

SKOKOMISH MORTGAGE LENDING, FORECLOSURE, AND EVICTION ORDINANCE

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General Provisions

4.09.001 Purpose

The Skokomish Mortgage Lending, Foreclosure and Eviction Ordinance is designed to meet the needs of mortgage loan guarantee, insurance and direct loan programs sponsored by the U. S. Departments of Housing and

Urban Development, Agriculture (Rural Housing) and Veterans Affairs and is enacted to provide homeownership opportunities to Native Americans who wish to live on the Skokomish Reservation or within the Skokomish "Indian area" (as defined within each agency's program requirements).

Lien Priority

4.09.010 Lien Priority

All mortgage loans recorded in accordance with the recording procedures set forth in this Mortgage Lending, Foreclosure, and Eviction Ordinance, including leasehold mortgages, and including loans made, guaranteed, insured or held by a governmental agency, shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim excepting a lien or claim arising from a tribal leasehold tax assessed after the recording of the mortgage. (In those cases where the government direct, guaranteed or insured mortgage is created as a second mortgage, the loan shall assume that position.)

Recording of Mortgage Loan Documents

4.09.020 Recording of Mortgage Loan Documents

(a) On Tribal trust or other federally restricted land, mortgage loan documents shall be recorded by filing with the Land Titles and Records Office at the Bureau of Indian Affairs (BIA) and in the office of the recording officer of the county where the property is situated.

(b) On fee simple land, mortgage loan documents shall be filed in the office of the recording officer of the county where the property is situated.

Foreclosure Procedures

4.09.030 Purpose

These foreclosure procedures are designed to meet all of the foreclosure procedure requirements currently established under the mortgage loan programs sponsored by the U.S. Departments of Housing and Urban Development, Agriculture and Veterans Affairs.

4.09.031 Default

A Borrower/Mortgagor shall be considered to be in default when he or she is thirty (30) days past due on his or her mortgage payment(s) or is in violation of any covenant under the mortgage for more than 30 days to the Lender/Mortgagee (i.e. the 31st day from the payment due date).

(a) When a Borrower/Mortgagor is thirty days past due on his or her mortgage and before any foreclosure action or activity is initiated, the Lender/Mortgagee shall:

(1) Make a reasonable effort to arrange a face-to-face interview with the Borrower/Mortgagor.

This shall include at least one trip to meet with the Borrower/Mortgagor at the mortgaged property.

(2) Document that it has made at least one phone call to the Borrower/Mortgagor (or to a phone designated by the Borrower/Mortgagor, able to receive and relay messages to the Borrower/Mortgagor) for the purpose of trying to arrange a face-to-face interview.

(3) Lender/Mortgagee may appoint an agent to perform the services of arranging and conducting the face-to-face interview specified in this section.

4.09.032 Pre-Foreclosure Notice

When the Borrower/Mortgagor is past due on three installment payments and at least ten (10) days before initiating a foreclosure action in Tribal Court, the Lender shall notify the Borrower/Mortgagor in writing by mail or by posting prominently on the unit, with a copy provided to the Tribe, as follows:

(a) Advise the Borrower/Mortgagor that information regarding the loan and default/delinquency will be given to credit bureaus.

(b) Advise the Borrower/Mortgagor of any homeownership counseling opportunities/programs available through the Lender or otherwise.

(c) Advise the Borrower/Mortgagor of any other available assistance regarding the mortgage/default.

(d) In addition to the preceding notification requirements, the Lender/Mortgagee shall provide the following notices:

(1) Notify the Borrower/Mortgagor that if the leasehold mortgage remains past due on three installment payments, the Lender/Mortgagee may ask the applicable governmental agency to accept assignment of the leasehold mortgage if this is an option of the governmental program;

(2) Notify the Borrower/Mortgagor of the qualifications for forbearance relief from the Lender/Mortgagee, if any, and that forbearance relief may be available from the government; and

(3) provide the Borrower/Mortgagor with names and addresses of government officials to whom further communications may be addressed, if any.

4.09.033 Foreclosure Complaint and Summons

(a) If a Borrower/Mortgagor is past due on three or more installment payments and the Lender/Mortgagee has complied with the procedures set forth in section 4.09.032 above, the Lender/Mortgagee may commence a foreclosure proceeding in the Skokomish Tribal Court by filing a verified complaint.

(b) The verified complaint in a mortgage foreclosure proceeding shall contain the following:

- (1) The name of the Borrower/Mortgagor and each person or entity claiming an interest in the property subject to the mortgage loan through the Borrower/Mortgagor subsequent to the recording of the mortgage loan, including each subordinate lien holder (except the Tribe with respect to a claim for a tribal leasehold), as defendant(s);
 - (2) A description of the property subject to the mortgage loan;
 - (3) A concise statement of the facts concerning the execution of the mortgage loan and, in the case of a leasehold mortgage, the lease; the facts concerning the recording of the mortgage loan or the leasehold mortgage; the facts concerning the alleged default(s) of the Borrower/Mortgagor; and such other facts as may be necessary to constitute a cause of action;
 - (4) True and correct copies of each security instrument (“security instruments” are defined as “promissory notes, mortgages, deeds of trust or other recorded real property security instruments”) and any other documents relating to the property and, if a leasehold mortgage, a copy of the lease and any assignment of any of these documents; and
 - (5) Any applicable allegations concerning relevant requirements and conditions prescribed in (A) federal statutes and regulations (B) tribal codes, ordinances and regulations; and/or (C) provisions of the promissory note, security instrument and if a leasehold mortgage, the lease.
- (c) The complaint shall be verified by the Plaintiff Lender/Mortgagee before the Tribal Court Clerk or other Tribal employee authorized to administer oaths and verify signatures and shall be accompanied by a summons specifying a date and time of appearance for the Defendant(s).
- (d) The summons and complaint must be in writing and must be filed with the Clerk of the Skokomish Tribal Court and served on all Defendants in the following manner:
- (1) Service must be made by a person over the age of eighteen.
 - (2) Service is effective when the summons and complaint are:
 - (A) Personally delivered to the Defendant, and by sending a copy addressed to the Defendant by first class mail, postage prepaid, or
 - (B) In the case of the Defendant Borrower/Mortgagor, personally delivered to a person over the age of eighteen living on the property subject to the mortgage loan, and by sending a copy addressed to the Defendant Borrower/Mortgagor by first class mail, postage prepaid, or
 - (C) Personally delivered to a person over the age of eighteen who is the agent or employee of the Defendant, and by sending a copy addressed to the Defendant by first class mail, postage prepaid.
 - (3) If the summons and complaint cannot be served by means of personal delivery, or a Defendant cannot be found, the notice may be delivered by means of:

(A) Certified mail, return receipt requested, at the last known address of the Defendant, and by sending a copy by first class mail, postage prepaid, addressed to the Defendant's last known address

(B) In the case of the Defendant Borrower/Mortgagor, securely taping a copy of the notice to the main entry door of the property in such a manner that it is not likely to blow away, and by posting a copy of the notice in some public place near the premises, including a tribal office, public store, or other commonly-frequented place and by sending a copy by first class mail, postage prepaid, addressed to the Borrower/Mortgagor at the premises.

(4) Service of the summons and complaint shall be complete upon the filing of a verified certification of service with the Clerk of the Skokomish Tribal Court.

(A) The effective date of service by personal delivery or by posting shall be the date the summons and complaint were delivered or posted.

(B) The effective date of service by mail shall be three days after the date of mailing for addresses within the state of Washington, fourteen days after the date of mailing for addresses outside the state of Washington but within the United States, and thirty days after the date of mailing for addresses outside of the United States.

4.09.034 Cure of Default

Prior to the entry of a judgment of foreclosure, any Borrower/Mortgagor or a subordinate lien holder may cure the default(s) under the Mortgage by making a full payment of the delinquency to the Lender/Mortgagee and all reasonable legal and Court costs incurred in foreclosing on the property. Any subordinate lien holder who has cured a default shall thereafter have included in its lien the amount of all payments made by such subordinate lien holder to cure the default(s), plus interest on such amounts at the rate stated in the note for the mortgage. There shall be no right of redemption in any leasehold mortgage foreclosure proceeding.

4.09.035 Judgment and Remedy

(a) Except as otherwise provided herein, foreclosure proceedings under this ordinance shall be governed by the Rules of the Skokomish Tribal Court, S.T.C. 3.01.

(b) Foreclosure proceedings under this ordinance shall be heard by the Skokomish Tribal Court in a prompt and reasonable time period not to exceed sixty (60) days from the date of service of the complaint on the Defendant Borrower/Mortgagor. If the alleged default has not been cured at the time of trial and the Tribal Court finds for the Plaintiff Lender/Mortgagee, the Tribal Court shall enter judgment:

(1) Foreclosing the interest in the mortgaged property of the Borrower/Mortgagor and each other defendant, including subordinate lien holders, and

(2) Granting title to the property to the Lender/Mortgagee or the lender's designated assignee;

(3) In the case of a leasehold mortgage, the lease and the leasehold estate shall be assigned to the Lender/Mortgagee or the lender's designated assignee, subject to the following conditions:

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

(B) The lender or lender's designated assignee may only transfer, sell or assign the lease and lessee's leasehold interest in the property described in the lease to a Tribal member, the Tribe, or the Tribal Housing Authority;

(C) The mortgagee has the right to convey the leasehold interest to the Secretary of HUD without providing the right of first refusal to the Tribe for mortgages financed under the FHA 248 mortgage insurance program.

Foreclosure Eviction Procedures

4.09.040 Court Rules/Application of Ordinance

Except as otherwise provided herein, foreclosure eviction proceedings under this ordinance shall be governed by the Rules of the Skokomish Tribal Court, S.T.C. 3.01. These eviction procedures apply only to evictions pursuant to a judgment of foreclosure. Evictions from rental housing are governed by the Eviction Procedures Ordinance (S.T.C. 2.06).

4.09.041 Jurisdiction

The foreclosure eviction provisions of this ordinance shall apply to all persons and property subject to the governing authority of the Tribe as established by the Tribal Constitution, Tribal Code, or applicable federal law.

4.09.042 Unlawful Detainer

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

4.09.043 Complaint and Summons

The lender or federal agency which made, guaranteed or insured the mortgage loan, as applicable, shall commence an action for unlawful detainer by filing with the Tribal Court, in writing, the following documents:

- (a) A complaint, signed by the lender or federal agency, or an agent or attorney on their behalf, which:
 - (1) Cites the facts establishing the court's jurisdiction
 - (2) Names as defendants the mortgagors and any other record owner (including sub lessees and subordinate lien holders), of which the plaintiff has record notice (except the Skokomish Tribe with respect to a claim for a Tribal tax on the leasehold estate subject to the leasehold mortgage);

- (3) Describes the leasehold estate subject to the leasehold mortgage;
- (4) States 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) States any claim for damages or compensation due from the persons to be evicted; and
- (6) Otherwise satisfies the requirements of the Tribal Court.

(b) A copy of the summons, issued in accordance with Rules of the Skokomish Tribal Court (S.T.C. 3.01), requiring the defendants to file a response to the complaint by the date specified in the summons. The deadline specified in the summons for filing a response shall be no less than 6 nor more than 30 days from the date of service of the summons and complaint. The summons shall notify the defendants that judgment will be taken against them in accordance with the terms of the complaint unless they file a response with the court by the date specified in the summons.

4.09.044 Service of Summons and Complaint

A copies of the summons and complaint shall be served by a person over the age of eighteen by one of the following methods:

- (a) Delivery of copies personally to the Defendant(s), and to any other occupant of the leasehold estate under color of law or to any person over the age of eighteen residing on the leasehold estate and, if applicable, to any sub lessee; or
- (b) In the case of a Defendant Borrower/Mortgagor, delivery of a copy personally to the Borrower/Mortgagor or to any person over the age of eighteen residing on the leasehold estate; or
- (c) Posting copies in a conspicuous place near the entrance to the leasehold estate, and sending additional copies to the Defendants and to any other occupant of the leasehold estate under color of law, and, if applicable, to any sub lessee, by both first class mail and certified mail, return receipt requested, properly addressed, postage paid.
- (d) Service of the summons and complaint shall be complete upon the filing of a verified certification of service with the Clerk of the Skokomish Tribal Court. The effective date of service shall be the date the summons and complaint were delivered or posted.

4.09.045 Certified Mailing to Tribe

In any foreclosure proceedings on a leasehold mortgage where the Tribe is not named as a defendant, a copy of the summons and complaint shall be mailed to the Tribe by certified mail, return receipt requested, within five (5) days after the issuance of the summons. If the lessor is not the tribe, this notice will also be mailed to the lessor at the same time the notice is mailed to the Tribe. If the location of the lessor cannot be ascertained after reasonable inquiry, a copy of the summons and complaint shall be mailed to the lessor in care of the Superintendent of the applicable agency of the Bureau of Indian Affairs.

4.09.046 Intervention

The Tribe or any lessor may petition the Tribal Court to intervene in any lease or leasehold mortgage foreclosure proceeding under this ordinance. Neither the filing of a petition for intervention by the Tribe, nor the granting of such petition by the Tribal Court shall operate as a waiver of the sovereign immunity of the Tribe, except as may be expressly authorized by the Tribe.

4.09.047 Power of the Tribal Court

(a) The Tribal Court shall enter an Order of Repossession if:

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

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

(b) Upon issuance of an Order of Repossession, the Tribal Court shall have the authority to enter a judgment against the defendants for the following, based on the court's findings:

(1) Back rent, unpaid utilities, and any charges due the Tribe, Tribal Housing Authority, other public housing authority, or sub lessor under any sublease or other written agreement (except for a leasehold mortgage);

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

(3) Damages to the property caused by the defendants, other than ordinary wear and tear. The Tribal Court shall have the authority to award to the prevailing party its costs and reasonable attorney's fees in bringing or defending against suit.

4.09.048 Enforcement

Upon issuance of an Order of Repossession by the Tribal Court, Tribal law enforcement officers shall help plaintiffs enforce same by evicting the defendants and their property from the unlawfully occupied leasehold estate. In all cases involving the lender or federal agency, the Order of Repossession shall be enforced no later than 45 days after a pre-trial proceeding or trial in which the Tribal Court finds against defendants, subject to section 4.09.049 below, and provided that no party exercised the right to cure a default or right of first refusal as described in sections 4.09.034 and 4.09.035(b)(3) above.

4.09.049 Continuances in Cases Involving the Lender or Federal Agency

Except by agreement of all parties, there shall be no continuances in cases involving the lender or federal agency which originally made, insured or guaranteed the mortgage loan that will interfere with the requirement that the Order of Repossession be enforced not later than 45 days after a pre-trial proceeding or trial in which the Tribal Court finds against defendants, subject to the sound discretion of the court.

No Merger of Estates

4.09.050 No Merger of Estates

There shall be no merger of estates by reason of the execution of a lease or a leasehold mortgage or the assignment or assumption of the same, including an assignment adjudged by the Tribal Court, or by operation of law, except as such merger may arise upon satisfaction of the leasehold mortgage.

Appeals

4.09.051 Appeals

Appeals of decisions, orders and judgments under this Ordinance shall comply with the Rules of Appellate Procedure of the Rules of the Skokomish Tribal Court (S.T.C. 3.01.100 through 3.01.119).