CHAPTER 2. MORTGAGES AND FORECLOSURES

The Smith River Rancheria ("Tribe") is a federally-recognized Indian tribe that is eligible for all the rights and privileges afforded recognized tribes. The Smith River Rancheria's Constitution ("Constitution"), approved by the Bureau of Indian Affairs, establishes the Tribal Council as the governing body of the Tribe. Article IV, Section 1(a) empowers the Tribal Council to represent the Tribe and act in all matters that concern the general welfare of the Tribe. Article IV, Section 1(h) of the Constitution grants the Tribal Council the authority to enact ordinances to negotiate permits and leases for business, home sites, and other purposes, and generally to provide for the proper use and development of Tribal lands, natural resources and all other properties within the Tribe's territory. Article IV, Section 1(j) of the Constitution grants the Tribal Council the authority to enact ordinances to regulate the use of all Tribal lands through zoning, taxation, and otherwise. Article IV, Section I(o) of the Constitution grants the Tribal Council the authority to regulate its own procedures, to appoint subordinate committees and to prescribe their salaries, tenure, and duties. In addition, Article IV, Section 1(p) of the Constitution authorizes the Tribal Council to prescribe rules for governing courts. Article XII of the Constitution grants all members the right to petition the Tribal Council for redress of grievances, with adequate notice and opportunity to be heard by an impartial tribunal. The Tribe also retains police powers to enforce ordinances its Tribal Council enacts by virtue of its inherent sovereignty. Pursuant to the Tribe's inherent sovereign power, the Tribe's Constitution, and applicable federal law, the Tribal Council of the Smith River Rancheria hereby enacts this ordinance. which shall hereinafter be known as the Smith River Rancheria Foreclosure Ordinance.

§1. Priority

All Mortgages recorded in accordance with the recording procedures set forth in this Ordinance, including Leasehold Mortgages, and including loans guaranteed or held by a governmental agency, 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.

§2. Recording

(A) The Tribal Recording Clerk shall maintain in the Tribal Real Estate program a system for the recording of mortgages and such other documents as the Tribe may designate by laws or resolution.

(B) The Tribal Recording Clerk shall endorse upon any mortgage or other document received for recording:

(1) The date and time of receipt of the mortgage or other document
(2) The tiling number, to be assigned by the Tribal Recording Clerk, which shall be a unique number for each mortgage or other document received; and
(3) The name of the Tribal Recording Clerk or designee receiving the mortgage or document.

(C) Upon completion of the above-cited endorsements, the Tribal Recording Clerk shall make a true and correct copy of the mortgage or other document and shall certify the copy as follows:

_____Tribe)
)SS.
Indian Reservation)

I certify that this is a true and correct copy of a document received for recording this date.

Given under my hand and seal this _____ day of _____

(Seal) _____
(Signature)

_____
(Date)

(D) The Tribal 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.

(E) The Tribal 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 Tribal Recording Clerk; and
(6) The name of the Tribal Recording Clerk or designee receiving the mortgage or document.

(F) The certified copies of the mortgages and other documents and the log maintained by the Tribal Recording Clerk shall be made available for public inspection and copying. Rules for copying shall be established and disseminated by the Tribal Recording Clerk.

§3. 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 trip to meet with the Borrower/Mortgagor at the mortgaged property.
> (2) Lender /Mortgagee shall document that it has made at least one 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 arranging and conducting the face-to-face interview specified in this action.

(D) Before the Borrower/Mortgagor has been delinquent for ninety (90) days and at least (10) days before initiating a foreclosure action in Tribal Court, the Lender shall advise the Borrower/Mortgagor in writing by mail or by posting prominently on the unit, with a copy provided to the Tribe, as follows:

> (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: (i) notify the Borrower/Mortgagor that if the default for more than (90) days, the Lender/Mortgagee may ask the applicable Leasehold Mortgage remains in governmental agency to accept assignment of the Leasehold Mortgage if this is a requirement of the governmental program; (ii) 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 (iii) provide the Borrower/Mortgagor with the names and addresses 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/Mortgagor has complied with the procedures set forth in the first part of this Section, the Lender/Mortgagee may commence a foreclosure proceeding in the Tribal Court by filing a verified complaint as set forth in the Foreclosure Complaint and Summons section of this Ordinance.

§4. 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 Tribe 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 facts 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, 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 (1) federal statutes and regulations (2) tribal codes, ordinances and regulations; and/or (3) provisions of the Lease or Leasehold Mortgage, or security instrument.

(B) The complaint shall be verified by the Tribal Court Clerk along with a summons specifying a date and time of appearance for the Defendant(s).

§5. Service of Process and Procedures

(A) A copy of the complaint shall be served upon defendants in the manner provided by the Tribal Court rules for service of process in civil matters. In the absence of such Tribal Courts rules, the summons and complaint shall be served as follows:

(1) A Lender/Mortgagee is responsible for service of the complaint and summons upon the named defendant(s). A Lender/Mortgagee is also responsible for filing a return of service with the Clerk of Court. Whenever possible, the complaint and summons shall be served on the defendant by personal service. Personal service may be made by a law enforcement officer or by any adult who is not a party to the action or counsel.

(2) If, after diligent search and inquiry, if the defendant cannot be personally served, process may be served by mail. Service by mail shall be by registered or certified mail with return receipt requested. All service by mail shall be confirmed by the Court at the time of trial or at the time of the entering ofa default judgment, and shall be supported by affidavit from the Lender/Mortgagee. The affidavit shall include the original return receipt signed by the defendant, a description of documents served on the defendant, and a statement that a diligent search and inquiry was made in an effort to serve the defendant personally.

(3) If, after diligent search and inquiry, the defendant cannot be personally served or served by mail, process may be served by publication. In such cases, the Lender/Mortgagee shall file an affidavit with the Clerk of Court prior to any service by publication. The affidavit shall include a statement that the Lender/Mortgagee has, after diligent search and inquiry, been unable to effect service of process on the defendant. After receiving such an affidavit, the Clerk of Court shall issue a Summons by Publication authorizing service by publication. The Summons by Publication shall be valid for 60 days from the date of issuance. and thereafter void. The other requirements for service by publication are as follows:

(a) The Summons by Publication shall be published in the Tribal newspaper and in at least one other newspaper generally distributed within tribal territory at least once each week for three consecutive weeks. The Summons by Publication shall: contain the name of the Court and the names of the parties; be directed to the defendant; state the name and address of the Lender/Morgagee's counsel, if any, otherwise the Lender/Morgagee's address; state that time period from the last date of publication in which to answer and defend; inform the defendant that failure to answer and defend will result in judgment by default; explain the object of the complaint; and, in an action in which the title to or any interest in or lien upon real property is involved, the publication shall also contain a general or legal description of the property involved.

(b) Service by publication is complete on the date of the last publication of the summons. A copy of each publication of service, certified by the publisher as to date and accuracy of publication, shall be filed by the Lender/Mortgagee with the Clerk of Court.

(c) At the time of trial or entering of default judgment, the Lender/Mortgagee shall submit evidence to the Court that the foregoing service by publication procedures were satisfied.

§6. 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.

§7. Judgment and Remedy

(A) This matter shall be heard and decided by the Tribal 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 Tribal Court finds for the Lender/Mortgagee, the Tribal Court shall enter judgment:

(B) Foreclosing the interest of the Borrower/Mortgagor and each other Borrower/Mortgagor, including subordinate Lienholder in the Mortgage, and

(C) Assigning 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:

(1) The lender shall give the Tribe 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.
(2) The Lender or Lender's Designated Assignee may only transfer, sell or assign the Lease and/or Leasehold Mortgage to a Tribal member, the Tribe, or the Tribal Housing authority.
(3) Any other transfer, sale or assignment of the Lease or Leasehold Mortgage shall be made to a Tribal member, the Tribe, or the Tribal housing committee during the remaining period of the leasehold.

§8. Foreclosure Evictions

Foreclosure evictions shall be handled according to the general eviction process set forth in the Eviction Ordinance, 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.

§9. 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 Tribal Court, or by operation of law, except as such merger may arise upon satisfaction of the Leasehold Mortgage.

§10. Certified Mailing to Tribe and Lessor

Any foreclosure proceedings on a Lease or Leasehold Mortgage where the Tribe or the Lessor(s) is not named as a defendant, a copy of the summons and complaint shall be mailed to the Tribe 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 Superintendent of the applicable agency of the Bureau of Indian Affairs.

§11. Intervention

The Tribe or any Lessor may petition the Tribal Court to intervene in any Lease or Leasehold Mortgage foreclosure proceeding under this Ordinance. Neither the filing of a petition for intervention by the Tribe, nor the granting of such a petition by the Tribal Court shall operate as a waiver of the sovereign immunity of the Tribe, except as may be expressly authorized by the Tribe.

§12. Appeals

Appeals under this Ordinance shall be handled in accordance with the general tribal appellate provisions.

LEGISLATIVE HISTORY

This Chapter was originally adopted as the Smith River Rancheria Mortgage and Foreclosure Ordinance (Ordinance 01-03) by Resolution 01-45, on November 5, 2001.