

TRIBAL CODE

CHAPTER 84

MORTGAGES ON TRUST LANDS

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CHAPTER 84

MORTGAGES ON TRUST LANDS

Pursuant to the authority vested in the Lac du Flambeau Band of Lake Superior Chippewa Indians Tribe by its Constitution, and particularly by Article VI, Sections 1(a), (b) and (c) thereof, and its authority to provide for the health, safety, morals and welfare of the Tribe, the Tribal Council of the Lac du Flambeau Band of Lake Superior Chippewa Indians Tribe hereby enacts this Ordinance.

CHAPTER I: GENERAL PROVISIONS

84.101 Purpose.

The purpose of this Ordinance is to enhance the ability of the Tribe, the Chippewa 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 Fannie Mae, a corporation organized and existing under the laws of the United States ("Fannie Mae"). The Ordinance seeks to achieve this purpose by providing legal procedures that will allow mortgaging of leasehold estates in tribal trust lands.

84.102 Definitions.

- (1) "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.
- (2) "Leasehold Estate" means a leasehold estate established pursuant to a Lease between the Tribe, as Lessor, and a member of the Tribe, as Tenant.
- (3) "Leasehold Mortgage" means the first-lien mortgage of a Leasehold Estate given to secure a mortgage loan made by a Mortgagee.
- (4) "Leasehold Mortgage Foreclosure Proceeding" means a proceeding in the Tribal Court (a) 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 (b) to assign such Leasehold Estate to the Mortgagee or the Mortgagee's successors or assigns.

- (5) "Lessor" means the Tribe or the Lac du Flambeau Chippewa 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.
- (6) "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.
- (7) "Mortgagee" means the lender under any Leasehold Mortgage or any successors or assigns of any such lender, including Fannie Mae.
- (8) "Nuisance" means maintenance on the Leasehold Estate of a condition which:
 - (a) Unreasonably threatens the health or safety of the public or neighboring land users; or
 - (b) Unreasonably and substantially interferes with the ability of neighboring real property users to enjoy the reasonable use and occupancy of their property.
- (9) "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.
- (10) "Tenant" means any person who occupies Tribal Trust Land under a Leasehold Estate with a Lessor.
- (11) "Tribal Court" means the Lac du Flambeau Tribal Court.
- (12) "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.
- (13) "Tribe" means the Lac du Flambeau Band of Lake Superior Chippewa Indians.
- (14) "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.

- (15) "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.
- (16) "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.
- (17) "Writ of Restitution" is an order of the Tribal Court:
 - (a) Restoring an owner, Lessor, Mortgagee to possession of a Leasehold Estate subject to a Leasehold Mortgage; and
 - (b) Evicting a Tenant or other occupant from such property.

84.103 Exclusivity.

Notwithstanding Tribal Code Section 92.110, this Chapter shall provide the exclusive procedures for enforcement of loan agreements relating to trust lands.

84.104 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. The Lac du Flambeau Chippewa Tribal Court shall have exclusive jurisdiction to enforce this chapter.

CHAPTER II: RECORDING LEASEHOLD SECURITY INTERESTS

84.201 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).

84.202 Recording.

- (1) Leases and Leasehold Mortgages shall be recorded at the offices of: (a) the Bureau of Indian Affairs Area Land Titles and Records Office, (b) the county recorder's office in the state in which the Leasehold Estates are located, and (c) the Tribal Land Use Office.

- (2) The Tribal Recording Clerk shall maintain a system for the recording of Leasehold Mortgages and such other documents as the Tribe may designate by law or resolution, including, without limitation, the Lease.
- (3) The Tribal Recording Clerk shall endorse upon any Lease and Leasehold Mortgage or other document received for recording the following:
 - (a) The date and time of receipt of the Lease and the Leasehold Mortgage or other document;
 - (b) The filing number to be assigned by the Tribal Recording clerk, which shall be a unique number for each Lease and Leasehold Mortgage or other document received; and
 - (c) The name of the Tribal Recording Clerk receiving the Lease and Leasehold Mortgage or other document.

Upon completion of the above endorsements, the Tribal Recording Clerk shall make true and correct copies of the Lease and Leasehold Mortgage or other security instrument and shall certify each copy as follows:

_____ TRIBE) SS.

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

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

(SEAL)

Signature

Title

The Tribal Recording Clerk shall maintain such copies in the records of the recording system and shall return the original Lease and Leasehold Mortgage or other document to the person or entity that presented the same for recording.

- (4) The Tribal Recording Clerk shall also maintain a log of each Lease and Leasehold Mortgage or other document recorded in which there shall be entered the following:

- (a) The name(s) of the Mortgagor(s) of each Leasehold Mortgage, identified as such;
 - (b) The name(s) of the Mortgagee(s) of each Leasehold Mortgage, identified as such;
 - (c) The name(s) of the grantor(s), grantee(s) or other designation of each party named in any other documents including the Lease;
 - (d) The date and time of receipt;
 - (e) The filing numbers assigned by the Tribal Recording Clerk; and
 - (f) The name of the Tribal Recording Clerk receiving the Lease, Leasehold Mortgage or other document.
- (5) The certified copies of the Leases and Leasehold Mortgages and other documents and the log maintained by the Tribal Recording Clerk shall be made available for public inspection and copying.

CHAPTER III: FORECLOSURE OF LEASEHOLD INTERESTS

84.301 Leasehold Mortgage Foreclosure Proceedings.

Upon the default of the Mortgagor(s), and upon expiration of any applicable cure periods, under a Leasehold Mortgage, the Mortgagee or its successors and assigns, may commence a Leasehold 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 Leasehold Mortgage, including each Subordinate Lienholder (except the Tribe with respect to a claim for a Tribal tax on the Leasehold Estate subject to the Leasehold Mortgage), as a defendant;
 - (c) Describing the Leasehold Estate subject to the Leasehold Mortgage;

- (d) Stating the facts concerning (i) the execution of the Lease and the Leasehold Mortgage; (ii) the recording of the Leasehold Mortgage; and (iii) the alleged default(s) of the Mortgagor(s) (and any other 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, Leasehold Mortgage, and, if applicable, assignment thereof relating to such Leasehold Estate;
 - (f) Including an allegation that all relevant requirements and conditions prescribed by any applicable federal loan guarantee program have been complied with by the Mortgagee; 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.

84.302 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 Leasehold Mortgage Foreclosure Proceeding pursuant to this Ordinance.

84.303 Cure of Default by Subordinate Lienholder.

Prior to the entry of a judgment of foreclosure of a Leasehold Mortgage pursuant to this Ordinance, any Mortgagor or any Subordinate Lienholder may cure the default(s) under the Leasehold 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.

84.304 Judgment and Remedies.

If the alleged default(s) have not been cured, and if the Tribal Court should find for the Mortgagee, the Tribal Court shall enter judgment:

- (1) Foreclosing the Leasehold Estate of the Mortgagor(s) and each other defendant named in the complaint upon whom proper and timely service has been made, including each such Subordinate Lienholder.
- (2) Assigning such Leasehold Estate to the Mortgagee, subject to the restrictions imposed under Section 84.305 of this Chapter.
- (3) The plaintiff may, in the complaint, demand judgment for any deficiency that may remain due the plaintiff after sale of the mortgaged premises against every party who is personally liable for the debt secured by the mortgage. Judgment may be rendered for any deficiency remaining after applying the proceeds of sale to the amount due. The judgment for deficiency shall be ordered in the original judgment and separately rendered against the party liable on or after the confirmation of sale. The judgment for deficiency shall be entered in the judgment and lien docket and enforced as in other cases.
- (4) Such other relief to which a party may be entitled in law or equity.

84.305 Restrictions on Assignability of Leasehold Estates.

In the event the court issues a judgment of foreclosure under this Chapter, the following restrictions apply:

- (1) The Mortgagee 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 Mortgagee.
- (2) The Mortgagee may transfer, sell or assign the Lease and/or Leasehold Mortgage only to a Tribal member, the Tribe or the Tribal Housing Authority.

84.306 Certified Mailing to Tribe and Lessor.

With respect to 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.

84.307 Intervention.

The Tribe or Lessor may, by Notice of Intervention filed with the Court and served on all parties, intervene in any proceeding under this Chapter.

CHAPTER IV: LEASEHOLD MORTGAGE EVICTION PROCEDURES

84.401 Unlawful Detainer.

A Tenant or other occupier of a Leasehold Estate subject to a Leasehold Mortgage shall be guilty of unlawful detainer under any of the following situations:

- (1) Regardless of whether notice has been given, a Tenant or other occupant is guilty of unlawful detainer if he or she continues to occupy the Leasehold Estate:
 - (a) After the expiration of the term of the 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 that provide such person a hearing before such Lessor; or
 - (d) After such person's Leasehold Estate has been foreclosed in a Leasehold Mortgage Foreclosure Proceeding in the Tribal Court.
- (2) After having received 30 days' notice, the Tenant or occupier who remains in possession of a Leasehold Estate contrary to the terms of the notice is guilty of an unlawful detainer 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 the 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

- (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.

84.402 Procedures for Service of Notice. 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 Leasehold Estate; or
- (2) Posting said notice in a conspicuous place near the entrance to said Leasehold Estate, and by sending an additional copy to the Tenant or occupier by certified mail, return receipt requested, properly addressed, postage prepaid.

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.

84.403 Complaint and Summons.

The Lessor or the Mortgagee 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 Leasehold Mortgage, including each Subordinate Lienholder (except the Tribe with respect to a claim for a Tribal tax on the Leasehold Estate subject to the Leasehold Mortgage), as a defendant;
 - (c) Describing the Leasehold Estate subject to the Leasehold Mortgage;
 - (d) Stating the facts concerning (i) the execution of the Lease and the Leasehold Mortgage; (ii) the recording of the Leasehold 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. 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 six nor 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.

84.404 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.

84.405 Writ of Restitution and Judgment.

The Tribal Court shall have the authority to issue a Writ of Restitution and to enter 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 Leasehold Mortgage that are due the Mortgagee;
- (3) damages caused by the defendants to the property other than ordinary wear and tear; and
- (4) other relief to which a party may be entitled in law or equity.

The Tribal Court shall have the authority to award costs and reasonable attorneys' fees in bringing suit to the prevailing party.

84.406 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 Leasehold Estate which is unlawfully occupied. A Writ of Restitution issued under this Ordinance shall be enforced no later than 60 days after the date of service of the summons and complaint.

84.407 Continuances in Cases Involving the Mortgagee.

Except by agreement of all parties, there shall be no continuances inconsistent with the requirement of this Chapter that the Writ of Restitution be enforced not later than 60 days from the date of service of the summons and complaint.

CHAPTER V: ENFORCEMENT OF WAIVERS OF SOVEREIGN IMMUNITY

84.501 The tribal court shall enforce any waivers of the Tribe's sovereign immunity given by the Tribe in connection with any Lease, Mortgage, or other agreement enforceable under this Chapter or any agreement entered into by the Tribe to implement Fannie Mae's Native American Conventional Lending Initiative or any government program facilitating mortgage lending on the reservation.