

Chapter 2. Mortgage Lending Statute

8.201 SHORT STATUTE

This Statute may be cited as the "Mortgage Statute," and it repeals and replaces any prior Statute or Regulation in conflict with this Statute including WOS 2000-03, Mortgage of Trust or Restricted Land.

(Source: WOS 2018-002, April 4, 2018, Section I)

8.202 PURPOSE

The purpose of this Statute is to set forth general provisions for mortgages that provide homeownership opportunities to Tribal Citizens wishing to live on Trust Land or lands owned by the Tribe. This Statute meets the needs of mortgage loan guarantee, insurance and direct loan programs sponsored by the United States Departments of Housing and Urban Development, Agriculture (Rural Housing) and Veterans Affairs, that offer various mortgage loan programs.

(Source: WOS 2018-002, April 4, 2018, Section II)

8.203 DEFINITIONS

- A.** "Lease" means a ground lease or other agreement for use of Trust Land or land owned by the Tribe on which a Mortgage has or will be given.
- B.** "Leasehold Estate" means a leasehold estate established pursuant to a Lease between the Tribe, as Lessor and a Citizen of the Tribe as Tenant.
- C.** "Lender/Mortgagee" means any mortgage lender or any successors or assigns of any such lender. This definition also includes any subsequent holder, whether by assignment, succession or otherwise, of the original Mortgagee's right, title or interest in and to the Mortgage and/or the Mortgaged property, together with the improvements.
- D.** "Lessor" means the Tribe or a Tribal Citizen who leases an interest in property.

E. "Mortgage" means the first-lien mortgage of a beneficial real property interest in Trust Land or land owned by the Tribe Land given to secure a mortgage loan made by a Mortgagee.

F. "Mortgagor" means the Tribe or any eligible tribal member or entity borrower who has executed a mortgage on its beneficial interest in Trust Land or Restricted Land, including any heir(s), successor(s), executor(s) or assign(s) of such borrower.

G. "LTBB" or "Tribe" means the Little Traverse Bay Bands of Odawa Indians.

H. "Reservation" means all lands within the boundaries of the reservations for Little Traverse as set out in Article I, paragraphs third and fourth of the Treaty of 1855, 11 Stat. 621, plus any lands set out in Articles Second and Third of the Treaty of March 28, 1836, 7 Stat. 491, in the event that the 1836 reservation is determined to include lands which are not included within the 1855 reservation, plus any lands outside of those boundaries which are now or in the future declared to be Little Traverse reservation by the Department of the Interior.

I. "Tenant" means any person who occupies Trust land or Restricted Land, as lessee, under a Leasehold Estate with the Lessor.

J. "Tribal Court" means the Little Traverse Bay Bands of Odawa Indians Tribal Court.

K. "Tribal Citizen" means any person enrolled with the Tribe.

L. "Trust Land" means land within the jurisdiction of the LTBB Tribe, title to which is held by the United States Secretary of Interior for the benefit of the Tribe or an individual member of the Tribe.

(Source: WOS 2018-002, April 4, 2018, Section III)

8.204 JURISDICTION

Tribal Court of The Little Traverse Bay Bands of Odawa Indians (LTBB or Tribe) shall have exclusive jurisdiction over all foreclosure actions arising on all lands located within the exterior boundaries of the LTBB Reservation on trust lands, lands owned in fee by the Tribe, and any other property within the Reservation containing housing owned or financed by LTBB.

I certify that this is a true and correct copy of a document received for recording this date.

Given under my hand and seal this _____ day of _____.

(SEAL) _____ (Signature)

(Date)

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

4. The Housing Department shall also maintain a log of each mortgage loan or other document recorded in which there shall be entered: (a) The name(s) of the Borrower/Mortgagor of each mortgage loan, identified as such; (b) The name(s) of the Lender/Mortgagee of each mortgage loan, identified as such; (c) The name(s) of the grantor(s), grantee(s) or other designation of each party named in any other documents filed or recorded; (d) The date and time of the receipt; (e) The filing number assigned by the Housing Department; and (f) The name of the Housing Department staff person receiving the mortgage or document.

5. The certified copies of the mortgage loan and other documents and the log maintained by the Housing Department shall be made available for public inspection and copying. Rules for copying shall be established and disseminated by the Housing Department.

6. All mortgages will be recorded with the Bureau of Indian Affairs in addition to any Tribal recording provisions, if applicable by law.

C. Foreclosure Procedures

1. 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).

2. When a Borrower/Mortgagor is thirty (30) days past due on his or her mortgage and before any foreclosure action or activity is initiated, the Lender/Mortgagee shall complete the following:
 3. 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.
 4. Lender/Mortgagee shall document that it has made at least one phone call to the Borrower/Mortgagor for the purpose of trying to arrange a face-to-face interview.
 5. Lender/Mortgagee may appoint an agent to perform the services of arranging and conducting the face-to-face interview specified in this action.
 6. When the Borrower/Mortgagor is past due on three (3) installment payments and at least ten (10) days before initiating a foreclosure action in Tribal Court, the Lender/Mortgagee shall advise the Borrower/Mortgagor in writing by mail or by posting prominently on the unit, with a copy provided to the Tribe, as follows:
 - 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 homeownership counseling opportunities/programs available through the Lender/Mortgagee or otherwise.
 - c. Advise the Borrower/Mortgagor of other available assistance regarding the mortgage/default.
 - d. In addition to the preceding notification requirements, the Lender/Mortgagee shall complete the following additional notice requirements:
 - i. 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;

- ii. notify the Borrower/Mortgagor of the qualifications for forbearance relief from the Lender/Mortgagee, if any, and that forbearance relief may be available from the government; and
- iii. provide the Borrower/Mortgagor with names and addresses of government officials to whom further communications may be addressed, if any.

7. If a Borrower/Mortgagor is past due on three (3) or more installment payments and the Lender/Mortgagee has complied with the procedures set forth in the first part of this Section, the Lender/Mortgagee may commence a foreclosure proceeding in the Tribal Court by filing a verified complaint as set forth in Section D.

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

1. The name of the Borrower/Mortgagor and each person or entity claiming through the Borrower/Mortgagor subsequent to the recording of the mortgage loan, including each Subordinate Lienholder (except the Tribe with respect to a claim for a tribal leasehold), as a defendant;
2. A description of the property subject to the mortgage loan;
3. A concise statement of the facts concerning the execution of the mortgage loan and in the case of a Leasehold Mortgage the lease; the facts concerning the recording of the mortgage loan or the Leasehold Mortgage; the facts concerning the alleged default(s) of the Borrowers/Mortgagor; and such other facts as may be necessary to constitute a cause of action;
4. True and correct copies of each promissory note, mortgage, deed of trust or other recorded real property security instrument (each a “security instrument”) and any other documents relating to the property and if a Leasehold Mortgage, a copy of the lease and any assignment of any of these documents; and
5. Any applicable allegations concerning relevant requirements and conditions prescribed in federal statutes and regulations, tribal codes, ordinances and regulations; and/or provisions of the promissory note, security instrument and if a Leasehold Mortgage, the lease.

6. The complaint shall be verified by the Tribal Court Clerk along with a summons specifying a date and time of appearance for the Defendant(s).

E. Service of Process and Procedures. Any foreclosure complaint must be in writing, and must be delivered to the Borrower/Mortgagor in the following manner:

1. Delivery must be made by an adult person and is effective when it is:

- a. Personal delivery to a Borrower/Mortgagor with a copy sent by mail, or
- b. Personal delivery to an adult living in the property with a copy sent by mail, or
- c. Personal delivery to an adult agent or employee of the Borrower/Mortgagor with a copy sent by mail.

2. If the notice cannot be given by means of personal delivery, or the Borrower/Mortgagor cannot be found, the notice may be delivered by means of:

- a. Certified mail, return receipt requested, at the last known address of the Borrower/Mortgagor, or
- b. Securely taping a copy of the notice to the main entry door of the property in such a manner that it is not likely to blow away, and by posting a copy of the notice in some public place near the premises, including a tribal office, public store, or other commonly-frequented place and by sending a copy first class mail, postage prepaid, addressed to the Borrower/Mortgagor at the premises.

3. The person giving notice must keep a copy of the notice and proof of service in accordance with this section, by affidavit or other manner recognized by law.

F. Cure of Default. Prior to the entry of a judgment of foreclosure, any Borrower/Mortgagor or a Subordinate Lienholder may cure the default(s) under the Mortgage by making a full payment of the delinquency to the Lender/Mortgagee and all reasonable legal and Court costs incurred in foreclosing on the property. Any subordinate Lienholder who has cured a default shall thereafter have included in its lien the amount of all payments made by such Subordinate Lienholder to cure the default(s), plus interest on such amounts at the rate stated in

the note for the mortgage. There shall be no right of redemption in any Leasehold Mortgage Foreclosure proceeding.

G. Judgment and Remedy. This matter shall be heard and decided by the Tribal Court in a prompt and reasonable time period not to exceed sixty (60) days from the date of service of the Complaint on the Borrower/Mortgagor. If the alleged default has not been cured at the time of trial and the Tribal Court finds for the Lender/Mortgagee, the Tribal Court shall enter judgment:

1. Foreclosing the interest of the Borrower/Mortgagor and each other defendant, including Subordinate Lienholder, in the mortgaged property and
2. Granting title to the property to the Lender/Mortgagee or the Lender's Designated Assignee; in the case of a Leasehold Mortgage, the Lease and the Leasehold Estate will be assigned to the Lender/Mortgagee or the Lender's Designated Assignee, subject to the following provisions:
 - a. The Lender/Mortgagee or Lender Designated Assignee 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/Mortgagee 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 Citizen, the Tribe, or the Tribal Housing Authority;
 - c. The Lender/Mortgagee or Lender Designated Assignee has the right to convey the leasehold interest to the United States, Secretary of Housing and Urban Development without providing the right of first refusal to the Tribe for Nation Housing Act Section 248.
 - d. Nation Housing Act Section 248. Insured Mortgages on Indian Land. Federal Housing Administration (FHA) insures loans made to Native Americans to buy, build, or rehabilitate houses on Indian land. These are only available to Native Americans on Indian land.

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

- 1. Jurisdiction.** The provisions of this section H. 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.
- 2. Unlawful Detainer.** A Lessee, Sublessee, or other occupant of a Leasehold Estate subject to a Leasehold Mortgage shall be guilty of unlawful detainer if such person shall continue in occupancy of such Leasehold Estate without the requirement of any notice by the Lessor, after such person's Leasehold Estate has been foreclosed in a Leasehold Mortgage foreclosure proceeding in the Tribal Court;
- 3. Complaint and Summons.** The Lender/Mortgagee or Federal Agency (which made, guaranteed or insured the mortgage loan) as appropriate, shall commence an action for unlawful detainer by filing with the Tribal Court, in writing, the following documents:

 - a.** A complaint, signed by the Lender/Mortgagee or Federal Agency, or an agent or attorney on their behalf:

 - i.** Citing facts alleging jurisdiction of the Tribal Court;
 - ii.** Naming as defendants the mortgagors and any other record owner (including Sublessees and subordinate lienholders), of which the complainant has record notice (except the Tribe with respect to a claim for a Tribal tax on the Leasehold Estate subject to the Leasehold Mortgage);
 - iii.** Describing the Leasehold Estate subject to the Leasehold Mortgage;
 - iv.** Stating the facts concerning (1) the execution of the lease and the Leasehold Mortgage; (2) the recording of the Leasehold Mortgage; and (3) the facts upon which he or she seeks to recover;
 - v.** Stating any claim for damages or compensation due from the persons to be evicted; and
 - vi.** Otherwise satisfying the requirements of the Tribal Court.
 - b.** A copy of the summons, issued in accordance with established Tribal Court rules and procedures, requiring the defendants to file a response to the complaint by the date specified in the summons. The deadline specified in the summons for filing a response shall be no less than 6 nor more than 30 days from the date of service of the summons and complaint. The summons shall notify the

defendants that judgment will be taken against them in accordance with the terms of the complaint unless they file a response with the court by the date specified in the summons.

4. Service of Summons and Complaint. 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. In the absence of such Tribal Court rules, the summons and complaint shall be served by one of the following two methods.

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

a. Delivering a copy personally to the Borrower/ Mortgagor or to any other occupant under color of law, or to any adult residing on the Leasehold Estate and, if applicable, to any Sublessee; or

b. Posting said notice in a conspicuous place near the entrance to said Leasehold Estate, and sending an additional copy to the Lessee or to any other occupant under color of law, and, if applicable, to the Sublessee, by certified mail, return receipt requested, properly addressed, postage paid. Proof of service may be made by affidavit of any adult person stating the he has complied with the requirements of one of the above methods of service.

6. Power of the Tribal Court.

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

i. Notice of suit is given by service of summons and complaint in accordance with the procedures provided herein; and

ii. The Tribal Court shall find during pre-trial proceedings or at trial that the Lessee, Sublessee, or other occupant under color of law of the Leasehold Estate subject to the Leasehold Mortgage is guilty of an act of unlawful detainer.

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, as

appropriate: (1) back rent, unpaid utilities, and any charges due the Tribe, Tribal Housing Authority, other public Housing Authority, or Sublessor under any sublease or other written agreement (except for a Leasehold Mortgage); (2) any and all amounts secured by the Leasehold Mortgage that are due the Lender/Mortgagee (or Federal Agency); and (3) damages to the property caused by the defendants, other than ordinary wear and tear. The Tribal Court shall have the authority to award to the prevailing party its costs and reasonable attorney's fees in bringing suit.

7. 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/Mortgagee 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 Paragraph H7 below, and provided, that no party exercised the right to cure a default or right of first refusal as described in Paragraphs F and G above.

8. Continuances in Cases Involving the Lender/Mortgagee or Federal Agency. (which originally made, insured or guaranteed) the mortgage loan. Except by agreement of all parties, there shall be no continuances in cases involving the Lender/Mortgagee or Federal Agency 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.

I. 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.

J. 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.

K. Intervention. The Tribe or any Lessor may petition the Tribal Court to intervene in any Lease or Leasehold Mortgage foreclosure proceeding under this Code. Neither the filing of a petition for intervention by the Tribe, nor the granting of such 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.

L. Appeals. Appeals under this Code shall be handled in accordance with the general tribal appellate provisions.

(Source: WOS 2018-002, April 4, 2018, Section V)

8.206 SEVERABILITY

If any section, subsection, paragraph, sentence, phrase or portion of this Statute is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

(Source: WOS 2018-002, April 4, 2018, Section VI)

8.207 EFFECTIVE DATE

Effective upon signature of the Executive or 30 days from Tribal Council approval whichever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

(Source: WOS 2018-002, April 4, 2018, Section VII)

8.208 OTHER RELATED STATUTES

See Waganakising Odawak Statute 2000-07 Lease Inheritance Statute, Waganakising Odawak Statute 2014-017 Leasing of Trust Lands Statute, or as may be amended.

(Source: WOS 2018-002, April 4, 2018, Section VIII)