

ORDINANCE #05/94

**FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA
PROCEDURES GOVERNING LEASEHOLD MORTGAGES
MADE TO SECURE LOANS UNDER THE
NATIVE AMERICAN VETERAN DIRECT LOAN PROGRAM**

**Adopted by Resolution #1061/94 of the Fond du Lac Reservation
Business Committee on February 15, 1994.**

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PROCEDURES GOVERNING LEASEHOLD MORTGAGES
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Section 101 AUTHORITY

This Ordinance is enacted pursuant to the inherent sovereign authority of the Fond du Lac Reservation Business Committee, as the governing body of the Fond du Lac Band of Lake Superior Chippewa, as granted by Article VI of the Constitution of the Minnesota Chippewa Tribe, and as recognized by the United States under Section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. § 476, and under the Native American Veteran Direct Loan Program, 38 U.S.C. § 3761 et seq.

Section 102 PURPOSE

The purpose of this Ordinance is to avail members of the Fond du Lac Band of Lake Superior Chippewa who are veterans of the United States Armed Services financing for the construction, purchase or improvement of family residences on trust land within the jurisdiction of the Fond du Lac Band by prescribing procedures for the recording, priority and foreclosure of leasehold mortgages given to secure loans made by the Department of Veterans Affairs under the Native American Veteran Direct Loan Program authorized under title 38 U.S.C. § 3761 et seq.

Section 103 DEFINITIONS

- (a) "Band" shall mean the Fond du Lac Band of Lake Superior Chippewa.
- (b) "Lease" shall mean the lease of trust property for which a Leasehold Mortgage, as defined in this Ordinance, has or will be given.
- (c) "Leasehold Mortgage" 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.C. § 3761 et seq.

- (d) "Leasehold Mortgage Foreclosure Proceeding" 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.C. § 3761 et seq.; or
 - (2) To assign such Lease to the Secretary or the Secretary's assignee.
- (e) "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 Ordinance, has been given, or the heir(s), successor(s), executor(s), administrator(s), or assign(s) of such Lessor.
- (f) "Mortgagor" shall mean the Band 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 Band or such Native American(s).
- (g) "Mortgagee" shall mean the mortgagee under any Leasehold Mortgage as defined in this Ordinance 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.
- (h) "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.
- (i) "Secretary" shall mean the Secretary of the United States Department of Veterans Affairs (VA) or designee.
- (j) "Subordinate Lienholder" shall mean the holder of any lien, including a subsequent mortgage, perfected subsequent to the recording of a Leasehold Mortgage under this document (except the Band with respect to a claim for a tribal leasehold tax).

- (k) "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.
- (l) "Tribal Court" shall mean the Tribal Court as established by the laws of Fond du Lac Band or such body as may now or hereafter be authorized by the laws of the Band to exercise the powers and functions of a court of law.
- (m) "Tribal Recording Clerk" shall mean the person designated by the Band to perform the recording functions required by this Ordinance or any deputy or designee of such person.
- (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) "Writ 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.

Section 104 PRIORITY

A Leasehold Mortgage recorded in accordance with the recording procedures set forth in this Ordinance 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.

Section 105 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 Band 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:

FOND DU LAC BAND OF LAKE)
SUPERIOR CHIPPEWA)
) ss.
FOND DU LAC RESERVATION)
CLOQUET, MINNESOTA)

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 a 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 received 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.
- (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.

Section 106 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 Band 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 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) title 38 U.S.C. § 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.

Section 107 SERVICE OF PROCESS AND PROCEDURES

A Leasehold Mortgage Foreclosure Proceeding conducted pursuant to this Ordinance shall be conducted in accordance with the Fond du Lac Rules of Civil Procedure, FDL Ordinance #02/91.

Section 108 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.

Section 109 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.

SECTION 110

EFFECT ON TRIBAL ORDINANCES

The provisions of this Ordinance shall not affect the applicability of the Minnesota Chippewa Tribe Land Ordinance, MCT Ordinance #2, or the Fond du Lac Eminent Domain Ordinance, FDL Ordinance #16/93.

EVICTIION PROCEDURES

Section 201 JURISDICTION

The provisions of this Chapter shall apply to all persons and property subject to the governing authority of the Band as established by the Constitution of the Minnesota Chippewa Tribe and the Bylaws of the Fond du Lac Band.

Section 202 DEFINITIONS

The definitions provided in Section 103 of this Ordinance apply to eviction procedures as well.

Section 203 UNLAWFUL DETAINER

A tenant or other occupier of land shall be guilty of unlawful detainer if such person shall continue in 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 either surrendering possession of the property or payment 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.

Section 204 PROCEDURES FOR SERVICE OF NOTICE

Notices 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 two methods of service.

Section 205 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.
- (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 be not 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 206 SERVICE OF SUMMONS AND COMPLAINT

A copy of the summons and complaint shall be served upon the defendants in the manner provided by 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.

Section 207 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 defendant a judgment for the following: back rent, unpaid utilities; charges due the Reservation Business Committee 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.

Section 208 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 requirement 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.

Section 209 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 are unlawfully occupied. In all cases involving the Secretary, the Writ of Restitution shall be enforced not later than 60 days after the date of service of the summons and complaint.

Section 210 ALTERNATIVE REMEDIES

In those cases in which the persons or property are subject to the jurisdiction of the courts of the State of Minnesota 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 Minnesota or the United States.

We do hereby certify that the foregoing Ordinance # 05/94 was duly presented and adopted by Resolution # 1061/94, by a vote of 2 for, 0 silent, 0 against, with a quorum of 3 being present at a Special Meeting of the Fond du Lac Reservation Business Committee held on February 15, 1994 in Cloquet, Minnesota.


Robert B. Peacock, Chairman


Peter J. Defoe, Sec./Treas.

djp:12000203

Fond du Lac Reservation Business Committee

105 University Road,
Cloquet, MN 55720
Phone (218) 879-4593
Fax (218) 879-4146



RESOLUTION #1061/94

The Fond du Lac Reservation Business Committee, on behalf of the Fond du Lac Band of Lake Superior Chippewa, hereby enacts the following Resolution:

Chairman
Robert B. Peacock

Secretary/Treasurer
Peter J. Defoe

Dist. I Councilman
Clifton Rabideaux

Dist. II Councilman
Herman Wise

Dist. III Councilman
George Dupuis

Executive Director
I. Jean Mulder

WHEREAS, the Fond du Lac Reservation is a sovereignty, created by the Treaty of September 30, 1854, 10 Stat. 1109, as the perpetual home of the Fond du Lac Band of Lake Superior Chippewa, which possesses the inherent jurisdiction and authority to exercise regulatory control within the boundaries of the Fond du Lac Reservation; and

WHEREAS, it is the sovereign obligation of the Fond du Lac Reservation Business Committee, as the Governing Body of the Fond du Lac Band, under the Indian Reorganization Act, 25 U.S.C. § 461 et seq., and in accordance with the Indian Self-Determination Act, 25 U.S.C. § 450 et seq., to assume the responsibilities of self government; and

WHEREAS, Congress has enacted the Native American Veteran Direct Loan Program, 38 U.S.C. § 3761 et seq., to provide for the availability of loans to Native American veterans for the purchase, construction or improvement of residences on tribal trust lands; and

WHEREAS, participation by veteran members of the Fond du Lac Band in the aforementioned program requires the adoption by the Reservation Business Committee of procedures to govern the recording, priority and foreclosure of leasehold mortgages of tribal trust land used to secure loans under the program, and the execution of a Memorandum of Understanding between the Fond du Lac Band and the Department of Veterans Affairs to govern administration of the program; and


WHEREAS, the Reservation Business Committee has determined that it is in the best interests of the Fond du Lac Band to adopt such procedures and to enter into such a memorandum of understanding;

NOW THEREFORE BE IT RESOLVED, that the Fond du Lac Reservation Business Committee does hereby adopt Fond du Lac Ordinance #05/94, entitled "Procedures Governing Leasehold Mortgages Made to Secure Loans Under the Native American Veteran Direct Loan Program"; and

NOW THEREFORE BE IT FURTHER RESOLVED, that the Reservation Business Committee does hereby subscribe and consent to the terms and conditions of the proposed "Memorandum of Understanding Between the United States Department of Veterans Affairs and the Fond du Lac Band of Lake Superior Chippewa for the Administration of the Native American Veteran Direct Loan Program," and the Chairman and Secretary-Treasurer are authorized and directed to execute said document on behalf of the Fond du Lac Band.

We do hereby certify that the foregoing Resolution was duly presented and acted upon by a vote of 2 for, 0 against, 0 silent, with a quorum of 3 being present at a SPECIAL Meeting of the Fond du Lac Reservation Business Committee held on FEBRUARY 15, 1994 in Cloquet, Minnesota.


Robert B. Peacock, Chairman


Peter J. Defoe, Sec. Treas.