

TRIBAL CODE

CHAPTER 90

HOUSING AUTHORITY ORDINANCE

90.101 Establishment of Housing Authority.

90.102 Declaration of Need.

90.103 Purposes.

90.104 Definitions.

90.105 Board of Commissioners.

90.106 Powers.

90.107 Obligations.

90.108 Annual Report.

90.109 Conflicts of Interest.

90.110 Miscellaneous

90.111 Tribal Cooperation in Connection With Projects.

CHAPTER II LEASEHOLD MORTGAGES

90.201 Purpose.

90.202 Definitions.

90.203 Priority.

90.204 Recording

90.205 Leasehold Mortgage Foreclosure Proceedings.

90.206 Service of process and procedures.

90.207 Cure of Default by Subordinate Lienholder.

90.208 Power of the Tribal Court.

CHAPTER III EVICTIONS PROCEDURES

90.301 Jurisdiction.

90.302 Definitions.

90.303 Unlawful Detainer.

90.304 Procedures for Service of Notice.

90.305 Complaint and Summons.

90.306 Service of Summons and Complaint.

90.307 Power of the Tribal Court.

90.308 Continuances in cases involving the Secretary.

90.309 Enforcement.

90.310 Alternative Remedies.

History Note:

Current Ordinance:

Amended with numerous revisions and changes December 13, 1976, Resolution No. 147(76).

Section 90.105(9) amended and (12) added April 27, 1987, Resolution No. 127(87).

Section 90.105(8) amended October 9, 1995, Resolution No. 406(95), effective immediately.

Amendments:

Resolution No. 317(93) Adopts Addendum Leasehold Mortgages, Part II, limited to (Department of Veterans Affairs)Veterans loans, no repealer, September 27, 1993. Secretarial approval 10/21/1993, confirming the land is not a part of the collateral.

Resolution No. 493(01) revises and amends Chapter I, September 12, 2001. Conforms with the requirements of the United States Department of Housing and Urban Development, adopting and approving ByLaws for the Lac du Flambeau Chippewa Housing Authority, September 12, 2001.

Prior Actions:

Adopted as Tribal Ordinance No. 1, April 5, 1963, Resolution No. 25(63).

TRIBAL CODE

CHAPTER 90

HOUSING AUTHORITY ORDINANCE

90.101 Establishment of Housing Authority.

(1) Pursuant to the authority vested in the Lac du Flambeau Band of Lake Superior Chippewa Indians Tribe by its Constitution and particularly by Article VI, Section 1(a), (b) and (c) thereof, and its authority to provide for the health, safety, morals and welfare of the Tribe, the Tribal Council of the Lac du Flambeau Band of Lake Superior Chippewa Indians Tribe hereby establishes a public body known as the Lac du Flambeau Chippewa Housing Authority (hereafter referred to as the "Authority"), and enacts this Ordinance which shall establish the purposes, powers and duties of the Authority.

(2) In any suit, action or proceedings involving the validity or enforcement of or relating to any of its contracts, the Authority shall be conclusively deemed to have become established and authorized to transact business and exercise its powers upon proof of the adoption of this Ordinance. A copy of the Ordinance duly certified by the Secretary of the Council shall be admissible in evidence in any suit, action or proceeding.

90.102 Declaration of Need.

It is hereby declared:

(1) That there exists on the Lac du Flambeau Band of Lake Superior Chippewa Indians Reservation unsanitary, unsafe, and overcrowded dwelling accommodations; that there is a shortage of decent, safe and sanitary dwelling accommodations available at rents or prices which persons of low income can afford; and that such shortage forces such persons to occupy unsanitary, unsafe and overcrowded dwelling accommodations;

(2) That these conditions cause an increase in and spread of disease and crime and constitute a menace to health, safety, morals and welfare; and that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety protection, fire and accident prevention, and other public services and facilities;

(3) That the shortage of decent, safe and sanitary dwellings for persons of low income cannot be relieved through the operation of private enterprises;

(4) That the providing of decent, safe, and sanitary dwellings accommodations for persons of low income are public uses and purposes for which money may be spent and private property acquired and are governmental functions of Tribal concern;

(5) That residential construction activity and a supply of acceptable housing are important factors to general economic activity, and that the undertakings authorized by this Ordinance to aid the production of better housing and more desirable neighborhood and community development at lower costs will make possible a more stable and larger volume of residential construction and housing supply which will assist materially in achieving full employment; and

(6) That the necessity in the public interest for the provisions hereinafter enacted is hereby declared as a matter of legislative determination.

90.103 Purposes.

The Authority shall be organized and operated for the purposes of:

(1) Remedying unsafe and unsanitary housing conditions that are injurious to the public health, safety and morals;

(2) alleviating the acute shortage of decent, safe and sanitary dwellings for persons of low income;

(3) providing employment opportunities through the construction, reconstruction, improvement, extension, alteration or repair and operation of low-income dwellings; and

(4) such additional activities as are reasonably related to the purposes stated above.

90.104 Definitions.

The following terms, wherever used or referred to in this ordinance, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) “Area of Operation” means all areas within the jurisdiction of the Tribe.

(2) “Board” means the Board of Commissioners of the Authority.

(3) “Cooperating Agency” means any public or private entity of any kind, including, but not limited to, federal governmental agencies, state governmental agencies, banks, other Indian tribes, private lenders and private nonprofit and for-profit corporations, partnerships, limited partnerships, LLCs or other business forms. The singular form shall include the plural.

(4) “Council” means the Lac du Flambeau Tribal Council.

(5) “Federal government” includes the United States of America, or any department, agency or instrumentality, corporate or otherwise, of the United States of America.

(6) “Homebuyer” means a person(s) who has executed a lease-purchase agreement with the Authority, and who has not yet achieved homeownership.

(7) “Housing project” or “project” means any work or undertaking to provide or assist in providing (by any suitable method, including, but not limited to: rental; sale of individual units in single or multifamily structures under conventional condominium, or cooperative sales contracts or lease-purchase agreements; loans; or subsidizing of rentals or charges) decent, safe and sanitary dwellings, apartments, or other living accommodations for persons of low income. Such work or undertaking may include buildings, land, leaseholds, equipment, facilities, and other real or personal property for necessary, convenient or desirable appurtenances, for streets, sewers, water service, utilities, parks, site preparation or landscaping, and for administrative, community, health recreational, welfare, or other purposes. The term “housing project” or “project” also may be applied to the planning of the building and improvements, the acquisition of property or any interest therein, the demolition of existing structures, the construction, reconstruction, rehabilitation, alteration or repair of the improvements or other property and all other work in connection therewith, and the term shall include all other real and personal property and all tangible and intangible assets held or used in connection with the housing project.

(8) “Obligations” means any notes, bonds, interim certificates, debentures, or other forms of obligation issued by the Authority pursuant to this Ordinance.

(9) “Obligee” includes any holder of an obligation, agent or trustee for any holder of an obligation or lessor demising to the Authority property used in connection with a project, or any assignee or assignees of such lessor’s interest or any part thereof, and the Federal government when it is a party to any contract with the Authority in respect to a housing project.

(10) “Persons of low income” means persons or families who cannot afford to pay enough to case private enterprise in their locality to build an adequate supply of decent, safe, and sanitary dwellings for their use.

90.105 Board of Commissioners.

(1) The affairs of the Authority shall be managed by a Board of Commissioners composed of five persons.

(2) The Board members shall be appointed, and may be reappointed, by the Council. A certificate of the Secretary of the Council as to the appointment or reappointment of any commissioner shall be conclusive evidence of the due and proper appointment of the commissioner.

(3) A commissioner may be a member or nonmember of the Council.

(4) No person shall be barred from serving on the Board because he is a tenant or home buyer in a housing project of the Authority; and such commissioner shall be entitled to fully participate in all meetings concerning matter that affect all of the tenants or homebuyers, even though such matters affect him as well. However, no such commissioner shall be entitled or permitted to participate in or be present at any meeting (except in his capacity as a tenant or homebuyer), or to be counted or treated as a member of the Board, concerning any matter involving his or her individual rights, obligations or status as a tenant or homebuyer.

(5) The term of office shall be four years and staggered. When the Board is first established, one member’s term shall be designated to expire in one year, another to expire in two years, a third to expire in three years, and the last two in four years. Thereafter, all appointments shall be for four years, except that in the case of prior vacancy, an appointment shall be only for the length of the unexpired term. Each member of the Board shall hold office until his or her successor has been appointed and has qualified.

(6) The Council shall name one of then Commissioners as Chairman of the Board. The Board shall elect from among its members a Vice-Chairman, a Secretary, and a Treasurer; and any members may hold two of these positions. In the absence of the Chairman, the Vice-Chairman shall preside; and in the absence of both the Chairman and the Vice-Chairman, the Secretary shall preside.

(7) A member of the Board may be removed by the Council for serious inefficiency or neglect of duty or for misconduct in office, but only after a hearing before the Council and only after the member has been given a written notice of the specific charges against him or her at least 10 days prior to the hearing. At any such

hearing, the member shall have the opportunity to be heard in person or by counsel and to present witnesses in his or her behalf. In the event of removal of any Board member, a record of the proceedings, together with the charges and findings thereon, shall be filed with the Council.

(8) The Commissioners shall receive a meeting stipend at the rate established by the Council and reimbursement for business-related travel expenses in accordance with the per diem rate established by the Council.

(9) A majority of the full Board (i.e., notwithstanding the existence of any vacancies) shall constitute a quorum for the transaction of business, but no Board action shall be taken by less than a majority of the full Board; provided, that in the event a quorum is not present at a meeting the alternate provided for in subsection (i) shall, if present, count toward a quorum and may vote on Board business.

(10) The Secretary shall keep complete and accurate records of all meetings and actions taken by the Board.

(11) The Treasurer shall keep full and accurate financial records, make periodic reports to the Board, and submit a complete annual report, in written form, to the Council as required by Section 90.108 of this Ordinance.

(12) The Council shall appoint an alternate to the Board of Commissioners. The alternate shall serve for a term of four (4) years. The alternate may attend meetings of the Board and shall assume the powers and duties of a commissioner at any duly called Board meeting at which a quorum of commissioners is not present. In that event, the alternate shall count toward a quorum, and the vote of the alternate shall count toward a majority of the Board for transacting business.

(13) Meetings of the Board shall be held at regular intervals as provided in the Bylaws. Emergency meetings may be held upon 24 hours actual notice and business transacted, provided that not less than a majority of the full Board concurs in the proposed action.

90.106 Powers.

(1) The Authority shall have perpetual succession in its corporate name.

(2) The Council hereby gives its irrevocable consent to allowing the Authority to sue in its corporate name upon any contract, claim or obligation arising out of its activities under this Ordinance. Further, the Council gives its irrevocable consent to allow the Authority to be sued in upon any contract, claim or obligation arising out of its activities under this Ordinance, provided that the Board has agreed,

in writing, to waive the Authority's immunity from suit with respect to such contract, claim or obligation, but the Tribe shall not be liable for the debts or obligations of the Authority.

(3) The Authority shall have the following powers which it may exercise consistent with the purposes for which it is established:

(a) To adopt and use a corporate seal.

(b) To enter into agreements, contracts and understandings with any Cooperating Agency (including the Council) or with any person, partnership, corporation or Indian tribe; and to agree to any conditions attached to federal financial assistance.

(c) To lease property from the Tribe and others for such periods as are authorized by law, and to hold and manage or to sublease the same.

(d) To exercise the power of eminent domain.

(e) To borrow or lend money, to issue temporary or long-term evidence of indebtedness and to repay the same. Obligations shall be issued and repaid in accordance with the provisions of Section 90.107 of this Ordinance.

(f) To pledge the assets and receipts of the Authority as security for debts; and to acquire, sell, lease, exchange, transfer or assign personal property or interests therein.

(g) To purchase land or interests in land or take the same by gift; to lease land or interests in land to the extent provided by law.

(h) To undertake and carry out studies and analyses of housing needs, to prepare housing plans, to execute the same, to operate projects and to provide for the construction, reconstruction, improvement, extension, alteration or repair of any project or any part thereof.

(i) With respect to any dwellings, accommodations, lands, buildings or facilities embraced within any project (including individual cooperative or condominium units); to lease or rent, sell, enter into lease-purchase agreements or leases with option to purchase; to establish and revise rents or required monthly payments; to make rules and regulations concerning the selection of tenants or homebuyers, including the establishment of priorities, and concerning the occupancy, rental, care and management of

housing units; and to make such further rules and regulations as the Board may deem necessary and desirable to effectuate the powers granted by this Ordinance.

(j) To finance purchase of a home by an eligible person.

(k) To enforce all of its legal rights including, but not limited to, the right to foreclose mortgages and evict tenants and homeowners, where permitted by contract.

(l) To establish income limits for admission that insure that dwelling accommodations in a housing project shall be made available only to persons or low income.

(m) To purchase insurance from any stock or mutual company for any property or against any risk or hazards.

(n) To invest such funds as are not required for immediate disbursement.

(o) To establish and maintain such bank accounts as may be necessary or convenient.

(p) To employ an executive director, technical and maintenance personnel and such other officers and employees, permanent or temporary, as the Authority may require; and to delegate to such officers and employees such powers or duties as the Board shall deem proper.

(q) To join or cooperate with any Cooperative Agency in the exercise, either jointly or otherwise, of any or all of the powers of the Authority and such other Cooperating Agency for the purpose of financing (including but not limited to the issuance of notes or other obligations and giving security therefor), planning, undertaking, owning, constructing, operating, or contracting with respect to a housing project or projects of the Authority or such other Cooperating Agency. For such purpose, the Authority may by resolution authorize any Cooperating Agency to act on the Authority's behalf with respect to any or all powers, as the Authority's agent or otherwise, in the name of the Authority or in the name of such Cooperating Agency or Agencies.

(r) To adopt such bylaws as the Board deems necessary and appropriate.

(s) To form subsidiary corporations, partnerships or other business entities as the Board may deem necessary and desirable to effectuate the purposes of the Authority.

(t) To take such further actions as are commonly engaged in by public bodies of this character as the Board may deem necessary and desirable to effectuate the purposes of the Authority.

(4) It is the purpose and intent of this ordinance to authorize the Authority to do any and all things necessary or desirable to secure the financial aid or cooperation of the Cooperating Agencies in the undertaking, construction, maintenance or operation of any project by the Authority.

(5) No ordinance or other enactment of the Tribe with respect to the acquisition, operation, or disposition of Tribal property shall be applicable to the Authority in its operations pursuant to this Ordinance.

90.107 Obligations.

(1) The Authority may issue obligations from time to time in its discretion for any of its purposes and may also issue refunding obligations for the purpose of paying or retiring obligations previously issued by it. The Authority may issue such types of obligations as it may determine, including obligations on which the principal and interest are payable:

(a) exclusively from the income and revenues of the project financed with the proceeds of such obligations, or with such income and revenues together with a grant from the Federal government in aid of such project;

(b) exclusively from the income and revenues of certain designated projects whether or not they were financed in whole or in part with the proceeds of such obligations; or

(c) from its revenues generally.

Any such obligations may be additionally secured by a pledge of any revenues of any project or other property of the Authority.

(2) Neither the commissioners of the Authority nor any person executing the obligations shall be liable personally on the obligations by reason of issuance thereof.

(3) The notes and other obligations of the Authority shall not be a debt of the Tribe and the obligations shall so state on their face.

(4) Obligations of the Authority are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from taxes imposed by the Tribe. The tax-exemption provisions of this Ordinance shall be considered part of the security for the repayment of obligations and shall constitute, by virtue of this Ordinance and without necessity of being restated in the obligations, a contract between (a) the Authority and the Tribe, and (b) the holders of obligations and each of them, including all transferees of the obligations from time to time.

(5) Obligations shall be issued and sold in the following manner:

(a) Obligations of the Authority shall be authorized by a resolution adopted by the vote of a majority of the full Board and may be issued in one or more series.

(b) The obligations shall bear such dates, mature at such times, bear interest at such rates, be in such denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment and at such places, and be subject to such terms of redemption, with or without premium, as such resolution may provide.

(c) The obligations may be sold at public or private sale.

(d) In case any of the commissioners of the Authority whose signatures appear on any obligations cease to be commissioners before the delivery of such obligations, the signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the commissioners had remained in office until delivery.

(6) Obligations of the Authority shall be fully negotiable. In any suit, action or proceeding involving the validity or enforceability of any obligation of the Authority or the security therefor, any such obligation reciting in substance that it has been issued by the Authority to aid in financing a project pursuant to this Ordinance shall be conclusively deemed to have been issued for such purpose, and the project for which such obligation was issued shall be conclusively deemed to have been planned, located and carried out in accordance with the purposes and provisions of this Ordinance.

(7) In connection with the issuance of obligations or incurring of obligations under leases and to secure the payment of such obligations, the Authority, subject to the limitations in this Ordinance, may:

(a) Pledge all or any part of its gross or net rents, fees or revenues to which its right then exists or may thereafter come into existence.

(b) Provide for the powers and duties of obligees and limit their liabilities; and provide the terms and conditions on which such obligees may enforce any covenant or rights securing or relating to the obligations.

(c) Covenant against pledging all or any part of its rents, fees and revenues or against mortgaging any or all of its real or personal property to which its title or right then exists or may thereafter come into existence or permitting or suffering any lien on such revenues or property.

(d) Covenant with respect to limitations on its right to sell, lease or otherwise dispose of any project or any part thereof.

(e) Covenant as to what other or additional debts or obligations may be incurred by it.

(f) Covenant as to the obligations to be issued and as to the issuance of the obligations in escrow or otherwise, and as to the use and disposition of the proceeds thereof.

(g) Provide for the replacement of lost, destroyed or mutilated obligations.

(h) Covenant against extending the time for the payment of its obligations or interest thereon.

(i) Redeem the obligations and covenant for their redemption and provide the terms and conditions thereof.

(j) Covenant concerning the rents and fees to be charged in the operation of a project or projects, the amount to be raised each year or other period of time by rents, fees and other revenues, and as to the use and disposition to be made thereof.

(k) Create or authorize the creation of special funds for monies held for construction or operating costs, debt service, reserves or other

purposes, and covenant as to the use and disposition of the monies held in such funds.

(l) Prescribe the procedure, if any, by which the terms of any contract with holders of obligations may be amended or abrogated, the proportion of outstanding obligations the holders of which must consent thereto, and the manner in which such consent may be given.

(m) Covenant as to the use, maintenance and replacement of its real or personal property, the insurance to be carried thereon and the use and disposition of insurance monies.

(n) Covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition or obligation.

(o) Covenant and prescribe as to events of default and terms and conditions upon which any or all of its obligations become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived.

(p) Vest in obligees or any proportion of them the right to enforce the payment of the obligations or any covenants securing or relating to the obligations.

(q) Exercise all or any part or combination of the powers granted in this section.

(r) Make covenants other than and in addition to covenants expressly authorized in this section, of like or different character.

(s) Make any covenants and do any acts and things necessary or convenient or desirable in order to secure its obligations, or, in the absolute discretion of the Authority, tending to make the obligations more marketable although the covenants, acts or things are not enumerated in this section.

90.108 Annual Report.

(1) The Authority shall submit an annual report, signed by the Chairman of the Board, to the Council showing:

- (a) a summary of the year's activities;
- (b) the financial condition of the Authority;

- (c) the condition of the properties;
- (d) the number of units and vacancies;
- (e) any significant problems and accomplishment;
- (f) plans for the future; and
- (g) such other information as the Authority or the Council deem pertinent.

90.109 Conflicts of Interest.

(1) During his tenure and for one year thereafter, no commissioner, officer or employee of the Authority, or any member of any governing body of the Tribe, or any other public official who exercises any responsibilities or functions with regard to the project, shall voluntarily acquire any interest; direct or indirect, in any project or in any property included or planned to be included in any project, or in any contract or proposed contract relating to any project (“Interest”), unless prior to such acquisition, he discloses his interest in writing to the Authority and such disclosure is entered upon in minutes of the Authority, and the commissioner, officer or employee shall not participate in any action by the Authority relating to the property or contract in which he has any such interest.

(2) If any commissioner, officer or employee of the Authority involuntarily acquires any such interest, or voluntarily or involuntarily acquired any such interest prior to appointment or employment as a commissioner, officer or employee, the commissioner, officer or employee, in any such event, shall immediately disclose his interest in writing to the Authority, and the commissioner, officer or employee shall not participate in any action by the Authority relating to the property or contract in which he has any such interest.

(3) Any violation of the foregoing provisions of this section shall constitute misconduct in office.

(4) This section shall not be applicable to the acquisition of any interest in obligations of the Authority issued in connection with any project, or to the execution of agreements by banking institutions for the deposit or handling of funds in connection with a project or to act as trustee under any trust indenture, or to utility services the rates for which are fixed or controlled by a governmental agency, or to membership on the Board as provided in Section 90.105(4) of this Ordinance.

90.110 Miscellaneous.

(1) Each project developed or operated under a contract providing for federal financial assistance shall be developed and operated in compliance with all requirements of such contract and applicable law, and with all applicable regulations and requirements.

(2) The Authority shall obtain or provide for the obtaining of adequate fidelity bond coverage of its officers, agents, or employees handling cash or authorized to sign checks or certify vouchers.

(3) The Authority shall not construct or operate any project for profits.

(4) The property of the Authority is declared to be public property used for essential public and governmental purposes and such property and the Authority are exempt from all taxes and special assessments of the Tribe.

(7) All property, including funds acquired or held by the Authority pursuant to this Ordinance, shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against the Authority be a charge or lien upon such property. However, the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by the Authority on its rents, fees or revenues or the right of the Cooperating Agencies to pursue any remedies conferred pursuant to provisions of this Ordinance or the right of the Authority to enforce its legal rights under §90.106(3)(k) of this Ordinance.

90.111 Tribal Cooperation in Connection With Projects.

(1) For the purpose of aiding and cooperating in the planning, undertaking construction or operation of projects, the Tribe hereby agrees that:

(a) It will not levy or impose any real or personal property taxes or special assessments upon the Authority or any project of the Authority.

(b) It will furnish or cause to be furnished to the Authority and the occupants of projects all services and facilities of the same character and to the same extent as the Tribe furnishes from time to time without cost or charge to other dwellings and inhabitants.

(c) Insofar as it may lawfully do so, it will grant such deviations from any present or future building or housing codes of the Tribe as are responsible and necessary to promote economy and efficiency in the development and operation of any project, and at the same time safeguard health and safety, and make such changes in any zoning of the site and

surrounding territory of any project as are reasonable and necessary for the development and protection of such project, and the surrounding territory.

(d) It will do any and all things, within its lawful powers, necessary or convenient to aid and cooperate in the planning, undertaking, construction or operation of projects.

(e) The Tribal Courts shall have jurisdiction to hear and determine an action for foreclosure and/or eviction of a tenant, homebuyer or homeowner to the full extent permitted under federal law relating to the jurisdiction of Indian tribes. The Tribal Government hereby declares that the powers of the Tribal Courts shall be vigorously utilized to enforce foreclosure and/or eviction of a tenant, homeowner or homebuyer for nonpayment or other contract violations.

(2) The provisions of this Article shall remain in effect with respect to any project, and said provisions shall not be abrogated, changed, or modified without the consent of any Cooperating Agency whose rights are affected by such abrogation, change or modification, so long as:

(a) the project is owned by a public body or Cooperating Agency and is used for low income housing purposes;

(b) any contract between the Authority and the federal government or Cooperating Agency for loans or annual contributions in connection with such project, remains in force and effect; or,

(c) any obligations issued in connection with such project or any monies due in connection with such project remain unpaid, whichever period ends the latest.

(3) If at any time, title to, or possession of, any project is held by any public body or cooperating agency authorized by law to engage in the development or operation of low income housing, the provisions of this section shall inure to the benefit of and be enforced by such public body or cooperating agency.

CHAPTER II LEASEHOLD MORTGAGES

90.201 Purpose.

The purpose of this addendum is to avail the Lac du Flambeau Band of Lake Superior Chippewa Indians and its members of financing for the construction and/or purchase of family residences on trust land within the jurisdiction of the Lac du

Flambeau Band of Lake Superior Chippewa Indians by prescribing procedures for the recording, priority and foreclosure of leasehold mortgages given to secure loans made by the Department of Veteran's Affairs under the native American Veteran Direct Loan Program authorized under title 38 U.S. Code s. 3761 et seq.

90.202 Definitions.

(a) Lease shall mean the lease of trust property for which a Leasehold Mortgage, as defined in this document has or will be given.

(b) Leasehold Mortgages shall mean the mortgage of a lease of trust property given to secure a loan made under the VA Native American Direct Loan Program and 38 U.S. Code s. 3761 et seq.

(c) Leasehold Mortgage Foreclosure Procedure shall mean a proceeding in the Tribal Court:

(1) To foreclose the interest of the Mortgagor(s), and each person or entity claiming through the Mortgagor(s), in a Lease for which a Mortgage has been given under the VA Native American Direct Loan Program and 38 U.S. Code s. 3761 et seq.; and

(2) To assign such Lease to the Secretary or the Secretary's assignee.

(d) Lessor shall mean the beneficial or equitable owner of trust or otherwise restricted property under a Lease for which a Mortgage, as defined in this document, has been given, or the heir(s), successor(s), executor(s), administrator(s), or assign(s) of such Lessor.

(e) Mortgagor shall mean the Tribe or any Native American(s) who has executed a Leasehold Mortgage as defined in this document, or any heir(s), successor(s), executor(s), administrator(s), or assign(s) of the Tribe or such Native American(s).

(f) Mortgagee shall mean the Mortgagee under any Leasehold Mortgage as defined in this document or the successor(s) in interest of any such Mortgagee, including the Secretary as defined in this document, or the Secretary's assignee under any such mortgage.

(g) Nuisance shall mean the maintenance on real property 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 property users to enjoy the reasonable use and occupancy of their property.

(h) Secretary shall mean the Secretary of the United States Department of Veteran Affairs, an officer of the United States.

(i) Subordinate Lienholder shall mean the holder of any lien, including a subsequent mortgage, perfected subsequent to the recording of a Leasehold Mortgage under the document (except the Tribe with respect to a claim for a tribal leasehold tax).

(j) Tenant shall mean any person who occupies real property under a lease, rental agreement or other agreement with a lessor as defined in this document.

(k) Tribal Court shall mean the Tribal Court as established by the laws of this Tribe or such body as may now or hereafter be authorized by the laws of the Tribe to exercise the powers and functions of a court of law.

(l) 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.

(m) Tribe shall refer to the Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Indian Reservation as defined in the Tribal Constitution.

(n) Unlawful Detainer Action shall be a suit brought before the Tribal Court to terminate a tenant's interest in real property and/or to evict any person from occupancy of real property.

(o) Waste is spoil or destruction by a tenant of land, buildings, gardens, trees or other improvements which result in substantial injury to the lessor's interest in the property.

(p) Write of Restitution is an order of the Tribal Court:

(1) Restoring an owner or lessor or the Secretary to possession of real property and,

(2) Evicting a tenant or other occupant therefrom.

90.203 Priority.

A Leasehold Mortgage recorded in accordance with the recording procedures set forth in this Title 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. Nothing in this document shall prevent any person or entity from recording a Leasehold Mortgage in accordance with State Law or from filing a Leasehold Mortgage with the Bureau of Indian Affairs.

90.204 Recording

(a) The Tribal Recording Clerk shall maintain in the Tribal Court a system for the recording of Leasehold Mortgages and such other documents as the Tribe may designate by law or resolution.

(b) The Tribal Recording Clerk shall endorse upon any Leasehold Mortgage or other document received for recording:

(1) The date and time of receipt of 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 Leasehold Mortgage or other document received; and

(3) The name of the Tribal Recording Clerk receiving the Leasehold Mortgage or document.

Upon completion of the above endorsements, the Tribal Recording Clerk shall make a true and correct copy of the Leasehold Mortgage or other document and shall certify the copy as follows:

Lac du Flambeau Band of Lake)
Superior Chippewa Indians)

(ss.

Lac du Flambeau Indian Reservation)

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

Given under by hand and seal this ___ day of _____, 19__.

(Seal)

—

(Signature)

—

(Title)

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

(c) The Tribal Recording Clerk shall also maintain a log of each Leasehold Mortgage or other document recorded in which there shall be entered:

(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 names in any other documents;

(4) The date and time of receipt.

(5) The filing number assigned by the Tribal Recording Clerk; and

(6) The name of the Tribal Recording Clerk receiving the Leasehold Mortgage or document.

(d) The certified copies of the Leasehold Mortgages and other documents and the log maintained by the Tribal Recording Clerk shall be made available for public inspection and copying.

90.205 Leasehold Mortgage Foreclosure Proceedings.

Upon the default of the Mortgagor(s) under a Leasehold Mortgage, the Secretary may commence a Leasehold Mortgage foreclosure proceeding in the Tribal Court by filing:

(a) A verified complaint:

(1) Naming the Mortgagor(s) and each person or entity 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 leasehold tax), as a defendant;

(2) Describing the property;

(3) Stating the facts concerning the execution of the Lease and the Leasehold Mortgage; the facts concerning the alleged default(s) of the Mortgagor(s); and such other facts as may be necessary to constitute a case of action;

(4) Having appended as exhibits true and correct copies of each promissory note, Lease, leasehold MORTGAGE, or assignment thereof relating to the property; and

(5) Including an allegation that all relevant requirements and conditions prescribed in (i) title 38 U.S. Code ss. 3761 et seq., (ii) the regulations promulgated thereunder by the Secretary, and (iii) the provisions of the Lease, have been complied with by the Secretary.

(b) A summons, issued as in other cases, requiring the Mortgagor(s) and each other defendant to appear for a trial upon the complaint on a date and time specified in the summons.

90.206 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.

90.207 Cure of Default by Subordinate Lienholder.

Prior to the entry of a judgment of foreclosure, any Mortgagor or any Subordinate Lienholder may cure the default(s) under the Leasehold Mortgage. 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 Leasehold Mortgage.

90.208 Power of the Tribal Court.

If the alleged default(s) have not been cured, and if the Tribal Court shall find for the Secretary, the Tribal Court shall enter judgment:

(a) Foreclosing the interest in the Lease 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 Lease to the Secretary or the Secretary's assignee.

CHAPTER III EVICTIONS PROCEDURES

90.301 Jurisdiction.

The provisions of this section apply to all persons and property subject to the governing authority of the Tribe as established by the Tribal Constitution and Bylaws.

90.302 Definitions.

The definitions provided in the section on Leasehold Mortgages applies to this section as well.

90.303 Unlawful Detainer.

A tenant or other occupier of land shall be guilty of unlawful detainer if such person shall continue to occupancy of real property under any of the following situations:

- (a) Without the requirement of any notice:
 - (1) After the expiration of the term of the lease or other agreement; or
 - (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 of a lease or title of the property; or
 - (3) After the Indian Housing Authority or other Public Housing Authority has terminated such person's tenancy pursuant to procedures providing such person a hearing before the Housing Authority involved; or
 - (4) After the interest of such person in a lease has been foreclosed in a leasehold mortgage foreclosure proceeding in the Tribal Court.
- (b) After having received 30 days notice, the tenant or occupier shall remain in possession of the property contrary to the terms of the notice as follows:
 - (1) When such person has received notice:

(i) That he or she is in default in the payment of rent; and

(ii) Requiring him or her, to either pay the rent or surrender possession of the occupied property; and such person has remained in possession after receipt of such notice without surrendering possession of the property or paying the rent; or

(2) When the lease of the property is for an indefinite time, with rent to be paid monthly or by some other period, and the lessor has given notice of termination of the tenancy at least 30 days prior to the end of such month or period; or

(3) When such person shall continue to fail to keep or perform any condition or covenant of the lease or agreement under which the property is held after he has been given notice to surrender the property; or

(4) 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.

90.304 Procedures for Service of Notice.

Notice required or authorized in the immediately preceding section shall be given in writing by either:

(a) Delivering a copy personally to the tenant or occupier or to any adult members of his or her family residing on the premises; or

(b) Posting said notice in a conspicuous place near the entrance to said premises, and by sending an additional copy to the tenant or occupier by certified mail, return receipt requested, properly addressed, postage prepaid.

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 2 methods and service.

90.305 Complaint and Summons.

The owner of real property or lessor or Secretary shall commence an action for unlawful detainer by filing with the Court, in writing, the following documents:

(a) A complaint, signed by the owner, lessor, the Secretary, an agent, or attorney, stating:

(1) The facts on which he or she seeks to recover;

(2) Describing the property so that it can be identified with reasonable certainty; and

(3) Any claim for damages or compensation due from the persons to be evicted; and

(b) A summons, issued as in other cases, requiring the defendants to appear for trial upon the complaint on a date and time specified in the summons. The trial date specified in the summons shall not be less than 6 nor more than 30 days from the date of service of the summons and complaint. 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.

90.306 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 two methods authorized in the section on procedures for service of notice, above.

90.307 Power of the Tribal Court.

The Tribal Court shall enter a Writ of Restitution if:

(a) Notice of suit and trial is given by service of summons and complaint in accordance with the procedures provided in this document; and

(b) The Tribal Court shall find that the occupier of the real property is guilty of an act of unlawful detainer.

Upon issuance of a Writ of Restitution, the Tribal Court shall have the authority to enter against the defendants a judgment for the following: ~~back rent~~, unpaid utilities; charges due to the Tribe, Indian Housing Authority, or land owner under any lease or occupancy agreement (not including a leasehold mortgage); and for damages caused by the defendants to the property other than ordinary wear and tear. The Tribal Court shall have the authority to award to the prevailing party his costs and reasonable attorney's fees in bringing suit.

90.308 Continuances in cases involving the Secretary.

Except by agreement of all parties, there shall be no continuance in the cases involving the Secretary which will interfere with the requirements that the Writ of Restitution in a case involving the Secretary be enforced not later than 60 days from the date of service of the summons and complaint.

90.309 Enforcement.

Upon the 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 premises which are unlawfully occupied. In all cases involving the Secretary, the Writ of Restitution shall be enforced not later than 60 days after that date of the service of the summons and complaint.

90.310 Alternative Remedies.

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