

RESCINDED

05/19/97

R97-126.

msb

Resolution #96-115-DSB

RESOLUTION OF THE GOVERNING BODY OF
THE THREE AFFILIATED TRIBES OF THE
FORT BERTHOLD RESERVATION

WHEREAS, This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act; and

WHEREAS, The Constitution of the Three Affiliated Tribes generally authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and

WHEREAS, Article VI, Section 3 of the Constitution of the Three Affiliated Tribes specifically grants to the Tribal Business Council all necessary sovereign legislative authority for the purpose of exercising the jurisdiction granted by the people of the Three Affiliated Tribes in Article 1 of the Constitution; and

WHEREAS, It is the considered judgment of the Tribal Business Council that the Code of Laws of the Three Affiliated Tribes must be supplemented with the inclusion of statutory provisions governing the foreclosure of mortgages on interests in real property, including both trust lands and fee lands, situated within the exterior boundaries of the Fort Berthold Reservation; and

WHEREAS, The Tribal Business Council has reviewed and discussed the provisions set forth in the attached Foreclosure Code and has determined that such proposed Code constitutes an appropriate and adequate treatment of the procedures inherent in the foreclosure of mortgages on the various interests in real property over which the Three Affiliated Tribes maintain jurisdiction, as provided by governing federal law;

NOW, THEREFORE, BE IT RESOLVED, That the Tribal Business Council of the Three Affiliated Tribes hereby formally approves and adopts the legislative provisions entitled "Foreclosure Code", a true and correct copy of which Code is attached hereto.

BE IT FURTHER RESOLVED, That the attached Foreclosure Code shall become effective immediately and shall be designated as Chapter 34 of the Code of Laws of the Three Affiliated Tribes.

BE IT FURTHER RESOLVED, That the provisions set forth in the

attached Foreclosure Code shall supercede any and all conflicting provisions currently included in the Code of Laws of the Three Affiliated Tribes.

C E R T I F I C A T I O N

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 7 members of whom 5 constitute a quorum, 6 were present at a Special Meeting thereof duly called, noticed, convened, and held on the 24th day of May, 1996; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 6 members, 0 members opposed, 0 members abstained, 0 not voting, and that said Resolution has not been rescinded or amended in any way.

Dated this 24th day of May, 1996.

Daylon Spotted Bear
Secretary, Tribal Business Council

ATTEST:



Chairman, Tribal Business Council

RESCINDED

Attachment to
R# 96-115-DSB.

THREE AFFILIATED TRIBES FORECLOSURE AND RECORDING STATUTES

Chapter 1 General Provisions

34-1-1 Application

This code shall apply to the foreclosure of any and all arrangements, formal or informal, written or agreed to orally or by the practice of the parties whereby a mortgage, lien or other indebtedness may or shall cause a lien of whatsoever nature to attach to property located within the exterior boundaries of the Fort Berthold Reservation.

34-1-2 Jurisdiction

Jurisdiction shall be as provided in §33-1-2 of the Code of Laws of the Three Affiliated Tribes.

34-1-3 Definitions

Except as defined in this section, definitions of terms used in this Chapter are as provided in §33-1-5 of the Code of Laws of the Three Affiliated Tribes.

- (A) *Default:* Means the failure by a borrower to make any payment or to perform any other obligation under the terms of the loan, and such failure continues for a period of 30 days. Default may be defined by the terms of the agreement. What constitutes a default of a mortgage guaranteed by United States Government programs is determined by the applicable United States Statutes and Regulations. The borrower - mortgagor or, unless the pertinent federal statute or regulation states otherwise, is considered to be in default of the leasehold mortgage when they are thirty (30) days past due on their mortgage payments to the lender - mortgagor.
- (B) *District Court:* Unless otherwise specified, the Fort Berthold District Court of The Three Affiliated Tribes of the Fort Berthold Reservation.
- (C) *Fee; Fee Simple:* The description applied to land that is owned without restriction on alienation; such land may be sold, transferred, leased, mortgaged or otherwise disposed of without restriction.
- (D) *Foreclosure of fee lands:* A judicial proceeding to foreclose a mortgage on fee lands or cancel a land contract and judgment may be rendered for the amount due under the mortgage plus costs and may order the sale of the land.
- (E) *Fort Berthold Housing Authority:* A Tribal entity established by the Three Affiliated Tribes in the exercise of its' power of self government authorized to engage in or assist in the development or operation of low-income housing for Indians.
- (F) *Guarantee Fund:* The Indian Housing Loan Guarantee fund established under Section 184(I) of the Housing and Community Development Act of 1992.
- (G) *Lease Assignment:* A transfer or conveyance of an existing valid lease to a third party, who

becomes the new lessee. Generally an assignment must cover the entire leasehold interest although some leases provide for the creation of several leases in place of the original lease (spin off leases) each of which may be assigned.

- (H) *Subordinate lienholder*: a holder of any lien, including subsequent mortgages perfected subsequent to the recording of a mortgage or liens under this code except that the tribe shall not be considered a subordinate lienholder with respect to any claim regarding a tribal tax on real property including lease hold taxes.

34-1-4 Priority

- (1) Mortgages, including leasehold mortgages executed in favor of the United States Government or under the auspices of a federal agency or guaranteed by the United States Government or any Federal agency or program have priority over other mortgages, liens and obligations excepting any applicable Tribal Leasehold taxes that are assessed after the property is mortgaged.
- (2) All mortgages, including leasehold mortgages recorded in accordance with the recording procedures set forth in this Chapter, 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 Chapter shall prevent a person from further recording a leasehold mortgage in accordance with state law or filing a leasehold mortgage with the Bureau of Indian Affairs.
- (3) A mortgage given for the purchase price of real property at the time of its conveyance generally has priority over all other liens created against the purchaser subject to the operation of recording laws. Secondary mortgages are subordinate to other liens that are filed prior to the filing of the secondary mortgage except for tax liens.
- (4) Other things being equal, different liens upon the same property have priority according to the time of their creation.

Chapter 2 Foreclosure Actions

34-2-1 When an action may be commenced to foreclose a mortgage on fee property or a leasehold mortgage

- (1) An action to foreclose a mortgage or leasehold mortgage may be commenced after the mortgage or leasehold mortgage is in default, in accordance with the procedures contained in this section.
- (2) All relevant statutes and regulations pertaining to the program under which the loan is granted or guaranteed must be complied with prior to the commencement of a foreclosure action. This includes the following:
 - (a) Unless an applicable federal statute or regulation provides otherwise, prior to the borrower - mortgagor being (90) days delinquent on the mortgage and prior to initiating foreclosure activity, the lender - mortgagee shall make reasonable efforts to arrange a face to face interview with the borrower - mortgagor to including, if practicable, at least

one trip to meet with borrower - mortgagor at the mortgaged property.

(b) Lender - mortgagee shall document that it has made at least one telephone 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.

34-2-2 Action to foreclose mortgage on real estate authorized -- no jury trial permitted except to determine deficiency judgment

(1) An action may be brought in the district court for the foreclosure or satisfaction of a leasehold mortgage, or a mortgage upon real property held in fee, in accordance with the provisions of this chapter.

(2) Foreclosure actions will be tried before the court without a jury trial except where a separate action by a jury is allowed to determine the amount of the deficiency judgment.

34-2-3 Notice before foreclosure

Prior to mortgagor - borrower becoming ninety (90) days delinquent and at least ten days before the commencement of any action or proceeding for the foreclosure of a mortgage on real estate, a written notice shall be served on the title owner of record of the real estate described in the mortgage as shown by the records in the office of Tribal Register of Documents.

34-2-4 What notice shall contain

The notice before foreclosure shall contain:

1. A description of the real estate.
2. The date and amount of the mortgage.
3. The amount due for principal, interest, and taxes paid by the owner of the mortgage, stated separately.
4. A statement that if the amount due is not paid within thirty days from the date of the mailing or service of the notice proceedings will be commenced to foreclose the mortgage.
5. The applicable period of redemption if any.
6. Notice that information regarding the loan and default will be given to credit bureaus.
7. Where appropriate, notice that homeownership counseling opportunities or similar programs may be available through the lender or otherwise.
8. Notice that other assistance regarding the mortgage default may be available.
9. If the mortgage is secured by or guaranteed by the United States Government

through the Indian Guarantee Fund or one of its agencies, the notice must also advise the borrower - mortgagor, as required by any Federal statute or regulations, that:

- A. If the mortgage remains in default for more than ninety (90) days, the lender - mortgagee may ask the applicable United States Government agency to accept assignment of the leasehold mortgage if this is a requirement of the applicable United States government program;
- B. The borrower - mortgagor shall also be advised of the qualifications for forbearance relief from the lender- mortgagee, if any and that forbearance relief may be available from the United States Government if the mortgage is assigned; and
- C. The borrower - mortgagor shall be provided with names and address of government officials to whom further communications may be addressed, if any.

34-2-5 Notice may be served by registered or certified mail

(1) The notice before foreclosure may be served by registered or certified mail addressed to the owner, borrower - mortgagor, or leasehold - mortgagor of record, as appropriate, at his or her post-office address as such address is shown by the mortgage or by the records in the chain of title to such real estate in the office of the register of deeds of the county where the real estate is situated or as listed in the records filed with the Tribal Register of Documents.

(2) If such post-office address is not shown in the mortgage or in such records, the notice may be served by registered or certified mail addressed to the owner of record at the post office nearest any part or tract of the real estate.

(3) A copy of the notice shall be served upon the Three Affiliated Tribes.

34-2-6 When notice not required

If the record title to real estate or leasehold is in the name of a deceased person, no notice before foreclosure need be served unless an administrator or executor of the estate of the deceased person has been appointed by the district court. The certificate of the judge or clerk of the district court stating that no such administrator or executor has been appointed may be recorded in the office of Tribal Register of documents and is sufficient evidence of that fact.

34-2-7 Service of notice on administrator or executor

If an administrator or executor of the estate of the deceased owner has been appointed, the notice before foreclosure must be served upon the administrator or executor. Service may be made by registered or certified mail addressed to the administrator's or executor's post-office address as shown by the records of the district court by which the administrator or executor was appointed.

34-2-8 Appointment of guardian ad litem for infant defendant -- nonresident

(1) In actions for the partition of real property or for the foreclosure of a mortgage or other lien, and in all actions affecting the title to real property, and in all other actions wherein an

infant is a proper or necessary party and such infant resides outside this reservation, a guardian ad litem may be appointed upon application of the plaintiff.

(2) If the infant does not have a guardian ad litem, the court shall designate some suitable person to be the guardian for the infant defendant for the purposes of the action. The order must contain special directions for the manner of its service, which may be upon the infant himself or herself or upon any relative or other person with whom the infant resides, and may be either by mail or by personal service upon the person designated.

34-2-9 Notice may be served personally

Service of the notice before foreclosure may be made upon the title owner of record or upon his administrator or executor by personal service thereof either within or without this reservation, made in the manner provided by law for the service of a summons in a civil action.

34-2-10 Actual receipt of notice always sufficient

In any case, service of the notice before foreclosure shall be sufficient if it actually was received by the title owner of record or by the administrator or executor of his estate. A United States post-office registry return receipt showing that the envelope containing the notice has been delivered to the title owner of record or to the administrator or executor of his estate, or to the agent of either, shall be prima facie evidence that such owner or his administrator or executor received the same.

34-2-11 Proof of notice -- how made and filed

Proof of service of notice before foreclosure may be made by the return of a law enforcement officer, other officer, or by affidavit of the person making personal service or mailing such notice. Proof of death of the title owner of record may be made by a certified copy of the death certificate or by affidavit of any person having knowledge of the fact. Proof of any other fact necessary to show that the notice was properly served may be made by certificate of a proper officer or of an abstractor or by affidavit of any person having knowledge of the facts. Such proofs together with the notice shall be filed with the complaint in any action for the foreclosure of a mortgage and shall be recorded with the notice and certificate of sale in foreclosures by advertisement.

34-2-12 Default may be cured

If the title owner of record or the administrator or executor of his estate, within thirty days from the service of notice before foreclosure, shall perform the conditions or comply with the provisions upon which default in the mortgage shall have occurred, such mortgage shall be reinstated and shall remain in full force and effect the same as though no default had occurred therein.

34-2-13 Foreclosure action commenced by service of summons and complaint -- contents of the summons and complaint

The summons and complaint shall name as defendants the Borrower - Mortgagor and each person or entity claiming through the Borrower - Mortgagor subsequent to the recording of

the mortgage including each Subordinate Lienholder.

The complaint shall contain:

1. A description of the property subject to the mortgage.
2. A concise statement of facts concerning the execution of the mortgage and or lease and leasehold mortgage: the facts concerning the recording of the mortgage or leasehold mortgage: the facts concerning the alleged default of the Borrower - Mortgagor: and such other facts as may be necessary to constitute a cause of action.
3. A true and correct copy of the mortgage and each promissory note or instruments evidencing the indebtedness and if a leasehold mortgage then a copy of the lease , the lease, assignment thereof relating to the property shall be appended attached to and incorporated as part of the complaint
4. Any applicable allegations concerning relevant requirements and conditions prescribed in (1) federal statutes and regulations (2) tribal codes, ordinances and regulations: and - or (3) provisions of the lease or leasehold mortgage, or security agreement.
5. In an action for the foreclosure or satisfaction of a mortgage on fee property or a leasehold mortgage, the complaint shall state whether any proceedings have been had at law or otherwise for the recovery of the debt secured by such mortgage, or any part thereof, and if there have been, whether any and what part thereof has been collected. Where applicable, the plaintiff shall also state in his complaint whether he will in a later and separate action demand judgment for any deficiency, if allowed, which may remain due to him after sale of the mortgaged premises against every party who is personally liable for the debt secured by the mortgage.

The summons shall have appended thereto, a statement substantially as follows:

This action relates to the foreclosure of a leasehold mortgage, mortgage or lien, as the case may be, upon (here describe the real estate involved in the action).

34-2-14 Summons -- how served

In addition to any other method provided by law for the service of summons, in all actions for the foreclosure or satisfaction of a mortgage, or other lien, upon real estate, or to foreclose a leasehold mortgage in the District court of the Three Affiliated Tribes, the summons may be served personally upon all defendants, if any, in actual possession of the real estate involved in the action, if such real estate is occupied, and upon all other defendants by publication in the manner provided in this chapter. When the summons is thus served the service shall be deemed complete.

34-2-15 Service by publication -- how made

Service of the summons may be made by publication if the plaintiff files a verified complaint in the office of the clerk of the Fort Berthold District Court, setting forth a claim for relief in favor of the plaintiff and against the defendants, for the foreclosure of a mortgage or other lien

upon real estate, and when the plaintiff files in that office an affidavit signed by the plaintiff or the plaintiff's attorney substantially in the following form:

_____, being first duly sworn upon oath deposes and says that he or she is the (attorney for) the plaintiff in the above entitled action:

Affiant further says that the defendants (naming them) appear to have an interest in or lien or encumbrance upon the real estate or leasehold described and listed by street address, if any, in the complaint in this action, that such interest or lien is subject and inferior to the lien of the plaintiff being foreclosed; that plaintiff seeks no personal judgment against the defendants, if any, (naming them) and seeks only to bar and exclude the defendants from any interest in or lien or encumbrance upon the real estate described in the complaint, save and except the right of redemption as provided by law; that the residences of the defendants, if any, (naming them) are not shown upon the records of the office of Tribal Register of Documents, or clerk of the Fort Berthold District Court of the Three Affiliated Tribes of the Fort Berthold Reservation, that being where the real estate involved in this action is situated; that the residences of the defendants, if any, (naming them) are as follows: (list addresses); that affiant does not know the residences of the following defendants, (if any) (naming them); that the defendants (if any) (naming them) are deceased, and it does not appear by the records in the office of the Fort Berthold District Court or other appropriate probate court, that any administration upon the estate of said defendant is now pending; and that the defendants, (if any) (naming them) are deceased, and that _____ is the duly appointed, qualified, and acting administrator or executor, as the case may be, of the estate of the deceased.

The failure to include the street address in the affidavit does not affect the validity of the affidavit.

34-2-16 Summons to be published

Plaintiff shall cause the summons in a foreclosure action to be published once each week for four successive weeks in some newspaper published and circulated within the Fort Berthold Reservation where the land described in the complaint is situated, and if no newspaper is published within the Reservation, then in some newspaper published in an adjoining county of the state and having a general circulation in the Fort Berthold Reservation.

34-2-17 Copy of summons and complaint to be mailed

Within thirty days after the first publication of the summons, a copy of the summons and complaint must be deposited in some post office in this state, postage prepaid, and directed to each of the defendants whose residences are shown by the affidavit specified in section 15 to be known to the person making such affidavit, and to the executor or administrator, if any, of deceased defendants. The receipt of the post office where such mailing is done shall be received in evidence by any court in this state as proof of such mailing.

34-2-18 Personal service equivalent to publication

After the affidavit for publication has been filed, personal service of the summons and complaint upon any defendant, within or without the Fort Berthold Reservation, shall be equivalent to and shall have the same force and effect as the publication and mailing thereof.

34-2-19 Personal service of summons and complaint may be made in any event

Nothing contained in the preceding sections shall prevent the plaintiff from making personal service of the summons and complaint upon any or all of the defendants in the manner provided by law.

34-2-20 Service by publication -- when completed

Service by publication is completed upon the expiration of thirty-six days after the first publication of the summons, or in case of personal service of the summons and complaint upon the defendant outside of the Fort Berthold Reservation, upon the expiration of fifteen days from such service.

34-2-21 Personal service of summons -- how made

Personal service of the summons may be made in the manner provided by the Rules of Civil Procedure of the Three Affiliated Tribes.

34-2-22 Unknown defendants -- how joined

All persons having or claiming an estate or interest in, or lien or encumbrance upon, the property or leasehold described in the complaint, whether as heirs, devisees, legatees, or personal representatives of a deceased person, or under any other title or interest, and not in possession and not appearing of record in the office of the Tribal Register of Documents, the clerk of the Fort Berthold District Court, Bureau of Indian Affairs, or the county auditor of the county in which the land described in the complaint is situated to have such claim, title, or interest therein, may be proceeded against as persons unknown, and any order, judgment, or decree entered in a foreclosure action shall be valid and binding on such unknown persons, whether of age or minors, and on those claiming under them. If any unknown persons are joined as defendants, they shall be designated in the summons as: "And all persons unknown, claiming any estate or interest in, or lien or encumbrance upon, the real estate described in the complaint". As to such unknown defendants the plaintiff or his attorney, at the time of filing the summons and complaint, shall file in the office of the clerk of the court an affidavit substantially in the following form:

_____ being first duly sworn upon oath deposes and says that he is the (attorney for) _____ plaintiff in the above entitled action:

Affiant further says that as to all defendants proceeded against as "And all persons unknown, claiming any estate or interest in, or lien or encumbrance upon, the real estate described in the complaint" the interests of such unknown persons defendant in the land described in the complaint are not shown of record in the office of the Tribal Register of Documents, the clerk of the Fort Berthold District Court, or the county auditor of the county of _____, that being the county in which said land is situated, Bureau of Indian Affairs, and affiant does not know and is unable to ascertain the names, residences, or post-office addresses of any of the persons who are proceeded against as unknown persons defendant; that the relief sought in this action consists wholly or partially in excluding said unknown defendants from any interest in or lien upon the real estate described in the complaint save and except the right of redemption as provided by law.

34-2-23 When persons holding unrecorded conveyance need not be made parties

In any action to foreclose a mortgage or other lien upon real property or to foreclose a leasehold mortgage, no person holding a conveyance from or under the mortgagor of the property mortgaged, or other owner thereof, nor one having a lien upon such property, if such conveyance or lien does not appear of record in the proper office at the time of the commencement of the action, need be made a party to such action, and the judgment therein rendered and the proceedings therein had shall be as conclusive against the party holding such unrecorded conveyance or lien as if he had been made a party to the action.

34-2-24 Judgment of foreclosure on mortgages subject to section 184 of the Housing and Community Development Act of 1992 or similar federal or tribal statutes

In any action, wherein the mortgage or lien is subject to the provisions of Section 184(1) of the Housing and Community Development Act of 1992 or other similar Federal or Tribal statutes, for the foreclosure of a leasehold mortgage, mortgage on trust property or mortgage on fee property, the Court may enter judgment foreclosing the interest of the borrower - mortgagor and all other defendants including subordinate lien holders in the mortgage, and assign the mortgage or lease to the lender - mortgagee or the lender's designated assignee subject to the following provisions:

1. The lender - mortgagee shall give the Three Affiliated Tribes the right of first refusal on any acceptable offer to purchase the lease or leasehold mortgage which is subsequently obtained by the lender or lender's designated assignee.
2. The lender - mortgagee or lender - mortgagee's designated assignee may only transfer, sell or assign the lease or leasehold mortgage to the Three Affiliated Tribes, a Tribal member or the Fort Berthold Housing Authority.
3. Any other transfer, sale or assignment of the lease or leasehold mortgage shall only be to the Three Affiliated Tribes, a Tribal member or the Fort Berthold Housing Authority during the remaining period of the leasehold.
4. A mortgagee other than the United States Department of Housing and Urban Development (HUD) must obtain Tribal consent before obtaining title through a foreclosure sale.

34-2-25 Who subject to deficiency judgment

If the mortgage debt is secured by the obligation, or other evidence of debt, of any person other than the mortgagor, the plaintiff may make such other person a party to the action and the court may render judgment for the balance of the debt remaining unsatisfied after a sale of the mortgaged premises as against such other person and may enforce such judgment as in other cases by execution or other process. Nothing elsewhere contained in this chapter shall be construed to postpone or affect any remedies the creditor may have against any person personally liable for the debt, other than the mortgagor or purchaser and the successors in interest of either.

34-2-26 Foreclosure on fee land; what judgment must contain -- deficiency judgments and

other suits prohibited in excess of amount by which debt exceeds fair value of mortgaged premises -- determination of fair value of mortgaged real property

(1) In any action for the foreclosure of a mortgage on fee land or the cancellation or the foreclosure of a land contract for the purchase of fee land subject to the jurisdiction of the Fort Berthold District Court, the court may render judgment for the amount found to be due at the time of the rendition of the judgment, and the costs of the action, and may order and decree a sale of the premises described in the mortgage or contract or that part thereof as may be sufficient to pay the amount adjudged to be due and the costs of the action.

(2) The court may order and compel delivery of the possession of the premises to the purchaser at the sale, but in no case may the possession of the premises sold be delivered until after the expiration of the one-year redemption period unless otherwise allowed by the court pursuant to applicable sections of this chapter allowing for a shorter period of redemption.

(3) The court shall direct, and the judgment must provide, that during the redemption period the debtor or owner of the premises is entitled to the possession, rents, use, and benefit of the real property sold subject to any applicable sections contained in this chapter. The Court shall order that the person or persons in possession not cause or allow any waste or damage to be done to the property.

(4) The court may not render a deficiency judgment for any sum whatever against the mortgagor or purchaser, or the successor in interest of either, except as hereinafter provided. Where a note or other obligation and a mortgage upon real property have been given to secure a debt contracted, and the sale of the mortgaged premises has failed to satisfy in full the sum adjudged to be due and the costs of the action, the plaintiff may, in a separate action, ask for a deficiency judgment, if the plaintiff has so indicated in the complaint, against the party or parties personally liable for that part of the debt and costs of the action remaining unsatisfied after the sale of the mortgaged premises.

(5) The separate action for a deficiency judgment must be brought within ninety days after the sale of the mortgaged premises. The court, in the separate action, may render a deficiency judgment against the party or parties personally liable, but the deficiency judgment may not be in excess of the amount by which the sum adjudged to be due and the costs of the action exceed the fair value of the mortgaged premises. In case the mortgaged premises sell for less than the amount due and to become due on the mortgaged debt and costs of sale, there is no presumption that the premises sold for their fair value.

(6) In all actions brought for a deficiency judgment and before any judgment can be rendered therein, the determination of the fair value of the mortgaged premises must first be submitted to a jury at a regular term or to a jury impaneled for that purpose, and no deficiency judgment may be rendered against the party or parties personally liable unless the fair value of the mortgaged premises is determined by the jury to be less than the sum adjudged to be due and the costs of the action.

(7) Fifteen days' notice of the time and place when or where the fair value of the mortgaged premises is to be determined must, in all cases, be given, as the court may direct, to the party or parties against whom personal judgment is sought. At that time and place the party or parties may offer evidence to show the fair value of the mortgaged premises even though they

may not have otherwise appeared in the action for a deficiency judgment.

(8) Any deficiency judgment obtained must be enforced by execution as provided by law, except that no execution may be enforced after three years from the date of the rendition of the deficiency judgment.

34-2-27 Foreclosure judgment on commercial property -- deficiency judgments

(1) Notwithstanding any other provision of law, a mortgagee holding a mortgage on commercial real property may obtain a deficiency judgment against the mortgagor of commercial real property contracted for after June 1, 1996, and any successor in interest of the mortgagor who has assumed the debt secured by the mortgage.

(2) In an action involving the foreclosure of a mortgage on commercial real property, the foreclosing party shall state in its pleading whether a deficiency judgment will be sought, identify the parties claimed to be personally liable for payment of the debt secured by the mortgage being foreclosed, and demand a deficiency judgment against those parties.

(3) Within ninety days after the later of the filing or service of the pleading seeking the foreclosure of a mortgage, the party seeking a deficiency judgment on commercial real property shall file with the clerk of district court a notice for an appraisal of the real property by a licensed or certified appraiser and mail a copy of the request to the parties claimed to be liable for a deficiency, at their last known residences or business addresses by first-class mail.

(4) The notice must contain the foreclosing party's agreement to pay the cost of the appraisal, which must be included as a cost allowed the foreclosing party if judgment is entered granting foreclosure. Upon the filing of the notice, the foreclosing party shall arrange for an appraisal of the property.

(5) Within twenty days after completion of the appraisal, the appraiser shall provide to the foreclosing party and file with the clerk of court a written report indicating the fair market value of the commercial real property. The foreclosing party shall also mail copies of the report to the parties claimed to be personally liable to their last known residences or business addresses by first-class mail.

(6) Within fifteen days of the later of the filing or mailing of the report of the foreclosing party's appraisal, any party may file a notice of intention to obtain an additional appraisal to be conducted by a licensed or certified appraiser at the party's own expense. The additional appraisal report must be served upon the foreclosing party and filed within thirty days of the filing of the notice of appraisal and must be considered, with other appraisal reports filed, in the determination by the court of the fair market value of the property which determination as to fair market value must be made as of the date of the foreclosing party's appraisal.

(7) At the time of the entry of the judgment, the court shall include in its findings of fact the fair market value of the property and, if the fair market value is less than the amount found to be due the foreclosing party, and shall identify the persons who are liable for any deficiency remaining after a sheriff's sale of the property pursuant to foreclosure judgment.

(8) The foreclosure judgment must be in an amount equal to the balance then due and owing

on the mortgage, plus costs taxed by the court. Upon entry of an order confirming the sale in the foreclosure, the clerk of court shall note the amount to be credited on the foreclosure judgment, which credit must be at least the amount bid at the sale, less the cost of the sale, which credit may not in any event be less than the fair market value established by the court. However, only the amount actually paid in excess of the foreclosure judgment may constitute surplus payable to the debtor.

(9) At any time after the order confirming sale, the clerk shall enter a money judgment to the extent of the deficiency against those parties found by the court to be personally liable for the deficiency. The foreclosing party may thereafter pursue the same remedies to collect the deficiency judgment as are available to collect other money judgments.

(10) The deficiency judgment must be for the entire amount found to be due the foreclosing party in the foreclosure judgment, together with interest on the amount of the foreclosure judgment at the rate provided in the note secured by the mortgage, less the amount credited by the clerk of court upon entry of the order confirming the sheriff's sale. The deficiency judgment must bear interest at the same rate as the foreclosure judgment.

(11) As used in this section, "commercial real property" means any real property except residential real property consisting of fewer than three residential units and agricultural property, whose primary use is determined as of the time the mortgage is executed.

(12) As used in this section, "fair market value" means the highest price that commercial real property can be sold for in the open market by a willing seller to a willing buyer, neither acting under compulsion and both exercising reasonable judgment, reduced by the value of any liens paramount to the lien of the foreclosing party. In addition to the appraisals filed by the parties, the court, in its determination of the fair market value of the property, may consider affidavits from the parties or other proof of paramount liens and other matters that may affect the value.

(13) The provisions of this section are not available unless the obligation and mortgage upon which the deficiency liability is based contain language located immediately above the signatures of the parties advising them that the mortgagee has the right to proceed to obtain and collect a deficiency judgment, together with foreclosure of the real property mortgaged under applicable laws.

34-2-28 When judgment at law obtained

If it appears that any judgment has been obtained in an action at law for the moneys demanded by the complaint, or any part thereof, no proceedings shall be had in the foreclosure action on fee property, unless an execution against the fee property of the defendant in such judgment has been issued and the appropriate official or law enforcement personnel shall have made return that the execution is unsatisfied in whole or in part and that the defendant has no other property out of which to satisfy such execution.

34-2-29 Against whom judgment and decrees to be binding

All orders, judgments, or decrees entered in any foreclosure action brought under the provisions of this chapter shall be binding upon all persons proceeded against as defendants, whether of age or minors, and all those claiming by, through, or under them after the commencement of the action, and all persons whose interests did not appear of record in the clerk of court of the Fort Berthold District Court, Tribal Register of Document's office, Bureau of Indian affairs, and the following state offices of the county wherein the land is situated to wit: the office of the register of deeds, county auditor, or clerk of the district court of the county in which the real property is located.

34-2-30 Appointment of trustee to take possession of commercial buildings foreclosed

On application of the mortgagee or contract for deed vendor, in any action for the foreclosure of a real estate mortgage or for cancellation of a contract for deed upon any commercial building, including apartments of two or more units, the court, upon ten days' notice to the mortgagor or contract for deed vendee, may, upon good cause being shown, appoint a trustee to take possession of the premises. Any person, other than the mortgagee or vendor, or its agents or employees, may act as trustee if the court deems them qualified.

The trustee shall:

1. Take possession of the premises.
2. Pay, to the extent funds are available, all utilities, taxes, insurance, and expenses of maintenance and operation.
3. Receive the rentals from tenants.
4. Remove tenants for nonpayment of rent or for any other cause permissible by law.
5. Rent premises.

34-2-31 Termination and accounting

- (1) The appointment of a trustee continues until:
 1. The expiration of the period of redemption;
 2. The redemption of the premises by the mortgagor or contract vendee;
 3. The voluntary dismissal of the foreclosure or cancellation action; or
 4. Removal of the trustee by the court.
- (2) Within thirty days after the termination of appointment, the trustee shall file with the court a report of the trustee's activities and all receipts and expenditures, and shall serve a copy on the mortgagor or the vendee by certified or registered mail, an affidavit of service by mail being competent proof thereof. The trustee's account becomes final

unless objected to within thirty days from the date of mailing to the mortgagor or contract vendee.

34-2-32 Compensation of trustee and distribution of funds

Upon the trustee's account becoming final, the trustee shall pay all remaining funds, less the trustee's fee and expenses, to the mortgagor or contract vendee or to such other person as may be otherwise provided by law. The trustee is entitled to a fee as set by the court. All expenses incurred by the trustee in performing duties under this chapter must be reimbursed out of available funds.

34-2-33 Sales made by whom and where -- notice

All sales of mortgaged fee property under a judgment of foreclosure must be made within the exterior boundaries of the Fort Berthold Reservation where the premises, are situated, by the person or department designated by the Tribal Council, or by some person appointed by the court for that purpose, upon the notice and in the manner prescribed by law for the sale of real property upon execution.

34-2-34 Sale of property

Foreclosed fee property wherein the land was mortgaged and mortgagor is an Indian shall be sold at public auction at the highest bid to:

To the highest bidder at a public auction subject to any applicable Federal, or Tribal laws or regulations; provided:

The mortgagor or a member of the mortgagor's immediate family, including a father, mother, son, daughter, brother, sister, or spouse, who desires to repurchase land lost through foreclosure or by a deed given in lieu of foreclosure, may, by matching the highest accepted bid within one hour after public sale, repurchase the property. The offer to repurchase must be made in good faith and payment must be in a form and manner acceptable to the plaintiff. In the event the mortgagor or mortgagor's family decline to exercise their option to purchase the property, then: the Three Affiliated Tribes shall have the option of matching the accepted high bid within one month after the public sale by the tender of an offer made in good faith to purchase the property for an amount equal to the accepted high bid.

34-2-35 Certificate of sale -- deed and effect

Whenever any real property shall be sold under judgment of foreclosure pursuant to the provisions of this chapter, the officer or other person making the sale must give to the purchaser a certificate of sale as provided by applicable Tribal and Federal law, and at the expiration of the time for the redemption of such property, if the same is not redeemed, the person or officer making the sale, or his successor in office, or other officer appointed by the court, must make to the purchaser, his heirs, or assigns, or to any person who has acquired the title of such purchaser by redemption or otherwise, a deed or deeds of such property. Such deed shall vest in the grantee all the right, title, and interest of the mortgagor in and to the property sold, at the time the mortgage was executed, or subsequently acquired by him, and

shall be a bar to all claim, right, or equity of redemption in or to the property by the parties to such action, their heirs and personal representatives, and also against all persons claiming under them, or any of them, subsequent to the commencement of the action in which such judgment was rendered.

34-2-36 Application of proceeds

The proceeds of every foreclosure sale must be applied to the discharge of the debt adjudged by the court to be due and of the costs, and if there is any surplus, it must be brought into court for the use of the defendant or of the person entitled thereto, subject to the order of the court.

34-2-37 When surplus invested

If the surplus upon a foreclosure sale, or any part thereof, shall remain in court for the term of three months without being applied for, the judge of the district court may direct the same to be put out at interest for benefit of the defendant, his representatives, or assigns, subject to the order of the court.

34-2-38 Complaint dismissed on payment of installments due prior to sale

Whenever an action shall be commenced for the foreclosure of a mortgage upon which there shall be due any interest, or any portion or installment of the principal, and there shall be other portions or installments to become due subsequently, the complaint shall be dismissed upon the defendant's bringing into court at any time before decree of sale the principal and interest due, with costs and disbursements, but the court may enforce the judgment by a further order upon a subsequent default in the payment of any of the installments or any part thereof, or of any interest thereafter becoming due on such mortgage.

34-2-39 Successive judgments and sales

If, in the case mentioned in the preceding section, there shall be any default subsequent to such judgment in the payment of any portion or installment of the principal, or of any interest due upon such mortgage, the court, upon the application of the plaintiff, by a further order founded upon such first judgment or decree, may direct a sale of so much of the mortgaged premises to be made under such decree as will be sufficient to satisfy the amount due, with costs of the application and the subsequent proceedings.

34-2-40 Sale of whole on first default

If 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, a judgment or decree in the first instance must be entered for the sale of the whole premises accordingly.

34-2-41 Rebate on undue part

In a case such as is mentioned in the preceding section, the proceeds of sale must be applied as well to the interest or portion or installment of the principal due as toward the whole or residue of the sum secured by the 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 plaintiff to be paid to him as the installments or portions of the principal or interest may become due and the surplus for the benefit of the defendant, his representatives, or assigns, to be paid to them by order of the court.

34-2-42 Referee to view premises

If the defendant shall not bring into court the amount due with costs, or if for any other cause a judgment or decree shall be entered for the plaintiff, the court may appoint a referee 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 interest of the parties, the decree must 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.

34-2-43 Tribal foreclosure of mortgages

Mortgages on real property or leasehold mortgages assigned to or acquired by the Three Affiliated Tribes or Tribal entities under the provisions of this chapter may be foreclosed either by action or advertisement in the manner provided by the laws of the Three Affiliated Tribes.

34-2-44 Redemption after foreclosure

When a mortgage acquired under the provisions of this chapter has been foreclosed, the mortgagor or a redemptioner of foreclosed fee land may redeem the property from the purchaser within one year after the sale; and a mortgagor - borrower may redeem a foreclosed leasehold within one year from and after date of judgment of foreclosure in the following manner:

1. By paying the purchaser the amount of his purchase with interest at the rate provided in the mortgage;
2. By paying the amount of any insurance premiums, assessments, taxes, utilities, or other items which the purchaser has paid thereon after the purchase, and the interest thereon at the same rate; and
3. If the purchaser is also a creditor having a lien prior to that of the redemptioner, other than the mortgage under which the purchase was made, by paying the amount of the lien with interest.

34-2-45 Deeds, judgments, decrees, mortgage foreclosures, and other transfers legalized

Any valid deed, judgment, decree, mortgage foreclosure, assignment or other transfer, including a certificate of sale, affecting the title to real property located within the exterior boundaries of the Fort Berthold Reservation, in good faith taken, made, or rendered in favor or in the name of a deceased person, or in the name of the estate of a person deceased, or to the executor or administrator thereof, must be construed and held to be made and to be in favor of

the executor or administrator, as the case may be, of the estate of such person deceased, and the same hereby is declared to be legal and valid for all purposes. Such executor or administrator hereby is authorized and empowered to assign, transfer, and set over any such property to the person entitled thereto.

34-2-46 Protection of premises during period of redemption

In all cases where a sale of real estate is made under execution or upon mortgage foreclosure, the purchaser at the sale or the purchaser's successors in interest, in case of the expiration during the period of redemption of any insurance policy on the premises sold, may pay the premium necessary to procure a renewal of that policy, and, if any taxes or assessments become delinquent, or if any installment of interest or principal on any prior or superior mortgage becomes due during that period of redemption, and any utilities or other items to be paid by the purchaser in protection of the title or premises, the purchaser may pay those charges. The amount so paid, with interest at the same rate as provided in the original instrument on which the judgment is based, is part of the sum necessary to be paid for the redemption from the sale. The payments may be proved by a written notice verified by affidavit of the purchaser, the purchaser's agent or attorney, stating the items and describing the premises. That before mortgagor may redeem the property shall pay the full amount of the moneys or funds expended to protect the property.

34-2-47 Court may delay orders in foreclosures

Whenever any proceeding for the foreclosure of a mortgage on fee land is pending in the District Court of the Three Affiliated Tribes and the amount of the debt is less than the value of the property involved, and when any order for judgment will have the force and effect of depriving a defendant of his home and confiscating his property, the court may construe further proceedings to be unconscionable, and may delay the signing of such order to such time as it shall deem it advisable and just to enter the same.

34-2-48 Enjoining mortgagee from foreclosing mortgage or vendor from taking possession or selling property permissible

When the mortgagee has commenced foreclosure proceedings, or the vendor demands or takes possession of the property covered by the contract, and it appears by the affidavit of the mortgagor or vendee, his agent or attorney, to the satisfaction of the judge of the district court of the county wherein such property is situated, that the mortgagor or vendee has a legal counterclaim, or has any other valid defense against the collection of the whole or any part of the amount claimed to be due, such judge, by an order to that effect, may enjoin the mortgagee from foreclosing such mortgage by advertisement, or the vendor from taking possession of or selling such property, and may direct that all further proceedings be had in the district court. For the purpose of carrying out the provisions of this section, service may be made on the mortgagee or vendor or his attorney or agent. The provisions of this section apply to the assignee or transferee of any mortgagee or vendor and to the assignee or successor in interest of the mortgagor or vendee.

34-2-49 Injury to property restrained -- abandoned real property

(1) During the redemption period the mortgagor - borrower, if he chooses to stay in possession

of the premises shall not commit or permit any acts of waste or destruction to the property. The court, by injunction, on good cause shown, may restrain the party in possession from doing any act to the injury of real property or leasehold during the existence of the lien or foreclosure of a mortgage thereon and until the expiration of the time allowed for redemption.

(2) If before the sale the mortgagee or after the sale the holder of the certificate of sale reasonably believes that the property is abandoned, the mortgagee or holder of the certificate of sale may petition the court to determine abandonment.

(3) A notice of hearing must be sent by mail to the last known address of the mortgagor or the party entitled to possession of the real property at least ten days prior to the date of the hearing to determine abandonment. Service by mail is complete upon mailing.

(4) If the court determines that the real property is abandoned, the court may grant the mortgagee or holder of the certificate of sale immediate possession and use of the property and all benefit and rents from the property until expiration of the redemption period. The court may proceed at the hearing to consider remedies to prevent waste.

34-2-50 Abandoned personal property -- disposal by record title owner

The record title owner of real property or leasehold sold under judgment of foreclosure or foreclosure by advertisement for which a deed has been issued and recorded, or after receipt and recording of a deed in lieu of foreclosure, may retain and dispose of without legal process any personal property left on the real property 180 days after the issuance of a deed. If the total estimated value of the personal property is five hundred dollars or more, the record title owner shall make reasonable efforts to notify in writing the mortgagor or person who was entitled to possession of the real property during the redemption period by certified mail at least fifteen days before disposing of the personal property. Service by mail is complete upon mailing. The record title owner is entitled to the proceeds from the sale of the personal property, after all costs incidental to removal, storage, disposal, and sale of the property have been deducted.

34-2-51 Notice before foreclosure to state time for redemption

When the notice before foreclosure is served upon the title owner of record of the real estate described in the mortgage, such notice shall, where foreclosure is authorized under this chapter, contain a statement as to the time for redemption after the sale. Failure to include such a statement in the notice shall not invalidate the notice before foreclosure, but the redemption period shall be one year.

34-2-52 Certificate of sale to contain recitation of redemption period

In the event of a foreclosure under this chapter where authorized by the terms of the mortgage and by law, there shall be contained in the certificate of sale a statement as to the period of redemption fixed by the court according to law and contained in the judgment.

34-2-53 Foreclosure evictions

Foreclosure evictions shall be in accordance with the procedure set forth in Chapter 33, the

Landlord-Tenant code of the Three Affiliated Tribes.

Chapter 3 Tribal Register of Documents

34-3-1 Establishment of office of Tribal Register of Documents

There shall be established by the Three Affiliated Tribes an office of the Tribal Register of Documents.

34-3-2 Appointment of Tribal Register of Documents -- duties

The Tribal Business Council of the Three Affiliated Tribes shall appoint a person to the office of Tribal Register of Documents, who shall have the following duties:

1. Receive for recording when requested any deed, mortgage, or other instrument stating an interest in real property within the jurisdiction of the Three Affiliated Tribes, at which time of receipt shall be endorsed upon the document the following information:
 - A. The date and time of receipt of the document.
 - B. A unique filing number, which shall be the same number as recorded in the log of such documents to be kept by the Tribal Register of Deeds, as stated below.
 - C. The name of the Tribal Register of Deeds or of any clerk accepting such document for filing with the office of the Tribal Register of Deeds.
2. Upon receipt of any document for filing and completion of the endorsement stated above, the Tribal Register of Documents shall make a photocopy of the document and shall endorse upon the document the following:

"I certify that this is a true and correct copy of a document received for recording and filing in the office of the Tribal Register of Documents as of this date."

Given under my hand and seal this ____ day of _____, ____.

Signature of person making endorsement
Printed name of person making endorsement

Upon completion of the endorsement on the copy of the document being filed with the office of the Tribal Register of Documents, the Register of Documents shall forthwith return the document to the person who presented the same.

3. Maintain a log or other approved record system of each mortgage, deed or other instrument affecting real property located within the jurisdiction of the Three Affiliated Tribes, which shall contain the following:
 - A. The name and address of any borrower, mortgagee, debtor or other person listed

on the instrument to be recorded who would be considered the obligor under the instrument.

- B. The name and address of any lender, mortgagor, or any person who owns any interest in the instrument to be recorded and who would be considered the obligee under the instrument.
- C. The name and address of any grantee and grantor of a deed to real property of any kind.
- D. The name and address of any lienholder filing a lien of record against any real property within the jurisdiction of the Three Affiliated Tribes and the kind of lien.
- E. The date and time of the receipt of the documents in the office of the Tribal Register of Documents.
- F. A unique number assigned to the document being recorded.
- G. The name of the Tribal Register of Deeds or any clerk of the office of the Tribal Register of Deeds who is recording the document or who received the document for filing.

4. Such other duties as the Tribal Business Council may prescribe.

34-3-3 All filed documents open to public inspection

All documents filed with the Tribal Register of Documents shall be open to public inspection during normal business hours.

34-3-4 Manner of maintaining copies of documents

All copies of documents retained in the office of the Tribal Register of Documents may be maintained in a secure place, and shall be maintained in electronic form, in photographic images, or by whatever means will allow ready retrieval and inspection and will preserve such documents over time.