

DRAFT

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

Bill No. _____

Introduced by: _____

**AN ACT TO APPROVE RULES AND REGULATIONS OF THE
CHAMORRO LAND TRUST COMMISSION PURSUANT TO
SECTION 75112 OF CHAPTER 75, TITLE 21, GUAM CODE
ANNOTATED RELATIVE TO THE CHAMORRO LOAN
GUARANTEE FUND.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Section 75112(h) of Chapter 75, Title 21, Guam Code Annotated authorizes the Chamorro Land Trust Commission (CLTC) to guarantee home or commercial loans to those holding leases or licenses issued by the CLTC, when necessary to allow the Borrower to secure the loan. These rules are intended for the guarantee of loans for homes.

Section 2. Notwithstanding any other provision of law, rule, regulation, and Executive Order, the rules and regulations for the Chamorro Loan Guarantee Fund, attached hereto as Appendix "A," are hereby approved by *I Liheslaturan Guahan*. The Rules and Regulations for the Chamorro Loan Guarantee Fund shall be amendments to "The Senator Paul Bordallo Rules and Regulations for the Chamorro Land Trust Commission" adopted in Public Law 23-38.

Section 3. The Rules and Regulations contained in the Appendix and adopted by this Act shall not affect the provisions of the Chamorro Land Trust Act, Chapter 75 of Title 21, Guam Code Annotated. Any provision or application of these Rules and Regulations which conflicts with the Chamorro Land Trust Act or is held invalid shall be null and void. The invalidity of a provision or application shall not affect other provisions or applications of the Rules and Regulations which can be given effect without the invalid provision or application, and to this end the provisions of the Rules and Regulations are severable.

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3 **APPENDIX “A”**

4 **“Chamorro Loan Guarantee Program”**

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6 The following Section 8.2 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 8.2. Chamorro Loan Guarantee Program: Purpose.**

10 The purpose is to establish rules and regulations governing the announcement, selection,
11 negotiation, execution, administration, monitoring and modification of the Chamorro Loan
12 Guarantee Program for loans made by governmental agencies or financial institutions to those
13 holding leases issued under 21 Guam Code Annotated, Chapter 75, Section 75107, for home loan
14 purposes.

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16 **Section 8.2(a) Definitions**

- 17 1. **“Agricultural Lease”** means an applicant who has been awarded a tract of agricultural
18 land and desires to build a home on the tracts, as defined in Section 6.5 and Section 6.6
19 of these rules.
- 20 2. **“Borrower”** means the Chamorro Land Trust Commission (CLTC) residential or
21 agricultural lessee who is the primary party that has entered into a loan agreement with
22 a governmental agency or financial institution.
- 23 3. **“Developer”** means the primary construction company contracted by the Borrower
24 that is licensed to conduct business in the Territory of Guam.
- 25 4. **“Guarantor”** means the Chamorro Land Trust Commission
- 26 5. **“Lender”** means the primary government agency or financial institution financing the
27 loan to the Borrower.
- 28 6. **“Residential Lease”** means an applicant who has been awarded a tract of land for
29 residential homestead, as defined by Section 6.1 of these rules.
- 30 7. **“Successor”** means a current leaseholder or qualified residential or agricultural

1 applicant who is eligible to assume an existing loan and lease because the current
2 Borrower is deemed unable to meet the obligations of the loans.

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4 **Section 8.2(b) Board Authority.**

5 The Board of Commissioners of CLTC (the “Board”) shall be responsible for establishing
6 the policies and direction of the Chamorro Loan Guarantee Program (the “Program”). The
7 Administrative Director is directly responsible to the Board for the operation of the Program.

8
9 **Section 8.2(c) Available Funds.**

10 The Chamorro Loan Guarantee Fund shall not be less than five percent (5%) of the total
11 amount of loans guaranteed or less than five hundred thousand dollars (\$500,000), whichever is
12 greater.

13
14 **Section 8.2(d) Eligibility.**

15 Persons with a CLTC Residential Lease or Agricultural Lease are eligible for a loan
16 guarantee based on the Chamorro Loan Guarantee Fund available funds and the Borrower’s credit.

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18 **Section 8.2(e) Application Requirements.**

19 The Borrower shall submit to the CLTC the following documents to determine the
20 eligibility to participate in the Program.

- 21 1. A recorded CLTC lease and a recorded survey map showing the legal descriptions of
22 metes and bounds and lot size. The lot must be registered and recorded CLTC property.
- 23 2. Certification that all property taxes for the applicable lot, and all personal taxes are
24 current with no outstanding taxes in arrears.
- 25 3. Construction plans with estimates for the Borrower’s home meet current building and
26 zoning codes and other ordinances and regulations of the Territory of Guam.
- 27 4. Listing of all immediate family members who will reside in the Borrower’s house, to
28 include age of each member and certification of those who are the Borrower’s legal
29 dependents.
- 30 5. A Lenders official notification of a home construction loan approval or financing for

- 1 the construction of a residence, or a conditional letter of intent or the equivalent.
- 2 6. Contract between the Borrower and a Developer to construct a residential dwelling.
- 3 7. Equivalent evidence of the Borrower's intent and ability to construct a residential
- 4 dwelling.
- 5 8. Equivalent evidence of the Borrower's intent and ability to fulfill pre-existing
- 6 requirements entered into between other parties with respect to the residential dwelling
- 7 the Borrower wishes to occupy.
- 8 9. Private mortgage insurance.
- 9 10. Land appraisal prior to construction.
- 10 11. Borrower show proof of evidence of a down payment on the loan.
- 11 12. Guarantor shall have Lien Rights of the mortgage.
- 12

13 **Section 8.2(f) Evaluation and Action.**

14 Upon the receipt of the request for the Chamorro Loan Guarantee to the CLTC, the staff

15 shall review the application and associated documents for completeness and accuracy; the staff

16 will perform a site inspection based on the request and prepare a staff report; and, the CLTC

17 Commissioners will review and approve/disapprove the application which the Administrative

18 Director will execute accordingly. The CLTC shall allow the Borrower a meaningful opportunity

19 to be heard on the Loan Guarantee request which will also include:

- 20 1. The CLTC staff will present the site inspection report for the loan guarantee request;
- 21 2. The CLTC board of commissioners shall make a determination of the Lessee Loan
- 22 Guarantee Request; and,
- 23 3. The Commission shall indicate in its approval that no parts of any CLTC Loan
- 24 Guarantee shall be devoted to any purpose other than those for which the request is
- 25 made or a portion thereof.
- 26

27 **Section 8.2(g) Terms and Conditions of the Program.**

28 Upon CLTC's approval for the CLTC Loan Guarantee, the Administrative Director shall

29 sign on the Commission's behalf. When applicable, the Chairman shall countersign the CLTC

30 Loan Guarantee. The Commission shall require, as a minimum Loan Protection Insurance;

1 Typhoon Insurance; Fire Insurance; and, Earthquake Insurance. Borrower will record the
2 Chamorro Loan Guarantee Agreement with the Records Division of the Department of Land
3 Management and file a copy with the CLTC.

4 Upon commencement of the construction phase of the home by the Borrower, the Borrower
5 shall provide the CLTC a copy of an approved Department of Public Works Building Permit for
6 construction by the Developer. Should the Borrower change the Developer, the Borrower shall
7 submit change of Developer with a completed building permit application indicating such change
8 for filing. For any changes in design and material, the Borrower shall submit to the CLTC for
9 approval prior to obtaining a building permit request. The Borrower shall also submit from the
10 Developer a copy of a performance bond and a copy of builders risk insurance for filing.

11
12 **Section 8.2(h) Loan Guarantee Eligible Amount.**

13 The loan amount that will be guaranteed by CLTC is determined by the number of persons
14 in the immediate household, to include legal guardians. The minimum home size and interior
15 dimensions are based on family size and according to the standards established by the International
16 Building Code (IBC) 2009, Chapter 12, Section 1208 Interior Dimensions. The most current
17 construction costs to build a home within the minimum established home size which conform to
18 established wind, earthquake and other safety codes shall determine the amount of the Borrower's
19 home loan that CLTC shall guarantee.

20 International Building Code 2009, Chapter 12, Section 1208 Interior Dimensions Standards
21 are:

- 22 1. Husband and wife:
 - 23 a. Bedroom at least one hundred twenty (120) square feet net floor area;
 - 24 b. Living room not less than two hundred twenty (220) square feet;
 - 25 c. Dining room not less than seven (7) feet on any side (forty-nine (49) square
26 feet);
 - 27 d. Kitchen at least fifty (50) square feet and must provide for a kitchen sink,
28 cooking appliance and refrigerator;
 - 29 e. Bathroom provide for a water closet, lavatory, and bathtub or shower.
- 30 2. Each additional occupant:

1 a. Bedroom: Other habitable rooms shall not be less than seventy (70) square feet
2 net floor area;

3 b. Living room: additional one hundred (100) square feet per occupant

4 Exceptional circumstances to the minimum size of the home that will determine the loan
5 guarantee amount shall be explained and justified in writing by the Borrower and is subject to
6 approval by the CLTC commissioners. Such exceptions may include medical conditions of an
7 immediate or legal dependent family member.

8
9 **Section 8.2(i) Loan Guarantee Loan Disbursement.**

10 The Lender shall make no financial payment disbursements to the Developer or Borrower
11 without the consent of the CLTC based on a portioned distribution after the completion of the
12 following construction phases certified by receipt of a completed Construction Inspection Report
13 from the Department of Public Works. Construction phases are defined as:

- 14 1. Clearing, grading and site preparation.
- 15 2. Foundation. Lender shall have the right to refuse disbursement if the building
16 foundation extends into the setback margins from the design plans and property
17 markers. The Developer shall correct deficiencies prior to a loan disbursement.
- 18 3. Half wall.
- 19 4. Full wall.
- 20 5. Roof.
- 21 6. Final Approved Occupancy. All punch list items, when applicable, are corrected prior
22 to final inspection approval for occupancy.

23 Upon completion of the construction, the Borrower shall furnish a copy of the completed
24 and approved Department of Public Works Occupancy Permit to the CLTC.

25 The following are prohibited from being included as part of the loan guarantee in the
26 Program:

- 27 1. Monies for food (and goods of this nature)
- 28 2. Monies for clothing (and goods of this nature)
- 29 3. Monies for travel and personal expenditures (and goods of this nature)
- 30 4. White goods (i.e. refrigerator, stoves, washers, dryers, and goods of this nature)

- 1 5. Household goods (Televisions, microwaves, computers, furnishings, and goods of this
2 nature)
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4 **Section 8.2(j) Filing and Recording.**

5 The Borrower shall record the Lender’s loan agreement and the building permit with the
6 Department of Land Management, Records Division, and provide copies to the CLTC. Any
7 changes to the Developer are to be recorded and filed accordingly. Upon construction completion,
8 the Borrower shall record and file the completed Occupancy Permit with the Department of Land
9 Management, Records Division.
10

11 **Section 8.2(k) Emergency Disaster Home Loan Guarantees.**

12 The Commission shall inventory all its leased lands for residential structure on residential
13 and agriculture lands and shall develop a database of all existing structures and provide the
14 following information:

- 15 1. Lot number and parcel identification number of the leased land
16 2. Document number for recorded lease
17 3. Legal description of lease
18 4. Approved recorded map of leased parcel
19 5. Name of lease holder
20 6. Current contact number
21 7. Dimensions of structure
22 8. Dimensions of accessory structures
23 9. Type of Construction
24 a. Concrete
25 b. Semi-concrete
26 c. Wood
27 d. Composites or alternative material design
28 10. Other such data as deemed necessary.

29 Pictures shall be taken of the structures (homes, etc.) and filed in the client’s folder.
30 Structural pictures can be updated during an annual inspection to record any changes.

1 Any approved CLTC Leaseholder may seek emergency relief funds from local and federal
2 lending institutions following a natural disaster for home damage repairs. Should the Leaseholder
3 require a Chamorro Loan Guarantee, the leaseholder shall submit a request to the CLTC requesting
4 for approval for a Loan Guarantee. The Leaseholder shall only define the amount requested for the
5 damages incurred on the house structure. The Leaseholder shall define all elements of the loan
6 guarantee request. The CLTC Commissioners may approve or disapprove the elements in total or
7 in parts as deemed appropriate for repairing the Borrowers home structure. Home damage repairs
8 are to follow the previous design plans and Federal building requirements are to prevail, when
9 applicable. Emergency disaster home loan guarantees are for the repair of damaged or destroyed
10 homes to its original pre-disaster condition. Conditions set forth for loan guarantees in Section 8.2
11 (h), (i), and (j) shall also apply.
12

13 **Section 8.2(l) Servicing the Loan Guarantee.**

14 CLTC shall restrict Lenders from secondary market outside the Guam markets and the
15 Guarantor shall have Lien Rights of the mortgage. Upon the receipt of a thirty (30) day notice of
16 past due, the Borrower will inform the Commission in writing of the incident and provide a
17 financial plan to remedy the past due. When special circumstances arises for considerations, e.g.
18 medical expenses, the Borrower will work with the financial institution on any amendments,
19 adjustments, or considerations to the loan. The Borrower shall provide any amendments,
20 adjustments, or considerations of the loan to the CLTC in writing.

21 Upon the receipt of a sixty (60) day notice of past dues, the Borrower shall provide the
22 Administrative Director proposed remedies for considerations prior to any further actions. The
23 CLTC may act to remedy the situation to include the Succession of the lease and loan. The CLTC
24 may also hold in effect of a special account monies to cover the cost of the following to maintain
25 the loan in good faith:

- 26 1. One hundred eighty (180) days of payment
- 27 2. Sixty (60) days to pay for missed payments
- 28 3. One hundred twenty (120) days of payments in preparation of transferring the lease and
29 loan to the Successor

30 Between the sixty (60) and ninety (90) days, if the lessee Borrower is determined to be

1 unable to meet the obligations of the loans, the CLTC shall entertain those qualified applicants to
2 succeed on the lease and loan. During the sixty (60) and ninety (90) days, the CLTC shall provide
3 a list of qualified applicants the right to view the subject lot and structure prior to their decision.
4 Upon a formal decision of a Successor, the Administrative Director may move to appoint the
5 Successor to the lease and loan. The period between ninety (90) days and one hundred twenty
6 (120) days, after the sixty (60) days of notice of past due, the CLTC shall perform all administrative
7 duties as to transfer the lease and loan.

8 As permitted in 21 GCA, Chapter 75, Section 75112(h)(3), should the CLTC intervene on
9 a defaulted loan and directly repay the loan and accrued interests to bring the payments current, it
10 may add the aggregate amount to the principle amount of the loan. The aggregate amount of
11 payments made by the CLTC may be recovered from the Successor deposited in the Chamorro
12 Loan Guarantee Fund. Upon the administrative completion of transfer of lease and loan to the
13 next Successor, the Successor will be added to the database of all existing Chamorro Loan
14 Guarantees.

15 The Commission shall repeat these steps for the life of the Chamorro Loan Guarantee until
16 paid in full. Termination of this monitoring process is complete when loan debt is paid in full and,
17 all payments received for the life of the loan is recorded at the Department of Land Management
18 – Records Division (Record of Release of Loan).

19 All documents concerning the transaction of transfer of the loan and lease shall be recorded
20 with the Department of Land Management – Records Division, which shall include the original
21 Borrower’s lease agreement, the Successor’s lease agreement, and the Chamorro Loan Guarantee
22 Agreement.

23 24 **Section 8.2(m) Responsibilities.**

25 The Borrower, Lender, and Guarantor each are responsible for specific actions listed below
26 to ensure all accounts which CLTC extends a loan guarantee are appropriately monitored.

- 27 **1. Borrower’s Responsibility.** The Borrower must ensure the guaranteed loan is kept
28 current in its payments and any changes to their address, contact information, or home
29 is furnished to the Guarantor and Lender immediately. Borrower shall provide
30 Guarantor a copy of their January and July loan statements as issued by the Lender

1 within thirty (30) days of receipt. Should the loan be transferred from the original
2 Lender to a new Lender, that information must be provided to the Guarantor
3 immediately.

4 **2. Lender’s Responsibility.** The Lender shall notify the Guarantor of loan accounts that
5 are sixty (60) days past due. Lender shall not transfer or assign the loan to another
6 lending agency without notifying and receiving authorization from the Guarantor.
7 Transfer or assignment of a guaranteed loan without the written authorization from the
8 Guarantor may negate the loan guarantee. When the Guarantor authorizes the transfer
9 or assignment of a guaranteed loan to a new Lender, the new Lender must immediately
10 provide contact information to the Guarantor and the new Lender shall be responsible
11 for the conditions established by the Chamorro Loan Guarantee Program.

12 **3. Guarantor’s Responsibility.** The Guarantor shall diligently monitor and regularly
13 reconcile all Chamorro Loan Guarantee Program loans ensuring all accounts are current
14 in their payments and all January and July loan statements from Borrowers are
15 promptly received. Guarantor shall also ensure all changes to Lender and Borrower
16 information are updated. Guarantor shall include the status of all loans it has
17 guaranteed in its Annual Report but must ensure it also promptly reacts to any
18 discrepancies with loans, such as past due payments. Guarantor will also assure loans
19 remain in compliance with the terms of the loan and those loans not in compliance shall
20 be acted upon by the CLTC immediately and properly coordinated with the Lender, in
21 accordance with Section 8.2(p).

22
23 **Section 8.2(n) Annual Report.**

24 The Administrative Director shall prepare an annual report for presentation to the CLTC
25 Commissioners summarizing the activities of the Program for the fiscal year. The report shall not
26 contain proprietary information or personal information of Borrowers. The report shall also
27 contain a projection of revenues over the next five year time period and a discussion on outstanding
28 issues and recommendations. The report shall be submitted no later than December 31 covering
29 the previous fiscal year ending September 30.

1 **Section 8.2(o) Monitoring and Compliance**

- 2 1. **Initial Meeting.** No more than five (5) working days after recordation of the loan
3 at the Department of Land Management, the CLTC staff shall meet with the
4 Borrower to ensure understanding of the Chamorro Loan Guarantee Program terms
5 and conditions.
- 6 2. **Annual Review.** Annual reviews for Chamorro Loan Guarantees that have
7 determined concerns shall be conducted following a standard review to be
8 developed by CLTC staff, to the extent possible given possible differences in
9 agreements. Written notification of these annual reviews shall be sent via mail to
10 the Borrower two (2) weeks prior to the review date, notifying them of the date,
11 time and issues to be reviewed or discussed. Two (2) working days prior to the
12 annual review, the Borrower shall provide all requested records and documents
13 required by the CLTC including: last three months of Lender’s statements;
14 documentation on Borrower’s children or dependents not on file; written
15 explanation for payment anomalies; and any other documents requested by the
16 CLTC to ensure compliance with the terms of the loan agreement. A concise
17 detailed review report shall be submitted to the Administrative Director within
18 fifteen (15) working days from the date of the annual inspection. As soon as
19 possible thereafter, the results of the annual inspection shall be transmitted to the
20 Borrower.
- 21 3. **Compliance Inspections.** A concise detailed inspection report shall be submitted
22 to the Administrative Director within fifteen (15) working days from the date of the
23 compliance inspection. As soon as possible thereafter, the results of the inspection
24 shall be transmitted to the Borrower.

25
26 **Section 8.2(p) Notice of Non-compliance.**

27 When the CLTC has determined that the terms and conditions stipulated in the loan
28 agreement have not been met, the CLTC shall take the following action:

- 29 1. **First Notice.** Within ten (10) working days after CLTC identifies a non-compliance
30 issue, CLTC shall notify the Borrower in writing of the specifics of the non-

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

- 12 2. **Second Notice.** Should the Borrower not respond after ten (10) working days to the
13 first notice, or if the Borrower contests the matter but fails to appear before the CLTC
14 Commissioners, or if Borrower does not correct non-compliance after thirty (30)
15 working days, CLTC shall issue a second notice and prepare its findings to refer the
16 matter to CLTC legal counsel for default remedies as stipulated in 21GCA, Chapter
17 75, §75112(h), to include termination of the agreement. CLTC must provide
18 financial institutions with copies of the second notice, if estoppel, mortgage or other
19 such agreements require such notification.

20
21 **Section 8.2(q) Borrower Notification.**

22 To the maximum extent practicable, Borrowers will be provided advance notification of any public
23 Board meetings in which any aspect of the Borrower's loan, lease, or license is an agenda item for
24 Board discussion.

25
26 **Section 8.2(r) Applicability of Rules and Regulations.**

27 All current loan agreements with provisions that differ from these Rules and Regulations shall be
28 renegotiated to conform to these Rules and Regulations, as opportunities to revise the loan
29 agreement arise. In instances where these Rules and Regulations differ from the provisions of loan

1 agreements that pre-date these Rules and Regulations, the provisions of the pre-existing loan
2 agreements shall prevail.

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