

TITLE XIII. REAL ESTATE

CHAPTER 1. LANDLORD AND TENANT PROCEEDINGS

Sec. 101. Jurisdiction.

It is hereby declared that the civil jurisdiction of the Tribal Court includes jurisdiction over all landlord and tenant proceedings respecting any real property on the Reservation.

(Added by Ordinance #2-90; Adopted: November 7, 1990; Effective: May 25, 1993)

Sec. 102. Forcible Detainer or Eviction.

An action of forcible detainer, or eviction, to recover the possession of real property is maintainable in the Tribal Court when:

(1) A party, by force, intimidation, fraud, or stealth, has entered upon the prior actual possession of real property of another and detains the same;

(2) A party, after entering peaceably upon real property, turns or by force, threats, or menacing conduct the party in possession;

(3) A party, by force or by threat or violence, unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise;

(4) A lessee, or tenant, in person or by subtenant, holds over after the termination of the lease or expiration of the term;

(5) A lessee, or tenant, in person or by subtenant, fails to pay the rent for seven (7) days after it is due;

(6) A party continues in possession after a sale of the real property; or

(7) A party continues in possession after a judgment in partition or after a sale under an order or decree of a court of competent jurisdiction.

(Added by Ordinance #2-90; Adopted: November 7, 1990; Effective: May 25, 1993)

Sec. 103. Notice To Quit.

(a) **When required -- when, on whom, and how served.** In all cases arising under subsections (4), (5), (6) and (7) of Section 102, three (3) days written notice to quit or remove must be given to the lessee, tenant, subtenant, or party in possession, before proceedings can be instituted for forcible detainer or eviction. Notice shall be in writing and must be served in accordance with Title IV, Section 102 of this Code.

(b) **Service of Notice to Quit on the Tribal Chairman and the Chairman of the Board of Commissioners of the Chitimacha Housing Authority (hereinafter referred to as the Housing Authority Chairman).** If the lessee, tenant, subtenant, or party in possession depends on social security, or public assistance, for funds to pay the rent, the notice to quit, or remove, shall be served on the Chairman of the Tribe and on the Housing Authority Chairman, by delivering a copy of the same to each, or to the respective persons acting in such capacities, or to the respective persons designated by them to receive service.

(Added by Ordinance #2-90; Adopted: November 7, 1990; Effective: May 25, 1993)

Sec. 104. Proceedings in Tribal Court.

(a) **Complaint.** Eviction proceedings may be instituted in the Tribal Court by filing a complaint. This complaint must be filed in accordance with Title IV, Section 101 of this Code and shall include:

- (1) A legal description of the property from which the tenant is sought to be evicted;
- (2) A description of the lease which gives rise to the action. A copy of the lease shall be attached to the complaint;
- (3) Allegations of the particulars of the default which gives rise to the action;
- (4) The total balance due and owing to the landlord;
- (5) Allegations of facts showing notice as required by subsection (b) of this section. A copy of the notice shall be attached to the complaint.

(6) Whether any other proceedings have been had in any Court for collection of any part of the debt secured by the lease, and if there have been, the details and particulars of such actions, including the amount of any judgments rendered and the amount collected.

(b) **Order and Notice.** At the time the complaint is filed, the Court shall issue an order and notice scheduling a hearing on the complaint not less than fifteen (15) days after the complaint is filed. The order and notice shall inform the defendant that at the hearing the Court will determine whether the defendant and all other occupants of the premises and their personal belongings will be forcibly evicted. The order and notice shall also fix a date, not less than fifteen (15) days after the complaints is filed, for a hearing on the demand for a judgment for money or other relief, unless the defendant consents that such matters be heard at the hearing set on the demand for eviction. The Court shall furnish the plaintiff with a copy of the notice showing the time and place of the hearing and shall affix such notice to the copy of the complaint to be served on each defendant. Service of process should be made in accordance with Title IV, Section 102 of this Code.

(c) **Service of Order and Notice on the Tribal Chairman and on the Housing Authority Chairman.** In any action for eviction, if the lessee, tenant, subtenant, or party in possession depends on social security, or public assistance, for funds to pay the rent, a copy of the order and notice of hearing issued by the Court shall be served on the Chairman of the Tribe and the Housing Authority Chairman by delivering a copy of the same to each, or to the respective persons acting in such capacities, or to the respective persons designated by them to receive such notice.

(d) **Hearing.** At the hearing, the presiding Judge shall have the following options:

(1) **Begin eviction proceedings.** If the facts and law presented at the hearing demonstrate that eviction is warranted under this ordinance, or if the defendant fails to appear, the Court may order eviction.

(2) **Dismiss the complaint.** If the facts and law presented at the hearing demonstrate that eviction is not warranted under this ordinance, the Court may dismiss the complaint.

(3) **Defer eviction.** In an action for eviction for failure to pay rent, where the defendant depends on social security or public assistance for funds for payment of rent, the Court may defer eviction for nonpayment of rent where the reason for nonpayment of rent is delay in the receipt of such social security or public assistance funds, provided that the defendant agrees in writing and on penalty of contempt, that when the check for social security or public assistance funds is received, it shall be delivered to the Court for payment of the rent.

(Added by Ordinance #2-90; Adopted: November 7, 1990; Revised by Ordinance #1-91; Adopted March 20, 1991; Effective: May 25, 1993)

Sec. 105. Forcible Eviction.

(a) Where the Court orders an eviction, and the defendant or any other occupant of the premises refuses to vacate voluntarily by the effective date of that Order, the defendant or other occupants may be forcibly removed from the premises by a tribal police officer. At the hearing where the eviction is ordered, the Court shall inform the defendant that if he/she does not vacate the premises voluntarily by the effective date, he/she and the other occupants will be subject to forcible eviction, and their property will be subject to storage, sale and disposal as set forth in Section 106.

(b) Following eviction, the Court may allow the Housing Authority or the United States Department of Housing and Urban Development access to any property leased by either or them for purposes of preserving and securing it.

(Added by Ordinance #2-90; Adopted: November 7, 1990; Effective: May 25, 1993)

Sec. 106. Storage of Personal Property Following Forcible Eviction.

Following forcible eviction of the defendant and/or other occupants, the former occupants' personal property shall be stored by the owner of the premises for at least thirty (30) days, either on the premises or at another suitable location. In order to reclaim their property, the former occupants must pay the reasonable costs of its removal and storage. If they do not pay such costs

within thirty (30) days, the owner is authorized to sell the property in order to recover these costs. Upon request by the former occupants, the landlord must provide them with pertinent information concerning the sale, including the time, date and location. Any proceeds from the sale in excess of the storage and removal costs must be remitted to the former occupants. Nothing in this Section shall be construed to prevent the former occupants from reclaiming property remaining after the sale if they can arrange to do so in a manner satisfactory to the owner.

(Added by Ordinance #2-90; Adopted: November 7, 1990; Effective: May 25, 1993)

Sec. 107. Definition of Lessee.

As used in this ordinance, "lessee" refers to a person who may have secured rights to possession of a house leased by the Tribe and subject to rules and regulations of the Department of Housing and Urban Development. The rules and regulations of the Department of the Interior pertaining to leases of tribal lands are not intended to apply to such lessees.

(Added by Tribal Council; Adopted: February 3, 1993; Effective: May 25, 1993)

CHAPTER 2. MORTGAGE OF REAL ESTATE AND FORECLOSURE PROCEDURE

(Revised by Ordinance #01-03; Adopted: March 20, 2003; Effective: April 15, 2003)

Sec. 201. Jurisdiction.

It is hereby declared that the civil jurisdiction of the Tribal Court includes jurisdiction over all proceedings to foreclose a mortgage on any real property on or a leasehold interest in real property on the Reservation. An action of foreclosure of real property is maintainable in the Tribal Court after a breach of an obligation secured by a mortgage. A mortgage which is properly recorded with the Tribal Court shall have priority over any subsequently recorded mortgage or lien of any kind.

(Added by Ordinance #2-90; Adopted: November 7, 1990; Effective: May 25, 1993; Revised by Ordinance #01-03; Adopted: March 20, 2003; Effective: April 15, 2003)

Sec. 202.

Scope and Definitions.

(a) For purposes of Chapters 2 and 3 of Title XIII, the following terms shall, when capitalized, have the meaning set forth below:

- (1) "**Lease**" shall mean a ground lease or other agreement for use of Trust Land or land on the Reservation on which a Mortgage has been or can be given.
- (2) "**Leasehold Estate**" shall mean a leasehold estate established pursuant to a Lease between the Tribe, as Lessor, and a member of the Tribe, as Tenant.
- (3) "**Lessor**" shall mean the Tribe. The Tribe shall be the beneficial or equitable owner of the Trust Land or other land on the Reservation underlying a Leasehold Estate on which a Mortgage has been or can be given. The Lessor shall include the successor(s) or assign(s) of such Lessor.
- (4) "**Mortgage**" shall mean the mortgage of a beneficial real property interest in Trust Land or other land on the Reservation and any improvements thereon given to secure a mortgage loan made by a Mortgagee.
- (5) "**Mortgagor**" shall mean any eligible member of the Tribe who has executed a Mortgage on the member's beneficial interest in Trust Land or land on the Reservation, including any heir(s), successor(s), executor(s), administrator(s) or assign(s) of such member of the Tribe.
- (6) "**Mortgagee**" shall mean any mortgage lender or any successors or assigns of any such lender. This definition also includes any subsequent holder, whether by assignment, succession or otherwise, of the original Mortgagee's right, title or interest in and to the Mortgage and/or the mortgaged property, together with the improvements.
- (7) "**Subordinate Lienholder**" shall mean the holder of any lien, including a mortgage, perfected subsequent to the recording of a Mortgage under this Ordinance; provided, however, such definition shall not include the Tribe with respect to a claim for a Tribal tax on the Mortgaged property, where applicable.

(8) "**Tenant**" shall mean any person who occupies Trust Land or other land on the Reservation, as lessee, under a Leasehold Estate with the Lessor.

(9) "**Trust Land**" shall mean land within the jurisdiction of the Tribe, title to which is held by the United States for the benefit of the Tribe.

(b) This Chapter shall apply to all actions to foreclose mortgages or liens on Trust Land, on other real property located on the Reservation, or on a Leasehold Estate. A foreclosure will be ordered only where such mortgages or liens are authorized by and valid under federal and tribal law. In the case of Trust Land, the land itself cannot be alienated, but the Tribal Court can foreclose possessory interests on Trust Land, including a Leasehold Estate. Purchasers at a foreclosure sale of such interests shall be limited to persons who are otherwise eligible to hold such interests under federal and tribal law. This Chapter shall also apply to all actions to foreclose on fee land, or an interest in fee land, on the Reservation.

(Added by Ordinance #2-90; Adopted: November 7, 1990; Effective: May 25, 1993; Revised by Ordinance # 1-97; Adopted: March 27, 1997; Effective: May 21, 1997; Revised by Ordinance #01-03; Adopted: March 20, 2003; Effective: April 15, 2003)

Sec. 203. Proceedings in Tribal Court.

(a) **Complaint.** Foreclosure proceedings may be instituted in the Tribal Court by filing a verified complaint. This complaint must be filed in accordance with Title IV, Section 101 of this Code and shall include:

- (1) A legal description of the property sought to be foreclosed.
- (2) A description of the Mortgage which gives rise to the action.
- (3) Allegations to the particulars concerning (i) the execution of any Lease and Mortgage; (ii) the recording of the Lease and Mortgage; (iii) the default which gives rise to the action; and (iv) any other facts needed to establish a cause of action.
- (4) The total balance due and owing that is secured by the Mortgage.
- (5) Copies of the Lease, Mortgage, and documents evidencing the debt secured by the Mortgage shall be attached to the complaint.

(6) A statement of whether any other proceedings have been had in any court for collection of any part of the debt secured by the Mortgage, and if there have been, the details and particulars of such actions, including the amount of any judgments rendered and the amount collected.

(b) **Order and Notice.** At the time the complaint is filed, the Court shall issue an order and notice scheduling a hearing on the complaint not less than fifteen (15) days after the complaint is filed. The order and notice shall inform the Mortgagee and any Subordinate Lienholder that at the hearing the Court will determine whether proceedings for foreclosure should proceed. The Court shall serve the Mortgagee and any Subordinate Lienholder with a copy of the notice showing the time and place of the hearing and with a copy of the complaint. Service of process shall be made in accordance with Title IV, Section 102 of this Code.

(c) **Hearing.** At the hearing, the presiding Judge shall, if the facts and law presented at the hearing demonstrate that foreclosure is warranted, or if the defendant fails to appear, order that the foreclosure proceed.

(Added by Ordinance #2-90; Adopted: November 7, 1990; Revised by Ordinance #1-91; Adopted: March 20, 1991; Revised by Tribal Council; Adopted: February 3, 1993; Effective: May 25, 1993; Revised by Ordinance #1-03; Adopted: March 20, 2003; Effective: April 15, 2003)

Sec. 204. Right to Cure Mortgage Foreclosure Default.

(a) After a foreclosure complaint has been filed, at any time prior to the commencement of bidding at any sale ordered by the Court, the Mortgagor or any subordinate Lienholder, may cure the default and prevent sale or other disposition of the real estate, by tendering the amount or performance specified in subsection (b) of this section.

(b) To cure a default under this section, a Mortgagor or a Subordinate Lienholder shall:

(1) Pay or tender in the form of cash, cashier's check, or certified check all sums, including any late fee, required to bring the account current, or pay all amounts due, if the debt secured by the Mortgage has been accelerated;

(2) Perform any other obligation which the Mortgagor is obligated to perform;
and

(3) Pay or tender any expenses properly associated with the foreclosure and incurred by the Mortgagee to the date of payment or tender under this section. These costs and expenses may include, but are not limited to, advertising fees, trustee fees, and reasonable attorney's fees.

(c) Cure of a default pursuant to this section restores the Mortgagor to the same position as if the default or acceleration had not occurred.

(Added by Ordinance #2-90; Adopted: November 7, 1990; Effective: May 25, 1993; Revised by Ordinance #1-03; Adopted: March 20, 2003; Effective: April 15, 2003)

Sec. 205. Injury to Property.

The Court may, by injunction pursuant to Title IV, Section 402, on good cause shown, restrain the party in possession from doing any act to the injury of real property during the foreclosure proceeding, and may allow the Mortgagee access to and possession of real property on which it holds a Mortgage for purposes of preserving and securing it.

(Added by Ordinance #2-90; Adopted: November 7, 1990; Effective: May 25, 1993; Revised by Ordinance #1-03; Adopted: March 20, 2003; Effective: April 15, 2003)

Sec. 206. Foreclosure Sales.

(a) In all actions of foreclosure, the Court shall have authority to order and decree that the property or the Leasehold Estate be sold and the proceeds be brought into court to be applied to the payment of the debt secured by the Mortgage.

(b) All sales of mortgaged property under a judgment of foreclosure shall be made by an official appointed by the Court for that purpose.

(c) The sale shall be conducted by public auction, at a place on the Reservation convenient to potential buyers, after such notice as required by the Court. Notice shall be reasonably calculated to assure that potential buyers are aware of the sale and shall, at a minimum, include;

(1) publication of a notice of sale in a newspaper of general circulation on the

Reservation once a week for four consecutive weeks;

(2) notice mailed at least thirty (30) days before the sale to the Mortgagor, the Mortgagee, and any Subordinate Lienholder at the address provided for service of papers in the case; and

(3) notice mailed at least thirty (30) days before the sale for the Tribal Chairman at the tribal headquarters.

(d) The officer or person making the sale shall issue to the purchaser a deed transferring title to the property or the Leasehold Estate to the purchaser, immediately or upon approval of the sale by the Tribal Council, if such approval is required by law.

(Added by Ordinance #2-90; Adopted: November 7, 1990; Effective: May 25, 1993; Revised by Ordinance#1-03; Adopted: March 20, 2003; Effective: April 15, 2003)

Sec. 207. Application of the Proceeds of Sale.

(a) The proceeds of any sale of foreclosure shall be applied as follows:

(1) First, to the expenses of the sale, including the cost of notice and a reasonable fee by the officer conducting the sale, except that no tribal or BIA employee shall be paid a fee for such services.

(2) Second, to the discharge of the debts adjudged by the Court to be due on the most senior mortgage encumbering the property or the Leasehold Estate.

(3) Third, to the discharge of the claims of the holders of other mortgages whether or not foreclosed, which are junior to the most senior mortgage, in order of seniority.

(4) Finally, if upon a sale of the whole mortgaged property, the net proceeds exceed the amount of the mortgage debt, this excess amount shall be returned to the Mortgagor after payment of all related expenses.

(b) If the proceeds, or any part thereof shall remain in the Court for a term of three (3) months without being applied for, the Court may direct that such proceeds be invested for the benefit of the parties entitled thereto, subject to order of the Court.

(c) If, upon a sale of the whole mortgaged property or Leasehold Estate, the net proceeds shall be insufficient to pay the Mortgage, debt, the Court may, following a hearing, enter a decree against the Mortgagor or other party to the suit who is liable for the payment of the debt secured by the Mortgage for the amount of the debt remaining unsatisfied after applying the proceeds of such sale to the debt.

(d) If the Mortgagee shall become the purchaser at such sale, the Mortgagee shall credit the amount of the purchase money against the debt, and the Mortgagee shall be only required to pay the excess of the purchase money over the debt owed to the mortgagee, together with such additional amount as may be necessary to defray the expenses of the sale.

(Added by Ordinance #2-90; Adopted: November 7, 1990; Effective: May 25, 1993; Revised by Ordinance #01-03; Adopted: March 20, 2003; Effective: April 15, 2003)

CHAPTER 3. REAL ESTATE RECORDS.

(Added by Ordinance#01-03; Adopted: March 20, 2003; Effective: April 15, 2003)

Sec. 301. Definitions.

Capitalized terms used in this Chapter 3 of Title XIII shall have the meaning set forth in Title XIII, Section 201(a) of this Code.

(Added by Ordinance#01-03; Adopted: March 20, 2003; Effective: April 15, 2003)

Sec. 302. Recording.

(a) The appropriate offices for recording Mortgages and Leases on Trust Land and on other land within the Reservation is the office of the Clerk of the Tribal Court. A Mortgagee may also require that Leases and Mortgages on Trust Land and on other land within the Reservation be recorded in the recorder's office for St. Mary Parish, Louisiana or with the Bureau of Indian Affairs Area Land Titles and Records Office.

(b) The Clerk shall maintain a system for the recording of Leases and Mortgages and such other documents as the Tribe may designate by law or resolution.

(c) The Clerk of the Tribal Court shall endorse upon any Lease and/or Mortgage or other document received for recording the following:

- (1) The date and time of receipt of the Lease, Mortgage or other document;
- (2) The filing number assigned by the Clerk, which shall be a unique number for each Lease, Mortgage or other document received; and
- (3) The stamp of the Tribal Court indicating that the Lease and/or Mortgage or other document has been filed.

(Added by Ordinance#01-03; Adopted: March 20, 2003; Effective: April 15, 2003)

Sec. 303. Certification.

Upon completion of the above endorsements, the Clerk shall, on request, make true and correct copies of the Lease, Mortgage or other security instrument and shall certify each copy as follows:

I hereby certify that the foregoing is a true and correct copy of the original on file and of record in the Chitimacha Tribal Courts.

Dated this _____ day of _____, 20 ____.

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The Clerk shall maintain the originals of all Leases, Mortgages, and other documents in the records of the recording system and shall deliver copies, certified as set forth herein, of the Lease, Mortgage or other document to any person. Fees for recording Leases, Mortgages and other documents and for furnishing certified copies of such may, from time to time, be established.

(Added by Ordinance#01-03; Adopted: March 20, 2003; Effective: April 15, 2003)

Sec. 304. Indexing.

The Clerk shall maintain a log of each Lease, Mortgage or other document recorded in which there shall be entered the following:

- (1) The name(s) of the Mortgagor(s) of each Mortgage, identified as such;
- (2) The name(s) of the Mortgagee(s) of each 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 including any Lease;
- (4) The date and time of receipt; and
- (5) The filing numbers assigned by the Clerk;

The certified copies of any Leases, Mortgages and other documents and the log maintained by the Clerk shall be made available for public inspection and copying.

(Added by Ordinance#01-03; Adopted: March 20, 2003; Effective: April 15, 2003)