

WARM SPRINGS TRIBAL CODE

CHAPTER 206

REAL PROPERTY SECURED TRANSACTIONS

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CHAPTER 206

REAL PROPERTY SECURED TRANSACTIONS

206.001 Legislative History. This chapter is part of a larger effort by the Confederated Tribes of the Warm Springs Reservation of Oregon ("Tribe") to create a legal framework on the Warm Springs Reservation that is conducive to the development and conduct of private business on the Reservation. The chapter is intended to strike an appropriate balance between the rights of debtors and creditors. The chapter deals with security interests in real property on the Reservation, whether through mortgages, trust deeds, or land sale contracts.

206.010 Tribal Court Jurisdiction. The Warm Springs Tribal Court shall have jurisdiction over cases for breach of contract that include the foreclosure of mortgage security interests when:

- (1) The property subject to the security interest is either:
 - (a) Real property within the external boundaries of the Reservation; or
 - (b) Other lands held in trust by the United States for the benefit of the Tribe or a tribal member and which are not within the boundaries of an Indian reservation; and
- (2) Either a plaintiff or a defendant is an Indian or the Tribe, and
- (3) There is jurisdiction over the person pursuant to WSTC 200.025(1) or other Tribal jurisdictional enactments.

206.015 Security Interests Created off the Warm Springs Reservation. Security interests created off the Warm Springs Reservation may be enforced in the Warm Springs Tribal Court provided that they are valid in the jurisdiction where created, and if the Court has jurisdiction pursuant to WSTC 206.010.

206.020 One Action to Foreclose Mortgage Security Interest.

- (1) There can be but one action in Tribal Court to recover any debt or enforce or foreclose any right secured by a security interest, which action must be in accordance with this chapter.
- (2) Notwithstanding the above provision, if the debt for which the security interest is held is due in installments, the court may direct the sale of the encumbered property or of the defendant's equity therein or so much thereof as may be necessary to satisfy the amount of the debt that is due, including foreclosure costs and fees and debt that is due under an acceleration provision, and such security interest shall otherwise remain in full force and effect and the holder thereof shall

have the right to foreclose on the balance or any part thereof if subsequent installments are not satisfied in due course.

206.030 Definitions. For purposes of this chapter, the following terms shall have the following meanings:

- (1) "Bureau" or "BIA" means the Bureau of Indian Affairs of the Department of the Interior of the United States.
- (2) "Lease" means the lease of trust property for which a Leasehold Mortgage, as defined in this Chapter, has or will be given.
- (3) "Leasehold mortgage" means the mortgage of a lease of trust property given to secure a loan made for construction and/or purchase of a family residence or commercial business.
- (4) "Leasehold or allotment mortgage foreclosure proceeding" means a proceeding in the Tribal Court pursuant to WSTC 206.230:
 - (a) To foreclose the interest of the mortgagor(s) and each person or entity claiming through the mortgagor(s), in a lease for which a leasehold mortgage has been given; and
 - (b) To assign such lease to the mortgagee or the mortgagee's assignee.
- (5) "Lessor" means the Tribe as the beneficial or equitable owner of trust or otherwise restricted property under a lease for which a mortgage has been given, or the successor(s) of such Lessor.
- (6) "Mortgage" means an agreement which creates or provides for a mortgage security interest and created to secure the payment of a debt or performance on an obligation.
- (7) "Mortgage security interest" means a non-possessory interest in real property held by other than the owner of the real property.
- (8) "Mortgagee" means the mortgagee under any leasehold or allotment mortgage or the successor(s) in interest of any such mortgagee, including the Secretary of Veterans Affairs or the Secretary of Veterans Affairs' assignee under any such mortgage.
- (9) "Mortgagor" means a tribal member, partnership, corporation, limited liability company, association or other legal entity that has executed a leasehold or allotment mortgage or any heir(s), successor(s), executor(s), administrator(s) or assign(s) of such person or entity.

- (10) "Nuisance" means the maintenance on real property of a condition which constitutes a nuisance pursuant to WSTC 305.463
- (11) "Real property" means land and permanent improvements affixed to land that are subject to the jurisdiction of this chapter pursuant to the provisions of WSTC 206.010.
- (12) "Reservation" means the Warm Springs Indian Reservation established by the Treaty of June 25, 1855.
- (13) "Residential real property" means real property used or bought for use primarily for personal, family or household purposes.
- (14) "Secretary of Veterans Affairs" means the Secretary of the United States Department of Veterans Affairs ("VA") or designee.
- (15) "Subordinate lienholder" means the holder of any lien, including a subsequent mortgage, perfected subsequent to the recording of a leasehold or allotment mortgage under this document.
- (16) "Tenant" means any person who occupies real property under a lease, rental agreement or other agreement with a lessor.
- (17) "Tribal Court" means the Warm Springs Tribal Court as established by the laws of the Tribe.
- (18) "Tribal Member" means an enrolled member of Tribe.
- (19) "Tribe" means the Confederated Tribes of the Warm Springs Reservation of Oregon.
- (20) "Trust deed" means an agreement or deed which conveys an interest in real property to a trustee in trust to secure the payment of a debt or performance of an obligation owed by the grantor or other person named in the agreement or deed to a beneficiary.
- (21) "Trustee" means a person, other than the beneficiary, to whom an interest in real property is conveyed by a trust deed, or such person's successor in interest and may include a person who is an employee of the beneficiary, if the person is otherwise qualified under this chapter.
- (22) "Vital Statistics Department" means the Vital Statistics Department of Tribe.
- (23) "Waste" means spoil or destruction by a tenant of land, buildings, gardens, trees or other improvements which result in substantial injury to the lessor's interest in the property.

(24) "Writ of Restitution" means an order of the Tribal Court:

- (a) Restoring an owner or lessor or a mortgagee to possession of real property; and
- (b) Evicting a tenant or other occupant therefrom.

206.200 Purpose. The purpose of this Chapter is to avail the Tribe and its members of financing for the construction and/or purchase of family residences or commercial businesses on trust land within the jurisdiction of the Tribe by prescribing procedures for the recording, priority and foreclosure of leasehold and allotment mortgages given to secure loans, including loans made by the Department of Veterans Affairs under the Native American Veteran Direct Loan Program authorized under title 38 USC § 3761 et seq. and 25 USC § 483a.

206.205 Allottees. Individual owners of allotments on the Reservation may mortgage their allotment in accordance with the provisions of 25 USC § 483a and b.

206.210 Creation of Mortgage Security Interests in on-Reservation Real Property. Mortgage security interests may be created in:

- (1) Real property held in trust by the United States for the benefit of a Tribal Member through mortgages, trust deeds, or similar instruments, in accordance with this chapter and federal law, including but not limited to 25 USC § 483a.
- (2) Leasehold interests in real property held in trust by the United States for the benefit of the Tribe through a leasehold mortgage.

206.215 Priority of Liens. A leasehold or allotment mortgage recorded in accordance with the recording procedures set forth in this chapter shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim. Priority of liens on property created on the Reservation shall be the same as the priority of liens created in Oregon off the Reservation.

206.220 Recording of Leasehold or Allotment Mortgages. Leasehold or allotment mortgages shall be recorded with the BIA Realty Office and the clerk of the county in which the real property is located.

206.230 Leasehold or Allotment Mortgage Foreclosure Proceedings. Upon the default of the mortgagor(s) under a leasehold or allotment mortgage, the mortgagee may commence a leasehold or allotment mortgage foreclosure proceeding in the Tribal Court by filing:

- (1) A verified complaint:
 - (a) Naming the Mortgagor(s) and each person or entity claiming through the Mortgagor(s) subsequent to the recording of the leasehold or allotment mortgage, including each Subordinate Lienholder as a defendant;

- (b) Describing the property;
 - (c) Stating the facts concerning the execution of the Lease and the leasehold or allotment mortgage; the facts concerning the recording of the leasehold or allotment mortgage; the facts concerning the alleged default(s) of the Mortgagor(s); and such other facts as may be necessary to constitute a cause of action;
 - (d) Having appended as exhibits true and correct copies of each promissory note, Lease, leasehold or allotment mortgage or assignment thereof relating to the property; and
 - (e) Including an allegation that the provisions of the Lease have been complied with by the Mortgagee and, in those cases where the Secretary of Veterans Affairs is the Mortgagee, that all relevant requirements and conditions prescribed in (a) title 38 U.S. Code §§ 3761 et seq., and (b) the regulations promulgated thereunder by the Secretary of Veterans Affairs have been complied with by the Secretary of Veterans Affairs.
- (2) A summons, issued as in other cases, requiring the Mortgagor(s) and each other defendant to appear for a trial upon the complaint on a date and time specified in the summons.
- (3) The Tribal Court shall determine the issues presented and may by its judgment direct the sale of the judgment debtor's interest in the encumbered property or so much thereof as is necessary and direct the application of the proceeds to the costs of the court, the expenses of the sale, and the amount due the plaintiffs under the judgment of the court. If it appears from the return on the sale as filed in accordance with WSTC 206.320 herein that the proceeds are insufficient to satisfy the judgment and that an amount is still due and owing, the court can direct the entry of a deficiency judgment for such balance against the defendant except as provided in WSTC 206.360, and the defendant shall remain liable for the payment of the balance of the judgment.

206.240 Service of Process and Procedures. The laws of the Tribe governing service of process and all other matters relating to the conduct of Tribal Court proceedings shall apply to any leasehold or allotment mortgage Foreclosure Proceeding pursuant to this ordinance. A copy of the summons and complaint shall also be served upon the Secretary/Treasurer of the Tribal Council and the Director of the Tribal Housing Department.

206.250 Cure of Default by Subordinate Lienholder. Prior to the entry of a judgment of foreclosure, any Mortgagor, the Lessor or any Subordinate Lienholder may cure the default(s) under the leasehold or allotment mortgage. 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 leasehold or allotment mortgage.

206.260 Power of the Tribal Court. If the alleged default(s) have not been cured, and if the Tribal Court should find for the Mortgagee, the Tribal Court shall enter judgment:

- (2) 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
- (3) Assigning such Lease to the Mortgagee or the Mortgagee's assignee.

206.270 Person Subject to Eviction. A tenant or other such occupier of land shall be subject to eviction if such person shall continue in occupancy of real property under any of the following situations.

- (1) Without the requirement of any notice:
 - (a) After the expiration of the term of the lease or other agreement;
 - (b) If such person has entered onto or remains on the real property of another without the permission of the owner and without having any substantial claim of a lease or title of the property;
 - (c) After the Tribal Housing Authority or other Public Housing Authority has terminated such person's tenancy pursuant to procedures providing such person a hearing before the Housing Authority involved; or
 - (d) After the interest of such person in a lease has been foreclosed in a leasehold mortgage foreclosure proceeding in the Tribal Court.
- (2) After having received 30 days' notice, the tenant or occupier shall remain in possession of the property contrary to the terms of the notice as follows:
 - (a) When such person has received notice:
 - (i) That he or she is in default in the payment of rent; and
 - (ii) Requiring him or her, to either pay the rent or surrender possession of the occupied property; and such person has remained in possession after receipt of such notice without either surrendering possession of the property or paying the rent;
 - (b) When the lease of the property is for an indefinite time, with rent to be paid monthly or by some other period, and the lessor has given notice of termination of the tenancy at least 30 days prior to the end of such month or period;

- (c) When such person shall continue to fail to keep or perform any condition or covenant of the lease or agreement under which the property is held after he has been given notice to surrender the property; or
- (d) When such person continues to commit or to permit waste upon or maintain a nuisance upon the occupied property after having been given notice, to either cease such waste or maintenance of nuisance or to surrender the property.

206.280 Procedures for Service of Notice. Notices required or authorized in the immediately preceding section shall be given in writing by either:

- (1) Delivering a copy personally to the tenant or occupier or to any adult members of his or her family residing on the premises; or
- (2) Posting said notice in a conspicuous place near the entrance to said premises, and by sending an additional copy to the tenant or occupier by certified mail, return receipt requested, property addressed, postage prepaid.
- (3) Proof of service by either of the above methods may be made by affidavit of any adult person stating that he or she has complied fully with the requirements of either of the two methods of service.

206.290 Procedure for Eviction. The owner of real property or lessor or Mortgagee may commence an action for eviction in accordance with WSTC 400.405.

206.300 Notice of Sale of Real Property.

- (1) Before the sale of real property subject to a decree of foreclosure and order of sale there must be notice as follows:
 - (a) By posting written notice of the time and place of the sale giving a specific legal and general description of the property, for twenty (20) days prior to the sale in at least four (4) public places on the reservation, including one (1) copy posted at the tribal headquarters, one (1) copy posted at the Warm Springs post office, and one (1) copy posted on the property to be sold; and
 - (b) By publication in the Spilyay Tymoo newspaper at least thirty (30) days prior to the sale.
 - (c) By delivering a copy of the notice to the Bureau of Indian Affairs Realty Officer.
 - (d) By mailing a copy of the notice to the owner at the owner's last known address by certified mail.

- (e) By delivering copies of the notice to the Secretary-Treasurer of the Tribes, the Tribal Credit Enterprise and the Tribal Housing Department.

If there is a sale of real property conducted without substantial compliance with the notice requirements as set forth herein, the sale may be declared void and of no effect by the Tribal Court.

206.310 Conduct of Sale.

- (1) All sales of property under decree of foreclosure and order for sale shall be conducted by the Warm Springs Tribal Police at the Tribal Court between the hours of 9:00 A.M. and 5:00 P.M. on any regular business day, shall be by oral auction, and shall be sold to the highest bidder.
- (2) Once sufficient property has been sold to satisfy the judgment plus costs of the court and of the sale, no more property shall be sold.
- (3) The person conducting the sale may not be a purchaser or be interested in any purchase at such sale.
- (4) If real property being sold consists of several known lots or parcels, they must be sold separately. The judgment debtor may direct the order in which the property shall be sold if more than one parcel is involved. If a third person has an interest in part of the property to be sold, he may require that such property be sold separately.
- (5) All purchasers must pay in cash or by certified check except the judgment creditor who may bid any or all of the judgment creditor's judgment. Payment shall be made into Tribal Court. The Tribal Court shall distribute funds as appropriate and enter the appropriate satisfaction of judgment. If a purchaser refuses or is unable to pay the amount bid by him for property sold to him at sale, the officer conducting the sale may again sell the property to the highest bidder. If any loss be occasioned thereby, the officer may by court order recover the amount of such loss plus costs from the bidder so refusing. When a purchaser refuses to pay, the person conducting the sale may thereafter reject any subsequent bid of such person.

206.320 Return on Sale of Real Property.

- (1) The person conducting the sale of real property shall make a return thereon to the Tribal Court reciting all the details of the sale including but not limited to the name and address of the purchaser, the judgment debtor, the legal description of the real property and the amount bid.
- (2) A certified copy of such return, together with a certified copy of the court's order directing said sale, shall be filed by the Warm Springs Tribal Police in the Tribal

Court office, the Bureau of Indian Affairs Realty Office and the office of the county clerk in which the real property is located.

206.330 Title to Real Property.

- (1) On a sale of real property, the purchaser acquires all the right, title, interest, and claim of the judgment debtor thereto.
- (2) The real property so acquired is subject to redemption as provided in WSTC 206.090.
- (3) At the time payment for sale is made, the officer conducting the sale must give to the purchasers a certificate of sale containing:
 - (a) The name of the purchaser;
 - (b) The name of the judgment debtor;
 - (c) Particular legal description of the real property sold;
 - (d) Price bid for each particular lot or parcel;
 - (e) Total price paid;
 - (f) The date of sale;
 - (g) That the sale is subject to redemption; and
 - (h) The date of expiration of the redemption period.
- (4) The officer conducting the sale shall file certified copies of the certificate of sale with Bureau of Indian Affairs Realty Office, the office of the clerk and recorder in each county where the real property is located, one copy with the Tribal Court, and shall deliver a copy for the purchaser's personal records.

206.340 Tribal Right of First Refusal. Within 45 days of receipt of the return on sale by the Secretary-Treasurer the Tribe shall be entitled to purchase any real property sold pursuant to this chapter by tendering to the purchaser a check for the amount paid by the purchaser together with interest at the rate of 8% per annum on the amount paid by the purchaser from the date of the purchaser's payment until the tender by the Tribe. With regard to allotments the Tribe's purchase and acquisition of title shall not be deemed a purchase pursuant to the foreclosure proceeding as those terms are used in 25 USC § 483a and title to the allotment shall continue to be held by the United States in trust.

206.350 Redemption of Real Property Sold at Foreclosure.

- (1) All real property sold as provided herein is subject to redemption by the judgment debtor or his successor in interest in the whole or any part of the property.

- (2) The judgment debtor or redemptioner may redeem real property from the purchaser, or the Tribe if the Tribe has exercised its right of first refusal, within one hundred eighty (180) days after the sale by depositing into Tribal Court the amount of the purchaser's purchase price together with interest thereon at the rate of eight percent (8%) per annum from the date of the sale to the date of redemption together with the amounts of any assessments or additional costs which the purchaser, or the Tribe if the Tribe has exercised its right of first refusal, may have paid thereon after the date of purchase.
- (3) Written notice of redemption must be given to the tribal police and duplicates filed with the Bureau of Indian Affairs Realty Office and with the office of the county clerk and recorder in each county in which the real property is situated.
- (4) If the debtor redeems, the effect of the sale is terminated and he is restored to his estate.
- (5) Upon redemption by the debtor, the person to whom the payment is made must execute and deliver to the debtor sufficient copies of a certificate of redemption, acknowledged and proved before an officer authorized to take such acknowledgments of conveyance of real properties. Copies of such certificates shall be filed at the county clerk and recorder's office in which the real property is located, and at the Bureau of Indian Affairs Realty Office.
- (6) If no redemption is made within one hundred eighty (180) days after the date of sale, the purchaser or his assigns is entitled to a conveyance by means of a tribal police officer's deed at the expiration of such time. Such deed shall be recorded at the county clerk and recorder's office in which the real property is located, and at the Bureau of Indian Affairs Realty Office.
- (7) Redemption payment must be made in United States currency or by certified or cashier's check and made payable to the purchaser or for him to the officer who made the sale or his successor in office.
- (8) A Judgment debtor or successor in interest desiring to redeem property must present to the person from whom he seeks to redeem or to the officer a certified copy of the judgment and order of sale under which he claims a right to redeem and his own affidavit that he is the person entitled to redeem and showing the amount due to effect the redemption.
- (9) Until expiration of the time for redemption, the court may forbid any waste or change of character in the property.
- (10) The purchaser, from the time of sale until redemption, is entitled to receive from tenants in possession the rents of the property sold or the value of the use and occupation thereof. However, when any rents or profits have been received by the purchaser or his assigns from the property, the amount of such rents and profits shall be a credit on the redemption money to be paid. If a purchaser or his

assigns fails or refuses to give an accounting to the judgment debtor or his assigns, the redemptioner may, within sixty (60) days of such demand, bring an action in the tribal court to compel an accounting and disclosure of such rents and profits, and until fifteen (15) days after the final determination of such action, the right of redemption is extended to such redemptioner.

206.360 Surpluses and Deficiencies from Sales.

- (1) If there remains surplus money after the payment of the costs of court and of the sale and payment of the judgment creditor, such funds may be distributed by the court to the judgment debtor or other person entitled thereto.
- (2) No deficiency judgment may be entered by the court if the mortgage is on residential real property, unless the creditor is the Tribe.

206.400 Trust Deeds are to be Considered Real Property Mortgages.

- (1) A trust deed is deemed and is to be considered to be a mortgage on real property and is subject to all laws and code provisions relating to mortgages on real property, except to the extent that such laws and code provisions are inconsistent with the provisions of this chapter, in which case the provisions of this chapter shall control.
- (2) For purposes of applying the real property mortgage laws, the grantor of the trust deed shall be considered the mortgagor and the beneficiary of the trust deed shall be considered the mortgagee.

206.410 Authority for Security; Power of Sale. Transfers in trust of an interest in real property may be made to secure the performance of an obligation of a grantor, or any other person named in the deed, to a beneficiary. When any transfer in trust of an interest in real property is made to secure the performance of an obligation pursuant to this chapter, a power of sale is hereby conferred upon the trustee. This power of sale may be exercised by the trustee, or the successor trustee, after a breach of the obligation for which the transfer is security.

206.420 Remedies upon Default of Trust Deed.

- (1) In the event of a breach of the agreement, including but not limited to a breach as described in 206.410, the beneficiary may elect to foreclose the trust deed in the manner provided in WSTC 206.001-206.360 for foreclosure of mortgages on real property or may elect to foreclose the trust deed by advertisement and sale in the manner provided under subsection (2) below, subject to the additional requirements of 206.420 to 206.440. The beneficiary may elect to exercise its foreclosure remedy under this chapter only if all requirements provided in the subject trust deed for said election have been satisfied.

- (2) The procedural law to be followed for foreclosure by advertisement and sale of a trust deed on real property subject to this chapter shall be the law of the jurisdiction in which the trust deed was executed.
- (3) In the event the trust deed at issue was executed on the Reservation, the beneficiary shall be limited to foreclosure in the manner provided in WSTC 206.001 to 206.360.
- (4) If the jurisdiction in which the trust deed was executed does not provide for or allow foreclosure of trust deeds by advertisement and sale, the beneficiary shall be limited to foreclosure in the manner provided in WSTC 206.001 to 206.360.

206.430 Additional Recordings Required. Any recording required by the applicable law of the jurisdiction in which the trust deed was executed shall not be effective unless it is also recorded with the BIA Realty Office.

206.440 Sale of Property under Advertisement and Sale.

- (1) The date, time and place of the sale shall be set by the beneficiary, trustee or successor trustee so long as it satisfies the following:
 - (a) The sale shall be held at the entrance to the Warm Springs Tribal Court;
 - (b) The sale shall be held between the hours of 9:00 a.m. and 5:00 p.m. on any regular, non-holiday, business day.
- (2) The purchaser at the trustee's sale shall be entitled to possession of the property on the 10th day following the sale, and any persons remaining in possession after that day under any interest, except one prior to the trust deed or created voluntarily by the grantor or a successor of the grantor, shall be deemed to be tenants at sufferance. All persons not holding under an interest prior to the trust deed may be removed from possession by following the procedures set out in WSTC 206.270