

TITLE 29. THE NON-TRIBAL MEMBER SURVIVING SPOUSE LAW

CHAPTER 1. PURPOSE, POLICY, DEFINITIONS

29 M.P.T.L. ch. 1 § 1

§ 1. Title

The title of this Law shall be the Mashantucket Pequot Surviving Spouse Law.

29 M.P.T.L. ch. 1 § 2

§ 2. Policy Purpose

It is the policy of the Tribe that the enjoyment of the rights under an Assignment granted pursuant to 27 M.P.T.L. shall be limited, to the greatest extent practicable, to Tribal Members. One exception to this general policy is the right of a non-Tribal Member Spouse of a Tribal Member to continue to occupy an Assignment upon the death of such Tribal Member. The purpose of this Surviving Spouse Law is to set forth the terms and conditions under which the Surviving Spouse of a deceased Tribal Member may continue their occupancy in an Assignment located on the Reservation. The further purpose of this Surviving Spouse Law is to set forth the rights of such Surviving Spouse to sell, transfer, or devise, or otherwise realize, the value of the rights that would have been enjoyed by the deceased Tribal Member by virtue of his or her Assignment except for his or her death.

29 M.P.T.L. ch. 1 § 3

§ 3. Applicability

This Law applies to the rights of a deceased Tribal Member as evidenced by an Assignment pursuant to 27 M.P.T.L. only. The Tribe will convert a Certificate of Conveyance to an Assignment in the name of the deceased Tribal Member in the event that said Tribal Member failed to so do prior to his or her death. Excluded from the application of this Law are the rights of a Surviving Spouse who is an enrolled Tribal Member as such rights are governed by the Probate Laws of the Tribe.

29 M.P.T.L. ch. 1 § 4

§ 4. Definitions

In construing the provisions of this Law, the following words or phrases shall have the meanings designated unless a different meaning is expressly provided, or the context clearly indicates otherwise:

- a. "Assignment" has the same meaning as set forth in 27 M.P.T.L. ch. 1 §4(b) and does not include an Initial Assignment.
- b. "Certificate of Conveyance" has the same meaning as set forth in 27 M.P.T.L. ch. 1 §4(i).
- c. "Tribal Children" or "Tribal Child" means any unmarried person who is under the age of 18 years and is either:
 - (1) A Tribal Member; or
 - (2) Eligible for membership in the Tribe and is the biological child of a Tribal Member.
- d. "Department of Housing" or "DOH" has the same meaning as set forth in 27 M.P.T.L. ch. 1 §4(j).
- e. "Dwelling" has the same meaning as set forth in 27 M.P.T.L. ch. 1 §4(k).
- f. "Eligible Tribal Member" has the same meaning as set forth in 27 M.P.T.L. ch. 1 §4(l).
- g. "Loan Program" has the same meaning as set forth in 27 M.P.T.L., ch. 1 §4(p).
- h. "Occupancy Interest" means the interest of the deceased Tribal Member by virtue of an Assignment.
- i. "Principal Place of Residence" means a primary Dwelling occupied by a Surviving Spouse on a continuous basis for more than six (6) months of every calendar year.
- j. "Spouse" means a person joined in lawful marriage to another person.
- k. "Surviving Spouse" means the surviving non-Tribal Member Spouse of a deceased Tribal Member.
- l. "Tribal Member" means an enrolled member of the Mashantucket Pequot Tribal Nation.

CHAPTER 2. NATURE OF A SURVIVING SPOUSE'S RIGHT

29 M.P.T.L. ch. 2 § 1

§ 1. Nature of a Surviving Spouse's Right

- a. A Surviving Spouse has the right to occupy the Assignment of the deceased Tribal Member as follows:

- (1) If the deceased Tribal Member devised or designated through a Housing Designation Form an Occupancy Interest to the Surviving Spouse and the Surviving Spouse is under the age of Seventy (70) years, the Surviving Spouse shall have an Occupancy Interest in the Assignment for ten (10) years from the deceased Tribal Member's date of death, or in the event that there are Tribal Children residing in the Assignment, of which the Surviving Spouse is the parent or legal guardian, then the Surviving Spouse's Occupancy Interest will expire when the youngest child reaches the age of 18, whichever occurs later.
- (2) If the deceased Tribal Member devised or designated through a Housing Designation Form an Occupancy Interest in the Assignment to the Surviving Spouse and the Surviving Spouse is Seventy (70) years of age or older, the Surviving Spouse shall have an Occupancy Interest for the remaining years of his or her life.
- (3) If the deceased Tribal Member did not devise or designate through a Housing Designation Form an Occupancy Interest to the Surviving Spouse, the Surviving Spouse may continue residence in the Assignment for three (3) years from the deceased Tribal Member's date of death or in the event that there are one or more Tribal Children residing in the Assignment, of which the Surviving Spouse is the parent or legal guardian,, then the Surviving Spouse may continue residence in the Assignment until such time as the youngest child reaches the age of 18, whichever occurs later.

b. A Surviving Spouse who was devised an Occupancy Interest may sell, transfer, or devise his or her Occupancy Interest in the Assignment to an Eligible Tribal Member only as provided herein.

29 M.P.T.L. ch. 2 § 2

§ 2. Rights of a Surviving Spouse

a. Right to Continued Occupancy. Upon the death of a Tribal Member, the Surviving Spouse may continue to reside in the Assignment as provided in 29 M.P.T.L., ch. 2 §1(a)(1), (2), and (3) herein as long as the Surviving Spouse:

- (1) Continues to occupy the Assignment as his or her Principal Place of Residence;
- (2) Complies with the requirements of this Surviving Spouse Law;
- (3) Abides by all the laws, rules, regulations, and policies of the Tribe;
- (4) Continues to fully discharge all obligations arising under the Assignment and/or any Security Interest on the Assignment; and
- (5) Timely executes, within ninety (90) days of request, any

documentation that the DOH or Loan Program may reasonably require to evidence the Surviving Spouse's obligations.

b. Expiration of Occupancy Period.

- (1) At the expiration of the Occupancy Interest as provided in 29 M.P.T.L., ch.2 §1(a)(1), the Surviving Spouse must sell or transfer the Assignment to an Eligible Tribal Member after giving the Tribe the right of first refusal. In the event that the Surviving Spouse fails to comply with the requirements of this section, the provision of 29 M.P.T.L., ch. 3 §1 shall apply.
- (2) At the expiration of the period of time permitted in accordance with 29 M.P.T.L., ch. 2 §1(a)(3), the Assignment shall pass to the legal heir(s) of the deceased Tribal Member as determined by the Mashantucket Pequot Probate Court. In the event that the Surviving Spouse fails to comply with the requirements of this section, the DOH may bring an eviction action in the Tribal Court.

CHAPTER 3. DEFAULT, REMEDIES, CONVEYANCE

29 M.P.T.L. ch. 3 § 1

§ 1. Default of Conditions

In the event that the Surviving Spouse fails to comply with the requirements of this Surviving Spouse Law, then, upon two (2) successive written notices from the DOH, thirty (30) days apart, sent via certified and regular mail, the Surviving Spouse shall have six (6) months from the date of the first letter to either cure his or her alleged default or if the Surviving Spouse has an Occupancy Interest, sell the Assignment to the Tribe as herein provided, or, in the event the Tribe is unwilling or unable to purchase the Assignment, sell or transfer it to an Eligible Tribal Member. In the event that the Surviving Spouse fails to cure the default and cannot or does not sell or transfer the Assignment as herein set forth or fails to vacate such Assignment within the time specified, then the Occupancy Interest, if any, will be terminated and he or she shall be subject to an eviction action in Tribal Court, which may be brought by the DOH. If the Surviving Spouse had an Occupancy Interest, the Assignment shall be sold at auction by the Tribal Court. The net proceeds of the sale, after payment of costs of the sale, any monies due and owing the Tribe, and any obligation to third parties that are secured by the Security Interest in the Assignment, shall be distributed to the Surviving Spouse. If the Surviving Spouse was not devised or designated through a Housing Designation Form an Occupancy Interest, the Assignment shall pass to the legal Eligible Tribal Member heir(s) of the deceased Tribal Member as determined by the Mashantucket Pequot Probate Court.

§ 2. Conveyance by Surviving Spouse

a. Sales and Transfers

- (1) A Surviving Spouse with an Occupancy Interest may sell the Assignment to the Tribe at any time during his or her Occupancy Interest, as long as the Tribe agrees to purchase such Assignment.
- (2) The sales price shall be determined by an appraisal process as follows:
 - (i) Two (2) appraisers shall each provide an appraisal; one appraiser shall be selected by the DOH and the other shall be selected by the Surviving Spouse;
 - (ii) Comparable sales used in the appraisals shall, to the greatest extent possible, be derived from sales of similar Assignments located on the Reservation; and
 - (iii) The sale price shall be the mid-point between the two appraisals.
- (3) The Tribe shall have fifteen (15) calendar days from the date of receipt of the second appraisal to determine whether it will purchase the property.
- (4) In the event that the Tribe decides not to purchase the Assignment, then the Surviving Spouse may sell or transfer the Assignment to an Eligible Tribal Member.
- (5) The purported sale or transfer of an Assignment by a Surviving Spouse to a non-Eligible Tribal Member is void.

b. Conveyance by Will

- (1) A Surviving Spouse with an Occupancy Interest may devise the Assignment to an Eligible Tribal Member.
- (2) Any provision of a will of a Surviving Spouse devising his or her interest to an Assignment to a non-Eligible Tribal member is void.
- (3) If the Surviving Spouse dies and fails to devise the Assignment to an Eligible Tribal Member, the Assignment, or the proceeds from the sale, will be devised in accordance with the Probate Law. However, the Tribe shall have a right of first refusal to purchase the Assignment.

§ 3. Designated Minor

When the Assignment has been willed to a Tribal Child who is underage but otherwise eligible to receive an Assignment pursuant to 27 M.P.T.L., ch. 2 §1, the Land Assignment Law, and after consultation with the DOH, the Tribal Court shall appoint a guardian to hold the Assignment until the beneficiary is eligible to hold the Assignment. The Tribal Child must be or become an enrolled member of the Tribe within a reasonable period of time. In the event the otherwise eligible Tribal Child is not yet an enrolled member of the Tribe, the appointed guardian must use his/her best efforts to help secure enrollment within a reasonable period of time. The guardian shall utilize the Assignment in a manner which is in the best interest of the beneficiary. Any Tribal Member shall have the right to petition the Tribal Court to have the guardian of the beneficiary removed as guardian. The Tribal Court may remove the guardian of the beneficiary and appoint a new guardian for the beneficiary if the Tribal Court, after giving notice to the guardian and after a hearing, has determined that the guardian has not utilized the Assignment to the best interests of the beneficiary. The guardian appointed by the Court shall be responsible for maintaining the Assignment and otherwise complying with the provisions of this Surviving Spouse Law.

CHAPTER 4. GENERAL

§ 1. Construction

Nothing in this Surviving Spouse Law shall be construed to establish any non-Tribal Member rights in any Reservation resources, property, or assets that may be held for the benefit of the Tribe or any individual member of the Tribe. Nothing in this Surviving Spouse Law shall be construed as establishing any individual rights of any Tribal Member beyond those recognized by Tribal Law. Nothing in this Surviving Spouse Law shall be construed to establish jurisdiction in any agency or government that is not recognized by Tribal Law.

§ 2. Severability

If any part of this Surviving Spouse Law is held to be invalid the remainder shall remain to be in full force and effect to the maximum extent possible.

Historical and Statutory Notes

Derivation.

Effective October 27, 2005, TCR102705-08 of 12 enacted the "Non-Tribal Member Surviving Spouse Law", Title 29 M.P.T.L.

Amendments.

Effective October 22, 2015, TCR102215-03 of 07, made various amendments to 29 M.P.T.L. to include the Elders Housing Area & all Housing on Trust Lands & to provide some level of security for Non-Tribal Member Surviving Spouses