



Legislation Text

File #: CNCA-33, Version: 1

TITLE 33 - HOUSING
Code of Federal Regulations

Housing improvement program, see 25 C.F.R. § 256.1 et seq.

United States Code

Housing assistance and self-determination, see 25 U.S.C. § 4101 et seq.

CHAPTER 1

CHEROKEE NATION MORTGAGE FORECLOSURE ACT

§ 1. Short title

This act shall be known and may be cited as the Cherokee Nation Mortgage Foreclosure Act.

History

Source. LA 21-96, eff. December 16, 1996.

Library References

Mortgages <KEY>320, 329.

Westlaw Topic No. 266.

C.J.S. Mortgages §§ 639 to 640, 645, 723, 732, 739, 786.

§ 2. Purpose

This act shall be interpreted and construed to fulfill the following purposes:

1. To preserve the peace, harmony, safety, health and general welfare of the people of the Nation and those permitted to enter or reside in Cherokee Nation;
2. To simplify the law governing the rights, obligations, and remedies of the owners, sellers, buyers, lessors, and lessees of buildings;
3. To avail Cherokee Nation, Cherokee Business Entities, and Cherokee citizens of financing for the construction and/or purchase of family residences on trust land within the jurisdiction of Cherokee Nation by

prescribing procedures for the recording, priority and foreclosure of mortgages given to secure loans made by or through any government agency or lending institution;

4. To establish laws and procedures which are necessary in order to obtain governmental funding for Cherokee Nation housing programs or loan guarantees for private or Nation housing construction, purchase, or renovation.

History

Source. LA 21-96, eff. December 16, 1996.

Library References

Mortgages <KEY>321, 330.

Westlaw Topic No. 266.

C.J.S. Mortgages §§ 641 to 642, 732, 741.

§ 3. Definitions

For the purpose of this chapter, unless the context otherwise requires, the terms defined in this section shall have the meaning ascribed to them as follows:

1. **"Borrower/mortgagor"** shall mean the Nation, the Indian Housing Authority, or any individual Indian(s) or any heir(s), successor(s), executor(s), administrator(s), or assign(s) of the Nation or such Indian(s) or non-Indian(s) who has executed a mortgage as defined in this act or a leasehold mortgage as defined in this act.

2. **"Default"** shall mean the failure by a borrower to make any payment or to perform any other obligation under the terms of a loan, when such failure continues for a period of more than thirty (30) days.

3. **"Department"** or **"HUD"** shall mean the U.S. Department of Housing.

4. **"Guarantee fund"** shall mean the Indian Housing Loan Guarantee Fund established under 12 U.S.C. § 1715z-13a(i).

5. **"Housing Authority"** shall mean the Cherokee Nation Housing Authority, established pursuant to Oklahoma law for the purpose of constructing and maintaining dwellings for public use within the territorial jurisdiction of Cherokee Nation.

6. **"Indian"** or **"Native American"** shall mean any person recognized as being Indian or Alaska Native by an Indian tribe, the federal government, or any state.

7. **"Indian area"** shall mean the area within which an Indian housing authority is authorized to provide housing.

8. **"Indian country"** shall mean property within the territorial jurisdiction of the Nation, all lands owned by or held in trust for the Nation as well as any such ownership or use by an entity of the Nation; and including any

and all areas which constitute the Indian country of the Nation under applicable provisions of its laws or the laws of the United States.

9. **"Lease assignments"** shall mean a transfer or conveyance of a valid existing lease to a third party, who becomes the new lessee. Generally, an assignment must cover the entire leasehold interest, although some leases do provide for the creation of several leases in place of the original lease (so-called spin-off leases) each of which may then be assigned.

10. **"Lease or lease contract"** shall mean the complete agreement between the parties as it exists at any given time. It is the original lease as it has been modified to date.

11. **"Leasehold encumbrance"** shall mean a mortgage, deed of trust, or other lien on the leasehold interest given to secure the repayment of a loan obtained by the lessee.

12. **"Leasehold interest"** shall mean the interest conveyed by the lessor to the lessee under the lease; in other words, the lessee's interest in the land. It consists of the right to the quiet enjoyment of the leased premises for the term of the lease, subject to the requirements of the contract.

13. **"Leasehold mortgage"** shall mean the mortgage of a lease of property given to secure a loan, and may be created under the auspices of any federal agency home buyer program, the Mutual Help Home Ownership administered by the Indian Housing Authority, or any other agreement entered between a borrower/mortgagor and a lender/mortgagee.

14. **"Lender/mortgagee"** shall mean any private lending institution established to primarily loan funds and not to invest in or purchase properties, the Nation, an Indian Housing Authority, or a U.S. government agency which loans money, guarantees or insures loans to a borrower for construction, acquisition, or rehabilitation of a home. It is also any lender-designated assignee(s) or successor(s) of such lender/mortgagee.

15. **"Lessee"** shall mean a tenant of a dwelling unit, user and/or occupier of real property, or the home buyer under any federal mortgage program including the Mutual Help program. The lessee may, for purposes of federal agency home mortgage programs, be the Indian Housing Authority.

16. **"Lessor"** shall mean the legal, beneficial, or equitable owner of property under a lease. Lessor may also include the heir(s), successor(s), executor(s), administrator(s), or assign(s) of the lessor.

17. **"Mortgage"** shall mean a first lien as is commonly given to secure advances on, or the unpaid purchase of, real estate under the laws of the jurisdiction where the property is located, and may refer both to a security instrument creating a lien, whether called a mortgage, deed of trust, or security deed, as well as the credit instrument, or note secured thereby.

18. **"Mortgage foreclosure proceeding"** means a proceeding:

a. To foreclose the interest of the borrower(s)/mortgagor(s), and each person or entity claiming through the borrower(s)/mortgagor(s), in real property, a building, or in the case of a leasehold mortgage, a lease for which a mortgage has been given under the home purchase program of any federal agency; and

b. To assign where appropriate the borrower(s)/mortgagor(s) interest to a designated assignee.

19. "**Mortgagor**" shall mean all persons who to the knowledge of the mortgagee owe payment or other performance of the obligation secured by the mortgage, and for the purpose of receipt of notice, includes a surety, guarantor or co-signor.

20. "**Nation**" shall mean Cherokee Nation.

21. "**Owner**" shall mean any person or entity jointly or individually having legal title to all or part of land or a dwelling, including the legal right to own, manage, use, or control a dwelling unit under a mortgage, long-term lease, or any other security arrangement.

22. "**Principal residence**" shall mean the dwelling where the mortgagor maintains (or will maintain) his or her permanent place of abode, and typically spends (or will spend) the majority of the calendar year. A person may have only one (1) principal residence at any one time. This term also includes mobile homes which have been affixed to the land.

23. "**Recording Clerk**" shall mean the Director of the Cherokee Nation Real Estate Service or such other person designated by the Nation to perform the recording functions required by this document or any deputy or designee of such person.

24. "**Secretary**" shall mean the Secretary of Housing and Urban Development.

25. "**Shall**" for the purposes of this act, shall be defined as mandatory or must.

26. "**Standard housing**" shall mean a dwelling unit or housing that complies with the requirements established by federal law.

27. "**Subordinate lienholder**" shall mean the holder of any lien, including a subsequent mortgage, perfected subsequent to the recording of a mortgage under this code, except the Nation shall not be considered a subordinate lienholder with respect to any claim regarding a tribal tax on real property.

28. "**Title status report**" shall mean a report issued after a title examination that shows the proper legal description of a tract of Indian land; current ownership, including any applicable conditions, exceptions, restrictions, or encumbrances of record; and whether the land is in unrestricted, trust, or other status as indicated by the records in a land titles and records office.

29. "**Trust land**" shall mean land or any interest therein held in trust by the U.S. Government for an individual Indian or tribe.

History

Source. LA 21-96, eff. December 16, 1996.

United States Code

Loan guarantees for Indian housing, see 12 U.S.C. § 1715z-13a(i).

§ 4. Priority of liens

The Recording Clerk shall maintain the copy in the records of the recording system, and shall return the original of the mortgage or other document to the person or entity that presented the same for recording.

C. The Recording Clerk shall also maintain a log of each mortgage or other document recorded, in which there shall be entered:

1. The name(s) of the borrower/mortgagor of each mortgage, identified as such;
2. The name(s) of the lender/mortgagee 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 filed or recorded;
4. The date and time of the receipt;
5. The filing number assigned by the Recording Clerk; and
6. The name of the Recording Clerk or designee receiving the mortgage or document.

D. The certified copies of the mortgages and other documents and the log maintained by the Recording Clerk shall be made available for public inspection and copying. Rules for copying shall be established and disseminated by the Nation's Recording Clerk.

History

Source. LA 21-96, eff. December 16, 1996.

Library References

Mortgages <KEY>88.5.

Westlaw Topic No. 266.

§ 6. Foreclosure procedures

A. A borrower/mortgagor shall be considered to be in default when he is thirty (30) days past due on his mortgage payment(s) to the lender/mortgagee.

B. Before a borrower/mortgagor becomes ninety (90) days delinquent on his mortgage payments and before any foreclosure action or activity is initiated, the lender/mortgagee shall complete the following:

1. Make a reasonable effort to arrange a face-to-face interview with the borrower/mortgagor. This shall include at least one (1) trip to meet with the borrower/mortgagor at the mortgaged property;
2. Lender/mortgagee shall document that it has made at least one (1) phone call to the borrower/mortgagor (or the nearest phone as designated by the borrower/mortgagor, able to receive and relay messages to the borrower/mortgagor) for the purpose of trying to arrange a face-to-face interview.

C. Lender/mortgagee may appoint an agent to perform the services or arrange and conduct the face-to-face interview specified in this action.

D. Before the borrower/mortgagor has been delinquent for ninety (90) days and at least ten (10) days before initiating a foreclosure action in Cherokee Nation Court, the lender/mortgagee shall provide the following advice to the borrower/mortgagor in writing by mail or by posting prominently on the unit, with a copy provided to the Nation:

1. advise the borrower/mortgagor that information regarding the loan and default will be given to credit bureaus;
2. advise the borrower/mortgagor of home ownership counseling opportunities/programs available through the lender or otherwise.
3. advise the borrower/mortgagor of other available assistance regarding the mortgage/default.
4. 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/mortgager 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/mortgager with names and address of government officials to whom further communications may be addressed, if any.

E. If a borrower/mortgagor has been in default for ninety (90) days or more and the lender/mortgagee has complied with the procedures set forth in the first part of this section, the lender/mortgagee may commence a foreclosure proceeding in the Cherokee Nation District Court by filing a complaint as set forth in § 1-5-4 of this Code.¹

¹ So in original.

History

Source. LA 21-96, eff. December 16, 1996.

Library References

Indians <KEY>510.

Mortgages <KEY>322, 335.

Westlaw Topic Nos. 209, 266.

C.J.S. Indians §§ 151 to 179.

C.J.S. Mortgages §§ 667 to 669, 671 to 680, 684 to 685, 743, 767, 769.

§ 7. Foreclosure complaint and summons

A. 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 tribal leasehold), as a defendant;

2. A description of the property subject to the mortgage;

3. A concise statement of the fact concerning the execution of the mortgage or in the case of a leasehold mortgage the lease, the facts concerning the recording of the mortgage or the leasehold mortgage, the facts concerning the alleged default(s) 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 if a leasehold mortgage then a copy of the lease, the mortgage, or assignment thereof relating to the property (appended as exhibits); and

5. Any applicable allegations concerning relevant requirements and conditions prescribed in:

a. federal statutes and regulations,

b. Cherokee Nation laws and regulations, and/or

c. provisions of the lease or leasehold mortgage, or security instrument.

B. The complaint shall be filed by the Cherokee Nation District Court Clerk, who shall issue a summons specifying a date and time of appearance for the defendant(s).

History

Source. LA 21-96, eff. December 16, 1996.

Library References

Indians <KEY>511, 514.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 8. Service of process and procedures

Service of process shall be performed according to the procedures set forth as follows:

1. Service by personal delivery.

a. At the election of the plaintiff, process shall be served by a Marshal, a person licensed to make service of process in civil cases, or a person specially appointed for that purpose. The Court shall freely make special appointments to serve all process, other than a subpoena under this subdivision.

b. A summons to be served by the Marshal shall be delivered to the Marshal by the Court Clerk or attorney of record by the plaintiff.

c. Service shall be made as follows:

i. upon an individual, other than an infant who is less than fifteen (15) years of age or an incompetent person, by delivering a copy of the summons and of the complaint to him/her personally or by leaving copies thereof at his dwelling house or usual place of abode with some person then residing therein who is fifteen (15) years of age or older or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process;

ii. upon an infant who is less than fifteen (15) years of age, by serving the summons and complaint upon him/her personally and upon either of his parents or his guardian, or if they cannot be found, then upon the person having the care or control of the infant or with whom he lives; and upon an incompetent person by serving the summons and complaint upon him personally and upon his guardian;

iii. upon the Housing Authority by delivering a copy of the summons and of the complaint to an officer or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by law to receive service of process by also mailing a copy to the defendant.

2. Service by mail.

a. At the election of the plaintiff, a summons and complaint may be served by mail by the plaintiff's attorney, any person authorized to serve process pursuant to this statute as previously stated herein. Service by mail shall be effective on the date of receipt or if refused, on the date of refusal of the summons and complaint by the defendant.

b. Service by mail shall be accomplished by mailing a copy of the summons and petition by certified mail, return receipt requested and delivery restricted to the addressee. When there is more than one defendant, the summons and a copy of the petition or order shall be mailed in a separate envelope to each defendant. If the summons is to be served by mail by the Court Clerk, the Court Clerk shall enclose the summons and a copy of the petition or order of the Court to be served in an envelope, prepared by the plaintiff, addressed to the defendant, or to the resident service agent if one has been appointed. The Court Clerk shall prepay the postage and mail the envelope to the defendant, or service agent, by certified mail, return receipt requested and delivery restricted to the addressee. Such return receipt shall be prepared by the plaintiff.

c. Service by mail shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing acceptance by the defendant or a returned envelope showing refusal of the process by the defendant. Acceptance or refusal of service by mail by a person who is fifteen (15) years of age or older who resides at the defendant's dwelling house or usual place of abode shall constitute acceptance or refusal by the party addressed. In the case of an entity described in division (3) of subparagraph (c) of

paragraph (1)¹ of this subsection, acceptance or refusal by any officer or by any employee of the registered office or principal place of business who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed. A return receipt signed at such registered office or principal place of business shall be presumed to have been signed by an employee authorized to receive certified mail. In the case of a state municipal corporation, or other governmental organization thereof subject to suit, acceptance or refusal by an employee of the office of the officials specified in division (5) of subparagraph (c) of paragraph (1)¹ of this subsection who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed. If delivery of the process is refused, upon the receipt of notice of such refusal and at least ten (10) days before applying for entry of default, the person elected by plaintiff pursuant to subparagraph a of this paragraph to serve the process shall mail to the defendant by first-class mail a copy of the summons and petition and a notice prepared by the plaintiff that despite such refusal the case will proceed and that judgment by default will be rendered against him unless he appears to defend the suit. Any such default or judgment by default shall be set aside upon motion of the defendant if the defendant demonstrates to the court that the return receipt was signed or delivery was refused by an unauthorized person. Such motion shall be filed within one (1) year after the defendant has notice of the default or judgment by default but in no event more than two (2) years after the judgment.

3. Service by publication.

a. Service of summons upon a named defendant may be made by publication when it is stated in the petition, verified by the plaintiff or his attorney, or in a separate affidavit by the plaintiff or his attorney filed with the Court, that with due diligence service cannot be made upon the defendant by any other method.

b. Service of summons upon the unknown successors of a named defendant, a named decedent, or a dissolved partnership, corporation, or other association may be made by publication when it is stated in a petition, verified by the plaintiff or his attorney, or in a separate affidavit by the plaintiff or his attorney filed with the Court, that the person who verified the petition or the affiant does not know and with due diligence cannot ascertain the following:

i. whether a person named as defendant is living or dead, and, if dead, the names or whereabouts of his successors, if any,

ii. the names or whereabouts of the unknown successors, if any, of a named decedent,

iii. whether a partnership, corporation, or other association named as a defendant continues to have legal existence or not, or the names or whereabouts of its officers or successors,

iv. whether any person designated in a record as a trustee continues to be the trustee, or the names or whereabouts of the successors of the trustee, or

v. the names or whereabouts of the owners or holders of special assessment or improvement bonds, or any other bonds, sewer warrants or tax bills.

c. Service pursuant to this subdivision shall be made by publication of a notice, signed by the Court Clerk, one (1) day a week for three (3) consecutive weeks in a newspaper authorized by law to publish legal notices which is published in the county where the petition is filed. If no newspaper authorized by law to publish legal notices is published in such county, the notice shall be published in some such newspaper of general circulation which is published in an adjoining county. All named parties and their unknown successors who may be served by

publication may be included in one (1) notice. The notice shall state the court in which the petition is filed and the names of the plaintiff and the parties served by publication, and shall designate the parties whose unknown successors are being served. The notice shall also state that the named defendants and their unknown successors have been sued and must answer the petition on or before a time to be stated (which shall not be less than forty-one (41) days from the date of the first publication), or judgment, the nature of which shall be stated, will be rendered accordingly. If jurisdiction of the Court is based on property, any real property subject to the jurisdiction of the Court and any property or debts to be attached or garnished must be described in the notice.

¹ So in original.

History

Source. LA 21-96, eff. December 16, 1996.

Library References

Indians <KEY>510.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 9. Cure of default by subordinate lienholder

Prior to the entry of a judgment of foreclosure, any borrower/mortgagor or a subordinate lienholder may cure the default(s) under the mortgage by making a full payment of the delinquency to the lender/mortgagee and all reasonable legal and court costs 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(s), plus interest on such amounts at the rate stated in the note for the mortgage. There shall be no right of redemption in any leasehold mortgage foreclosure proceeding.

History

Source. LA 21-96, eff. December 16, 1996.

Library References

Mortgages <KEY>322, 335, 336.

Westlaw Topic No. 266.

C.J.S. Mortgages §§ 667 to 669, 671 to 680, 684 to 685, 743, 766 to 767, 769.

§ 10. Judgment and remedy

This matter shall be heard and decided by the Cherokee Nation District 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 trial and the District Court finds for the lender/mortgagee, the

District Court shall enter judgment, which shall:

1. Foreclose the interest of the borrower/mortgagor and each other defendant, including subordinate lienholder, in the mortgage; and
2. Assign the mortgage to the lender/mortgagee or the lender's designated assignee; in the case of a leasehold mortgage, the lease will be assigned to the lender/mortgagee or the lender's designated assignee, subject to the following provisions:
 - a. The lender shall give the Nation the right of first refusal on any acceptable offer to purchase the lease or leasehold mortgage which is subsequently obtained by the lender or lender's designated assignee;
 - b. The lender or lender's designated assignee may only transfer, sell or assign the lease and/or leasehold mortgage to a Cherokee citizen, the Nation, or the Housing Authority of Cherokee Nation.
3. Any other transfer, sale or assignment of the lease or leasehold mortgage and fee simple property secured by a mortgage that is duly recorded shall only be made to a Cherokee citizen, the Nation, or the Housing Authority of Cherokee Nation during the remaining period of the leasehold.

History

Source. LA 21-96, eff. December 16, 1996.

Library References

Indians <KEY>519, 533.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 11. Foreclosure evictions

Foreclosure evictions shall be handled according to the general eviction process set forth in Chapter 3 of this Code¹, with the added provision that foreclosure eviction proceedings shall not occur until after the borrower/mortgagor, lessee, occupier has received thirty (30) calendar days' notice, and remains in possession of the property contrary to the terms of the notice. All foreclosure evictions shall occur no later than sixty (60) days from the date of service of notice upon the borrower/mortgagor that foreclosure was completed.

¹ So in original.

History

Source. LA 21-96, eff. December 16, 1996.

Library References

Mortgages <KEY>324.

Westlaw Topic No. 266.

C.J.S. Mortgages §§ 726, 732 to 736.

§ 12. No merger of estates

There shall be no merger of estates by reason of the execution of a lease or a leasehold mortgage or the assignment or assumption of the same, including an assignment adjudged by the Cherokee Nation District Court, or by operation of law, except as such merger may arise upon satisfaction of the leasehold mortgage.

History

Source. LA 21-96, eff. December 16, 1996.

§ 13. Certified mailing to Nation and lessor

In any foreclosure proceedings on a lease or leasehold mortgage where the Nation or the lessor(s) is not named as a defendant, a copy of the summons and complaint shall be mailed to the Nation and to the lessor(s) by certified mail, return receipt requested, within five (5) days after the issuance of the summons. If the location of the lessor(s) cannot be ascertained after reasonable inquiry, a copy of the summons and complaint shall be mailed to the lessor(s) in care of the Self-Governance Specialist of the Bureau of Indian Affairs.

History

Source. LA 21-96, eff. December 16, 1996.

United States Code

Bureau of Indian Affairs, see 25 U.S.C. § 1 et seq.

§ 14. Intervention

The Nation or any lessor may petition the Cherokee Nation District Court to intervene in any lease or leasehold 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 Cherokee Nation District Court shall operate as a waiver of the sovereign immunity of the Nation, except as may be expressly authorized by the Nation.

History

Source. LA 21-96, eff. December 16, 1996.

Library References

Indians <KEY>509.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 15. Appeals

Appeals under this chapter shall be to the Cherokee Nation Supreme Court and shall be handled in accordance with the Rules of the Supreme Court.

History

Source. LA 21-96, eff. December 16, 1996.

Library References

Indians <KEY>540.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

CHAPTER 2

HOUSING AUTHORITY ADVISORY BOARD

§ 21. Advisory board of directors

A. There shall be an advisory board of directors to the Cherokee Nation Housing Authority. This advisory board shall consist of five (5) members of the Cherokee Nation Tribal Council. The Tribal Council shall appoint these members in accordance with their rules and procedures. The advisory board shall have full access to all information and meetings of the Board of Directors and have all privileges of the Board of Directors except voting privileges.

B. A regular agenda item will be included in the monthly Community Services Committee meeting so that the members of the Council who serve on the Cherokee Nation Housing Authority Advisory Board can provide the full Council Committee with a monthly report in addition to the Cherokee Nation Housing Authority Director.

History

Source. LA 36-02, eff. November 18, 2002.

Amended. LA 32-12, eff. September 19, 2012.

Library References

Indians <KEY>227.

Westlaw Topic No. 209.

C.J.S. Indians § 76.

