

CHAPTER 6 – BUSINESS AND FINANCE

- 6.1 ENFORCEMENT OF LOAN AGREEMENTS RELATING TO TRUST LANDS 1**
 - 6.1.1 General Provisions
 - 6.1.2 Purpose
 - 6.1.3 Definitions
 - 6.1.4 Exclusivity
 - 6.1.5 Jurisdiction
- 6.2 RECORDING LEASEHOLD SECURITY INTERESTS..... 3**
 - 6.2.1 Priority
 - 6.2.2 Recording
- 6.3 FORCLOSURE OF LEASEHOLD INTERESTS 4**
 - 6.3.1 Default
 - 6.3.2 Procedure When in Default
 - 6.3.3 Notification
 - 6.3.4 Foreclosure of Leasehold Interests
 - 6.3.5 Service of Process and Procedures
 - 6.3.6 Cure of Default
 - 6.3.7 Judgment and Remedy
 - 6.3.8 Foreclosure Eviction Procedures
 - 6.3.9 No Merger of Estates
 - 6.3.10 Certified Mailing to Tribe
 - 6.3.11 Tribe/Lessor Right to Petition
 - 6.3.12 Appeals

**CHAPTER 6
BUSINESS AND FINANCE**

6.1 ENFORCEMENT OF LOAN AGREEMENTS RELATING TO TRUST LANDS

6.1.1 General Provisions.

6.1.2 Purpose. The purpose of this Ordinance is to enhance the ability of the Tribe, the Sokaogon Chippewa Community Housing Authority and individual tribal members to obtain financing for the purchase, rehabilitation and construction of residential housing and related infrastructure on the reservation, including, but not limited to, conventional mortgage lending, lending under government loan guarantee programs and under loan acquisition programs of the Federal National Mortgage Association (“Fannie Mae”). The Ordinance seeks to achieve this purpose by providing legal procedures that will allow mortgaging of leasehold estates in tribal trust lands.

6.1.3 Definitions.

- A. “Lease” means the residential ground lease or other agreement for use of Tribal Trust Land on which a Leasehold Mortgage has or will be given.
- B. “Leasehold Estate” means a leasehold estate established pursuant to a Lease between the Tribe, as Lessor, and a member of the Tribe, as Tenant.
- C. “Leasehold Mortgage” means the first-lien mortgage of a Leasehold Estate given to secure a mortgage loan made by a Mortgagee.
- D. “Leasehold Mortgage Foreclosure Proceeding” means a proceeding in the Tribal Council;
 - (1) to foreclose the interest of the Mortgagor(s), and each person or entity claiming through the Mortgagor(s), in a Leasehold Estate on which a Leasehold Mortgage has been made, and/ or
 - (2) to assign such Leasehold Estate to the Mortgagee or the Mortgagee’s successors or assigns.
- E. “Lessor” means the Tribe or the Tribal Housing Authority. The Tribe shall be the beneficial or equitable owner of certain Tribal Trust Land underlying a Leasehold Estate on which a Leasehold Mortgage has been given. The Lessor shall include the successor(s) or assign(s) of such Lessor.
- F. “Mortgagor” means any member of the Tribe who has executed a Leasehold Mortgage, including any heir(s), successor(s), executor(s), administrator(s) or assign(s) of such member, or the Tribal Housing Authority if it enters into a leasehold mortgage.
- G. “Mortgagee” means the lender under any Leasehold Mortgage or any successors or assigns of any such lender, including Fannie Mae.

- H. “Nuisance” means maintenance on the Leasehold Estate of a condition which;
 - (1) Unreasonably threatens the health or safety of the public or the neighboring land users; or
 - (2) Unreasonably and substantially interferes with the ability of neighboring real property users to enjoy the reasonable use and occupancy of their property.
- I. “Subordinate Lienholder” means the holder of any lien, including a mortgage, perfected subsequent to the recording of a Leasehold Mortgage under this Ordinance; provided, however, such terms shall not include the Tribe with respect to a claim for a Tribal leasehold tax.
- J. “Tenant” means any person who occupies Tribal trust Land under a Leasehold Estate with a Lessor.
- K. “Tribal Court” means the Sokaogon Chippewa Community Tribal Court.
- L. “Tribal Recording Clerk” means the person designated by the Tribe to perform the recording functions required by this document or any deputy or designee of such person.
- M. “Tribe” means the Sokaogon Chippewa Community.
- N. “Tribal Trust Land” means land, title to which is held by the United States for the benefit of the Tribe and/or which may be subject to a restriction against alienation imposed by federal treaty, statute or Executive Order.
- O. “Unlawful Detainer Action” is a suit brought before the Tribal Court to terminate a tenant’s interest in a Leasehold Estate and/or to evict any person from occupancy of such Leasehold Estate.
- P. “Waste” means spoil or destruction of land, buildings, gardens, trees or other improvements on the Leasehold Estate which result in substantial injury to the Lessor’s interest in the Leasehold Estate.
- Q. “Writ of Restitution” is an order of the Tribal Court:
 - (1) Restoring an owner, Lessor, Mortgagee to possession of a Leasehold Estate subject to a Leasehold Mortgage; and
 - (2) Evicting a Tenant or other occupant from such property.

6.1.4 Exclusivity. This Chapter shall provide the exclusive procedures for enforcement of loan agreements relating to trust lands.

6.1.5 Jurisdiction. The provisions of this Chapter shall apply to all persons and property subject to the governing authority of the Tribe as established by the constitution and bylaws of the Tribe.

6.2 RECORDING LEASEHOLD SECURITY INTERESTS

6.2.1 Priority. A Leasehold Mortgage recorded in accordance with the recording procedures set forth in this Ordinance shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim (except a lien or claim arising from a Tribal tax assessed against a Leasehold Estate subject to the Leasehold Mortgage.)

6.2.2 Recording.

A. Leases and Leasehold Mortgages shall be recorded at the offices of:

- (1) The Bureau of Indian Affairs Area Land Titles and Records Office, and
- (2) The Tribal Housing Department.

B. The Tribal Recording Clerk shall maintain in the Tribal Real Estate program a system for the recording of mortgage loans and such other documents as the Tribe may designate by laws or resolution.

C. The Tribal Recording Clerk shall endorse upon any mortgage loan or other document received for recording:

- (1) The date and time of receipt of the mortgage or other document;
- (2) The filing number, to be assigned by the Tribal Recording Clerk, which shall be a unique number for each mortgage or other document received; and
- (3) The name of the Tribal Recording Clerk or designee receiving the mortgage or document.

D. Upon completion of the above cited endorsements, the Tribal Recording Clerk shall make a true and correct copy of the mortgage or other document and shall certify the copy as follows:

Sokaogon Chippewa Community)

Indian Reservation)ss.

I certify that this is a true and correct copy of a document received for recording this date.

Given under my hand and seal this ____ day of _____.

(SEAL) _____
(Signature)

(Date)

- E. The Tribal Recording Clerk shall maintain the copy in the records of the recording system and shall return the original of the mortgage loan or other document to the person or entity that presented the same for recording.
- F. The Tribal Recording Clerk shall also maintain a log of each mortgage loan or other document recorded in which there shall be entered:
 - (1) The name(s) of the Borrower/Mortgagor of each mortgage loan, identified as such;
 - (2) The name(s) of the Lender/Mortgagee of each mortgage loan, identified as such;
 - (3) The name(s) of the grantor(s), grantee(s) or other designation of each party named in any other documents filed or recorded;
 - (4) The date and time of the receipt;
 - (5) The filing number assigned by the Tribal Recording Clerk; and
 - (6) The name of the Tribal Recording Clerk or designee receiving the mortgage or document.
- G. The certified copies of the mortgage loan and other documents and the log maintained by the Tribal Recording Clerk shall be made available for public inspection and copying. Rules for copying shall be established and disseminated by the Tribal Recording Clerk.
- H. All mortgages will be recorded with the BIA in addition to any Tribal recording provisions.

6.3 FORCLOSURE OF LEASEHOLD INTERESTS

- 6.3.1 Default.** A Borrower/Mortgagor shall be considered to be in default when he or she is thirty (30) days past due on his or her mortgage payment(s) or is in violation of any covenant under the mortgage for more than thirty (30) days to the Lender/Mortgagee (i.e. the 31st day from the payment due date).
- 6.3.2 Procedure When in Default.** When a Borrower/Mortgagor is thirty (30) days past due on his or her mortgage and before any foreclosure action or activity is initiated, the Lender/Mortgagee shall complete the following:
 - A. Make a reasonable effort to arrange a face-to-face interview with the Borrower/Mortgagor. This shall include at least one (1) trip to meet with the Borrower/Mortgagor at the mortgaged property.
 - B. Lender/Mortgagee shall document that it has made at least one (1) phone call to the Borrower/Mortgagor (or the nearest phone as designed by the Borrower/Mortgagor, able to receive and relay messages to the Borrower/Mortgagor) for the purpose of trying to

arrange a face-to-face interview. Lender/Mortgagee may appoint an agent to perform the services of arranging and conducting the face-to-face interview specified in this action.

6.3.3 Notification. When the Borrower/Mortgagor is past due on three installment payments and at least ten (10) days before initiating a foreclosure action in Tribal Court, the Lender shall advise the Borrower/Mortgagor in writing by mail or by posting prominently on the unit, with a copy provided to the Tribe, as follows:

- A. Advise the Borrower/Mortgagor that information regarding the loan and default/delinquency will be given to credit bureaus.
- B. Advise the Borrower/Mortgagor of homeownership counseling opportunities/programs available through the Lender or otherwise.
- C. Advise the Borrower/Mortgagor of other available assistance regarding the mortgage/default.
- D. In addition to the preceding notification requirements, the Lender/Mortgagee shall complete the following additional notice requirements:
 - (1) Notify the Borrower/Mortgagor that if the Leasehold Mortgage remains past due on three (3) installment payments, the Lender/Mortgagee may ask the applicable governmental agency to accept assignment of the Leasehold Mortgage if this is an option of the governmental program;
 - (2) Notify the Borrower/Mortgagor of the qualifications for forbearance relief from the Lender/Mortgagee, if any, and that forbearance relief may be available from the government; and
 - (3) Provide the Borrower/Mortgagor with names and addresses of government officials to whom further communications may be addressed, if any,
- E. If a Borrower/Mortgagor is past due on three (3) or more installment payments and the Lender/Mortgagee has complied with the procedures set forth in the first part of this Section, the Lender/Mortgagee may commence a foreclosure proceeding in the Tribal Court by filing a verified complaint as set forth in this Chapter.

6.3.4 Foreclosure Complaint and Summons.

- A. The verified complaint in a mortgage foreclosure proceeding shall contain the following:
 - (1) The name of the Borrower/Mortgagor and each person or entity claiming through the Borrower/Mortgagor subsequent to the recording of the mortgage loan, including each Subordinate Lienholder (except the Tribe with respect to a claim for a tribal leasehold), as a defendant;
 - (2) A description of the property subject to the mortgage loan;

- (3) A concise statement of the facts concerning the execution of the mortgage loan and in the case of a Leasehold Mortgage the lease; the facts concerning the recording of the mortgage loan or the Leasehold Mortgage; the facts concerning the alleged default(s) of the Borrowers/Mortgagor, and such other facts as may be necessary to constitute a cause of action;
 - (4) True and correct copies of each promissory note, mortgage, deed of trust or other recorded real property security instrument (each a “security instrument”) and any other documents relating to the property and if a Leasehold Mortgage, a copy of the lease and any assignment of any of these documents; and
 - (5) Any applicable allegations concerning relevant requirements and conditions prescribed in;
 - (a) Federal statutes and regulations;
 - (b) Tribal codes, ordinances and regulations; and/or
 - (c) Provisions of the promissory note, security instrument and if a Leasehold Mortgage, the lease.
- B. The complaint shall be verified by the Tribal Court Clerk along with a summons specifying a date and time of appearance for the defendant(s).

6.3.5 Service of Process and Procedures. Any foreclosure complaint must be in writing, and must be delivered to the Borrower/Mortgagor in the following manner:

- A. Delivery must be made by an adult person and is effective when it is:
- (1) Personally delivered to a Borrower/Mortgagor with a copy sent by mail;
 - (2) Personally delivered to an adult living in the property with a copy sent by mail; or
 - (3) Personally delivered to an adult agent or employee of the Borrower/Mortgagor with a copy sent by mail.
- B. If the notice cannot be given by means of personal delivery, or the Borrower/Mortgagor cannot be found, the notice may be delivered by means of:
- (1) Certified mail, return receipt requested, at the last known address of the Borrower/Mortgagor, or
 - (2) Securely taping a copy of the notice to the main entry door of the property in such a manner that it is not likely to blow away, and by posting a copy of the notice in some public place near the premises, including a tribal office, public store, or other commonly frequented place and by sending a copy first class mail, postage prepaid, addressed to the Borrower/Mortgagor at the premises

- C. The person giving notice must keep a copy of the notice and proof of service in accordance with this section, by affidavit or other manner recognized by law.

6.3.6 Cure of Default. Prior to the entry of a judgment of foreclosure, any Borrower/Mortgagor or a Subordinate Lienholder may cure the default(s) under the Mortgage by making a fall payment of the delinquency to the Lender/Mortgagee and all reasonable legal and Court costs incurred in foreclosing on the property. Any subordinate Lienholder who has cured a default shall thereafter have included in its lien the amount of all payments made by such Subordinate Lienholder to cure the default(s), plus interest on such amounts at the rate stated in the note for the mortgage. There shall be no right of redemption in any Leasehold Mortgage Foreclosure proceeding.

6.3.7 Judgment and Remedy. This matter shall be heard and decided by the Tribal Court in a prompt and reasonable time period not to exceed sixty (60) days from the date of service of the Complaint on the Borrower/Mortgagor. If the alleged default has not been cured at the time of trial and the Tribal Court finds for the Lender/Mortgagee, the Tribal Court shall enter judgment:

- A. Foreclosing the interest of the Borrower/Mortgagor and each other defendant, including Subordinate Lienholder, in the mortgaged property; and
- B. Granting title to the property to the Lender/Mortgagee or the Lender's Designated Assignee; in the case of a Leasehold Mortgage, the Lease and the Leasehold Estate will be assigned to the Lender/Mortgagee or the Lender's Designated Assignee, subject to the following provisions:
 - (1) The lender shall give the Tribe the right of first refusal on any acceptable offer to purchase the Lease and the Lessee's leasehold interest in the property described in the lease which is subsequently obtained by the Lender or Lender's Designated Assignee;
 - (2) The Lender or Lender's Designated Assignee may only transfer, sell or assign the Lease and Lessee's leasehold interest in the property described in the Lease to a Tribal member, the Tribe, or the Tribal Housing Authority; and
 - (3) The mortgagee has the right to convey the leasehold interest to the Secretary of HUD without providing the right of first refusal to the Tribe for Section 248.

6.3.8 Foreclosure Eviction Procedures. Foreclosure evictions shall be handled according to the general eviction process set forth below:

- A. Jurisdiction. The provisions of this section shall apply to all persons and property subject to the governing authority of the Tribe as established by the Tribal Constitution, Tribal Code, or applicable federal law.
- B. Unlawful Detainer. A Lessee, Sublessee, or other occupant of a Leasehold Estate subject to a Leasehold Mortgage shall be guilty of unlawful detainer if such person shall continue in occupancy of such Leasehold Estate without the requirement of any notice by the

Lessor, after such person's Leasehold Estate has been foreclosed in a Leasehold Mortgage foreclosure proceeding in the Tribal Court.

- C. Complaint and Summons. The lender or Federal Agency (which made, guaranteed or insured the mortgage loan) as appropriate, shall commence an action for unlawful detainer by filing with the Tribal Court, in writing, the following documents:
- (1) A complaint, signed by the lender or Federal Agency, or an agent or attorney on their behalf:
 - (a) Citing facts alleging jurisdiction of the Tribal Court;
 - (b) Naming as defendants the mortgagors and any other record owner(including Sublessees and subordinate lien holders), of which the complainant has record notice (except the Tribe with respect to a claim for a Tribal tax on the Leasehold Estate subject to the Leasehold Mortgage);
 - (c) Describing the Leasehold Estate subject to the Leasehold Mortgage;
 - (d) Stating the facts concerning; the execution of the lease and the Leasehold Mortgage, the recording of the Leasehold Mortgage, and the facts upon which he or she seeks to recover;
 - (e) Stating any claim for damages or compensation due from the persons to be evicted; and
 - (f) Otherwise satisfying the requirements of the Tribal Court.
 - (2) A copy of the summons, issued in accordance with established Tribal Court rules and procedures, requiring the defendants to file a response to the complaint by the date specified in the summons. The deadline specified in the summons for filing a response shall be no less than six (6) nor more than thirty (30) days from the date of service of the summons and complaint. The summons shall notify the defendants that judgment will be taken against them in accordance with the terms of the complaint unless they file a response with the court by the date specified in the summons.
- D. Service of Summons and Complaint. A copy of the summons and complaint shall be served upon the defendants in the manner provided by the Tribal Court rules for service of process in civil matters. In the absence of such Tribal Court rules, the summons and complaint shall be served by one (1) of the following two (2) methods:
- (1) Procedures for Service of Notice. Notices required or authorized in the immediately preceding section shall be given in writing either by;
 - (a) Delivering a copy personally to the Borrower/ Mortgagor or to any other occupant under color of law, or to any adult residing on the Leasehold Estate and, if applicable, to any Sublessee; or

(b) Posting said notice in a conspicuous place near the entrance to said Leasehold Estate, and sending an additional copy to the Lessee or to any other occupant under color of law, and, if applicable, to the Sublessee, by certified mail, return receipt requested, properly addressed, postage paid. Proof of service may be made by affidavit of any adult person stating the he has complied with the requirements of one of the above methods of service.

(2) Power of the Tribal Court. The Tribal Court shall enter an Order of Repossession if:

(a) Notice of suit is given by service of summons and complaint in accordance with the procedures provided herein; and

(b) The Tribal Court shall find during pre-trial proceedings or at trial that the Lessee, Sublessee, or other occupant under color of law of the Leasehold Estate subject to the Leasehold Mortgage is guilty of an act of unlawful detainer.

E. Judgment. Upon issuance of an Order of Repossession, the Tribal Court shall have the authority to enter a judgment against the defendants for the following, as appropriate:

(1) Back rent, unpaid utilities, and any charges due the Tribe; Tribal Housing Authority, other public Housing Authority, or Sublessor under any sublease or other written agreement (except for a Leasehold Mortgage);

(2) Any and all amounts secured by the Leasehold Mortgage that are due the lender (or Federal Agency); and

(3) Damages to the property caused by the defendants, other than ordinary wear and tear.

(4) The Tribal Court shall have the authority to award to the prevailing party its costs and reasonable attorney's fees in bringing suit.

F. Enforcement. Upon issuance of an Order of Repossession by the Tribal Court, Tribal law enforcement officers shall help plaintiffs enforce the Order of Repossession by evicting the defendants and their property from the unlawfully occupied Leasehold Estate. In all cases involving the lender or Federal Agency, the Order of Repossession shall be enforced no later than forty-five (45) days after a pre-trial proceeding or trial in which the Tribal Court finds against defendants, subject to Paragraph H7 below, and provided, that no party exercised the right to cure a default or right of first refusal as described in Paragraphs F and G above.

G. Continuances in Cases Involving the Lender or Federal Agency (which originally made, insured or guaranteed) the mortgage loan. Except by agreement of all Parties, there shall be no continuances in cases involving the lender or Federal Agency that will interfere with the requirement that the Order of Repossession be enforced not later than forty-five

(45) days after a pre-trial proceeding or trial in which the Tribal Court finds against defendants, subject to the sound discretion of the Court.

6.3.9 No Merger of Estates. There shall be no merger of estates by reason of the execution of a Lease or a Leasehold Mortgage or the assignment or assumption of the same, including an assignment adjudged by the Tribal Court, or by operation of law, except as such merger may arise upon satisfaction of the Leasehold Mortgage.

6.3.10 Certified Mailing to Tribe. In any foreclosure proceedings on a Leasehold Mortgage where the Tribe is not named as a defendant, a copy of the summons and complaint shall be mailed to the Tribe by certified mail, return receipt requested, within five (5) days after the issuance of the summons. If the Lessor is not the Tribe, this notice will also be mailed to the Lessor at the same time the notice is mailed to the Tribe. If the location of the Lessor cannot be ascertained after reasonable inquiry, a copy of the summons and complaint shall be mailed to the Lessor in care of the Superintendent of the applicable agency of the Bureau of Indian Affairs.

6.3.11 Tribe/Lessor Right to Petition. The Tribe or any Lessor may petition the Tribal Court to intervene in any Lease or Leasehold Mortgage foreclosure proceeding under this Code. Neither the filing of a petition for intervention by the Tribe, nor the granting of such petition by the Tribal Court shall operate as a waiver of the sovereign immunity of the Tribe, except as may be expressly authorized by the Tribe.

6.3.12 Appeals. Appeals under this Code shall be handled in accordance with the general tribal appellate provisions.

History:

Enacted - unknown.

7/20/11 adopted, ratified and codified by Resolution # 720A2011 and as amended by Resolution # 825A2011 on August 25, 2011.