

**TITLE 26
REAL PROPERTY ORDINANCE**

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CHAPTER 1

RESERVED

CHAPTER 2

TRIBAL REAL PROPERTY LEASES

Section 26-2-1 **Scope.**

Sections 26-2-1 through 26-2-25 apply to all Tribal real property leases between the Flandreau Santee Sioux Tribe and any other person or entity. This includes all residential, commercial, and agricultural leases of real property validly executed by the Flandreau Santee Sioux Tribe. Any federal provisions preempting this title will control. If jurisdiction requires that the state laws of South Dakota should be applied, then those state laws will control.

Section 26-2-2 **Purpose.**

The purpose of this Ordinance is to establish uniform policies and procedures for the leasing of Tribal lands to non-members and members of the Flandreau Santee Sioux Tribe. This ordinance will provide a framework founded on fair principles that give each potential lessee an equal stance when applying for, and receiving, a lease with the Tribe. This ordinance will also provide the minimum required terms, conditions, and covenants of a lease with the Tribe, as well as the process for termination of a lease for non-compliance.

Section 26-2-3 **Definitions.**

- (a) “Agricultural Use” shall mean the act or practice of enjoying the benefits of property through the utilization of that property for an agricultural purpose.
- (b) “Breach” shall refer to failure, without legal excuse, to perform any promise which forms the whole or part of the agreement.
- (c) “Commercial Use” shall mean the act or practice of enjoying the benefits of property through the utilization of that property for business purposes dealing with trade or commerce.
- (d) “Current Tribal Member Lessee” shall mean the Tribal Member who is leasing a parcel of land from that Tribe immediately before that lease expires.
- (e) “Department” shall mean the Flandreau Santee Sioux Tribe Buffalo Land Management Department.
- (f) “Eviction” is the process of dispossession of a lessee by process of law.
- (g) “Executive Committee” shall mean the governing body of the Flandreau Santee Sioux Tribe as provided in Article III, Section 1 of the Flandreau Santee Sioux Tribe Constitution.
- (h) “Federal Government” shall refer to the United States Government, and its agents, including the Department of Interior, Bureau of Indian Affairs, and the United States Attorney.

- (i) “Land Committee” shall mean the Land Management Committee created by the Flandreau Santee Sioux Tribe Executive Committee on March 8, 2012 pursuant to Tribal Resolution 12-20.
- (j) “Lease” shall mean a contract by which one person (the lessor) gives to another (the lessee) temporary possession and use of real property and the lessee agrees to return such property to the lessor at a future time.
- (k) “Lessor” shall mean the party who conveys the land to the lessee. In the instance of land owned by the Tribe, the Tribe is the Lessor.
- (l) “Lessee” shall mean the party that land is conveyed to.
- (m) “Non-Member” shall mean any individual who does not meet the definition of “Tribal Member” in Section 26-2-3(m).
- (n) “Residential Use” shall mean the act or practice of enjoying the benefits of property through the utilization of that property as a primary dwelling.
- (o) “State” shall mean the State of South Dakota, its agencies, and other agents.
- (p) “Tribal Member” refers to an individual who is enrolled as a member by the Flandreau Santee Sioux Tribe.
- (q) “Tribe” in this ordinance shall refer to the Flandreau Santee Sioux Tribe.
- (r) “Trust Land” refers to land which is owned by the Flandreau Santee Sioux Tribe and held in trust by the United States Government for the Tribe’s benefit.

Section 26-2-4 Applicability to Leases.

This ordinance will apply to all leases entered into after the effective date of this ordinance, and all properly executed existing leases. If a previously executed lease contradicts a portion of this ordinance, that portion of the lease agreement will control.

Section 26-2-5 Preferences.

- (a) Because it is beneficial to achieve the best market price when leasing, the Tribe will not offer membership preferences in the assigning of agricultural or commercial leases except as provided in this section.
- (b) Tribal Member Preference for Agricultural Leases.
 - (1) If a parcel that is characterized as pasture expires in accordance with section 26-2-18(a) of this title, and the current lessee is a Tribal Member, then the Current Tribal Member Lessee shall have the option to match the highest bid plus ten percent (10%) if done so in accordance with this section.

- (2) The parcel must be publicly bid in accordance with this ordinance, and other applicable law.
- (3) The Current Tribal Member Lessee must submit a bid within the advertised timeframe to exert this preference.
- (4) If the Current Tribal Member Lessee unsuccessfully bids on the parcel, they may notify the Land Manager within seven (7) calendar days of the bid opening, in writing, of their intention to match the highest bid plus ten (10) percent.
- (5) This provision is not applicable to commercial leases or agricultural leases involving crop land.

Section 26-2-6 Approval Requirement.

All leases of real property must be presented to, and approved by, the Flandreau Santee Sioux Tribe Executive Committee through a duly-passed resolution. The President of the Flandreau Santee Sioux Tribe must sign the lease on behalf of the Tribe. Leases that are not approved through resolution will not be valid.

Section 26-2-7 Notice of Lease Availability.

Land parcels that the Executive Committee and the Land Management Committee have deemed appropriate to lease to individuals, must be posted in the local newspaper, and anywhere else that the Department determines will reach potential lessees. This notification must be posted fourteen (14) calendar days before bids may be accepted for the parcel.

Section 26-2-8 Bidding for Agricultural or Commercial Leases.

- (a) Bid Requirements. Bids must be filled out on the Bid Form (FSST § 26-2-22(a)) provided by the Department to the bidder. The bid form will have, at a minimum, the following:
 - (1) a description of the land to be lease,
 - (2) the terms of the lease,
 - (3) the length of the lease,
 - (4) the name of the bidder;
 - (5) the amount of money bid per acre (or in another form as otherwise directed by the Department or Land Management Committee);
 - (6) the date of the bid;
 - (7) the date when the bids will be opened; and
 - (8) the signature of the bidder.
- (b) Time Period. Bidding will take place for a period determined by the Land Management Committee, not to exceed 14 calendar days.

- (c) Delivery. Bids must be sealed, and delivered to the Executive Assistant of the Executive Committee. The Executive Assistant will collect, but not open, these sealed bids, and must record the number of bids submitted. The Executive Assistant will sign, concurrently, the "Receipt of Bid Form" (FSST § 26-2-22(b)) with the bidder. If the Executive Assistant is not available, the bids may be received by the Finance Specialist of the Tribe.
- (d) Incomplete Bids. Incomplete bids will not be accepted. Bids will be considered as incomplete if the bid form is not properly filled out or if the bids are not submitted within the allotted time frame of bidding.
- (e) Anyone who bids on the parcels may not owe the Tribe lease payments for current, or previous leases.

Section 26-2-9 Reviewing Bids.

- (a) Time and place of meeting. Within five (5) business days after the final day of bid submissions, the Land Committee will meet to open bids. This meeting must be held open to the public. The bid opening date must be scheduled before the bid period to insure that it can be included in the bid form. This provides bidders with adequate notice of when the meeting will be held if they desire to attend the opening process.
- (b) Process. The Committee chair will open, and read the bids aloud. Another member of the Committee will then record the bid. Once all of the bids have been recorded, the Land Committee will certify the bids by making a written resolution of bids, including the highest bidder for the parcel. The Land Committee will then inform the Tribal Attorney of the results, who will then draft the legal documents that are necessary to satisfy the lease. The final lease documents will be reviewed by the Land Committee, the Executive Committee, the Land Department, and the potential Lessee. When the parties have reviewed, and approved the documents, they will sign the documents, approve the lease through a resolution, and the lessee will take possession of the land as specified in the lease.

Section 26-2-10 Eligibility for Residential Leases.

- (a) To be eligible for residential lease with the Flandreau Santee Sioux Tribe, the applicant must be a member of the Tribe who is enrolled and who has attained the age of 18. It is of the utmost importance that the Tribe provides residential opportunities for its membership, and therefore residential leases may not be offered to non-members, unless it is obtained through a lease under Section 26-2-25.
- (b) One additional lessee may added to a residential lease, only if the primary lessee is eligible for a lease in accordance with subsection (a) of this Section, and the additional lessee is a significant other, family member of the primary lessee, or devisee as provided in a testamentary document. The additional lessee may be a Tribal Member, or Non-Member. The Tribe, primary lessee, and the additional lessee must all expressly agree to

the additional lessee being include on a new lease, or to any modification to an existing lease to add the additional lessee.

Section 26-2-11 Application for Residential Leases.

(a) Application Requirements. Applications must be filled out on the Application Form (FSST § 26-2-22(c)) provided by the Department to the applicant. The application form will have, at a minimum, the following:

- (1) A description of the land to be lease,
- (2) The terms of the lease,
- (3) The length of the lease,
- (4) The name of the applicant;
- (5) The names of individuals who will be living with the applicant at the residence;
- (6) A statement regarding the need of the a residential lease for the applicant;
- (7) Description of the applicant’s current living situation;
- (8) Three references:
 - i. Two must be community members whom the applicant has not lived with in the past year, and who are not related to the applicant;
 - ii. One must be a previous landlord;
- (9) The date of the application; and
- (10) The signature of the applicant.

(b) Delivery. Applications must be delivered to the Executive Assistant of the Executive Committee. The Executive Assistant will sign, concurrently, the “Receipt of Application Form” (FSST § 26-2-22(d)) with the bidder.

(c) Review. The Executive Committee will then review the application. They may then either deny or accept the application by resolution. The applicant will be notified of the Executive Committee’s decision via first class mail. If the application is accepted, the Tribal Attorney will be notified, and will draft the appropriate lease documents for the parcel. When these lease documents are prepared, they will be made available to the applicant, Land Committee, Land Department, and Executive Committee for review. When the documents are approved, the Executive Committee representative will sign the document concurrently with the applicant, and applicant may take possession of the land in accordance with the lease terms.

Section 26-2-12 No Assignments.

A lessee may not rent, lease, assign, sublease, or transfer their lease or any portion thereof without the written approval of the Executive Committee. A violation of this provision will result in an involuntary termination of the lease.

Section 26-2-13 Collateral.

Leases may not be used as collateral, be pledged, or used in any manner that implies that the tenant has the ability to alienate the land. The lessee only has the rights as laid out in the lease agreement, and is not vested with a personal interest to assign or pledge. If the land is subsequently foreclosed on, or if any lien is placed on the property, the lessee will be responsible for all damages including attorney's fees.

Section 26-2-14 Inspection of Premises.

To ensure the leased premises are being utilized as specified within the lease, periodic checks of the leased premises will be done by the Buffalo Land Management Department. The Department will be required to visit the property at least monthly, and if it has reason to expect that the lease not been complied with it may do so on a more regular basis. An inspection of lease property may be done by the Department without notice if it is deemed appropriate. The Department may not enter on residential structure on the premises without 24-hour notice to the lessee. Any inspections done from a public road or other access will not require notification. A log of each inspection must be created, and given to the Land Management Committee and the Tribal Secretary.

Section 26-2-15 Non-Compliance with Lease Agreement.

If the lessee is determined to be noncompliant with any of the provisions of the lease agreement, there will be a presumption that the lessee has breached the lease. Any material breach will be considered grounds for termination of the lease, as determined by the Executive Committee.

Section 26-2-16 Notification of Non-Compliance.

If an inspection by the Department has deemed that the Lessee is no longer in compliance with the lease, the Department will notify the lessee in writing, by certified mail, within ten (10) business days.

Section 26-2-17 Hearing with Executive Committee.

Within ten (10) business days of the receipt of the notification letter, the Lessee must request a meeting with Executive Committee and Land Management Committee to discuss his non-compliance. If a hearing is not requested, the Committee may initiate eviction procedures. At the end of the hearing, the Executive Committee will determine whether to allow the Lessee to cure the breach, or whether to evict the Lessee.

Section 26-2-18 Termination of Lease.

A validly executed lease between the Tribe and the Lessee may not be terminated unless of the following events has occurred:

- (a) the lease agreement expires;

- (b) the Tribe and the Lessee mutually agree to terminate the lease in writing;
- (c) the lessee breaches the lease;
- (d) the Tribe breaches the lease.

The lease may end for any one of, or any combination of, these events. If the lease has been terminated the non-breaching party may proceed in Tribal Court with the eviction process provided in this Ordinance. If a lease has been terminated because of the lessee's breach, the lessee may not apply for another lease for a period of two (2) years from the date of lease's termination.

Section 26-2-19 Eviction.

Eviction is the process of dispossessing the lessee of the leased premises by the process of law. An eviction may only take place in the Flandreau Santee Sioux Tribe Tribal Court. Eviction will be authorized after the termination of a lease, and will be enforced by the Flandreau Santee Sioux Tribe Police Department, or any other like agency that has jurisdiction.

Section 26-2-20 Damages.

Damages for the early termination of a lease may be assessed by the Tribal Court. These damages will be limited to actual damages and other damages authorized by the Flandreau Santee Sioux Tribe Law and Order Code. If the land use by the lessee has exceeded the scope of the lease, and profits derived from the use will be disgorged from the Lessee, and given to the Tribe.

Section 26-2-21 Annual Reporting.

The lessee shall file with the land department an annual report which identifies improvements made to the property, the uses of the property, and type of crops grown, and the quantities or volumes yielded from the agricultural or commercial assignment. At the Department's request, this report may be subsidized with receipts from elevators or other markets.

Section 26-2-22 Conflicts of Interest.

If any person on the Land Management Committee or in the Buffalo Land Management Department has an apparent or real conflict of interest with the prospective lessee, it is the obligation of that person to recuse themselves from any decision regarding the lease.

Section 26-2-23 Sovereign Immunity.

This ordinance does not expressly or impliedly waive the sovereign immunity enjoyed by the Tribe in any forum or tribunal, nor does it waive the sovereign immunity of any tribal employee, elected official, board or committee member, or other tribal agent. All waivers of sovereign immunity must be done in accordance with applicable Tribal and Federal law.

Section 26-2-23 Forms.

The following forms must be used with bidding on agricultural and commercial leases, as well as for the application for residential leases. Forms that are incomplete will be held invalid, and that bid or application will be void.

Section 26-2-25 Death of the Residential Lessee.

If the lessee of a valid residential lease deceases during the period of the lease, the other occupants of leased premises will have six (6) months to submit an application to the Executive Committee, or one (1) year to vacate the premises. If the person in possession is also listed as a lessee on the residential lease with the lessee, they will automatically assume the entire lease. The lease application will be awarded at the Executive Committee's discretion, and can be awarded to the original applicant's significant other, family member, or devisee in a testamentary document and these individuals can be Tribal Members, or non-Tribal Members. Multiple lease applications for this property can be submitted by anyone living with the lessee, and it is wholly within the Executive Committee's discretion as to who to award the lease to. The residential property will not be opened up to other applications during the period where occupants are applying for the lease. If the other occupants vacate the property, applications may then be submitted.

AGRICULTURAL/COMMERCIAL BID FORM - FSST § 26-2-22(a)

The following must be typed by the Buffalo Land Management Department:			
(1) Legal Description of Land			
(2) Bidding Period			
(3) Type of Lease			
(4) Terms of the Lease			
(5) Lease Period			
The following must be written, or typed in by the Bidder (INCOMPLETE BIDS WILL NOT BE ACCEPTED. PLEASE ENSURE THAT YOUR BID HAS BEEN FILLED OUT PROPERLY).			
First Name	Middle Name	Last Name	
Current Street Address/ P.O. Box			
City		State	Zip Code
E-mail Address		Phone Number	
Yes ___ No ___			
Have you ever been awarded a lease?	Former Lease Year	Type of Former Lease	Former Property Description
Yes ___ No ___	<hr/> <hr/> <hr/>		
Have you ever been denied a lease, or had a lease terminated?	Reason for denial/termination?		
Amount Bid on Land (\$###.## per acre)			
<p>By signing this bid form I acknowledge that I am willing and able to lease this property at the above listed bid. I realize that after submitting my bid, I can revoke the bid up to the day that bids are opened. I also understand that if my bid is accepted by the Flandreau Santee Sioux Tribe, we will enter into the lease the terms specified on this bid form, and in the lease agreement.</p>			
Signature of Bidder			Date

BID RECEIPT FORM - FSST § 26-2-22(b)

**I, _____, certify that I accepted a sealed bid from
_____, on this _____ day of _____, _____.**

Signature of Person Collecting Bid	Date
Signature of Bidder	Date

RESIDENTIAL APPLICATION FORM - FSST § 26-2-22(c)

The following must be typed by the Buffalo Land Management Department:

(1) Legal Description of Land	
(2) Application Period	
(3) Type of Lease	
(4) Terms of the Lease	
(5) Lease Period	

The following must be written, or typed in by the applicant. Each applicant 18 years of older must submit a separate application. (INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED. PLEASE ENSURE THAT YOUR BID HAS BEEN FILLED OUT PROPERLY).

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First Name	Middle Name	Last Name
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Name of all other persons who will occupy the Property:

Name: _____	Relationship: _____	Age _____
Name: _____	Relationship: _____	Age _____
Name: _____	Relationship: _____	Age _____
Name: _____	Relationship: _____	Age _____

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Current Street Address/ P.O. Box

City	State	Zip Code

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E-mail Address	Phone Number
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Yes ___ No ___			
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Have you ever been awarded a lease?	Former Lease Year	Type of Former Lease	Former Property Description
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Yes ___ No ___	_____		

Have you ever been denied a lease, or had a lease terminated?	Reason for denial/termination?
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Continued on next page

What is your current living situation? (*attach additional pages if needed*)

Why do are you submitting this application for residential housing? (*attach additional pages if needed*)

By signing this bid form I acknowledge that I am willing and able to lease this property at the above listed bid. I realize that after submitting my bid, I can revoke the bid up to the day that bids are opened. I also understand that if my bid is accepted by the Flandreau Santee Sioux Tribe, we will enter into the lease the terms specified on this bid form, and in the lease agreement.

Signature of Bidder	Date

APPLICATION RECEIPT FORM - FSST § 26-2-22(d)

**I, _____, certify that I accepted an application from
_____, on this _____ day of _____, _____.**

Signature of Person Collecting Application	Date
Signature of Bidder	Date

CHAPTER 3

PLAN OF CONSERVATION STIPULATIONS

Section 26-3-1 **Scope.**

This chapter applies to all Tribal real property leases between the Flandreau Santee Sioux Tribe and any other person or entity. This includes all residential, commercial, and agricultural leases of real property validly executed by the Flandreau Santee Sioux Tribe. Any federal provisions preempting this title will control.

Section 26-3-2 **Purpose.**

The purpose of this Ordinance is to establish land use provisions applicable to Tribal land. The following provisions are additional covenants which will be required of all lessees of tribal land. The Executive Council agrees to make available technical services required to develop and assist in formulation of plans of conservation operations.

Section 26-3-3 **Burning.**

No crop residue or grassland shall be burned, except with prior approval of the Tribe. The penalty of this act shall be \$40.00 per acre burned.

Section 26-3-4 **Breaking of Sod.**

The operator shall not break any sod unless indicated as cropland without permission of the Tribe. The full acreage broken in violation shall be reseeded to an approved grass or grass/legume mixture by the lessee in accordance with instructions of the Tribe. The penalty for violating this provision will be \$250.00 per acre, plus the cost of reseeded.

Section 26-3-5 **Grassed Waterways.**

Waterways both natural and designed shall be maintained at acceptable standards as stated in the NRCS Technical Guides and remain in suitable grass cover at all times. Waterways when required under this plan shall be constructed to meet NRCS specifications. The penalty for violating this provision shall be \$50.00 per linear foot plus construction and labor.

Section 26-3-6 **Erosion.**

If at any time during the term of this lease the land shows signs of accelerated erosion the operator may be required to take reasonable corrective measures as directed by the Land Manager/Committee. The penalty for violating this provision shall be \$250.00 per acre damaged.

Section 26-3-7 Dumping.

The placing or dumping of trash, rubbish, carrion, rocks or other debris is prohibited. The penalty for violating this provision is \$5.00 per square foot plus cleanup costs.

Section 26-3-8 Pastureland.

The lessee shall practice proper pasture and/or range management on all pastureland covered by this lease, and shall not overgraze. The lessee will follow stocking rates in the appraisal and management plan of this lease. The lessee shall retain at least 50% of the current year's growth on the land for protection and revegetation. The penalty for violating this section shall be \$25.00 per aum overgrazed and/or removal of all livestock for the season as determined necessary by the Tribe.

Section 26-3-9 Noxious Weeds.

The lessee shall protect the land against the growth and spread of noxious weeds, such as Canadian Thistle, Mush Thistle, Leafy Spurge or any other weeds that decrease production of the land. The penalty for violating this section shall be \$80.00 per acre untreated.

Section 26-3-10 Tillage.

All tillage operations shall be with an implement which will produce either surface mulch, stubble mulch, or a cloddy condition considered satisfactory by the Land Manager/Committee. The penalty for violating this section shall be \$80.00 per acre.

Section 26-3-11 Haying.

Haying will be on alternate years only, unless otherwise stated in the management plan and approved by the Tribe. If the range condition on prairie hay falls below 50% deferment then another plan of operation will be required. The penalty for violating this section shall be \$80.00 per acre.

Section 26-3-12 Environmental Acts.

The lessee will abide by all of the environmental and pollution regulations of Tribal and Federal governing bodies that are currently in effect or come into effect during the term of this lease.

Section 26-3-13 Improvements

The lessee will maintain all existing improvements, including fences, water troughs, dams, waterlines and wells. The penalty for violating this section shall be \$100.00 and cost of repairs per improvement.

Section 26-3-14 Violations.

Any violation of any provision of this Chapter shall constitute grounds for cancellations of the lease in addition to any other penalties provided in these conditions, or as otherwise provided by law. Violations of any provision(s) of these conditions, where no penalty is otherwise provided, shall be assessed \$100.00 per day for each day of non-compliance.

Section 26-3-15 Inspection.

The Tribe, lesser, and/or their duly authorized representative(s) shall have the right, at any reasonable time during the term of this lease, to enter upon the leased premises or any part thereof, to inspect the same and all buildings and other improvements erected and placed thereon.

Section 26-3-16 Crop History Report

The lessee will authorize all crop history reports to be made available to the lesser at any reasonable time during the term of this lease.

LEGISLATIVE HISTORY

This Ordinance was approved through a motion by the Land Management Committee on the 10th day of September, 2012. This Ordinance was passed by the Executive Committee on the 18th day of September, 2012, by Resolution No. 12-77. This Ordinance was further amended on January 4, 2016 by Tribal Resolution 15-162. This Ordinance was further amended on November 1, 2017 by Tribal Resolution 17-90. This Ordinance was further amended on March 21, 2019 by Tribal Resolution 19-29.