

TITLE 5. SPECIAL PROCEEDINGS

Chapter 5.9

VETERANS AFFAIRS MORTGAGE LENDING

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5.9.1. Purpose. The purpose of this ordinance is to detail procedures for recording, establishing priority, and foreclosure of mortgages, leasehold mortgages, and other similar security instruments to allow the Suquamish Tribe, its members, and other Indians to secure financing from the US Department of Veterans Affairs (VA) for the construction, remodeling, and/or purchase of family residences on trust and otherwise restricted lands within the jurisdiction of the Suquamish Tribe. The provisions of Suquamish Tribal Code (STC) Chapters 5.4, Evictions, and 5.5, Foreclosure of Leasehold Mortgages, remain in effect for all mortgage-related proceedings except those financed directly or indirectly through the VA. (Res. 2012-007, passed Jan. 9, 2012)

5.9.2. Title. This chapter shall be known as the “Veterans Affairs Mortgage Lending Ordinance.” (Res. 2012-007, passed Jan. 9, 2012)

5.9.3. Lien Priority. All mortgage loans recorded in accordance with the recording procedures set forth in this ordinance, including leasehold mortgages and loans made, guaranteed, insured, or held by a governmental agency, 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. In those cases where the government direct, guaranteed, or insured mortgage is created as a second mortgage, the loan shall assume that position. (Res. 2012-007, passed Jan. 9, 2012)

5.9.4. Recording of Mortgage Loan Documents. The tribal recording clerk shall maintain a system for the recording of mortgage loans and such other documents as the Tribe may designate by laws or resolution.

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

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

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

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

Upon completion of the above-cited endorsements, the tribal recording clerk shall make a true and correct copy of the mortgage 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)

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

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

(1) The name(s) of the borrower/mortgagor(s) of each mortgage loan, identified as such;

(2) The name(s) of the lender/mortgagee(s) of each mortgage loan, identified as such;

(3) The name(s) of the grantor(s), grantee(s) or other designation of each party named in any other documents filed or recorded;

(4) The date and time of the receipt;

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

(6) The name of the tribal recording clerk or designee receiving the mortgage or document.

(c) The certified copies of the mortgage loan and other documents and the log maintained by the tribal recording clerk shall be made available for public inspection and copying. Rules for copying shall be established and disseminated by the tribal recording clerk.

(d) All mortgages will be recorded with the Bureau of Indian Affairs in addition to any tribal recording provisions. (Res. 2012-007, passed Jan. 9, 2012)

5.9.5. Foreclosure Procedures. A borrower/mortgagor shall be considered to be in default when he or she is thirty (30) days past due on his or her mortgage payment(s) or is in violation of any covenant under the mortgage for more than thirty (30) days to the lender/mortgagee [i.e., the thirty-first (31st) day from the payment due date].

(a) When a borrower/mortgagor is thirty (30) days past due on his or her mortgage 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 mortgaged property.

(2) Document that it has made at least one telephone call to the borrower/mortgagor (or to the nearest telephone designated by the borrower/mortgagor as able to receive and relay messages to the borrower/mortgagor) for the purpose of trying to arrange a face-to face interview.

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

(c) When the borrower/mortgagor is past due on three (3) installment payments and at least ten (10) days before initiating a foreclosure action in the Suquamish 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) That information regarding the loan and default/delinquency will be given to credit bureaus.

(2) Of homeownership counseling opportunities or programs available through the lender or otherwise.

(3) Of other available assistance regarding the mortgage/default.

(4) In addition to the preceding notification requirements, the lender/mortgagee shall complete the following additional notice requirements:

(A) Notify the borrower/mortgagor that if the leasehold mortgage remains past due on three (3) installment payments, the lender/mortgagee may ask the applicable governmental agency to accept assignment of the leasehold mortgage if this is an option 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; and

(C) Provide the borrower/mortgagor with the names and addresses of government officials to whom further communications may be addressed, if any.

(d) If a borrower/mortgagor is past due on three (3) or more installment payments 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 the Tribal Court by filing a verified complaint as set forth in §5.9.6. (Res. 2012-007, passed Jan. 9, 2012)

5.9.6. Foreclosure Complaint and Summons. (a) The verified complaint in a mortgage foreclosure proceeding shall contain the following:

(1) The name of the borrower/mortgagor and each person or entity claiming through the borrower/mortgagor subsequent to the recording of the mortgage loan, including each subordinate lienholder except the Tribe with respect to a claim for a tribal leasehold, as a defendant;

(2) A description of the property subject to the mortgage loan;

(3) A concise statement of the facts concerning the execution of the mortgage loan and in the case of a leasehold mortgage the lease; the facts concerning the recording of the mortgage loan or the leasehold mortgage; the facts concerning the alleged default(s) of the borrower/mortgagor; and such other facts as may be necessary to constitute a cause of action;

(4) True and correct copies of each promissory note, mortgage, deed of trust, or other recorded real property security instrument (each a “security instrument”) and any other documents relating to the property and if a leasehold mortgage, a copy of the lease and any assignment of any of these documents; and

(5) Any applicable allegations concerning relevant requirements and conditions prescribed in federal statutes and regulations; tribal codes and regulations; and/or provisions of the promissory note, security instrument, and if a leasehold mortgage, the lease.

(b) The complaint shall be verified by the Tribal Court clerk along with a summons specifying a date and time of appearance for the defendant(s). (Res. 2012-007, passed Jan. 9, 2012)

5.9.7. Service of Process and Procedures. Any foreclosure complaint must be in writing and must be delivered to the borrower/mortgagor in the following manner.

(a) Delivery must be made by an adult person with a copy sent by mail and is effective when it is personally delivered:

(1) To a borrower/mortgagor;

(2) To an adult living in the property; or

(3) To an adult agent or employee of the borrower/mortgagor.

(b) If the notice cannot be given by means of personal delivery or the borrower/mortgagor cannot be found, the notice may be delivered:

(1) By certified mail, return receipt requested, at the last known address of the borrower/mortgagor, or

(2) By securely affixing a copy of the notice to the main entry door of the property in such a manner that it is not likely to blow away; by posting a copy of the notice in some public place near the premises, including a tribal office, public store, or other commonly frequented place; and by sending a copy first class mail, postage prepaid, addressed to the borrower/mortgagor at the premises.

(c) The person giving notice must keep a copy of the notice and proof of service in accordance with this section, by affidavit or other manner recognized by law. (Res. 2012-007, passed Jan. 9, 2012)

5.9.8. Cure of Default. Prior to the entry of a judgment of foreclosure, any borrower/mortgagor or a subordinate lienholder may cure the default(s) under the mortgage by making a full payment of the delinquency to the lender/mortgagee and all

reasonable legal and court costs incurred in foreclosing on the property. 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 mortgage. There shall be no right of redemption in any leasehold mortgage foreclosure proceeding. (Res. 2012-007, passed Jan. 9, 2012)

5.9.9. Judgment and Remedy. This matter shall be heard and decided by the Tribal Court 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:

(a) Foreclosing the interest of the borrower/mortgagor and each other defendant, including subordinate lienholder, in the mortgaged property; and

(b) Granting title to the property to the lender/mortgagee or the lender's designated assignee; in the case of a leasehold mortgage, the lease and the leasehold estate will be assigned to the lender/mortgagee or the lender's designated assignee, subject to the following provisions:

(1) The lender shall give the Tribe the right of first refusal on any acceptable offer to purchase the lease and the lessee's leasehold interest in the property described in the lease which is subsequently obtained by the lender or lender's designated assignee; and

(2) The lender or lender's designated assignee may only transfer, sell, or assign the lease and lessee's leasehold interest in the property described in the lease to a tribal member, the Tribe, or the tribal housing authority. (Res. 2012-007, passed Jan. 9, 2012)

5.9.10. Foreclosure Evictions. Foreclosure evictions shall be handled according to the general eviction process set forth below.

(a) Jurisdiction. The provisions of this section shall apply to all persons and property subject to the governing authority of the Tribe as established by the Constitution and Bylaws of the Suquamish Tribe, the Suquamish Tribal Code, or applicable federal law.

(b) Unlawful Detainer. A lessee, sublessee, or other occupant of a leasehold estate subject to a leasehold mortgage shall be guilty of unlawful detainer if such person shall continue in occupancy of such leasehold estate without the requirement of any notice by the lessor, after such person's leasehold estate has been foreclosed in a leasehold mortgage foreclosure proceeding in the Tribal Court.

(c) Complaint and Summons. The lender or federal agency which made, guaranteed, or insured the mortgage loan, as appropriate, shall commence an action for unlawful detainer by filing with the Tribal Court, in writing, the following documents:

(1) A complaint, signed by the lender or federal agency or an agent or attorney on their behalf:

(A) Citing facts alleging jurisdiction of the Tribal Court;

(B) Naming as defendants the mortgagors and any other record owner, including sublessees and subordinate lienholders, of which the complainant has record notice except the Tribe with respect to a claim for a tribal tax on the leasehold estate subject to the leasehold mortgage;

(C) Describing the leasehold estate subject to the leasehold mortgage;

(D) Stating the facts concerning the execution of the lease and the leasehold mortgage; the recording of the leasehold mortgage; and 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, requiring the defendants to file a response to the complaint by the date specified in the summons. The deadline specified in the summons for filing a response shall be no less than six (6) nor more than thirty (30) days from the date of service of the summons and complaint. The summons shall notify the defendants that judgment will be taken against them in accordance with the terms of the complaint unless they file a response with the Court by the date specified in the summons.

(d) Service of Summons and Complaint. A copy of the summons and complaint shall be served upon the defendant(s) in the manner provided by STC Chapter 4.2 Commencement of Actions.

(e) Power of the Tribal Court. (1) The Tribal Court shall enter an order of repossession if:

(A) Notice of suit is given by service of summons and complaint in accordance with the procedures provided herein; and

(B) The Tribal Court finds during pretrial proceedings or at trial that the lessee, sublessee, or other occupant under color of law of the leasehold estate subject to the leasehold mortgage is guilty of an act of unlawful detainer.

(2) Upon issuance of an order of repossession, the Tribal Court shall have the authority to enter a judgment against the defendants for the following, as appropriate:

(A) Back rent, unpaid utilities, and any charges due the Tribe, tribal housing authority, other public housing authority, or sublessor under any sublease or other written agreement, except for a leasehold mortgage;

(B) Any and all amounts secured by the leasehold mortgage that are due the lender or federal agency; and

(C) Damages to the property caused by the defendants, other than ordinary wear and tear.

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

(f) Enforcement. Upon issuance of an order of repossession by the Tribal Court, tribal law enforcement officers shall help plaintiffs enforce same by evicting the defendants and their property from the unlawfully occupied leasehold estate. In all cases involving the lender or federal agency, the order of repossession shall be enforced no later than forty-five (45) days after a pretrial proceeding or trial in which the Tribal Court finds against defendants, subject to §5.9.10(g), and provided, that no party exercised the right to cure a default or right of first refusal as described in §5.9.8 and §5.9.9(b)(1).

(g) Continuances in Cases Involving the Lender or Federal Agency. Except by agreement of all parties, there shall be no continuances in cases involving the lender or federal agency which originally made, insured, or guaranteed the mortgage loan that will interfere with the requirement that the order of repossession be enforced not later than forty-five (45) days after a pretrial proceeding or trial in which the Tribal Court finds against defendants, subject to the sound discretion of the Court. (Res. 2012-007, passed Jan. 9, 2012)

5.9.11. No Merger of Estates. 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 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. (Res. 2012-007, passed Jan. 9, 2012)

5.9.12. Certified Mailing to Tribe. In any foreclosure proceedings on a leasehold mortgage where the Tribe is not named as a defendant, a copy of the summons and complaint shall be mailed to the Tribe by certified mail, return receipt requested, within five (5) days after the issuance of the summons. If the lessor is not the Tribe, this notice will also be mailed to the lessor at the same time the notice is mailed to the Tribe. If the location of the lessor cannot be ascertained after reasonable inquiry, a copy of the summons and complaint shall be mailed to the lessor in care of the superintendent of the Puget Sound Agency of the Bureau of Indian Affairs. (Res. 2012-007, passed Jan. 9, 2012)

5.9.13. 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 the granting of such 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. 2012-007, passed Jan. 9, 2012)

5.9.14. Appeals. Appeals under this ordinance shall be handled in accordance with the general tribal appellate provisions. (Res. 2012-007, passed Jan. 9, 2012)

Note: Subsections 5.9.10(f)-(h) renumbered to 5.9.10(e)-(g) to correct original omission of letter (e).