

COQUILLE INDIAN TRIBAL CODE

Chapter 425

Part 4 – Community Development

RESIDENTIAL MORTGAGE LENDING AND FORECLOSURE ORDINANCE

COQUILLE INDIAN TRIBE
Chapter 425
RESIDENTIAL MORTGAGE LENDING AND FORECLOSURE ORDINANCE

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425.010 Purpose and Background

The Tribe adopts this Ordinance to establish a procedure for the creation and foreclosure of residential leasehold mortgages on tribal reservation lands.

425.050 Jurisdiction (Reserved)

425.080 Definitions

1. BIA, means the Bureau of Indian Affairs of the U.S. Department of the Interior.
2. Dwelling Unit, means a residence that is subject to a Leasehold Mortgage.
3. Federal Agency, means a Department, Bureau of Agency of the executive branch of the United States Government, including, but not limited to, the U.S. Department of Housing and Urban Development and the U.S. Veterans Administration.
4. Lease, means a written contract between the Tribe and a lessee, whereby the lessee is granted a right to possess Tribal Reservation lands for residential use for a specified duration. The lessee's right to possess will limit the Indian landowners' right to possess the leased premises only to the extent provided in the lease. This term includes only residential leases. Non-residential leases are not covered by this Ordinance.
5. Leasehold Mortgage, means a mortgage, deed of trust, or other instrument that pledges a lessee's leasehold interest (or subleasehold interest) as security for a debt or other obligation owed by the lessee to a lender or other mortgagee
6. Leasehold Mortgage Loan, means a transaction secured by a Leasehold Mortgage.
7. Leasehold Mortgage Loan Document, means a loan agreement, leasehold mortgage, deed of trust, guaranty, note or any other instrument comprising a Leasehold Mortgage Loan.
8. Leasehold Mortgagee, means the holder of a Leasehold Mortgage.
9. Public, means any employee or member of the Tribe, and any party to a specific Leasehold Mortgage Loan Document.
10. Sublease, means a written agreement by which the lessee grants to an individual or entity a right to possession no greater than that held by the lessee under the lease.
11. Residential Use, means possession of a single residential unit by one or more natural persons.
12. Subordinate Lienholder, means the holder of Leasehold Mortgage that is not the first Leasehold Mortgagee to receive payment in the event of a Leasehold Mortgage foreclosure.
13. Tribe, means the Coquille Indian Tribe, a federally recognized Indian tribe.
14. Tribal Agency, means the Tribe or a Tribal Housing authority that is affiliated with the Tribe.
15. Tribal Court, means the Coquille Indian Tribal Court.
16. Tribal Recording Clerk, means the official designated by the Tribal Executive Director, or otherwise authorized under Tribal law, to record documents as described in this Ordinance.

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425.100 Lien Priority

All Leasehold Mortgage Loans made, guaranteed, insured or held by a Federal Agency or Tribal Agency, shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim excepting a lien or claim arising from a tribal leasehold tax, if any, assessed after the recording of the Leasehold Mortgage; *provided that*, in those cases where the government direct, guaranteed or insured Leasehold Mortgage is created as a second mortgage, the loan shall assume that position.

425.150 Recording of Leasehold Mortgage Loan Documents

1. The Tribal Executive Director shall designate a Tribal Recording Clerk to carry out the provisions of this Ordinance.
2. Tribal Recording Clerk shall maintain a system for the recording of Leasehold Mortgage loans and such other documents as the Tribal Council may designate by Tribal law.
3. The Tribal Recording Clerk shall endorse upon any Leasehold Mortgage Loan or other document received for recording:
 - a. The date and time of receipt of the Leasehold Mortgage Loan Document or other document;
 - b. The filing number, to be assigned by the Tribal Recording Clerk, which shall be a unique number for each Leasehold Mortgage Loan Document or other document received; and
 - c. The name of the Tribal Recording Clerk or designee receiving the Leasehold Mortgage Loan Document or other document.
4. Upon completion of the above-cited endorsements, the Tribal Recording Clerk shall make a true and correct copy of the Leasehold Mortgage Loan Document or other document and shall certify the copy as follows:

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)

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

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6. The Tribal Recording Clerk shall also maintain a log of each Leasehold Mortgage Loan Document or other document recorded in which there shall be entered:
- a. The name(s) of the Borrower/Mortgagor of each Leasehold Mortgage Loan Document, identified as such;
 - b. The name(s) of the Lender/LeaseholdMortgagee of each Leasehold Mortgage Loan Document, 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 Tribal Recording Clerk; and
 - f. The name of the Tribal Recording Clerk or designee receiving the mortgage or document.
7. The certified copies of the Leasehold Mortgage Loan Document and other documents and the log maintained by the Tribal Recording Clerk shall be made available for Public inspection and copying. Rules for copying shall be established and disseminated by the Tribal Recording Clerk.
8. All mortgages will be recorded with the BIA Land Title and Records Office in addition to any Tribal recording provisions.

425.300 Foreclosure Procedures

1. Unless the terms of a Leasehold Mortgage Loan Document provide otherwise, a Borrower/LeaseholdMortgagor shall be considered to be in default when he or she is thirty (30) days past due on a leasehold mortgage payment(s) or is in violation of any covenant under the mortgage for more than 30 days to the Lender/LeaseholdMortgagee (i.e. the 31st day from the payment due date).
2. When a Borrower/Mortgagor is in default for being thirty days past due on his or her Leasehold Mortgage payment(s) and before any foreclosure action or activity is initiated, the Lender/LeaseholdMortgagee, or its authorized representative, shall:
- a. Make a reasonable effort to arrange a face-to-face interview with the Borrower/LeaseholdMortgagor. This shall include at least one trip to meet with the Borrower/LeaseholdMortgagor at the mortgaged property.
 - b. Document that it has made at least one phone call to the Borrower/LeaseholdMortgagor (or the nearest phone as designed by the Borrower/LeaseholdMortgagor, able to receive and relay messages to the Borrower/LeaseholdMortgagor) for the purpose of trying to arrange a face-to-face interview; *provided*, that it shall be Borrower / Leasehold Mortgagor's responsibility to maintain an updated phone number with Lender / Leasehold Mortgagee.
3. Lender/LeaseholdMortgagee may appoint an agent to perform the services of arranging and conducting the face-to-face interview specified in this action.

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4. When the Borrower/LeaseholdMortgagor is past due on three installment payments and at least ten (10) days before initiating a foreclosure action in Tribal Court, the Lender / Leasehold Mortgagee shall advise the Borrower/LeaseholdMortgagor in writing by mail or by posting prominently on the Dwelling Unit, with a copy provided to the Tribe, as follows:
 - a. That information regarding the loan and default/delinquency will be given to credit bureaus.
 - b. Information regarding homeownership counseling opportunities / programs available through the Lender or otherwise.
 - c. Other available assistance regarding the Leasehold Mortgage default or delinquency.
 - d. A notice stating that if the Leasehold Mortgage remains past due on three installment payments, the Lender / Mortgagee may (i) 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/LeaseholdMortgagor of the qualifications for forbearance relief from the Lender / LeaseholdMortgagee, if any, and that forbearance relief may be available from the government; and
 - e. Names and addresses of government officials to whom further communications may be addressed, if any.
5. If a Borrower /Mortgagor is past due on three or more installment payments and the Lender /Mortgagee has complied with the procedures set forth in the previous part of this Section, the Lender /Mortgagee may commence a foreclosure proceeding in the Tribal Court by filing a verified complaint as set forth below.

425.350 Foreclosure Complaint and Summons

1. The verified complaint in a Leasehold Mortgage foreclosure proceeding shall contain the following:
 - a. The name of the Borrower/LeaseholdMortgagor and each person or entity claiming through the Borrower/LeaseholdMortgagor subsequent to the recording of the Leasehold Mortgage Loan, including each Subordinate Lienholder (except the Tribe with respect to a claim for a tribal leasehold), as a defendant;
 - b. A description of the property subject to the Leasehold Mortgage Loan;
 - c. A concise statement of the facts concerning the execution of the Leasehold Mortgage and the lease; the facts concerning the recording of 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;
 - d. True and correct copies of each promissory note, Leasehold Mortgage, deed of trust or other recorded security instrument (each a "security instrument") and any other documents relating to the property, a copy of the Lease and any assignment of any of these documents;
 - e. A request for the Court to declare the ownership and/or disposition of any personal property remaining in the property subject to the Leasehold Mortgage after a foreclosure; and
 - f. Any applicable allegations concerning relevant requirements and conditions prescribed in (i) federal statutes and regulations (ii) tribal codes, ordinances and regulations;

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and/or (iii) provisions of any Leasehold Mortgage Loan Documents and the lease.

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).

2. Any foreclosure complaint must be in writing, and must be served on the Borrower/ LeaseholdMortgagor as required in CITC Chapter 620 for service of process, along with a notice informing the Leasehold Mortgagor that personal property remaining in a foreclosed property will be subject to transfer, forfeiture or disposal as ordered by the Tribal Court.

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, as well as copies of any certified mailing.

425.400 Cure of Default

Prior to the entry of a judgment of foreclosure, any Borrower/ LeaseholdMortgagor or a Subordinate Lienholder may cure the default(s) under the Leasehold Mortgage by making a full payment of the delinquency to the Lender/ LeaseholdMortgagee and all reasonable legal and court costs incurred to date 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.

425.450 Judgment and Remedy

If the alleged default has not been cured at the time of trial and the Tribal Court finds for the Lender/ LeaseholdMortgagee, the Tribal Court shall enter judgment:

1. Foreclosing the interest of the Borrower/ Mortgagor and each other defendant, including Subordinate Lienholder, in the leasehold;

2. Assigning the lessee's interests in the Lease and the Leasehold Estate to the Lender/ Mortgagee or the Lender's Designated Assignee, subject to the following provisions:

a. The lender shall give the Tribe the right of first refusal on any acceptable offer to purchase the Lease and the Lessee's leasehold interest in the property described in the lease which is subsequently obtained by the Lender or Lender's Designated Assignee.

b. The Lender or Lender's Designated Assignee may only transfer, sell or assign the Lease and Lessee's leasehold interest in the property described in the Lease to a Tribal member, the Tribe, or the Tribal Housing Authority; and

c. Ordering the transfer or other disposition of any personal property remaining in the leasehold estate after the date of foreclosure.

425.500 Foreclosure Evictions

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

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1. 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.
2. Complaint and Summons. The lender or Federal Agency (which made, guaranteed or insured the 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, Tribal Agency 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 Leasehold Mortgagors and any other record owner (including Sublessees and subordinate lienholders), of which the complainant has record notice;
 - (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;
 - (vi) Requesting the Court to order the disposition of any personal property remaining after any Order of Repossession; and
 - (vii) Otherwise satisfying the requirements of the Tribal Court.
 - b. A summons, issued in accordance with CITC Chapter 620, requiring the defendants to file a response to the complaint by the date specified in the summons. 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, and that any personal property remaining on the premises after any Order of Repossession shall be subject to transfer, forfeiture or disposal as directed by the Court.
3. Service of Summons and Complaint. The summons and a copy of the complaint shall be served upon the defendants in the manner provided by CITC Chapter 620 for service of process in civil matters.
4. Power of the Tribal Court. The Tribal Court shall enter an Order of Repossession if:
 - a. Notice of suit is given by service of summons and complaint in accordance with the procedures provided herein; and
 - b. The Tribal Court finds 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.
5. Effect of Order of Repossession. 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,

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Tribal Housing Authority or Sublessor under any sublease or other written agreement; (2) any and all amounts secured by the Leasehold Mortgage that are due the lender (or a Tribal Agency or Federal Agency); and (3) damages to the property caused by the defendants, other than ordinary wear and tear. The Court shall also have the authority to order the disposal, forfeiture or transfer of any personal property remaining on the premises. The Tribal Court shall have the authority to award to the prevailing party its costs and reasonable attorney's fees in bringing suit.

6. Enforcement. Upon issuance of an Order of Repossession by the Tribal Court, Tribal law enforcement officers shall help plaintiffs enforce same by evicting the defendants and their property from the unlawfully occupied Leasehold Estate. In all cases involving the lender or a Tribal 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 the continuance below, and provided, that no party exercised the right to cure a default or right of first refusal as permitted by this Ordinance.

7. Continuances in Cases Involving the Lender or Federal Agency Except by agreement of all parties, continuances in a case involving the lender or a Tribal or Federal Agency must not delay enforcement of an Order more than 45 days after the Tribal Court finds against defendants, subject to the sound discretion of the Court.

425.600 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. Unless the Tribal Court orders otherwise, a post-foreclosure assignment of a lease to the Tribe or a Tribal Housing Authority shall not create a merger of estates.

425.700 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.

425.800 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

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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.

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History of Amendments to Chapter 425 Residential Mortgage Lending and Foreclosure Ordinance:

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