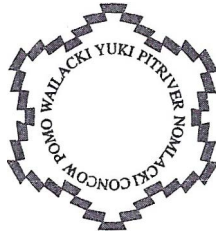


ROUND VALLEY INDIAN TRIBES

A Sovereign Nation of Confederated Tribes

TRIBAL COUNCIL OFFICE
POST OFFICE BOX 448
COVELO, CALIFORNIA 95428
PHONE: 707-983-6126
FAX: 707-983-6128



LOCATION: ON STATE HWY 162
ONE MILE NORTH OF COVELO
IN ROUND VALLEY
TRIBAL TERRITORY SINCE TIME BEGAN

ROUND VALLEY RESERVATION ESTABLISHED 1856

ORDINANCE RV-2004-03

Of the

**ROUND VALLEY INDIAN HOUSING
AUTHORITY**

MORTGAGE LENDING CODE

APPROVED: January 5, 2004

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ROUND VALLEY RESERVATION, ESTABLISHED 1856

RESOLUTION NO. RV-2004-03

A RESOLUTION DULY ADOPTED BY THE ROUND VALLEY TRIBAL COUNCIL APPROVING THE MORTGAGE LENDING CODE

WHEREAS, the Round Valley Indian Tribes is a federally recognized Indian Tribe eligible for all rights and privileges afforded to recognized Tribes, and

WHEREAS, the Round Valley Tribal Council is the governing body of the Round Valley Indian Tribes under the authority of the Tribe's Constitution, and

WHEREAS, Article V, Section 1, subsection (y) and (z) vests the Tribal Council with the authority to prescribe the rules and process for exercise of said authority, including enactment of tribal codes, ordinances and resolutions, and

WHEREAS, on February 18, 2003, the Tribal Council unanimously adopted the Round Valley Indian Tribes Mortgage Lending Code.

NOW THEREFORE BE IT RESOLVED, that the Tribal Council hereby affirms by resolution the enactment on February 18, 2003 of the attached Round Valley Indian Tribes Mortgage Lending Code.

BE IT FURTHER RESOLVED, that the President of the Round Valley Tribal Council, and/or the Vice-President in the absence of the President is hereby authorized by the governing body to execute said resolution and any other documents authorizing the approval of the Round Valley Indian Tribes Mortgage Lending Code.

CERTIFICATION

I, the undersigned as President of the Round Valley Indian Tribes do hereby certify that this resolution was adopted at a duly called and duly noticed meeting of the Round Valley Tribal Council at which five (5) members were present, constituting a quorum held on the 5th day of January 2004, and that this resolution was adopted by a vote of:

For	<u>Four (4)</u>
Against	<u>None (0)</u>
Abstentions	<u>One (1)</u>

And that said resolution has not been rescinded or amended in any way.

RESOLUTION NO. RV-2004-03

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President, Round Valley Tribal Council

ATTEST:



Executive Secretary, Round Valley
Tribal Council

ROUND VALLEY INDIAN TRIBES MORTGAGE LENDING CODE

CHAPTER 1 GENERAL PROVISIONS

1.1 Purpose

The purpose of this Code is to provide guidelines for mortgage lending rules and regulations for the Round Valley Indian Tribes (hereafter ATribes@). These regulations are meant to facilitate home ownership on lands within the Tribes' jurisdiction, and serves as the Tribes' law governing the rights and duties of building owners, sellers, buyers, borrowers, lenders, lessors and lessees. This Code is also intended to include all necessary laws and procedures vital to obtaining governmental funding for tribal housing programs or loan guarantees for private or tribal housing construction, purchase, or renovation.

1.2 Applicability

The Tribes' Mortgage Lending code shall apply to any and all mortgages, leasehold mortgages, and agreements to secure an interest in all housing, dwellings, or accommodations for human occupation or residence, including buildings on trust lands.

1.3 Jurisdiction

(A) The Tribal Court shall exercise jurisdiction over all matters arising within the Tribes' jurisdiction, which is extended over all buildings and lands that lie within:

- (1) The exterior boundary of the Round Valley Indian Reservation;
- (2) Lands owned by, held in trust for, leased or used by the Tribes, its members, its designated housing entity or any other entity of the Tribes; or

(B) Jurisdiction is extended over all persons or entities within the jurisdiction of the Tribes who sell, rent, lease, or allow persons to occupy housing, dwellings or accommodations for the purpose of human dwelling, occupation, or residence, and all persons who buy, rent, lease, or occupy such dwellings or occupations. Such personal jurisdiction is extended over all persons and entities whether or not they are members of the Tribes, whether they are Indian or non-Indian, and whether they have a place of business within the Tribal Reservation, to the extent fully allowable under Federal law.

1.4 Definitions

As used in this Code, the following words will have the meanings given them in this Section unless the context plainly requires otherwise:

Borrower/Mortgagor is the Tribes, the Round Valley Indian Housing Authority (hereafter AHousing Authority@), or any individual Indian or any heir, successor, executor, administrator or assign of the Tribes or such Indian who has executed a Mortgage as defined in this code or a leasehold mortgage as defined in this Code.

Court means the court of competent jurisdiction, including Tribal Court, or where appropriate, also the Tribal Council sitting as an interim tribal court.

Forbearance - the act of declining, usually for a period of time, to enforce a legal right.

Housing Authority is the Round Valley Indian Housing Authority, established by Tribal Ordinance RV-75-1 for the purpose of providing housing assistance and constructing and maintaining dwellings for housing and public use within the territorial jurisdiction of the Tribes.

HUD - means the Department of Housing and Urban Development.

Indian - any person who is a member of an Indian Tribe or who is recognized as a California Indian or Alaska Native by the Tribes, the federal government, or the State of California.

Lease is an agreement, written or oral, as well as valid rules and regulations, regarding the terms and conditions of the use and occupancy of real property, dwelling unit, building, or premises, including a lease-to-purchase agreement.

Leasehold Estate - means the possessory right in trust lands established under a Lease between the Tribes, as Lessor, and a member of the Tribes, as Lessee; or in the case of Indian allotments, an allottee-interest holder and other interest holders.

Leasehold Mortgage is the mortgage of a lease of property given to secure loan, and may be created under the auspices of any federal agency homebuyer program, the Mutual Help Home Ownership administered by the Indian Housing Authority, or any other agreement entered between a Borrower/Mortgagor and a Lender/Mortgagee.

Lender/Mortgagee is any private lending institution established to primarily loan

funds and not to invest in or purchase properties, the Tribes, the Housing Authority, or a United States government agency which loans money, guarantees or insures loans to a Borrower for construction, acquisition, or rehabilitation of a home. It is also any lender designated assignee(s) or successor(s) of such Lender Mortgagee.

Lessor is the legal, beneficial or equitable owner or interest holder of property under a Lease, including the Tribes or Housing Authority. Lessor may also include the heir(s), successor(s), executor(s), administrator(s) or assign(s) of the lessor.

Lessee is a person under a leasehold estate, including, but not limited to, a home buyer under a federal or private mortgage lending program.

Mortgage - shall mean an interest in land or real property created by a written instrument providing security for the performance of a duty or the payment of a debt. Where trust lands, including allotment lands, are involved, mortgage shall mean the first-lien mortgage of a Leasehold Estate or other beneficial interest in trust land given to secure a mortgage loan made by a Lender.

Mortgage Foreclosure Proceeding -shall mean a proceeding:

- (i) To foreclose the interest of the Mortgagor/Borrower and each person or entity claiming through the Borrower/Mortgagor, in real property, a building, or in the case of a Leasehold Mortgage, a Lease for which a Mortgage has been given under the home purchase program of any federal agency; and
- (ii) To assign where appropriate the Borrower/Mortgagor interest to a designated assignee.

NAHASDA refers to the Native American Housing and Self-Determination Act of 1996 codified at 25 U.S.C. 4101 et seq.

Nuisance - shall mean maintenance or the allowance on the Mortgaged Property of a condition which:

- (i) Unreasonably threatens the health or safety of the public or neighboring land users; or
- (ii) Unreasonably and substantially interferes with the ability of neighboring real property users to enjoy the reasonable use and occupancy of their property.

Reservation shall include (1) all lands and territory within the exterior boundaries of the Round Valley Indian Reservation; (2) any and all lands owned by, held in trust for, leased or used by the Tribes, its members, its Housing Authority, or any

other entity of the Tribes; and (3) any and all lands which the Tribes may acquire for itself or which the United States may acquire for the benefit of the Tribes or its members.

Subordinate Lienholder is the holder of any lien, including a subsequent mortgage, perfected subsequent to the recording of a Mortgage under this Code, except the Tribes shall not be considered a subordinate lienholder with respect to any claim regarding a tribal tax on real property.

Tribal Court - shall mean (i) a Tribal Court established under the Constitution and laws of the Tribes, or (ii) any such body authorized by tribal law to exercise the powers and functions of a court of law to adjudicate disputes, including foreclosure and eviction proceedings and to use and enforce orders in such proceedings.

Unlawful Detainer Action - shall be a suit brought before the Tribal Court to terminate a Borrower/Mortgagor's interest in real property, including trust lands, and/or to evict any person from occupancy of such property.

CHAPTER 2 MORTGAGES

2.1 Priority

All mortgages, including leasehold mortgages, recorded in accordance with the recording procedures set forth in this Chapter, including loans guaranteed or held by a governmental agency, will have priority over any lien not perfected at the time of such recording.

2.2 Recording of Mortgage Documents

- (A) All mortgages on trust lands executed under this will be filed and recorded with the Bureau of Indian Affairs, or if applicable, with the Tribes' recording system. This will substitute California's mortgage recording systems.
- (B) Under a tribal recording system, the Tribal Recording Clerk shall endorse on any mortgage 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, Tribal Recording Clerk shall make a true and correct copy of the mortgage or other document and shall certify the copy as follows:

Round Valley Indian Tribes)
)
Round Valley 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) _____

_____ (Date)

The Tribal Recording Clerk must maintain the copy of the records of the recording system and shall return the original of the mortgage or other document to the person or entity that presented the same for recording.

- (C) The Tribal Recording Clerk must also maintain a log of each mortgage or other document recorded in which there must be entered:
- (1) The name(s) of the Borrower/Mortgagor of each mortgage, identified as such;
 - (2) The name(s) of the Lender/Mortgagee of each 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 filed or recorded;
 - (4) The date and time of the receipt;

- (5) The filing number assigned by the Tribal Recording Clerk
- (6) The name of the Tribal Recording Clerk or designee receiving the mortgage or document.
- (D) The certified copies of the mortgages 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 designated by the Tribal Recording Clerk.
- (E) All mortgages on non-trust lands executed under this Code shall be filed and recorded with the with the State=s recording system by filing and recording the mortgage with the county recorder=s office in which the land lies.

2.3 Mortgages on Trust Lands.

- (A) Allottees or interest holders of Indian trust allotments are permitted to mortgage allotment lands with the approval of the Bureau of Indian Affairs (BIA). In lieu of mortgaging allotted trust lands, a leasehold mortgage may be created. Once a lease from the BIA is obtained, the allottee or interest holder may mortgage that lease.
- (B) With regard to mortgages concerning tribal trust lands, no Borrower may mortgage a leasehold interest without first (i) having a valid lease for such property from the Tribes and approved by the BIA (ii) obtaining the written consent of the Tribal Council to mortgage the leasehold interest. Any mortgage given in violation of this Section shall be void and of no effect.

CHAPTER 3 FORECLOSURE

- 3.1 Notice of Default Required - If a Borrower defaults in performance under a Mortgage, the Lender must provide a written Notice of Default prior to enforcing the terms and conditions of the Mortgage and prior to availing itself of the remedies under this Code. All Notices of Default on a Mortgage shall be properly served by Lender on Borrower, all Subordinate Lienholders, and the Tribes and/or Housing Authority. Prior to initiating a foreclosure proceeding on any HUD-guaranteed mortgage, notice shall be provided to the Secretary of HUD or the duly-appointed representative.

3.2 Actions to Foreclose

- (A) An action to foreclose a security interest shall commence when the complaint of foreclosure is filed with the proper adjudicatory body.
- (B) A Borrower/Mortgagor shall be considered to be in default when s/he is thirty (30) days past due on his mortgage payment(s) to the Lender/Mortgagee or when s/he has been in breach of any other material mortgage provision for at least thirty (30) days.
- (C) Before a Borrower/Mortgagor becomes ninety (90) days delinquent on his or her mortgage payments 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) Lender/Mortgagee shall document that it has made at least one phone call to the Borrower/Mortgagor (or the nearest phone as designated by the Borrower/Mortgagor, able to receive and relay messages to the Borrower/Mortgagor) for the purpose of trying to arrange a face-to-face interview.
- (D) Lender/Mortgagee may appoint an agent to perform the services or arranging and conducting the face-to-face interview specified in this action.
- (E) Before the Borrower/Mortgagor has been delinquent for ninety (90) days and at least ten (10) days before initiating a foreclosure action in 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 Tribes, as follows:
 - (1) Advise the Borrower/Mortgagor that information regarding the loan and default will be given to credit bureaus.
 - (2) Advise the Borrower/Mortgagor of homeownership counseling opportunities/programs available through the Lender or otherwise.

(3) Advise the Borrower/Mortgagor 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 when a Leasehold Mortgage is involved: (i) notify the Borrower/Mortgagor that if the Leasehold Mortgage remains in default for more than ninety (90) days, the Lender/Mortgagee may ask the applicable governmental agency to accept assignment of the Leasehold Mortgage if this is a requirement of the governmental program; (ii) 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 if the mortgage is assigned; and (iii) provide the Borrower/Mortgagor with names and address of government officials to whom further communications may be addressed, if any.

(F) If a Borrower/Mortgagor has been delinquent for ninety (90) days or more 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 Section 3.3 of this Ordinance.

3.3 Right of First Refusal

(A) In the event of default by the Borrower on any mortgage or other loan agreement for which a lease is pledged as security, the Lessor shall have the Right of First Refusal to acquire the Borrower's interest in the premises (subject to all valid liens and encumbrances) upon:

- (1) Payment of all sums then in arrears; and
- (2) either payment of the balance of the loan or assumption of the mortgage.

(B) The Right of First Refusal may be exercised at any time within thirty (30) days after the Lessor receives notice in writing from the Lender of the Borrower's default. The Notice of the Lessor's Intent to Exercise the Right of First Refusal shall be provided in writing from the Lessor to the Borrower, all Subordinate Lienholders, and the Lender; provided however, that the Borrower shall have the remainder of the cure

period in which to cure the default. The estate acquired by the Lessor through exercise of its Right of First Refusal shall not merge with any other estate or title held by the Lessor as long as the lease is mortgaged or otherwise pledged as security for any loan.

3.4 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, 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;
 - (3) A concise statement of the facts concerning the execution of the Mortgage or in the case of a Leasehold Mortgage the lease; the facts concerning the recording of the Mortgage 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, if a Leasehold Mortgage then a copy of the Lease, the Mortgage, or assignment thereof relating to the property (Appended as exhibits); and
 - (5) Any applicable allegations concerning relevant requirements and conditions prescribed in (1) federal statutes and regulations (2) tribal codes, ordinances and regulations; and/or (3) provisions of the Lease or Leasehold Mortgage, or security instrument.
- (B) The complaint shall be provided to the Court Clerk along with a summons specifying a date and time of appearance for the Defendant(s).

3.5 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 and is effective when it is:
 - (1) Personally delivered to a Borrower/Mortgagor with a copy sent by mail, or
 - (2) Personally delivered to an adult living in the property with a copy sent by mail, or
 - (3) Personally delivered to an adult agent or employee of the Borrower/Mortgagor with a copy sent by mail.
- (B) If the notice cannot be given by means of personal delivery, or the Borrower/Mortgagor cannot be found, the notice may be delivered by means of:
 - (1) Certified mail, return receipt requested, at the last known address of the Borrower/Mortgagor, or
 - (2) Securely taping 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, and 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.
- (D) Parties to the matter shall include the creditor, debtor, and all subordinate lienholders. For a leasehold agreement, additional parties shall include the Tribes and the United States.
- (E) Defendants shall have thirty (30) days to file an answer, counterclaim, and/or affirmative defenses, and shall serve a copy of the pleadings on the Plaintiff pursuant to Section 3.5.

3.6 Certified Mailing to Tribe and Lessor

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 Tribes 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 applicable agency of the Bureau of Indian Affairs.

3.7 Intervention

The Tribes or any Lessor may petition the Tribal Court to intervene in any Lease or Leasehold Mortgage foreclosure proceeding under this Code. 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 Tribes, except as may be expressly authorized by the Tribes.

3.8 Appeals

Appeals under this Code shall be handled in accordance with any existing general tribal appellate provisions.

3.9 Cure of Default

At any time 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.

3.9.1 Tribal Court Procedures

(A) Complaints filed with the Tribal Court pursuant to this Code 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.

(B) Discovery and Pre-hearing Proceedings

Extensive, prolonged, or time-consuming discovery and prehearing proceedings will not be permitted, except in the interests of justice and for good cause shown by the moving party. Discovery shall be informal, and reasonably provided on demand of a party, and it shall be completed within five (5) calendar days of the date of

hearing. Requests for discovery shall be made no later than three (3) calendar days following the setting of a hearing date. The Tribal Court may enter reasonable orders requiring discovery or protecting the rights of the parties upon reasonable notice.

- (C) Evidence Evidence in proceedings under this Code shall be informal, and may include relevant and reliable hearsay evidence if such evidence is not the basis for a final decision. The books and records of the parties as to the payment or nonpayment of monies owed will be received in evidence and the files and business records of the Lender/Mortgagee with respect to the agreement of the parties will be received in evidence upon their presentation to the Tribal Court; provided, however, that a Borrower/Mortgagor may examine the custodian of such records as to their contents. All hearings will be informal and designed to receive evidence in a fair and just manner.
- (D) Burden of Proof The burden of proof in all proceedings under the Code shall be preponderance of the evidence.
- (E) Judgment and Remedy
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 foreclosing the interest of the Borrower\Mortgagor and each defendant, including Subordinate Lienholder, in the Mortgage, awarding ownership of the foreclosed property and/or lease securing the property, to the Lender\Mortgagee or the Lender's Designated Assignee and ordering the sale of the foreclosed property. Said sale shall be executed by a duly authorized law enforcement officer or officer of the Tribal Court, appointed by the Tribal Court for such a purpose in the manner specified in this Code under Sections 3.9.5 and 3.9.6.
- (F) In the case of a Leasehold Mortgage, the Lease will be assigned to the Lender/Mortgagee or the Lender's Designated Assignee, subject to the following provisions:
- (1) In accordance with Section 3.3, the Lender shall give the Tribes or Housing Authority the *Right of First Refusal* on any acceptable offer to purchase the Lease or Leasehold Mortgage which is subsequently obtained by the Lender or Lender's Designated

- (2) Citing facts alleging jurisdiction of the Tribal Court;
- (3) 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);
- (4) Describing the Leasehold Estate subject to the Leasehold Mortgage;
- (5) Stating the facts concerning (1) the execution of the lease and the Leasehold Mortgage; (2) the recording of the Leasehold Mortgage; and (3) the facts upon which he or she seeks to recover;
- (6) Stating any claim for damages or compensation due from the persons to be evicted; and
- (7) Otherwise satisfying the requirements of the Tribal Court.
- (8) 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 6 nor more than 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 defendants in the manner provide under Section 3.5 of this Code.

(E) Procedures for Service of Notice. Notices required or authorized in the immediately preceding section shall be given in writing either by:

- (1) delivering a copy personally to the Borrower/ Mortgagor or to any other occupant under color of law, or to any adult residing on the Leasehold Estate and, if applicable, to any Sublessee; or
- (2) posting said notice in a conspicuous place near the entrance to said Leasehold Estate, and sending an additional copy to the Lessee or to any other occupant

Assignee.

(2) The Lender or Lender's Designated Assignee may only transfer, sell or assign the Lease to a Tribal member, the Tribes, or the Tribal Housing Authority. *Should the Tribes and Housing Authority be unable or unwilling to purchase the lease or property, the Lender and the Tribes/Housing Authority shall reach a mutually agreeable alternative tenancy arrangement.*

(3) Any other transfer, sale or assignment of the Lease or Leasehold Mortgage shall only be made to a Tribal member, the Tribe, or the Tribal Housing Authority during the remaining period of the leasehold.

- (G) The Tribal Court shall determine the issues and may, in its discretion, direct the sale of the encumbered property and direct the application of the proceeds to the expenses of sale, hearing costs and the amount due plaintiff. However, in secured loans pursuant to Section 184 Indian Housing Loan Guarantee Program, the mortgage amount shall be satisfied before any other obligation.

3.9.2 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 Tribes as established by the Tribal Constitution, 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:

- (H) Except by agreement of all parties, there shall be no continuances in cases involving the lender or Federal Agency that will interfere with the requirement that the Order of Possession be enforced no later than 15 days after the date of issuance.
- (I) Foreclosure eviction proceedings shall not occur until after the Borrower/Mortgagor, lessee, occupier has received thirty (30) calendar day's notice, and remains in possession of the property contrary to the terms of the notice. All foreclosure evictions shall occur no later than sixty (60) days from the date of service of notice upon the Borrower/Mortgagor that foreclosure was completed.

3.9.3 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.

3.9.4 Notice of Property Sale

Before the sale of real property subject to a foreclosure decree and order of sale, notice must be given by posting written notice of the time and place of the sale, describing the property. Such notice must be posted for 20 days before the date of the intended sale and must be posted in at least four (4) public places on the Reservation.

3.9.5 Conduct of Sale

- (A) All sales must be made at auction conducted at the Tribal Office, to the highest bidder between the hours of 9:00 a.m. and 5:00 p.m. on any tribal business day.
- (B) The Tribal Court shall appoint a duly authorized law enforcement officer or officer of the Tribal Court to conduct the sale under this Section.

under color of law, and, if applicable, to the Sublessee, by certified mail, return receipt requested, properly addressed, postage paid.

Proof of service may be made by affidavit of any adult person stating the he has complied with the requirements of one of the above methods of service.

- (F) Power of the Tribal Court. The Tribal Court shall enter an Order of Possession if:
- (1) Notice of suit is given by service of summons and complaint in accordance with the procedures provided herein; and
 - (2) The Tribal Court shall find during pre-trial 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.

Upon issuance of an Order of Possession, the Tribal Court shall order possession of the property by the plaintiff and have authority to enter a judgment against the defendants for the following, as appropriate: (1) 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); (2) any and all amounts secured by the Leasehold Mortgage that are due the lender (or Federal Agency); and (3) 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.

- (G) Enforcement. Upon issuance of an Order of Possession by the 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 15 days after a pre-trial proceeding or trial in which the Court finds against defendants, and provided that no party exercised the right to cure a default or right of first refusal.

- (D) Purchaser shall receive sufficient certified copies of the Certificate of Sale in order for purchaser to file one copy with the proper recorder=s office and one copy for the purchaser=s own records.
- (E) If the purchaser fails to obtain possession of the property due to irregularity in the proceedings related to the sale or because the property sold was not subject to execution and sale, the court must, after hearing notice and motion, revive the original judgment in the name of the petitioner, for the amount paid by the purchaser, with interest at a rate of 8% per annum, and the judgment so revived has the same effect as would the original judgment.

3.9.8 Redemption

- (A) All non-trust real property is subject to redemption unless otherwise prohibited under a HUD mortgage insurance program.
- (B) Judgment debtor may redeem real property from the purchaser within six (6) months after the sale by paying the purchaser for the amount of his purchase together with interest thereon at the rate of 8% per annum from the date of sale to the date of redemption, together with the amount of any assessments or reasonable additional costs which the purchaser may have paid thereon after the date of purchase.
- (C) Written notice of redemption must be sent to the tribal real property office, the proper recorder=s office, and the Housing Authority, if money from NAHASDA were used in the building, maintenance or financing of the property.
- (D) If the debtor redeems, the sale is terminated and the debtor is restored his or her property.
- (E) Upon redemption, the person who purchased the property at auction must execute and deliver to the debtor sufficient copies of a Certificate of Redemption. Such a Certificate must be proved before a Notary Public. Copies of the Certificate shall be filed at the tribal real property office, the proper recorder=s office and the

- (C) The person conducting the sale must not be a purchaser or be interested in any purchase at such sale.
- (D) If the property being sold includes several known parcels, each parcel shall be sold separately.
- (E) If a purchaser refuses to pay the amount bid by the purchaser for the property sold to her or her at sale, the officer conducting the sale may again sell the property to the highest bidder and recover any amount of an occasioned loss from the bidder who refused to pay.

3.9.6 Record on Sale

- (A) The officer who conducts the sale shall file a report with the court reciting the details of the sale;
- (B) A certified copy of the officer=s report and a certified copy of the Hearing Officer=s order directing sale shall be filed by the purchaser with the appropriate recorder=s office.

3.9.7 Title

- (A) Upon sale, the purchaser acquires all the right, title, interest and claim of the judgment debtor.
- (B) The property may be subject to redemption.
- (C) At the time of payment, the officer conducting the sale must give the purchaser a Certificate of Sale containing:
 - (i) name of purchaser;
 - (ii) name of judgment debtor;
 - (iii) legal description of the property;
 - (iv) price bid for parcel;
 - (v) total price paid;
 - (iv) statement that sale is subject to redemption pursuant to Section 3.9.8 of this Code.

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- (F) The judgment debtor who wished to redeem property must present the person from whom the judgment debtor is redeeming the property a certified copy of the judgment and order of sale under which s/he claims a right to redeem, together with the debtor=s affidavit that s/he is the person entitled to redeem and showing the amount due to redeem the property.
- (G) From the time of sale until redemption, the purchaser is entitled to receive from the tenants in possession, the rents of the property. The debtor is entitled to any rents or profits received by the purchaser from the property sold prior to redemption, the amounts shall be a credit on the redemption money to be paid. The debtor who is redeeming the property may ask the purchaser to provide an account of any rents or profits received.

3.9.9 Surplus and Deficiencies

- (A) If there is a surplus of money after the payment of the costs of court and the sale and payment of the judgment creditor, such funds shall be distributed by the court to the judgment debtor.
- (B) A deficiency judgment may be entered by the court in a foreclosure and sale of real property, where the amount due under the secured indebtedness plus costs of court/hearings and sale exceed the reasonable value of the property at the time of sale.