

TITLE 5. SPECIAL PROCEEDINGS

Chapter 5.5

FORECLOSURE OF LEASEHOLD MORTGAGES

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5.5.1. Purpose. The purpose of this chapter is to avail the Suquamish Tribe, its members, and other Indians of financing for the construction and/or purchase of family residences on trust and otherwise restricted lands within the jurisdiction of the Port Madison Indian Reservation by prescribing procedures for the recording, priority, and foreclosure of leasehold mortgages given to secure loans insured under Sections 184 and 248 of the National Housing Act. (Res. 96-070 (part), passed Aug. 12, 1996)

5.5.2. Definitions. (a) "Tribe" shall refer to the Suquamish Tribe of the Port Madison Indian Reservation as defined in the tribal Constitution.

(b) "Tribal council" shall mean the Tribal Council of the Suquamish Tribe as defined in the tribal Constitution.

(c) "Tribal recording clerk" shall mean the person designated by the Tribal Council to perform the recording functions under this chapter or any deputy or designee of such person.

(d) "Tribal Council secretary" shall mean the secretary of the Suquamish Tribe as defined in the tribal Constitution.

(e) "Tribal Court" shall mean the Tribal Court as established by the laws of this Tribe, which Court shall have exclusive jurisdiction over foreclosure actions under this chapter.

(f) "Secretary" shall mean the Secretary of the United States Department of Housing and Urban Development (HUD) or his or her designee, attorney, or agent.

(g) "Sections 184 and 248" shall mean Sections 184 and 248 of the National Housing Act, 12 USC 1715z-13.

(h) "Lease" shall mean the lease of trust or otherwise restricted property for which a leasehold mortgage as defined in this chapter has been or will be given.

(i) "Lessor" shall mean the beneficial or equitable owner of trust 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.

(j) "Leasehold mortgage" shall mean the mortgage of a lease of trust or otherwise restricted property given to secure a loan insured under Sections 184 and 248.

(k) "Mortgagor" shall mean the Tribe or any Indian(s) who has/have executed a leasehold mortgage as defined in this chapter or any heir(s), successor(s), executor(s), administrator(s), or assign(s) of the Tribe or such Indian(s).

(l) "Mortgagee" shall mean 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.

(m) "Subordinate lienholder" shall mean 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).

(n) "Leasehold mortgage foreclosure proceeding" shall mean 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 248; and

(2) To resell such interest and use such proceeds to extinguish the mortgage debt; or

(3) To assign such lease to the Secretary or the Secretary's assignee. (Res. 96-070 (part), passed Aug. 12, 1996)

5.5.3. 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; however, such filing shall not replace the requirement for recording with the Suquamish Tribal Court clerk as set forth in §5.5.4 below. (Res. 96-070 (part), passed Aug. 12, 1996)

5.5.4. Recording. (a) The Tribal Council shall from time to time designate by law or resolution a tribal recording clerk or 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 in the Tribal Court a system for the recording of leasehold mortgages and such other documents as the Tribal Council may designate by law or 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 document 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:

SUQUAMISH TRIBE)
) ss.
PORT MADISON INDIAN 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 _____.

(SEAL)

(Signature)

(Title)

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 signed and sealed by a judge or clerk of the Tribal Court, the tribal secretary, a notary public, or other authorized official of the State of Washington:

_____)
_____) ss.

I certify that this is a true and correct copy of a document in the possession of _____ this date.

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

(SEAL)

(Signature)

(Title)

(Date of Expiration of Commission, if applicable)

(g) The recording procedures set forth in this chapter for leasehold mortgages shall also 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. (Res. 96-070 (part), passed Aug. 12, 1996)

5.5.5. Leasehold Mortgage Foreclosure Proceedings. Upon the default of the mortgagor(s) under a leasehold mortgage, the lienholder or the Secretary 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 (except the Tribe with respect to a claim for tribal leasehold tax), as a defendant;

(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) Including an allegation that all relevant requirements and conditions of the Indian Housing Loan Guarantee Program Processing Guidelines for (i) Sections 184 or 248 guaranteed loans; (ii) the regulations promulgated thereunder by the Secretary; and (iii) the provisions of the lease have been complied with by the complainant/plaintiff.

(b) A 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 trial date specified in the summons shall be not less than twenty (20) nor more than forty-five (45) days from the date of service of the summons and complaint. The summons must notify the defendant(s) that judgment will be taken against the defendant(s) in accordance with the terms of the complaint unless the defendant(s) file an answer with the court and appear for trial at the time, date, and place specified in the summons. (Res. 96-070 (part), passed Aug. 12, 1996)

5.5.6. Service of Process and Procedure. 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 under this chapter. (Res. 96-070 (part), passed Aug. 12, 1996)

5.5.7. 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 had 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 but not less than twenty (20) days prior to the date set for trial; 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 and in care of the Superintendent of the Puget Sound Agency of the Bureau of Indian Affairs within five (5) days after the issuance of the summons but not less than twenty (20) days prior to the date set for trial. (Res. 96-070 (part), passed Aug. 12, 1996)

5.5.8. Certified Mailing to Tribe and Lessor. In any leasehold mortgage foreclosure proceeding 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, but not less than twenty (20) days prior to the date set for trial. 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 Puget Sound Agency of the Bureau of Indian Affairs. (Res. 96-070 (part), passed Aug. 12, 1996)

5.5.9. Intervention. The Tribe 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 Tribe nor the granting of such a 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. (Res. 96-070 (part), passed Aug. 12, 1996)

5.5.10. Cure of Default by Subordinate Lienholder. Prior to the entry of a 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 amounts at the rate stated in the note for the leasehold mortgage. (Res. 96-070 (part), passed Aug. 12, 1996)

5.5.11. Power of the Tribal Court. If the alleged default(s) have not been cured and if the Tribal Court should find for the mortgagee or the Secretary, 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) Reselling such property to a qualified Indian; or

(c) Reselling such property to the Tribe; or

(d) Assigning such lease to the Secretary or the Secretary's assignee.

(e) The Suquamish Tribe has the right of first refusal of any such resale or assignment. (Res. 96-070 (part), passed Aug. 12, 1996)

5.5.12. No Redemption. There shall be no right of redemption in any leasehold mortgage foreclosure proceeding. (Res. 96-070 (part), passed Aug. 12, 1996)

5.5.13. No Deficiency Judgment. No deficiency judgment shall be entered in any leasehold mortgage foreclosure proceeding. (Res. 96-070 (part), passed Aug. 12, 1996)

5.5.14. Resale Proceeds. All proceeds must be used to pay off the outstanding Section 184 or 248 guaranteed mortgage debt. Excess proceeds become the property of the lender/mortgagee with no restriction as to its use. In these cases it is the responsibility of the lender/mortgagee to evict the mortgagee from the property. (Res. 96-070 (part), passed Aug. 12, 1996)

5.5.15. Resale after Foreclosure. All resales are subject to the nonalienation policy outlined in the processing guidelines and federal law. (Res. 96-070 (part), passed Aug. 12, 1996)

5.5.16. Remedies Exclusive. The remedies provided under this chapter are exclusive. (Res. 96-070 (part), passed Aug. 12, 1996)

5.5.17. No Merger. 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 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. (Res. 96-070 (part), passed Aug. 12, 1996)

5.5.18. Limited Waiver of Immunity. In any case where the Tribe is a mortgagor under a leasehold mortgage, the Tribe may be sued as a defendant in such capacity only and only under this chapter, provided that there shall be no award of attorney fees or costs against the Tribe in any proceeding involving the Tribe, except where prior written consent to such an award has been given by the Tribe. (Res. 96-070 (part), passed Aug. 12, 1996)

Note: Subsections 5.5.11(1)-(5) renumbered 5.5.11(a)-(e) for consistency.