

Ordinance Number 13.400. Amended by Resolution 2004-338,
dated August 20, 2004; Resolution No. 2005-361, dated
September 16, 2005.

Original Date: June 17, 2000
Subject: Mortgage Financing Ordinance

MORTGAGE FINANCING ORDINANCE

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§ 13.400 PURPOSE

The purpose of this Ordinance is to assist certain Native American borrowers in obtaining mortgage financing for the purchase of one to four family residences on certain Trust Land or Restricted Land within the jurisdiction of the Tribe, by prescribing procedures relating to recordation, foreclosure and evictions in connection with Mortgages given to secure loans made by Mortgagees.

§ 13.401 DEFINITIONS

(a) ALease@ means the residential ground lease or other agreement for use of Trust Land or Restricted Land on which a Mortgage has or will be given.

(b) ALeasehold Estate@ means an estate established pursuant to a Lease between the Tribe, as Lessor, and a member of the Tribe, as Tenant.

(c) ALessor@ means the Confederated Tribes of Siletz Indians. The Tribe shall be the beneficial or equitable owner of certain Trust Land or Restricted Land underlying a Leasehold Estate on which a Mortgage had been given. The Lessor shall include the successor(s) or assign(s) of such Lessor.

(d) AMortgage@ means the first-lien mortgage of a beneficial real property interest in Trust Land or Restricted Land given to secure a mortgage loan made by Mortgage.

(e) AMortgage Foreclosure Proceeding@ means a proceeding in the Tribal Court (i) to foreclose the interest of the Mortgagor(s), and each person or entity claiming through the Mortgagor(s), in Trust Land or Restricted Land on which a Mortgage has been made by a

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Mortgagee; and/or (ii) to assign such interest of the Mortgagor to the Mortgagee or the Mortgagee=s successors or assigns.

(f) AMortgagor@ means any eligible Native American borrower who has executed a Mortgage on its beneficial interest in Trust Land or Restricted Land, including any heir(s), successor(s), executor(s), administrator(s) or assign(s) of such borrower.

(g) AMortgagee@ means any mortgage lender or any successors or assigns of any such lender, including Fannie Mae. This definition also includes any subsequent holder, whether by assignment, succession or otherwise, of the original Mortgagee=s right, title or interest in and to the Mortgage and/or the Mortgaged property, together with the improvements.

(h) ANative American@ means any person recognized as being Indian or Alaska Native by the Tribe, the federal government or the state in which the Mortgaged property is located.

(i) ANuisance@ means maintenance on the Mortgaged property of a condition which:

- (1) Unreasonably threatens the health or safety of the public or 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.

(j) ARestricted Land@ means land within the jurisdiction of the Tribe that is subject to restrictions against alienation imposed by federal treaty, statute, Executive Order, or the Tribe.

(k) ASubordinate Lienholder@ means the holder of any lien, including a mortgage, perfected subsequent to the recording of a Mortgage under this Ordinance; provided, however, such definition shall not include the Tribe with respect to a claim for a Tribal tax on the Mortgaged property, where applicable.

(l) ATenant@ means any person who occupies Trust Land or Restricted Land, as Lessee, under a Leasehold Estate with the Lessor.

(m) ATribal Court@ means the tribal court established by the laws and Constitution of

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the Tribe.

(n) ATribe@ means the tribe as defined in the Siletz Constitution.

(o) ATrust Land@ means land within the jurisdiction of the Tribe, title to which is held by the United States or any state for the benefit of the Tribe or an individual Native American.

(p) ATri-Party Agreement@ means that certain agreement by and among Fannie Mae, the Mortgagee and the Tribe, and approved by the Secretary of the Interior evidencing Fannie Mae=s Native American conventional lending initiative.

(q) AUnlawful Detainer Action@ means a suit brought before the Tribal court to terminate a Mortgageor=s or Tenant=s interest in Trust Land or Restricted Land and/or to evict any person from occupancy of such property.

(r) AWaste@ means spoil or destruction of land, buildings, gardens, trees or other improvements on the Mortgaged property which result in substantial injury to such property.

(s) AWrit of Restitution@ is an order of the Tribal Court:

- (1) Restoring an owner, Lessor, Mortgagee (or other successor in interest) to possession of Trust Land or Restricted Land subject to a Mortgage; and
- (2) Evicting a Tenant or other occupant from such property.

§ 13.402 PRIORITY

A 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 over any subsequent lien or claim (except a lien or claim arising from a Tribal tax assessed against a property subject to the Mortgage).

§ 13.403 RECORDING

(a) The Tribe recognizes that the appropriate office for recording Mortgages and leases on Trust Land or Restricted land is the Bureau of Indian Affairs Area Land Titles and

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Records Office. The Tribe agrees that a Mortgagee may also require that the Leases and Mortgages on Trust Land or Restricted Land shall be recorded in the county recorders office in the state in which the Mortgaged properties are located.

§ 13.404 MORTGAGE AND FORECLOSURE PROCEEDINGS

(a) Before a Borrower/Mortgagor becomes ninety (90) days delinquent on his mortgage payments and before any foreclosure action or activity is initiated, the Lender/Mortgagee shall complete the following:

- (1) Make a reasonable effort to arrange a face-to-face interview with the Borrower/Mortgagor. This shall include at least one trip to meet with the Borrower/Mortgagor at the mortgage property.
- (2) Lender/Mortgagee shall document that it has made at least one phone call to the Borrower/Mortgagor (or the nearest phone as designated 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.

(b) Lender/Mortgagor may appoint an agent to perform the services of arranging and conducting the face-to-face interview specified in this action.

(c) Before the Borrower/Mortgagor has been delinquent for ninety (90) days and at least (10) days before initiates 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:

- (1) Advise the Borrower/Mortgagor that information regarding the loan and default will be given to credit bureaus.
- (2) Advise the Borrower/Mortgagor of home ownership counseling opportunities/programs available through the Lender or otherwise.
- (3) Advise the Borrower/Mortgagor of other available assistance regarding the mortgage /default.

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- (4) In addition to the preceding notification requirements, the Lender/Mortgagee shall complete the following additional notice requirements when a Leasehold Mortgage is involved:
- (A) notify the Borrower/Mortgager that if the Leasehold Mortgage remains in default for more than ninety (90) days, the Lender/Mortgagee may ask the applicable governmental agency to accept assignment of the Leasehold Mortgage if this is a requirement of the governmental program;
 - (B) 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 if the mortgage is assigned; and
 - (C) provide the Borrower/Mortgagor with names and addresses of government officials to whom further communications be addressed, if any.

(d) If a Borrower/Mortgagor has been in default for ninety (90) days or more 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 Tribal court by filing a verified complaint as set forth in section (e).

(e) Upon the default of the Mortgagor(s), and upon expiration of any applicable cure periods under a Mortgage, the Mortgagee or its successors and assigns, including Fannie Mae, may commence a Mortgage foreclosure proceeding in the Tribal Court as follows:

- (1) By filing a verified complaint:
 - (A) Citing authority for jurisdiction of the Tribal Court;
 - (B) Naming the Mortgagor(s) and each record owner claiming through the Mortgagor(s) subsequent to the recording of the Mortgage, including each Subordinate Lienholder (except the Tribe with respect to a claim for a Tribal tax on the Mortgaged property), as a defendant;

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- (C) Describing the property subject to the Mortgage;
 - (D) Stating the facts concerning (i) the execution of any Lease and/or the Mortgage; (ii) the recording of the Mortgage; and (iii) the alleged default(s) of the Mortgagor(s) (and any facts as may be necessary to constitute a cause of action);
 - (E) Having appended as exhibits true and correct copies of each promissory note, Lease, if any, Mortgage, and, if applicable, assignment thereof relating to such Mortgaged property;
 - (F) Including an allegation that all relevant requirements and conditions prescribed in the Mortgage and the Lease, if any, have been complied with by the Mortgagee or its successors or assigns; and
 - (G) Otherwise satisfying the requirements of the Tribal Court.
- (2) By obtaining a summons, issued as in other cases, requiring the Mortgagor(s) and each other person or entity claiming through the Mortgagor, as defendants to appear for a trial upon the complaint on a date and time specified in the summons, and filing a copy of such summons with the Tribal Court.

§ 13.405 SERVICE OF PROCESS AND PROCEDURES

The laws of the Tribe governing service of process and all other matters relating to the conduct of Tribal Court proceedings shall apply to any Mortgage Foreclosure Proceeding pursuant to this Ordinance.

§ 13.406 CURE OF DEFAULT BY SUBORDINATE LIENHOLDER

Prior to the entry of a judgment of foreclosure of a Mortgage pursuant to this Ordinance, any Mortgagor or any Subordinate Lienholder may cure the default(s) under the Mortgage. 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 such default(s) plus interest on such amounts at the rate stated in the promissory note evidencing the subordinate lien.

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§ 13.407 Power of the Tribal Court

(a) If the alleged default(s) have not been cured, the Tribal Court shall hear and decide the matter 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:

- (1) Foreclosing the Mortgagor's interest in the Mortgaged property, and each other defendant named in the complaint upon whom proper and timely service has been made, including each Subordinate Lienholder; and
- (2) Assigning such Mortgaged property to the Mortgagee or the Mortgagee's successor or assignee, the Lease will be assigned to the Lender/Mortgagee or the Lender=s Designated Assignee, subject to the following provisions:
 - (A) The Lender shall give the Tribe the right of first refusal on any acceptable offer to purchase the Lease or Leasehold Mortgage which is subsequently obtained by the Lender or the Lender=s Designated Assignee.
 - (B) The Lender or Lender=s Designated Assignee may only transfer, sell or assign the Lease and /or Leasehold Mortgage to a Tribal member, the Tribe, or the Tribal Housing Authority.
 - (C) Any other transfer, sale or assignment of the Lease or Leasehold Mortgage shall only be made to a Tribal member or the tribe, during the remaining period of the Leasehold.

II. MORTGAGE EVICTION PROCEDURES

§ 13.408 JURISDICTION

The provisions of this Article II shall apply to all persons and property subject to the governing authority or jurisdiction of the Tribe as established by the constitution and bylaws of the Tribe.

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§ 13.409 UNLAWFUL DETAINER

(a) A Tenant or other occupier of a beneficial interest in Trust Land or Restricted Land subject to a Mortgage shall be guilty of unlawful detainer if such person shall continue in occupancy of such property under any of the following situations:

- (1) Without the requirement of any notice by the Tribe or Lessor:
 - (A) After the expiration of the term of any Lease;
 - (B) If such person has entered onto or remains on the real property of another without the permission of the owner and without having any substantial claim under a Lease or title to such property;
 - (C) After the Lessor has terminated such person's tenancy pursuant to procedures providing such person a hearing before such Lessor involved; or
 - (D) After a Mortgagor's interest in Trust Land or Restricted Land has been foreclosed in a Mortgage Foreclosure Proceeding in the Tribal Court.
- (2) After having received 30 days' notice, the Tenant or occupier shall remain in possession of such property contrary to the terms of the notice as follows:
 - (A) When such person has received notice: (i) that he or she is in default in the payment of ground rent; and (ii) requiring him or her to either pay such rent or surrender possession of the occupied property and such person has not either surrendered possession of such property or paid the rent within the 30-day period provided in such notice;
 - (B) When such person shall continue to fail to keep or perform any condition or covenant of any Lease or other use agreement under which the property is held after he or she has been given notice to comply with such condition or covenant or else to surrender the property; or

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- (C) When such person continues to commit or to permit Waste upon or maintain a Nuisance upon the occupied property after having been given notice to either cease such Waste or maintenance of Nuisance or to surrender the property.

§ 13.410 PROCEDURES FOR SERVICE OF NOTICE

(a) Notices required or authorized in the immediately preceding section shall be given in accordance with established Tribal Court rules and procedures. In the absence of such rules and procedures, notices shall be given in writing by either:

- (1) Delivering a copy personally to the Tenant or occupier or to any adult members of his or her family residing on the Mortgaged property; or
- (2) If the notice cannot be given by means of personal delivery, or tenant cannot be found, the notice may be delivered by means of:
- (3) Certified mail, return receipt requested, at the last known address of the landlord or tenant, and
- (4) Securely taping a copy of the notice to the main entry door of the premises.

Proof of service by either of the above methods may be made by affidavit of any adult person stating that he or she has complied fully with the requirements of either of these two methods of service.

§ 13.411 COMPLAINT AND SUMMONS

(a) The Lessor or the Mortgagee (including its successors or assigns) shall commence an action for unlawful detainer by filing with the Tribal Court, in writing, the following documents:

- (1) A complaint, signed by the Lessor, the Mortgagee (or its successors or assigns), or an agent or attorney on their behalf including the following:
 - (A) Citing authority for jurisdiction of the Tribal Court;
 - (B) Naming the Mortgagor(s) and each record owner claiming through the Mortgagor(s) subsequent to the recording of the Mortgage,

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including each Subordinate Lienholder (except the Tribe with respect to a claim for a Tribal tax on the property subject to the Mortgage), as a defendant;

- (C) Describing the property subject to the Mortgage;
 - (D) Stating the facts concerning (i) the execution of any Lease and the Mortgage; (ii) the recording of the Mortgage; and (iii) 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. In the absence of such rules and procedures for the issuance of a summons, the summons shall require defendants to appear for trial upon the complaint on a date and time specified in the summons. The trial date specified in the summons shall be no less than 6 or more than 30 days from the date of service of the summons and complaint. The summons must notify the defendants that judgment will be taken against them in accordance with the terms of the complaint unless they file with the court an answer and appear for trial at the time, date and place specified in the summons.

§ 13.412 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 of the two methods provided in Article II Section 13.411 above.

§ 13.413 POWER OF THE TRIBAL COURT

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- (a) The Tribal Court shall enter a Writ of Restitution if:
- (1) Notice of suit and trial is given by service of summons and complaint in accordance with the procedures provided herein; and
 - (2) The Tribal Court shall find that the occupier of the property subject to the Mortgage is guilty of an act of unlawful detainer (as defined in Part II, Section 13.409 of this Code).

Upon issuance of a Writ of Restitution, the Tribal Court shall have the authority to enter against the defendants a judgment for the following: (1) back rent, unpaid utilities, and any charges due the Tribe or Lessor under any lease or occupancy agreement; (2) any and all amounts secured by the Mortgage that are due the Mortgagee (or its successors or assigns); and (3) damages caused by the defendants to the property other than ordinary wear and tear. The Tribal Court shall have the authority to award costs and reasonable attorney's fees in bringing suit to the prevailing party.

§ 13.414 ENFORCEMENT

Upon issuance of a Writ of Restitution by the Tribal Court, Tribal law enforcement officers shall enforce the Writ of Restitution by evicting the defendants and their property from the property which is unlawfully occupied. In all cases involving the Mortgagee (or its successors or assigns) the Writ of Restitution shall be enforced no later than 60 days after the date of service of the summons and complaint, subject to Section 13.415 below.

§ 13.415 CONTINUANCES IN CASES INVOLVING THE MORTGAGEE

Except by agreement of all parties, there shall be no continuances in cases involving the Mortgagee (or its successors or assigns) which will interfere with the requirement that the Writ of Restitution be enforced not later than 60 days from the date of service of the summons and complaint.

§ 13.416 ALTERNATIVE REMEDIES

In those cases in which the persons or property are subject to the jurisdiction of the courts of the State of Oregon or the United States, the remedies and procedures provided by this Ordinance are in the alternative to the remedies and procedures provided by the laws of the State of Oregon or the United States.

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§ 13.417 NO MERGER OF ESTATES

There shall be no merger of estates by reason of the execution of a Lease or a Leasehold Mortgage of 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.

§ 13.418 CERTIFIED MAILING TO THE TRIBE AND LESSOR

Any foreclosure proceedings on a Lease or Leasehold Mortgage where the Tribe or the Lessor(s) is not named as a defendant, a copy of the summons and complaint shall be mailed to the Tribe and to the Lessor(s) by certified mail, return receipt requested, within five (5) days after the issuance of the summons. If the location of the Lessor(s) cannot be ascertained after reasonable inquiry, a copy of the summons and complaint shall be mailed to the Lessor(s) in care of the Superintendent of the applicable agency of the Bureau of Indian Affairs.

§ 13.419 INTERVENTION

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

§ 13.420 APPEALS

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