

**ORDINANCE REGULATING THE ISSUANCE AND TERMINATION OF
LEASEHOLD MORTGAGES ON TRUST LAND OF
THE BAY MILLS INDIAN COMMUNITY**

Section 1. Purpose.

The purpose of this ordinance is to avail the Bay Mills Indian Community and its members of financing for the construction and/ or purchase of family residences, multi-family homes, and commercial facilities 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 the Department of Veterans Affairs under the Native American Veteran Direct Loan Program (38 U.S.C. sec. 3761, et seq.), other federal housing loan programs as are established by act of Congress, and under federal and state banking laws.

Section 2. Definitions.

a. **Lease** shall mean the lease of trust property for which a Leasehold Mortgage, as defined in this ordinance, has or will be given.

b. **Leasehold Mortgage** shall mean the mortgage of a lease of trust property given to secure a loan made under the VA Direct Loan Program and 38 U.S.C. sec. 3761, et seq., under any other federal housing loan program, or under the lending laws of the United States or the State of Michigan.

c. **Leasehold Mortgage Foreclosure Proceeding** shall mean a proceeding in the Bay Mills Tribal Court which:

(1) forecloses the interest of the Mortgagor(s), and each person or entity claiming through the Mortgagor(s), in a lease for which a Mortgage has been given; and

(2) assigns such Lease to the Mortgagee or the Mortgagee's assignee.

d. **Lessor** shall mean the beneficial or equitable owner of trust or otherwise restricted property under a Lease for which a Mortgage, as defined in this ordinance, has been given, or the heir(s), successor(s), executor(s), administrator(s), or assign(s) of such Lessor.

e. **Mortgagor** shall mean the Tribe or any member of the Tribe who has executed a Leasehold Mortgage as defined

in this ordinance, or any heir(s), successor(s), executor(s), administrator(s), or assign(s) of the Tribe or such member.

f. **Mortgagee** shall mean the mortgagee under any Leasehold Mortgage or the successor(s) in interest of any such mortgagee.

g. **Nuisance** shall mean the maintenance on real property of a condition which:

(1) unreasonably threatens the health or safety of the public or neighboring land users; or

(2) unreasonably and substantially interferes with the ability of neighboring property users to enjoy the reasonable use and occupancy of their property.

h. **Subordinate Lienholder** shall mean the holder of any lien, including a subsequent mortgage, perfected subsequent to the recording of a Leasehold Mortgage; this definition does not include the Tribe with respect to a claim for payment of a tribal leasehold tax.

i. **Tenant** shall mean any person who occupies real property under a lease, rental agreement or other agreement with a Lessor.

j. **Tribal Court** shall mean the Bay Mills Tribal Court.

k. **Tribal Recording Clerk** shall mean the Clerk of the Bay Mills Tribal Court, or any deputy or designee of the Clerk.

l. **Tribe** shall mean the Bay Mills Indian Community.

m. **Summary Proceeding to Recover Possession of Premises** shall mean 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, pursuant to Part Two, Chapter IV of the Tribal Code.

n. **Waste** shall mean 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.

o. **Writ of Restitution** shall mean an order of the Tribal Court which:

(1) Restores an owner, lessor, or mortgagee to possession of real property, and

(2) evicts a tenant or other occupant from such property.

Section 3. Priority.

A Leasehold Mortgage recorded in accordance with the recording procedures of this ordinance shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim, excepting a lien or claim arising from a tribal leasehold tax assessed after the recording of the mortgage. Nothing in this ordinance shall prevent any person or entity from recording a Leasehold Mortgage in accordance with Michigan law or from filing a Leasehold Mortgage with the Bureau of Indian Affairs.

Section 4. Recording.

a. *Location of Records.* The Tribal Recording Clerk shall maintain in the Tribal Court a system for the recording of Leasehold Mortgages and such other documents as the Tribe may designate by resolution.

b. *Recording Identification Provided by Clerk.* The Tribal Recording Clerk shall endorse upon any Leasehold Mortgage or other document received for recording:

(1) the date and time of receipt of the Leasehold Mortgage or other document;

(2) the filing number, as assigned by the Tribal Recording Clerk, which shall be a unique number for each Leasehold Mortgage or other document received; and

(3) the name of the Tribal Recording Clerk receiving the document for recording.

c. *Certification of Record by Clerk.* Upon completion of the endorsements specified in subs. (b), above, the Tribal Recording Clerk shall make a true and correct copy of the Leasehold Mortgage or other document, and shall certify the copy as follows:

Mortgage foreclosure proceeding in the Tribal Court by filing:

a. A verified complaint, which includes:

(1) name(s) of the Mortgagor(s) and each person or entity claiming through the Mortgagor(s) subsequent to the recording of the Leasehold Mortgage, including each Subordinate Lienholder (except the Tribe with respect to a claim for unpaid tribal leasehold taxes), as a defendant;

(2) description of the property;

(3) facts concerning the execution of the Lease and the Leasehold Mortgage, facts concerning the recording of the Leasehold Mortgage; facts concerning the alleged default(s) by the Mortgagor(s), and such other facts as may be necessary to provide a basis for the proceeding;

(4) true and correct copies of each promissory note, Lease, Leasehold Mortgage, or assignment thereof, relating to the property, attached as exhibits to the complaint; and

(5) a statement that all relevant requirements and conditions prescribed in federal law and implementing regulations, and the provisions of the Lease, have been complied with by the Mortgagee(s) prior to filing the action.

b. A summons, issued as in other cases, requiring the Mortgagor(s) and each other defendant to appear for a trial on the complaint on a date and time specified in the summons.

Section 6. Service of Process and Procedures in Mortgage Leasehold Foreclosure Actions.

The provisions of Chapter IV of the Tribal Code relating to the conduct of Tribal Court proceedings shall apply to any Leasehold Mortgage Foreclosure Proceeding.

Section 7. Cure of Default by Subordinate Lienholder.

Prior to the entry of a judgment of foreclosure, any Mortgagor or any Subordinate Lienholder may cure the default(s) under the Leasehold 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 Mortgage.

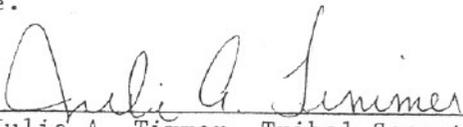
Section 8. Foreclosure Judgments.

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

- a. 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;
- b. Assigning such Lease to the Mortgagee or the Mortgagee's assignee; and
- c. Authorize the filing of a summary proceeding to recover possession of the premises, pursuant to Part Two of Chapter IV of the Tribal Code.

CERTIFICATION

I, the undersigned, as Secretary of the Bay Mills Indian Community Executive Council, do hereby certify that the above Ordinance was adopted and approved at a meeting of the Bay Mills Indian Community Executive Council held at Bay Mills, Michigan on the 28th day of September, 1993, with a vote of 4 for 0 opposed 0 absent and 1 abstaining. As per provisions of the Bay Mills Constitution, the Tribal Chairman must abstain except in the event of a tie.



Julie A. Timmer, Tribal Secretary
Bay Mills Indian Community
Executive Council