


*I MINA'TRENTAI TRES NA LIHESLATURAN GUÁHAN*  
2015 (FIRST) Regular Session

Bill No. 1369-33 (over)

Introduced by:

T.C. Ada 

2015 JUN -2 AM 10:39 

AN ACT TO ADOPT RULES AND REGULATIONS TO GOVERN COMMERCIAL LEASES AND LICENSES FOR COMMERCIAL USE OF CHAMORRO LAND TRUST PROPERTIES, TO ADD NEW SUBSECTIONS 14 AND 15 TO SECTION 6.9(g), AND TO ADD A NEW SUBSECTION (g) TO §75107 OF CHAPTER 75 TITLE 21 GUAM CODE ANNOTATED.,

1           **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2           **Section 1. Findings and Intent.** Section 75107(f) of Chapter 75, Title 21, Guam Code  
3 Annotated authorizes the Chamorro Land Trust Commission to make rules and regulations  
4 pursuant to the Administrative Adjudication Law to govern commercial leases and licenses for  
5 commercial use of Chamorro Land Trust Properties.

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7           **Section 2. Adoption of Rules and Regulations.** Rules and regulations, attached hereto  
8 as Appendix "A", governing the commercial use of Chamorro Land Trust Properties, and as  
9 further amended herein, are hereby approved by *I Liheslaturan Guahan*. Section 6.9 of "The  
10 Senator Paul Bordallo Rules and Regulations for the Chamorro Land Trust Commission" adopted in  
11 Public Law 23-38 is repealed and reenacted by the rules and regulations attached hereto as  
12 Appendix "A".

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14           **Section 3. Amendments.** The following sections of the Commercial Rules and  
15 Regulations, as adopted, are hereby amended as follows:

16           (I) A new Subsection 15 under Section 6.9(g), Terms and Conditions of Lease or License  
17 Agreements, is added to read as follows:

18                   "15. Assignments. Leases shall require that assignments of the leasehold interest,  
19                   including changes of ownership, can only be effectuated by a tenant with the prior written  
20                   consent of the Board, which consent shall not unreasonably be withheld. Tenant requests

1 for assignment shall be in writing and shall contain the name, address, and description of  
2 the business of the proposed assignee. The proposed assignee shall also comply with the  
3 application requirements described in Section 6.9(e). Prospective assignees must agree to  
4 accept all terms of the lease being assigned”.  
5

6 (2) A new Subsection 16 under Section 6.9(g), Terms and Conditions of Lease or License  
7 Agreements, is added to read as follows:

8 “16. Subletting. Leases shall require that subletting or allowing subtenants to sublet  
9 the leasehold premises under any form of agreement including use and occupancy  
10 permits, shall be allowed only with the prior written consent of CLTC, which consent  
11 shall not unreasonably be withheld. Subleases shall be consistent with the intent of the  
12 master lease and shall not include sublease of land. Requests for approval of subleases  
13 shall be submitted by tenants and shall include at a minimum, the name, address, and  
14 description of the business of the proposed subtenant, the proposed subtenant’s most  
15 recent financial statement over the past three years and other evidence of financial  
16 responsibility, its intended use of the premises, the terms and conditions of the proposed  
17 sublease and a description of how the sublease meets or exceeds CLTC objectives. The  
18 board shall approve all subleases which will include: (1) subtenant rents which the master  
19 lessee will pay to CLTC a negotiated percentage of gross sub-rents; and, (2) participation  
20 rent which the subtenant will pay to CLTC a negotiated amount defined as a percentage  
21 of the gross annual income derived from the use of the property”.  
22

23 **Section 4.** A new § 75107(g) of Chapter 75, Title 21, Guam Code Annotated is hereby added to  
24 read:

25 “(g) Chamorro Land Trust Commission board of commissioners may also permit  
26 commercial leases to be subleased or assigned under the following provisions:

27 (1) Commercial sublease. The master lessee of the commercial lease shall be  
28 permitted to sublease rooms or space within their established building structure for  
29 complementary commercial use. This provision does not permit the subleasing of the

1        leased land. Said commercial sublease shall be allowed only with the prior written  
2        consent of CLTC, which consent shall not unreasonably be withheld.

3        (2) Assignment of commercial lease. A commercial lease may be assigned should  
4        the ownership of the business holding the lease change and if the use of the original lease  
5        does not change. Said assignment of commercial lease shall be allowed only with the  
6        prior written consent of CLTC, which consent shall not unreasonably be withheld.”.

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8        **Section 5.** The requirement for an economic impact analysis pursuant to §9301(i) of Title  
9        5 Guam Code Annotated Chapter 9 Article 3 is waived.

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11        **Section 6.** Severability. The Rules and Regulations contained in the Appendix “A”, as  
12        amended, and adopted by this Act shall not affect the provisions of the Chamorro Land Trust  
13        Act, Chapter 75 of Title 21, Guam Code Annotated. Any provision or application of these Rules  
14        and Regulations which conflicts with the Chamorro Land Trust Act or is held invalid shall be  
15        null and void. The invalidity of a provision or application shall not affect other provisions or  
16        applications of the Rules and Regulations which can be given effect without the invalid provision  
17        or application, and to this end the provisions of the Rules and Regulations are severable.

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3 **APPENDIX “A”**

4 **“Commercial Lease and License Program”**

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6 The following Section 6.9 is added to the “Senator Paul Bordallo Rules and Regulations  
7 for the Chamorro Land Trust Commission” to read:

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9 **Section 6.9. Commercial Lease and License Program: Purpose.**

10 The purpose of this part is to establish rules and regulations governing the announcement,  
11 selection, negotiation, execution, administration, monitoring and modification of commercial  
12 leases and licenses for real property owned and/or managed by the Chamorro Land Trust  
13 Commission (CLTC). Commercial leases and licenses are intended for the highest and best use  
14 of CLTC lands to provide necessary revenue to improve and enhance CLTC residential and  
15 agricultural properties. Commercial leases and licenses are limited to CLTC real property made  
16 available for this purpose, and that has been registered prior to being made available.

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18 **Section 6.9(a) Definitions**

- 19 1. **“Commercial Lease”** is a leasehold interest in real property between the CLTC and a  
20 lessee/tenant for the commercial use of real property under the management of the CLTC.  
21 2. **“Commercial License”** is an agreement between the licensee and the CLTC which  
22 permits certain activity to be conducted upon real property under the management of the  
23 CLTC, but does not confer upon the licensee any title or leasehold interest, and is  
24 terminable upon cessation of the approved activity.  
25 3. **“Commercial Use”** means a purpose that furthers the commercial, trade, or profit  
26 interests of a Lessee or Licensee. Commercial use includes mineral extraction for  
27 commercial purposes but does not include commercial agriculture and aquaculture use  
28 which is addressed in Section 6.7 (Livestock and Crops) of The Senator Paul Bordallo  
29 Rules and Regulations for the Chamorro Land Trust Commission. The appropriate  
30 regulatory clearances will be required for all commercial uses of CLTC lands.

1 4. **“Tenant”** means an applicant who has been approved for either a lease or license, and  
2 can also be referred to as a “Lessee” or “Licensee.”

3 5. **“Default Remedies”** are actions the CLTC Board of Commissioners may direct the  
4 Administrative Director to take to resolve noncompliance issues which may be actions up  
5 to and including termination of the lease or license.

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7 **Section 6.9(b) Board Authority.**

8 The Board of Commissioners of CLTC (the “Board”) shall be responsible for establishing  
9 the policies and direction of the Commercial Lease and License Program (the “Program”). The  
10 Administrative Director is directly responsible to the Board for the operation of the Program.

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12 **Section 6.9(c) Available Property.**

13 Prior to any lease or license of CLTC real property for commercial use, the CLTC shall  
14 publish a solicitation in a newspaper of general circulation, or through any methods of electronic  
15 publication capable of providing notice to the general public of the opportunity to apply for  
16 available real property under the Program. The CLTC may also accept from interested applicants  
17 alternative proposals for lease or license of CLTC real property made available under the  
18 Program.

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20 **Section 6.9(d) Eligibility.**

21 Sole proprietorships, partnerships, corporations, limited liability companies, and limited  
22 liability partnerships may submit a proposal to lease or license real property owned and/or  
23 managed by CLTC. The owner(s) of a sole proprietorship, partnership, or limited partnership  
24 must be a resident(s) of Guam. A corporation must be created under the laws of Guam or must  
25 be a duly constituted “possession” corporation created under the laws of a state of the United  
26 States of America and limited to doing its principal business in Guam. A limited liability  
27 company must be created under the laws of Guam. The entity must possess a valid business  
28 license prior to executing a lease and must demonstrate that its proposed use of CLTC property  
29 will satisfy CLTC’s statutory objective of generating revenues for the programs administered by

1 CLTC or such other objectives as approved by the Board. Eligibility preference shall be granted  
2 to an entity whose owner or company officer is a native Chamorro, as defined in 21 GCA,  
3 Chapter 75.

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5 **Section 6.9(e) Application Requirements.**

6 Each applicant is required to provide at a minimum, the following information:

- 7 1. Two (2) copies of the last three (3) most recent annual audited financial statements if  
8 available;
- 9 2. A copy of the applicant's current business license and other licenses or permits required  
10 by Guam law;
- 11 3. Revenue projections for the first five (5) years of the lease or license, two (2) copies of  
12 applicant's corporate or formation documents (articles, bylaws, partnership agreement,  
13 etc.);
- 14 4. Two (2) copies of the applicant's preliminary business plan for the use of the property, to  
15 include personnel requirements, capital improvements, target market, financing source,  
16 and other information deemed pertinent by CLTC;
- 17 5. A corporate resolution authorizing the submission of a proposal to lease or license (if  
18 applicant is a corporation);
- 19 6. A qualitative description of its proposed use of the property and a quantitative description  
20 of how the proposal will assist CLTC in achieving its objectives;
- 21 7. The applicant shall also complete and sign all required forms, including: a) Authorization  
22 to Release Information Form, which will be used to obtain credit information from  
23 lenders, trade suppliers, customers, and other similar sources; and, b) an Advanced Costs  
24 Form which contains the applicant's agreement to pay recoverable expenses.

25 **Section 6.9(f) Evaluation and Action.**

26 CLTC shall determine whether the applicant has submitted all required information and  
27 evaluate proposals based on the extent to which the applicant's proposal meets and exceeds  
28 CLTC objectives as stated in the purpose herein. CLTC shall also conduct background checks of  
29 the applicant using all possible sources as deemed necessary. Approval or denial of an

1 application shall be made by majority vote of the Board at a regularly called meeting.

2

3 **Section 6.9(g) Terms and Conditions of Lease or License Agreements.**

4 The following terms and condition shall apply to all agreements:

5 1. Rents shall be based upon fair market value as determined by the average of two  
6 appraisals pursuant to Public Law 31-44. Immediately prior to execution of a prospective  
7 lease or license, the applicant shall authorize CLTC to employ one or two certified  
8 appraisers to appraise the value of the available real property including any  
9 improvements thereon at the applicant's expense. One appraisal may be selected by the  
10 CLTC, and the second appraisal by the applicant. All costs for both appraisals shall be  
11 borne by the applicant.

12 2. Fair market annual rent shall be no less than nine percent (9%) of the original appraisal of  
13 fair market value. Rent shall escalate at five (5) year intervals based upon original  
14 appraisals of fair market value, but in no event shall rent be lower than the rent charged  
15 during the previous five (5) year period.

16 3. The latest lease or license agreement executed by CLTC shall be used as the model  
17 containing current requirements. All lease and license agreements shall require tenants to  
18 have business insurance which indemnifies and holds CLTC harmless; shall have tenants  
19 maintain storm water management systems pursuant to generally accepted maintenance  
20 standards or as required by applicable laws and government regulations; and shall require  
21 the tenant to respond to CLTC requests for information on a timely basis. All lease and  
22 license agreements shall require that any improvements made to or upon the real property  
23 shall belong in title to the CLTC upon termination or expiration of the lease or license,  
24 and that any removal required by the CLTC of improvements or items remaining on the  
25 property shall be the responsibility of the tenant at no cost to the CLTC.

26 4. All commercial tenants of CLTC shall be required to pay to CLTC a negotiated amount  
27 of participation rent which is defined as a percentage of the gross annual income derived  
28 from the use of the property.

29 5. Unless otherwise approved by the Board, the term of a lease or license shall coincide with

1 financing requirements for initial construction of improvements. Tenants shall be  
2 afforded options to extend based upon the demonstrated need for extensions and the  
3 extent to which CLTC objectives will be achieved and shall notify CLTC of its intent to  
4 exercise its options no later than ninety (90) days prior to the expiration of the lease or  
5 license. Tenants shall not be given the right to extend options more than one (1) at a  
6 time.

- 7 6. Payments shall be due monthly. Monthly rents can be paid in advance on a different  
8 schedule with prior Board approval. Rental payments that are unpaid greater than ninety  
9 (90) days shall be considered in non-compliance.
- 10 7. Land uses for properties under CLTC jurisdiction shall be utilized in a manner consistent  
11 with the zoning category applicable to the property pursuant to the zoning laws of Guam.
- 12 8. Tenants shall pay all taxes and assessments lawfully levied against the leased premises  
13 and against any business conducted thereon or in connection therewith. Tenant shall also  
14 pay all charges for utility services furnished or provided to the leased premises.
- 15 9. Tenants shall pay for those expenses associated with the processing of leases,  
16 amendments, assignments, estoppels, consents or other such documents, including, but  
17 not limited to, attorneys' fees, appraisal fees, title report fees, survey fees, credit report  
18 fees, recording fees, and documentation fees but not including CLTC staff time. Payment  
19 of fees shall be made prior to document recordation or pick up.
- 20 10. Applicants need not possess a Guam business license to submit a proposal but must be  
21 licensed to do business in Guam prior to the execution of a lease or license and all tenants  
22 must maintain a valid license to do business in Guam during the term of their lease or  
23 license.
- 24 11. All activities on leased or licensed available real property shall be in compliance and  
25 maintained in accordance with existing environmental laws.
- 26 12. Tenants shall be required to prepare within one hundred twenty (120) days after lease or  
27 license execution at their own expense, a Phase I Environmental Site Assessment (ESA)  
28 of the leased property to serve as a baseline. The complexity of the assessment shall be  
29 dependent of the previous use of the property. The Phase I ESA shall be referenced in



1 any lease or license agreement for the property. Prior to the issuance or renewal of any  
2 agreement, tenants or prospective tenants must conduct a Phase I ESA of the site at  
3 tenant's expense.

4 13. At the end of the lease or license period, or upon termination, tenant shall restore the land  
5 to baseline levels established at the start of their lease or license, and shall bear all  
6 expenses relating to such restoration.

7 14. Failure to comply with environmental laws may be cause to terminate the agreement.  
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9 **Section 6.9(h) Lease and License Approval.**

10 All fully completed applications meeting the requirements herein and all agreements  
11 derived from eligible applications shall be presented to the Board for approval. Upon approval  
12 and execution by all parties, three (3) original copies of the agreement shall be prepared, signed  
13 by the appropriate parties and recorded with the Department of Land Management.  
14 Additionally, there will be two (2) copies of the recorded document. One (1) recorded original is  
15 for CLTC; one (1) recorded original for the tenant; one (1) recorded original along with one (1)  
16 recorded copy shall remain with the Department of Land Management where the recorded  
17 original shall be permanently stored and the recorded copy be made available as public record;  
18 and, one (1) recorded copy shall be transmitted to the Department of Revenue and Taxation, Real  
19 Property Tax Division. All agreements shall be executed by the CLTC Administrative Director,  
20 the Attorney General, and the Governor.  
21

22 **Section 6.9(i) Amendments and Modifications.**

23 Except as modified by the sections below, all amendments and modifications to an  
24 agreement shall be requested in writing by the tenant. The request shall state the nature of the  
25 amendment or modification to the agreement, the consent of any financing institution if the  
26 premises were used to secure financing, and the reasons for the request. Upon receipt of the  
27 written request from the tenant, CLTC will acknowledge receipt of the request and if necessary  
28 provide tenant with a list of additional information required by CLTC to evaluate the request  
29 within five (5) working days from the date the request was received. CLTC staff will conduct a

1 review and analysis of the request and provide a recommendation for action by the  
2 Administrative Director or the Board as necessary. Financial institutions must be provided with  
3 copies of approved amendments and modifications, if estoppel, mortgage or other such  
4 agreements require the provision of such documentation.

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6 **Section 6.9(j) Estoppel and Consents to Mortgage Buildings Only.**

7 Tenant may submit written requests for estoppel certificates, consents to mortgage or  
8 similar requests for the purpose of securing financing. At a minimum, tenant must provide the  
9 following information: purpose of the financing, a copy of the draft estoppel or consent to  
10 mortgage document, a description of the financing arrangement, a copy of the real estate  
11 appraisal and other related information. Tenants must be current on all rents to CLTC or must  
12 have an approved payment plan prior to CLTC issuing any estoppel certificate, consent to  
13 mortgage or other such documents. Estoppel certificates, consents to mortgage or similar  
14 agreements for the purpose of securing financing shall not provide financing institutions or  
15 tenants with benefits that are greater than or inconsistent with those contained in the lease or  
16 license. All financing using the leasehold or licensing interest as collateral shall be used to  
17 further the operations of the business located on the leased or licensed premises. The Board  
18 delegates approval authority to the Administrative Director to issue estoppel certificates,  
19 consents to mortgage or other such documents, applicable to building and infrastructure only.

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21 **Section 6.9(k) Rent Amendments and Payments Schedules.**

22 Tenants may submit written requests for reductions in rent. Tenants shall submit audited  
23 financial statements covering the previous three (3) year period. If audited financial statements  
24 are not available, tenants shall provide financial statements attested to by an officer or legal  
25 representative of the company. CLTC shall consider the current financial position of the tenant  
26 and the prospect for improvements in the tenant's financial position and such other information  
27 as may be required in considering tenant's request for rent reductions. Any rent reductions  
28 authorized by CLTC shall not exceed one (1) year. Tenants may submit written requests for  
29 extensions no later than thirty (30) calendar days prior to the date the rent reduction expires, if

1 financial requirements of the tenant warrant continuing rent reductions. As temporary rent  
2 reductions are intended to assist tenants over a short period of time, tenants must agree in writing  
3 that such temporary reductions shall in no way affect the schedule and amount of rent escalations  
4 for future option terms identified in the lease agreement. Requests for rent reductions shall be  
5 subject to Board approval.

6

7 **Section 6.9(l) Payment Plans.**

8 Requests to develop a payment plan for back rent shall be submitted in writing with the  
9 reasons for the request. In addition, tenants shall submit a copy of audited financial statements  
10 covering the previous three (3) year period. If audited financial statements are not available,  
11 tenants shall provide financial statements attested to by an officer or legal representative of the  
12 company. Payment plans must include a provision for payment of interest on the unpaid  
13 balance. In addition, payment plans must contain the requirement that late fees using the  
14 industry standard be paid, in the event the lessee does not make payments as scheduled and if the  
15 lessee is not deemed to be in breach of the lease. Financial institutions must be provided with  
16 copies of approved payment plans, if estoppel, mortgage or other such agreements require such  
17 notification. The Board delegates the authority to approve payment plans to the Administrative  
18 Director. To the extent possible, payment plans for outstanding rent must be paid off within the  
19 fiscal year to avoid budgetary problems within CLTC.

20

21 **Section 6.9(m) Annual Report.**

22 The Administrative Director shall prepare an annual report for presentation to the Board  
23 summarizing the benefits received by CLTC on activities of the Program for the fiscal year. The  
24 annual report shall contain findings on employment, payroll, gross receipts taxes paid, local  
25 purchases made and total and annual capital investments by tenants and their sub-tenants, if any.  
26 The report shall not contain proprietary information of tenants. The report shall also contain a  
27 projection of revenues over the next five year time period and a discussion on outstanding issues  
28 and recommendations. The report shall be submitted no later than December 31 covering the  
29 previous fiscal year ending September 30.

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**Section 6.9(n) Monitoring and Compliance**

- 1. **Initial Meeting.** No more than five (5) working days after recordation of the commercial lease or license agreement at the Department of Land Management, the CLTC staff shall meet with the tenant of a newly approved commercial lease or license agreement to ensure understanding of its terms and conditions.
- 2. **Annual Inspections.** Annual on-site inspections shall be conducted following a standard inspection format to be developed by CLTC staff, to the extent possible given possible differences in agreements. Written notification of the annual inspection shall be sent via mail to the tenant two (2) weeks prior to the inspection date, notifying them of the date, time and issues to be reviewed or discussed during the inspection. Two (2) working days prior to the annual inspection, the tenant shall provide all requested records and documents required by the CLTC including the following: copies of their comprehensive business insurance policy in effect; and any other documents requested by the CLTC to ensure compliance with the terms of the commercial agreement. A concise detailed inspection report shall be submitted to the Administrative Director within fifteen (15) working days from the date of the annual inspection. As soon as possible thereafter, the results of the annual inspection shall be transmitted to the tenant.
- 3. **Compliance Inspections.** CLTC may inspect facilities and premises to determine the observable condition of the leased premises and any improvements and compliance with conditions of the agreement. A concise detailed inspection report shall be submitted to the Administrative Director within fifteen (15) working days from the date of the compliance inspection. As soon as possible thereafter, the results of the inspection shall be transmitted to the tenant.

**Section 6.9(o) Notice of Non-compliance.**

When the CLTC has determined that the terms and conditions stipulated in the lease or license agreement have not been met, the CLTC shall take the following action:

- 1. **First Notice.** Within ten (10) working days after CLTC identifies a non-compliance

1 issue, CLTC shall notify the tenant in writing of the specifics of the non-compliance,  
2 giving the tenant the period of time required for cure as specified in the lease or license  
3 agreement. Should no cure period be contained in the lease or license, a period of ten  
4 (10) working days shall be given for the tenant to respond. CLTC must provide financial  
5 institutions with copies of first notices, if estoppel, mortgage or other such agreements  
6 require such notification. Should the tenant acknowledge the non-compliance, thirty (30)  
7 working days shall be provided to correct the non-compliance issue. Should the tenant  
8 respond and contest the non-compliance, the tenant may address the matter with the  
9 board of commissioners at its next regularly scheduled meeting. These time periods can  
10 be extended by the Administrative Director. Copies of all notices and responses shall be  
11 provided to CLTC legal counsel.

- 12 2. **Second Notice.** Should the tenant not respond after ten (10) working days to the first  
13 notice, or if the tenant contests the matter but fails to appear before the board of  
14 commissioners, or if tenant does not correct non-compliance after thirty (30) working  
15 days, CLTC shall issue a second notice and prepare its findings to refer the matter to  
16 CLTC legal counsel for default remedies, to include termination of the agreement. CLTC  
17 must provide financial institutions with copies of the second notice, if estoppel, mortgage  
18 or other such agreements require such notification.

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20 **Section 6.9(p) Failure to Exercise Option to Extend.**

21 Should tenants fail to exercise options to extend as provided for in the commercial lease or  
22 license agreement, CLTC may reinstate the lease or license with the same tenant for the same  
23 property under terms that coincide with standard practices of the time including charging rents  
24 based upon a current real property appraisal negotiated between CLTC and the tenant. Should  
25 CLTC determine that economic circumstances make it possible that other tenants can be found to  
26 lease the property, CLTC may terminate the lease or license and re-advertise the property as  
27 provided for in these Rules and Regulations.

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29 **Section 6.9(q) Tenant Notification.**

30 To the maximum extent practicable, tenants will be provided advance notification of any

1 public Board meetings in which any aspect of the tenant's lease or license is an agenda item for  
2 Board discussion.

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4 **Section 6.9(r) Applicability of Rules and Regulations.**

5 All current leases and licenses with provisions that differ from these Rules and Regulations  
6 shall be renegotiated to conform to these Rules and Regulations, as opportunities to revise the  
7 lease or license arise. In instances where these Rules and Regulations differ from the provisions  
8 of leases or licenses that pre-date these Rules and Regulations, the provisions of the pre-existing  
9 leases or licenses shall prevail. These rules and regulations shall not apply to utility companies  
10 and licenses for lots with villages which are addressed under Section 75107(c). However, the  
11 leases and licenses for lots with villages that are addressed in Section 75107(c) are not exempt  
12 from compliance to the Rules and Regulation for Clearing and Grading of Land and Construction  
13 of Buildings and other Structures on Guam (Pursuant to Section 24200 as Amended, 31014 and  
14 31015 of the Government Code of Guam). All leases, licenses, or sale or transfer of CLTC lands  
15 are subject to Article 5, Chapter 76, Title 21, Guam Code Annotated, Historical Objects and  
16 Sites.