds;

(2) Presence of cultural resources; or

(3) Presence of historic properties.

26A-18 ENVIRONMENTAL REVIEW

Unless a categorical exclusion applies, the Environmental Department shall cause the effects on the environment of the intended uses authorized by the proposed Lease to be identified and evaluated as follows:

26A-18.01 If the Environmental Department determines that the uses authorized by the proposed Lease will not have a significant effect on the environment, then it shall cause the following to occur in order set forth below:

(1) A finding of no significant impact shall be issued and posted for a minimum of fifteen (15) calendar days in a prominent, noticeable place in the Administration Building.

(2) If there is a substantial interest in holding a public meeting, it shall be held in a manner determined by Tribal Council to provide an opportunity for Tribal citizens and Reservation residents to comment in writing or verbally on the finding of no significant impact.

(3) Comments shall be reviewed and analyzed and a report shall be issued by the Environmental Department responding to relevant and substantive comments, if any, regarding the finding of no significant impact. The report shall be posted for a minimum of fifteen (15) calendar days in a prominent, noticeable place in the Administration Building.

(4) A final decision confirming that the uses authorized by the proposed Lease are expected to have no significant effect on the environment shall be issued, sent to the Tribal Council for approval, and posted for fifteen (15)

calendar days in a prominent, noticeable place in the Administration Building.

26A-18.02 If the Environmental Department determines that the proposed Lease will have a significant effect on the environment, then it shall cause the following to occur in the order set forth below:

(1) A draft environmental review that identifies and evaluates any significant effect on the environment of uses authorized by the proposed Lease shall be issued and posted for a minimum of thirty (30) calendar days in a prominent, noticeable place in the Administration Building;

(2) A meeting on the draft environmental review shall be held in a manner determined by the Tribal Council to provide an opportunity for Tribal citizens and Reservation residents to comment in writing or verbally on any Significant Effect on the Environment of the uses authorized by the proposed Lease;

(3) Comments shall be reviewed and analyzed and a report by the Environmental Department shall be issued responding to relevant and substantive comments, if any, on any significant effect on the environment of the uses authorized by the proposed Lease. The report shall be posted for a minimum of thirty (30) calendar days in a prominent, noticeable place in the Administration Building;

(4) A final environmental review describing the conclusions of the Environmental Department report on the issues and evidence gathered under this Section shall be issued and posted for a minimum of thirty (30) calendar days in a prominent, noticeable place in the Administration Building; and

(5) A final decision assessing the potential for any significant effect on the environment associated with the uses authorized by the Lease shall be issued, sent to the Tribal Council for approval, and posted for a minimum of thirty (30) calendar days in a prominent, noticeable place in the Administration Building.

26A-19 APPROVAL OF LEASEHOLD MORTGAGE

26A-19.01 All Leasehold Mortgages under a Lease must be separately authorized by the Tribal

Council, unless the Lease authorizes a Leasehold Mortgage and states the law governing foreclosure.

26A-19.02 After the Secretary approves this Act, all Leasehold Mortgages authorized under this Section shall be effective without federal approval under 25 U.S.C. 415, unless the Secretary rescinds approval of this Act and reassumes responsibility for such approval.

26A-20 RECORDING

All Leasehold Mortgage, assignments, amendments, and sales relating thereto shall be recorded at the Realty Department and the Bureau of Indian Affairs Land Titles and Records Office with jurisdiction over the Kootenai Indian Reservation, provided that, to the extent required by a Mortgage a Leasehold Mortgage shall also be recorded in the appropriate county register of deeds.

26A-21 COMPLAINT

26A-21.01 An individual, corporation or government whose interests could be adversely affected by a decision of the Tribe to lease a housing site and who has reasonable grounds to believe that the Tribe has failed to comply with this Act ("Interested Party") has the right to file a Complaint under this Section.

26A-21.02 The Complaint shall be in writing, signed by the Interested Party, with a description of the alleged noncompliance with this Act that is the subject of the complaint, state all relief requested and submitted to the Tribal Council.

26A-21.03 The Tribal Council shall make reasonable efforts to resolve the Complaint informally, including, but not limited to, scheduling a meeting with the Interested Party for such purpose. All complaints resolved through such informal resolution shall be reduced to writing and signed by the Tribal Council and the Interested Party.

26A-21.04 If the Complaint is not resolved informally, the Tribal Council shall issue a decision on the Complaint, which shall be in writing and signed by the Tribal Council. The Tribal Council shall cause the decision to be delivered to the Interested Party no later than twenty (20) business days after receipt of the Complaint. The decision

of the Tribal Council shall constitute a final decision.

26A-22 APPEAL

In accordance with 25 U.S.C. 415(h)(8)(A), an Interested Party who has exhausted the Tribe's remedies set forth in Section 26A-21 may submit a petition to the Secretary, at such time and in such form as the Secretary deems appropriate, to review the Tribe's compliance with this Act.

26A-23 NO WAIVER OF SOVEREIGN IMMUNITY

Nothing in this Act shall be deemed to waive the sovereign immunity of the Tribe or any of its officials, employees, or representatives.