

**TITLE 13  
HOUSING & PROPERTY**

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**Chapter 1 - Reserved**

History: Former 13 GTBC Chapter 1, Grand Traverse Band Housing Authority, derived from Tribal Act #94-12.161, enacted by Tribal Council on September 27, 1994; amended by Tribal Act #97-15.473, enacted by Tribal Council on June 17, 1997; was repealed by Tribal Act #01-19.966, enacted by Tribal Council on April 18, 2001.

**Chapter 2 - Residential Lot Assignment/Lease**

**§ 201 - Title and Applicability**

- (a) This ordinance shall be known as the Residential Lot Assignment/Lease Ordinance (“lot assignment ordinance”) of the Grand Traverse Band of Ottawa and Chippewa Indians.
- (b) This ordinance governs all lot assignments and leases to individuals upon tribal lands, pursuant to the authority provided the Tribal Council by Article XI, Section 1(b)&(c) of the Constitution of the Grand Traverse Band of Ottawa and Chippewa Indians.

History: Residential Lot Assignment/Lease Ordinance, adopted by Tribal Council on November 17, 1990; and as amended by Tribal Council on July 2, 1996.

**§ 202 - Definitions**

- (a) “Tribe” means the Grand Traverse Band of Ottawa and Chippewa Indians; “Tribal Council” means the Tribe’s governing body; and “Lot Committee” means the committee appointed by the Tribal Council to assist in the administration of residential lot assignments/leases.
- (b) “Tribal Court” means the Tribal Judiciary of the Grand Traverse Band of Ottawa and Chippewa Indians.

- (c) “Tribal lands” means real property owned (or leased) by the Tribe or the United States of America in trust for the Tribe including lands acquired after this ordinance is enacted.
- (d) “Lot assignment” means the assignment granted to an individual tribal member of a specific lot upon tribal lands for residential use.
- (e) “Lease” or “BIA lease” means a residential lease for a lot upon tribal lands entered into between the Tribe and an individual tribal member on the form approved by the Bureau of Indian Affairs, United States Department of the Interior (Form 5-5461 or its successor), pursuant to regulations prescribed at 25 CFR Part 162 as amended or succeeded; this term also includes the lease forms utilized for mortgage guaranty programs administered by the Rural Housing Service of the United States Department of Agriculture and the United States Department of Housing and Urban Development.
- (f) “Previous assignments” means assignments and/or leases to individual Indians of specific lots for residential use made between 1944 and the date of enactment of this ordinance by the Leelanau County Department of Social Services, Leelanau Indians, Inc. (the Tribe’s governing body between 1978-1980), and/or the Tribe’s current governing body, the Tribal Council of the Grand Traverse Band of Ottawa and Chippewa Indians.
- (g) “Member” means an individual enrolled as a member of the Tribe.
- (h) “Lot” refers to a designated parcel of real estate upon tribal lands.
- (i) “Lot holder” means the individual assigned or leased a specific lot upon tribal lands.
- (j) “Transfer” means legal assignment of lot assignment/leasehold interest from lot holder to another enrolled member of the Tribe.
- (k) “Testamentary designation” means designation in a lot holder’s will that his/her lot assignment/leasehold interest shall be inherited by another enrolled member of the Tribe.
- (l) “Splitting” means dividing a lot into subparcels to accommodate additional residence(s).
- (m) “Sublease” means temporary authorization by a lot holder to another tribal member of the right to occupy residential premises upon an assigned lot.
- (n) “Zoning ordinance” means the zoning ordinance of the Grand Traverse Band of Ottawa and Chippewa Indians or other zoning regulations enforced by the Tribe.
- (o) “Zoning Administrator” means the person designated by the Tribe to administer the Zoning Ordinance.

History: Residential Lot Assignment/Lease Ordinance, adopted by Tribal Council on November 17, 1990; and as amended by Tribal Council on July 2, 1996.

**§ 203 - Policy Regarding Homestead Purposes**

Because of its limited land base, the Tribe's policy is that all lot assignments and residential leases are intended for homestead purposes.

History: Residential Lot Assignment/Lease Ordinance, adopted by Tribal Council on November 17, 1990; and as amended by Tribal Council on July 2, 1996.

**§ 204 - Option to Choose Lot Assignment or BIA Lease**

- (a) Lot assignments upon federal trust lands cannot be encumbered. Therefore, if any lot holder desires to encumber his/her lot assignment upon federal trust lands to participate in a loan guaranty program in order to obtain financing to construct a residence, such individual may choose to request the Tribal Council to enter into a Residential Lease upon the form required by the Rural Housing Service, the United States Department of Housing and Urban Development and/or approved by the Bureau of Indian Affairs, United States Department of the Interior (Form 5-5461 or its successor).
- (b) Lot holders desiring to participate in any loan program in an effort to obtain financing to construct a residence upon federal trust lands cannot use the value of the trust property, which by definition is owned by the United States in trust for the tribe and cannot be sold, pledged, mortgaged, or otherwise encumbered without an Act of Congress, in the appraisal process that is typically used by banks or other real estate agents.

History: Residential Lot Assignment/Lease Ordinance, adopted by Tribal Council on November 17, 1990; as amended by Tribal Council on July 2, 1996; and amended by Tribal Act #08-26.1905, adopted by Tribal Council on April 30, 2008.

**§ 205 - Eligibility for Lot Assignment/Lease**

Applicants requesting a lot assignment or BIA lease must be enrolled members of the Tribe who intend to use the lot for their primary residence.

History: Residential Lot Assignment/Lease Ordinance, adopted by Tribal Council on November 17, 1990; and as amended by Tribal Council on July 2, 1996.

**§ 206 - Procedure for Applying for Lot Assignment/Lease**

An applicant requesting a lot assignment or BIA lease should submit a request for a specific lot in writing to the Lot Committee or Tribal Land Records Office. The written request should be on a form obtained from the Tribal Land Records Office entitled "Request for Lot Assignment or Lease." The request should include information specified in § 207.

History: Residential Lot Assignment/Lease Ordinance, adopted by Tribal Council on November 17, 1990; and as amended by Tribal Council on July 2, 1996.

**§ 207 - Criteria Governing Selection**

The following criteria shall be considered in determining which applicant(s) to select for available lots:

- (a) Whether applicant intends to utilize lot for primary residence;
- (b) Applicant's demonstrated ability to arrange necessary financing to construct a residence meeting standards specified in the Tribe's zoning ordinance and applicable construction codes;
- (c) Governmental service, employment or other factors requiring applicant to live within proximity of tribal lands; and
- (d) Other factors deemed relevant by the Tribal Council, Lot Committee or applicant.

History: Residential Lot Assignment/Lease Ordinance, adopted by Tribal Council on November 17, 1990; and as amended by Tribal Council on July 2, 1996.

**§ 208 - Approval of Lot Assignments/Leases**

Approval of lot assignments/leases shall be made by action of the Tribal Council, and lot assignments/leases shall be certified upon a form entitled Approval of Lot Assignment/Lease. A lot holder must execute the Acceptance of Lot Assignment or Lease form within thirty (30) days of the Tribal Council approval or the assignment/lease.

History: Residential Lot Assignment/Lease Ordinance, adopted by Tribal Council on November 17, 1990; and as amended by Tribal Council on July 2, 1996.

**§ 209 - Conditions Applicable to Lot Assignments/Leases**

- (a) Lot assignments/leases shall be considered void if the lot holder and any successor(s) in interest do not occupy the premises or begin construction of a residence within two years of the date of the assignment or lease; this period may only be extended for one year by motion of the Tribal Council if the lot holder submits information in writing demonstrating the likelihood that a residence will be constructed within another year. If the Tribal Council determines the lot assignment/lease to be void, the Tribal Council shall have discretion either to declare the lot assignment void and designate a successor, or to request the Tribal Court to exercise equitable jurisdiction to designate a successor. Provided, that this provision is not applicable to mortgages recorded with the Tribal Court pursuant to the terms of the Tribe's Leasehold Mortgage Ordinance.
- (b) The lot holder and any successor(s) in interest must comply with this ordinance, the Tribe's zoning ordinance and other applicable land use regulations or the lot assignment/lease is voidable, and no construction activity may commence without required permits issued by the Tribe's Zoning Administrator. Provided, that leases encumbered by mortgages recorded with the Tribal Court are not voidable by the Tribal Council.

- (c) Subleases are permitted only if the sublessee is an enrolled member of the Tribe and utilizes the premises for his/her primary residence. However, any subleases must be in writing and approved by the Tribal Council in order to be effective.
- (d) If a residence upon a lot assignment is vacated without an approved sublease for a period longer than one year, the Tribal Council shall have discretion either to declare the lot assignment void and designate a successor, or to request the Tribal Court to exercise equitable jurisdiction to designate a successor. Provided, that leases encumbered by mortgages recorded with the Tribal Court are not voidable by the Tribal Council.
- (e) Any structure or other improvements capable of being removed from the premises shall be considered the property of the former lot holder if the lot assignment or lease terminates; however, such property reverts to tribal ownership if it is not removed within six (6) months from the termination of the lot assignment/lease.
- (f) The Tribe's policy designating lot assignments and residential leases for homestead purposes prohibits lot holders from being assigned or leased more than one lot, with the exception of previous assignments that combined lots designated on the Plat of the Village of Peshawbestown or partial lots not suitable for separate residences. Nonetheless, if a lot holder inherits or receives an additional lot by transfer, he/she has six (6) months (or until the conclusion of probate proceedings) in which to transfer such lot to another tribal member before any additional lot assignment/lease shall be considered void. Furthermore, a lot holder may serve as guardian and/or conservator of another lot during the period of that lot holder's legal incapacity. Provided, that leases encumbered by mortgages recorded with the Tribal Court shall continue to be encumbered in the event that they revert to the Tribe, and any successors designated by the Tribal Council or Tribal Court shall be required to assume the terms and conditions of the mortgage.
- (g) Lot holders/lessees may not harvest timber or extract any natural resources with the exception of clearing necessary for construction of residential premises and related activities as authorized by land use permit issued by the Tribe's Zoning Administrator.
- (h) Previous and future lot assignments or leases for residential purposes do not guarantee the right of occupancy if the Tribe's Zoning Administrator (or Tribal Council acting as the Zoning Board of Appeals) determines not to issue land use and/or construction permits because of environmental concerns, space limitations or other conflicts with the Tribe's zoning ordinance or other land use regulations.

History: Residential Lot Assignment/Lease Ordinance, adopted by Tribal Council on November 17, 1990; and as amended by Tribal Council on July 2, 1996.

### **§ 210 - Policy Regarding Previous Assignments**

The Tribe's policy is to honor all previous assignments regardless whether the grantor had legal authority at the time to make the purported assignment, subject to the following qualifications:

- (a) The lot holder must be an enrolled member of the Tribe or a Native American formerly enrolled and/or eligible for enrollment;
- (b) With respect to a previous assignment held by a non-member (or current assignment approved in exchange for previous assignment), such assignment may not be conveyed to another non-member; a lifetime transfer or testamentary designation shall be void unless conveyed to an enrolled member of the Tribe; and
- (c) Previous assignments of vacant parcels shall be void if residential premises are not constructed and occupied within two years of the date of enactment of this ordinance; this period may only be extended for one year by motion of the Tribal Council if the lot holder submits information in writing demonstrating the likelihood that a residence will be constructed within another year.

History: Residential Lot Assignment/Lease Ordinance, adopted by Tribal Council on November 17, 1990; and as amended by Tribal Council on July 2, 1996.

### **§ 211 - Transfers and Testamentary Designations**

- (a) The lot holder of a lot assignment may transfer his/her property interest to a specified family member, heir or another tribal member either by testamentary designation or transfer during lifetime on a form entitled "Transfer of Lot Assignment." The Tribal Council must approve the transfer and the new lot holder must execute the acceptance form as specified in § 208 in order to be effective.
- (b) Transfers and testamentary designations shall be void unless conveyed to enrolled members of the Tribe.
- (c) The lot holder may reserve a life estate for himself/herself when transferring his/her interest.
- (d) The lot holder may reserve a life estate for his/her spouse when making a testamentary designation or transferring his/her interest to an enrolled member.
- (e) Monetary consideration need not be made for transfers; but if consideration is involved, it must be limited to a reasonable value for improvements. Consideration may not be based upon value of the land.
- (f) If the lot holder dies without transferring the lot assignment or executing a testamentary designation, the lot assignment shall revert to the Tribe.
- (g) If an assigned lot does not contain a residence qualifying for an occupancy permit in the judgment of the Tribe's Zoning Administrator, the lot may not be transferred more than once. (The purpose of this provision is to prevent the policy stated in §§ 203 and 209 from being thwarted by successive transfers having the effect of extending the two-year period for occupying the premises or constructing a residence.)

History: Residential Lot Assignment/Lease Ordinance, adopted by Tribal Council on November 17, 1990; and as amended by Tribal Council on July 2, 1996.

### **§ 212 - Procedure for Requesting Splitting of Lot**

The following procedures govern situations in which lot holders desire to obtain Tribal Council approval for splitting a lot:

- (a) Lot holders must demonstrate that the Tribe's zoning ordinance allows the specific lot to be split; therefore lot holders must provide information and/or documents required by the Tribe's Zoning Administrator to make this determination, including a survey, if necessary, as well as a drawing showing the proposed split and locations of existing and proposed residence(s) upon the lot and adjacent lots with wells and septic/drain field systems identified;
- (b) Lot holders requesting the splitting of a lot are responsible for obtaining and providing any surveys or legal documents deemed necessary by the Tribe's Zoning Administrator, such as easements of ingress and egress; and
- (c) Before the Tribe's Zoning Administrator may issue land use and/or building permits authorizing construction upon a new lot created by the splitting of a lot, the Tribal Council must by motion approve the proposed splitting of a lot and the forms specified in § 208 must be executed.

History: Residential Lot Assignment/Lease Ordinance, adopted by Tribal Council on November 17, 1990; and as amended by Tribal Council on July 2, 1996.

### **§ 213 - Eviction Procedures for Financed Construction**

The eviction procedures utilized by the Tribe's Housing Authority and/or specified in the Tribal Code of the Grand Traverse Band of Ottawa and Chippewa Indians are applicable to those lots upon which the lot holder has constructed or improved a residence utilizing financing obtained from lending institutions and/or governmental programs. The eviction procedures specified in Part 2 of the Leasehold Mortgage Ordinance (13 GTBC § 309 et seq.) are applicable to those lots (and corresponding residential leases) upon which the lot holder has constructed or improved a residence utilizing financing obtained from lending institutions and/or governmental programs.

History: Residential Lot Assignment/Lease Ordinance, adopted by Tribal Council on November 17, 1990; and as amended by Tribal Council on July 2, 1996.

### **§ 214 - Tribal Court Jurisdiction**

The Tribal Court shall have exclusive jurisdiction to resolve disputes concerning lots assigned for residential purposes upon tribal lands and all related matters.

History: Residential Lot Assignment/Lease Ordinance, adopted by Tribal Council on November 17, 1990; and as amended by Tribal Council on July 2, 1996.

**Chapter 3 - Leasehold Mortgages****PART 1 - Leasehold Mortgaging of Tribal Trust Lands****§ 301 - Purpose**

- (a) The purpose of this ordinance is to assist Tribal members in obtaining mortgage financing for the purchase of one-family, owner-occupied principal residences on certain leasehold estates located upon Tribal trust lands, by prescribing procedures relating to recordation, foreclosure and evictions in connection with leasehold mortgages given to secure loans made by mortgagees pursuant to: the Section 184 Housing Loan Guarantee Program administered by the U.S. Department of Housing and Urban Development (HUD); the direct loan program administered by the U.S. Department of Veterans' Affairs (VA) under 38 U.S.C. § 3761; the similar program administered by the Rural Economic and Community Development Service of the U.S. Department of Agriculture; the Native American Housing Pilot Initiative (the "Initiative") offered by the Federal National Mortgage Association ("Fannie Mae"); financing offered by the Federal Home Loan Mortgage Corporation ("Freddie Mac"); and/or other conventional lending programs. In order to facilitate the purpose of these programs, this ordinance authorizes a limited waiver of sovereign immunity by the Tribe with respect to all controversies or claims arising out of, or relating to, the leasehold mortgage agreements and the leases described herein.
- (b) In addition, Tribal members, in seeking mortgage financing for the purchase of one-family, owner-occupied principal residences on certain leasehold estates located upon Tribal trust lands, cannot use the value of the trust property, which by definition is owned by the United States in trust for the tribe and cannot be sold, pledged, mortgaged, or otherwise encumbered without an Act of Congress, in the appraisal process that is typically used by banks or other real estate agents.

History: Tribal Act #96-14.319, enacted by Tribal Council on February 20, 1996; as amended by Tribal Act #96-14.375, enacted by Tribal Council on July 2, 1996; amended by Tribal Act #01-19.1065, enacted by Tribal Council in Special Session on October 10, 2001; and amended by Tribal Act #08-26.1905, enacted by Tribal Council on April 30, 2008.

**§ 302 - Definitions**

- (a) "Lease" shall mean the residential ground lease or other agreement for use of Tribal trust land on which a leasehold mortgage has or will be given.
- (b) "Leasehold Estate" shall mean a leasehold estate established pursuant to a lease between the Tribe, as lessor, and a member of the Tribe, as tenant.
- (c) "Leasehold Mortgage" shall mean the first-lien mortgage of a leasehold estate given to secure a mortgage loan made by a mortgage pursuant to the HUD 184 program, the VA and RECD programs, and/or Fannie Mae's Initiative.

- (d) “Leasehold Mortgage Foreclosure Proceeding” shall mean a proceeding in the Tribal Court (i) to foreclose the interest of the mortgagor(s), and each person or entity claiming through the mortgagor(s), in a leasehold estate on which a leasehold mortgage has been made by the mortgage pursuant to the HUD 184 program, the VA and RECD programs, and/or Fannie Mae’s Initiative; and/or (ii) to assign such leasehold estate to the mortgagee or the mortgagee’s successors or assigns.
- (e) “Lessor” shall mean the Tribe. The Tribe shall be the beneficial or equitable owner of certain Tribal trust land underlying a leasehold estate on which a leasehold mortgage has been given. The lessor shall include the successor(s) or assign(s) of such lessor.



- (f) “Leasehold Mortgage Agreement” shall mean that certain agreement indicating participation by the mortgagor(s) in one of the federal mortgage loan guarantee programs to the mortgagee and the Tribe, and approved by the Secretary of the Interior.
- (g) “Mortgagor” shall mean any member of the Tribe who has executed a leasehold mortgage, including any heir(s), successor(s), executor(s), administrator(s) or assign(s) of such member.
- (h) “Mortgagee” shall mean the approved lender under any leasehold mortgage made pursuant to the leasehold mortgage agreement. This definition also includes, without any consent by Tribe, any subsequent holder, whether by assignment, succession or otherwise, of the original mortgagee’s right, title or interest in and to the leasehold mortgage and/or the leasehold estate.
- (i) “Nuisance” shall mean maintenance on the leasehold estate of a condition which:
  - (1) Unreasonably threatens the health or safety of the public or neighboring land users; or
  - (2) Unreasonably and substantially interferes with the ability of neighboring real property users to enjoy the reasonable use and occupancy of their property.
- (j) “Subordinate Lienholder” shall mean the holder of any lien, including a mortgage, perfected subsequent to the recording of a leasehold mortgage under this ordinance; provided, however, such terms shall not include the Tribe with respect to a claim for a Tribal leasehold tax.
- (k) “Tenant” shall mean any person who occupies Tribal trust land under a leasehold estate.
- (l) “Tribal Court” shall mean the Tribal Court of the Grand Traverse Band of Ottawa Indians.
- (m) “Tribal Recording Clerk” shall mean the person designated by the Tribe to perform the recording functions required by this document or any deputy or designee of such person.
- (n) “Tribe” shall mean the Grand Traverse Band of Ottawa and Chippewa Indians.
- (o) “Tribal Trust Lands” shall mean land, title to which is held by the United States of America in trust for the Tribe and/or which may be subject to a restriction against alienation imposed by federal treaty, statute or Executive Order.
- (p) “Unlawful Detainer Action” shall be a suit brought before the Tribal Court to terminate a tenant’s interest in a leasehold estate and/or to evict any person from occupancy of such leasehold estate.
- (q) “Waste” shall mean spoil or destruction of land, buildings, gardens, trees or other improvements on the leasehold estate which result in substantial injury to the lessor’s interest in the leasehold estate.

- (r) “Writ of Restitution” is an order of the Tribal Court:
- (1) Restoring an owner, lessor, mortgagee (or other successor in interest) to possession of a leasehold estate subject to a leasehold mortgage; and
  - (2) Evicting a tenant or other occupant from such property.

History: Tribal Act #96-14.319, enacted by Tribal Council on February 20, 1996; and as amended by Tribal Act #96-14.375, enacted by Tribal Council on July 2, 1996.

### **§ 303 - Priority**

A leasehold mortgage recorded in accordance with the recording procedures set forth in this ordinance shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim (except a lien or claim arising from a Tribal tax assessed against a leasehold estate subject to the leasehold mortgage).

History: Tribal Act #96-14.319, enacted by Tribal Council on February 20, 1996; and as amended by Tribal Act #96-14.375, enacted by Tribal Council on July 2, 1996.

### **§ 304 - Recording**

- (a) The Tribe recognizes that the appropriate offices for recording leases and leasehold mortgages is the Bureau of Indian Affairs Area Land Titles and Records Office in addition to the Tribal Court, and the Tribe agrees that the agreement shall require that the leases and leasehold mortgages shall also be recorded in the county recorder’s office in the Michigan county in which the leasehold estates are located.
- (b) The Tribal Recording Clerk shall maintain in the Tribal Court, or other designated office, a system for the recording of leasehold mortgages and such other documents as the Tribe may designate by law or resolution including, without limitation, the lease.
- (c) The Tribal Recording Clerk shall endorse upon any lease and leasehold mortgage or other document received for recording the following:
  - (1) The date and time of receipt of the lease and the leasehold mortgage or other document;
  - (2) The filing number, to be assigned by the Tribal Recording Clerk, which shall be a unique number for each lease and leasehold mortgage or other document received; and
  - (3) The name of the Tribal Recording Clerk receiving the lease and leasehold mortgage or other document.

Upon completion of the above endorsements, the Tribal Recording Clerk shall make true and correct copies of the lease and leasehold mortgage or other security instrument and shall certify each copy as follows:

Grand Traverse Band of Ottawa and Chippewa Indians: ss.

I certify that this is a true and correct copy of a document received for recording. Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_.

(SEAL)

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Title*

The Tribal Recording Clerk shall maintain such copies in the records of the recording system and shall return the original lease and leasehold mortgage or other document to the person or entity that presented the same for recording.

- (d) The Tribal Recording Clerk shall also maintain a log of each lease and leasehold mortgage or other document recorded in which there shall be entered the following:
- (1) The name(s) of the mortgagor(s) of each leasehold mortgage, identified as such;
  - (2) The name(s) of the mortgagee(s) of each leasehold mortgage, identified as such;
  - (3) The name(s) of the grantor(s), grantee(s), or other designation of each party named in any other documents including the lease;
  - (4) The date and time of receipt;
  - (5) The filing numbers assigned by the Tribal Recording Clerk; and
  - (6) The name of the Tribal Recording Clerk receiving the lease, leasehold mortgage or other document.
- (e) The certified copies of the leases and leasehold mortgages and other documents and the log maintained by the Tribal Recording Clerk shall be made available for public inspection and copying.

History: Tribal Act #96-14.319, enacted by Tribal Council on February 20, 1996; and as amended by Tribal Act #96-14.375, enacted by Tribal Council on July 2, 1996.

### **§ 305 - Leasehold Mortgage Foreclosure Proceedings**

Upon the default of the mortgagor(s), and upon expiration of any applicable cure periods under a leasehold mortgage, the mortgagee or its successors and assigns, may commence a leasehold mortgage foreclosure proceeding in the Tribal Court as follows:

- (a) By filing a verified complaint:
- (1) Citing authority for jurisdiction of the Tribal Court;
  - (2) Naming the mortgagor(s) and each record owner claiming through the mortgagor(s) subsequent to the recording of the leasehold mortgage, including each subordinate lienholder (except the Tribe with respect to a claim for a Tribal tax on the leasehold estate subject to the leasehold mortgage), as a defendant;
  - (3) Describing the leasehold estate subject to the leasehold mortgage;
  - (4) Stating the facts concerning:
    - (A) The execution of the lease and the leasehold mortgage;
    - (B) The recording of the leasehold mortgage; and
    - (C) The alleged default(s) of the mortgagor(s) and any other facts as may be necessary to constitute a cause of action;
  - (5) Having appended as exhibits true and correct copies of each promissory note, lease, leasehold mortgage, and, if applicable, assignment thereof relating to such leasehold estate;
  - (6) Including an allegation that all relevant requirements and conditions prescribed in the federal mortgage loan guarantee program and/or leasehold mortgage agreement and the lease have been complied with by the mortgagee or its successors or assigns; and
  - (7) Otherwise satisfying the requirements of the Tribal Court.
- (b) By obtaining a summons, issued as in other cases, requiring the mortgagor(s) and each other person or entity claiming through the mortgagor, as defendants, to appear for a trial upon the complaint on a date and time specified in the summons, and filing a copy of such summons with the Tribal Court.

History: Tribal Act #96-14.319, enacted by Tribal Council on February 20, 1996; and as amended by Tribal Act #96-14.375, enacted by Tribal Council on July 2, 1996.

### **§ 306 - Service of Process and Procedures**

The laws of the Tribe governing service of process and all other matters relating to the conduct of Tribal Court proceedings shall apply to any leasehold mortgage foreclosure proceeding pursuant to this ordinance.

History: Tribal Act #96-14.319, enacted by Tribal Council on February 20, 1996; and as amended by Tribal Act #96-14.375, enacted by Tribal Council on July 2, 1996.

**§ 307 - Cure of Default by Subordinate Lienholder**

- (a) Prior to the entry of a judgment of foreclosure of a leasehold mortgage pursuant to this ordinance, any mortgagor or any subordinate lienholder may cure the default(s) under the leasehold mortgage.
- (b) Any subordinate payments made by such subordinate lienholder to cure such default(s) must comply with the terms of the mortgage, plus interest on such amounts at the rate stated in the promissory note evidencing the subordinate lien.

History: Tribal Act #96-14.319, enacted by Tribal Council on February 20, 1996; and as amended by Tribal Act #96-14.375, enacted by Tribal Council on July 2, 1996.

**§ 308 - Power of the Tribal Court**

If the alleged default(s) have not been cured, and if the Tribal Court should find for the mortgagee or its successors or assigns, the Tribal Court shall enter judgment:

- (a) Foreclosing the leasehold estate of the mortgagor(s) and each other defendant named in the complaint upon whom proper and timely service has been made, including each such subordinate lienholder; and
- (b) Assigning such leasehold estate to the mortgagee or the mortgagee's assignee, including Fannie Mae.

History: Tribal Act #96-14.319, enacted by Tribal Council on February 20, 1996; and as amended by Tribal Act #96-14.375, enacted by Tribal Council on July 2, 1996.

**PART 2 - Leasehold Mortgage Eviction Procedures****§ 309 - Jurisdiction**

The provisions of this Part shall apply to all persons and property subject to the governing authority of the Tribe as established by the Constitution and other Tribal law.

History: Tribal Act #96-14.319, enacted by Tribal Council on February 20, 1996; and as amended by Tribal Act #96-14.375, enacted by Tribal Council on July 2, 1996.

**§ 310 - Unlawful Detainer**

A tenant or other occupier 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 under any of the following situations:

- (a) Without the requirement of any notice by the lessor:

- (1) After the expiration of the term of the lease;
  - (2) If such person has entered onto or remains on the real property of another without the permission of the owner and without having any substantial claim under a lease or title to such property;
  - (3) After the lessor has terminated such person's tenancy pursuant to procedures providing such person a hearing before such lessor involved; or
  - (4) After such person's leasehold estate has been foreclosed in a leasehold mortgage foreclosure proceeding in the Tribal Court.
- (b) After having received thirty (30) days' notice, the tenant or occupier shall remain in possession of such property contrary to the terms of the notice as follows:
- (1) When such person has received notice:
    - (A) That he or she is in default in the payment of ground rent; and
    - (B) Requiring him or her to either pay such rent or surrender possession of the occupied property and such person has not either surrendered possession of such property or paid the rent within the thirty- (30-) day period provided in such notice;
  - (2) When such person shall continue to fail to keep or perform any condition or covenant of the lease or other use agreement under which the property is held after he or she has been given notice to comply with such condition or covenant or else to surrender the property; or
  - (3) When such person continues to commit or to permit waste upon or maintain a nuisance upon the occupied property after having been given notice to either cease such waste or maintenance of nuisance or to surrender the property.

History: Tribal Act #96-14.319, enacted by Tribal Council on February 20, 1996; and as amended by Tribal Act #96-14.375, enacted by Tribal Council on July 2, 1996.

### **§ 311 - Procedures for Service of Notice**

- (a) Notices required or authorized in the immediately preceding section shall be given in accordance with established Tribal Court rules and procedures. In the absence of such rules and procedures, notices shall be given in writing by either:
  - (1) Delivering a copy personally to the tenant or occupier or to any adult members of his or her family residing on the leasehold estate; or

- (2) Posting said notice in a conspicuous place near the entrance to said leasehold estate, and by sending an additional copy to the tenant or occupier by certified mail, return receipt requested, properly addressed, postage prepaid.
- (b) Proof of service by either of the above methods may be made by affidavit of any adult person stating that he or she has complied fully with the requirements of either of these two methods of service.

History: Tribal Act #96-14.319, enacted by Tribal Council on February 20, 1996; and as amended by Tribal Act #96-14.375, enacted by Tribal Council on July 2, 1996.

### **§ 312 - Complaint and Summons**

The lessor or the mortgagee (including its successors or assigns) shall commence an action for unlawful detainer by filing with the Tribal Court, in writing, the following documents:

- (a) A complaint, signed by the lessor, the mortgagee (or its successors or assigns), or an agent or attorney on their behalf including the following:
  - (1) Citing authority for jurisdiction of the Tribal Court;
  - (2) Naming the mortgagor(s) and each record owner claiming through the mortgagor(s) subsequent to the recording of the leasehold mortgage, including each subordinate lienholder (except the Tribe with respect to a claim for a Tribal tax on the leasehold estate subject to the leasehold mortgage), as a defendant;
  - (3) Describing the leasehold estate subject to the leasehold mortgage;
  - (4) Stating the facts concerning:
    - (A) The execution of the lease and the leasehold mortgage;
    - (B) The recording of the leasehold mortgage; and
    - (C) The facts upon which he or she seeks to recover;
  - (5) Stating any claim for damages or compensation due from the persons to be evicted; and
  - (6) Otherwise satisfying the requirements of the Tribal Court.
- (b) A copy of the summons, issued in accordance with established Tribal Court rules and procedures.
  - (1) In the absence of such rules and procedures for the issuance of a summons, the summons shall require defendants to appear for trial upon the complaint on a date and time specified in the summons.

- (2) The trial date specified in the summons shall be no less than six (6) nor more than thirty (30) days from the date of service of the summons and complaint.
- (3) The summons must notify the defendants that judgment will be taken against them in accordance with the terms of the complaint unless they file with the Court an answer and appear for trial at the time, date and place specified in the summons.

History: Tribal Act #96-14.319, enacted by Tribal Council on February 20, 1996; and as amended by Tribal Act #96-14.375, enacted by Tribal Council on July 2, 1996.

### **§ 313 - Service of Summons and Complaint**

- (a) A copy of the summons and complaint shall be served upon the defendants in the manner provided by the Tribal Court rules for service of process in civil matters.
- (b) In the absence of such Tribal Court rules, the summons and complaint shall be served by one of the two methods provided in § 311 above.

History: Tribal Act #96-14.319, enacted by Tribal Council on February 20, 1996; and as amended by Tribal Act #96-14.375, enacted by Tribal Council on July 2, 1996.

### **§ 314 - Power of the Tribal Court**

- (a) The Tribal Court shall enter a writ of restitution if:
  - (1) Notice of suit and trial is given by service of summons and complaint in accordance with the procedures provided herein; and
  - (2) The Tribal Court shall find that the occupier of the leasehold estate subject to the leasehold mortgage is guilty of an act of unlawful detainer.
- (b) Upon issuance of a writ of restitution, the Tribal Court shall have the authority to enter against the defendants a judgment for the following:
  - (1) Back rent, unpaid utilities, and any charges due the Tribe or lessor under any lease or occupancy agreement;
  - (2) Any and all amounts secured by the leasehold mortgage that are due the mortgagee (or its successors or assigns); and
  - (3) Damages caused by the defendants to the property other than ordinary wear and tear. The Tribal Court shall have the authority to award costs and reasonable attorney's fees in bringing suit to the prevailing party.

History: Tribal Act #96-14.319, enacted by Tribal Council on February 20, 1996; and as amended by Tribal Act #96-14.375, enacted by Tribal Council on July 2, 1996.

**§ 315 - Enforcement**

- (a) Upon issuance of a writ of restitution by the Tribal Court, Tribal law enforcement officers shall enforce the writ of restitution by evicting the defendants and their property from the leasehold estate which is unlawfully occupied.
- (b) In all cases involving the mortgagee (or its successors or assigns), the writ of restitution shall be enforced no later than sixty (60) days after the date of service of the summons and complaint, subject to § 316 below.

History: Tribal Act #96-14.319, enacted by Tribal Council on February 20, 1996; and as amended by Tribal Act #96-14.375, enacted by Tribal Council on July 2, 1996.

**§ 316 - Continuances in Cases Involving the Mortgagee**

Except by agreement of all parties, there shall be no continuances in cases involving the mortgagee (or its successors or assigns) which will interfere with the requirement that the writ of restitution be enforced not later than sixty (60) days from the date of service of the summons and complaint.

History: Tribal Act #96-14.319, enacted by Tribal Council on February 20, 1996; and as amended by Tribal Act #96-14.375, enacted by Tribal Council on July 2, 1996.

**§ 317 - Alternative Remedies**

In those cases in which the persons or property are subject to the jurisdiction of the courts of the State of Michigan or the United States, the remedies and procedures provided by this ordinance are in the alternative to the remedies and procedures provided by the laws of the State of Michigan or the United States.

History: Tribal Act #96-14.319, enacted by Tribal Council on February 20, 1996; and as amended by Tribal Act #96-14.375, enacted by Tribal Council on July 2, 1996.

**PART 3 - Limited Waiver of Immunity****§ 318 - Limited Waiver of Immunity**

- (a) The Tribe hereby authorizes a limited waiver of immunity from suit that the Tribe may enjoy with respect to any and all controversies or claims arising out of or related to the obligations of the Tribe under the leasehold mortgage agreements and the leases described herein; and in connection with such waiver, the Tribe hereby consents to the personal jurisdiction of the Tribal Court with respect to any action to enforce any obligations owed by it to any other party or to enforce any of the other party's rights and/or remedies under such leasehold mortgage agreements or leases.

- (b) The authority provided herein is not intended to nor shall it be construed to waive the immunity of the Tribe for any other purpose or with respect to any claim or other matter not specifically mentioned herein, and is not intended to, nor shall it extend to the benefit of, any person other than the parties to such agreements or their successors or assigns.

History: Tribal Act #96-14.319, enacted by Tribal Council on February 20, 1996; as amended by Tribal Act #96-14.375, enacted by Tribal Council on July 2, 1996; and as amended by Tribal Act #96-14.376, enacted by Tribal Council on July 2, 1996.

## **Chapter 4 - FHA Insured Loan Program**

### **§ 401 - Purpose**

The purpose of this ordinance is to assist in making available to Tribal members the benefits of the FHA Section 248 Program, under which an Indian family may purchase a home located on leased trust land on the Reservation under an FHA Insured Loan Program.

History: Tribal Act #92-112, enacted by Tribal Council on February 18, 1992.

### **§ 402 - Authority**

This ordinance is adopted pursuant to Article IV, Section 1(h) of the Grand Traverse Band of Ottawa and Chippewa Indian Tribal Constitution. It states the authority to manage and control the economic affairs, enterprises, property, and all other interests of the Band.

History: Tribal Act #92-112, enacted by Tribal Council on February 18, 1992.

### **§ 403 - Effective Date**

This ordinance shall take effect upon its approval by the HUD/FHA office that serves the Reservation and/or Secretary of the Interior.

History: Tribal Act #92-112, enacted by Tribal Council on February 18, 1992.

### **§ 404 - Abrogation and Greater Restriction**

Where this ordinance imposes greater restrictions than those contained in other ordinances, the provisions of this ordinance shall govern.

History: Tribal Act #92-112, enacted by Tribal Council on February 18, 1992.

**§ 405 - Interpretation**

- (a) In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall not be deemed a limitation or repeal of any other Tribal power or authority.
- (b) The Tribe's sovereign immunity is not waived or affected hereby.

History: Tribal Act #92-112, enacted by Tribal Council on February 18, 1992.

**§ 406 - Definitions**

As used in this ordinance:

- (a) "FHA Section 248 Program" means the Federal Housing Administration (FHA) Section 248 Mortgage Insurance Program on Indian Reservations, 12 U.S.C. §§ 1715z-13.
- (b) "Reservation" means the land and waters within the exterior boundaries of the Grand Traverse Band Reservation.
- (c) "court" means the Tribal Court of the Grand Traverse Band.
- (d) "Tribe" means the Grand Traverse Band of Ottawa and Chippewa Indians.
- (e) "trust lands" means land held in trust for the Tribe by the United States of America.

History: Tribal Act #92-112, enacted by Tribal Council on February 18, 1992.

**§ 407 - Evictions**

- (a) The eviction procedures set forth by the lending agencies shall apply to evictions from homes and leased land under the FHA Section 248 Program.
- (b) The Grand Traverse Band Tribal Court shall have jurisdiction in eviction procedures.

History: Tribal Act #92-112, enacted by Tribal Council on February 18, 1992.

**§ 408 - Access to Property**

The Tribe hereby grants its permission to agents or employees of the U.S. Department of Housing and Urban Development to enter trust land on the reservation for the purpose of carrying out their responsibilities under the FHA Section 248 Program including the serving of posting of property in case of eviction.

History: Tribal Act #92-112, enacted by Tribal Council on February 18, 1992.

**§ 409 - Lease Form**

Tribal trust land shall be leased for purposes of the FHA Section 248 Program using the lease form prescribed and preapproved by the Secretary of Housing and Urban Development and the Bureau of Indian Affairs, pursuant to 24 C.F.R. 203.43h(c), for use in connection with the FHA Section 248 Program.

History: Tribal Act #92-112, enacted by Tribal Council on February 18, 1992.

**§ 410 - Foreclosure**

The Tribal Court shall exercise jurisdiction over foreclosures. A mortgage insured under the FHA Section 248 Program shall be and constitute the first lien in priority of the home.

History: Tribal Act #92-112, enacted by Tribal Council on February 18, 1992.

**Chapter 5 - Liens****§ 501 - Definitions**

- (a) “Tribe” means the Grand Traverse Band of Ottawa and Chippewa Indians, as well as subordinate authorities and boards chartered by the Tribe for the purpose of fulfilling specified governmental functions.
- (b) “Tribal Court” means the Tribal Judiciary of the Grand Traverse Band of Ottawa and Chippewa Indians.
- (c) “Tribal lands” means the Tribe’s proclaimed reservation as well as all other lands owned by the United States in trust for the Tribe.
- (d) “person” means a natural person, firm, association, corporation or other legal entity.
- (e) “judgment debtor” means a person whose debt to the Tribe has been reduced to judgment by a court of competent jurisdiction.
- (f) “contract debtor” means a person whose debt to the Tribe is set forth in a written agreement.

History: Tribal Act #88-605, enacted by Tribal Council on January 20, 1988.

**§ 502 - Jurisdiction**

The Tribe asserts jurisdiction over all contracts and related matters arising upon Tribal lands involving treaty/trust resources, governmental functions, or economic development enterprises.

History: Tribal Act #88-605, enacted by Tribal Council on January 20, 1988.

### **§ 503 - Applicability**

This ordinance shall apply to all debts to the Tribe which either have been reduced to judgment or arise from written contracts clearly stating when payment(s) are due.

History: Tribal Act #88-605, enacted by Tribal Council on January 20, 1988.

### **§ 504 - General Provisions**

- (a) Judgment Debts. If any court of competent jurisdiction has granted judgment for the Tribe, the Tribe may attach personal property located upon Tribal lands owned by the judgment debtor or a related business entity as a means of enforcing the judgment.
- (b) Contractual Obligations. If any written agreement sets forth the deadline(s) for payment(s) to the Tribe and if such contractual obligation(s) are past due to the Tribe, the Tribe may attach personal property located upon Tribal lands owned by the obligor or a related business entity as a means of securing payment.

History: Tribal Act #88-605, enacted by Tribal Council on January 20, 1988.

### **§ 505 - Procedure**

- (a) Upon receipt of a petition requesting a lien signed by the Tribe's manager, a program director or enterprise manager, the Tribal Council/Court by temporary order entered without notice may direct the Tribe's Law Enforcement Officer(s) to attach a lien against personal property located upon Tribal lands which is owned by judgment or contractor debtor(s) or related business entities
- (b) Within two weeks from the date the Tribe attaches a lien against personal property, the Tribal Court shall hold a preliminary hearing to determine whether sufficient basis exists to continue holding the attached personal property pending trial on the merits.
- (c) Within sixty (60) days of the preliminary hearing, the Tribal Court shall hold a trial to determine the propriety of the lien and value of the attached personal property (in order to determine the amount by which the judgment or contractual obligation shall be reduced/eliminated). If the Tribal Court determines that the alleged debt is actually owed to the Tribe and if the value of the attached property exceeds the amount of the debt, the Tribal Court may either effectuate an equitable settlement with the parties' consent or condemn the property and order the Tribe to provide partial restitution.

History: Tribal Act #88-605, enacted by Tribal Council on January 20, 1988.

**Chapter 6 - Zoning****§ 601 - Adoption of Leelanau County Zoning Ordinance**

- (a) The Grand Traverse Band of Ottawa and Chippewa Indians incorporates by reference and adopts as a Tribal ordinance the Leelanau County Zoning Ordinance previously applicable to Tribal lands, with the following provisos:
- (1) the Tribal Council shall designate an individual to serve as Zoning Administrator;
  - (2) the Tribal Council shall serve as the Zoning Board of Appeals and in this capacity shall be the final arbiter of all determinations under the ordinance; and
  - (3) upon recommendation of the Zoning Administrator and for good cause shown, the Tribal Council may approve a waiver of any provision of the ordinance.

History: Tribal Act #83-119, enacted by Tribal Council on February 25, 1983.

**Chapter 7 - Lease Assignment from Leelanau Indians  
Incorporated; Relinquishment****§ 701 - Acceptance of Lease Assignment**

The Grand Traverse Band of Ottawa and Chippewa Indians hereby accepts the assignment of Leelanau Indians Incorporated's 99-Year Lease Agreement with the County of Leelanau, and agrees to assume and perform all duties, obligations and responsibilities therein continued.

History: Tribal Act #82-057, enacted by Tribal Council on March 27, 1982.

**§ 702 - Compliance with Conditions**

The Tribe hereby agrees to comply with the following conditions made by Leelanau Indians Incorporated:

- (a) Lot holders will not be required to be members of the Grand Traverse Band of Ottawa and Chippewa Indians;
- (b) Applicants or holders must be descendants of the original grantee; and
- (c) Present lot holders may remain on their lots.

History: Tribal Act #82-057, enacted by Tribal Council on March 27, 1982.

**§ 703 - Relinquishment of Leasehold Interest in Lands Acquired by Leelanau Indians, Inc.**

**Legislative Background:** The preamble to the resolution relinquishing the Tribe's leasehold interest reads as follows: Whereas the Grand Traverse Band was federally acknowledged effective May 27, 1980, and the Tribe is the political successor to the historic Grand Traverse Bands which were allocated lands in present-day Leelanau County under Article First, clause fifth of the Treaty of 1855; whereas by deeds executed on June 21, 1944, and March 17, 1970, the State of Michigan conveyed lands to Leelanau County to be held in trust for the Tribe; whereas by Lease executed November 7, 1978, Leelanau County leased these lands to Leelanau Indians, Inc.; whereas by Opinion and Order dated January 30, 1985, Leelanau County conveyed its underlying fee title of these lands to the United States of America in trust for the Grand Traverse Band; whereas by Memorandum dated October 1, 1987, the Department of the Interior's Assistant Secretary - Indian Affairs authorized the Area Director to accept these lands in trust for the Tribe, contingent upon the Tribe's furnishing of title evidence and the Field Solicitor's title opinion; and whereas the Tribe's leasehold interest technically is an encumbrance against the underlying fee title conveyed on December 10, 1985 by Leelanau County to the United States in trust for the Tribe, and it should be merged with the underlying fee title.

The Grand Traverse Band hereby relinquishes its leasehold interest and authorizes the Tribal Chairman to execute a quit claim deed of the leasehold interest to the United States of America in trust for the Tribe.

History: Tribal Act #87-545, enacted by Tribal Council on November 18, 1987.

**Chapter 8 - Easements and Rights-of-Way;  
Jurisdiction over Certain Property****§ 801 - Right-of-Way Grant to BIA for Health Center and Bingo Roads**

**Legislative Background:** The preamble for the resolution granting this right-of-way to the Bureau of Indian Affairs reads as follows:

Whereas the Grand Traverse Band of Ottawa and Chippewa Indians is a federally recognized Tribe so proclaimed May 27, 1984 with commensurate jurisdiction, and whereas the Tribe has been approved for BIA road construction projects titled "Health Center Road" and "Bingo Road", and whereas in order to partially fulfill prerequisites for start-up of said projects a right-of-way is required by the BIA, and whereas said right-of-way provides for public ingress and egress as required by the BIA, and whereas said right-of-way is fully given to the BIA for the purpose of maintaining said roads, and whereas under said right-of-way freedom is granted to the BIA to access roads described for this purpose of maintenance of surface thirty-three feet from the center of both ways of middle of said roadway, and whereas said right-of-way does not grant BIA title to roads, and whereas should said described roads be abandoned right-of-way reverts back to the Tribe, and whereas a public hearing on said project will be held August 15, 1984 with public comment period commencing this date and concluding August 17, 1984, and whereas legal descriptions of said road project sites are herein incorporated by reference.

The above-described right-of-way is granted to the Bureau of Indian Affairs, U.S. Department of Interior, by the Grand Traverse Band of Ottawa and Chippewa Indians.

History: Tribal Act #84-228, enacted by Tribal Council on July 31, 1984.

**§ 802 - Lots Designated for Educational and Cultural Purposes**

The Grand Traverse Band hereby designates Lots 6 and 7, Block 3 of the Village of Peshawbestown as being reserved for educational and cultural purposes.

History: Tribal Act #84-253, enacted by Tribal Council on October 16, 1984.

**§ 803 - Peshawbestown Community Park**

[The parcel of land at Section 11, Block 3, Lots 16 and 17] is officially declared a park, intended for use by Grand Traverse Band members and all Native Americans, and whose official name shall be Peshawbestown Community Park.

History: Tribal Act #88-644, enacted by Tribal Council on August 17, 1988.

**§ 804 - Elders Park**

[The parcel of land at Section 11, Block 5, Lot 1B] is officially declared a park area, to be used for the previously stated purposes, and whose official name shall be Elders Park.

History: Tribal Act #88-645, enacted by Tribal Council on August 17, 1988.

**§ 805 - Ne-zhon-zha-wuk Park**

[The parcel of land consisting of the Southwest Quarter of the Southwest Quarter (SW  $\frac{1}{4}$  of the SW  $\frac{1}{4}$ ) of Section 35, Town 29 North, Range 8 West, Antrim County] is officially declared a park, intended for use by Grand Traverse Band members and all other Native Americans, and whose official name shall be Ne-zhon-zha-wuk Park.

History: Tribal Act #88-646, enacted by Tribal Council on August 17, 1988.

**§ 806 - Jurisdiction Over Railroad Right-of-Way**

**Legislative Background:** The preamble to the Tribal Act providing jurisdiction over the railroad right-of-way is as follows:

Whereas the Grand Traverse Band of Ottawa and Chippewa Indians became duly acknowledged as an Indian tribe with a government-to-government relationship with the United States by action of the Department of the Interior effective May 27, 1980; and whereas the Tribe desires to effectuate the federal policy of self-determination for Indian people through their tribal governments; and whereas the Tribe has determined to develop a portion of Tribal lands into a park dedicated to its Elders; and whereas Elders Park is located on land owned by the Tribe on both sides of the old C & O Railroad, and it is necessary to have access across the railroad in order to fully utilize the park; and whereas the current owners of the railroad right-of-way have not seen fit to cooperate with or even discuss the Tribe's intent to build a bridge across the railroad tracks to allow their Elders access to the waterfront area of the park; and whereas the railroad has not been in use for several years, with portions of the track having been removed and no apparent use as a railroad planned; and whereas recent federal court decisions have raised doubt whether the

railroad has a valid right-of-way through lands in Leelanau County allotted to Grand Traverse Band members in the Treaty of 1855:

- (a) The Grand Traverse Band of Ottawa and Chippewa Indians has determined to exercise its governmental right and declare that the railroad right-of-way through Tribal lands is within Tribal jurisdiction, and no other easement is necessary.
- (b) These portions of the railroad right-of-way shall be determined to be abandoned and the Tribe is authorized to construct the bridge allowing the Elders complete access to the park.

History: Tribal Act #83-145, enacted by Tribal Council on June 8, 1993.

### **Chapter 9 - Homeownership Protection From Predatory Lending Ordinance**

#### **§ 901 - Title**

This Chapter shall be known as the “Homeowner Protection from Predatory Lending Ordinance.”

History: Tribal Act #03-21.1190, enacted by Tribal Council in Special Session on January 29, 2003.

#### **§ 902 - Council Findings and Purpose of the Ordinance**

- (a) The Tribal Council finds and declares that unscrupulous mortgage lenders often engage in “predatory lending,” practices in which lenders make unsuitable loans designed to exploit vulnerable unsophisticated borrowers. These “predatory loans” are a subset of sub-prime lending and loans and have one or more of the following features:
  - (1) Charges more in interest and fees than is required to cover the added risk of lending to borrowers with credit imperfections;
  - (2) Contains abusive terms and conditions that trap borrowers and lead to increased indebtedness;
  - (3) Does not take into account borrowers’ abilities to repay the loans; or
  - (4) Violates fair lending laws by targeting Tribal members.
- (b) The Homeownership Protection from Predatory Lending Ordinance establishes a behavior standard by which creditors, lenders, appraisers, home inspectors, builders, manufactured housing dealers, contractors, and real estate agents must conduct business when tribal members, lands, and/or dollars are involved in housing and mortgage lending transactions. The intent of this Ordinance is to eliminate predatory behavior/practices by requiring all “interested parties” to disclose business relationships and arrangements that could influence the decision making process in a proposed transaction. The Ordinance prohibits “interested parties” from receiving undisclosed referral fees, “excessive transaction related

commission/fees” and/or other consideration that violate the spirit of this Tribal Code. The Realtor Agency Disclosure Statement and HUD 1 Settlement Statement must identify all fees and clearly define transactional costs including business relationships with “related parties.” The Tribe must receive a complete copy of the HUD 1 Settlement Statement for the buyer and seller three (3) days prior to the scheduled closing.

History: Tribal Act #03-21.1190, enacted by Tribal Council in Special Session on January 29, 2003.

### § 903 - Definitions

- (a) “Affiliate” means any company that controls, is controlled by, or is under common control with another company, pursuant to the federal “Bank Holding Company Act of 1956” (12 U.S.C. § 1841 et seq.).
- (b) “Annual percentage rate” means the annual percentage rate for a loan calculated pursuant to the federal “Truth in Lending Act” (15 U.S.C. § 1601 et seq.), and the regulations promulgated by the Federal Reserve Board.
- (c) “Bona fide loan discount points” means loan discount points knowingly paid by a borrower for the purpose of reducing, and which result in a reduction of, the interest rate or time-price differential applicable to the loan, provided the amount of the interest rate reduction purchased by the discount points is reasonably consistent with established industry practices for market transactions.
- (d) “Borrower” means any natural person or persons/Tribal member(s) obligated to repay a loan, including, without limitation, a co-borrower, cosigner, or guarantor.
- (e) “Credit insurance” means any credit life, credit disability, credit unemployment, accident, health or loss of income insurance or any other line or subline of insurance which may become accepted as credit insurance by the insurance and lending industries or any debt cancellation or suspension agreement or contract (whether or not the debt cancellation or suspension agreement or contract coverage is insurance under applicable law) or any similar product.
- (f) “Creditor” means a person who extends consumer credit that is subject to a finance charge or that is payable by written agreement in more than four (4) installments and to whom the obligation is payable.
- (g) “High-cost home loan” means any loan or extension of credit, including an open-end line of credit but excluding a reverse mortgage transaction, as defined in 12 C.F.R. § 226.33, as from time to time amended:
  - (1) The principal amount of the loan does not exceed the lesser of the conforming loan size limit for a single-family dwelling as established from time to time by the Federal National Mortgage Association;
  - (2) The borrower is a natural person/GTB Tribal member;

- (3) The debt is incurred by the borrower primarily for personal, family or household purposes;
  - (4) The loan is secured by a security leasehold interest or mortgage on real estate upon which there is erected or to be erected a one- to four-family dwelling; and
  - (5) The terms of the loan equal or exceed one (1) or more of the “thresholds,” as that term is defined in this Act.
- 
- (h) “Home loan” means a loan or agreement to extend credit made to a natural person/Tribal member, which loan is secured by a leasehold interest, a deed to secure debt, security deed, mortgage, security instrument, deed of trust, or other document representing a security interest or lien upon any interest in one- to four-family residential property or a manufactured home located in (the Grand Traverse Band of Ottawa and Chippewa service area, which is represented by the following counties in Michigan: Antrim, Benzie, Charlevoix, Grand Traverse, Leelanau and Manistee), regardless of where made, including the renewal or refinancing of any such loan. Without limiting the generality of the foregoing, the term specifically includes a home equity line of credit, a commercial or small business loan secured by a residential property or manufactured home, per capita loan, or other similar agreement.
  - (i) “Interested party” means any party that generally, but not necessarily, benefits from the final outcome of the transaction.
  - (j) “Junior mortgage” means a home loan secured by a deed of trust or mortgage on real property if the deed of trust or mortgage is junior in priority to another deed of trust or mortgage on the real property.
  - (k) “Lender” means any person who makes a home loan or acts as a mortgage broker with respect to a home loan.
  - (l) “Loan consummation” means the time that a consumer becomes contractually obligated on a credit transaction.
  - (m) “Mortgage broker” means any person who functions as intermediary for a fee between the borrower and the creditor in the making of a home loan.
  - (n) “Originate” means to arrange, negotiate, or make a consumer loan.
  - (o) “Prepayment penalty” means any charge or penalty for paying all or part of the principal before the date on which the principal is due and includes computing a refund or unearned interest by a method that is less favorable to the borrower than the actuarial method, as defined by Section 933(d) of the Housing and Community Development Act of 1992, 15 U.S.C. § 1615(d), as from time to time amended.
  - (p) “Points and fees” means:

- (1) All items required to be disclosed under 12 C.F.R. §§ 226.4(a) and 226.4(b), as amended, except interest or the time-price differential;
  - (2) All charges, except for escrow amounts for future payments of taxes and insurance, for items listed under 12 C.F.R. § 226.4(c)(7), as amended, if the creditor receives direct or indirect compensation in connection with the charge of the charge is paid to an affiliate of the creditor, or third party or parties;
  - (3) All compensation paid directly or indirectly to a mortgage broker, including a broker that originates a home loan in its own name through an advance of moneys and subsequently assigns the home loan to the person advancing the moneys;
  - (4) The maximum prepayment fees or penalties that may be charged or collected under the terms of the loan documents;
  - (5) All prepayment fees or penalties that are charged to the borrower if the loan refinances a previous loan made by the same creditor or an affiliate of the creditor;
  - (6) For open-ended loans, the points and fees are calculated by adding the total fees charged at closing plus the maximum additional fees that can be charged pursuant to the loan documents during the term of the loan.
  - (7) The term “points and fees” does not include taxes, filing fees, recording charges, and other charges and fees paid or to be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest.
- (q) “Rate” means the interest rate charged on the home loan, based on an annual simple interest yield.
- (r) “Threshold” means any one of the following:
- (1) The annual percentage rate of the loan equals or exceeds:
    - (A) By more than four (4) percentage points the yield on Treasury securities having comparable periods of maturity on the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor, if the home loan is a first mortgage; or
    - (B) By more than five (5) percentage points the yield on Treasury securities having comparable periods of maturity on the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor, if the home loan is a junior mortgage.
  - (2) The total points and fees equals or exceeds three percent (3%) of the total loan amount or four hundred dollars (\$400), whichever amount is greater; provided, the following discount points are excluded from the calculation of the total points and fees payable by the borrower:

- (A) Up to and including two bona fide loan discount points payable by the borrower in connection with the loan transaction, but only if the interest rate without the discount points does not exceed by more than one (1) percentage point the average interest rate posted on Freddie Mac's Weekly Mortgage Rate Survey.
- (B) Up to and including one bona fide loan discount point payable by the borrower in connection with the loan transaction, but only if the interest rate without the discount points is more than one (1) percentage point higher but less than two (2) percentage points greater than the average interest rate posted on Freddie Mac's Weekly Mortgage Rate Survey.

If the terms of the home loan provide for an initial or introductory period during which the annual percentage rate is lower than that which will apply after the end of such initial or introductory period, then the annual percentage rate to be considered for purposes of the definition is the rate which applies after the initial or introductory period. If the terms of the home loan provide for an annual percentage rate that varies in accordance with an index plus a margin or varies in any other manner, then the annual percentage rate to be considered for purposes of this definition is the maximum rate that will be charged during the term of the loan. For loans that vary according to an index, the annual percentage rate is computed as the index rate at loan closing plus the largest margin specified in the loan agreements.

- (s) "Total loan amount" means the principal of the loan minus those points and fees as defined in Subsection (o) of this section that are included in the principal amount of the loan. For open-ended loans, the total loan amount is calculated using the total line of credit allowed under the home loan.

History: Tribal Act #03-21.1190, enacted by Tribal Council in Special Session on January 29, 2003.

#### **§ 904 - Limitations on Home Loans**

All home loans made within the jurisdiction of the Grand Traverse Band are subject to the following limitations:

- (a) **No Financing of Credit Insurance.** No creditor making a home loan may finance, directly or indirectly, the premiums for any credit life, credit disability, credit property, or credit unemployment insurance, or any other life or health insurance premiums, or any payments for any debt cancellation or suspension agreement or contracts. Insurance premiums and debt cancellation or suspension agreement payments that are not included in the home loan principal and that are calculated and paid on a monthly basis may not be considered to have been financed by the creditor for purposes of this subsection.
- (b) **No Flipping.** No creditor shall knowingly or intentionally engage in the unfair act or practice of flipping a consumer home loan. For the purposes of this section, "flipping" is the making of a home loan to a borrower that refinances an existing home loan when the new loan does not have a tangible benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the

new loan, and the borrower's circumstances. Home loan refinancings are presumed to be flippings if the primary tangible benefit to the borrower is an interest rate lower than the interest rate on debts satisfied or refinanced in connection with the home loan, and it will take more than four (4) years for the borrower to recoup the costs of the points and fees and other closing costs through savings resulting from the lower interest rate. The provisions of this subsection apply regardless of whether the interest rate, points, fees and charges paid or payable by the borrower in connection with the refinancing exceed those thresholds as defined in 13 GTBC § 903(r) of this Act.

- (c) **No Default Recommendations.** No creditor may recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a home loan that refinances all or any portion of that existing loan or debt.
- (d) **No Excessive Late Fees.** A creditor may not charge a late payment fee except according to the following rules:
  - (1) The late payment fee may not be in excess of four percent (4%) of the amount of the payment past due.
  - (2) The late payment fee may be assessed only for a payment past due for fifteen (15) days or more.
  - (3) The late payment fee may not be charged more than one (1) time with respect to a single late payment. If a late payment charge is deducted from a payment made on the loan, and the deduction causes a subsequent default on a subsequent payment, no late payment charge may be imposed for the default. If a late payment charge has been imposed one (1) time with respect to a particular late payment, a late payment fee may not be imposed with respect to any future payment that would have been timely and sufficient, but for the previous default.
  - (4) A late payment fee may not be charged unless the creditor notifies the borrower within forty-five (45) days following the date the payment was due that a late payment charge has been imposed for a particular late payment. No late payment charge may be collected from any borrower if the borrower informs the creditor that nonpayment of an installment is in dispute or presents proof of payment within forty-five (45) days after receipt of the creditor's notice of the late charge.
  - (5) A creditor must treat each payment as posted on the same date as it was received by the creditor, services, or creditor's agent, or at the address provided to the borrower by the creditor, services, or the creditor's agent for making payments.
- (e) **No Refinancing of Special Mortgages.** No creditor may make a home loan if the new loan refinances an existing home loan that is a special mortgage originated, subsidized, or guaranteed by or through a state, tribal, or local government, or nonprofit organization, that either bears nonstandard payment terms beneficial to the borrower, such as payments that vary with income, are limited to a percentage of income, or where no payments are required under specified conditions, or with a below-market interest rate that is at least one (1) percentage point less than the average interest rate posted on Freddie Mac's Weekly

Mortgage Survey, and where, as a result of the refinancing, the borrower will lose one (1) or more of the benefits of the mortgage.

- (f) **No Call Provisions.** A home loan may not contain a provision that permits the creditor, in its sole discretion, to accelerate the indebtedness. This subsection does not prohibit acceleration of the loan in good faith due to the borrower's failure to abide by the material terms of the loan.
- (g) **No Fee for Balance or Payoff.** A creditor may not charge a fee for informing or transmitting to a person the balance due to pay off a home loan or to provide a release upon prepayment. A creditor must provide payoff balance not later than seven (7) business days after the request is received by the creditor.
- (h) **No Fee for Product Where Product Not Provided.** A creditor may not charge a fee for a product or service where the product or service is not actually provided, or misrepresent the amount charged by or paid to a third party for a product or service.
- (i) **No Above-Market Charges for Services.** No third party may charge or receive any unreasonable compensation for loan-related goods, products, and services. For the purpose of this section, "unreasonable compensation" is a price for loan-related goods, services, and products that is fifty percent (50%) higher than the average price in (a metropolitan area or the non-metropolitan areas of a state or Leelanau/Grand Traverse Counties). The average price can be determined by obtaining quotes for services from three (3) or more third parties. Loan-related goods, products and services include fees for tax payment services, fees for flood certification, fees for pest infestation determinations, mortgage brokers' fees, appraisal fees, inspection fees, environmental assessment fees, fees for credit report services, assessments, costs of upkeep, surveys, attorneys' fees, notary fees, escrow charges and insurance premiums, including, for example, fire, title, life, accident and health, disability, unemployment, flood and mortgage insurance.
- (j) **No False Statements or Representations.** A creditor, appraiser, broker, or real estate agent must not make or cause to be made, directly or indirectly, any false, deceptive, or misleading statement or representation in connection with a home loan, including, without limitation, a false, deceptive, or misleading statement or representation regarding the borrower's ability to qualify for any mortgage product, or regarding the value of the dwelling. A statement or representation is deceptive or misleading if it has the capacity to deceive or mislead a borrower or potential borrower. The court may consider the following factors in deciding whether a statement or representation is deceptive or misleading:
  - (1) The overall impression that the statement or representation reasonably creates.
  - (2) The particular type of audience to which the statement is directed.
  - (3) Whether it may be reasonable comprehended by the segment of the public to which the statement is directed.
- (k) **No Influencing Appraiser.** A creditor, broker, or real estate agent may not directly or indirectly compensate, coerce, or intimidate an appraiser for the purpose of influencing the

independent judgment of the appraiser with respect to the value of real estate covered by a home loan or is being offered as security according to an application for a home loan.

- (l) No Blanks in Loan Documents. A home loan document in which blanks are left to be filled in after the contract is signed by the borrower is not enforceable under the law.
- (m) Required Language Accommodation. If the discussions between the creditor and the borrower on a home loan are conducted primarily in a language other than English, the creditor must, before closing, provide an additional copy of all information required to be disclosed to the borrower under the federal Truth in Lending Act and the Real Estate Settlement Procedures Act, translated into the language in which the discussions were conducted, or make available an objective third party interpreter who can explain the loan transaction and translate the loan documents and disclosures into the language in which the discussions were conducted.
- (n) Required Disclosure of Yield Spread Premiums. In the making of a home loan, the amount of yield spread premium and other compensation paid to mortgage brokers must be disclosed to the borrower no later than three (3) days prior to closing the home loan. The borrower must also be informed of the comparison of the dollar amount of the yield spread premium paid to the broker and the dollar amount of the loan costs assumed by the broker. The borrower must also be informed how many basis points the interest rate increased due to the yield spread premium and how much the increase in the interest rate adds to the monthly loan payment and the total loan payment over the term of the loan.

History: Tribal Act #03-21.1190, enacted by Tribal Council in Special Session on January 29, 2003.

### **§ 905 - Limitations on High-Cost Home Loans**

All high-cost home loans are subject to the following limitations:

- (a) No Financing of Points and Fees. No creditor making a high-cost home loan may directly or indirectly finance:
  - (1) Any prepayment fees or penalties payable by the borrower in a refinancing transaction if the creditor or an affiliate of the creditor is the noteholder of the note being refinanced;
  - (2) Points and fees defined in 13 GTBC § 903 in excess of three percent (3%) of the total loan amount; or
  - (3) Any other charges payable to third parties.
- (b) No Benefit From Refinancing Existing High-Cost Home Loan With New High-Cost Home Loan. A creditor may not charge a borrower points, fees, or other charges in connection with a high-cost home loan if the proceeds of the high-cost home loan are used to refinance an existing high-cost home loan held by the same creditor or an affiliate of the creditor.

- (c) Limit on Prepayment Penalties.
- (1) A high-cost loan shall not include a prepayment fee or penalty after the first 24 months after the date of consummation of the loan.
  - (2) A covered loan may include a prepayment fee or penalty up to the first 24 months after the date of consummation of the loan if:
    - (A) The person who originates the covered loan has also offered the consumer a choice of another product without a prepayment fee or penalty.
    - (B) The person who originates the covered loan has disclosed in writing to the consumer at least three (3) business days prior to loan consummation the terms of the prepayment fee or penalty to the consumer for accepting a covered loan with the prepayment penalty and the rates, points, and fees that would be available to the consumer for accepting a covered loan without a prepayment penalty.
    - (C) The person who originates the covered loan has limited the amount of the prepayment fee or penalty to an amount not to exceed the payment of six (6) months' advance interest, at the contract rate of interest then in effect, on the amount prepaid in any twelve-month period in excess of twenty percent (20%) of the original principal amount.
  - (3) A covered loan will not impose the prepayment fee or penalty if the covered loan is accelerated as a result of default.
  - (4) The person who originates the covered loan will not finance a prepayment penalty through a new loan that is originated by the same person.
- (d) No Balloon Payment. No high-cost home loan may contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. For a payment schedule that is adjusted to account for the seasonal or irregular income of the consumer, the total installments in any year may not exceed the amount of one (1) year's worth of payments on the loan. This prohibition does not apply to a bridge loan. For purposes of this paragraph, "bridge loan" means a loan with a maturity of less than eighteen (18) months that only requires payments of interest until the time when the entire unpaid balance is due and payable.
- (e) No Steering. No creditor making a high-cost home loan may steer a borrower into a loan with higher costs than the lowest-cost category of loans for which the borrower could qualify with that creditor or any of its affiliates. No mortgage broker arranging a high-cost home loan may steer a borrower into a loan with higher costs than the lowest-cost array of loans available to that borrower from the creditors with whom the mortgage broker regularly does business.
- (f) No Negative Amortization. No high-cost home loan may contain a payment schedule with regular periodic payments that cause the principal balance to increase at any time over the

course of the loan because the regular periodic payments do not cover the full amount of interest due.

- (g) No Advance Payments. No high-cost home loan may include terms under which more than two (2) periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.
- (h) No Increased Interest Rate Upon Default. Except with regard to interest rate changes in a variable-rate loan in which the increase is otherwise consistent with the provisions of the loan documents and in which the event of default or the acceleration of the indebtedness does not trigger a change in the interest rate, no high-cost home loan may contain a provision that increases the interest rate after default.
- (i) No Modification or Deferral Fees. A creditor may not charge a borrower any fees or other charges to modify, renew, extend, or amend a high-cost home loan or to defer any payment due under the terms of a high-cost home loan.
- (j) No Mandatory Arbitration Clause. No high-cost loan may be subject to a mandatory arbitration clause that limits in any way the right of the borrower to seek relief through the judicial process. Non-binding arbitration and mediation would be acceptable forms of attempted dispute or conflict resolution.
- (k) No Lending Without Home Ownership Counseling. A creditor may not make a high-cost home loan without first receiving certification from a counselor approved by the Grand Traverse Band and/or United States Department of Housing and Urban Development or the creditor's regulatory agency of jurisdiction that the borrower has received counseling on the advisability of the loan transaction and the appropriate loan for the borrower.
- (l) No Lending Without Due Regard to Repayment Ability.
  - (1) A creditor may not make a high-cost home loan unless the creditor reasonably believes at the time the loan is consummated, the person reasonably believes the consumer, or consumers, when considered collectively in the case of multiple consumers, will be able to make the scheduled payments to repay the obligation based upon a consideration of their current and expected income, current obligations, employment status, and other financial resources, other than the consumer's equity in the dwelling that secures repayment of the loan. In the case of multiple consumers, a creditor may not include or add a borrower to the high-cost loan, unless the individual or added borrower separately confirms in writing to the creditor that the borrower expects and commits to substantially contribute to payments.
  - (2) The consumer is presumed to be able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, the consumer's total monthly debts, including amounts owed under the loan, do not exceed fifty percent (50%) of the consumer's monthly gross income, as verified by the credit application, the consumer's financial statement, a credit report, financial information provided to the person originating the loan by or on behalf of the consumer, or any other

reasonable means. In the case of a covered loan with an annual percentage rate that varies, this evaluation shall be based upon the procedures for computing the annual percentage rate in 13 GTBC § 903(q) above.

- (m) No Attempted Evasion. A creditor who originates a high-cost loan may not avoid, or attempt to avoid, the application of this division by doing the following:
  - (1) Dividing any loan transaction into separate parts for the purpose of evading the provisions of this Act.
  - (2) Any other such acts or practices with the intent of evading the provisions of this Act.
- (n) Restrictions on Home-Improvement Contracts. A creditor may not pay a contractor under a home-improvement contract from the proceeds of a high-cost home loan unless:
  - (1) The creditor is presented with a completion contract dated and signed by all parties to the home-improvement contract showing that the home improvements have been completed; and
  - (2) The instrument is payable to the borrower or jointly to the borrower and the contractor or, at the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the creditor, and the contractor prior to the disbursement.
- (o) Required Notice. A creditor or broker may not sell, transfer or otherwise assign a high-cost home loan without furnishing the following statement to the purchaser or assignee:

“NOTICE: THIS IS A HOME LOAN SUBJECT TO SPECIAL RULES AND CONDITIONS AS REQUIRED BY TRIBAL LAW. PURCHASERS OR ASSIGNEES OF THIS LOAN ARE LIABLE FOR ALL CLAIMS AND DEFENSES WITH RESPECT TO THE LOAN THAT THE BORROWER COULD ASSERT AGAINST THE CREDITOR OR BROKER OF THE LOAN.”
- (p) Required Reporting of Payments. Any lender who makes a high-cost home loan must report both the favorable and unfavorable payment history of the borrower to a nationally recognized consumer credit reporting agency at least annually during such period as the lender holds or services the loan.

History: Tribal Act #03-21.1190, enacted by Tribal Council in Special Session on January 29, 2003.

### **§ 906 - Right to Cure**

- (a) Right to Reinstate. If a creditor asserts that grounds for acceleration exist and requires the payment in full of all sums secured by the security instrument, the borrower or anyone authorized to act on the borrower's behalf has the right at any time, up to the time title is transferred by means of foreclosure, judicial proceeding and sale, or otherwise, to cure the default and reinstate the high-cost home loan by tendering the amount or performance as

specified in this section. Cure of default as provided in this section reinstates the borrower to the same position as if the default had not occurred and nullifies as of the date of the cure any acceleration of any obligation under the security instrument or note arising from the default.

- (b) **Grounds for Reinstatement.** Before any action filed to foreclose upon the property or other action is taken to seize or transfer ownership of the property, a notice of the right to cure the default must be delivered to the borrower informing the borrower of the following:
- (1) The nature of default claimed on the high-cost home loan, and of the borrower's right to cure the default by paying the sum of money required to cure the default; except that a creditor or services may not refuse to accept any reasonable partial payment made or tendered in response to such notice. If the amount necessary to cure the default will change during the twenty-day period after the effective date of the notice due to the application of a daily interest rate or the addition of late fees, as allowed by this Act, the notice must give sufficient information to enable the borrower to calculate the amount at any point during the twenty-day period;
  - (2) The date by which the borrower must cure the default to avoid acceleration and initiation of foreclosure, or other action to seize the property, which date may not be less than twenty (20) days after the date the notice is effective, and the name, address, and telephone number of a person to whom the payment or tender shall be made;
  - (3) That if the borrower does not cure the default by the date specified, the creditor may take steps to terminate the borrower's ownership in the property by requiring payment in full of the high-cost home loan and commencing a foreclosure proceeding or other action to seize the property; and
  - (4) The name and address of the creditor and the telephone number of a representative of the creditor whom the borrower may contact if the borrower disagrees with the creditor's assertion that a default has occurred or the correctness of the creditor's calculation of the amount required to cure the default.
- (c) **Fees.** To cure a default under this section, a borrower is not required to pay any charge, fee, or penalty attributable to the exercise of the right to cure a default as provided for in the section, other than the fees specifically allowed by this section. The borrower may be liable for attorney fees that are reasonable and actually incurred by the creditor, based on a reasonable hourly rate and a reasonable number of hours; except that the borrower may not be liable for any attorney fees relating to the borrower's default that are incurred by the creditor prior to or during the twenty-day period set forth in this section.

History: Tribal Act #03-21.1190, enacted by Tribal Council in Special Session on January 29, 2003.

### **§ 907 - Civil Action; Tribal Court Jurisdiction; Enforcement and Remedies**

- (a) **Civil Action.** The Tribal Council authorizes any borrower to initiate a civil action in Grand Traverse Band Tribal Court to enforce this Ordinance. The Tribal Council is also

authorized to initiate a civil action of declaration, injunctive, or other equitable relief on its own behalf, on behalf of the public interest, or on behalf of a borrower to enforce this Ordinance.

- (b) Jurisdiction. The Grand Traverse Band Tribal Court has exclusive jurisdiction over all civil actions initiated to enforce this Ordinance. As a matter of law, persons engaging in lending activities covered in this Ordinance consent to the jurisdiction of the Grand Traverse Band Tribal Court.
- (c) Enforcement and Remedies.
  - (1) Any violation of this Act constitutes an unfair or deceptive trade practice.
  - (2) Any person found by a preponderance of evidence to have violated this Act is liable to the borrower for the following:
    - (A) Actual damages sustained by the borrower as a result of the violation. The borrower is required to demonstrate reliance in order to receive actual damages;
    - (B) Statutory damages equal to the finance charges agreed to in the home loan agreement plus twenty percent (20%) of the amount financed for all violations;
    - (C) Punitive damages if the violation was malicious or reckless;
    - (D) Reasonable costs and attorney fees.

In addition, the court may, as the court deems appropriate, grant injunctive, declaratory, and other equitable relief in an action to enforce compliance.

- (3) The intentional violation of this Act, including the absence of acting in good faith, renders the home loan agreement void. A creditor intentionally violating any provision in this Act has no rights to collect, receive, or retain any principal, interest, or other charges whatsoever with respect to the loan, and the borrower may recover any payments made under the agreement. Loan terms that violate the protections of this Act are unenforceable, and the courts may issue orders to reform any terms to bring the loan into compliance.
- (4) The brokering of a home loan that violates the provisions of this Act constitutes a violation of such provisions.
- (5) The rights of rescission granted under 15 U.S.C. § 1601 et seq. for violations of this Act and all other remedies provided in this Act are available to a borrower by way of recoupment against a party foreclosing on the home loan or collecting on the loan, at any time during the term of the loan.

- (6) The borrower may also assert a violation of this Act as a defense, bar, or counterclaim to any default action, collection action, or judicial or nonjudicial foreclosure action in connection with a home loan.
- (7) The remedies provided under this Act are cumulative. The protections and remedies provided under this Act are in addition to other protections and remedies that may be otherwise available under law. Nothing in this Act is intended to limit the rights of any injured person to recover damages or pursue any other legal or equitable action under any other applicable law or legal theory.
- (8) Any entity that purchases or is otherwise assigned a home loan is liable for all claims and defenses with respect to the loan that the borrower could assert against the creditor or broker of the loan.
- (9) A creditor that makes a home loan and that, when acting in good faith, fails to comply with the provisions of this Act will not be deemed to have violated this Act if the creditor establishes that either:
  - (A) Within thirty (30) days after the loan closing, and prior to receiving any notice from the borrower or any governmental agency of such noncompliance, the creditor made appropriate restitution to the borrower and made appropriate adjustments to the loan; or
  - (B) Within sixty (60) days after the loan closing, prior to receiving any notice from the borrower of such noncompliance, and the noncompliance was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such errors, the creditor made appropriate restitution to the borrower and made appropriate adjustments to the loan. Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to a person's obligations under this section is not a bona fide error.
- (10) High-cost home loans are governed by this Act notwithstanding any other provision of law to the contrary.

History: Tribal Act #03-21.1190, enacted by Tribal Council in Special Session on January 29, 2003.

### **§ 908 - Severability**

The provisions of this Act are severable, and if any phrase, clause, sentence, paragraph, or provision of this Act, or the application thereof to any person or circumstance, is for any reason adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act nor the application of such phrase, clause, sentence, paragraph, or provision to other persons or circumstances, but is confined in its operation to the phrase, clause, sentence, paragraph, or provision thereof and to the persons or circumstances directly involved in the controversy in which such judgment may have been rendered. If any provision of this Act is declared to be inapplicable to any specific category, type

of loan or points and fees, the provisions of this Act shall nonetheless continue to apply with respect to all other loans and points and fees.

History: Tribal Act #03-21.1190, enacted by Tribal Council in Special Session on January 29, 2003.

### **§ 909 - Effective Date and Applicability**

- (a) **Effective Date.** This Act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after enactment.
- (b) **Applicability.** This Act applies to home loans and high-cost home loans offered or originated or consummated on or after the applicable effective date of this Act.

History: Tribal Act #03-21.1190, enacted by Tribal Council in Special Session on January 29, 2003.

### **§ 910 - Sovereign Immunity**

Nothing in this Ordinance is, or may be construed as, a waiver of the sovereign immunity of the Grand Traverse Band, its officers, employees, or agents.

History: Tribal Act #03-21.1190, enacted by Tribal Council in Special Session on January 29, 2003.

## **Chapter 10 - Judicial Eviction Ordinance**

### **§ 1001 - Purpose; Applicability**

This chapter is intended to provide a uniform and fair procedure governing the eviction of persons from Tribally held and/or managed residential properties when the cause for eviction is violation of a residential lease or for cause by a violation of a Grand Traverse Band of Ottawa and Chippewa Indians (GTB, Grand Traverse Band) Housing Department Policy and Procedure as established under the authority of the Native American Housing Assistance and Self-Determination Act, 25 U.S.C. § 4101 et seq. (NAHASDA).

History: Tribal Act #05-23.1501 enacted by Tribal Council on October 19, 2005.

### **§ 1002 - Definitions**

- (a) **Eviction:** the recovery of real property and the termination of any possessory interest in that property by operation of law.
- (b) **Tribally held or managed:** Property under the control of the Grand Traverse Band through the GTB Housing Department. Tribally held property are units held and managed under NAHASDA authority as low rent units managed by the Housing Department. “Managed property” are units managed and held as “Mutual Help Homes” under the authority of

NAHASDA. "Market Rentals" are units held and managed by the Housing Department outside the authority of NAHASDA.

- (c) For cause: Any substantial violation of the GTB Housing Department policy and procedure, or violation of a residential lease.

History: Tribal Act #05-23.1501 enacted by Tribal Council on October 19, 2005.

### **§ 1003 - Summons and Complaint**

If after the date set forth in the GTB Housing Department's notice to quit possession of the property, the tenant remains in possession, the GTB Housing Department may file a complaint for eviction and such other relief as deemed just and proper, in the Tribal Court. The complaint shall state:

- (a) The names of the adult tenant(s) against whom the suit is brought;
- (b) A description of the rental agreement, if any;
- (c) The address or reasonable description of the location of the premises;
- (d) The grounds for eviction;
- (e) A statement showing that the notice to quit and any required termination notices have been served in accordance with this ordinance or other applicable law;
- (f) A statement of the relief demanded, including any claim(s) for possession of the dwelling unit, damages, fees, costs, or other special relief;
- (g) If violation of a federal regulation is asserted as the grounds for eviction for cause, the federal regulation shall be cited; and
- (h) The GTB Housing Department shall declare compliance with all regulatory processes prior to filing the complaint for eviction.

History: Tribal Act #05-23.1501 enacted by Tribal Council on October 19, 2005.

### **§ 1004 - Action Upon Filing Complaint**

- (a) The Tribal Court shall, within thirteen (13) business days of filing, review the complaint for eviction and shall make findings regarding compliance with § 1003. If found in compliance, the complaint shall be served pursuant to § 1003 along with the Court's summons requiring the defendant to answer the complaint either in person or in writing on or before a date certain. In cases in which the grounds for eviction is for cause as defined herein, the answer shall be due no less than three (3), or more than five (5) calendar days from the date of the summons. In all other cases, the answer shall be filed either in writing

or in person within ten (10) calendar days of the date of the summons. Proof of service of the complaint and summons shall be required before proceeding.

- (b) Any answer to the complaint shall state any and all defenses to be asserted as well as any factual disputes. When the defendant answers the complaint in person, a written rendering of the answer shall be served upon the plaintiff within five (5) business days of receipt of the answer.

History: Tribal Act #05-23.1501 enacted by Tribal Council on October 19, 2005.

### **§ 1005 - Commencement of Proceedings**

- (a) If the defendant timely files an answer either in person or in writing, the Court shall set a date for hearing at which the defendant shall appear and show cause why an order of eviction should not be entered. All parties shall be notified by the court of the date, time, and place of the hearing no less than three (3) business days prior to the scheduled hearing.
- (b) The hearing to show cause shall be held within fifteen (15) calendar days of the date of filing of the answer. If the hearing date falls on a weekend day or holiday, the hearing will held on the first business day following the weekend or holiday.
- (c) If the stated cause for eviction is the non-payment of rents, the defendant may, for good cause shown and upon payment in full of all rents due from the date of filing of the complaint until the scheduled date of the show cause hearing may, at the court's discretion, obtain an extension of time for the hearing of no more than fifteen (15) additional days. There shall be no extension of time of hearing when the complaint alleges for cause grounds for eviction.
- (d) The Court may, as a matter of discretion, or upon motion of either party, order the defendant to pay into an escrow account with the Court rents due for the occupancy of the property pending litigation. Upon final determination of the Court regarding eviction, the funds in escrow may be released entirely or in part to the plaintiff or its agent in satisfaction of terms of the lease or other GTB Housing Department agreement. Funds not released to the plaintiff or its agent pursuant to a final judgment shall be released to the defendant.

History: Tribal Act #05-23.1501 enacted by Tribal Council on October 19, 2005.

### **§ 1006 - Defenses to Eviction**

The Court shall grant remedies provided within this ordinance unless clear and convincing evidence is presented demonstrating:

- (a) The premises of the property that is the subject of the lease or other housing agreement are untenable, uninhabitable or present a condition constituting constructive eviction by the plaintiff or its agent and that defendant provided reasonable and proper notice to the plaintiff of the condition and that plaintiff failed to timely remedy any serious hazard to

human health and safety. Infringement upon an aesthetic use of the property, whether adversely affecting the quiet use and enjoyment of the property by the defendant, shall not constitute a serious hazard.

- (b) The plaintiff has failed or refused to make repairs for which plaintiff is responsible resulting in an adverse effect on defendant's quiet use and enjoyment of the property. Defendant must have provided the plaintiff notice of the defect and plaintiff either, without good cause, failed to make timely repairs or refused to repair the defect.
- (c) There are monies due and owing to the defendant because defendant has been required to make repairs on conditions over which the plaintiff is responsible and plaintiff has, after reasonable notice, failed or refused to make the repairs. Sums owing to the defendant may be a complete or partial defense to complaint for eviction, but only to the extent that such sums set off monies validly owed to the defendant pursuant to the lease or other housing agreement. Eviction may be ordered after offset, if defendant fails or refuses to comply with the terms of the lease or other housing agreement.
- (d) Due to improper conduct of plaintiff, there has been injury to the defendant or lawful members of the household to the degree that justice is served by modification or denial of remedies including but not limited to the equitable defenses of estoppel, laches, fraud, misrepresentation and breach of material obligations to public health and safety to a degree that offends community standards of peace and justice.
- (e) Serious and material breach(es) of applicable housing federal and Tribal statutes by the plaintiff such that a grant of remedy would be adverse to justice and against public policy.
- (f) The cause for eviction is apparently the race, color, national origin, religion, sex, familial status or handicap [The Fair Housing Act, 42 USCA § 3601 et seq.] of the defendant or lawful members of the household.
- (g) The termination of the tenancy and/or housing agreement is clearly in retaliation for the defendant's assertion of rights under this ordinance or defendant's efforts to compel plaintiff to comply with responsibilities defined in this ordinance.
- (h) Other material facts presented by the defendant that clearly demonstrate that eviction is unjust and contrary to public interest.

History: Tribal Act #05-23.1501 enacted by Tribal Council on October 19, 2005.

### **§ 1007 - Discovery and Pre-hearing Proceedings**

Extensive, prolonged or time consuming discovery and pre-hearing procedures are impermissible except in the interest of justice and for good cause shown by the moving party. Extensions of time for discovery and pre-hearing shall only be granted upon written motion to the Court. Discovery shall be informal, and reasonably reciprocal, completed within five (5) calendar days of the date of hearing. Discovery requests shall be made within three (3) calendar days after the show cause hearing has been set. The court may enter reasonable orders requiring discovery or to protect the rights of the parties upon receipt of reasonable notice.

History: Tribal Act #05-23.1501 enacted by Tribal Council on October 19, 2005.

### **§ 1008 - Evidence**

The presentation and admission of evidence under this ordinance shall comport with the following:

- (a) All relevant and material evidence may be admitted.
- (b) The interests of justice and fairness shall be the determinative factors in ruling on challenges to the admissibility of evidence.
- (c) The Court may avail itself of any recognized authoritative materials, books or documents to guide it in reaching a ruling on the admissibility of any evidence.
- (d) Evidence of the customs, traditions and mores of Native American tribes, particularly those of the Ottawa and Chippewa, are admissible.
- (e) The Court may admit reasonable and reliable hearsay evidence. Determinations regarding hearsay objections shall be based upon the materiality and relevance of the evidence under the circumstances. Evidence may be excluded if its probative value is outweighed by a substantial likelihood of prejudice, confusion, unfair surprise or misleading of the trier of fact. Hearsay is freely admissible when all parties to the hearsay are present before the court and qualified to testify regarding the hearsay evidence.
- (f) Incident reports generated by law enforcement agencies shall be admissible hearsay under this ordinance.
- (g) Upon request of any party, the Court may take judicial notice of specific facts which, by reason of common certainty in the community, are undisputable.

History: Tribal Act #05-23.1501 enacted by Tribal Council on October 19, 2005.

### **§ 1009 - Burden of Proof**

The burden of proof for issuance of an order of eviction shall be a preponderance of the evidence that lawful reason exists to terminate the lease or other housing agreement.

History: Tribal Act #05-23.1501 enacted by Tribal Council on October 19, 2005.

### **§ 1010 - Judgment**

Judgment on eviction shall be rendered within five (5) calendar days of the hearing to show cause and take the following forms:

- (a) Order of eviction stating the date and time for complete delivery of the property to plaintiff.
- (b) Grant of actual damages as provided for in the agreement of the parties or this ordinance, including interest.
- (c) Order parties to execute an obligation required by law.
- (d) Establish a payment plan for the defendant.
- (e) Establish and grant power of attorney in another person or entity to fulfill the rights and/or obligations of either party.
- (f) Remediate the action in part or in whole through appropriate recalculation of rents or sums due.
- (g) Order the defendant to perform specific work for the plaintiff in consideration of sums due and/or damages.
- (h) Order payment of attorneys' fees and, where allowed by law or agreement, costs and expenses of litigation.
- (i) Order the parties into negotiations as provided for in this ordinance.
- (j) Grant any other relief allowed in law or equity and provided for in this ordinance.

History: Tribal Act #05-23.1501 enacted by Tribal Council on October 19, 2005.

### **§ 1011 - Default**

If a defendant fails to answer the complaint for eviction or appear for the hearing to show cause, the Court shall enter a default judgment in favor of plaintiff which presumes all facts presented in the complaint to be true. If plaintiff fails to appear for the hearing to show cause, the Court may dismiss the complaint with or without prejudice.

History: Tribal Act #05-23.1501 enacted by Tribal Council on October 19, 2005.

### **§ 1012 - Form of Judgment**

The judgment shall be in the form of an order and specifically state the relief granted but need not state findings of fact or law. The judgment may offer a brief statement in support of the order. The Court should, whenever possible, render an immediate judgment.

History: Tribal Act #05-23.1501 enacted by Tribal Council on October 19, 2005.

**§ 1013 - Execution of Judgment**

The order of eviction may be executed by a duly authorized law enforcement officer or other officer of the Court, or one appointed by the Court for that purpose. Execution of an eviction order shall entail:

- (a) Removal of the defendant and all members of that person's household from the dwelling with verbal notice not to return or re-enter the premises.
- (b) Provision of a copy of the order of eviction to all adult tenants/occupants of the property.
- (c) The posting of the order of eviction upon the door of the premises if no legal occupant of the property is present at the time of execution.
- (d) Supervision of the removal of all possessions of the tenant and/or legal occupants.
- (e) Judgment shall be executed within five (5) days of the entry of judgment unless the order specifies a date certain for execution of the order. The person who executes the order of eviction shall make a report to the Court within forty-eight (48) hours of the execution of the order. The report shall include the date and time of execution and a brief description of the action taken to execute the order. Failure to properly and timely execute an order of eviction in good faith shall be subject to payment of reasonable damages, costs and the expenses of either party arising directly from the failure to properly execute in good faith. Additionally a person who fails to properly execute an eviction order in good faith may be subject to suspension or termination from employment. This section shall apply to any judgment for the defendant obtained under this ordinance and the general civil procedure, small claims procedure of the Grand Traverse Band.

History: Tribal Act #05-23.1501 enacted by Tribal Council on October 19, 2005.

**§ 1014 - Stay of Execution of Order**

If a judgment favors the plaintiff, the defendant may apply for a stay of execution of the eviction order if within five (5) days of judgment being rendered, the following is established:

- (a) Good and reasonable grounds affecting the well being of the defendant are stated;
- (b) There would be no substantial prejudice or injury to the plaintiff during the period of the stay;
- (c) Execution of the judgment could result in extreme hardship for the defendant(s); or
- (d) A bond is posted or monies are paid to the Court, to satisfy the judgment or payment for the reasonable use and occupancy of the premises during the period of time following the judgment. No stay may exceed three (3) months in the aggregate. The Court Clerk shall distribute such arrearages to the plaintiff in accordance with any order of the Court.

History: Tribal Act #05-23.1501 enacted by Tribal Council on October 19, 2005.

**§ 1015 - Appeals**

Appeals under this ordinance shall be handled according to the general Tribal appellate provisions, with the exception that the party taking the appeal shall have only five (5) days from the entry of the order of judgment to file an appeal. All orders from the Court will remain in effect during the pendency of an appeal under this ordinance unless otherwise ordered by the Court.

History: Tribal Act #05-23.1501 enacted by Tribal Council on October 19, 2005.

**§ 1016 - Miscellaneous Complaints and Claims**

Any miscellaneous complaint or claim including a complaint or claim by a tenant which does not fall within the procedures of this ordinance may be made under the general Tribal civil procedure code and/or Tribal small claims procedure code.

History: Tribal Act #05-23.1501 enacted by Tribal Council on October 19, 2005.

**§ 1017 - Notice to Leave the Premises**

Any notice to leave the premises shall be by written order of the Court, and shall be delivered to the defendant in the following manner:

- (a) Delivery shall be made by:
  - (1) A law enforcement officer of the Tribe or an agency of the United States government; or
  - (2) Any person authorized by the Tribal Court.
- (b) Delivery will be effective when it is:
  - (1) Personally delivered to a defendant with a copy delivered by mail; or
  - (2) Personally delivered to an adult living in the premises with a copy delivered by mail; or
  - (3) Personally delivered to an adult agent or employee of the defendant with a copy delivered by mail.
- (c) If the notice cannot be given by means of personal delivery, or defendant cannot be found, the notice may be delivered by means of:
  - (1) Certified mail, return receipt requested, at the last known address of the plaintiff or defendant; or

- (2) Securely taping a copy of the notice to the main entry door of the premises 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 or other commonly frequented place and by sending a copy first class mail, postage prepaid, addressed to the defendant at the premises.

History: Tribal Act #05-23.1501 enacted by Tribal Council on October 19, 2005.

### **§ 1018 - Forcible Eviction**

- (a) Where the Court orders an eviction, and the defendant or any other occupant of the premises refuses to vacate voluntarily by the effective date of that order, the defendant or other occupants may be forcibly removed from the premises by a Tribal law enforcement officer. At the hearing where the eviction is ordered, the Court shall inform the defendant that if defendant does not vacate the premises voluntarily by the effective date, defendant and the other occupants will be subject to forcible eviction, and their property will be subject to storage, sale and disposal as set forth in Subsection (c) below.
- (b) Following eviction, the Court may allow the GTB Housing Department or the United States government access to any property leased by either of them for purposes of preserving and securing it.
- (c) Following forcible eviction of the defendant and/or other occupants, the former occupant's personal property shall be stored by the owner of the premises for at least five (5) days, either on the premises or at another suitable location. In order to reclaim their property, the former occupants shall pay the reasonable costs of its removal and storage. If they do not pay such costs within five (5) days, the owner is authorized to sell the property in order to recover those costs. The landlord shall not condition return of the former occupant's personal property on the payment of any costs or fees other than those of removal and storage of those personal possessions. Should the landlord attempt to condition return of personal possessions on payment of any other cost or fee, the landlord shall forfeit his right to the costs of removal and storage. Upon request by the former occupants, the landlord shall provide them with pertinent information concerning the sale, including the time, date and location. Any proceeds from the sale in excess of the storage and removal costs shall be remitted to the former occupants. Nothing in the section shall be construed to prevent the former occupants from reclaiming property remaining after the sale if they can arrange to do so in a manner satisfactory to the owner. If the abandoned property is of cultural, religious, or ceremonial significance, the landlord shall have an affirmative duty to locate next of kin and/or contact the Tribe in order to return these items.
- (d) A copy of the police report be attached to executor's report to the court.

History: Tribal Act #05-23.1501 enacted by Tribal Council on October 19, 2005.

**§ 1019 - No Self-Help Eviction**

No landlord may compel a tenant to vacate any premises in a forceful fashion or way which causes a breach of the peace. All landlords shall give a notice to quit and obtain a court order as provided in this ordinance.

History: Tribal Act #05-23.1501 enacted by Tribal Council on October 19, 2005.

**§ 1020 - Security Deposits**

- (a) **Security Deposit Limits.** A landlord may demand a security deposit of an amount equal to one hundred dollars (\$100.) or one month's periodic rent, whichever is greater, which may be in addition to the current month's rent. Additional security deposits may be allowed for special circumstances such as animals or pets or tenant history or prior damages.
- (b) **Payment of Security Deposit at Termination of Tenancy.** The person who is the landlord at the time a tenancy is terminated shall pay to the tenant or former tenant the amount of the security deposit that was deposited by the tenant with the person who was landlord at the time such security deposit was deposited less the value of any damages which any person who was a landlord of such premises at any time during the tenancy of such tenant, has suffered as a result of such tenant's failure to comply with such tenant's obligations. Damages shall not include normal wear and tear.
- (c) **Action to Reclaim Security Deposit.** Any tenant may bring a civil action in Tribal Court to reclaim any part of his security deposit which may be due.

History: Tribal Act #05-23.1501 enacted by Tribal Council on October 19, 2005.