



PUEBLO OF ISLETA
P.O. BOX 1270 ISLETA, NM 87022

RESOLUTION #99-41

APPROVING A MORTGAGE CODE OF THE PUEBLO OF ISLETA

At a duly called meeting of the Tribal Council of the Pueblo of Isleta, the following resolution was passed:

WHEREAS, the Tribal Council of the Pueblo of Isleta is the governing body of the Pueblo; and

WHEREAS, the Tribal Council desires to initiate home financing programs and such programs requires the adoption of a mortgage code to provide for leasehold mortgaging, foreclosure, recording and priority of lien; and

WHEREAS, the Mortgage Code of the Pueblo of Isleta is attached hereto as Exhibit "A" and made a relevant part hereof.

NOW, THEREFORE, BE IT RESOLVED THAT the Tribal Council of the Pueblo of Isleta hereby approves the Mortgage Code (Exhibit "A"). The adoption of the Code shall in no way rescind the "Ordinance Relating to Leasehold Mortgages" for loans under the Native American Veteran Direct Loan Program which will continue to apply to all such loans.

CERTIFICATION

We, the undersigned officials for the Pueblo of Isleta, do hereby certify that the foregoing resolution was passed at a duly called meeting of the Tribal Council of the Pueblo of Isleta, held on the 25th day of May, 1999, at which a quorum was present, with 10 voting for, 0 opposing, and 0 abstaining.

APPROVED: Michael A. Lute
President of the Council

Abino Lucero
Governor

ATTEST: Jack L. Barrow
Secretary of the Council

MORTGAGE CODE OF THE PUEBLO OF ISLETA

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MORTGAGE CODE OF THE PUEBLO OF ISLETA

Article I - Jurisdiction/Limited Waiver of Sovereign Immunity/Definitions

Section 1. Jurisdiction.

The Tribal Court of the Pueblo of Isleta shall have exclusive jurisdiction over all actions arising under this Code, including any foreclosure and eviction actions arising on lands located within the exterior boundaries of the Pueblo of Isleta.

Section 2. Limited Waiver of Sovereign Immunity.

The Pueblo hereby authorizes a limited waiver of immunity from suit, with respect to specific controversies or claim described in this Code that may arise out of or relate to the Pueblo's obligations under a mortgage or lease entered into by the Pueblo under a mortgage assumption pursuant to Article III, Section 1(b) or Section 7(a)(3) of this Code. In connection with such limited waiver, the Pueblo consents solely to the jurisdiction of the Isleta Pueblo Tribal Courts with respect to (a) actions in equity brought by any party to such mortgage or lease seeking specific performance of any of the Pueblo's express obligations thereunder and (b) actions at law for actual damages which shall consist exclusively for remaining sums secured by a mortgage. This waiver of immunity is not intended, or shall it be construed (a) to extend to any claim for punitive or compensatory damages, (b) to waive the Pueblo's immunity from suit for any other purpose or with respect to any controversy, claim, or other matter not specifically mentioned in this Code, or (c) to extend to the benefit of any person other than the parties to a mortgage or lease or their successors or assigns. This limited waiver of immunity from suit shall not be construed as an admission of liability of the Pueblo as to any claim for damages or as an agreement or willingness to pay any amount as damages absent a judicial determination of liability, and the Pueblo shall have the right to defend any of such claim fully on the merits.

Section 3. Definitions.

- a. "Land Assignment" shall mean a transfer of an interest in tribal lands to a tribal member in accordance with the laws of the Pueblo.
- b. "Lease" shall mean an agreement for the use of land, including Trust Land or Restricted Land, or other real property.
- c. "Leasehold Estate" shall mean an interest in real property established pursuant to a Lease between an owner of land or land interest as Lessor, and a third party as Lessee.

- d. "Lessor" shall mean the owner of land or land interest, including the Tribe. The Tribe shall be the beneficial or equitable owner of Pueblo Trust Lands or Restricted Lands underlying a Leasehold Estate on which a Mortgage has been given. The Lessor shall include the successor(s) or assign(s) of such Lessor.
- e. "Mortgage" shall mean the first-lien mortgage of a beneficial real property interest in land given to secure a loan made by a Mortgagee.
- f. "Mortgagee" shall mean any mortgage lender or any successors or assigns of any such lender. This definition also includes any subsequent holder, whether by assignment, succession or otherwise, of the original Mortgagee's right, title or interest in and to the Mortgage and/or the Mortgaged property, together with the improvements.
- g. "Mortgage Foreclosure Proceeding" shall mean a proceeding in the Isleta Pueblo Tribal Court: (i) to foreclose the interest of the Mortgagor(s), and each person or entity claiming through the Mortgagors in land, including Trust Land or Restricted Land, on which a mortgage has been made by a Mortgagee; and/or (ii) to assign such interest of the Mortgagor to the Mortgagee or the Mortgagee's successors or assigns.
- h. "Mortgagor" shall mean any eligible tribal member or entity borrower who has executed a Mortgage on land or its beneficial interest in Trust Land or Restricted Land. This definition also includes any heir(s), successor(s), executor(s), administrator(s) or assign(s) of such borrower.
- i. "Nuisance" shall mean maintenance on the Mortgaged 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 real property users to enjoy the reasonable use and occupancy of their property.
- j. "Pueblo" shall refer to the Pueblo of Isleta.
- k. "Restricted Land" shall mean land within the jurisdiction of the Pueblo that is subject to restrictions against alienation imposed by federal treaty, statute, Executive Order, or the Pueblo.
- l. "Subordinate Lienholder" shall mean the holder of any lien, including a mortgage, perfected subsequent to the recording of a Mortgage under this Code; provided, however, such definition shall not include the Pueblo with respect to a claim for a Tribal tax on the Mortgaged property, where applicable.
- m. "Tenant" shall mean any person who occupies land or other real property, including Trust Land or Restricted Land, as Lessee, under a Leasehold Estate with the Lessor.

- n. "Tribal Court" shall mean: (i) the Isleta Pueblo Tribal Court; or (ii) such body as may now or hereafter be authorized by the laws of the Pueblo to exercise the powers and functions of a court of law.
- o. "Tribal member" shall mean any person recognized as being an Isletan by the laws of the Pueblo.
- n. "Tribal Realty Officer" shall mean the person designated by the Pueblo to perform the recording functions required by this document or any deputy or designee of such person.
- p. "Tribe" refers to the Pueblo of Isleta.
- q. "Trust Land" shall mean land within the jurisdiction of the Pueblo, title to which is held by the United States for the benefit of the Tribe or an individual Isleta.
- r. "Unlawful Detainer Action" shall be a suit brought before the Tribal Court to terminate a Mortgagor's or Tenant's interest in land, including Trust Land or Restricted Land, and/or to evict any person from occupancy of such property.
- s. "Waste" shall mean spoil or destruction of land, buildings, gardens, trees or other improvements on the Mortgaged property which result in substantial injury to such property.
- t. "Writ of Restitution" is an order of the Tribal Court:
 - (1) Restoring an owner, Lessor, Mortgagee (or other successor in interest) to possession of land or real property, including Trust Land or Restricted Land, subject to a Mortgage; and
 - (2) Evicting a Tenant or other occupant from such property.

Article II - Mortgaging of Land

Section 1. Purpose.

The purpose of this Code is to assist tribal members in obtaining mortgage financing for the purchase of residences and businesses on lands within the jurisdiction of the Pueblo of Isleta, including Trust Lands or Restricted Lands, by prescribing procedures relating to recordation, foreclosure and eviction in connection with Mortgages given to secure loans made by Mortgagees.

Section 2. Mortgage of Leasehold Estate.

Any tribal member who has a land assignment may, with approval of the Pueblo, obtain a lease on the land and mortgage the leasehold estate for the purpose of obtaining home financing on said land.

Section 3. Priority.

A Mortgage recorded in accordance with the recording procedures set forth in this Code shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim (except a lien or claim arising from a Tribal tax assessed against property subject to the Mortgage).

Section 4. Recording.

- a. The recording of Mortgages and Leases on lands located within the exterior boundaries of the Pueblo, including Trust Lands or Restricted Lands, shall be at the Bureau of Indian Affairs Area Land Titles and Records Office.
- b. Where a Mortgagee requires that a Lease or Mortgage also be recorded in the county recorder's office in the state in which the Mortgaged properties are located, the lease or mortgage shall also be recorded at such county recorder's office.
- c. The Tribal Realty Officer shall maintain in the Tribal Court, or other designated office, a system for the recording of Mortgages and such other documents as the Pueblo may designate by law or resolution including, without limitation, any Lease.
- d. The Tribal Realty Officer shall endorse upon any Lease and/or Mortgage or other document received for recording the following:
 - (1) The date and time of receipt of the Lease and/or Mortgage or other document:
 - (2) The filing number, to be assigned by the Tribal Realty Officer, which shall be a unique number for each Lease and/or Mortgage or other document received: and
 - (3) The name of the Tribal Realty Officer receiving the Lease and/or Mortgage or other document.
- e. Upon completion of the above endorsements, the Tribal Realty Officer shall make true and correct copies of the Lease and/or Mortgage or other security instrument and shall certify each copy as follows:

PUEBLO OF ISLETA) ss.

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

Title

- f. The Tribal Realty Officer shall maintain such copies in the records of the recording

system and shall return the original Lease and/or Mortgage or other document to the person or entity that presented the same for recording.

g. The Tribal Realty Officer shall also maintain a log of each Lease and/or Mortgage or other document recorded in which there shall be entered the following:

- (1) The name(s) of the Mortgagor(s) of each Mortgage, identified as such;
- (2) The name(s) of the Mortgagee(s) 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 including any Lease;
- (4) The date and time of receipt;
- (5) The filing numbers assigned by the Tribal Realty Officer; and
- (6) The name of the Tribal Realty Officer receiving any Lease, Mortgage or other document.

h. The certified copies of any Leases, Mortgages and other documents and the log maintained by the Tribal Realty Officer shall be made available for public inspection and copying.

Article III – Foreclosure Procedures

Section 1. Pre-Foreclosure Notice.

- a. Upon the default of the Mortgagor(s) and prior to instituting foreclosure proceedings, the Mortgagee shall notify the Pueblo or its Designated Housing Department or Entity in writing of its intention to pursue foreclosure. Such notice must be hand-delivered or sent by certified mail to the Governor of the Pueblo or the Executive Director of the Pueblo's Designated Housing Department or Entity.
- b. Upon such notice, and upon the expiration of any applicable cure period provided Lessee under a mortgage or security instrument, the Lessor or its Designated Housing Department or Entity shall have the right of first refusal to acquire the Leasehold Estate (subject to all valid liens and encumbrances) prior to the commencement of foreclosure proceedings.
- c. The right of first refusal shall be exercised by notice to the Lender within thirty (30) days from receipt of the Lender's written notice.

Section 2. Mortgage Foreclosure Proceedings.

In the event of default of the Mortgagor(s), and upon expiration of any applicable cure periods under a Mortgage and expiration of the Lessor's first right of refusal in the preceding section, the Mortgagee or its successors and assigns, may commence a Mortgage foreclosure proceeding in the Tribal Court as follows:

(a) By filing a verified complaint:

- (1) Citing authority for jurisdiction of the Tribal Court;
- (2) Naming the Mortgagor(s) and each record owner claiming through the Mortgagor(s) subsequent to the recording of the Mortgage, including each

- Subordinate Lienholder (except the Pueblo with respect to a claim for a Tribal tax on the Mortgaged property), as a defendant;
- (3) Describing the property subject to the Mortgage;
 - (4) Stating the facts concerning: (i) the execution of any Lease and/or the Mortgage; (ii) the recording of the Mortgage; and (iii) the alleged default(s) of the Mortgagor(s) and any other facts as may be necessary to constitute a cause of action;
 - (5) Having appended as exhibits true and correct copies of each promissory note, Lease, if any, Mortgage, and, if applicable, assignment thereof relating to such Mortgaged property; and
 - (6) Including an allegation that all relevant requirements and conditions prescribed in the Mortgage and the Lease, if any, have been complied with by the Mortgagee or its successors or assigns.
- (b) By obtaining a summons, issued as in other cases, requiring the Mortgagor(s) and each other person or entity claiming through the Mortgagor as defendants to appear for a trial upon the complaint on a date and time specified in the summons, and filing a copy of such summons with the Tribal Court.

Section 3. Service of Process and Procedures.

The laws of the Pueblo governing services of process and all other matters relating to the conduct of Tribal Court proceedings shall apply to any Mortgage Foreclosure Proceeding pursuant to this Code.

Section 4. Dismissal of Foreclosure upon Payment by Mortgagor.

- a. The foreclosure proceeding shall be dismissed if the borrower, before judgment, tenders to the Mortgagee or its successors or assigns payment of the total amount required to be tendered, including costs of the filing of a civil action.
- b. Notice of tender. To invoke this section, the Mortgagor must tender payment to the Mortgagee or its successors or assigns and file with the Court a notice of tender, indicating that the Mortgagor is tendering the amount described below.
- c. Amount required to be tendered. The amount tendered shall consist of the following:
 - (i) Arrearage. The arrearage amount shall be the sum of the monthly payments missed up to and including the date of the tender.
 - (ii) Costs and fees. Reasonable costs and fees, including attorneys fees, determined by the Court, but in no event shall they exceed costs actually incurred.
 - (iii) Acceleration clauses prohibited. Under no circumstances may the amount required to be tendered include any amounts due pursuant to an acceleration clause. This shall not prohibit the Mortgagee from charging late fees.
- d. Disputes regarding cost. Where the Mortgagor and Mortgagee or its successors and assigns are unable to agree on reasonable costs and fees, the Mortgagor shall nonetheless file its notice of tender and tender payment of costs and fees to

the Court, indicating that this amount is disputed. The Mortgagee shall file a fee petition with the Court within five (5) business days of the filing of the notice of tender. The Court shall stay the proceedings for no longer than twenty (20) days pending resolution of the dispute.

- e. Dismissal of stay. Where the court's determination of reasonable costs and fees exceeds the amount tendered, the stay shall be lifted if the Mortgagor fails to file a revised notice of tender.

Section 5. Cure of Default by Subordinate Lienholder.

Prior to the entry of a judgment of foreclosure of a Mortgage pursuant to this Code, any Mortgagor or any Subordinate Lienholder may cure the default(s) under the 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 such default(s), plus interest on such amounts at the rate stated in the promissory note evidencing the subordinate lien.

Section 6. Power of the Tribal Court.

If the alleged default(s) have not been cured, judgment shall be entered:

- (a) foreclosing the Mortgagor's interest in the Mortgaged property, and each other defendant named in the complaint upon whom proper and timely service has been made, including each Subordinate Lienholder; and
- (b) assigning such Mortgaged property to the Mortgagee or the Mortgagee's successor or assignee and order sale of the residential property, or of a subset of the property that will suffice to satisfy the judgment. The Mortgagee must ensure that the price for which the property is sold is commercially reasonable. If the sales price is greater than the amount of the judgment, then the Mortgagee shall provide the difference to the Mortgagor within ten days of the Mortgagee's receipt of the money.

Section 7. Right of First Refusal During Foreclosure.

- a. The Pueblo shall have the right of first refusal regarding all property to be sold pursuant to these foreclosure proceedings.
 - 1. Notice to the Pueblo. Upon commencement of judicial foreclosure proceedings, the Mortgagee or its successors or assigns shall give written notice by certified mail, of these proceedings to the Pueblo.
 - 2. Right to conduct an appraisal. The Pueblo may conduct an appraisal of the property during or immediately after the foreclosure process. If the property in question is occupied, the Pueblo will make all reasonable efforts to respect the privacy of the homeowner, but the homeowner may not unreasonably interfere with the Pueblo's right to conduct the appraisal.
 - 3. Exercising the right to purchase after foreclosure. Upon entry of an order of foreclosure, a copy of the court order shall be served on the Office of the Governor or Housing Department or Entity, or on another agent

designated by the Isleta Tribal Council to receive such notice. Within twenty (20) working days of the service of the order, the Pueblo may provide written notice to the Mortgagee or its successors or assigns that the Pueblo elects to purchase the residential property for the amount of the judgment, or for some other amount agreed upon by the Pueblo and the Mortgagee. At the same time the Pueblo provides such notice to the Mortgagee, or at some other time agreed upon by the Pueblo and the Mortgagee, the Pueblo must tender payment. If the amount paid is less than the commercially reasonable price of the house, the Pueblo will pay the difference to the Mortgagor. If the Pueblo does not exercise its right to purchase the property within twenty days of the date of service of the court order, the Pueblo will be deemed to have waived its right of first refusal.

- b. The term "Pueblo" as used in this Section shall mean "the Pueblo or its Designated Housing Department or Entity".

Article IV - Eviction Procedures

Section 1. Purpose.

The purpose of this Article is to prescribe procedures relating to evictions in connection with leases, subleases or other land assignments or interests made by the Pueblo, the Pueblo's Designated Housing Department or Entity or any owner of land or leasehold interest.

Section 2. Unlawful Detainer.

A Tenant or other occupier of land or a beneficial interest in Trust Land or Restricted Land subject to a Mortgage or Lease shall be guilty of unlawful detainer if such person shall continue in occupancy of such property under any of the following situations:

- (a) Without the requirement of any notice by the Pueblo or Lessor:
- (1) After the expiration of the term of any Lease or Sublease;
 - (2) 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 under a Lease or title to such property;
 - (3) After the Lessor has terminated such person's tenancy pursuant to the Lessor's procedures; or
 - (4) After a Mortgagor's interest in Trust Land or Restricted Land has been foreclosed in a Mortgage Foreclosure Proceeding in the Tribal Court.
- (b) After having received at least seven (7) days notice of termination and notice to vacate the premises, the Tenant or occupier remains in possession of such property contrary to the terms of the notice as follows:
- (1) When such person has received notice: (i) that he or she is in default

in the payment of ground or unit rent; and (ii) requiring him or her to either pay such rent or surrender possession of the occupied property and such person has not either surrendered possession of such property or paid the rent within the time period provided in such notice; or

- (2) When such person shall continue to fail to keep or perform any condition or covenant of any Lease or other use agreement under which the property is held after he or she has been given notice to comply with such condition or covenant or else to surrender the property; or
- (3) 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; or
- (4) When such person violates a material covenant of any Lease designed to protect the health and safety of persons.

Section 3. Procedures for Service of Notice.

- (a) Notices required or authorized under Section 2 of this Article shall be given in accordance with established Tribal Court rules and procedures or policies of the Pueblo's Designated Housing Department or Entity. In the absence of such rules and procedures, notices 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 Leased or Mortgaged property; or
 - (2) Posting said notice in a conspicuous place near the entrance to said property, and by sending an additional copy to the Tenant or occupier by certified mail, return receipt requested, properly addressed, postage prepaid.
- (b) 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 these two methods of service.

Section 4. Complaint and Summons.

The Lessor or the Mortgagee (including its successors or assigns) shall commence an action for eviction by filing with the Tribal Court, in writing, the following documents:

- (a) A complaint, signed by the Lessor, the Mortgagee (or its successors or assigns), or an agent or attorney on their behalf including the following:
 - (1) Citing authority for jurisdiction of the Tribal Court;
 - (2) If the property is mortgaged, naming the Mortgagor(s) and each

record owner claiming through the Mortgagor(s) subsequent to the recording of the Mortgage, including each Subordinate Lienholder (except the Pueblo with respect to a claim for a Tribal tax on the property subject to the Mortgage), as a defendant;

- (3) Describing the property subject to the Mortgage or Lease;
 - (3) Stating the facts concerning (i) the execution of any Lease and/or the Mortgage; (ii) the recording of any Mortgage; and (iii) the facts upon which he or she seeks to recover; and
 - (4) Stating any claim for damages or compensation due from the persons to be evicted.
- (b) A copy of the summons, issued in accordance with established Tribal Court rules and procedures. In the absence of such rules and procedures for the issuance of a summons, the summons shall require defendants to appear for trial upon the complaint on a date and time specified in the summons. The trial date specified in the summons shall be no less than six (6) nor more than twenty (20) days from the date of service of the summons and complaint. The summons must notify the defendants that judgment will be taken against them in accordance with the terms of the complaint unless they file with the court an answer and appear for trial at the time, date and place specified in the summons.

Section 5. 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. In the absence of such Tribal Court rules, the summons and complaint shall be served by one of the two methods provided in Section 3 of this Article.

Section 6. Power of the Tribal Court.

(a) The only issue on an action for eviction shall be the right of actual possession. A lender who has foreclosed on a leasehold estate shall be deemed to have the right to actual possession. The merits of ownership of land interest shall be an issue to be determined by the traditional laws of the Pueblo. An action for eviction may not be brought in connection with any other action, nor may it be made the subject of any set off or counter claim.

(b) The Tribal Court shall enter a Writ of Restitution if:

- (1) Notice of suit and trial is given by service of summons and complaint in accordance with the procedures provided herein; and
- (2) The Tribal Court:
 - (a) finds that the occupier of the property subject to the Mortgage or Lease is guilty of an act of unlawful detainer; or
 - (b) determines that the Tenant failed to respond to the complaint.

(c) Upon issuance of a Writ of Restitution the Tribal Court shall have the authority to enter against the defendants a judgment for the following: (1) back rent, unpaid utilities, and any charges due the Lessor under any lease or occupancy agreement; (2) any and

all amounts secured by the Mortgage that are due the Mortgagee (or its successors or assigns); (3) damages caused by the defendants to the property other than ordinary wear and tear; and (4) costs and reasonable attorney's fees incurred in bringing suit.

(d) At the hearing where the eviction is ordered, the Court shall inform the defendant that if he/she does not vacate the premises voluntarily by the effective date, he/she will be subject to forcible eviction, and his/her property will be subject to storage, sale and disposal as set forth in Section 9 below.

Section 7. Enforcement.

Upon issuance of a Writ of Restitution, Tribal law enforcement officers shall within five days enforce the Writ of Restitution by removing the defendants and their personal property from the property which is unlawfully occupied, and levy damages and costs incurred by the Police Department in such removal. In cases involving a Mortgagee (or its successors or assigns), the Writ of Restitution shall be enforced no later than sixty (60) days after the date of service of the summons and complaint, subject to Section 8 of this Article.

Section 8. Continuance in Cases Involving the Mortgagee.

Except by agreement of all parties, there shall be no continuances in cases involving the Mortgagee (or its successors or assigns) which will interfere with the requirement that the Writ of Restitution be enforced not later than sixty (60) days from the date of service of the summons and complaint.

Section 9. Storage of Property.

Following forcible eviction of the defendant and/or other occupants, the former occupant's personal property shall be stored by the Lessor or owner of the premises for at least thirty (30) days, either on the premises or at another suitable location. In order to reclaim their property, the former occupants shall pay the reasonable costs of its removal and storage. If they do not pay such costs within thirty (30) days, the Lessor or owner is authorized to sell the property in order to recover these costs. The Lessor or owner shall provide the evicted occupants with pertinent information concerning the sale, including the time, date and location. Any proceeds from the sale in excess of the storage and removal costs shall be remitted to the former occupants. Nothing in this section shall be construed to prevent the former occupants from reclaiming property remaining after the sale if they can arrange to do so in a manner satisfactory to the Lessor or owner.

Approved: _____ (date)

Superintendent
Southern Pueblos Agency
Bureau of Indian Affairs

Authority: 209 DM 8, Secretary's Order No 3150, as amended
10 BIAM Bulletin 13, as amended,
Albuquerque Area Office Redelegation Order 2,
Amendment 2, Section 2.14