

**RESOLUTION OF THE  
WHITE MOUNTAIN APACHE TRIBE OF THE  
FORT APACHE INDIAN RESERVATION**

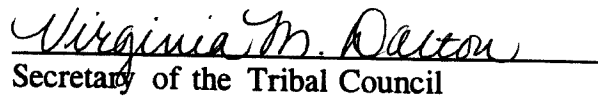
**WHEREAS**, the Tribal Council has reviewed the recommended Leasehold Mortgage Ordinance which establishes certain standards and procedures to foreclose leasehold mortgage interests on the Fort Apache Indian Reservation; and

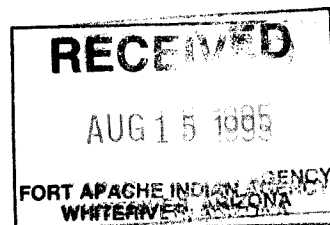
**WHEREAS**, the Tribal Council recommends that said proposed Ordinance attached hereto be posted for public comment as required by the Constitution.

**BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby directs the Tribal Council Secretary to post the proposed Leasehold Mortgage Ordinance, amending Chapter Seven of the Housing and Construction Code of the White Mountain Apache Tribe, in each District for ten days as required by the Constitution.

The foregoing resolution was on August 03, 1995, duly adopted by a vote of nine for and zero against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article IV, Section 1 (a), (h), (m) and (n) of the Constitution of the Tribe, ratified by the Tribe September 30, 1993, and approved by the Secretary of the Interior on November 12, 1993, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

  
Chairman of the Tribal Council

  
Secretary of the Tribal Council



# PROPOSED ORDINANCE

## PROPOSED ORDINANCE OF THE WHITE MOUNTAIN APACHE TRIBE OF THE FORT APACHE INDIAN RESERVATION

BE IT ENACTED by the Tribal Council of the White Mountain Apache Tribe that it hereby amends Chapter Seven of the Housing and Construction Code as follows:

### CHAPTER SEVEN

#### SECTION 7.5      LEASEHOLD MORTGAGES

##### A.    PURPOSE

The purpose of this Section is to avail the White Mountain Apache Tribe and its members of financing for the construction and/or purchase of family residences on trust land within the jurisdiction of the Fort Apache Indian Reservation 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. Code § 3761 et. seq., Farmers Home Administration (FHA), the Federal National Mortgage Association (FNMA) and the Department of Housing and Urban Development (HUD).

##### B.    DEFINITIONS

(1)    **Lease** shall mean the lease of trust property for which a Leasehold Mortgage, as defined in this document, has or will be given.

(2)    **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. Code § 3761 et. seq., FHA, FMHA and HUD.

(3)    **Leasehold Mortgage Foreclosure Proceeding** shall mean a proceeding in the Tribal Court:

(a)    To foreclose the interest of the Mortgagor(s), and each person or entity claiming through the Mortgagor(s), in a Lease for which a mortgage has been given under the VA, FHA, FMHA or HUD.

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

- (4) **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 document, has been given, or the heir(s), successor(s), executor(s), administrator(s), or assign(s) of such Lessor.
- (5) **Mortgagor** shall mean the Tribe 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 Tribe or such Native American(s).
- (6) **Mortgagee** shall mean the mortgagee under any Leasehold Mortgage as defined in this document 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.
- (7) **Nuisance** shall mean the maintenance on real property of a condition which:
- (a) Unreasonably threatens the health or safety of the public or neighboring land users; or
  - (b) Unreasonably and substantially interferes with the ability of neighboring property users to enjoy the reasonable use and occupancy of their property.
- (8) **Secretary** shall mean the Secretary of the United States Department of Veterans Affairs or designee, and the Secretary of the Department of Housing and Urban Development or designee, and the Secretary of Agriculture or designee.
- (9) **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 Tribe with respect to a claim for a tribal leasehold tax).
- (10) **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.
- (11) **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.
- (12) **Tribal Recording Clerk** shall mean the person designated by the Tribe to perform the recording functions required by this document or any deputy or designee of such person.

(13) **Tribe** shall refer to the White Mountain Apache Tribe as defined in the Tribal Constitution.

(14) **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.

(15) **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.

(16) **Writ of Restitution** is an order to the Tribal Court:

(a) Restoring an owner or lessor or the Secretary to possession of real property, and

(b) Evicting a tenant or other occupant therefrom.

#### **C. 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 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.

#### **D. RECORDING**

(1) The Tribal Recording Clerk shall maintain in the Tribal Court a system for the recording of Leasehold Mortgages and such other documents as the Tribe may designate by law or resolution.

(2) The Tribal Recording Clerk shall endorse upon any Leasehold Mortgage or other document received for recording:

(a) The date and time of receipt of the Leasehold Mortgage or other document;

(b) The filing number, to be assigned by the Tribal Recording Clerk, which shall be a unique number for each Leasehold Mortgage or other document received; and

(c) The name of the Tribal Recording Clerk receiving the Leasehold Mortgage or document.

(3) 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:

White Mountain Apache Tribe )  
 ) ss.  
Fort Apache 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 \_\_\_\_\_ 19\_\_

(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.

(4) The Tribal Recording Clerk shall also maintain a log of each Leasehold Mortgage or other document recorded in which there shall be entered:

(a) The name(s) of the Mortgagor(s) of each Leasehold Mortgage, identified as such;

(b) The name(s) of the Mortgagee(s) of each Leasehold Mortgage, identified as such;

(c) The name(s) of the grantor(s), grantee(s), or other designation of each party named in any other documents;

(d) The date and time of receipt;

(e) The filing number assigned by the Tribal Recording Clerk; and

(f) The name of the Tribal Recording Clerk receiving the Leasehold Mortgage or document.

(5) 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.

**E. 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:

(1) A verified complaint:

(a) Naming the Mortgagor(s) and each person or entity claiming through the Mortgagor(s) subsequent to the recording of the Leasehold Mortgage, including each Subordinate Lienholder (except the Tribe with respect to a claim for a tribal leasehold tax), as a defendant;

(b) Describing the property;

(c) 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;

(d) Having appended as exhibits, true and correct copies of each promissory note, Lease, Leasehold Mortgage, or assignment therefor relating to the property; and

(e) Including an allegation that all relevant requirements and conditions prescribed in: (i) Title 38 U.S. Code §§ 3761 *et. seq.* and Section 184 of the Indian Housing Loan Guarantee Program; (ii) the regulations promulgated thereunder by the Secretary; and (iii) the provisions of the Lease, have been complied with by the Secretary.

(2) 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.

**F. SERVICE OF PROCESS AND PROCEDURES**

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 pursuant to this document.

**G. 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.

**H. POWERS 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:

- (1) 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
- (2) Assigning such Lease to the Secretary or the Secretary's assignee.

**EVICITION PROCEDURES**

**I. JURISDICTION**

The provisions of this section shall apply to all persons and property subject to the governing authority of the Tribe as established by the Tribal Constitution.

**J. DEFINITIONS**

The definitions provided in the section on Leasehold Mortgages applies to this section as well.

**K. UNLAWFUL DETENTION**

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:

- (1) Without the requirement of any notice:
  - (a) After the expiration of the term of the lease or other agreement; or

(b) 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

(c) After the interest of such person in a lease has been foreclosed in a leasehold mortgage foreclosure proceeding in the Tribal Court.

(2) 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:

(a) 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 paying the rent; or

(b) 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

(c) 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

(d) 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.

#### **L. PROCEDURES FOR SERVICE OF NOTICE**

Notices required or authorized in the immediately preceding section shall be given in writing by either:

(1) Delivering a copy personally to the tenant or occupier or to any adult members of his or her family residing on the premises; or

(2) 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.

**M. 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:

(1) A complaint, signed by the owner, lessor, the Secretary, an agent, or attorney, stating:

(a) The facts on which he or she seeks to recover,

(b) Describing the property so that it can be identified with reasonable certainty; and

(c) Any claim for damages or compensation due from the persons to be evicted.

(2) 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 6 nor more than 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.

**N. SERVICE OF SUMMONS AND COMPLAINT**

A copy of the summons and complaint shall be served upon 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.

**O. POWER OF THE TRIBAL COURT**

The Tribal Court shall enter a Writ of Restitution if:

(1) Notice of suit and trial is given by service of summons and complaint in accordance with the procedures provided in this document; and,

(2) 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 defendants a judgment for the following: back rent, unpaid utilities, charges due the Tribe, Lender, Indian Housing Authority, and 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.

**P. CONTINUANCES IN CASES INVOLVING THE SECRETARY**

Except by agreement of all parties, there shall be no continuances 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.

**Q. 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.

**R. SEVERABILITY**

If any provision of this Section or the application thereof, is held invalid for any reason, by a court of competent jurisdiction, the remainder of this Ordinance, or other applications of such provision, shall not be affected and shall continue in full force and effect.

**S. REPEAL OF PRIOR ACTS**

Adoption of this Leasehold Mortgage Ordinance supersedes and repeals any prior ordinances in conflict therewith.

The foregoing Ordinance was on \_\_\_\_\_, 1995 duly adopted by a vote of \_\_\_\_\_ for and \_\_\_\_\_ against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article IV, Section 1 (a), (h), (m), (n) and (u) of the Constitution of the Tribe, ratified by the Tribe September 30, 1993, and approved by the Secretary of the Interior on November 12, 1993, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

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Chairman of the Tribal Council

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Secretary of the Tribal Council