

WINNEBAGO TRIBAL CODE
TITLE 17 ARTICLE 1

TITLE 17
INTERESTS IN REAL PROPERTY

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17-201 Applicability of Article and purpose. The provisions set forth herein shall apply to all real property interests, including, but not limited to, leasehold and leasehold mortgage interests in trust or allotted land, mortgages, deeds of trust, land sales contracts, and any document purporting to pledge real property and/or improvements as security for a debt relating to real property situated within the boundaries of the Winnebago reservation, except property title to which is held in fee simple. The purpose of this Article is to establish a regulatory structure for transferring and recording interest in real property and to assist the Tribe and its members in obtaining financing for the construction and/or purchase of family residences on trust land within the jurisdiction of the Tribe by prescribing procedures for the recording, priority and foreclosure of leasehold mortgages given to secure loans made by or guaranteed by the Department of Veterans Affairs under the Native American Veteran Direct Loan Program authorized under Title 38 U.S. Code Section 3761, *et seq.*, Section 184 of the Housing Loan Guarantee Program established pursuant to the Housing and Community Development Act of 1992 (P.L. 102-55), or other similar tribal, state or federal program. For purposes of this Article, a trailer house, mobile home or manufactured home is considered an improvement to real property unless such home remains on wheels. [TCR 08-28]

17-202 Tribal Court jurisdiction. Except as otherwise provided by federal law and as provided herein, the Tribal Court shall have exclusive jurisdiction over all actions pertaining to interests in Indian lands within the boundaries of the reservation that are taken pursuant to this Article. [TCR 08-28]

17-203 Definitions.

1. "Borrower" shall mean the borrower under the terms of the financing documents.
2. "Financing documents" means all documents evidencing and securing a construction loan or a mortgage loan relating to housing on Indian lands.
3. "Indian lands" shall mean all land located within the boundaries of the Winnebago reservation, except land title to which is held in fee simple.
4. "Lease" shall mean the lease of trust property for which a leasehold mortgage, as defined in this document, has or will be given.
5. "Leasehold mortgage" shall mean the mortgage of a lease of trust property given to secure a loan made under or guaranteed by the Section 184 housing loan guarantee program established pursuant to the Housing and Community Development Act of 1992 (P.L. 102-550), the Department of Veterans Affairs Native American Veteran Direct Loan Program authorized under Title 38 U.S.C §3761 *et seq.*, or similar program.
6. "Leasehold mortgage foreclosure proceeding" shall mean a proceeding in the Tribal Court:
 - a. To foreclose the interest of a mortgagor, and each person or entity claiming through a mortgagor, in a lease for which a mortgage has been given under loan; and
 - b. To assign such lease to a lender or a lender's assignee.

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7. "Lender" shall mean any private or governmental lender who loans money to a borrower for construction, acquisition or rehabilitation of a home.
8. "Lessor" shall mean the beneficial or equitable owner of a trust or otherwise restricted property under a lease for which a mortgage has been given, or the heir, successor, executor, administrator or assignee of such lessor.
9. "Mortgagor" shall mean the Tribe or any person who has executed a leasehold mortgage, heir, successor, executor, administrator or assign of the Tribe or such person.
10. "Mortgagee" shall mean the mortgagee under any leasehold mortgage as defined in this Article or the successor in interest of any such mortgagee, including the lender or the lender's assignee under any such mortgage.
11. "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.
12. "Secretary" shall mean the secretary of the United States Department of the Interior, an officer of the United States.
13. "Subordinate lienholder" shall mean the holder of any lien, including a subsequent mortgage, perfected subsequent to the recording of an interest in real property under this Article.
14. "Tenant" shall mean any person who occupies real property under a lease, rental agreement or other agreement with a lessor.
15. "Tribal Court" shall mean the Winnebago Tribal Court as established by the laws of the Tribe or any successor tribunal as may hereafter be authorized by the laws of the Tribe to exercise the powers and functions of a court of law.
16. "Tribal law enforcement officer" shall mean any tribally-appointed or Bureau of Indian Affairs officer with law enforcement jurisdiction on the reservation.
17. "Tribal recording clerk" shall mean the clerk of the Tribal Court or such other person who may be designated by the Tribe to perform the recording functions required by this Article or any deputy or designee of such person.
18. "Tribe" means the Winnebago Tribe of Nebraska.
19. "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.
20. "Waste" is spoil or destruction by a tenant of land, buildings, gardens, trees or other improvements which result in substantial injury to lessor's interest in the property.
21. "Writ of restitution" is an order of the Tribal Court:
 - a. Restoring an owner or lessor to possession of real property; and
 - b. Evicting a tenant or other occupant therefrom. [TCR 08-28]

17-204 Recording.

1. The Tribal recording clerk shall maintain on the premises of the Tribal Court a system for the recording of documents transferring interests in real property, including but not limited to leasehold mortgages.
2. The Tribal recording clerk shall endorse upon any real estate document received for recording:
 - a. The date and time of receipt of the document;
 - b. The filing number, to be assigned by the Tribal recording clerk, which shall be a unique number for each document received; provided, however, that all related documents shall be assigned a single number; and
 - c. The name of the Tribal recording clerk receiving the document.
3. Upon completion of the above endorsements, the Tribal recording clerk shall make a true and correct copy of each document and shall certify the copy as follows:

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PART B
EVICTION PROCEDURES

17-208 Unlawful detainer.

17-208 Unlawful detainer. Upon foreclosure of real property, the owner of real property, lessor or lender may commence an action for forcible entry and detainer pursuant to Winnebago Tribal Code Title II, Article 13, Forcible Entry and Detainer. [TCR 08-28]

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17-216 Filing of petitions.

1. All petitions for the foreclosure or satisfaction of leasehold mortgages, mortgages or other liens on real property or improvement thereto shall be filed in the Tribal Court.
2. Upon the default of a mortgagor under a leasehold mortgage or other debt instrument, a lender or mortgagee may commence the appropriate foreclosure proceeding in the Tribal Court by filing:
 - a. A verified complaint:
 - i. Naming the debtor under the debt instrument or mortgagor(s) and each person or entity claiming through the mortgagor(s) subsequent to the recording of a leasehold mortgage or other debt instrument, including each subordinate lienholder or other junior lienholder (except the Tribe with respect to a claim for a Tribal leasehold tax), as a defendant;
 - ii. Describing the property, including a description of the trust or restricted status of such property;
 - iii. Stating the facts concerning the execution of the lease and the leasehold mortgage or other debt instrument, the facts concerning the recording of the leasehold mortgage or other debt instrument, the facts concerning the alleged default(s) of the mortgagor(s) or other debtor, and such other facts as may be necessary to constitute a cause of action;
 - iv. Having appended as exhibits true and correct copies of each promissory note, lease, leasehold mortgage or other debt instrument or assignment thereof relating to the property or other debt instrument; and
 - v. Including an allegation that all relevant requirements and conditions prescribed in (a) any applicable federal law including the regulations promulgated thereunder and (b) the provisions of the lease, have been complied with by the lender.

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- b. A summons, issued as in other cases, requiring the mortgagor and/or each other defendant to appear for a trial upon the complaint on a date and time specified in the summons. [TCR 08-28]

17-217 Cure of default by subordinate lienholder or other lienholder. Prior to the entry of a judgment of foreclosure, any mortgagor, subordinate lienholder, or other lienholder may cure the default under the leasehold mortgage, the financing documents or other related documents. Any subordinate lienholder or other lienholder who has cured a default shall thereafter have included in its lien the amount of all payments made by such subordinate lienholder or other lienholder to cure the default(s), plus interest on such amounts at the rate stated in the note for the leasehold mortgage or other debt instrument, together with reasonable costs and attorneys' fees. [TCR 08-28]

17-218 Judgment in favor of the lender for default of leasehold mortgage. If the alleged default under the leasehold mortgage have not been cured, and if the Tribal Court should find for the lender, 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 lender or the lender's assignee. [TCR 08-28]

17-219 Sale of premises ordered by Tribal Court. Whenever a petition shall be filed for the foreclosure or satisfaction of a mortgage or other debt instrument, other than a leasehold mortgage, evidencing an interest in real property or improvements, the Tribal Court shall have power to decree a sale of the pledged or mortgaged premises, or such part thereof as may be sufficient to discharge the amount due on the mortgage or other debt instrument, and the cost of suit; provided, however, that no decree of sale shall issue for ninety days following the date on which the debtor received notice of such action. [TCR 08-28]

17-220 Limitation on power of Tribal Court. When a petition shall be filed for the satisfaction of a mortgage or other debt instrument, other than a leasehold mortgage, evidencing an interest in real property or improvements thereto, the Tribal Court shall have the power only to decree and compel the delivery of the possession of the premises or the improvements to the purchaser thereof. Any action to recover a deficiency shall be brought as a separate action at law. [TCR 08-28]

17-221 Suspension of activity on debt. After a petition is filed pursuant to Section 17-216 above, and while the same is pending, and after a decree is rendered thereon, no proceedings whatever shall be had at law for the recovery of the debt secured by the leasehold mortgage, mortgage or other debt instrument or any part thereof, unless authorized by the Tribal Court. [TCR 08-28]

17-222 Inclusion of co-debtor in action. If the subject debt is secured by the obligation or other evidence of debt of any other person besides the mortgagor or debtor, the complainant may make such person a party to the action. [TCR 08-28]

17-223 Complainants; disclosure obligations. Upon filing a petition for the foreclosure or satisfaction of a leasehold mortgage, mortgage or other interest in real property or improvements thereon, the complainant shall state therein whether any proceedings have been had or are pending in any other court for the recovery of the debt secured thereby, or any part thereof, and whether such debt, or any part thereof, has been collected and paid. [TCR 08-28]

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17-224 Effect of prior judgment. If it shall appear that any judgment has been obtained in a suit at law in a court of competent jurisdiction for the money demanded by such petition, or any part thereof, the Tribal Court may recognize and enter such judgment, provided the same is consistent with applicable Tribal and federal law. In any case where a prior judgment has been obtained, the Tribal Court shall not hear an action unless pursuant to an execution against the property of the defendant in such judgment the Tribal law enforcement officer or other proper officer shall have returned notice that the execution is unsatisfied in whole or in part, and that the defendant has no property whereof to satisfy such execution except the mortgage premises or improvements. [TCR 08-28]

17-225 Sale of premises by Tribal law enforcement officer or Tribal Court officer. All sales of mortgaged premises or other interests in real property, other than a leasehold mortgage; under a decree shall be made by a Tribal law enforcement officer or some other person authorized by the Tribal Court to perform such sale, and, in all cases where a Tribal law enforcement officer shall make such sale, he/she shall act in his/her official capacity as an officer of the Tribal Court. [TCR 08-28]

17-226 Publication and posting of notice of sale. The Tribal Court, in any sale of property valued at more than five hundred dollars (\$500.00), shall order publication of the sale. Notice shall be published one day per week for three consecutive weeks in a newspaper published in Thurston County, Nebraska authorized to publish legal notices. In addition, notice of such sale shall be posted in the Tribal administration building continuously for three weeks prior to the date of sale. [TCR 08-28]

17-227 Content of notice. Each notice shall specify the name of the mortgagor and of the mortgagee and of the assignee of the mortgage, if any, and the original principal amount secured by said mortgage; the date of the mortgage and when and where recorded; a statement regarding the trust or restricted status, if any, of the real property, and when and where any leasehold or other interest is recorded; the amount claimed to be due thereon, and taxes, if any, paid by the mortgagee at the date of the notice; a description of the mortgaged premises, conforming substantially to that contained in the mortgage; the time and place of sale; and the time allowed by law for redemption by the mortgagor, his/her personal representative or assigns. [TCR 08-28]

17-228 Transfer of property to purchaser. Following a sale by a Tribal law enforcement officer or other Tribal court-appointed official, deed shall thereupon be executed by such individual, which shall vest in the purchaser the same estate that would have vested in the mortgagee or other lienholder if the equity of redemption had been foreclosed, and no other or greater, and such deeds shall be as valid as if executed by the mortgagor and mortgagee and shall be an entire bar against each of them and all parties to the suit in which the decree for such sale was made, and against their heirs respectively, and all persons claiming under such heirs. [TCR 08-28]

17-229 Application of proceeds to discharge of debt and ownership surplus. The proceeds of every sale made under a decree in equity shall be applied to the discharge of the debt adjudged by the Tribal Court to be due, and of the costs awarded, and, if there be any surplus, it shall be brought into Tribal Court for the use of the defendant or of the persons entitled thereto, subject to the order of the Tribal Court. [TCR 08-28]

17-230 Disposition of unclaimed surplus. If such surplus or any part thereof, shall remain in the Tribal Court for the term of three months without being applied for, the Tribal Court may direct the same to be put out at interest under the direction of the Tribal Court for the benefit of the defendant, his/her representative or assigns, to be paid to them by order of the Tribal Court. [TCR 08-28]

17-231 Cure Period. A petition for foreclosure of any mortgage having remaining interest and principal payments due thereon shall be dismissed by the Tribal Court if the defendant deposits with the

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Court, at any time before the decree of sale is entered, the amount of principal payments due to date and interest due, with costs. [TCR 08-28]

17-232 Stay of proceedings upon payment by defendant of sums due. After a decree of sale is entered against a defendant, the Tribal Court shall stay proceedings under the petition if a defendant deposits with the Court the full amount of principal due to date and interest due, with costs: provided, however, the Tribal Court shall enter a decree of foreclosure and sale to be enforced by further order of the Court in the event the defendant subsequently defaults in the payment of any portion or installment of the principal, or any interest due. [TCR 08-28]

17-233 Sale of premises in parcels. If the defendant shall fail to bring into Tribal Court the amount due, with costs, or if for any other cause a decree shall pass for the complainant, the Tribal Court may direct a reference to a Tribal law enforcement officer 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 parties, the decree shall 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, and such decree shall remain a security for subsequent default. [TCR 08-28]

17-234 Order of sale upon default in payment of installments. If, in the event of a stay under Section 17-232 above, there shall be any default subsequent to such decree in the payment of any portion or installment of the principal, or any interest due upon such mortgage, the Tribal Court may, upon the petition of the complainant, by a further order, founded upon such first decree, as will be sufficient to satisfy the amount so due, with the costs of such petition and subsequent proceedings thereon, and the same proceedings may be had as often as a default shall happen. [TCR 08-28]

17-235 Sale of entire property. If in any of the foregoing cases it shall appear to the Tribal Court that the mortgaged premises or other interest in real property are so situated that a sale of the whole will be most beneficial to the parties, the decree shall, in the first instance, be entered for the sale of the whole premises or total interests accordingly. [TCR 08-28]

17-236 Disposition of proceeds of sale of entire property. In such case the proceeds of such sale shall be applied as well to the interest, portion, or installment of the principal due as toward the whole or residue of the sum secured by such mortgage or other debt instrument, and not due and payable at the time of such sale; and if such residue does not bear interest, then the Tribal 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 Tribal 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 complainant, to be paid to him/her as the installments or portions of the principal or interest may become due, and the surplus for the benefit of the defendant, his/her representative, or assigns, to be paid to them on the order of the Tribal Court. [TCR 08-28]

17-237 Actions to be taken upon satisfaction or payment.

1. In all cases of foreclosure of mortgages or other interest in real property, it shall be the duty of the clerk of the Tribal Court, on the satisfaction or payment of the amount of the decree, to forward to the register of deeds of Thurston County, Nebraska, if appropriate, the Aberdeen Area Land Titles and Records offices or the secretary, as appropriate, a certificate setting forth the names of parties, plaintiff and defendant, descriptions of the premises mentioned in the decree, for which certificate such clerk shall collect a fee of three dollars (\$3.00), which amount shall be taxed as part of the costs in the case, and said sum shall be paid to the clerk of the Tribal Court.

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2. It shall be the duty of the clerk of the Tribal Court to forward to the Tribal credit department a copy of the certificate specified in subsection (1) of this section. [TCR 08-28]

17-238 Fee lands not affected. Foreclosure actions relating to fee lands located within the boundaries of the Winnebago reservation shall be governed by the laws of the State of Nebraska; provided, however, the chairman of the Winnebago Tribe shall receive notice of all such actions by first-class mail. [TCR 08-28]

17-239 Fee land foreclosures. In the event any Winnebago Tribal member of any Tribal entity possesses an interest in fee land located within the boundaries of the Winnebago reservation that is the subject of a foreclosure action in state court, such individual may apply to the Tribal Court for an order directing a Tribal law enforcement officer or other Tribal court-appointed officer to take such actions as necessary to assist the state officers and/or to facilitate the foreclosure action. [TCR 08-28]