

Title XXV - Foreclosure of Mortgages and Liens on Real Estate

Sec. 101. Jurisdiction

Sec. 102. Definitions

Sec. 103. Scope

Sec. 104. Recording

Sec. 105. Proceedings in Tribal Court

(a) Foreclosure proceedings

(b) Order scheduling hearing

(c) Service of the complaint and order

Sec. 106. The hearing and judgement on the foreclosure complaint

Sec. 107. Judgement of the Court

Sec. 108. Foreclosure sales

Sec. 109. Deficiency judgement

Sec. 110. Right of redemption

(a) HUD Mortgages

(b) Non HUD mortgages or liens

Sec. 111. Non HUD mortgagor's possession of lands during the period of redemption

Sec. 112. Cure of default

(a) HUD mortgages

(b) Mortgages and liens other than HUD mortgages

Sec. 113. Foreclosure evictions

Sec. 114. No merger of estates

Sec. 115. Intervention

Sec. 101. Jurisdiction.

The Tribal Court is hereby vested with jurisdiction over all proceedings to foreclosure mortgages and liens on any real property on the Reservation owned by an Indian, provided, that jurisdiction shall not extend to the foreclosure of mortgages or liens on trust land unless authorized by federal law.

Sec. 102. Definitions.

(1) Foreclosure means the enforcement of collection of a mortgage loan or lien by the sale of real property through judicial proceedings.

(2) HUD mortgage including any assignment(s), means a guaranteed loan under section 184 of the Housing and Community Development Act of October 28, 1992, 106 Stat. 3672, 3739 (12 U.S.C. 1715z), or any other Housing and Urban Development mortgage insurance program that does not allow for a period of redemption.

(3) Lien means a charge against or an interest in property to secure payment of a debt or performance of an obligation.

(4) Mortgage means a contract by which real property is pledged by the owner as security for a loan from a lending institution and includes any assignment of the mortgage.

(5) Mortgage loan means an interest bearing obligation secured by a mortgage or HUD mortgage on land and improvements on the Reservation.

(6) Mortgagee means the owner of a mortgage or HUD mortgage, usually the lender.

(7) Mortgagor means the borrower under a mortgage or HUD mortgage.

(8) Redemptionor is a person entitled to redeem after a sale in foreclosure under Section 108 of this Title.

Sec. 103 Scope.

This title shall apply: (a) to all actions to foreclosure any mortgage or lien on real property held in fee that is located on the Reservation and is owned by an Indian or Indians; and (b) shall apply to all actions to foreclosure any mortgage or lien on real property held by the United States in trust that is located on the Reservation, provided, that such foreclosure is authorized by federal law.

Sec. 104. Recording.

All HUD mortgages including leasehold mortgages and other mortgages of trust real property that secure loans guaranteed by the United States or an agency of the United States shall be recorded with the Bureau of Indian Affairs at the Fort Peck Indian Agency.

Sec. 105. Proceedings in Tribal Court.

(a) Foreclosure proceedings. Foreclosure proceedings are instituted upon filing a complaint. The complaint shall be filed and, the proceedings shall be conducted in accordance with the applicable provisions of Title VIII of this Code, unless otherwise specified in this Title. The complaint shall be verified by a Clerk of the Tribal Court and Shall—:

(1) Name as a defendant the mortgagor and each person or entity claiming through the mortgagor subsequent to the recording of the mortgage or HUD mortgage, including each subordinate lienholder. With respect to a claim for a tribal lease hold, the Tribes need not to be made a party to an action to foreclosure on HUD leasehold mortgage. Any person holding a conveyance or lien on the property unrecorded at the time of the commencement of the action need not be named as a defendant;

(2) Contain a legal description of the property subject to the foreclosure;

(3) Contain a concise statement of the facts establishing a cause of action, including: (i) a description of the mortgage or HUD mortgage; (ii) a description of the lease if the leasehold is subject to foreclosure; (iii) the date, time and place the mortgage or HUD mortgage is recorded; (iv) the alleged default; and (v) the relevant requirements and conditions prescribed in applicable federal statutes and tribal ordinances, regulations, the mortgage or HUD mortgage, and any lease subject to the foreclosure;

(4) Include, as part of an appendix to the complaint, a true and correct copy of the mortgage or HUD mortgage, all assignments of such mortgages, each promissory note and any lease subject to the foreclosure.

(b) Order scheduling hearing. At the time the complaint is filed, the Court shall issue an order setting the place and time for a hearing on the foreclosure complaint, not less than fifteen (15) days or more than thirty (30) days after the date the complaint is filed.

(c) Service of the complaint and order. A copy of the summons, complaint and the order of the Court shall be served on each of the named defendants and, where the mortgage is secured by tribal trust property, on the Chairman of the Tribes and the Superintendent of the Fort Peck Indian Agency. Except as otherwise provided in this Title, service of process and other papers shall be in accordance with the provisions of Title IV, Section 102 of this Code.

Sec. 106 The hearing and judgement on the foreclosure complaint.

(a) Time for hearing and decision. The Tribal Court shall hear and decide a foreclosure suit within a reasonable time period, not to exceed sixty days from the date of service of the summons and complaint.

Sec. 107 Judgement of the Court.

(a) If the defendant fails to appear, or if the Court determines that the evidence and law establish that the plaintiff is entitled to foreclosure under this Title, the Court shall proceed with the foreclosure.

(b) If the Court determines that the evidence and law establish that the plaintiff is not entitled to foreclosure under this Title, the Court shall dismiss the case.

(c) The contents of the judgement in foreclosure. If the Court holds in favor of the mortgagee, the Court in its judgement shall order:

(1) A sale in foreclosure of the interest of the mortgagor and the interest of each other defendant in the mortgage, including subordinate lienholders;

(2) A sale of the encumbered property (or as much of the property as may be necessary;

(3) The application of the proceeds of the sale:

(4) The payment of the costs, expenses of litigation, reasonable attorneys' fees approved by the Court, and the amount due the plaintiff, and

(5) In the case of a leasehold mortgage, that the mortgage and the lease be assigned to the mortgagee, on condition that:

(i) The mortgagee give the Tribes the right of first refusal of any acceptable offer to purchase the lease or leasehold mortgage that the mortgagee subsequently obtains or receives;

(ii) The mortgagee or its assignee shall not transfer, sell or assign, either or both the lease or the mortgage, except to a Tribal member, the Tribes or the Tribal Housing Authority.

Sec. 108. Foreclosure sales.

(a) All sales of mortgaged property under a judgement of foreclosure shall be made under authority of the Court.

(b) The sale shall be conducted by public auction by an official appointed by the Court for that purpose, at a place on the Reservation convenient to potential buyers, after such notice reasonably as is calculated to assure that potential buyers are aware of the sale. The notice of sale shall, at a minimum, be published in the Wotanin Wopapi for three consecutive issues and in at least on other newspaper of general circulation on the Reservation once a week for three consecutive weeks. A copy of the notice of sale shall (1) be posted on the premises subject to the foreclosure sale; (2) be posted in conspicuous public places on the Reservation such as will give notice to all persons who may be interested in the sale (e.g. the Tribal Administrative Building, the Agency, the Housing Authority); (3) be served at least thirty (30) days before the sale upon the occupant of the property under foreclosure; (4) be mailed, certified mail, return receipt requested, to each party defendant at the address provided for the service of papers; and (5) be mailed or delivered to the respective offices of the Tribal Chairman and the Superintendent of the Fort Peck Indian Agency.

(c) On order of the Court, the officer conducting a sale on foreclosure of a HUD mortgage,

shall issue to the purchaser a deed in foreclosure or other appropriate document entitling the purchaser to possession of the property. On foreclosure of a non-HUD mortgage the purchaser shall receive a deed in foreclosure subject to the right of redemption provided in Section 110.

(d) Eligible purchasers at all foreclosure sales of interests in tribal property are the Tribes, the Fort Peck Housing Authority, or a member of the Tribes.

(AMENDED AS PER RESOLUTION NO. 607-98-7, DATED 07/13/98.)

Sec. 109. Deficiency judgement.

Upon foreclosure, no deficiency judgement on account of the foreclosed mortgaged or note(s) secured by the mortgage, shall be rendered for the unpaid balance of the purchase price of the mortgaged property.

Sec. 110. Right of redemption.

(a) HUD mortgages. There shall be no period of redemption from any sale in foreclosure of HUD mortgage.

(b) Non-HUD mortgages or liens. The mortgagor -debtor who occupies the property as a home for himself and his family may redeem the property from the purchaser at foreclosure sale within six months after the sale by paying the purchaser:

- (1) the amount of the foreclosure purchase price with interest at the rate fixed in the judgement of foreclosure to the date of payment;
- (2) the amount of any taxes and insurance premiums paid by the purchaser;
- (3) the reasonable cost of repairs and maintenance paid by the purchaser after the sale, with interest from the date of the expenditures to the date of payment;
- (4) if the purchaser is a subordinate lienholder the amount of the lien with interest to the date of payment;
- (5) the costs and expenses of the foreclosure litigation; and
- (6) the reasonable attorneys' fees as fixed by the Court, any agreement between the parties for a larger sum notwithstanding.

Sec. 111. Non-HUD mortgagor's possession of lands during the period of Redemption.

The purchaser at a non HUD mortgage foreclosure is not entitled to the possession during the six-month period of redemption allowed by law so long as the mortgagee occupies the land as a home for himself and his family. This right may not be waived. The intent is to ensure to such mortgagor, possession of the property during the period of redemption.

Sec. 112. Cure of default.

(a) HUD mortgages. Prior to the entry of a judgement of foreclosure, any mortgagor, or subordinate lienholder, may cure the mortgage default by making full payment of the delinquency together with interest at the rate fixed in the mortgage, plus all reasonable costs and expenses of the litigation and reasonably attorneys' fees approved by the Court.

(b) Mortgages and liens other than HUD mortgages. At any time prior to the expiration of the six-month period of redemption, any mortgagor or subordinate lienholder may cure the mortgage default by paying to the mortgagee in cash, cashier's or certified check the full amount due and owing on the mortgage with interest at the rate fixed in the mortgage, all reasonable costs and expenses of the litigation, plus reasonable attorneys' fees approved by the Court.

Sec. 113 Foreclosure evictions.

Foreclosure evictions shall be governed by the provisions of Title XV of this Code.

Sec. 114. 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.

Sec. 115. Intervention.

The Tribes, or any lessor, shall have the right to intervene in any foreclosure proceeding affecting their interests. Intervention by the Tribes shall not constitute a waiver of sovereign immunity, or a departure from the Tribes' policy not to waive sovereign immunity.

(AMENDED AS PER RESOLUTION NO. 3185-97-8, DATED 08/11/97.)