

TITLE 5. SPECIAL PROCEEDINGS

Chapter 5.7

SUQUAMISH REAL AND PERSONAL PROPERTY FORECLOSURE AND FORFEITURE

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5.7.1. Title. This chapter shall be known as the “Suquamish Tribe Real and Personal Property Foreclosure and Forfeiture Ordinance.” (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.2. Authorization. This chapter, governing the regulation and administration of foreclosures and forfeitures on individual trust property within the jurisdiction of the Suquamish Tribe, wherever situated, on individual fee simple property located within the exterior boundaries of the Port Madison Indian Reservation that are owned by an Indian, over all lands in which the Suquamish Tribe holds a security interest of any sort, and on manufactured homes located on any of the above identified real properties owned by an Indian, is enacted pursuant to the authority vested in the Suquamish Tribe by its tribal Constitution, particularly by Article I and Article III (b), (c), (g), (i), and (j) to regulate real property within its jurisdiction and to provide for the welfare and economic development of the Tribe and its members, and pursuant to the authority granted to Indian tribes in 25 USC 483 (a) and (b) and 25 CFR 162.12. (Res. 2002-088 (part), passed Aug. 26, 2002; codifier’s note Mar. 7, 2008: 66 FR 7079, 7124 (Jan. 22, 2001) renumbered 25 CFR 162.12 to 25 CFR 162.610)

5.7.3. Interpretation. This chapter is an exercise of the inherent sovereign power of the Suquamish Tribe over all real and personal property within its jurisdiction and all provisions of this chapter shall be construed in a manner which accomplishes its statement of purposes. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.4. Statement of Findings. The Suquamish Tribal Council finds that:

(a) The Suquamish Tribe has the inherent sovereign right and authority to regulate real and personal property situated within its jurisdiction and, pursuant to federal law, to regulate and administrate the foreclosure or forfeiture of individual trust lands and individual fee simple property and personal property located within its territorial jurisdiction owned by individual Indians.

(b) The exercise of tribal sovereign power through this chapter is necessary to protect the right of tribal self-government and to regulate its internal relations so as to protect the political, social, and economic security and integrity of the Tribe.

(c) Individual Suquamish Tribal members and other Indians who own real property or manufactured homes have been unable to secure financing to construct or purchase family residences, secure refinancing on family residences, or secure other construction or financing on individually owned lands because, despite the tribal member or other Indian being otherwise qualified for the financing, mainstream lenders are unwilling to loan money if the loan is to be secured by real estate or personal property which the lender cannot foreclose upon or enforce a forfeiture. Consequently, tribal members have been unable to secure mortgage, construction, and manufactured home purchase financing or refinancing or have had to pay higher interest rates, higher fees, and higher costs to obtain such financing.

(d) It is essential to the political, social, and economic development of the Suquamish Tribe for its individual tribal members and other Indian residents of the Port Madison Indian Reservation to be able to use their real and personal property assets, regardless of their title status, to obtain mortgage financing and refinancing from mainstream lenders at market rates, fees, and costs.

(e) A tribal membership and a tribal community which is able to make the most of their financial assets and real and personal property holdings to improve their individual financial situations will strengthen the economic well-being and self-esteem of the entire community. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.5. Statement of Purposes. The purposes of this chapter are:

(a) To provide Suquamish Tribal members and other Indians owning real or personal property within the jurisdiction of the Suquamish Tribe with a means to (1) finance the construction and/or purchase of one- to four-family residences, including manufactured homes, (2) finance and obtain other real property financing, and (3) refinance existing mortgages, loans, or real estate contracts on individual fee simple

lands, individual trust lands, and other trust lands, including leased or assigned tribal lands that are within the jurisdiction of the Tribe.

(b) To provide those holding approved contracts, mortgages, and deeds of trust on the trust lands or fee simple lands of individual Indian owners a remedy in the event the individual Indian debtor defaults under the terms of the contract, mortgage, or deed of trust by prescribing procedures for the recording, priority, and foreclosure of mortgages on such property given to secure loans as provided and authorized pursuant to 25 USC 483 (a) and (b) as now existing or as the same may hereafter be amended and as authorized by tribal action or other tribal law.

(c) To provide a just and proper tribal court forum for the foreclosure of real estate mortgages and deeds of trust and forfeiture of real estate contracts on all Indian trust lands within the jurisdiction of the Suquamish Tribe, wherever situated, and on fee simple lands within the jurisdiction of the Tribe.

(d) To allow compliance with 25 CFR 162.12 and the enforcement of encumbrances of leases of tribal lands.

(e) To promote the economic development, financial improvement, and financial stability of individual members of the Suquamish Tribe and other Indian residents of the Port Madison Indian Reservation. (Res. 2002-088 (part), passed Aug. 26, 2002; codifier's note Mar. 7, 2008: 66 FR 7079, 7124 (Jan. 22, 2001) renumbered 25 CFR 162.12 to 25 CFR 162.610)

5.7.6. Definitions. (a) "Council" shall mean the seven-member board that is the governing body of the Suquamish Tribe.

(b) "Construction mortgage" shall mean a mortgage which secures an obligation incurred for the construction of an improvement on land which also includes the acquisition cost of the land, provided the recorded writing specifically so indicates.

(c) "Deed of trust" shall mean a written security instrument serving the uses of a mortgage by which legal title to real property is placed in one or more trustees, to secure the repayment of a sum of money or other debt.

(d) "Fee simple land" shall mean lands within the jurisdiction of the Suquamish Tribe the title to which is held by an individual Suquamish tribal member or other Indian in fee simple status.

(e) "Foreclosure ordinance" shall mean the Suquamish Tribal Code Chapter 5.7 which establishes procedures for the recording, prioritizing, and foreclosure or forfeiture of mortgages, deeds of trust, real estate and other contracts given to secure debts.

(f) "Foreclosure- forfeiture related document" or "foreclosure- forfeiture related documents" shall mean all notices and other documents required to be prepared under this chapter to effectuate a foreclosure or forfeiture.

(g) "Mortgage foreclosure proceedings" shall mean a proceeding to judicially foreclose in Suquamish Tribal Court the interest of the mortgagor(s).

(h) "Mortgage" shall mean a written security instrument granting an interest in real property which provides security for the repayment of a sum of money or other debt.

(i) "Mortgagee" shall mean the Indian(s) or any other natural or legal person who has executed a mortgage as described in the chapter; or any heir(s), successor(s), executor(s), administrator(s), or assign(s) of such Indian(s); or other such persons obtaining any interest of such mortgagee or beneficiary.

(j) "Mortgagor" shall mean the person granting the mortgage.

(k) "Real estate contract" shall mean a written instrument executed between a seller and purchaser of real property in which a seller of land obligates him- or herself to deliver to the purchaser the deed of real property when certain conditions, such as a completion of payments, are met by the purchaser.

(l) "Real property document" or "real property documents" shall mean a mortgage, deed of trust, real estate contract, or other security contract used to memorialize a finance transaction related to real property or a manufactured home.

(m) "Reservation" shall mean the Port Madison Indian Reservation.

(n) "RCW" shall mean the Revised Code of Washington.

(o) "Subordinate lien holder" shall mean the holder of any lien, including a subsequent mortgage or deed of trust, perfected subsequent to the recording of a mortgage under this chapter, except the Tribe with respect to a claim for a tribal tax.

(p) "Tribal Court" shall mean the Tribal Court established by the laws of the Suquamish Tribe or such body as may now or hereafter be authorized by the laws of the Tribe to exercise the powers and functions of a court of law.

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

(r) "Tribal secretary" shall mean the secretary of the Tribe as defined in the tribal Constitution and Bylaws.

(s) "Tribe" shall refer to the Suquamish Tribe as defined in the Constitution and Bylaws of the Suquamish Tribe.

(t) "Trust land" or "trust lands" shall mean lands within the jurisdiction of the Suquamish Tribe the title to which is held by the United States government for the benefit of an Indian or which is otherwise held by the United States government in a restricted status. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.7. Consent to Jurisdiction of Tribal Court. Any person, corporation, association, or other entity which enters into a mortgage, deed of trust, real estate contract, or other contract which is subject to this chapter is deemed to have voluntarily and knowingly consented to the jurisdiction, both personal and subject matter, of the Suquamish Tribal Court. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.8. Conveyances by Written Deed. Every conveyance of real estate or any interest in real estate and every contract creating or evidencing any encumbrance upon real estate shall be by deed. Every deed shall be in writing, signed by the party bound thereby, and acknowledged by the party before a notary public authorized to take acknowledgements of deeds. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.9. Priority. Real property documents 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 over any lien or claim arising after the recording of a real property document, except a lien or claim arising from a tribal property tax assessed after the recording of the real property document. A conveyance which is not recorded in accordance with the chapter is void as against any subsequent purchaser or mortgagee in good faith and for a valuable consideration from the same property owner or his or her heirs of the same real property or any portion thereof whose conveyance is first legally recorded. Nothing in this chapter shall prevent any person or entity from recording a real property document in accordance with state law or from filing a real property document with the Bureau of Indian Affairs. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.10. Recording. Real property documents may and shall be recorded in compliance with this chapter. An instrument is deemed recorded the minute it is filed for record. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.11. Designation of Tribal Recording Clerk. The 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 Council, the tribal recording clerk may designate one or more designees to perform the recording functions under this chapter. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.12. System for Recording Real Property Documents and Other Documents. The tribal recording clerk shall maintain in the Tribal Court a system for the recording of real

property documents and such other documents as the Council may designate by resolution. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.13. Document Endorsement Requirements. The tribal recording clerk shall endorse upon any real property document or other document received for recording:

(a) The date and time of receipt of the real property document or other document;

(b) The filing number, to be assigned by the tribal recording clerk, which shall be a unique number for each real property document or other document received; and

(c) The name of the tribal recording clerk receiving the real property document or other document. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.14. Certified Copies of a Real Property Document or Other Document. Upon completion of the above endorsements, the tribal recording clerk shall make a true and correct copy of the real property document or other document and shall certify the copy as follows:

SUQUAMISH TRIBE)
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 _____, 20_____.

(SEAL)

Signature _____
Title _____

(Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.15. Maintaining Copies and Returning Original Documents. The tribal recording clerk shall maintain a copy of the real property document or other document in the records of the recording system and shall return the original of the real property document or other document to the person or entity presenting the same for recording. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.16. Maintaining Log. The tribal recording clerk shall maintain a log of each real property document or other document, identifying in such log the following:

(a) Name(s) of the interest holder(s) of each real property document;

(b) Name(s) of the grantor(s), grantee(s), or other designation of each party named in any other documents;

(c) The date and time of receipt;

(d) The filing number assigned by the tribal recording clerk; and

(e) The name of the tribal recording clerk receiving the real property document or other document. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.17. Public Inspection of Copies and Log. The certified copies of the real property document and other documents and the log maintained by the tribal recording clerk shall be made available for public inspection and copying during normal Tribal Court business hours. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.18. Acceptance of Certified Copy of Real Property Document or Other Document. In lieu of presenting an original real property document 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 a tribal court of a federally recognized Indian tribe or by a notary public or other authorized official of a federally recognized state of the United States.

_____)
_____) 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 _____, 20_____.

(SEAL)

Signature _____
Title _____

Date of Expiration of Commission, if applicable

(Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.19. Establishment of Fees Schedule. The Council may from time to time, by resolution, establish recording fees, copying fees, and fees for the certification of any document recorded under the recording system established under this chapter. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.20. Procedures Apply to Assignments of Real Property Document. The recording procedures set forth in this chapter for real property documents shall also apply to any assignment of a real property document. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.21. State Mortgage Foreclosure Law Adopted as Tribal Law. 25 USC 483(a) provides that the foreclosure of mortgages and deeds of trust on the trust of individual Indian owners shall be in conformity with the statutory law of the tribal reservation or

state in which the land is located. Therefore, the procedures of Chapter 61.12 of the Revised Code of Washington are adopted except as provided herein and shall be used by the Tribal Court of the Suquamish Tribe in foreclosing mortgages on the lands of Indian owners. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.22. Exceptions in Adoption of State Mortgage Foreclosure Law. In adopting the procedures of RCW 61.12, all references to “the superior court” or “the court” shall mean the Suquamish Tribal Court, all references to the “sheriff” shall mean the chief of police of the Suquamish Tribe or other tribal office as directed by the Tribal Council, all references to “county” shall mean the Suquamish Tribe, and all references to “county auditor” shall mean the tribal recording clerk. Furthermore, RCW 61.12.061 is specifically not adopted, and RCW 61.12.031 is adopted, provided violation of RCW 61.12.030 shall be subject to equity action and relief by the Tribal Court. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.23. Mortgage Foreclosure Proceeding. A mortgagee who forecloses a mortgage as provided in this section will obtain an unrestricted fee simple interest in the mortgage property or lease, and any individual trust, allotment, or other restriction will be extinguished thereby, provided such land remains subject to applicable tribal laws and may be transferred back into trust status upon compliance with the requirements of applicable federal law. Such foreclosure proceeding, whether conducted judicially or nonjudicially, shall divest the mortgagor and the United States of any and all title or interest to the mortgaged property or lease; provided that where the interest foreclosed is a leasehold, the trust title to the underlying trust land shall not be disturbed. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.24. Judicial Foreclosure of Mortgage. A mortgage may be foreclosed judicially in conformity with Chapter 61.12 RCW, as in effect as of the date of this chapter, a complete copy of which is attached hereto and which is incorporated herein as though set forth in full (a “judicial mortgage foreclosure proceeding”), provided, however, for purposes of this chapter all references to “court” or “superior court” shall be deemed to mean the Tribal Court. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.25. Initiating Mortgage Foreclosure Action. Upon the default of the mortgagor(s) under a mortgage, the mortgagee may commence a judicial mortgage foreclosure proceeding in the Tribal Court by filing a verified complaint which:

(a) Names the mortgagor(s) and each person or entity claiming through the mortgagor(s) subsequent to the recording of the mortgage, including each subordinate lien holder, except the Tribe with respect to a claim for a tribal property tax, as a defendant;

(b) Describes the property;

(c) States the facts concerning:

- (1) The execution of the mortgage;
 - (2) The recording of the mortgage;
 - (3) The alleged default(s) of the mortgagor(s); and
 - (4) Such other facts as may be necessary to constitute a cause of action;
- and

(d) Appends as exhibits true and correct copies of each promissory note, mortgage, or assignment thereof relating to the property. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.26. Summons; Requirements For Summons. The mortgagee in commencing a judicial mortgage foreclosure proceeding in the Tribal Court shall file 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 not be less than thirty (30) or more than ninety (90) days from the date of service of the summons and complaint. The summons must notify the defendant(s) in accordance with the terms of the complaint unless the defendants file an answer with the Court and appear for trial at the time, date, and place specified in the summons. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.27. 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 judicial mortgage foreclosure proceedings under this chapter. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.28. Alternate Service. If it appears by affidavit filed in the Tribal Court that any party to a judicial mortgage foreclosure proceeding cannot be located, then, upon order of the Tribal Court, service of process may be had upon such a party by:

(a) Posting a copy of the summons and complaint in a conspicuous place on the property which is subject to the mortgage within ten (10) days after the issuance of the summons but not less than thirty (30) 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 Regional Agency of the Bureau of Indian Affairs, whose office is located at 911 NE 11th Avenue, Portland, Oregon, 97232, or such other place as the Regional Agency of the Bureau may officially be located, within ten (10) days after the issuance of the summons, but not less than thirty (30) days prior to the date set for trial. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.29. Certified Mailing to Tribe. In any judicial mortgage foreclosure proceeding where the Tribe is not named as a defendant, a copy of the summons and complaint

shall be mailed to the Suquamish Tribe, Office of Tribal Attorney, by certified mail, return receipt requested, within ten (10) calendar days after the issuance of the summons but not less than thirty (30) calendar days prior to the date set for trial. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.30. Recording of Foreclosure-related Documents. All foreclosure-related documents must be recorded with the tribal recording office. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.31. Nonjudicial Mortgage Foreclosure. If a mortgage meets the requisites of RCW 61.24.030, the same may be foreclosed nonjudicially in conformity with Chapter 61.24 RCW, as in effect as of the date of this chapter, a complete copy of which is attached hereto and which is incorporated herein as though set forth in full (a “nonjudicial mortgage foreclosure proceeding”), provided, however, for the purpose of this chapter all references in Chapter 61.24 RCW to “county” shall be deemed to mean the Port Madison Indian Reservation and all references to “court” or “superior court” shall be deemed to mean the Suquamish Tribal Court. Furthermore, that portion of RCW 61.24.060 referencing RCW 59.12 is specifically not adopted and any purchaser at a trustee's sale shall, instead, have a right to summary proceedings to obtain possession of the real property or manufactured home by proceeding with eviction under Chapter 5.4 of the Suquamish Tribal Code. Furthermore, RCW 61.24.120 is specifically not adopted. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.32. Rules of Decision: Interpretation. To the extent not inconsistent herewith, the laws of the State of Washington contained in Title 61 RCW shall be incorporated herein by this reference as though set forth in full as to the procedure and substance of the respective foreclosure proceedings and the enforcement thereof as they now exist or may hereafter be amended. The laws of the State of Washington not inconsistent with the provisions of this chapter shall determine the priority of liens against the interest of the property subject to the mortgage. The rules of decision of the courts of the State of Washington shall guide but shall not be binding upon the Tribal Court’s determination and interpretation relating to such foreclosure proceedings and the enforcement thereof. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.33. Remedies Exclusive. The remedies provided under this chapter are exclusive for the judicial or nonjudicial foreclosure of a mortgage. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.34. State Deed of Trust Foreclosure Law Adopted As Tribal Law. 25 USC 483(a) provides that the foreclosure of mortgages and deeds of trust on the trust lands of the individual Indian owners shall be in conformity with the laws of the tribal reservation or state in which the land is located. Therefore, the procedures of Title 61.24 of the Revised Code of Washington are adopted in their entirety, except as set out in this chapter, and shall be used by the Suquamish Tribal Court in foreclosing deeds of trust on the lands of Indian owners. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.35. Exceptions in Adoption of State Deed of Trust Foreclosure Law. In adopting the procedures of RCW 61.24 all references to the “superior court of the county” or “the court” shall mean the Suquamish Tribal Court. All references to the “sheriff” shall mean the chief of police of the Suquamish Tribe or other tribal officer as directed by the Suquamish Tribal Council. All references to the “office of the auditor of each county” shall mean the office of the Bureau of Indian Affairs if the property is in trust or restricted status. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.36. State Real Estate Contract Forfeiture Law Adopted as Tribal Law. 25 USC 483 authorizes the Secretary of the Interior to approve conveyances with respect to lands or interests in lands held by individual Indians. The Secretary has adopted regulations which authorize real estate contracts as one possible means of such conveyance. (See 25 CFR 152.35.) Title 61.30 of the Revised Code of Washington sets forth certain procedures to be used in forfeiting a real estate contract and is adopted in its entirety except as set out in this chapter and shall be used by the Tribal Court of the Suquamish Tribe in forfeiting real estate contracts of the lands of Indian owners or in which the Tribe or an individual may have an interest. The Tribal Court shall not be required to follow Washington case law in interpreting these statutes but may use state case law as a guide. This chapter applies to all real estate contract forfeitures initiated on or after August 26, 2002, regardless of when the real estate contract was made. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.37. Exceptions in Adopting State Real Estate Contract Forfeiture Law. In adopting the procedures of RCW 61.30, all references to “court action” or “the court” shall mean the Suquamish Tribal Court. All references to “recorded in each county in which any of the property is located” shall mean the office of the Bureau of Indian Affairs if the property is in trust or restricted status and the tribal recording office if the property is held in fee status. RCW 61.30.120, 61.30.900, 61.30.905 and 61.30.910 are specifically not adopted. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.38. State Homestead Law Adopted as Tribal Law. Chapter 6.13 of the RCW provides for a homestead exemption for real properties, including manufactured homes, which may be subject to foreclosure or forfeiture. RCW 6.13 is adopted in its entirety except as set forth in this chapter and shall be used by the Tribal Court with regard to legal actions being taken pursuant to this chapter. The Tribal Court shall not be required to follow Washington case law in interpreting these statutes but may use state case law as a guide. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.39. State Receiver Law Adopted as Tribal Law. Chapter 7.60 of the RCW provides for the appointment and use of receivers under certain circumstances during the foreclosure and forfeiture processes. RCW 7.60 is adopted in its entirety except as set forth in this chapter and shall be used by the Tribal Court of the Suquamish Tribe in appointing and overseeing receivers during the course of a real property foreclosure or forfeiture. RCW 7.60.050 is specifically not adopted. The Tribal Court shall not be required to follow Washington case law in interpreting these statutes but may use state case law as a guide. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.40. State Sale under Execution Law Adopted as Tribal Law. Chapter 6.21 of the RCW provides for the procedures for selling foreclosed or forfeited property under execution. RCW 6.21 is adopted in its entirety except as set forth in this chapter and shall be used by the Tribal Court of the Suquamish Tribe and by the Suquamish Tribal Police to sell property that has been foreclosed or forfeited in accordance with the chapter. The Tribal Court shall not be required to follow Washington case law in interpreting these statutes but may use state case law as a guide. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.41. Exceptions in Adopting State Sale under Execution Law. In adopting the procedures of RCW 6.21 all references to the “superior court of the county” or “the court” shall mean the Suquamish Tribal Court. All references to the “sheriff” shall mean the chief of police of the Suquamish Tribe or other tribal officer as directed by the Suquamish Tribal Council. All references to the “office of the auditor of each county” shall mean the office of the Bureau of Indian Affairs if the property is in trust or restricted status and shall mean the tribal recording clerk for all other property. RCW 6.21.010 is specifically not adopted. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.42. State Redemption of Foreclosed Property Law Adopted as Tribal Law. Chapter 6.23 of the RCW provides for the procedures for the redemption of foreclosed property. RCW 6.23 is adopted in its entirety and shall be used by the Tribal Court when a foreclosed property is redeemed. The Tribal Court shall not be required to follow Washington case law in interpreting these statutes but may use state case law as a guide. In adopting the procedures of RCW 6.23, all references to the “superior court of the county” or “the court” shall mean the Suquamish Tribal Court. All references to the “sheriff” shall mean the chief of police of the Suquamish Tribe or other tribal officer as directed by the Suquamish Tribal Council. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.43. State Law Elimination of Title of Manufactured Homes Law Adopted as Tribal Law. Chapter 65.20 of the RCW provides for procedures that allow for the elimination of title on manufactured homes and treatment of manufactured homes thereafter as real property. RCW 65.20 is adopted in its entirety except as set forth in this chapter and shall be used by the Tribal Court in addressing manufactured homes subject to this chapter, except RCW 65.20.030 shall apply to security interests perfected after August 26, 2002. The Tribal Court shall not be required to follow Washington case law in interpreting these statutes but may use state case law as a guide. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.44. Exceptions in Adopting Elimination of Title of Manufactured Homes Law. RCW 65.20.010, 65.20.090, 65.20.900, 65.20.910, 65.20.920, 65.20.930, 65.20.940, and 65.20.950 are specifically not adopted. RCW 65.20.080 is specifically not adopted; however, persons eliminating title to a manufactured home under this chapter and processing such elimination through the Washington State Department of Licensing shall use the forms provided by the Washington State Department of Licensing when

eliminating title. RCW 65.20.120 shall only be applicable to manufactured homes placed on land within the reservation that is held in fee status by a Suquamish tribal member or an Indian. For manufactured homes placed on trust land within the reservation, the owner shall eliminate title of the manufactured home in accordance with this chapter; however, elimination of title shall also be recorded in the records of the tribal recording office by the tribal recording clerk and also forwarded to the BIA by the tribal recording clerk. RCW 65.20.130 is specifically not adopted. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.45. Foreclosure Prohibited on Manufactured Home Unless Title Eliminated. No person may foreclose upon a manufactured home using the processes provided in this chapter unless title to such manufactured home has been eliminated in accordance with those portions of RCW 65.20 which have been adopted in this chapter. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.46. Application of Chapter to Construction Mortgages. This chapter shall apply to construction mortgages in the same manner as any other mortgage. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.47. Notice to Tribal Executive Director. The plaintiff in any foreclosure or forfeiture action filed under this chapter shall, by personal service of the summons (or notice of suit) and complaint or notice of forfeiture on the Executive Director for the Suquamish Tribe at the same time the summons and complaint in the action is served on the defendant, give notice of the filing of the action to the Suquamish Tribe. This provision shall not cause or require the Suquamish Tribe to become party to the action. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.48. Intervention by Tribe in Foreclosure or Forfeiture Proceeding. The Tribe may petition the Tribal Court to intervene in any judicial mortgage foreclosure, nonjudicial mortgage foreclosure, deed of trust foreclosure, or real estate contract forfeiture 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. 2002-088 (part), passed Aug. 26, 2002)

5.7.49. Reasonable Efforts to Maintain Trust Status of Property — Nonjudicial Foreclosures and Forfeitures. Within seven (7) calendar days of initiating a nonjudicial foreclosure or forfeiture action under this chapter, the holder of the mortgage, deed of trust or real estate contract shall:

(a) Notify the Tribe, by writing sent first class, certified mail, return receipt requested, of the foreclosure or forfeiture action and of the Tribe's right of first refusal in the event an actual sale of the identified trust property occurs under this chapter; and

(b) Notify the U.S. Department of Interior, Bureau of Indian Affairs, Northwest Regional Office in Portland, Oregon, by writing sent first class, certified mail, return

receipt requested, of the foreclosure or forfeiture action and of the United States government's right of first refusal in the event an actual sale or forfeiture of the leasehold occurs under this chapter. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.50. Reasonable Efforts to Maintain Trust Status of Property — Judicial Foreclosures and Forfeitures. In the event the Tribal Court finds for the holder of the mortgage, deed of trust, or real estate contract in a judicial foreclosure or forfeiture action, the Court shall enter as part of any judgment a requirement that the holder, by written notice:

(a) Provide the Suquamish Tribe the right of first refusal of any sale of real property or assignment of a leasehold on any trust property and a reasonable time, but no longer than six (6) months, in which to respond; and

(b) Provide the United States government the right of first refusal of any assignment of a leasehold on any trust property and a reasonable time, consistent with federal law, in which to respond; and

(c) Provide a reasonable opportunity, but no longer than (3) three months, for qualified Indians to purchase any property in trust status prior to reselling the property in a court-sanctioned public foreclosure or forfeiture sale. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.51. Right of Entry. If compliance with §5.7.38 does not result in a sale of trust property or assignment of a leasehold on any trust property to the Tribe, the United States government, or a qualified Indian, then following foreclosure or forfeiture of a mortgage, deed of trust, or real estate contract as provided in this chapter, the mortgagee or other purchaser of the mortgaged property at a judicial mortgage foreclosure proceeding or at a nonjudicial mortgage foreclosure proceeding or the holder of title to property upon forfeiture of a real estate contract may enter the trust land to obtain possession in fee simple title of the foreclosed mortgaged property or to obtain the interest in the lease upon the foreclosed trust land. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.52. Evictions. Post-foreclosure actions in Tribal Court to obtain possession of the interest foreclosed may be undertaken at the option of the party who acquired an interest in the property through foreclosure by summary proceedings to obtain possession of the real property as provided in the Tribal Eviction Ordinance, Suquamish Tribal Code Chapter 5.4. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.53. Unlawful Detainer Action. Notwithstanding any provision of tribal law, a party obtaining foreclosure through the Tribal Court under this chapter shall be authorized to bring an eviction and unlawful detainer action pursuant to the Suquamish Tribal Code Chapter 5.4 against any person whose mortgage, deed of trust, real estate contract on land, or leasehold is subject to the provisions of this chapter, and such person shall be guilty of unlawful detainer under Suquamish Tribal Code Chapter 5.4 when such person

holds over or continues in possession of land which has been duly foreclosed upon pursuant to the provisions of this chapter, and such person shall be considered a tenant of lands or leaseholder of lands for the purpose of bringing an action under Suquamish Tribal Code Chapter 5.4. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.54. Tribal Interest. Notwithstanding any state statute adopted as tribal law by this chapter, where the Tribe is enforcing its own interest in lands or other mortgaged property:

(a) The Court shall grant the Tribe a judgment for any deficiency remaining unsatisfied after the application of the proceeds of sale of the mortgaged property, real or personal, to the debt owed the Tribe;

(b) The Court shall have no authority to upset the bid price; and

(c) No period or right of redemption shall be available to the mortgagor or any person deriving an interest from the mortgagor. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.55. Falsification or Omission of Material Information. Any person who falsifies documents or omits material information in any documents processed under this chapter is subject to prosecution under Chapter 7.10 of the Suquamish Tribal Code. (Res. 2002-088 (part), passed Aug. 26, 2002)

5.7.56. Severability. If any provision of this chapter or its application to any person or circumstance is held to be invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected. (Res. 2002-088 (part), passed Aug. 26, 2002)

Note: Subsections 5.7.54(1)-(3) renumbered 5.7.54(a)-(c) for consistency.