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## Title 44

# Leasehold Mortgages

TITLE 44  
LEASEHOLD MORTGAGES

44.01.10 Purpose: The purpose of this Title is to avail the Nooksack Indian Tribe and its members and others designated by the Tribe of financing and other funding for the construction and/or purchase and/or repair or improvement of family residences and related structures and facilities, including infrastructure on trust and otherwise restricted lands within the jurisdiction of the Nooksack Indian Tribe by prescribing procedures for the recording, priority and foreclosure of leasehold mortgages given to secure such financing or other funding.

44.01.11 Jurisdiction: This provision of this Title shall apply to all persons and property subject to the governing authority of the Tribe as established by the Tribal Constitution and Bylaws.

44.01.12 Definitions:

- (a) Tribe shall refer to the Nooksack Indian Tribe.
- (b) Tribal Council shall mean the Tribal Council of the Tribe.
- (c) Tribal Secretary shall mean the secretary of the Nooksack Indian Tribe as defined in the Tribal Constitution.
- (d) Tribal Recording Clerk shall mean the person designated by the Tribal Council to perform the recording functions under this Title or any deputy or designee of such person.
- (e) 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.
- (f) 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.
- (g) 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.
- (h) Leasehold Mortgage shall mean the mortgage of a lease of trust or otherwise restricted property given to secure financing or other funding for the construction and/or purchase of a family residence or related structures or facilities.
- (i) Mortgagor shall mean the Tribe (including any entity of the Tribe), or member of the Tribe or any other person or entity authorized by resolution of the Tribal Council 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 tribal member or other person or entity.
- (j) Mortgagee shall mean the mortgagee under any Leasehold Mortgage as defined in this Title or the successor(s) in interest or assignee of any such mortgagee.
- (k) Subordinate Lien Holder 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).

(1) Leasehold Mortgage Foreclosure Proceeding shall mean a proceeding in the Tribal Court to foreclose the interest of the Mortgagor(s), and each person or entity claiming through the Mortgagor(s), in a Lease for which a Leasehold Mortgage has been given.

44.01.13 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 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.

44.01.14 Recording:

(a) The Tribal 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 Tribal 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 Tribal 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:

NOOKSACK INDIAN TRIBE )  
 ) ss  
NOOKSACK 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, if applicable)

- (g) The recording procedures set forth in this Title for Leasehold Mortgages shall also apply to any assignment of a Leasehold Mortgage.
- (h) The Tribal 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.

44.01.15 Leasehold Mortgage Foreclosure Proceedings: Upon the default of the Mortgagor(s) under a Leasehold Mortgage, the Mortgagee 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 Lien Holder (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) all applicable statutes and ordinances, whether tribal, federal or state, (ii) all regulations promulgated under such statutes and ordinances and (iii) the provisions of the Lease and the Leasehold Mortgage have been complied with by the Mortgagee.
- (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. 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.

(c) A Borrower/Mortgagor shall be considered to be in default when he or she is thirty (30) days past due on his or her mortgage payment(s) or is in violation of any covenant under the mortgage for more than 30 days to the Lender/Mortgage (i.e. the 31<sup>st</sup> day from the payment due date).

(d) When a Borrower/Mortgagor is thirty days past due on his or her mortgage and before any foreclosure action or activity is initiated, the Lender/Mortgagee shall complete the following:

(1) Make a reasonable effort to arrange a face-to-face interview with the Borrower/Mortgagor. This shall include at least one trip to meet with the Borrower/Mortgagor at the mortgaged property.

(2) Lender/Mortgagee shall document that it has made at least one phone call to the Borrower/Mortgagor (or the nearest phone as designated by the Borrower/Mortgagor, able to receive and relay messages to the Borrower/Mortgagor for the purpose of trying to arrange a face-to-face interview).

(e) Lender/Mortgagee may appoint an agent to perform the services of arranging and conducting the face-to-face interview specified in this action.

(f) When the Borrower/Mortgagor is past due on three installment payments and at least ten (10) days before initiating a foreclosure action in Tribal Court, the Lender shall advise the Borrower/Mortgagor in writing by mail or by posting prominently on the unit, with a copy provided to the Tribe as follows:

(1) Advise the Borrower/Mortgagor that information regarding the loan and default/delinquency will be given to credit bureaus.

(2) Advise the Borrower/Mortgagor of homeownership counseling opportunities/programs available through the Lender or otherwise.

(3) Advise the Borrower/Mortgagor of other available assistance regarding the mortgage/default.

(4) In addition to the preceding notification requirements, the Lender/Mortgagee shall complete the following additional notice requirements (i) notify the Borrower/Mortgagor that if the Leasehold Mortgage remains past due on three installment payments, the Lender/Mortgagee may 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/Mortgagor of the qualifications for forbearance relief from the Lender/Mortgagee, if any, and that forbearance relief may be available from the government; and (iii) provide the Borrower/Mortgagor with names and addresses of government officials to whom further communications may be addressed, if any.

- (g) 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 first part of this Section, the Lender/Mortgagee may commence a foreclosure proceeding in the Tribal Court by filing a verified complaint as set forth in this Code.

44.01.16 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.

44.01.17 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 5 days after the issuance of the summons, but not less than 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 5 days after the issuance of the summons, but not less than 20 days prior to the date set for trial.

44.01.18 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 to the Lessor(s) by certified mail, return receipt requested, within 5 days after the issuance of the summons, but not less than 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.

44.01.19 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.

44.01.20 Cure of Default by Subordinate Lien Holder: Prior to the entry of a judgment of foreclosure, any Mortgagor or any Subordinate Lien Holder may cure the default(s) under the Leasehold Mortgage. Any Subordinate Lien Holder who has cured a default shall thereafter have included in its lien the amount of all payments made by such Subordinate Lien Holder to cure the default(s), plus interest on such amounts at the rate stated in the note for the Leasehold Mortgage

44.01.21 Power of the Tribal Court: If the alleged default(s) have not been cured, and if the Tribal Court should find for the Mortgagee, 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 Lien Holder; and
- (b) Assigning such Lease to the Mortgagee.

44.01.22 Foreclosure Evictions: Foreclosure evictions shall be handled according to the Unlawful Detainer Code.

44.01.23 No Redemption: There shall be no right of redemption in any Leasehold Mortgage Foreclosure Proceeding.

44.01.24 No Deficiency Judgment: No deficiency judgment shall be entered in any Leasehold Mortgage Foreclosure Proceeding.

44.01.25 Remedies Exclusive: The remedies provided under this Title are exclusive.

44.01.26 No Merger: 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 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.

44.01.27 Limited Waiver of Immunity: In any case where the Tribe (including any entity of the Tribe) is a Mortgagor under a Leasehold Mortgage, the Tribe (or such entity of 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 (or any entity of the Tribe) in any proceeding involving the Tribe (or such entity), except where prior written consent to such an award have been given by the Tribe (or such entity).

44.01.28 Restrictions on Sale, Transfer or Conveyance of Leasehold Interest: The Mortgagee shall not sell, transfer or convey any Lease or leasehold interest, which has been assigned to it in a Leasehold Mortgage Foreclosure Proceeding except to the Tribe, the Nooksack Indian Housing Authority or an eligible member of the Nooksack Tribe, or to a person or entity so authorized by resolution of the Tribal Council.

44.01.29 Approval of Tribe Required for Lease: Any lease of trust or other restricted lands, whether tribally or individually owned, for which a Leasehold Mortgage is executed for the purposes of this Title, is subject to the approval of the Tribe, acting through the Tribal Council.

44.01.30 Savings Clause, Severability Pending Actions: If any paragraph, subparagraph, clause or sentence or phrase of this Title or regulations adopted pursuant to this Title shall be declared invalid, or declared invalid as applied to any person or circumstance, such decision shall not affect the validity of the remaining portions of the

Title, and those remaining portions shall remain in full force and effect and to this end, provisions of this Title and any regulations adopted hereunder are declared severable. Any action pending at the date of the amendment of this Title shall not be affected by amendment of this Title, and the action shall proceed pursuant to prior provisions of the Nooksack Tribal Code or regulations enacted pursuant thereto.