

**TITLE XXVIII
(28)**

**FORECLOSURE OF REAL ESTATE
MORTGAGES**

Of the Standing Rock Sioux Tribal Code of Justice



**TITLE XXVIII
Approved
By
Resolution No. 304-94
Ordinance No. 158
By the
Standing Sioux Rock Tribal Council
October 3, 1994**

RESOLUTION NO. 340-94


BE IT RESOLVED, that pursuant to the power vested in the Standing Rock Sioux Tribal Council under the Constitution of the Standing Rock Sioux Tribe, the foregoing Ordinance No. 158 amending the Code of Justice to add a new Title XXVIII, Foreclosure of Real Estate Mortgages, be and the same is hereby approved.

BE IT FURTHER RESOLVED, that the Chairman and Secretary of the Tribal Council be authorized and instructed to sign this resolution for and on behalf of the Standing Rock Sioux Tribe.

CERTIFICATION

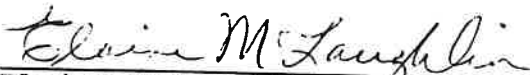
We, the undersigned Chairman and Secretary of the Standing Rock Sioux Tribal Council, do hereby certify that the Tribal Council is composed of 17 members of whom 17 constituting a quorum, were present at a meeting thereof, duly and regularly called, noticed, convened and held on the 15th day of September, 1994, and that the foregoing resolution was duly adopted by the affirmative vote of 12 members, with 1 opposing, and with 4 not voting. The Chairman's vote is not required except in case of a tie.

Dated this 3rd day of October, 1994.



Jesse Taken Alive, Chairman
Standing Rock Sioux Tribal Council

ATTEST:



Elaine McLaughlin, Secretary
Standing Rock Sioux Tribal Council

(Official Seal)

TITLE XXVIII (28)

FORECLOSURE OF REAL ESTATE MORTGAGES

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ORDINANCE NO. 158

BE IT RESOLVED, that the Code of Justice of the Standing Rock Sioux Tribe be and the same is hereby amended to add Title XXVIII, Foreclosure of Real Estate Mortgages, as follows:

TITLE XXVIII. FORECLOSURE OF REAL ESTATE MORTGAGES

Chapter 1. Initial Proceedings

28-101. Scope and Purpose

Purpose. The purpose of this Ordinance is to provide a procedure for the foreclosure of Real Estate Mortgages of family residences, on land located on the Standing Rock Sioux Indian reservation, and owned in whole or part, by an Indian.

Scope. This title shall apply to all actions to foreclose real estate mortgages on trust or fee land on the Standing Rock Sioux Indian reservation, by persons or entities, holding mortgages or other liens authorized and valid pursuant to federal law.

This title shall also apply to all actions to foreclose on fee land, or an interest in fee land, on the Standing Rock Sioux Indian reservation, which is owned by an Indian or Indians. In the case of fractionated fee land, only that fractionated interest may be mortgaged and will not affect the other fractionated landholders' interest.

28-102. Definitions

(a) Fee Land- means land located within the exterior boundaries of the Standing Rock Sioux Indian reservation, title to which is vested in an individual Indian or Indians.

(b) Foreclosure- Procedure by which mortgaged property is sold on default of mortgagor in satisfaction of the mortgage debt.

(c) Indian- Any person who is an enrolled member of a federally recognized Indian Tribe.

(d) Mortgage- A mortgage is an interest in land created by a written instrument which provides security for the payment of a debt. For purposes of this ordinance, a mortgage may also include a leasehold mortgage which is secured by the lessee's interest in leased property.

(e) Mortgagee- The person that takes or receives the mortgage.

(f) Mortgagor- One who, having all or some part of title to property or leasehold interest, by written instrument, pledges that property or leasehold interest, as security for a debt.

28-103. Recordation of Mortgages

All mortgages arising on the Standing Rock Sioux Indian reservation must be recorded in the Land Titles and Records Office within the Bureau of Indian Affairs, Standing Rock Agency, pursuant to 25 C.F.R., Section 150.1, et. seq. In addition, all mortgages involving fee land must also be recorded in the Sioux County or Corson County Register of Deeds, depending on where the fee land is located.

28-104. Submission to Jurisdiction

The Standing Rock Sioux Tribal Court shall have original and exclusive jurisdiction over all proceedings involving the foreclosure of mortgages, in which an Indian is involved.

Any person bringing suit in Tribal Court pursuant to this Ordinance shall be deemed to have submitted to the jurisdiction of the Court with respect to the entire transaction, whether or not the transaction was executed on the reservation.

In the case of trust land, the person or entity for whom the United States holds the land in trust shall be deemed the titleholder or owner of the land for the purposes of this Ordinance. The United States shall not be deemed an indispensable party unless required by federal law.

28-105. Notice Before Foreclosure

(a.) At least thirty (30) days, and not more than ninety (90) days, before filing an action for foreclosure under 28-201, the mortgagor shall give written notice to the titleholders of record of the real estate, as shown by the records of the Bureau of Indian Affairs and the mortgagee, by registered, certified mail, that the mortgagor intends to file a foreclosure action. In the case of trust land, a copy of the notice shall be sent to the Superintendent of the Standing Rock Agency Office of the Bureau of Indian Affairs and the Tribal Chairman, Standing Rock Sioux Tribe.

(b.) The notice shall contain the following:

- (1.) A description of the real estate;
- (2.) The date and amount of the mortgage;

- (3.) The amount due for principal, interest and taxes (if any) paid by the mortgagor;
- (4.) A statement that if the amount due is not paid within forty (45) days from receipt of the Notice, a foreclosure action will be commenced.

A United States postal service return receipt showing that the envelope containing the notice was delivered mortgagor and titleholders, or was refused by the mortgagor and/or titleholders, shall be prima facie evidence that the mortgagor and/or titleholder received the notice.

(c.) If the mortgagor or titleholder shall perform the conditions or comply with the provisions upon which the default in the mortgage has occurred, such mortgage shall be reinstated and shall be in full force and effect as though no default had occurred.

Chapter 2. Foreclosure Proceedings

28-201. Action For Foreclosure

(a.) The mortgagee may bring an action in Tribal Court for foreclosure. The action shall be in the form of a Complaint; shall name mortgagors, and the title owners of the property, if different from the mortgagors.

(b.) The complaint for foreclosure shall include the following information:

- (1.) A legal description of the property sought to be foreclosed;
- (2.) A description of the mortgage which gives rise to the action. A copy of the mortgage 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 mortgagor;
- (5.) A copy of the Notice of Foreclosure sent to the mortgagor, plus the receipt from the U.S. Postal Service showing the date of receipt;
- (6.) Allegations that the default has not been cured;

and,

- (7.) 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 judgment rendered and the amount collected.

(c.) Service of the Complaint for Foreclosure shall be made as provided in Title II, Section 2-102 of the Code of Justice. In addition, if the complaint names unknown persons having an interest in the property, the plaintiff shall cause a notice to be published once each week for four (4) successive weeks in a newspaper of general circulation on the reservation, which shall contain:

- (1.) A legal description of the property sought to be foreclosed;
- (2.) A statement that a foreclosure action has been filed, the results of which will bind unknown persons holding an estate or interest in the property;
- (3.) The address of the clerk of the Tribal Court from whom a copy of the complaint may be obtained; and,
- (4.) A statement that any person with an interest in the property should appear in the action by appearing at the Tribal Court by either Answer or personal appearance at the date and time set for hearing.

28-202. **Claims by Other Mortgage Holders**

Any defendant in a foreclosure action who holds a mortgage on the property sought to be foreclosed may, by counterclaim against the Plaintiff and cross-claim against other defendant, seek to have the mortgage foreclosed. In the event the mortgage is senior to that of plaintiff, it shall have priority for distribution of the proceeds pursuant to section 28-207. No notice before foreclosure pursuant to section 28-201 shall be required prior to a counterclaim or cross-claim.

28-203. **Proceedings at Law Not Had While Foreclosure Action Pending**

After the complaint for foreclosure is filed, no other

proceedings shall be held for the recovery of the debt secured by the mortgage, or any part thereof, unless authorized by the Court.

28-204. Injunction to Restrain Injury to Property During Existence of Lien or Foreclosure

The Court may by injunction, on good cause shown, restrain the party in possession from doing any act to the injury of the real property during the existence of the lien or foreclosure of a mortgage, and until the expiration of the time allowed for redemption, as set forth in section 28-301.

28-205. Dismissal of Complaint on Payment Into Court of Installments Then Due

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 bringing into Court at any time before judgment or sale, the principal and interest due. Such dismissal shall be without prejudice to another foreclosure proceeding in the event of a subsequent default.

28-206. Judgment For Foreclosure

(a.) In any action pursuant to this Ordinance, the Tribal Court may render judgment for the amount due at the time of judgment, and the costs of the action, and to order and decree a sale of the property foreclosed or such part thereof as may be sufficient to pay the amount adjudged to be due, with costs of the action.

(b.) The court shall have the power to order and compel delivery of possession of and title to the property to the person purchasing it at the foreclosure sale, but in no case shall possession or title be delivered until after the expiration of the redemption period provided by section 28-301, and the judgment shall provide that mortgagor of the property shall be entitled to the possession, rents, use and benefit of the property until the redemption period expires.

(c.) Property ordered sold pursuant to this section shall be sold subject to all mortgages senior to the mortgage(s) foreclosed, but free and clear of the claims of all other defendants, including holders of junior mortgages and where they are included, under 28-201 and Notice is published as required in

28-201(c.), to unknown defendants.

28-207. Foreclosure Sales

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

(b.) The sale shall be conducted by public auction, at a time and place on the reservation convenient to potential buyers. 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 (4) consecutive weeks; (2) Notice mailed at least thirty (30) days before the sale to each party to the case at the address provided for service of papers in the case; and (3) Notice to be posted at the Standing Rock Sioux Tribal Building at least thirty (30) days before the sale. At such auction, the Tribe shall have the right to purchase the property by matching the highest bid.

(c.) The officer appointed by the court to conduct the sale shall issue to the purchaser a certificate of sale. Upon expiration of the period of redemption provided for in section 28-301, unless the property has been redeemed, the Tribal Court shall instruct the BIA, in the case of Indian land, to issue a deed to the purchaser, his heirs or assigns to the property. In the case of fee land owned by an Indian, the Tribal Court shall make a deed to the purchaser, his heirs or assigns to the property.

28-207. Application of the Proceeds.

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

(a.) 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.

(b.) Second, to the discharge of the debts adjudged by the Court to be due on the most senior mortgage foreclosed in the action.

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

(d.) Finally, if there remains any surplus, to the mortgagor(s).

Chapter 3. Redemption

28-301. Redemption

(a.) All property sold upon foreclosure under this Ordinance shall be subject to redemption by the mortgagor within one (1) year from the date that the foreclosure sale is conducted.

(b.) The mortgagor may redeem the property by paying to the purchaser, his heirs or assigns, or if they cannot be located, to the Tribal Court, the amount of his/her purchase, with interest thereon at the rate provided for in the mortgage, together with the amount of any insurance premium(s), assessments, taxes (if any) or other amounts under subsection (d) which the purchaser, his heirs or assigns may have paid thereon after the purchase, with interest at the same rate as provided for in the mortgage.

(c.) If the property is redeemed, the effect of the sale is terminated and the mortgagor is restored to his estate. The person to whom the redemption payment is made must execute and deliver to the mortgagor a certificate of redemption acknowledged before a notary public, which shall be recorded in the appropriate BIA land records office or register of deeds, and also noted on the record of the certificate of sale.

(d.) The purchaser at a mortgage sale, his heirs or assigns, may, to protect their interest, during the redemption period, pay any premium necessary to keep in effect an insurance policy on the property, pay any taxes or assessments which become delinquent, and pay any installment of interest or principal due on any senior mortgage still in effect. The amounts so paid, when proved by affidavit of the person making the payment filed with the Tribal Court, shall constitute a part of the sum necessary to be paid for the redemption from such sale.

(e.) If the mortgagor shall object to payments of any insurance premium, taxes, assessments or mortgage payments made under subsection (d.) above, on the ground of incorrectness or invalidity, may file with the Tribal Court an indemnity bond, in an amount sufficient to cover the contested payments, with sureties approved by the Court. The mortgagor may then redeem the property without paying the contested amounts, and the purchaser or his successors may seek determination of the validity or correctness of the contested amount by suit in Tribal Court, with the judgment paid out of the bond, if any.