

CHAPTER 5 MORTGAGE AND FORECLOSURE

501. PRIORITY

All mortgages recorded in accordance with the procedures set forth in this Chapter shall have priority over any lien or claim subsequently recorded excepting a lien or claim arising from a Nation levy or assessment imposed against the subject property after such time as the mortgage upon which the lien is based was recorded. Notwithstanding the foregoing, no mortgage, lien or claim arising from such mortgage shall be effective without prior written approval of the Nation.

502. RECORDATION

- A. The Court Clerk shall maintain a system for the recording of mortgages and such other documents as the Nation may designate by law or ordinance.
- B. The Court Clerk shall endorse upon any mortgage or other document received for recording:
 - 1. The date and time of receipt of the mortgage or other document;
 - 2. The filing number, to be assigned by the Court Clerk, which shall be a unique number for each mortgage or other document received; and
 - 3. The name of the Court Clerk or designee receiving the mortgage or document.

Upon completion of these endorsements, the Court Clerk shall make a true and correct copy of the mortgage or other document and shall certify the copy as follows:

Oneida Indian Nation ss.:

I certify that this is a true and correct copy of the document received for recording this date.

Given under my hand and seal this _____ day of _____, 20__.

(SEAL)

(Signature)

(Date)

The Court Clerk shall maintain the true and correct copy in the records and shall return the original document to the person or entity that presented the same for recording.

- C. Upon satisfaction of the mortgage, the holder of the mortgage shall record with the Court Clerk an instrument evidencing the satisfaction of the mortgage in the following form:

Known all men by these presents, that _____ do hereby certify that a certain mortgage, bearing date of _____, made and executed by _____ to secure payment of the principal sum of _____, and duly recorded with the Court Clerk of the Oneida Indian Nation as [insert recording information], on the ____ day of _____, 20__, is paid, and do hereby consent that the same be discharged of record.

Given under my hand and seal this ____ day of _____, 20__.

(SEAL)

(Signature)

(Title)

(Date)

The satisfaction shall be filed with the Court Clerk within thirty (30) days of actual receipt of full payment under the mortgage.

503. MORTGAGE DEFAULT

- A. A Borrower/Mortgagor shall be considered to be in default when such individual is thirty (30) days past due on all or part of any mortgage payment to the Lender/Mortgagee or thirty (30) days following any other default pursuant to the mortgage documents.
- B. Before a Borrower/Mortgagor is ninety (90) days in default under a mortgage and before any foreclosure action or activity is initiated, the Lender/Mortgagee shall:
1. Make a reasonable effort to arrange a face-to-face interview with the Borrower/Mortgagor, which effort shall be documented by the Lender/Mortgagee; or
 2. Make at least one phone call to the Borrower/Mortgagor, or the nearest phone designated by the Borrower/Mortgagor as able to receive and relay messages to the Borrower/Mortgagor, which effort shall be documented by the Lender/Mortgagee.
- C. Lender/Mortgagee may appoint an agent to perform the services of arranging and conducting the face-to-face or telephone interview specified in this section.

D. No sooner than thirty (30) days following a determination of a default as specified in Section 503.A. of the Code and no later than ten (10) days before initiating a foreclosure action in the Nation Court, the Lender/Mortgagee shall issue a written notice to the Borrower/Mortgagor by certified mail or by posting the notice prominently on the premises, with a copy simultaneously provided to the Nation. The notice shall:

1. Advise the Borrower/Mortgagor that he or she is in default;
2. Advise the Borrower/Mortgagor that information regarding the loan and default will be given to credit bureaus;
3. Advise the Borrower/Mortgagor of homeownership counseling opportunities/programs available through the Lender/Mortgagee or otherwise;
4. Advise the Borrower/Mortgagor of other available assistance regarding the mortgage default; and
5. In addition to the preceding notification requirements, the Lender/Mortgagee shall complete the following additional notice requirements when a Leasehold Mortgage is involved:
 - a. notify the Borrower/Mortgagor that if the Leasehold Mortgage remains in default for more than ninety (90) days, the Lender/Mortgagee may ask the applicable governmental agency to accept assignment of the Leasehold Mortgage if this is a requirement of the governmental program;
 - b. notify the Borrower/Mortgagor of the qualifications for forbearance relief from the Lender/Mortgagee, if any, and that forbearance relief may be available from the government if the mortgage is assigned; and
 - c. provide the Borrower/Mortgagor with names and addresses of government officials to whom further communications may be addressed, if any.

504. FORECLOSURE COMPLAINT AND SUMMONS

A. No sooner than sixty (60) days following a determination of a default as specified in Section 503.A. of the Code and provided Lender/Mortgagee has complied with the requirements of Section 503 of the Code, the Lender/Mortgagee shall be entitled to initiate a foreclosure action in the Nation Court by filing a verified complaint in accordance with the following procedures. The verified complaint in a mortgage foreclosure proceeding shall contain the following:

1. The name of the Borrower/Mortgagor and each person or entity claiming through the Borrower/Mortgagor subsequent to the recording of the mortgage, including each Subordinate Lienholder, except the Nation with respect to a claim for a Nation leasehold, as a defendant;
 2. A description of the property or interest subject to the mortgage;
 3. A concise statement of the facts concerning the execution of the mortgage, any Use Rights and Homeowner Agreement, and the Ground Lease in the case of a Leasehold Mortgage; the facts concerning the recording of the mortgage or the 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;
 4. True and correct copies of each promissory note and mortgage, any Use Rights and Homeowner Agreement, and if a Leasehold Mortgage, a copy of the Ground Lease, the Leasehold Mortgage or any assignments thereof relating to the property (appended as exhibits); and
 5. Any applicable allegations concerning relevant requirements and conditions prescribed in (1) federal statutes and regulations (2) Nation codes, ordinances and regulations; and/or (3) provisions of the Use Rights and Homeowner Agreement, Ground Lease or Leasehold Mortgage, or other security instrument.
- B. The complaint shall be verified and accompanied by a summons issued by the Court specifying a date and time of appearance for the Borrower/Mortgagor and all other persons named as defendants.

505. SERVICE OF PROCESS AND PROCEDURES

- A. Service of process shall be governed by the procedures set forth in section 303, Chapter 3 of this Code.
- B. The admission of evidence in proceedings under this Chapter shall be governed by the Oneida Indian Nation Rules of Evidence.

506. RIGHT TO CURE DEFAULT

Prior to the entry of a judgment of foreclosure, any Borrower/Mortgagor or subordinate lienholder may cure the default under the mortgage by making a full payment to the Lender/Mortgagee of the delinquent amount, including interest at the rate stated in the mortgage through the date of redemption and including all reasonable legal and Court costs and actual out-of-pocket expenses incurred in foreclosing on the property. 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, plus interest on such amounts at the rate stated in the

mortgage. There shall be no right of redemption in any mortgage foreclosure proceeding involving a Leasehold Mortgage.

507. JUDGMENT AND REMEDY

Foreclosure matters shall be heard and decided by the Court in a prompt and reasonable time period not to exceed sixty (60) days from the date of service of the Complaint on the Borrower/Mortgagor. If the alleged default has not been cured at the time of the judicial proceeding and the Court finds for the Lender/Mortgagee, the Court shall enter judgment:

- A. Foreclosing the interests of the Borrower/Mortgagor and each other defendant, including subordinate lienholders, in the mortgage.
- B. Assigning the mortgage to the Lender/Mortgagee or the Lender's designated assignee. Assignments are subject to the following provisions when said mortgage is on Nation land:
 1. The Lender/Mortgagee shall give the Nation the right of first refusal on any acceptable offer to purchase the rights in the collateral or the mortgage, which is subsequently obtained by the Lender/Mortgagee, or Lender's designated assignee; and
 2. The Lender/Mortgagee or Lender's designated assignee may only transfer, sell, or assign rights to the collateral or the mortgage to a Nation member, the Nation, or the Oneida Housing Corporation.
- C. Providing 10 business days from the date final judgment is served on the Borrower/Mortgagor for the Borrower/Mortgagor to quit possession of the property;
- D. Providing for such other and further relief as appropriate.

508. FORECLOSURE SALES

- A. The sale shall be conducted by public auction, at a place on Nation land convenient to potential bidders, upon such notice as required by the Court. Notice shall be reasonably calculated to assure that potential bidders are aware of the sale and shall, at a minimum, include:
 1. Publication of notice of sale in a newspaper of general circulation within Territorial jurisdiction once a week for four (4) consecutive weeks and in a Nation publication to members at least once during such four (4) week time period; and
 2. Notice mailed at least thirty (30) days before the sale to the Borrower/Mortgagor, the Nation, the Nation Housing Corporation, any guarantor, and any subordinate Lender with a recorded interest.

The Notice shall be mailed to the Borrower/Mortgagor at the address provided in the lien instruments and to such other notice address(es) provided or known to the Lender/Mortgagee.

- B. The officer or person making the sale shall issue to the purchaser an appropriate document entitling the purchaser to the use of the property, immediately upon payment of the purchase price and approval of the sale by the Nation. Upon approval of the sale, the transfer of the use of the property shall be deemed to relate back to the date of the sale.
- C. If the sale is the sale of an interest in property located on Nation land, the purchaser must obtain Nation approval for the purchase of such interest. No sale of an interest in property located on Nation land shall be effective without Nation approval.

509. 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;
 - 2. Second, to the discharge of the debts adjudged by the Nation Court to be due on the most senior mortgage foreclosed in the action, which debt shall include the reasonable, out-of-pocket costs actually incurred and interest at the rate set forth in the mortgage through the date of the foreclosure sale;
 - 3. Third, to the discharge of the claims of the mortgage holders of other mortgages whether or not foreclosed, which are junior to the most senior mortgage foreclosed, in order of seniority; and
 - 4. Finally, if the net proceeds exceed the amount of the mortgage debt, this excess amount shall be returned to the Borrower/Mortgagor.
- B. If, upon a sale of the collateral, the net proceeds shall be insufficient to pay the mortgage debt, the Court shall enter a judgment against the Borrower/Mortgagor or other party to the suit who is liable for the payment of the mortgage debt for the amount of the debt remaining unsatisfied after applying the proceeds of such sale to the debt.
- C. If the Lender/Mortgagee shall become the purchaser at such sale, the Lender/Mortgagee shall be entitled to credit the amount of the purchase money against the debt, and shall be required only to pay the excess of the purchase money over the debt owed to the Lender/Mortgagee.

510. FORECLOSURE EVICTIONS

- A. On entry of a judgment pursuant to Section 507 of this Chapter, a copy of the order of judgment shall be served by the Court on the Borrower/Mortgagor. In addition, a written notice in a form substantially similar to that required in Section 302(c) of Chapter 3 shall be delivered by the Lender/Mortgagee to the Borrower/Mortgagor. The notice and order shall be delivered pursuant to Section 303 of Chapter 3. The order and notice shall serve as the Notice to Quit.
- B. If after the expiration date set forth in the order the Borrower/Mortgagor has not quit possession of the dwelling unit, the Lender/Mortgagee may file a complaint in the Court for eviction. The complaint shall state:
 - 1. The names and known addresses of the Borrower/Mortgagor against whom the suit is brought;
 - 2. The address or reasonable description of the location of the premises;
 - 3. The date and copy of the foreclosure judgment.
 - 4. A statement showing that the order and notice have been served in accordance with this Code or other applicable Nation law or ordinance;
 - 5. A statement of the relief demanded, including any claim for possession of the dwelling unit, damages, fees, costs, or other relief; and
 - 6. A statement that the Lender/Mortgagee has complied with all required regulatory processes prior to filing the eviction action.
- C. When a complaint is filed in the Court pursuant to Section 510B of this Chapter, the Court shall issue an order to the Borrower/Mortgagor named in the complaint to appear before the Court on a date certain within ten (10) business days of the date of the order, to answer the Complaint.
- D. The order of proceedings shall occur as follows:
 - 1. If the Borrower/Mortgagor appears before the Court in person or in writing to answer the complaint, the Court shall set a trial date. Any written response shall state any defenses or factual disputes and where any Borrower/Mortgagor appears in person, a written response shall be served upon the Lender/Mortgagee within five (5) calendar days of any hearing, excluding weekends and holidays.
 - 2. The Court shall set a trial date which is no more than fifteen (15) calendar days following the date for appearance.
 - 3. The Court may, in its discretion, and on motion from the Lender/Mortgagee order the Borrower/Mortgagor to pay into the Court for

the benefit of the Lender/Mortgagee, the fair market rent for the use and occupancy of the property during the pendency of the eviction case.

- E. Discovery, evidencing, and burden of proof issues shall be governed by Sections 405-407 of Chapter 4.
- F. Judgment shall be entered as follows:
 - 1. Within five (5) calendar days of the date of the trial, the Court shall grant and enter judgment and the judgment shall grant all relief that the parties are entitled to as of the date of the judgment. The order of judgment may:
 - a. Order the immediate eviction of a Borrower/Mortgagor;
 - b. Order delivery of the premises to the appropriate party;
 - c. Grant actual damages as provided in any agreement of the parties or by this Code, including interests;
 - d. Order the parties to carry out an obligation required by Nation law;
 - e. Order the payment of attorneys' fees and the costs and expenses of litigation; or
 - f. Grant any relief provided in this Code.
 - 2. If a Borrower/Mortgagor fails to appear in person or in writing on or before the date of appearance, the Court shall enter judgment on behalf of the Lender/Mortgagee following a hearing to determine whether relief should be granted and the kind of relief that should be granted.
- G. The form of judgment, execution, stays and appeal shall be governed by Sections 409-412 of Chapter 4.
- H. Notwithstanding anything herein to the contrary, all foreclosure evictions shall occur no later than sixty (60) days from the date of service of the foreclosure judgment order and notice upon Borrower/Mortgagor.

511. NO MERGER OF ESTATE

There shall be no merger of estates by reason of the execution of a Use Rights and Homeowner Agreement, a Ground Lease, or a mortgage or the assignment or assumption of the same, including an assignment adjudged by the Court, or by operation of law, except as such merger may arise upon satisfaction of the Leasehold Mortgage.

512. CERTIFIED MAILING TO NATION AND LESSOR

In any foreclosure proceeding where the Nation or any lessor is not a named party, a copy of the summons and complaint shall be mailed to the Nation Housing Corporation and any lessor by certified mail, return receipt requested, within five (5) days after the issuance of the summons.

513. INTERVENTION

The Nation or any lessor may petition the Court to intervene in any mortgage foreclosure proceeding under this Code. Neither the filing of a petition for intervention by the Nation, nor the granting of such a petition by the Court shall operate as a waiver of the sovereign immunity of the Nation, except as may be expressly authorized by the Nation.

514. APPEALS

Appeals under this Chapter shall be handled in accordance with Oneida Indian Nation Rules of Appellate Procedure and shall be to the Nation Appellate Court.