

# Tribal Lending Regulations

*Promulgated pursuant to the Tribal Lending Regulatory Ordinance #10-1, as Amended.*

*Regulations were originally approved by the Guidiville Indian Rancheria's Tribal Council & authorized for release by the TLRA on 02.18.2016. (These Regulations were amended and released by the TLRA on 02.21.2017; and 05.14.2019).*

## **100 – Authority Scope and Application**

**100.1 – Authority.** These Regulations are promulgated pursuant to the powers granted to the Tribal Lending Regulatory Authority (TLRA or “Authority”) by Sections 4.11 and 4.14 of the Tribal Lending Regulatory Ordinance 10-1 (“Ordinance 10-1”) of the Guidiville Band of Pomo Indians of the Guidiville Indian Rancheria (“Guidiville Band”).

**100.2 – Scope and Application.** These Regulations shall apply to Borrowers, Lenders, Licensees, and Persons, as defined in Ordinance 10-1. Any entity or Person charged with applying or interpreting these Regulations shall do so in a manner that gives deference to the actions and judgment of the TLRA as the regulatory body to which authority was delegated pursuant to Ordinance 10-1. Entities and individuals are expressly assenting to the authority of the TLRA and the application of these Regulations when:

- (a) Operating with a TLRA license;
- (b) Entering into a consensual contractual relationship with a tribally-owned entity for products or services authorized by Ordinance 10-1;
- (c) Entering into a contract to provide services to any entity or individual licensed by the TLRA and involved in consumer lending related activities contemplated in Ordinance 10-1; and
- (d) Any individual entering into a contractual relationship to obtain a loan product from a tribally-owned and TLRA licensed lending entity.

**100.3 – Definitions.** The following terms will be understood and interpreted from the definitions below. If the definitions below are in conflict with the definitions in Ordinance 10-1, the definitions stated in Ordinance 10-1 shall control:

- (a) “Custodian” shall mean the Regulatory Agent or his/her designee for the purposes of Investigations, Examination, Supervision, or Enforcement matters.
- (b) “Documentary material” means the original or any copy of any book, document, record, report, memorandum, paper, communication, tabulation, chart, log, electronic file, or other data or data compilation stored in any medium, including electronically stored information.
- (c) “Electronically stored information (ESI)” shall mean any information stored in any electronic medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form.
- (d) “Examiner” shall mean any hearing officer or professional appointed by the Regulatory Agent and vested with the powers of the TLRA for the purposes of conducting a hearing, investigation, enforcement action, or supervisory examination pursuant to Ordinance 10-1 and these

Regulations. The Regulatory Agent may designate the Intertribal Court of Southern California as the Examiner pursuant to the Guidiville Band's Memorandum of Agreement with the Intertribal Court of Southern California.

- (e) "Loan" or "Loan product" shall mean any financial product authorized by Ordinance 10-1.
- (f) "Violation" shall mean conduct or an omission that violates Ordinance 10-1 or these Regulations, or a practice that is not consistent with the guidance of the Federal Consumer Protection laws as specified in 200.1.

### **200-Requirements of Persons, Licensees, and Lenders Engaged in Tribal Lending**

**200.1 – Federal Consumer Protection Laws.** Every entity licensed by the TLRA or contracted to provide a Tribal Lending-related services to a Licensee shall conduct business in a manner that is consistent with the consumer protection principles and requirements set forth in the federal laws described in this section. However, the TLRA's requirement of compliance with the principles of these laws does not admit or endorse the use of any enforcement mechanisms described in these laws against any Licensee or its Tribal Lending Vendors. The applicable laws are:

- (a) The Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, and related regulations at 12 C.F.R. Part 226;
- (b) The Fair Credit Billing Act, 15 U.S.C. § 1666a;
- (c) The Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.*, and related regulations at 12 C.F.R. Part 202;
- (d) The Electronic Funds Transfer Act, 15 U.S.C. § 1693 *et seq.*, and related regulations at 12 C.F.R. Part 205;
- (e) The Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* and related regulations 12 C.F.R. Part 222;
- (f) The privacy provisions of Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801 *et seq.*, and related regulations at 16 C.F.R. Part 313 and 314;
- (g) The Fair Debt Collections Practices Act, 15 U.S.C. § 1692 *et seq.*, and related regulations at 16 C.F.R. Part 901;
- (h) The Talent Amendment, 10 U.S.C. § 987 and related regulations of the Department of Defense at 32 C.F.R. Part 232; and
- (i) The Service Members' Civil Relief Act, 50 U.S.C. App. §§ 501-596; and
- (j) The Telephone Consumer Protection Act, 47 U.S.C. § 227 *et. Seq.*

**200.2 – Tribes as States.** When interpreting any of the federal laws or regulations listed in section 200.1 above, any reference to "state" shall be construed where appropriate to mean the Guidiville Band, and shall be construed liberally in favor of the Guidiville Band, with ambiguous provisions being interpreted to the Guidiville Band's benefit.

### **200.3 – Prohibited Acts by Persons Engaged in Tribal Lending Activities**

- (a) A Person, Licensee, or Lender shall not engage in Tribal Lending without a license issued by the TLRA.
- (b) A Person, Licensee, or Lender shall not assess any interest or fee that is greater than any applicable limitation, if any, specified in Ordinance 10-1 or these Regulations.

- (c) A Person, Licensee, or Lender shall not use or cause to be published or disseminated any advertisements that contain false, misleading, or deceptive statements or representations.
- (d) A Person, Licensee, or Lender shall not engage in unfair, deceptive, abusive, or fraudulent practices or unfair or deceptive advertising in connection with a loan product.
- (e) Unconscionability. The TLRA may deem a Licensee's loan agreement with a consumer unconscionable, if, after an investigation and/or review of a Consumer complaint, it finds the underlying agreement was formed through improprieties in the process of its construction or formation or the actual terms are unduly harsh, commercially unreasonable, or grossly unfair given the existing circumstances.

#### **200.4 – Books, Accounts and Records, Examinations, Costs.**

- (a) Books, Accounts, and Records. A Licensee shall maintain all books, accounts, and records that the Authority reasonably requires. Each Licensee shall:
  - (1) Ensure that the books, accounts and records are sufficiently detailed to comply with Ordinance 10-1, these Regulations, and all applicable Tribal and federal laws.
  - (2) Maintain the books, accounts and records separately from any other business in which the Licensee is engaged and shall retain the books, accounts and records for at least six (6) years.
- (b) Examination and Costs. The Authority may examine or cause to be examined a Licensee annually and/or more frequently, if the Authority considers it necessary. In conducting such examination, the Authority or its Agent may examine the books, accounts and records to determine if the Licensee has complied with the Ordinance 10-1 and any implementing Regulations adopted pursuant to Ordinance 10-1. The Licensee shall pay the cost of the examination. Examinations shall be conducted pursuant to the TLRA Examination Manual.
- (c) Copy of Ordinance 10-1, Regulations, and License(s). Each Licensee shall have a copy of Ordinance 10-1 and any implementing Regulations and issued License(s) readily available for inspection at each authorized physical location and these documents shall be prominently displayed on each of Licensee's websites.

#### **200.5 – Requirements Regarding Presence on Tribal Property and Posting of Valid License(s).**

- (a) The Authority shall set minimal locational requirements, beyond those already required by Section 6 of Ordinance 10-1, for Lenders operating under the jurisdiction of the Authority.
- (b) The Authority may revise these requirements periodically by issuing formal guidance to Licensees.
- (c) All Licensees must post a valid TLRA license at the principal location maintained on Tribal property and those locations where activity related to licensed lending occurs.
- (d) Failure to comply with the locational requirements of these Regulations is grounds for immediate suspension by the Authority.

#### **200.6 – Required Disclosures and Terms**

- (a) Preservation of Tribal sovereignty, immunities, privileges, and exclusive jurisdiction. The Licensee must in a conspicuous and prominent place on each Loan Agreement in bold, capitalized type size no smaller than the type size used elsewhere in the Loan Agreement, provide the Consumer the following notice:

**IMPORTANT DISCLOSURE:**

**PLEASE READ THIS DISCLOSURE CAREFULLY BEFORE SIGNING THIS LOAN AGREEMENT. THE LENDER IS AN ARM OF A FEDERALLY RECOGNIZED INDIAN TRIBE: THE GUIDIVILLE BAND OF POMO INDIANS OF THE GUIDIVILLE INDIAN RANCHERIA ("GUIDIVILLE BAND"). THE LENDER IS A COMMERCIAL ENTITY FORMED PURSUANT TO FEDERAL AND TRIBAL LAWS AND IT IS OWNED AND OPERATED BY THE GUIDIVILLE BAND. THE LENDER FUNCTIONS AS A FOR-PROFIT COMMERCIAL ENTITY OF THE GUIDIVILLE BAND, FORMED FOR THE EXPRESS PURPOSE OF ECONOMIC DEVELOPMENT. BOTH THE LENDER AND THE GUIDIVILLE BAND ARE IMMUNE FROM SUIT IN ANY COURT, UNLESS THE GUIDIVILLE BAND, THROUGH IT'S TRIBAL COUNCIL, EXPRESSLY WAIVES THAT IMMUNITY THROUGH A FORMAL AND WRITTEN RESOLUTION OF THE GUIDIVILLE BAND'S TRIBAL COUNCIL. THE LENDER IS REGULATED BY THE TRIBAL LENDING REGULATORY AUTHORITY ("TLRA"). YOUR RIGHT TO SUBMIT COMPLAINTS IS GOVERNED BY THE TRIBAL LENDING REGULATORY ORDINANCE ("ORDINANCE") INCLUDING THE DISPUTE RESOLUTION PROCESS SET FORTH IN THE LOAN AGREEMENT AND TO THE TRIBAL LENDING REGULATORY AUTHORITY IN ACCORDANCE WITH THE ORDINANCE AND THE ACCOMPANYING LENDING REGULATIONS.**

**YOU AGREE THAT THIS LOAN IS MADE WITHIN THE GUIDIVILLE BAND'S JURISDICTION AND IS SUBJECT TO AND GOVERNED BY THE TRIBAL LAW AND NOT THE LAW OF YOUR RESIDENT STATE. IN MAKING THIS LOAN, YOU CONSENT TO TRIBAL JURISDICTION FOR THIS COMMERCIAL TRANSACTION. YOUR RESIDENT STATE LAWS MAY HAVE INTEREST RATE LIMITS AND OTHER CONSUMER PROTECTION PROVISIONS THAT ARE MORE FAVORABLE FOR YOU. CONSIDER TAKING A LOAN FROM A LENDER LISCENED BY YOUR STATE, IF YOU WISH TO HAVE YOUR RESIDENT STATE LAWS APPLY TO ANY LOAN THAT YOU NEGOTIATE. IN ANY EVENT, YOU SHOULD CAREFULLY EVALUATE YOUR FINANCIAL OPTIONS BEFORE TAKING OUT A LOAN. THIS LOAN HAS A HIGH INTEREST RATE AND IT IS NOT INTENDED TO PROVIDE A SOLUTION FOR LONGER TERM CREDIT OR OTHER FINANCIAL NEEDS. ALTERNATIVE FORMS OF CREDIT MAY BE LESS EXPENSIVE AND MORE SUITABLE FOR YOUR FINANCIAL NEEDS. CARFULLY CONSIDER YOUR ABILITY TO REPAY THE LOAN AND IF YOU ARE HAVING FINANCIAL DIFFICULTIES, YOU SHOULD SEEK THE ASSISTANCE OF FINANCIAL COUNSELORS. BEFORE SIGNING THIS LOAN AGREEMENT, PLEASE CAREFULLY READ ITS TERMS COMPLETELY. YOUR ELECTRONIC SIGNATURE IS APPROVAL OF THIS LOAN EXECUTED ON TRIBAL LANDS, AND WILL BE DEEMED AS PROOF THAT YOU HAVE READ THE LOAN AGREEMENT; YOU HAVE APPROVED ALL OF IT'S TERMS, INCLUDING CONSENTING TO TRIBAL JURISDICTION; YOU HAVE PROVIDED THE LENDER WITH THE MOST CURRENT AND ACCURATE EMPLOYMENT, CREDIT, INCOME, AND ASSET HISTORY REQUIRED FOR THIS LENDER TO ACCURATELY DETERMINE YOUR ABILITY TO REPAY THE LOAN; AND YOU AFFIRMATELY ACKNOWLEDGE YOU ARE ABLE TO REPAY THE LOAN ACCORDING TO THE TERMS OF THE LOAN AGREEMENT.**

**(b) Right to rescind.** A consumer shall have the right to rescind the Loan Agreement on or before 5 P.M. EST on the third (3<sup>rd</sup>) business day following the Loan Transaction. Upon rescission, the Consumer must repay the full amount of the Loan but shall not be required to pay any pre-assessed fee or other fees or costs as set forth in the Loan Agreement. A Consumer must provide the Lender with written notice of such rescission and such written notice must be mailed, faxed, or sent by electronic mail to Lender at the Lender's address as it appears on the Loan Agreement.

**(c) Right to rescind notice.** A Lender shall provide the following notice in a conspicuous and prominent place on each Loan Agreement in bold, capitalized type size not smaller that type used elsewhere in the Loan Agreement.

YOU HAVE THE RIGHT TO RESCIND THIS TRANSACTION BY 5 P.M. EASTERN TIME ON THE THIRD (3<sup>rd</sup>) BUSINESS DAY FOLLOWING THE APPROVAL OF THIS AGREEMENT ("Rescission Deadline"). TO RESCIND THIS AGREEMENT, YOU MUST INFORM US IN WRITING, BY THE RESCISSION DEADLINE, BY EITHER FAXING NOTICE TO (866) 583-3575 OR EMAILING TO CUSTOMER SERVICE AT CUSTOMERSERVICE@THELOANSMITH.COM THAT YOU WANT TO CANCEL THIS AGREEMENT AND THAT YOU AUTHORIZE US TO EFFECT A DEBIT ENTRY TO YOUR BANK ACCOUNT FOR THE PRINCIPAL LOAN AMOUNT IN THE AGREEMENT. IN THE EVENT THAT WE TIMELY RECEIVE YOUR WRITTEN NOTICE OF RESCISSION ON OR BEFORE THE RESCISSION DEADLINE BUT BEFORE THE LOAN PROCEEDS HAVE BEEN CREDITED TO YOUR BANK ACCOUNT, WE WILL NOT AFFECT A DEBIT ENTRY TO YOUR BANK ACCOUNT AND BOTH OURS AND YOUR OBLIGATIONS UNDER THIS AGREEMENT WILL BE RESCINDED AND YOU WILL NOT BE CHARGED ANY FEES. IN THE EVENT THAT WE TIMELY RECEIVE YOUR WRITTEN NOTICE OF RESCISSION ON OR BEFORE THE RESCISSION DEADLINE BUT AFTER THE LOAN PROCEEDS HAVE BEEN CREDITED TO YOUR BANK ACCOUNT, WE WILL AFFECT A DEBIT TO YOUR BANK ACCOUNT FOR THE PRINCIPAL AMOUNT IN THE LOAN AGREEMENT. IF WE RECEIVE PAYMENT OF THE PRINCIPAL AMOUNT, VIA THE DEBIT, OURS AND YOUR OBLIGATIONS UNDER THIS AGREEMENT WILL BE RESCINDED. IF WE DO NOT RECEIVE PAYMENT OF THE PRINCIPAL AMOUNT VIA THE DEBIT, THEN THE AGREEMENT WILL REMAIN IN FULL FORCE AND EFFECT UNTIL ALL SUMS DUE AND OWING UNDER THIS AGREEMENT ARE REPAYED IN FULL INCLUSIVE OF INTEREST AND FEES, IF ANY.

### **300 - Investigations**

**300.1 – Scope.** These Regulations apply to the conduct of investigations by the TLRA or its Agent(s), pursuant to Section 4.12 of Ordinance 10-1.

**300.2 – Initiating and Conducting Investigations.** The TLRA has the authority to initiate investigations, and to retain outside counsel, auditors, or vendor specialists for its own counsel and assistance in completing investigations.

**300.3 – Notification of Purpose.** Any Person compelled by the TLRA, to furnish documentary material, tangible things, written reports or answers to questions, oral testimony, or any combination thereof shall be advised of the nature of the conduct constituting the alleged violation that is under investigation, and the provisions of Ordinance 10-1 or these Regulations applicable to such violations.

### **300.4 – Regulatory Investigative Demands.**

(a) In general, the TLRA may issue Regulatory Investigative Demands (RID). In any Authority investigation directing a Person or entity named to produce documentary material for inspection and copying or reproduction in a form requested by the TLRA; to submit tangible things; to provide a written report or answers to questions; to appear before a TLRA representative at a designated time and place to testify about documentary material, tangible things, or other information; and to furnish any combination of such things.

(1) Documentary Material. RIDs for the production of documentary material shall describe each class of material to be produced with such definiteness and certainty as to permit such material to be fairly identified; prescribe a return date that is a reasonable time within which the material demanded may be assembled and produced

or made available for copying and inspection; and identify the custodian to whom such material shall be produced or made available.

(2) Tangible things. RIDs for tangible things shall describe with specificity either the precise things or each class of things to be produced with such definiteness and certainty as to permit such material to be fairly identified, prescribe a return date that is a reasonable time within which the things demanded may be assembled and made submitted, and identify the custodian to whom such things will be submitted.

(3) Written reports or answers to questions. RIDs for written reports or answers to questions shall propound with definiteness and certainty the reports to be produced or the questions to be answered, prescribe a date at which time the written reports or answers to questions shall be submitted, and identify the custodian to whom such reports or answers shall be submitted.

(4) Oral testimony.

(i) RIDs for the giving of oral testimony shall prescribe a date, time, and place at which oral testimony shall be commenced, and identify a TLRA representative who shall conduct the investigation and the custodian to whom the transcript of such investigation shall be submitted.

(ii) When a RID requires oral testimony from an entity, the RID shall describe with reasonable particularity the matters for examination and the entity must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf. Unless a single individual is designated by the entity, the entity must designate the matters on which each designee will testify. The individuals designated must testify about information known or reasonably available to the entity and their testimony shall be binding on the entity. The entity will be allowed to bring legal counsel, if it so chooses to do so at its own expense.

(b) Manner and form of production of ESI. When a RID requires the production of Electronically Stored Information ("ESI"), it shall be produced in accordance with the instructions provided by the TLRA regarding manner and form of production. Absent any instructions as to the form for producing ESI, ESI must be produced in the form in which it is ordinarily maintained or in a reasonably usable form.

(c) Meet and Confer. The recipient of a RID shall meet and confer with a TLRA representative within ten (10) calendar days after receipt of a RID to discuss and attempt to resolve all issues and questions regarding compliance with the demand. The Authority may, in his/her discretion, waive the requirement of a meet and confer. The meeting may be in person or by telephone.

(1) Personnel. The recipient must make available at the meeting personnel with knowledge necessary to resolve any issues relevant to compliance with the demand.

(2) Electronically Stored Information (ESI). If the RID seeks ESI, the recipient shall ensure that a person familiar with its ESI systems and methods of retrieval participates in the meeting.

(d) Compliance. The Authority and any designees are authorized to negotiate and approve the terms of satisfactory compliance with RIDs and, for good cause shown, may extend the time prescribed for compliance.

**300.5 – Withholding requested material.**

(a) Any person withholding material responsive to a RID or any other request for production of material shall assert a claim of privilege not later than the date set for the production of material. Such person shall, if so directed in the regulatory investigative demand or other request for production, submit, together with such claim, a schedule of the items withheld which states, as to each such item, the type, specific subject matter, and date of the item; the names, addresses, positions, and organizations of all authors and recipients of the item; and the specific grounds for claiming that the item is privileged.

(b) Disclosure of privileged or protected information or communications produced pursuant to a RID shall be handled as follows:

(1) The disclosure of privileged or protected information or communications shall not operate as a waiver with respect to the TLRA if:

- (i) The disclosure was inadvertent;
- (ii) The holder of the privilege or protection took reasonable steps to prevent disclosure; and
- (iii) The holder promptly took reasonable steps to rectify the error, including notifying a TLRA investigator of the claim of privilege or protection and the basis for it.

(2) After being notified, the TLRA representative must promptly return, sequester, or destroy the specified information and any copies; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if he or she disclosed it before being notified; and, if appropriate, may sequester such material until such time as a hearing officer or court rules on the merits of the claim of privilege or protection. The producing party must preserve the information until the claim is resolved.

(3) The disclosure of privileged or protected information or communications shall waive the privilege or protection with respect to the TLRA as to undisclosed information or communications only if:

- (i) The waiver is intentional;
- (ii) The disclosed and undisclosed information or communications concern the same subject matter; and
- (iii) They ought in fairness to be considered together.

**300.6 – Rights of witnesses in investigations.**

(a) Any person compelled to submit documentary material, tangible things, or written reports or answers to questions to the TLRA, or to testify as part of the investigation, shall be entitled to retain a copy or, on payment of lawfully prescribed costs, request a copy of the materials, things, reports, or written answers submitted, or a transcript of his or her testimony. Upon

completion of transcription of the testimony of the witness, the witness shall be offered an opportunity to read and if necessary, correct/change, the transcript of his or her testimony. Any corrections/changes by the witness shall be entered and identified upon the transcript by the TLRA representative with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness and submitted to the TLRA unless the witness cannot be found, is ill, waives in writing his or her right to signature, or refuses to sign. If the signed transcript is not submitted to the TLRA within thirty (30) calendar days of the witness being afforded a reasonable opportunity to review it, the TLRA or his/her representative, shall sign the transcript and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with any reasons given for the failure to sign.

(b) Any witness compelled to appear in person at an investigational hearing may be accompanied, represented, and advised by counsel as follows:

(1) Counsel for a witness may advise the witness, in confidence and upon the initiative of either counsel or the witness, with respect to any question asked of the witness where it is claimed that a witness is privileged to refuse to answer the question. Counsel may not otherwise consult with the witness while a question directed to the witness is pending.

(2) Any objections made under the rules in this part shall be made only for the purpose of protecting a constitutional or other legal right or privilege, including the privilege against self-incrimination. Neither the witness nor counsel shall otherwise object or refuse to answer any question. Any objection during an investigational hearing shall be stated concisely on the record in a non-argumentative and non-suggestive manner. Following an objection, the examination shall proceed, and the testimony shall be taken, except for testimony requiring the witness to divulge information protected by the claim of privilege or work product.

(3) Following completion of the examination of a witness, counsel for the witness may, on the record, request that the TLRA investigator taking the testimony permit the witness to clarify any of his or her answers. The grant or denial of such request shall be within the sole discretion of the TLRA representative.

**300.6 – Noncompliance with regulatory investigative demands.**

In cases of failure to comply in whole or in part with TLRA investigative demands, appropriate action may be initiated by the TLRA, including actions for enforcement or authorized sanctions.

**300.7 – Disposition.**

The TLRA shall resolve all RIDs by either notifying the recipient that no action is being taken, entering into an agreement resolving issues identified by the investigation, or the initiation of enforcement proceedings authorized by these Regulations.

## **400 – Rules and Procedures for Hearings**

### **400.1 – General Provisions**

(a) The Authority values fairness, due process, and expediency in the resolution of matters for which a formal hearing is necessary. The Examiner designated by the Authority pursuant to section 4.16(d) of Ordinance 10-1, counsel, and all parties shall make every effort not to delay and to act in good faith to agree on procedure and schedule issues that will fulfill these general purposes.

(b) All hearings held pursuant to these Regulations shall be conducted in a manner consistent with the requirements of Ordinance 10-1, section 4.16.

### **400.2 – Powers of the Examiner**

(a) An Examiner appointed by the Authority shall possess the full powers of the Authority as contemplated in Ordinance 10-1, with regard to hearings. This delegation of authority shall exist for the duration of the specific hearing appointment and shall dissolve upon the conclusion of the hearing.

(b) The Examiner shall possess discretion as to the shortening or extension of time periods, the location of the hearing, the use of technology in hearings, the specific rules of evidence to be utilized in a particular hearing, and the time allowed each party to present evidence and arguments to the Examiner. This discretion shall be exercised consistent with the values of fairness, due process, and expediency.

(c) Powers of the Examiner. The powers of the Examiner include by are not limited to the powers:

- (1) To administer oaths and affirmations;
- (2) To issue subpoenas or orders for the production of documents and things or the attendance of witnesses; and to issue protective orders and confidentiality orders regarding specific documents and things or testimony;
- (3) To take depositions or cause depositions to be taken;
- (4) To receive relevant evidence and to rule upon the admission of evidence and offers of proof;
- (5) To regulate the course of the proceedings and the conduct of parties and their counsel;
- (6) To order and hold conferences for settlement, the simplification of the issues, or any other proper purpose; and to require the attendance at any such conference of at least one representative of each party who has authority to negotiate concerning the resolution of issues in controversy;
- (7) To consider and rule upon all procedural and other motions appropriate in adjudication proceedings;
- (8) To issue final decisions on matters in dispute in the hearing;
- (9) To issue such sanctions against parties or counsel as may be necessary to deter repetition of sanctionable conduct or comparable conduct by others similarly situated or as otherwise necessary to the appropriate conduct of hearings and related proceedings,

provided that no sanction shall be imposed before providing the sanctioned person an opportunity to show cause why no such sanction should be issued; and

(10) To do all other things necessary and appropriate to discharge the duties of the TLRA.

(11) To shift the cost incurred by the Authority in carrying out the hearing, should the Authority prevail.

#### **400.3 – Commencement of Hearing.**

A hearing shall be held by the TLRA when:

(a) The TLRA issues a written notice of a hearing, pursuant to Ordinance 10-1 and these Regulations, that is necessary or appropriate to carry out its full authority under Ordinance 10-1; and

(b) A Person, Lender, or Licensee subject to TLRA regulation and supervision has received notice of a right to a formal hearing and has elected to exercise that right in a manner specified in the written notice.

#### **400.4 – Prehearing Procedures.**

At the request of any party, or on his/her own motion, the Examiner may order a prehearing conference for any of the following purposes; provided however, that no party shall be required to disclose the nature of its evidence, the names of its witnesses or its theory in the case at that conference:

(a) To set the schedule for the hearing, including the deadlines for written submissions, prehearing disclosures, any necessary discovery, and the date, time, and location of the hearing.

(b) To provide for the acceptance of, or the in-camera inspection of, any document requested by any party to be treated as confidential.

(c) To hear and decide upon formal written requests for subpoenas or orders necessary to compel the production of documents and things, the attendance of witnesses at a hearing, or to compel the action of a party to complete a task deemed necessary for the expeditious completion of a hearing.

(d) To consider and decide prehearing motions and to issue orders regarding such motions.

#### **400.5 – Hearing Procedures.**

(a) Written Submissions. The Examiner may consider voluntary written submissions from either party or may require such submissions in order to streamline proceedings or narrow issues.

(b) Dispositive Motions. At any point during the hearing process, the Examiner may consider a written or oral motion by a party to dispose of all or part of the issues in controversy during the hearing. The Examiner may rule orally at the time the motion is made but shall memorialize any decision and the Examiners reasoning in reaching that decision, in writing at the conclusion of the hearing.

(c) Evidence. Parties to the hearing must be afforded the opportunity to present evidence on contested matters and examine or question witnesses. The Examiner shall have discretion as to the standards of admissibility applied to evidence offered by a party. This right to present

evidence is waived if a party to whom a hearing is available and who has received proper notice of this right has not elected to exercise the right to a hearing in a timely fashion.

(d) Opening and Closing Arguments. Parties may make opening and closing arguments that summarize evidence presented to the Examiner. If such arguments are made, they must explicitly address the party's specific requested disposition of the matters at issue in the hearing.

(e) Examination of Witnesses. The party calling a witness shall have the first right of examination. Following examination of the witness, all adverse parties will have the right to cross-examine that witness. After cross-examination of a party's witness by all adverse parties, the Examiner may question the witness. The Examiner shall have the authority to examine all witnesses presented.

#### **400.6 – Location and Manner of Hearing**

(a) The hearing Examiner shall have full discretion as to the location of the hearing and whether a hearing may be conducted by telephonic or video-conference means. The Examiner shall balance the priorities of due process, fairness, and expediency in making a decision as to the location of a hearing or the technological assistance employed.

(b) In the event of a telephonic or video-conference hearing, any court reporter or stenographer engaged by the Examiner to memorialize the proceedings shall be present at the location of the Examiner.

#### **400.7 – Post-Hearing Matters**

(a) The Examiner may grant leave for voluntary post-hearing briefing or motions by either party.

(b) The Examiner may order the parties to submit post-hearing written submissions, such as proposed findings of fact and conclusions of law.

(c) All Examiner decisions shall be issued in a timely manner, according to the thirty (30) business day requirement of Section 4.16(e) of Ordinance 10-1.

(d) At the conclusion of the hearing and issuance of a decision, the Authority or the Tribal Council may continue the services of any appointed Examiner to assist in any Appeals, as allowed under Sections 4.16(f) and Section 10 of Ordinance 10-1.

#### **500 – Enforcement, Civil Penalty and Sanctions**

**500.1 – Jurisdiction.** Except as provided otherwise in Ordinance 10-1, the TLRA shall have jurisdiction over all violations of Ordinance 10-1 and these Regulations, and with respect to any conduct governed by them or with respect to any claim arising from a transaction subject to Ordinance 10-1 and these Regulations.

**500.2 – Guidelines.** In imposing any administrative remedy or civil penalty, the Authority shall take into account the appropriateness of the remedy or penalty with respect to the size of the financial resources and good faith of the Licensee charged, the extent to which the violation was intentional, the gravity of the violation, the history or previous violations, and other matters as just may require.

**500.3 – Civil Violations.** Any Applicant, Person, Lender, or Licensee who violates or fails to comply with any provision of Ordinance 10-1 or who fails or neglects to comply with any final order of the Authority may be charged with a violation. If the Applicant, Person, Lender, or Licensee is found to have committed a violation, he/it may be required to pay a civil fine to the Authority not to exceed an amount of \$1000 per individual violation, which shall be set by the Authority for each violation. Each day during which any such violation or failure to comply continues may be treated as a separate violation of Ordinance 10-1 but not to exceed an amount to be set by the Authority. A violation or series of violations related to the same act or omission may be treated, in the Authority's discretion, as one violation.

(a) A Licensee found responsible for a material violation pursuant to this Section may also be subject to revocation of its License.

(b) If an officer or agent of a Licensee knowingly or recklessly participates in a material violation of Ordinance 10-1 or these Regulations, then the Authority may immediately revoke the License thereby terminating said relationship.

(c) If an officer or agent of a Vendor knowingly or recklessly participates in conduct or activity that would constitute a material violation of Ordinance 10-1 or these Regulations, the Authority may immediately ban the Vendor from operating within the Guidiville Band's jurisdiction and may require the Licensee working with such Vendor to show cause why they should not be held accountable and disciplined for the Vendor's conduct.

**500.4 – Cumulative Fines.** All civil fines accruing under these Regulations shall be cumulative and a suit for the recovery of any one fine shall not bar or affect the recovery of any other fine, or judgment, penalty, forfeiture or damages, nor bar the power of a court of competent jurisdiction to enter an order of contempt, nor bar any criminal prosecution against any officer, director, agent, or employee of any Licensee.

**500.5 – Purpose of Civil Penalties.** The civil fines imposed under these Regulations are intended to be remedial and not punitive. Such fines are designed to compensate the Guidiville Band for the damage caused to its peace, security, economy, and general welfare, while also compensating the Guidiville Band for the cost of enforcement under these Regulations and ensuring that Consumers harmed by the actions of a Licensee are made whole through restitution in the amount of any actual damages proven to have resulted from a violation. Finally, the civil penalties set forth under these Regulations are intended to encourage compliance with Ordinance 10-1 and the Authority's Regulations, and not as punishment for violation of such laws and Regulations.

**500.6 – Civil Action for Penalties.** In enforcing the civil infraction provisions of this Regulation, the Authority may proceed in the name of the Guidiville Band against a Person by civil complaint in a court of competent jurisdiction.

**500.7 – Seizure and Forfeiture of Property.** Property of a Licensee or its agent utilized in violation of Ordinance 10-1 or these Regulations shall be subject to seizure and forfeiture by order of the Authority.

**500.8 – Cease and Desist Order.** If the TLRA believes that any Licensee or its agent has engaged in or is about to engage in any act or practice constituting a violation of Ordinance 10-1 or these Regulations, the TLRA may issue a cease and desist order and therein provide required immediate actions to cease the violations and an opportunity to cure the violation.

(a) Immediate effect. To protect consumers and the Guidiville Band, a TLRA cease and desist order may have immediate effect and remain in effect until modification by the TLRA or the conclusion of the necessary hearing.

(b) Modification or Vacatur. The TLRA has the discretion to modify or vacate a cease and desist order.

**500.9 – Sanctions for Non-Compliance.** In the event that any Licensee or Vendor fails to comply with any order of the TLRA or any procedure specified herein, including but not limited to the failure to appear at a noticed hearing, the failure to comply with an order to cease and desist, the failure to pay an ordered civil fine, or other conduct obstructing the TLRA’s exercise of powers enumerated in Ordinance 10-1, the TLRA may impose the following immediate sanctions to protect consumers and the Guidiville Band.

(a) Immediate termination of Licensee web sites or server activity.

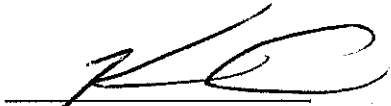
(b) The posting of an open and notorious notice on the Licensee or Tribal web sites, informing the public of the Licensees violation and pending TLRA orders or sanctions.

(c) Referral to the appropriate regulatory or law enforcement authorities beyond the Guidiville Band’s jurisdiction in an effort to alert them of potential misconduct.

**500.10 – Appeal and Due Process.** Any Applicant, Person, Lender, or Licensee that is the subject of an enforcement action concluding with a final adverse finding, action, or order of the TLRA, may contest it pursuant to Sections 4.16 and Section 10 of Ordinance 10-1 and Part 400 of these Regulations.

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These amended Regulations have hereby been reviewed and approved by the Tribal Council of the Guidiville Band of Pomo Indians of the Guidiville Indian Rancheria and are thereby authorized for implementation and posting by the Tribal Lending Regulatory Authority on this 9th day of May 2019. It is further directed that these Regulations will be posted on all Lender websites, per Ordinance 10-1.



Kevin Cline  
Regulatory Agent  
Tribal Lending Regulatory Authority

05-14-2019

Date