

# St. Croix Tribal Council

P.O. Box 45287 • 24663 Angelina Avenue • Hertel, Wisconsin 54845 • (715) 349-2196 • Fax (715) 349-5768

## TRIBAL COUNCIL

David "Maabin" Merrill  
Tribal Chairman  
Round Lake Community

Michael L. Bearhart  
Vice-Chairperson  
Maple Plain Community

Leo Butler  
Secretary/Treasurer  
Sand Lake Community

Gloria E. Benjamin  
Member  
Danbury Community

Lewis Taylor  
Member  
Sand Lake Community

## EXECUTIVE ASSISTANTS

Mary Hartmann  
Harriet Fickbohm  
Vicki Larson  
Stephaine Mosay

## RESOLUTION NO. 6.8.04.02

### A RESOLUTION ENACTING MORTGAGE LENDING CODE

**WHEREAS**, St. Croix Tribal Council is the duly elected governing body of the St. Croix Chippewa Indians of Wisconsin; and

**WHEREAS**, the St. Croix Tribe has prioritized the housing needs of the tribe as one of the most important goals; and

**WHEREAS**, the U.S. Department of Housing and Urban Development developed the Section 184 Indian Housing Loan Guarantee Program for Native American families and Indian Housing Authorities to gain access to sources of private financing by guaranteeing loans for the purchase, construction or rehabilitation of single family to four family dwellings on restricted lands and to Indian areas near trust lands; and


**WHEREAS**, the Tribal Council is aware that the interests of housing of Indian families on the St. Croix Reservation will be better served by the implementation of the Section 184 Indian Housing Loan Guarantee Program; and

**WHEREAS**, the Tribal Council has analyzed the Section 184 Loan Guarantee Program which will be another source of housing for tribal members;

**NOW THEREFORE BE IT RESOLVED**, that the Tribal Council does hereby, in support of the Section 184 Indian Housing Loan Guarantee Program, enact the St. Croix Mortgage Act, attached hereto and made a part hereof.

### CERTIFICATION

I, the undersigned Secretary of the St. Croix Tribal Council do hereby certify that the Council is composed of five (5) members of whom 3 were present at a meeting duly called, convened and held this 8th day of JUNE, 2004 and that the foregoing resolution was adopted at said meeting by an affirmative vote of 3 members for, 0 against, and 0 members abstaining from the vote, and that said resolution has not been rescinded or amended in any way.

  
Leo Butler, Secretary/Treasurer  
St. Croix Tribal Council

## CHAPTER 701     MORTGAGES-LIENS AND RECORDING

All mortgage loans recorded in accordance with the recording procedures set forth in this Act, including leasehold mortgages, and including loans made, guaranteed, insured 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 this mortgage. In those cases where a government direct, guaranteed or insured mortgage is originated as a second mortgage, the loan shall assume that position.

The Tribe shall designate a Tribal Recording Clerk who shall maintain a system for the recording of mortgage loans and such other documents as the Tribe may designate by law.

1. In addition to any federal filing requirements, all real estate leases, mortgage loans, related documents, and foreclosures or satisfactions thereof relating to St. Croix tribal trust lands shall be filed with the tribal recording clerk. A document that is not recorded as provided by law shall be void as against any subsequent good-faith purchaser of the same interest or any portion of that interest, whose interest is recorded first.
2. Upon payment of the appropriate fees, the tribal recording clerk or designee shall endorse upon any mortgage loan or other document received for recording all of the following:
  - a. The date and time or receipt of the mortgage or other document;
  - b. The filing number, to be assigned by the tribal recording clerk, which shall be a unique number for each mortgage or other document received and;
  - c. The name of the tribal recording clerk or designee receiving the mortgage or document.
3. Upon completion of the above-cited endorsements, the tribal recording clerk or designee shall make a true and correct copy of the mortgage or other document and shall certify the copy as follows:

St. Croix Chippewa Indians of Wisconsin )  
 ) ss  
Indian Reservation )

I certify that this is a true and correct copy of a document received for recording on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

(Signature)

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

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4. The tribal recording clerk shall also maintain a computer or other digital data entry log of each mortgage loan or other document recorded in which there shall be entered:
  - a. The name(s) of the borrower/mortgagor (hereafter, mortgagor) of each mortgage loan, identified as such;
  - b. The name(s) of the lender/mortgagee (hereafter lender) of each mortgage loan, identified as such;
  - c. The name(s) of the grantor(s), grantee(s) or other designation of each party named in any other documents filed or recorded;
  - e. If the mortgagor is a trust, the name of the settler, the name of the trustee and the name and date of the trust.
  - f. The date and time of the receipt;
  - g. The filing number assigned by the tribal recording clerk;
  - h. The date of foreclosure or satisfaction, as applicable; and
  - i. The name of the tribal recording clerk or designee receiving the mortgage or document.
5. Upon payment of a mortgage loan or satisfaction of other security interest in lands, the lender shall record a certificate of satisfaction signed and authenticated pursuant to Tribal or Wisconsin law.
6. The certified copies of the mortgage loan and other documents and the log maintained by the tribal recording clerk shall be made available for public inspection and copying.
6. Rules and fees for recording, certifying and copying shall be established by the Tribal Court and disseminated by the tribal recording clerk.
7. All mortgages will be recorded with the BIA in addition to any tribal recording provisions.

**CHAPTER 702    FORECLOSURE**

**702.01 – Mortgage Default Procedures**

A mortgagor shall be considered to be in default when thirty (30) days past due on the mortgage payment(s) or in violation of any covenant under the mortgage for more than thirty (30) days.

1. When a mortgagor is thirty days past due, and before any foreclosure action or activity is initiated, the lender shall complete the following:
  - a. Make a reasonable effort to arrange a face-to-face interview with the mortgagor. This shall include at least one trip to meet with the mortgagor at the mortgaged property.
  - b. Document that lender has made at least one telephone call and, if applicable, one e-mail message to the mortgagor (or the nearest contact telephone, and if applicable, e-mail address designated by mortgagor as able to receive and relay messages to the mortgagor) for the purpose of trying to arrange a face-to-face interview.
2. Lender may appoint an agent to perform the services of arranging and conducting the face-to-face interview specified in this action.
3. When the mortgagor is past due on three installment payments and at least ten (10) days before initiating a foreclosure action in tribal court, the lender shall advise the mortgagor in writing by both certified-restricted delivery and regular mail or by

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posting prominently on the unit, with a copy provided to the tribal recording clerk, as follows:

- a. Advise the mortgagor that information regarding the loan and default/delinquency will be given to credit bureaus.
  - b. Advise the mortgagor of homeownership counseling opportunities/programs available through the lender or otherwise.
  - c. Advise the mortgagor of other available assistance regarding the mortgage/default.
  - d. In addition to the preceding notification requirements, the lender shall complete the following additional notice requirements (i) notify the mortgagor that if the leasehold mortgage remains past due on three installment payments, the lender may ask the applicable governmental agency to accept assignment of the leasehold mortgage if this is an option of the governmental program; (ii) notify the mortgagor of the qualifications for forbearance relief from the lender, if any, and that forbearance relief may be available from the government; and (iii) provide the mortgagor with names and addresses of government officials to whom further communications may be addressed, if any.
4. If a mortgagor is past due on three or more installment payments and the lender has complied with the procedures set forth in §702.01(1)-(3), above, the lender may commence a foreclosure proceeding in the tribal court by filing a verified complaint as set forth in §702.02 of this Act.

### **702.02 – Foreclosure Complaint and Summons**

A verified complaint in a mortgage foreclosure proceeding, verified by the tribal court clerk and accompanied by a summons specifying a date and time of appearance for the defendant(s) shall contain the following:

1. The name of the mortgagor and each person or entity claiming through the mortgagor subsequent to the recording of the mortgage loan, including each subordinate lien holder (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 loan;
3. A concise statement of the facts concerning the execution of the mortgage loan and, in the case of a leasehold mortgage, the lease; the facts concerning the recording of the mortgage loan or the leasehold mortgage; the facts concerning the alleged default(s) of the mortgagor; and such other facts as may be necessary to constitute a cause of action;
4. True and correct copies of each promissory note, mortgage, deed of trust or other recorded real property security instrument (each a "security instrument") and any other documents relating to the property and, if a leasehold mortgage, a copy of the lease and any assignment of any of these documents; and
5. Any applicable allegations concerning relevant requirements and conditions prescribed in (i) federal statutes and regulations; (ii) tribal codes, ordinances and regulations; and/or (iii) provisions of the promissory note, security instrument and, if a leasehold mortgage, the lease.

### **702.03 – Service of Process and Procedures**

Any foreclosure complaint must be in writing, and must be delivered to the mortgagor in the following manner:

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1. Delivery must be made by an adult person and is effective when it is:
  - a. Personally delivered to a mortgagor with a copy sent by mail, or
  - b. Personally delivered to an adult living at the property with a copy sent by mail, or
  - c. If the mortgagor is the Tribe, personally delivered to an adult agent or employee of the mortgagor with a copy sent by mail.
2. If the notice cannot be given by means of personal delivery, or the mortgagor cannot be found, the notice may be delivered by means of:
  - a. Certified mail, return receipt requested, at the last known address of the mortgagor, or
  - b. Securely stapling a copy of the notice to the main entry door of the property in such a manner that it is not likely to blow away, and by posting a copy of the notice in the tribal community center closest to the premises, and by sending a copy by first class mail, postage prepaid, addressed to the mortgagor at the premises.
3. The person giving notice shall keep a copy of the notice and file proof of service made in accordance with this section with the tribal court clerk.

### **702.04 – Cure of Default**

Prior to the entry of judgment of foreclosure, any mortgagor or a subordinate lien holder may cure the default(s) under the mortgage by making a full payment to the lender of the delinquency and all reasonable legal and court costs incurred in foreclosing on the property. Any subordinate lien holder who has cured a default shall thereafter have included in its lien the amount of all payments made by such subordinate lien holder to cure the default(s), plus interest on such amounts at the rate state in the note for the mortgage. There shall be no right of redemption in any leasehold mortgage foreclosure proceeding.

### **702.05 – Judgment and Remedy**

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 mortgagor. If the alleged default has not been cured at the time of trial and the tribal court finds for the lender, the tribal court shall enter judgment:

1. Foreclosing the interest of the mortgagor and each other defendant, including subordinate lien holder(s), in the mortgaged property; and
2. Granting title to the property to the lender or the lender's designated assignee; in the case of a leasehold mortgage, the lease and the leasehold estate will be assigned to the lender or the lender's designated assignee, subject to the following provisions:
  - a. The lender shall give the Tribe the right of first refusal on any acceptable offer to purchase the lease and lessee's leasehold interest in the property described in the lease 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 lessee's leasehold interest in the property described in the lease to a St. Croix tribal member, the St. Croix Tribe or the St. Croix Tribal Housing Authority.

## **CHAPTER 703 FORECLOSURE EVICTION**

Foreclosure eviction shall be handled according to the general eviction process set forth below.

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### **703.01 – Jurisdiction**

The provisions of this Chapter 703 shall apply to all persons and property subject to the governing authority of the Tribe as established by the St. Croix Tribal Constitution, as amended, the St. Croix Tribal Code, or applicable federal law.

### **703.02 – Unlawful Detainer**

A lessee, sub lessee, or other occupant of a leasehold estate subject to a leasehold mortgage shall be guilty of unlawful detainer if such person shall continue in occupancy of such leasehold estate without the requirement of any notice by the lessor, after such person's leasehold estate has been foreclosed in a leasehold mortgage foreclosure proceeding in the tribal court.

### **703.03 – Complaint and Summons**

The lender or federal agency which made, guaranteed or insured the mortgage loan, whichever entity sought and obtained judgment, shall commence an action for unlawful detainer by filing with the tribal court, in writing, the following documents:

1. A complaint, signed by the lender or federal agency, or an agent or attorney on their behalf:
  - a. Citing facts alleging jurisdiction of the tribal court;
  - b. Naming as defendants the mortgagors and any other record owner (including sub lessees and subordinate lien holders), of which the complainant has record notice (except the Tribe with respect to a claim for a Tribal tax on the leasehold estate subject to the leasehold mortgage);
  - c. Describing the leasehold estate subject to the leasehold mortgage;
  - d. Stating the facts concerning (i) the execution of the lease and the leasehold mortgage; (i) the recording of the leasehold mortgage; and (3) the facts upon which he or she seeks to recover;
  - e. Stating any claim for damages or compensation due from the persons to be evicted; and
  - f. Otherwise satisfying the requirements of the tribal court.
2. A copy of the summons, issued in accordance with established tribal court rules and procedures, requiring the defendants to file a response to the complaint by the date specified in the summons. The deadline specified in the summons for filing a response shall be ten (10) days from the date of service of the summons and complaint. The summons shall notify the defendants that judgment will be taken against them in accordance with the terms of the complaint unless they file a response with the court by the date specified in the summons.

### **703.04 – Service of Summons and Complaint**

A copy of the summons and complaint shall be served upon the defendants in the manner provided by the tribal court rules for service of process in civil matters.

### **703.05 – Power of the Tribal Court**

The tribal court shall enter an order of repossession if:

1. Notice of suit is given by service of summons and complaint in accordance with the procedures provided herein; and

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2. The tribal court shall find during pre-trial proceedings or at trial that the lessee, sub lessee, or other occupant under color of law of the leasehold estate subject to the leasehold mortgage is guilty of an act of unlawful detainer.

**703.06 – Enforcement**

Upon issuance of an order of repossession by the tribal court, tribal law enforcement officers shall help plaintiffs enforce same by removing the defendants and their property from the unlawfully occupied leasehold estate. In all cases involving the lender or federal agency, the order of repossession shall be enforced no later than 45 days after a pre-trial proceeding or trial in which the tribal court finds against defendants, subject to §703.07, below, and provided that no party exercised the right to cure a default or right of first refusal as described in §702.04 and §702.05, above.

**703.07 – Continuances in Cases Involving the Lender or Federal Agency**

Except by agreement of all parties, there shall be no continuances in cases involving the lender or federal agency that will interfere with the requirement that the order of repossession be enforced not later than 45 days after a pre-trial proceeding or trial in which the tribal court finds against defendants, subject to the sound discretion of the court.

**CHAPTER 704     ADMINISTRATIVE PROVISIONS**

**704.01 – 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.

**704.02 – Certified Mailing to Tribe**

In any foreclosure proceedings on a leasehold mortgage where the Tribe is not named as a defendant, a copy of the summons and complaint shall be mailed to the tribal recording clerk or designee by certified, restricted delivery mail, return receipt requested, within five (5) days after the issuance of the summons. If the lessor is not the Tribe, this notice will also be mailed to the lessor at the same time the notice is mailed to the Tribe. If the location of the lessor cannot be ascertained after reasonable inquiry, a copy of the summons and complaint shall be mailed to the lessor in care of the Superintendent of the Bureau of Indian Affairs-Great Lakes Agency.

**704.03 – Intervention**

The Tribe or any lessor may petition the tribal court to intervene in any lease or leasehold mortgage foreclosure proceeding under this Code. Neither the filing of a petition for intervention by the Tribe, nor the granting of such 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.

**704.04 – Appeals**

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