

CHAPTER 9-6 LEASEHOLD MORTGAGES

FEDERAL LOAN PROGRAMS

9-6-1

Purpose

The purpose of this Chapter is to avail the Confederated Tribes of the Colville Reservation and its members (and other Indians) of financing for the construction, improvement or purchase of family residences or businesses on trust and otherwise restricted lands within the jurisdiction of the Colville Indian Reservation by prescribing procedures for the recording, prioritizing and foreclosure of leasehold mortgages given to secure loans insured by private loan insurers, under Section 184 or 248 of the National Housing Act, the Native American Veterans Housing Loan Pilot Program, hereafter NAVH authorized under 38 U.S.C. § 3761, or similar mandatory federal law intended to allow the provision of loans secured by trust property, or obtained through Tribal Credit.

(Amended 11/7/02, Resolution 2002-678)

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Definitions

(a) "Lease" means the lease of trust or otherwise restricted property for which a leasehold mortgage, as defined in this Chapter, has been or will be given.

(b) "Leasehold mortgage" means the mortgage of a lease of trust or otherwise restricted property given to secure a loan insured under Section 184 or 248, NAVH, by Tribal Credit or private loan insurers.

(c) "Leasehold mortgage foreclosure proceeding" means a proceeding in the Tribal Court:

(1) To foreclose the interest of the mortgagor(s), and each person or entity claiming through the mortgagor(s), in a lease for which a mortgage has been given under section 184 or 248 of the National Housing Act, NAVH, by Tribal Credit, or by a private loan insurer; and

(2) To assign such lease to the [Secretary](#), Tribal Credit, or private loan insurer or the Secretary's, Tribal Credit's or private loan insurer's assignee.

(d) "Lessor" means the beneficial or equitable owner of trust land or otherwise restricted property under a lease for which a mortgage, as defined in this Chapter, has been given, or the heir(s), successor(s), executor(s), administrator(s) or assign(s) of such lessor.

(e) "Mortgagee" means the mortgagee under any leasehold mortgage as defined in this Chapter or the successor(s) in interest of any such mortgagee, including the Secretary as defined in this Chapter, or the Secretary's assignee under any such mortgage.

(f) "Mortgagor" means the Tribe or any Indian(s) who has executed a leasehold mortgage as defined in this Chapter, or any heir(s), successor(s), executor(s), administrator(s) or assign(s) of the Tribes or such Indian(s).

(g) "Native American Veteran Housing Loan Pilot Program" means the Program administered by the U.S. Department of Veterans Affairs, P.L. 102-547, Subchapter 5, under 38 U.S.C. § 3761;

(h) "Private Loan Insurer" means a private mortgage insurance company or a public or private agency that insures or guarantees loans.

(i) "Secretary" means the Secretary of the United States Department of Housing and Urban Development (HUD) or the Secretary of the United States Department of Veterans Affairs (VA), or their designated attorney or agent.

(j) "Section 184" means section 184 of the National Housing Act, 12 U.S.C. § 1715-13a.

(k) "Section 248" means section 248 of the National Housing Act, 12 U.S.C. §1715z-13.

(l) "Subordinate lienholder" means the holder of any lien, including a subsequent mortgage, perfected subsequent to the recording of a leasehold mortgage under this Chapter (except the Tribe with respect to a claim for a tribal leasehold tax).

(m) "Tribal Council" means the Colville Business Council.

(n) "Tribal Court" means the Colville Tribal Court as established by Article VIII of the Colville Tribal Constitution or such other entity as may now or hereafter be authorized by the laws of the Tribes to exercise the powers and functions of a court of law.

(o) "Tribal Credit" means Colville Tribal Credit as established by the laws of the Tribes or such other entity as may now or hereafter be authorized by the laws of the Tribes to exercise the powers and functions of a financial institution.

(p) "Tribal recording clerk" means the person designated by the Tribal Council to perform the recording functions under this Chapter or any deputy or designee of such person.

(q) "Tribal secretary" means the Secretary of the Colville Business Council.

(r) "Tribes" means the Confederated Tribes of the Colville Reservation.

(s) "Trust" or otherwise "restricted property" includes all real property where the title is held in trust for the Colville Tribes or for a tribal member, and other property owned by a tribal member, the free alienation of which is restricted by the United States.

(Amended 12/4/03, Resolution 2003-779)

(Certified 12/12/03)

(Amended 11/7/02, Resolution 2002-678)

9-6-3 **Priority**

A leasehold mortgage recorded in accordance with the recording procedures set forth in this Chapter shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim excepting a lien or claim arising from a tribal leasehold tax assessed after the recording of the mortgage. Nothing in this Chapter shall prevent any person or entity from recording a leasehold mortgage in accordance with state law or from filing a leasehold mortgage with the Bureau of Indian Affairs.

9-6-4 **Recording**

(a) The Tribal Council shall from time to time designate by resolution a tribal recording clerk and such additional deputy tribal recording clerks as it deems proper to perform the recording functions under this Chapter. If approved by resolution of the Tribal Council, the tribal recording clerk may designate one or more designees to perform the recording functions under this Chapter.

(b) The tribal recording clerk shall maintain a system for the recording of leasehold mortgages and such other documents as the Tribal Council may designate by resolution.

(c) The tribal recording clerk shall endorse upon any leasehold mortgage or any other document received for recording:

(1) The date and time of receipt of the leasehold mortgage or other document;

(2) The filing number, to be assigned by the tribal recording clerk, which shall be a unique number for each leasehold mortgage or other documents received; and

(3) The name of the tribal recording clerk receiving the leasehold mortgage or document.

Upon completion of the above endorsements, the tribal recording clerk shall make a true and correct copy of the leasehold mortgage or other document and shall certify the copy as follows:

CONFEDERATED TRIBES OF THE)
COLVILLE RESERVATION)

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 20 ____.

(Signature)

(SEAL)

(Tribal Recording Clerk)

The tribal recording clerk shall maintain the copy in the records of the recording system and shall return the original of the leasehold mortgage or other document to the person or entity that presented the same for recording.

(d) The tribal recording clerk shall also maintain a log of each leasehold mortgage or other document recorded in which there shall be entered:

- (1) The name(s) of the mortgagor(s) of each leasehold mortgage, identified as such;
- (2) The name(s) of the mortgagee(s) of each leasehold mortgage, identified as such;
- (3) The name(s) of the grantor(s), grantee(s), or other designation of each party named in any other documents;
- (4) The date and time of receipt;
- (5) The filing number assigned by the tribal recording clerk; and
- (6) The name of the tribal recording clerk receiving the leasehold mortgage or document.

(e) The certified copies of the leasehold mortgages and other documents and the log maintained by the tribal recording clerk shall be made available for public inspection and copying.

(f) In lieu of presenting an original leasehold mortgage or other document for recording, any person or entity may present a copy of the same upon which there is an original certification in substantially the following form which has been attested to, in front of and notarized by a notary public.

COUNTY)
STATE)

I certify that this is a true and correct document
_____ in the possession of _____
(Title of Document) (Person or Institution name)
this date.

(Signature)

(Title)

Given under my hand and seal this ____ day of 20____.

(SEAL)

(Notary Public)

(Date of Expiration of Commission)

(g) The recording procedures set forth in this Chapter for leasehold mortgages shall apply to any assignment of a leasehold mortgage.

(h) The Tribal Council may from time to time establish recording fees, copying fees, and fees for the certification of any document recorded under the recording system established under this Chapter.

(Amended 12/4/03, Resolution 2003-779)

(Certified 12/12/03)

(Amended 11/7/02, Resolution 2002-678)

9-6-5 Leasehold Mortgage Foreclosure Proceeding

Upon the default of the mortgagor(s) under a leasehold mortgage, the Secretary, Tribal Credit or a private loan insurer may commence a leasehold mortgage foreclosure proceeding in the Tribal Court by filing:

(a) A verified complaint:

(1) Naming the mortgagor(s) and each person or entity claiming through the mortgagor(s) subsequent to the recording of the leasehold mortgage, including each subordinate lienholder (provided that where the Tribes claims through the mortgager or is a subordinate lienholder the Tribes need not be named);

(2) Describing the property;

(3) Stating the facts concerning the execution of the lease and the leasehold mortgage; the facts concerning the recording of the leasehold mortgage; the facts concerning the alleged default(s) of the mortgagor(s); and such other facts as may be necessary to constitute a cause of action;

(4) Having appended as exhibits true and correct copies of each promissory note, lease, leasehold mortgage, or assignment thereof relating to the property; and

(5) In actions brought by the Secretary, the complaint shall also include an allegation that all relevant requirements and conditions prescribed in:

(A) Section 184 or 248 of the NHA, or such other relevant federal laws under which the leasehold mortgage was given;

(B) The regulations promulgated thereunder by the Secretary where applicable; and

(C) The provisions of the lease;

have been complied with by the Secretary.

(b) A standard Tribal Court summons issued as in other cases requiring the mortgagor(s) and each other

defendant to appear for a trial upon the complaint on a date and time specified in the summons. The summons must notify the defendant(s) that judgment will be taken against the defendant unless the defendant(s) files an answer with the court.

(Amended 11/7/02, Resolution 2002-678)

9-6-6 Service of Process and Procedure

The laws of the Tribes governing service of process and all other matters relating to the conduct of Tribal Court proceedings shall apply to any leasehold mortgage foreclosure proceeding under this Chapter.

9-6-7 Alternate Service

If it appears by affidavit filed in the Tribal Court, that any party to a leasehold mortgage foreclosure proceeding cannot be located, then service of process may be made upon such party by:

(a) Posting a copy of the summons and complaint in a conspicuous place on the property which is the subject of the lease within five (5) days after the issuance of the summons; and

(b) Mailing a copy of the summons and complaint by certified mail, return receipt requested, to such party at the last known address of such party.

(Amended 11/7/02, Resolution 2002-678)

9-6-8 Certified Mailing to Tribe and Lessor

In any leasehold mortgage foreclosure proceeding where the Tribes or the lessor(s) is not named as a defendant, a copy of the summons and complaint shall be mailed to the Tribes, [the Office of Reservation Attorney](#) 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 Colville Agency of the Bureau of Indian Affairs within five (5) days after the issuance of the summons.

(Amended 12/4/03, Resolution 2003-779)

(Certified 12/12/03)

(Amended 11/7/02, Resolution 2002-678)

9-6-9 Intervention

The Tribes or any lessor may petition the Tribal Court to intervene in any leasehold mortgage foreclosure proceeding under this Chapter. Neither the filing of a petition for intervention by the Tribes, nor the granting of such a petition by the Tribal Court shall operate as a waiver of the sovereign immunity of the Tribes, except as may be expressly authorized by the Tribes.

9-6-10 Cure of Default by Subordinate Lienholder

Prior to the entry of the judgment of foreclosure, 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 the default(s), plus interest on such amount at the rate stated in the note for leasehold mortgage.

9-6-11 Power of the Tribal Court

If the alleged default(s) have not been cured, and if the Tribal Court should find for the Secretary, Tribal Credit or private loan insurer, the Tribal Court shall enter judgment:

(a) Foreclosing the interest in the lease 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: and

(b) Assigning such lease to the Secretary, Tribal Credit or private loan insurer or the Secretary's, Tribal Credit's or private loan insurer's assignee.

(c) Provided, that when the underlying debt is satisfied the property subject to the lease shall revert to the

owner unless otherwise agreed between lessor and lessee, and in the case of a change in trust status, the Tribes.

(Amended 11/7/02, Resolution 2002-678)

9-6-12 No Redemption

There shall be no right of redemption in any leasehold mortgage foreclosure proceeding.

9-6-13 No Deficiency Judgment

No deficiency judgment shall be entered in any leasehold mortgage foreclosure proceeding except in a leaseholder mortgage foreclosure proceeding initiated by Tribal Credit or a private loan insurer where the loan documents specifically set out the lender's right to seek a deficiency judgment.

(Amended 11/7/02, Resolution 2002-678)

9-6-14 Remedies Exclusive

The remedies provided under this Chapter are exclusive.

9-6-15 No Merger

There shall be no merger of estates by reason of the execution of the leasehold interest, a leasehold mortgage on that interest or the assignment or assumption of 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.

(Amended 11/7/02, Resolution 2002-678)

9-6-16 Limited Waiver of Immunity

In any case where the Tribes is a mortgagor under a leasehold mortgage, the Tribes may be sued as a defendant in such capacity and only under this Chapter; provided, that there shall be no award of attorney fees, damages, or costs against the Tribes in any proceeding involving the Tribes except where prior written consent to such an award have been given by the Tribes.

9-6-17 Trust Status of Land

Nothing in this Chapter is intended to affect or eliminate the trust or restricted status of any land subject to a leasehold mortgage, and at the end of any lease term said land shall revert to the lessor without encumbrance or lien that may arise as a result of this Chapter.

(Adopted August 17, 1995, Resolution 1995-544)