TITLE 22. REAL PROPERTY

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TITLE 22. REAL PROPERTY

Source: Omaha Tribal Council Resolution No. 95-01 (10/13/94).

CHAPTER 1. GENERAL PROVISIONS

SECTION 22-1-1. Purpose.

The purpose of this Chapter is to create a statutory framework within which to deal with Real Property.

SECTION 22-1-2. Definitions.

(a) "Borrower" means the borrower under the terms of the Financing Documents.

(b) "Financing Documents" means all documents evidencing and securing a construction loan or a mortgage loan relating to housing on Trust Land.

(c) "Lease" means the lease of Trust Land and for which a Leasehold Mortgage, as defined in this document, has or will be given.

(1) "Lease" may also mean an agreement for the rental of a residential dwelling either owned in fee or under a lease of Trust land agreement.

Source: Omaha Tribal Council Resolution No. 95-70 (2/23/95).

(d) "Leasehold Mortgage" means the mortgage of a lease of Trust Land given to secure a loan made by a Lender. This leasehold mortgage differs from a standard mortgage to the extent that the leasehold mortgage pledges the lease as collateral for the loan rather than pledging the land itself.

(e) "Leasehold Mortgage Foreclosure Proceeding" means a proceeding in the Omaha Tribal Court:

(1) To foreclose the interest of the Mortgagor, and each person or entity claiming through the Mortgagor, in a Lease for which a Mortgage has been given under a loan; and

(2) To assign such Lease to the Lender or the Lender's

(f) "Lender" means any private or governmental lender who loans money to a Borrower for construction, acquisition or rehabilitation of a home.

(g) "Lessor" means the beneficial or equitable owner of trust or otherwise restricted property under a Lease for which a Mortgage, as defined in this document, has or will be given, or the heir(s), successor(s), executor(s), administrator(s) or assign(s) of such Lessor.

(h) "Mortgagor" means the Tribe or any individual Native American who has executed a leasehold Mortgage, as defined in this document, or any heir, successor executor, administrator or assign of the Tribe or such Native American.

(i) "Mortgagee" means the Mortgagee under any Leasehold Mortgage as defined in this document or the successor in interest of any such mortgagee, including the Lender as defined in this document, or the Lender's assignee under any such mortgage.

(j) "Nuisance" means 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 or neighboring property users to enjoy the reasonable use and occupancy of their property.

(k) "Secretary" means the Secretary of the Interior, an officer of the United States or his\her designee.

(l) "Subordinate Lienholder" means the holder of any lien, including a subsequent mortgage, perfected subsequent to the recording of a Leasehold Mortgage as defined in this Chapter.

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

(n) "Tribal Court" means the Omaha Tribal Court or any successor tribunal as may hereafter be authorized by the Constitution of the Tribe to exercise the powers and function of a court of law.

(o) "Tribal Recording Clerk" means a person / Clerk designated by the Omaha Tribal Council to record Real Estate transactions and to perform the recording functions required by this Chapter or any deputy or designee of such person.

History: Section 20-1-2(o) was amended by Omaha Tribal Council Resolution No. 95-70 (2/23/95) to substitute "the person / Clerk designated by the Omaha Tribal Council to record Real Estate transactions and" for "the Clerk of the Omaha Tribal Court or such other person who may be designated by the Chief Judge."

(p) "Tribe" means the Omaha Tribe of Nebraska, a federally recognized Indian tribe, of the Omaha Indian Reservation as defined in the Tribal Constitution. .

(q) "Trust Land" means all land within the territorial jurisdiction of the Omaha Tribe , title to which is held by the federal government in trust for the benefit of the Tribe or an individual Native American.

(r) "Unlawful Detainer Action" means a suit brought before the Tribal Court to terminate the tenant's interest in real property and\or to evict any person from occupancy of real property.

(s) "Waste" means the spoiling 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.

(t) "Writ of Restitution" means an order of the Tribal Court:

(1) Restoring an owner or lessor or the Lender to possession of real property; and

(2) Evicting a tenant or other occupant therefrom.

(u) "Default" means when the borrower is thirty(30) days past due on his\her mortgage payments.

SECTION 22-1-3. Recording.

(a) The Tribal Recording Clerk shall maintain on the premises of the Tribal Court a system for the recording of documents transferring interests in real property.

(b) The Tribal Recording Clerk shall endorse upon any real estate document received for recording:

(1) The date and time of receipt of the document;

(2) The filing number, to be assigned by the Tribal Recording Clerk, which shall be a unique number for each document received; provided, however, that all related documents shall be assigned a single number; and

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

(c) Upon completion of the above endorsements, the Tribal Recording clerk shall make a true and correct copy of each document and shall certify the copy as follows:

OMAHA TRIBE OF NEBRASKA)
) ss.
OMAHA RESERVATION)

I hereby 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)

_____

(Title)

(d) The Tribal Recording Clerk shall maintain a copy of the enclosed document and the certification in the records system and shall return the original document to the person that presented the same for recording.

(e) The Tribal Recording Clerk shall also maintain a log of each real estate document recorded. With respect to each real property transaction, there shall be entered the following information

(1) The name of the Grantor of each transaction, identified as such;

(2) The name of the Grantee of each transaction, identified as such;

(3) The name of the grantor, grantee or other designation of each party named in the Financing Documents and any other related documents;

(4) The beneficial owner of the subject real estate;

(5) The date and time of receipt of the documents;

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

(7) The name of the Tribal Recording Clerk receiving the documents

(f) Certified copies of all real estate documents and the log maintained by the Tribal Recording Clerk shall be made available during regular Tribal Administration Building hours for public inspection and copying (a fee may be charged to copy).

History: Section 22-1-4(f) was amended by Omaha Tribal Council Resolution No. 95-70 (2/23/95) to substitute "Administration Building" for "Court."

SECTION 22-1-4. Foreclosure Proceedings.

Upon the default of the Mortgagor under a Mortgage, the Lender may commence, at the end of ninety (90) days delinquency, a Mortgage foreclosure proceeding in the Tribal Court by filing:

(a) A verified complaint:

(1) Naming the Mortgagor and each person or entity claiming through the Mortgagor subsequent to the recording of the Leasehold Mortgage, including each Subordinate Lienholder, as a defendant;

(2) Describing the property;

(3) Stating the facts concerning the execution of the Mortgage, the facts concerning the recording of the Mortgage, the facts concerning the alleged default of the Mortgagor, and such other facts as may be necessary to constitute a cause of action;

(4) Having appended as exhibits true and correct copies of all Financing Documents relating to the property; and

(5) Including allegations that all relevant requirements and conditions prescribed in (i) the relevant federal statutes and regulations in the case of a government loan program, (ii) federal and tribal law pertaining to foreclosures relation to Trust Land, and (iii) the provision relating to foreclosure and termination of the Leasehold Mortgage and the Lease, respectively, have been complied with by the

Lender.

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

(c) Before the Mortgagee may begin any foreclosure activity, the Mortgagee/lender must have a face to face interview with the borrower, or make a document the making of a reasonable effort to arrange such a meeting. Said meeting should occur in the interim period between thirty (30) days delinquent and ninety (90) days delinquent.

SECTION 22-1-5. Service of Process and Procedures.

The Rules of Civil Procedure of the Omaha Tribe, contained in Title 2 of this code, governing service of process and all other matters relating to the conduct of Tribal Court proceedings shall apply to any Mortgage Foreclosure Proceeding pursuant to this Chapter.

SECTION 22-1-6. Cure of Default by Subordinate Lienholder.

Prior to the entry of a judgment of foreclosure, any Mortgagor or any Subordinate Lienholder may cure a default under a 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, plus interest on such amounts at the rate stated in the promissory note relating to the Mortgage.

SECTION 22-1-7. Power of the Tribal Court.

If the alleged default has not been cured, and if the Tribal Court should find for the Lender, the Tribal Court shall enter judgment:

(a) Foreclosing the interest in the lease of the Mortgagor 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 Lender or the Lender's assignee.

(c) In the case of foreclosure on fee simple land (non-trust land) the Court shall have the power to decree a sale of the mortgaged premises, or such part thereof as may be sufficient to discharge the amount due on the mortgage, and the cost of suit.

(d) **Petition for foreclosure or satisfaction; allegations.** Upon filing a petition for the foreclosure or satisfaction of a mortgage, the complainant shall state therein whether any proceedings have been had at law for the recovery of the debt secured thereby, or any part thereof, and whether such debt, or any part thereof, has been collected and paid.

(e) **Prior judgment at law; effect.** If it shall appear that any judgment has been obtained in a suit at law for the money demanded by such petition, or any part thereof, no proceedings shall be had in such case, unless to an execution against the property of the defendant in such judgment the Tribal Police Captain or other proper officer shall have returned that the execution is unsatisfied in whole or in part, and that the defendant has no property whereof to satisfy such execution except the mortgaged premises.

(f) **Sale of premises; by whom made; liability and compensation of Tribal Police Captain.** All sales of mortgaged premises under a decree shall be made by a Tribal Police Captain or some other person authorized by the Tribal Court where the premises or some part of them are situated; and in all cases where the Tribal Police Captain shall make such sale he shall act in his official capacity, he shall be liable on his official bond for all his acts therein, and he shall receive the same compensation as is provided by law for like services upon sales under execution.

(g) **Deed of conveyance; effect; estate conveyed.** Deed shall thereupon be executed by such Tribal Police Captain, which shall vest in the purchaser the same estate that would have vested in the mortgagee if the equity of redemption had been foreclosed, and no other or greater; and such deeds shall be valid as if executed by the mortgagor and mortgagee, and shall be an entire bar against each of them and all parties to the suit in which the decree for such sale was made, and against their heirs respectively and all persons

claiming under such heirs.

(h) **Sale; proceeds; how applied.** The proceeds of every sale made under a decree in equity shall be applied to the discharge of the debt adjudged by such court to be due, and of the costs awarded, and if there be any surplus, it shall be brought into court for the use of the defendant, or of the persons entitled thereto, subject to the order of the court.

(i) **Sale; proceeds; surplus disposition.** If such surplus, or any part thereof, shall remain in the court for the term of three months without being applied for, the court may direct the same to be put out at interest under the direction of the court for the benefit of the defendant, his representative or assigns, to be paid to them be order of such court.

(j) **Payment by defendant of sums due; effect.** Whenever a petition shall be filed for the satisfaction or foreclosure of any mortgage, upon which there shall be due any interest on any portion or installment of the principal, and there shall be other portions or installments to become due subsequently, the petition shall be dismissed upon the defendant's bringing into court, at any time before the decree of sale, the principal and interest due, with costs.

(k) **Payment by defendant of sums due; stay; decree.** If, after a decree for sale, entered against a defendant in such case, he/she shall bring into court the principal and interest due, with costs, the proceedings in the suit shall be stayed, but the court shall enter a decree of foreclosure and sale, to be enforced by a further order of the court, upon a subsequent default in the payment of any portion or installment of the principal, or any interest thereafter to grow due.

(l) **Reference to Tribal Police Captain; sale of premises in parcels; decree; effect.** If the defendant shall not bring into court the amount due, with costs, or if for any other cause a decree shall pas for the complainant, the court may direct a reference to a Tribal Police Captain to ascertain and report the situation of the mortgaged premises, or may determine the same on oral or other testimony, and if it shall appear that the same can be sold in parcels without injury to the parties, the decree shall direct so much of the mortgaged premises to be sold as will be sufficient to pay the amount then due on such mortgage, with costs, and such decree shall remain a security for any subsequent default.

(m) **Default in payment of installments subsequent to decree; order of sale.** If in the case mentioned in subsection (l), there shall be any default subsequent to such decree in the payment of any portion or installment of the principal, or any interest due upon such mortgage, the court may, upon the petition of the complainant, but a further order, founded upon such first decree, as will be sufficient to satisfy the amount due, with the costs of such petition and subsequent proceedings thereon, and the same proceedings may be had as often as a default shall happen.

(n) **Sale of entire property; when ordered.** If in any of the foregoing cases, it shall appear to the court that the mortgaged premises are so situated that a sale of the whole will be most beneficial to the parties, the decree shall, in the first instance, be entered for the sale of the whole premises accordingly.

(o) **Sale of entire property; proceeds; disposition.** In such case the proceeds of such sale shall be applied as well to the interest, portion, or installment of the principal due as towards the whole or residue of the sum secured by such mortgage, and not due and payable at the time of such sale; and if such residue does not bear interest, then the court may direct the same to be paid with a rebate of the legal interest, for the time during which such residue shall not be due and payable; or the court may direct the balance of the proceeds of such sale, after paying the sum due with costs, to be put out at interest, for the benefit of the complainant, to be paid to him as the installments or portions of the principal or interests may become due, and the surplus for the benefit of the defendant, his representative, or assigns, to be paid to them on the order of the court.

(p) **Satisfaction or payment; certificate; delivery to register of deeds; duties of clerk of Tribal court; fee of register of deeds.** In all cases of foreclosure of mortgages in the several counties in the state, it shall be the duty of the clerk of the court, on the satisfaction or payment of the amount of the decree, to forward to the register of deed a certificate setting forth the names of parties, plaintiff and defendant, descriptions of the premises mentioned in the decree, and the book and page where the mortgage foreclosed is recorded, for which certificate such clerk shall collect a fee of three dollars, which amount shall be taxed as part of the costs in the case, and said sum shall be paid to the register of deeds as his fee for recording

the certificate.

(q) **Satisfaction or payment; certificate; recording and indexing; duties of register of deeds.** It shall be the duty of the register of deeds on receipt of the certificate mentioned in subsection (p) to enter the same upon his numerical index, and record the same in the mortgage record of his office.

Source: Sections 22-1-8(c) – (q) were added by Omaha Tribal Council Resolution No. 95-70 (2/23/95).

SECTION 22-1-8. Eviction Procedures.

The provisions of this section shall apply to all persons and property subject to the jurisdiction of the Tribe.

SECTION 22-1-9. Unlawful Detainer.

A tenant or other occupant of land, without the requirement of any notice, shall be guilty of unlawful detainer if such person shall continue in occupancy of real property under either of the following situations:

(a) After the expiration of the term of the lease or other agreement; or

(b) 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 title or lease to the property.

SECTION 22-1-10. Complaint and Summons.

The owner of real property, the Lessor or a Lender may commence an action for unlawful detainer by filing with the Tribal Court, in writing, the following documents:

(a) A complaint, signed by the owner, the lessor, the Lender or an agent or attorney of any of the above, 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 defendant 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 six (6) nor more and thirty (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.

SECTION 22-1-11. Service of Summons and Complaint.

A copy of the summons and compaint shall be served upon the defendant(s) in the manner provided by the Tribal Court rules for service of process in civil matters.

Including, Proof of service by any of the allowed methods maybe made by affidavit of any person over the age of eighteen (18) stating that he or she has complied fully with the requirements of the above mentioned allowed methods of service.

SECTION 22-1-12. Power of Trial 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 Chapter; and

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

Upon the 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 the Tribe, Indian Housing Authority, Native Council on Community and Economic Development (if NED provided a silent second mortgage) or land owner under any lease or occupancy agreement (not including a leasehold mortgage) and for damages caused by the defendant(s) to the property other than ordinary wear and tear. The Tribal Court shall have the authority to award to the prevailing party his cost and reasonable attorney's fees in bringing suit.

History: Sections 22-1-8(b) was amended by Omaha Tribal Council Resolution No. 95-70 (2/23/95) to include Native Council on Community and Economic Development (if NED provided a silent second mortgage).

SECTION 22-1-13. Continuance in Cases Involving the Secretary.

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

SECTION 22-1-14. Enforcement.

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 premises which they are occupying. In all cases involving the rights of the Lender, the Writ of Restitution shall be enforced not later than 60 days after the date of service of the summons and complaint.

SECTION 22-1-15. Alternative Remedies.

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

CHAPTER 2. LEASEHOLD MORTGAGES

SECTION 22-2-1. Purpose.

The purpose of this Chapter is to avail the Omaha Tribe of Nebraska and its members of financing for the construction and\or purchase of family residences on tribal trust or allotted land within the jurisdiction of the Omaha Tribe of Nebraska (the "Tribe") by prescribing procedures for the recording, priority and foreclosure of leasehold mortgages given to secure loans made by private lenders and various governmental entities.

SECTION 22-2-2. Definitions.

(a) "Borrower" means the borrower under the terms of the Financing Documents.

(b) "Financing Documents" means all documents evidencing and securing a construction loan or a mortgage loan relating to housing on Trust Land.

(c) "Lease" means the lease of Trust Land and for which a Leasehold Mortgage, as defined in this document, has or will be given.

(d) "Leasehold Mortgage" means the mortgage of a lease of Trust Land given to secure a loan made by a Lender. This leasehold mortgage differs from a standard mortgage to the extent that the leasehold mortgage pledges the lease as collateral for the loan rather than pledging the land itself.

(e) "Leasehold Mortgage Foreclosure Proceeding" means a proceeding in the Omaha Tribal Court:

(1) To foreclose the interest of the Mortgagor, and each person or entity claiming through the Mortgagor, in a Lease for which a Mortgage has been given under a loan; and

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

(f) "Lender" means any private or governmental lender who loans money to a Borrower for construction, acquisition or rehabilitation of a home.

(g) "Lessor" means the beneficial or equitable owner of trust or otherwise restricted property under a Lease for which a Mortgage, as defined in this document, has or will be given, or the heir(s), successor(s), executor(s), administrator(s) or assign(s) of such Lessor.

(h) "Mortgagor" means the Tribe or any individual Native American who has executed a leasehold Mortgage, as defined in this document, or any heir, successor executor, administrator or assign of the Tribe or such Native American.

(i) "Mortgagee" means the Mortgagee under any Leasehold Mortgage as defined in this document or the successor in interest of any such mortgagee, including the Lender as defined in this document, or the Lender's assignee under any such mortgage.

(j) "Nuisance" means 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 or neighboring property users to enjoy the reasonable use and occupancy of their property.

(k) "Secretary" means the Secretary of the Interior, an officer of the United States or his\her designee.

(l) "Subordinate Lienholder" means the holder of any lien, including a subsequent mortgage, perfected subsequent to the recording of a Lease hold Mortgage as defined in this Chapter.

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

(n) "Tribal Court" means the Omaha Tribal Court or any successor tribunal as may hereafter be authorized by the Constitution of the Tribe to exercise the powers and function of a court of law.

(o) "Tribal Recording Clerk" means the Clerk of the Omaha Tribal Court or such other person who may be designated by the Chief Judge to perform the recording functions required by this Chapter or any deputy or designee of such person.

(p) "Tribe" means the Omaha Tribe of Nebraska, a federally recognized Indian tribe, of the Omaha Indian Reservation as defined in the Tribal Constitution.

(q) "Trust Land" means all land within the territorial jurisdiction of the Omaha Tribe, title to which is held by the federal government in trust for the benefit of the Tribe or an individual Native American.

(r) "Unlawful Detainer Action" means a suit brought before the Tribal Court to terminate the tenant's interest in real property and\or to evict any person from occupancy of real property.

(s) "Waste" means the spoiling 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.

(t) "Writ of Restitution" means an order of the Tribal Court

(1) Restoring an owner or lessor or the Lender to possession of real property; and

(2) Evicting a tenant or other occupant therefrom.

(u) "Default" means when the borrower is thirty (30) days past due on his\her mortgage payments.

SECTION 22-2-3. 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. Nothing in this Chapter shall prevent any person or entity from recording a Leasehold Mortgage in accordance with Nebraska or Iowa law or from filing a Leasehold Mortgage with the Bureau of Indian

Affairs.

SECTION 22-2-4. Recording

(a) The Tribal Recording Clerk shall maintain on the premises of the Tribal Real Estate Office a system for the recording of documents transferring interests in real property, including but not limited to Leasehold Mortgages.

History: Sections 20-2-4 (a) was amended by Omaha Tribal Council Resolution No. 95-70 (2/23/95) to substitute "Tribal Court" for "Tribal Real Estate Office."

(b) The Tribal Recording Clerk shall endorse upon any real estate document received for recording:

(1) The date and time of receipt of the document;

(2) The filing number, to be assigned by the Tribal Recording Clerk, which shall be a unique number for each document received; provided, however, that all related documents shall be assigned a single number; and

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

(c) Upon completion of the above endorsements, the Tribal Recording clerk shall make a true and correct copy of each document and shall certify the copy as follows:

OMAHA TRIBE OF NEBRASKA)
) ss.
OMAHA RESERVATION)

I hereby 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)

_____

(Title)

(d) The Tribal Recording Clerk shall maintain a copy of the enclosed document and the certification in the records system and shall return the original document to the person that presented the same for recording.

(e) The Tribal Recording Clerk shall also maintain a log of each real estate document recorded. With respect to each leasehold Mortgage, there shall be entered the following information

(1) The name of the Mortgagor of each Leasehold Mortgage, identified as such;

(2) The name of the Mortgagee of each Leasehold Mortgage, identified as such;

(3) The name of the grantor, grantee or other designation of each party named in the Financing Documents and any other related documents;

(4) The beneficial owner of the subject real estate;

(5) The date and time of receipt of the documents;

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

(7) The name of the Tribal Recording Clerk receiving the Leasehold Mortgage or other

documents.

(8) Certified copies of all real estate documents and the log maintained by the Tribal Recording Clerk shall be made available during regular Tribal business hours for public inspection and copying (a fee may be charged to copy).

History: Sections 20-2-4 (a) was amended by Omaha Tribal Council Resolution No. 95-70 (2/23/95) to substitute "Tribal Court" for "Tribal business."

SECTION 22-2-5. Leasehold Mortgage Foreclosure Proceedings.

Upon the default of the Mortgagor under a Leasehold Mortgage, the Lender may commence, at the end of ninety (90) days delinquency, a Leasehold Mortgage foreclosure proceeding in the Tribal Court by filing:

(a) A verified complaint:

(1) Naming the Mortgagor and each person or entity claiming through the Mortgagor subsequent to the recording of the Leasehold Mortgage, including each Subordinate Lienholder, 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 recording of the Leasehold Mortgage, the facts concerning the alleged default of the Mortgagor, and such other facts as may be necessary to constitute a cause of action;

(4) Having appended as exhibits true and correct copies of all Financing Documents relating to the property; and

(5) Including allegations that all relevant requirements and conditions prescribed in (i) the relevant federal statutes and regulations in the case of a government loan program, (ii) federal and tribal law pertaining to foreclosures relation to Trust Land, and (iii) the provision relating to foreclosure and termination of the Leasehold Mortgage and the Lease, respectively, have been complied with by the Lender.

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

(c) Before the Mortgagee may begin any foreclosure activity, the Mortgagee\lender must have a face to face interview with the borrower, or make a documentation of the making of a reasonable effort to arrange such a meeting. Said meeting should occur in the interim period between thirty (30) days delinquent and ninety (90) days delinquent.

SECTION 22-2-6. Service of Process and Procedures.

The Rules of Civil Procedure of the Omaha 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 Chapter.

SECTION 22-2-7. Cure of Default by Subordinate Lienholder.

Prior to the entry of a judgment of foreclosure, any Mortgagor or any Subordinate Lienholder may cure a default under a 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, plus interest on such amounts at the rate stated in the promissory note relating to the Leasehold Mortgage.

SECTION 22-2-8. Power of the Tribal Court.

If the alleged default has not been cured, and if the Tribal Court should find for the Lender, the Tribal

Court shall enter judgment:

(a) Foreclosing the interest in the lease of the Mortgagor 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 Lender or the Lender's assignee.

SECTION 22-2-9. Eviction Procedures.

Eviction procedures are stated in Chapter 3 of this Title.

CHAPTER 3. EVICTION PROCEDURES

SECTION 22-3-1. Jurisdiction.

The provisions of this section shall apply to all persons and property subject to the jurisdiction of the Tribe.

SECTION 22-3-2. Definitions.

The definitions set forth in Chapter 1 of this Title shall apply to Chapter 2 of this Title.

SECTION 22-3-3. Unlawful Detainer.

A tenant or other occupant of land, without the requirement of any notice, shall be guilty of unlawful detainer if such person shall continue in occupancy of real property under either of the following situations:

(a) After the expiration of the term of the lease or other agreement; or

(b) 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 title or lease to the property.

SECTION 22-3-4. Complaint and Summons.

The owner of real property, the Lessor or a Lender may commence an action for unlawful detainer by filing with the Tribal Court, in writing, the following documents:

(a) A complaint, signed by the owner, the lessor, the Lender or an agent or attorney of any of the above, 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 defendant 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 six (6) nor more than thirty (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.

SECTION 22-3-5. Service of Summons and Complaint.

A copy of the summons and complaint shall be served upon the defendant(s) in the manner provided by the Tribal Court rules for service of process in civil matters.

Proof of service by any of the allowed methods may be made by affidavit of any person over the age of eighteen (18) stating that he or she has complied fully with the requirements of the above mentioned

allowed methods of service.

SECTION 22-3-6. Power of Trial 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 Chapter; and

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

Upon the 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 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 defendant(s) to the property other than ordinary wear and tear. The Tribal Court shall have the authority to award to the prevailing party his cost and reasonable attorney's fees in bringing suit.

SECTION 22-3-7. Continuance in Cases Involving the Secretary.

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

SECTION 22-3-8. Enforcement.

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 premises which they are occupying. In all cases involving the rights of the Lender, the Writ of Restitution shall be enforced not later than 60 days after the date of service of the summons and complaint.

SECTION 22-3-9. Alternative Remedies.

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

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