

TITLE 36
LUMMI NATION CODE OF LAWS
LEASEHOLD MORTGAGES CODE

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**TITLE 36
LUMMI NATION CODE OF LAWS
LEASEHOLD MORTGAGES**

Chapter 36.01 Purpose

36.01.010 Purpose

The purpose of this Title is to avail the Lummi Tribe and its members (and other Indians) of financing for the construction and/or purchase of family residences on trust and otherwise restricted lands within the jurisdiction of the Lummi Indian Nation by prescribing procedures for the recording, priority and foreclosure of leasehold mortgages given to secure loans insured under Section 184 The Indian Housing Loan Guarantee Program and Section 248 of the National Housing Act.

Chapter 36.02 Definitions

36.02.010 Tribe

Tribe shall refer to the Lummi Tribe of the Lummi Indian Reservation as defined in the Tribal Constitution.

36.02.020 Business Council

Business Council shall mean the Business Council of the Lummi Tribe as defined in the Tribal Constitution.

36.02.030 Tribal Recording Clerk

Tribal Recording Clerk shall mean the person designated by the Business Council to perform the recording functions under this Title or any deputy or designee of such person.

36.02.040 Tribal Secretary

Tribal Secretary shall mean the Secretary of the Lummi Tribe as defined in the Tribal Constitution.

36.02.050 Tribal Court

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.

36.02.060 Secretary

Secretary shall mean the Secretary of the United States Department of Housing and

Urban Development (HUD or his designee, attorney, or agent.

36.02.070 Section 184

Section 184 shall mean the federal Indian Housing Loan Guarantee Program established by Section 184 of the Housing and Community Development Act of 1992.

36.02.075 Section 248

Section 248 shall mean Section 248 of the National Housing Act, 12 U.S.C. 1715z-13.

36.02.080 Lease

Lease shall mean the lease of trust or otherwise restricted property for which a leasehold mortgage, as defined in this Title, has been or will be given.

36.02.090 Lessor

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 Title, has been given, or the heir(s), successor(s), executor(s), administrator(s), or assign(s) of such Lessor.

36.02.100 Leasehold Mortgage

Leasehold mortgage shall mean the mortgage of a lease of trust or otherwise restricted property given to secure a loan insured under Sections 184 and 248.

36.02.110 Mortgagor

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

36.02.120 Subordinate Lienholder

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

36.02.130 Leasehold Mortgage Foreclosure Proceeding

Leasehold Mortgage Foreclosure Proceeding shall mean a proceeding in the Tribal Court

(a) 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 Sections 184 and 248; and

(b) to assign such lease to the Secretary or the Secretary's assignee.

Chapter 36.03 Recording

36.03.010 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 except a lien or claim arising from a tribal leasehold tax assessed after the recording of the mortgage. Nothing in this Title 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.

36.03.020 Recording

(a) The Business Council shall from time to time designate by law or resolution a Tribal Recording Clerk and such additional deputy tribal recording clerks as it deems proper to perform the recording functions under this Title. If approved by resolution of the Business Council, the Tribal Recording clerk may designate one or more designees to perform the recording functions under this Title.

(b) The Tribal Recording Clerk shall maintain in the Tribal Court a system for the recording of leasehold mortgages and such other documents as the Business Council may designate by law or resolution.

(c) The Tribal Recording Clerk shall endorse upon any leasehold mortgage or any 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:

LUMMI TRIBE)
)ss.
LUMMI INDIAN RESERVATION)

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)

(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.

(d) 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 named 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.

(e) 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.

(f) In lieu of presenting an original leasehold mortgage or other document for recording, any person or entity may present a copy of the same upon which there is an original certification in substantially the following form which has been signed and sealed by a judge or clerk of the Tribal Court, the Tribal Secretary, or by a notary public or other authorized official of the State of Washington:

)
)
ss.

I certify that this is a true and correct copy of a document in the possession of _____ this date.

Given under my hand and seal this _____ day of _____

(SEAL)

(Signature)

(Title)

(Date of Expiration of Commission)

(g) The recording procedures set forth in this Title for leasehold mortgages shall also apply to any assignment of a leasehold mortgage.

(h) The Business Council may from time to time establish recording fees, copying fees, and fees for the certification of any document recorded under the recording system established under this Title.

Chapter 36.04 Leasehold Mortgage Foreclosure Proceedings

36.04.010 Summons and Complaints

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 recording of 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 cause 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) Section 184 ; ii) Section 248; iii) the regulations promulgated thereunder by the Secretary; and i) the provisions of the Lease have been complied with by the Secretary.

(b) A summons issued as in other causes 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. The trial date specified in the summons shall be not less than 20 nor more than 45 days from the date of service of the summons and complaint. The summons must notify the defendant(s) that judgment will be taken against the defendant(s) in accordance with the terms of the complaint unless the defendant(s) file an answer with the court and appear for trial at the time, date, and place specified in the summons.

36.04.020 Service of Process and Procedure

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 under this Title.

36.04.030 Alternate Service

If it appears by affidavit filed in the Tribal Court that any party to a Leasehold Mortgage Foreclosure Proceeding cannot be located, then service of process may be had upon such party by:

(a) Posting a copy of the summons and complaint in a conspicuous place on the property which is the subject of the Lease within five (5) days after the issuance of the summons, but not less than twenty (20) days prior to the date set for trial; and

(b) Mailing a copy of the summons and complaint by certified mail, return receipt requested, to such party at the last known address of such party and in care of the Superintendent of the Puget Sound Agency of the Bureau of Indian Affairs within five (5) days after the issuance of the summons, but not less than twenty (20) days prior to the date set for trial.

36.04.040 Certified Mailing to Tribe and Lessor

In any Leasehold Mortgage Foreclosure Proceeding where the Tribe or the Lessor(s) is not named as a defendant, a copy of the summons and complaint shall be mailed to the Tribe and the Lessor(s) by certified mail, return receipt requested, within five (5) days after the issuance of the summons, but not less than twenty (20) days prior to the date set for trial. If the location of the Lessor(s) cannot be ascertained after reasonable inquiry, a copy of the summons and complaint shall be mailed to the Lessor(s) in care of the Superintendent of the Puget Sound Agency of the Bureau of Indian Affairs.

36.04.050 Intervention

The Tribe or any Lessor may petition the Tribal Court to intervene in any Leasehold Mortgage Foreclosure Proceeding under this Title. Neither the filing of a petition for intervention by the Tribe, nor the granting of such a 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.

36.04.060 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.

36.04.070 Power of the Tribal Court

If the alleged default(s) have not been cured, and if the Tribal Court should 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.

36.04.080 No Redemption

There shall be no right of redemption in any Leasehold Mortgage Foreclosure Proceeding.

36.04.090 No Deficiency Judgment

No deficiency judgment shall be entered in any Leasehold Mortgage Foreclosure Proceeding.

36.04.100 Remedies Exclusive

The remedies provided under this Title are exclusive.

36.04.110 No Merger

There shall be no merger of estates by reason of the execution of a Lease or 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.

36.04.120 Limited Waiver of Immunity

In any case where the Tribe is a Mortgagor under a Leasehold Mortgage, the Tribe may be sued as a defendant in such capacity only and only under this Title; provided, that there shall be no award of attorney fees or costs against the Tribe in any proceeding involving the Tribe, except where prior written consent to such an award has been given by the Tribe.

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