

**RINCON BAND OF LUISEÑO MISSION INDIANS
RINCON INDIAN RESERVATION, CALIFORNIA**



**RINCON LAND ASSIGNMENT ORDINANCE
RINCON TRIBAL CODE § 8.700**

Adopted on June 2, 2009
Amended on September 13, 2018

RINCON LAND ASSIGNMENT ORDINANCE

Rincon Tribal Code § 8.700

Table of Contents

§ 8.700 Purpose 3
§ 8.701 Definitions 3
§ 8.702 Eligibility for a Residential Land Lease 6
§ 8.703 Duties of Land Use Office..... 7
§ 8.704 Processing Residential Land Lease Applications..... 9
§ 8.705 Action on the Assignment Lease or Lease Application 11
§ 8.706 Sub-Division of Original Assignments..... 13
§ 8.707 Mutual Help Homes not Located on an Assignment..... 14
§ 8.708 General Land and Property Policy..... 15
§ 8.709 Preference to Survivors 19
§ 8.710 Cancellation of an Assignment or Lease 21
§ 8.711 Appeals 23
§ 8.712 General Provisions..... 25

RINCON LAND ASSIGNMENT ORDINANCE

Rincon Tribal Code § 8.700

§ 8.700 PURPOSE

All Tribal Lands within the boundaries of the Rincon Reservation shall be for the use of the General Membership and their Immediate Family as defined under this Ordinance. All Tribal Trust Lands and all future Tribal Trust Lands as may be hereafter added thereto, designated for purposes of Assignments, are and will be under the jurisdiction of the General Membership. The issuance of Assignments to Band Members and Leases to members of their Immediate Families will preserve the future of the Band by encouraging Band Members to return to the Reservation and encourage those holding Assignments to enhance and protect Tribal Trust Lands. Assignments of Tribal Trust Lands will allow the Band to maintain customs and traditions and to protect our heritage and ancestral lands. Assignments will provide home sites to Band Members and their Successors (e.g., a Rincon Lineal and/or Surviving Spouse) and will strengthen family ties. The objective of this Ordinance is to establish uniform policies and procedures for the Assignment and Lease of Tribal Trust Lands on the Rincon Reservation. The provisions of this Ordinance are intended to meet the land needs of Band Members and their Successors by providing home sites and their Successors by providing long-term home sites through protections afforded to Assignees and their Successors, under a Residential Land Lease. In the absence of a Residential Land Lease, an Assignee's Assignment reverts to the Band upon death of the Assignee.

§ 8.701 DEFINITIONS

The following terms as used in this Ordinance shall have the following meanings:

(a) **"Assignment"** shall mean the legal right of a Band Member to use and occupy Tribal land on the Reservation subject to the conditions and limitations set forth in this Ordinance and in a Residential Land Lease. The term "Assignment" also means an Original Assignment to the extent a Band Member obtains a Residential Land Lease in accordance with this Ordinance.

(b) **"Assignee"** means a Band Member who holds an Assignment pursuant to a Residential Land Lease issued pursuant to the provisions of this Ordinance.

(c) **"Applicant"** means a person who has submitted an application to the Rincon Housing Department requesting a Residential Land Lease or Lease.

RINCON LAND ASSIGNMENT ORDINANCE

Rincon Tribal Code § 8.700

(d) "**Band**" shall mean the Rincon Band of Luiseño Indians and synonymous with "Tribe."

(e) "**Band Member**" means an enrolled member of the Tribe.

(f) "**BIA**" means the Bureau of Indian Affairs, Southern California Agency.

(g) "**Business Committee**" shall be the five member committee elected by the General Membership pursuant to the Rincon Articles of Association Section 3.

(h) "**Day**" as used in this Ordinance means business day and does not include weekends or holidays.

(i) "**Fair Market Value**" shall be determined by the Band by taking the average of no less than two (2) appraisals. The appraisal methodology shall be mutually agreed upon between the parties. Appraisals will be based on the structures and fixtures on the Assignment only and not on the Tribal Trust Land. All appraisal costs shall be split between the parties.

(j) "**Fixtures**" means personal property that has become physically attached to the land in such a manner that its removal would damage the personal property. (i.e., anything of non-removable nature.) For purposes of this Ordinance, a house is not a "Fixture".

(k) "**General Membership**" means those voting Band Members of the Tribe who are in attendance at the General Membership meeting where a duly noticed Assignment or Lease action is to be taken pursuant to Section 8.704(f) of this Ordinance.

(l) "**Immediate Family**" means a Rincon Band Member's blood relation, limited to parent(s), sibling(s), children, grandchildren, aunt(s), uncle(s), niece(s), nephew(s) and first cousin(s). An Immediate Family member may be a Band Member or a Rincon Lineal.

(m) "**Land Use Office**" means the office established by the Band that is responsible for overseeing the Assignment application process, preparing Assignment recommendations for the General Membership, maintaining Assignment records and files and other duties set forth under Section 8.703.

RINCON LAND ASSIGNMENT ORDINANCE

Rincon Tribal Code § 8.700

(n) **“Lease”** means the legal instrument between the Tribe, as Lessor, and a non-Band Member Successor, a Rincon Lineal or Surviving Spouse, as Lessee. A Lease is not synonymous with the word “Assignment” as referenced in the Articles of Association, Section 6 b and this Ordinance.

(o) **“Lessee”** means a non-Band Member Surviving Spouse or Rincon Lineal, or a Successor, who holds an estate in Tribal land subject to Lease.

(p) **“New Assignment”** means an Assignment issued to a Band Member after the approval of this Ordinance that is evidenced by a Residential Land Lease issued pursuant to this Ordinance.

(q) **“Occupy”** means to live on the Assignment or Lease for a total of a six-month period (not consecutive) each calendar year.

(r) **“Original Assignments”** means an Assignment issued to a Band Member prior to approval of this Ordinance that is evidenced by a Residential Land Lease issued to a Band Member and exempt from size requirements pursuant to Section 8.708(a) of this Ordinance. At death of the Band Member holder the remainder of the Original Assignment not used by surviving Band Member children, who may take a subdivided portion of the Original Assignment, and/or Surviving Spouse, who may be issued a Lease for that portion of the Original Assessment necessary to maintain existing residence, shall revert to the Band.

(s) **“Residential Land Lease”** shall mean the legal instrument between the Tribe and a Band Member, as an Assignee, to evidence the legal right to an Assignment pursuant to this Ordinance. A “Residential Land Lease” issued under this Ordinance and approved by the Bureau of Indian Affairs shall be synonymous with the term “Assignment” as used in this Ordinance and as provided for under the Rincon Articles of Association, Section 6 b.

(t) **“Reservation”** means all lands within the boundaries of the Rincon Reservation, including, but not limited to:

(1) all lands within the territorial boundaries of the Rincon Indian Reservation as established by the Executive Order of the President issued on March 2, 1881, the Mission Indian Relief Act, 26 Stat. 712 (1891), the trust patent issued by the President on September 13, 1892, the Act of

RINCON LAND ASSIGNMENT ORDINANCE

Rincon Tribal Code § 8.700

Congress of August 16, 1941, 55 Stat. 622, the February 12, 1968 Order setting aside land for the Rincon Band and the trust patent issued on January 20, 1971, which established and added to the Rincon Reservation, and any fee land acquired in trust pursuant to 25 U.S.C. 461 and its implementing regulations, and such other lands as may thereafter be added thereto or made a part thereof; and

(2) all other trust, restricted, or tribally owned lands, regardless of whether they have been formally added to or made part of the Rincon Reservation.

(u) **“Rincon Environmental Department”** means the Tribal Government department responsible for day-to-day preservation and protection of natural resources on the Reservation pursuant to the Environmental Enforcement Ordinance.

(v) **“Rincon Lineal”** means Immediate Family of a Band Member who is not an enrolled member of the Band.

(w) **“Shall”** means that a certain action or event must occur.

(x) **“Successor”** means a Surviving Spouse, Rincon Lineal or Band Member designated by an Assignee to take his or her Assignment at death provided that the Assignment is evidenced by a Residential Land Lease issued pursuant to this Ordinance.

(y) **“Surviving Spouse”** means a husband or wife of a deceased Band Member who may be a Band Member or a non-Band Member.

(z) **“Tribal Court”** means the Intertribal Court of Southern California.

(aa) **“Tribal Government”** means the administrative and executive arms of the Tribe, its departments, political subdivisions, agencies and enterprises.

§ 8.702 ELIGIBILITY FOR A RESIDENTIAL LAND LEASE

(a) **Age Limit.** Band Members who are 18 years of age or older upon showing financial viability to secure or construct a home.

RINCON LAND ASSIGNMENT ORDINANCE

Rincon Tribal Code § 8.700

(b) Lender Pre-qualification. The Band Member must provide a pre-qualification letter or other written documentation from a lender that describes the conditions, including the date and amount, under which financing will be made available to the Band Member for development of a residence on the proposed Assignment.

(c) Disqualifying Criteria for a Residential Land Lease. The following will disqualify a Band Member from being issued a Residential Land Lease:

- (1)** Holding an Assignment on the Rincon Reservation;
- (2)** The Band Member had an Assignment or Residential Land Lease previously canceled for cause within five (5) years from the date of application;
- (3)** The Band Member is the sole owner of an allotment or fee simple land on Rincon Reservation, unless the owner can demonstrate he or she cannot build upon or occupy the land, in which case the Band may, with the owner's consent purchase the land. This subsection does not apply to any Original Assignment holders;
- (4)** Sharing an undivided interest in an allotment on the Rincon Reservation with other interest owners, unless the Band Member can demonstrate that he or she is unable to obtain the necessary consent from the other joint owners to build a residence on the allotment or that he or she cannot build upon or occupy the land. This subsection does not apply to any Original Assignment holders;
- (5)** He or she is not in good standing with the Band (i.e., owes a delinquent debt to the Band), has been excluded from the Reservation, is in violation of or has been convicted for violating any applicable Tribal ordinance, regulation, rule or policy and/or has been convicted, within the last seven (7) years of a sex offense, a drug related or violent crime.

§ 8.703 DUTIES OF LAND USE OFFICE

(a) Establishment of Rincon Housing Department Land Use Office. The Business Committee shall establish the Rincon Housing Department to be the Land Use

RINCON LAND ASSIGNMENT ORDINANCE

Rincon Tribal Code § 8.700

Office within the Tribal Government no less than three (3) months from approval of this Ordinance. The Business Committee shall act in the capacity of the Land Use Office until such time as the Office is established, fully staffed and operational.

(b) Responsibilities and Duties of the Rincon Housing Department Land Use Office. The Rincon Housing Department Land Use Office shall be responsible for implementation of this Ordinance and applicable policies and procedures. The Rincon Housing Department Land Use Office duties shall include and not be limited to:

- (1) In conjunction with the Business Committee, identify and determine Tribal Lands suitable for Assignments. "Suitable" for Assignments means having such lands surveyed if necessary, ensuring that utilities are accessible to the property boundary, working with the Rincon Environmental Department to have all Lands environmentally reviewed, obtaining Title Status Reports (TSRs) from the BIA and performing other such duties necessary in identifying and making Tribal lands available for Assignments. Subject to Section 8.707, Applicants will reimburse tribe for cost of survey once Residential Land Lease or Lease has been approved. A list of all Tribal Lands identified as suitable for Assignments will be available at the Rincon Housing Department Land Use Office;
- (2) Ensuring compliance with the Ordinance and issuing notices of violation when necessary;
- (3) Ensuring that Assignments that are not immediately reassigned (where there is no successor) are maintained;
- (4) Determine when an extension of the one (1) year occupancy requirement may be granted under Section 8.708(k);
- (5) Posting all required public notices as set forth in this Ordinance;
- (6) Act as the repository of all Assignment records and files. The Rincon Housing Department Land Use Office will maintain an inventory and make sure that all Assignment records and files are updated and accurate;

RINCON LAND ASSIGNMENT ORDINANCE

Rincon Tribal Code § 8.700

- (7) Sending successor forms to all Assignees to ensure said forms are current and accurate;
- (8) Investigating and making recommendations regarding whether an existing use on an Original Assignment may continue and/or whether a Successor may continue a use following the death of an Assignee;
- (9) Assisting with the sub-dividing of Original Assignments and preparing a recommendation to the General Membership;
- (10) Developing and processing applications and forms for Residential Land Leases to make recommendations to the General Membership for final approval or disapproval;
- (11) Investigating and making recommendations concerning whether a Band Member has a valid Original Assignment;
- (12) Developing and processing Lease applications for Rincon Lineals and Surviving Spouses qualified to hold a Lease under this Ordinance;
- (13) Submitting all Residential Land Leases and Leases approved by the General Membership to the BIA for final approval;
- (14) Preparing recommendations to the General Membership on behalf of an Assignee who is requesting to relinquish, assign, exchange or transfer an Assignment;
- (15) Upon the death of an Assignee, conducting a diligent search to identify family members or heirs of the deceased Assignee.
- (16) Ensuring that an Applicant has not been named a Successor to an Assignment.

§ 8.704 PROCESSING RESIDENTIAL LAND LEASE APPLICATIONS

(a) **Listing of Assignments.** The Rincon Housing Department Land Use Office will post and maintain a list of all available Assignments. A deceased Band Member's Assignment will not be listed as an available Assignment if he or she has

RINCON LAND ASSIGNMENT ORDINANCE

Rincon Tribal Code § 8.700

Residential Land Lease and named a Successor. If the Successor declines or forfeits the Assignment, it may at that time be listed as an available Assignment. If there is no named Successor, the Assignment may be listed as available; priority will be given to an Immediate Family member if he or she files an application within one year from the date the Assignee passed. Applications timely received will be processed as provided for under Section 8.704(b) below.

(b) Filing and Processing of Applications for Residential Land Lease. All applications for a Residential Land Lease must be filed on a written application form available from the Rincon Housing Department Land Use Office. There is no time limitation on when a Band Member may apply for a Residential Land Lease. Applications for a Residential Land Lease shall be filed in triplicate along with a Pre-qualification Letter in accordance with Section 8.702(b) with the Rincon Housing Department Land Use Office. The application shall include a specific description of the land requested, including the tract and section number. That description shall be obtained from the Rincon Housing Department Land Use Office. Incomplete applications will be returned to the Applicant and he or she will have twenty (20) days to resubmit a completed application. If a completed application is not received within the twenty (20) days from the date it was returned to the Applicant, the Assignment will be added to the Assignment list.

All applications for a Residential Land Lease will be date stamped to ensure that the application is timely processed. All applications will be placed on a list in the priority in which they are received. If more than one application is received for the same Assignment, the Rincon Housing Department Land Use Office will only consider the date upon which a completed application was filed and give priority to Applicants who file a completed application first based on the date stamped on the completed application when it is filed.

(c) Posting of Applications for Residential Land Lease. The Rincon Housing Department Land Use Office shall review all applications for completeness within thirty (30) days from when they are filed and post the Applicant's name and the tract and section number of the Assignment at the Rincon Housing Department Land Use Office and on the Rincon Band's website for a period of not less than fifteen (15) days.

(d) Opposing an Application for a Residential Land Lease. Any Band Member may oppose or support the application for a Residential Land Lease by filing a

RINCON LAND ASSIGNMENT ORDINANCE

Rincon Tribal Code § 8.700

written document within the 15-day posting period with the Rincon Housing Department Land Use Office.

(e) Recommendation on the Residential Land Lease Application. After the 15-day posting period, the Rincon Housing Department Land Use Office shall make a recommendation for final approval or disapproval of the application. The application, written recommendation and any opposition documentation shall be forwarded to the Business Committee requesting that the matter be placed on the agenda of the next regularly scheduled General Membership meeting.

If the next regularly scheduled General Membership meeting will not permit adequate time to notice the Applicant as set forth below or the agenda cannot accommodate the Assignment matter being added, the matter will be held over to the following regular General Membership meeting.

(f) Notice to the Applicant. The Applicant will be notified in writing by the Rincon Housing Department Land Use Office twenty (20) days before the General Membership meeting and also will be provided a copy of the Rincon Housing Department Land Use Office's recommendation, as well as any objection that has been filed opposing the application. The Applicant must be present at the General Membership meeting when the application is presented for a vote.

§ 8.705 ACTION ON THE RESIDENTIAL LAND LEASE OR LEASE APPLICATION

(a) Presenting the Application to the General Membership. A representative of the Rincon Housing Department Land Use Office will present the application, recommendation and any objection to the application to the General Membership. A representative from the Rincon Housing Department Land Use Office shall answer any questions the General Membership may have concerning the Rincon Housing Department Land Use Office's recommendation. The Applicant will then be allowed to address the General Membership and present any information in support of the granting of his or her application. Detailed minutes will be kept at the General Membership meeting when Assignment applications are presented and shall include a record of any objections to the application and/or support of the application.

RINCON LAND ASSIGNMENT ORDINANCE

Rincon Tribal Code § 8.700

(b) General Membership Vote on the Residential Land Lease. The Business Committee Chairperson or in the absence of the Chairperson, the Vice-Chairperson, shall call for the vote of the General Membership as defined under Section 8.701(m), and a majority of those voting by *ballot vote* will determine whether the application is approved or disapproved. The vote of the General Membership will be announced at the meeting. The Applicant will be notified by certified mail of the decision of the General Membership within ten (10) days from the General Membership meeting. The written decision of the General Membership shall set forth the basis of the decision. If the application was denied, the Applicant will be informed of his or her right to appeal the decision pursuant to Section 8.711 of this Ordinance.

(c) Preparation of the Residential Land Lease. When a Residential Land Lease application is approved, the General Membership shall authorize the Business Committee to execute a Residential Land Lease with the person on behalf of the General Membership. The Rincon Housing Department Land Use Office will prepare a Residential Land Lease form and accompanying documents. It is the intent and desire of the Band that all Residential Land Leases will be issued for the lifetime of the Assignee and to accomplish this Residential Land Leases shall be for a term of fifty (50) years. A Residential Land Lease will be extended at the expiration of the fifty (50) year term if so requested by the Assignee. The Residential Land Lease payment shall be no more than one dollar (\$1.00) a year. All Residential Land Leases will provide for necessary road and utility rights-of-way. All documents will be forwarded to the BIA for final approval. Copies of the Residential Land Lease and accompanying documents will be provided to the Applicant.

(d) Successor Lease. A non-Band Member Successor to an Assignee shall be issued a Lease for the remainder of the Assignee's Residential Land Lease term or for the life of the non-Band Member Successor whichever is longer, without need for General Membership approval, provided that, the non-Band Member Successor: (i) is identified on a designated successor form by the Assignee, (ii) enters into a Lease and consents to the jurisdiction of the Tribe, (iii) resides and occupies the Lease premises, (iv) complies with Section 8.709, and (v) applies for a Lease within 1 year of the date of death of the Assignee unless an extension is granted by the Rincon Housing Land Use Office. If the non-Band Member Successor cannot comply with this subsection (d), the non-Band Member Successor may move the home or the Band may pay fair market value for the home.

RINCON LAND ASSIGNMENT ORDINANCE

Rincon Tribal Code § 8.700

(1) In the event that a Residential Land Lease was not properly executed prior to the Assignee's death, the non-Band Member Successor may still take possession as a Successor upon a showing of documents or other written evidence of Assignee intent.

(e) **BIA Approval of the Residential Land Lease.** Once the BIA has approved the Residential Land Lease or Lease, the Applicant will be notified in writing with a copy of the Residential Land Lease and Lease. The Residential Land Lease or Lease and all accompanying documents will be maintained at the Rincon Housing Department Land Use Office and recorded at the BIA.

§ 8.706 SUB-DIVISION OF ORIGINAL ASSIGNMENTS

(a) **Purpose of Sub-Division of Original Assignment.** An Assignee of an Original Assignment that has obtained a Residential Land Lease pursuant to this Ordinance may request that his or her Assignment be sub-divided into individual lots of no less than one-half (1/2) acre for the purpose of providing his or her Immediate Family a residence, provided that the family member is a Band Member.

(b) **Filing and Processing of Sub-Division Requests.** All sub-division requests will be filed with the Rincon Housing Department Land Use Office and will include a certified sub-division map and survey, at Assignee's expense, prepared by a licensed surveyor if applicable. The Rincon Housing Department Land Use Office will determine whether the sub-division proposal is viable (environmental clearance, infrastructure, access, etc.) and make a recommendation to the Business Committee. The Business Committee shall process the sub-division request in the same manner as a request for any Residential Land Lease under Section 8.705, including the right of appeal.

(c) **Approval of the Sub-Division Requests.** If approved by the General Membership, the Immediate Family Band Member will be issued a Residential Land Lease on a form approved by the BIA. The term of the Residential Land Lease will be for a period of fifty (50) years. The Residential Land Lease payment shall be a \$50.00 one-time payment. The Immediate Family Band Member Assignee shall be required to comply with Section 8.708(k) as to occupancy on the sub-divided lot and may not use the property for commercial, rental, or non-residential purposes.

RINCON LAND ASSIGNMENT ORDINANCE

Rincon Tribal Code § 8.700

§ 8.707 MUTUAL HELP HOMES NOT LOCATED ON AN ASSIGNMENT

(a) **Report on Mutual Help Homes Not on an Assignment.** Within six (6) months to one year from the approval of this Ordinance, the Rincon Housing Department Land Use Office shall investigate and prepare a report of all Mutual Help homes that are paid off and located on the Rincon Reservation but not on an Assignment.

(b) **Survey.** The Rincon Housing Department Land Use, at its expense, will have the land surveyed and have a land description prepared identifying the location of the paid-off home and the acreage occupied, up to one (1) acre of land.

(c) **Issuance of Residential Land Lease.** It is the intent of this Ordinance that each Mutual Help Band Member homeowner be issued a Residential Land Lease for his or her paid-off Mutual Help home. Residential Land Leases shall be issued by the Rincon Housing Department Land Use Office for one-half (½) to one (1) acre depending on design criteria, except Band Member homeowners of Mutual Help homes located on an Original Assignment. The Residential Land Lease will be issued in the name of the Band Member Mutual Help homeowner, who may be the original Band Member homeowner or in the case of his or her death, to a Band Member Successor, a Band Member Surviving Spouse or an Immediate Family member who is a Band Member.

(d) **Notification and Required Occupation.** Each Band Member Mutual Help homeowner will be so notified of his or her designated Residential Land Lease and informed that he or she, if not occupying the home, will have six (6) months to occupy the home as provided for under Section 8.708(k). Failure to occupy his or her Assignment may result in the cancellation of the Assignment as provided for under Section 8.710. Should the homeowner choose not to reside in the home, he or she may move the home or the Band may pay fair market value for the home.

(e) **Issuance of Lease to Non-Band Member Spouse and Non-Band Member Rincon Lineal.** If the present homeowner is a non-Band Member Surviving Spouse or a non-Band Member Rincon Lineal of the original Mutual Help homeowner he or she may be issued a Lease in accordance with Section 8.705(d). The Lessee will be required to comply with Section 8.708 (k). Failure to occupy his or her Mutual Help home may result in the cancellation of his or her Lease as provided for under Section 8.710. Should the homeowner choose not to reside in the home, he or she may move the home or the Band may pay fair market value for the home.

RINCON LAND ASSIGNMENT ORDINANCE

Rincon Tribal Code § 8.700

(f) Mutual Help Homes Currently Under Tribal Lease. All Mutual Help Home participants without a paid-off Mutual Help Home who are currently under a residential lease with the Rincon Housing Department Land Use officer may apply for a Residential Land Lease or Lease for the land area identified in his or her residential lease and/or surrounding area not to exceed one-half (1/2) acre. The holder of an Original Assignment is not subject to the one-half (1/2) to 1 acre limitation. The participant may apply for a Residential Land Lease or Lease under Section 8.704, and the application will be processed under Section 8.705.

§ 8.708 GENERAL LAND AND PROPERTY POLICY

(a) Lot Size and Infrastructure. All Residential Land Leases and Leases shall be no less than one-half (1/2) and no greater than one (1) acre depending on design criteria, except for Residential Land Leases issued to Assignees of an Original Assignment. Assignees and Lessees shall receive no more than one-half (1/2) acre for assignment unless, the one-half (1/2) acre does not perk or the assignment is too steep. Only one family may occupy assigned or leased, additional family members requesting an Assignment or Lease must go through the application process pursuant to Section 8.704. The Band will be responsible for certain infrastructure (waterline) to the property line of the Assignment. Provision and maintenance of infrastructure (septic, water, electricity, etc.) from the property line to interior of the Assignment or Lease will be the responsibility of the Assignee or Lessee.

(b) Improvements. Removable improvements to the property, not considered fixtures of the land, shall be considered personal property of the Assignee or Lessee and may be removed upon the termination or cancellation of an Assignment or Lease.

(c) Houses. All houses, regardless of removability, constructed on an Assignment or Lease shall be considered the personal property of the Assignee or Lessee and may be inherited or determined to be the personal property of an heir. This includes mobile/manufactured houses that are permanently attached to the land. Any Successor to a home on an Assignment or Lease that does not want the home may request that the Band purchase the home for fair market value. Where there is no Successor who has requested the Assignment or Lease and home within one year from the death of the Assignee or Lessee, the home will revert to the Tribe and become Tribal property.

RINCON LAND ASSIGNMENT ORDINANCE

Rincon Tribal Code § 8.700

(d) Fixtures. All fixtures to an Assignment or Leased Land, even though attached by the Assignee or Lessee, are considered to be real property with title vested with the land and must remain on the Assignment or Leased Land, unless removal is authorized by the Business Committee for health and safety reasons. Fixtures include, but are not limited to, the following:

- (1) Underground water facilities;
- (2) Trees and shrubs;
- (3) Wells installed well curbing, and irrigation facilities.

(e) Disposal of Personal Property. If an Assignee or Lessee abandons or vacates his or her Assignment or Lease for whatever reason, his or her Assignment or Lease, any and all personal property or effects must be removed or otherwise disposed of within sixty (60) days after formal written notice has been prepared and served upon the Assignee or Lessee by the Rincon Housing Department Land Use Office. In the event the personal property or effects are not removed within the specified period, the personal property and effects will be removed and stored at the Assignee's or Lessee's expense for thirty (30) days. After such time, if not claimed by the Assignee or Lessee, the personal property becomes Tribal property and may be used or disposed of by the Rincon Housing Department Land Use Office in any lawful manner.

In the case of an Assignee's or Lessee's death and no heir or family member can be located after a diligent search by the Rincon Housing Department Land Use Office, the personal property and effects of the deceased will become the property of the Band and disposed of in a lawful manner.

(f) Valid Original Assignment. This Ordinance shall apply to all Assignments evidenced by a Residential Land Lease approved by the General Membership. All questions concerning whether or not a Band Member has an existing and valid Assignment shall be investigated by the Rincon Housing Department Land Use Office and presented to the General Membership for final determination. Should the General Membership determine that a Band Member does not have a valid, Original Assignment, the Band Member will be notified in writing and informed of his or her right to appeal the General Membership's decision under Section 8.711.

RINCON LAND ASSIGNMENT ORDINANCE

Rincon Tribal Code § 8.700

(g) Income from Unassigned Tribal Lands. All income from unassigned Tribal land and property, including Assignments that have been abandoned or revoked, shall be deemed Tribal income and shall be deposited to the general account of the Band.

(h) Voluntary Relinquishment of a Residential Land Lease or Lease. An Assignee or Lessee may relinquish all or part of his or her Assignment or Lease at any time by giving written notice, including the legal description, to the Rincon Housing Department Land Use Office. No relinquishment may be for less than one-half (½) acre unless a waiver is granted pursuant to Section 8.708(o).

(i) Transfer, Assigning and Exchange of Assignment or Lease. An Assignee or Lessee may not transfer, reassign or exchange his or her Assignment or Lease without the consent of the General Membership. All requests for transfer, exchange or reassignment of an Assignment or Lease will be processed through the Rincon Housing Department Land Use Office in accordance with Section 8.705.

(j) Granting of Right-of-Ways and Leases. The granting of any estate in Tribal land (e.g., easements, leases and rights-of-way) is subject to this Ordinance and applicable federal law. An Assignee or Lessee is prohibited from entering into any agreement that purports to grant an estate in Tribal land without the consent of the Tribe, General Membership and the BIA in accordance with applicable laws. All minerals, including sand, gravel, oil and gases are hereby reserved to the Band with the right to explore, lease or dispose of the same in accordance with applicable Tribal and federal law. The Band further reserves the right of ingress and egress over any Assignment or Lease.

(k) Required Occupancy. Any Assignee or Lessee who is issued an Residential Land Lease or Lease under this Ordinance shall occupy the property as his or her residence within one (1) year of being granted the Assignment or Lease. Failure of an Assignee or Lessee to use the property as his or her residence within the one (1) year of General Membership approval of the Residential Land Lease or Lease may be grounds for cancellation of the Assignment or Lease. The one year (1) time limit may only be extended upon a showing of “good cause”, as defined in Section 8.708(m). All extensions shall be filed and approved by the Rincon Housing Department Land Use Office. Any extensions of time to occupy the property, beyond the two (2) year period provided herein, must be approved by Tribal Council.

RINCON LAND ASSIGNMENT ORDINANCE

Rincon Tribal Code § 8.700

(l) Use and Occupancy of Assignments. An Assignee has one year from the date the Rincon Housing Department Land Use Office notifies the Assignee that he or she must occupy his or her Assignment as his or her residence under the same terms and conditions under Section 8.708(k) above.

Assignment must comply with *Proof of Intent* document in the assignment application packet. Proof of Intent letter states: Within ninety (90) days of General Membership approval, intent to build documentation needs to be completed. Documentation includes: approved financing, providing a set of approved plans for home built on assignment, and filing for building permit with the Rincon Housing Department. Upon receipt of building permit, Assignee has ninety (90) days to commence construction or installation of their home. The installation/construction of the Assignee's home shall be finished within one (1) year of Assignment approval. The Rincon Housing Department Land Use office *will not* submit a Residential Land Lease Packet to the BIA until a survey, at the Assignee's expense, is completed. If the Applicant does not meet these milestone dates, the Rincon Housing Department Land Use Office may revoke the assignment.

If an Assignee is not occupying his or her Assignment, and the Assignment is in non-residential use (i.e. commercial, agricultural, public service, etc.) at the time this Ordinance is approved, the General Membership may approve continuation of the use so long as all Tribal Laws, Ordinances and Regulations are being complied with and the use is found to be compatible with the surrounding community unless a waiver or use variance is granted pursuant to Section 8.708(o). An Assignee may appeal a denial by the General Membership of his or her continued use of his or her Assignment under Section 8.711.

Upon the death of an Assignee, the Successor will have the option of either occupying the Assignment as a residence in accordance with the requirements of Section 8.705(d) of this Ordinance, or enter into a business lease with the Tribe pursuant to RTC § 7.600 *et seq.* to continue the existing, non-residential use on the Assignment.

(m) Limited Absence from a Residential Land Lease or Lease. An Assignee or Lessee may be absent from his or her property for more than one (1) year for "good cause." "Good cause" includes and is not limited to medical reasons, military reservists called to active duty, active military duty, employment, education, failure of commenced sale of off reservation realty or other reasons approved by the Rincon Housing Department Land Use Office.

RINCON LAND ASSIGNMENT ORDINANCE

Rincon Tribal Code § 8.700

(n) No Third Party Liability. The Band is not liable or responsible and shall not become involved in any third party dispute between the Assignee or Lessee and a third party over the occupancy of an Assignment or Lease. Said third parties shall have no recourse against the Band.

(o) Use Variance. Any Assignee may request a waiver or use variance of any provision of this Ordinance by setting forth in the written application form submitted to the Rincon Housing Department Land Use Office the relevant facts, including but not limited to the nature of the use, location of structures and site plan or any other particular circumstances that may justify a waiver or use variance. The Rincon Housing Department Land Use Office shall recommend to the Business Committee acceptance or rejection of the Applicant's request to waive provisions of this Ordinance and grant a use variance. This recommendation by the Rincon Housing Department Land Use Office to the Business Committee may also qualify acceptance of the Applicant's request for a waiver and use variance subject to conditions deemed reasonably necessary by the Rincon Housing Department Land Use Office. Upon recommendation by the Rincon Housing Department Land Use Office the Business Committee shall accept or reject the Applicant's request for waiver and use variance. The Business Committee may also qualify acceptance of the recommendation for a waiver and use variance subject to conditions deemed necessary in its sole and absolute discretion.

§ 8.709 PREFERENCE TO SURVIVORS

(a) Successors. The right to an Assignment is not subject to inheritance but an Assignee has the right to designate a "Successor" to his or her Assignment upon death, who may be a Band Member, his or her spouse (Band Member or non-Band Member) or a member of his or her Immediate Family (Band Member or Rincon Lineal). A Successor designation form shall be made available by the Rincon Housing Department Land Use Office and completed by the Assignee at time of Residential Land Lease issuance. Upon approval of this Ordinance the Rincon Housing Department Land Use Office shall notify all Original Assignment holders of the need to have a Residential Land Lease and updated Successor designation form. Original Assignment holders shall submit their Assignment documents to the Rincon Housing Department Land Use Office and execute a Residential Land Lease to protect the right of their Successors to obtain possession of the Original Assignment pursuant to a Lease in accordance with Section 8.704(d) or a Residential Land Lease pursuant to under this Ordinance.

RINCON LAND ASSIGNMENT ORDINANCE

Rincon Tribal Code § 8.700

A non-Band Member Surviving Spouse or Rincon Lineal who succeeds to an Assignment under a Lease may not designate a successor to his or her Lease. At the Lessee's death, the land subject to the Lease will revert to the Band to be re-assigned or designated for other Tribal use.

(b) No Designated Successor. For Assignments with no designated Successor, a Surviving Spouse or Rincon Lineal may only receive a Lease pursuant to Section 8.705(d) of this Ordinance. If no application is made by the Successor within one (1) year of the Assignee's death, unless a one (1) year extension is granted by the Rincon Housing Land Use Office, the Assignment and all personal property and effects (including the home) will revert to the Band and no "fair market value" will be paid.

(c) Surviving Spouse. Subject to Section 8.705(d), it is the custom and tradition of the Band that a Surviving Spouse should be allowed to reside in the family home on the Assignment for his or her life so long as he or she does not remarry a non-Rincon Band Member. Should the Surviving Spouse choose not to reside in the family home, the Surviving Spouse may either move the home within one (1) year of death of the Assignee, unless a one (1) year extension is granted by the Rincon Housing Land Use Office, or the Band may pay the Surviving Spouse fair market value for the home.

A Surviving Spouse under this Section will be issued a Lease pursuant to Section 8.705(d). If the Assignment is greater than one-half (½) acre, the Lease will be for that portion of the Assignment where the home is located and, if there are no children, the remainder will revert to the Band for re-Assignment. If there is/are a Band Member child or children, an Original Assignment may be subdivided pursuant to Section 8.706 of this Ordinance. A subdivided parcel will be held in trust for each minor child until he or she reaches the age of 18 at which time he or she may file an application for a Residential Land Lease. All excess acreage not being held in trust for a minor Band Member child under this section will revert to the Band for re-Assignment.

(d) Orphan and Abandoned Children. For the benefit of orphaned or abandoned minor children residing on his or her parent's Assignment, the Tribal Council may enter into a Lease with any adult qualified as the child's or children's legal representative under Tribal Law or with any adult found suitable by the Tribal Council to act as the child's or children's legal representative. The Lease will be for that portion of the Assignment where the home is located. The Lease term shall be for a period sufficient to allow the orphan or abandoned child to reach the age of 18 years or last child of the

RINCON LAND ASSIGNMENT ORDINANCE

Rincon Tribal Code § 8.700

family to reach 18 years if there are multiple children. Upon reaching the age of 18, he or she (both Band Member and Rincon Lineal) may apply for the Assignment or Lease.

(e) Incompetent Adult Members. The Tribal Council may enter into a Lease with a conservator of an adult Band Member who has been found to be incompetent by the Band or a state court, should the Band Member be in need of a residency. The conservator may apply for an Assignment Lease under Section 8.704 on behalf of an incompetent adult Band Member.

§ 8.710 CANCELLATION OF A RESIDENTIAL LAND LEASE OR LEASE

(a) Cancellation of a Residential Land Lease or Lease. An Assignment or Lease may be canceled if an Assignee, Lessee, or guest, invitee, or members of the Assignee's or Lessee's household violates the provisions of this Ordinance. Any person violating this Ordinance may also be excluded from the Reservation pursuant to applicable Tribal Law.

(b) Grounds for Cancellation of a Residential Land Lease or Lease. Grounds for cancellation of an Assignment or Lease may include and are not limited to:

- (1)** Failing to reside and occupy his or her Assignment or Lease as proscribed under Section 8.708 (k) & (l);
- (2)** Creating a public nuisance that endangers life and/or property;
- (3)** Attempting to transfer, reassign, sublease or exchange an Assignment or Lease without approval of the General Membership;
- (4)** Illegally granting an easement, right-of-way, leasehold interest or any interest in an Assignment or Lease without approval of the Tribal Council, BIA and General Membership, as applicable;
- (5)** Removing fixtures from the Assignment or Lease that are part of the real property;
- (6)** Engaging in or allowing another person to engage in illegal activities or conduct on an Assignment or Lease;

RINCON LAND ASSIGNMENT ORDINANCE

Rincon Tribal Code § 8.700

- (7) Failing to perform proper and necessary weed abatement on a bi-annual basis;
- (8) Failing to comply with a lawful order of the Tribal Court;
- (9) Failing to comply with any and all applicable Tribal or Federal Laws and Regulations;
- (10) Failing to pay a Residential Land Lease or Lease payment;
- (11) Violating the terms and conditions of the Assignee's Mutual Help Occupancy Agreement or Guaranteed Home Loan (i.e., Section 184);
- (12) Modifications to enrollment criteria or a new membership list;
- (13) Any use of an Assignment or Lease that does not strictly comply with residential purposes or both the terms and provisions of any waiver or use variance granted to the Assignee or Lessee.

(c) **Compliance Review.** The Rincon Housing Department Land Use Office shall review the use and compliance of an Assignment or Lease on a continuing basis and shall prepare a written report of any violations of this Ordinance.

(d) **Notice of Violation.** The Rincon Housing Department Land Use Office shall give written notice of Assignment or Lease violations to the Assignee or Lessee giving him or her opportunity to correct the violation within a specified period of time of not less than ten (10) days.

(e) **Action on Violations.** If the Rincon Housing Department Land Use Office deems a violation is sufficiently serious or if the Assignee or Lessee fails to take corrective action upon being given the opportunity to correct the violation, the violation shall be referred to the General Membership who will determine, by ballot, whether or not the Assignment or Lease should be cancelled. The Assignee or Lessee will be notified within fifteen (15) days before the General Membership meeting and informed that he or she may appear before the General Membership to be heard on whether the Residential Land Lease or Lease should be cancelled. The Rincon Housing Department Land Use Office shall present the violation to the General Membership and the Assignee or Lessee will be given an opportunity to address the General Membership. At the conclusion of the

RINCON LAND ASSIGNMENT ORDINANCE

Rincon Tribal Code § 8.700

presentation, a vote by ballot will be called and a majority of the General Membership will decide whether to cancel the Assignment or Lease. The General Membership's vote will be announced at the meeting. The General Membership's decision shall be in writing and served by certified mail on the Assignee or Lessee. The written notification shall advise the Assignee or Lessee that if he or she disagrees with the decision of the General Membership, he or she may file a Notice of Appeal with the Tribal Court.

§ 8.711 APPEALS

(a) Who May Appeal. The following persons (herein "Petitioners") may file an appeal to the Tribal Court:

- (1)** An Applicant whose Residential Land Lease or Lease application has been denied by the General Membership pursuant to Section 8.705(b) of this Ordinance;
- (2)** A Band Member who has been found not to have a valid Original Assignment by the Rincon Housing Department Land Use Office pursuant to Section 8.708(f) of this Ordinance;
- (3)** A Successor who has been denied Residential Land Lease, pursuant to Section 8.704(b) or a Lease pursuant to Section 8.705(d);
- (4)** An Assignee whose request to sub-divide his or her Original Assignment pursuant to Section 8.706 has been denied;
- (5)** An Assignee of an Assignment who has been denied the right to continue his or her non-residential use of his or her Assignment by the General Membership pursuant to Section 8.708(l);
- (6)** A Successor who has been denied continued use of an Assignment by the Tribal Council pursuant to Section 8.708(l); and
- (7)** An Assignee or Lessee whose Assignment or Lease has been cancelled by the General Membership pursuant to Section 8.710(b).

(b) Notice of Appeal. A Petitioner shall file a "Notice of Appeal" with the Tribal Court within twenty (20) days from receipt of the General Membership's or Tribal

RINCON LAND ASSIGNMENT ORDINANCE

Rincon Tribal Code § 8.700

Council's written decision. Within five (5) days from receipt of a "Notice of Appeal", the Tribal Court shall make a written request to the Rincon Housing Department Land Use Office for a copy of all documents relating to Petitioner's case including all documents submitted to and relied upon by the General Membership or Tribal Council in making its final decision, including a transcript of the General Membership meeting if available. The Rincon Housing Department Land Use Office shall submit all requested documents to the Tribal Court within ten (10) days from receipt of the Tribal Court's request.

(c) Petitioner's Response. Upon receipt of the written record from the Rincon Housing Department Land Use Office, the Tribal Court shall send the Petitioner a written notice that he or she has ten (10) days from receipt of the notice to submit his or her written argument and supporting documents on why he or she believes the General Membership or Tribal Council decision is in error. A copy of the Petitioner's written argument and documents will be served on the Rincon Housing Department Land Use Office. The Rincon Housing Department Land Use Office will be given ten (10) days to file a written response with the Tribal Court.

(d) Decision on the Record. Appeals filed by Petitioners identified under Section 8.711(a)(1-7) above will be decided without a hearing. The Tribal Court, after review of all the written arguments and documents, shall make a determination whether Petitioner was provided due process and whether the Tribal Council's or General Membership's decision was reasonable and supported by a preponderance of the evidence. The Tribal Court decision will be in writing and served on the Petitioner and the Rincon Housing Department Land Use Office. The Tribal Court decision will be final.

(e) Appeal Hearing. Appeals from the cancellation of an Assignment or Lease will be scheduled for a hearing before the Tribal Court thirty (30) days after the Court has received all of the documents and pleadings under Section 8.711(c) above. The Tribal Court shall serve the Petitioner and the Band with notice of the hearing no less than twenty (20) days before the hearing date. Either party may request, no less than ten (10) days before the hearing, a continuance for good cause.

(f) Hearing Process. At the hearing, the Band shall present its case to the Tribal Court and may call witnesses and produce documents in support of its decision to cancel the Petitioner's Assignment or Lease. The Petitioner shall be permitted to question the Band's witnesses.

RINCON LAND ASSIGNMENT ORDINANCE

Rincon Tribal Code § 8.700

After the Band has completed its presentation, Petitioner shall present his or her oral and/or written evidence. All evidence must be relevant to the decision to cancel Petitioner's Assignment or Lease. The Band shall be permitted to question the Petitioner and his or her witnesses.

(g) Hearing Conduct. All hearings before the Tribal Court shall be conducted in a fair and orderly manner. Hearings before the Tribal Court shall be civil in nature, informal and may be subject to rules and procedures as may from time to time be prescribed by the Tribal Court.

(h) Tribal Court Decision. At the close of Petitioner's presentation, the Tribal Court may either issue a decision at that time or take the case under advisement. In all cases, the Tribal Court shall evaluate all of the evidence and testimony and render a decision on whether Petitioner was provided due process and whether the General Membership's or Tribal Council's decision was reasonable and supported by a preponderance of the evidence. The Tribal Court shall issue its written decision setting forth its finding within five (5) days from the date of the hearing and the decision will be served on parties by personal service or certified mail with a return receipt requested. The Tribal Court decision shall be final.

(i) Notification to the BIA. If the canceled Assignment is Residential Land Lease or Lease, the Band shall notify the BIA that the lease has been terminated and provide a copy of the Tribal Court Order.

§ 8.712 GENERAL PROVISIONS

(a) Severability. If any provision of this Ordinance, or the application thereof to any person or circumstances, shall be determined invalid, such determination shall not affect any other provisions or applications of this Ordinance that can be given effect without the invalid provision or application thereof, and, to this end, the provisions of this Ordinance are severable.

(b) Amendment. This Ordinance may be amended only by the Tribal Council.

RINCON LAND ASSIGNMENT ORDINANCE

Rincon Tribal Code § 8.700

(c) Effective Date. The provisions of this Ordinance, and any amendments thereto, shall become effective upon adoption by the General Membership and shall govern all Assignments.

(d) No Waiver of Sovereign Immunity. Except for the limited purposes of Section 8.711 of this Ordinance, all inherent sovereign rights of the Band as a federally recognized Indian tribe with respect to provisions authorized in this Ordinance are hereby expressly reserved, including sovereign immunity from unconsented suit. Nothing in this Ordinance shall be deemed or construed to be a waiver of the Band's sovereign immunity from unconsented suit.