

**BISHOP PAIUTE TRIBE**

Bishop Paiute Reservation

Bishop, California

**TRIBAL MORTGAGE LENDING AND UNLAWFUL  
DETAINER ORDINANCE**

Adopted: January 26, 2006

## Tribal Mortgage Lending and Unlawful Detainer Ordinance

The Bishop Paiute Tribal Council as the recognized governing body of the Bishop Paiute Tribe has concluded that it would be in the best interests of Tribal members to provide them with an opportunity to participate in the Mortgage Loan Guarantee and Insurance Programs sponsored by the United States Department of Housing and Urban Development, United States Department of Agriculture's Rural Housing Service and United States Department of Veterans Administration "Program". This Ordinance shall apply to such Program financing.,

In addition, it has been determined that there is a need in general to have in place for all residential accommodations and commercial structures a means by which issues of eviction/unlawful detainer can be adjudicated.

It is the purpose of this Ordinance to provide for both "Program" needs for foreclosure/eviction/unlawful detainer and "non-Program" housing needs to be subject to the unlawful detainer procedures of this Ordinance as more fully set out in this Ordinance.

### A. Lien Priority

All mortgage loans recorded in accordance with the recording procedures set forth in this Ordinance, 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 the mortgage. (In those cases where the government direct, guaranteed or insured mortgage is created as a second mortgage, the loan shall assume that position.)

### B. Recording of Mortgage Loan Documents

(1) The Tribal Recording Clerk shall maintain in the Tribal Community Development Department (Department) a system for the recording of mortgage loans and such other documents as the Tribe may designate by laws or resolution.

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

- (a) The date and time of 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.

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:

Bishop Paiute Tribe )  
 )ss.

Bishop Paiute 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)

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.

(3) The Tribal Recording Clerk shall also maintain a log of each mortgage loan or other document recorded in which there shall be entered:

(a) The name(s) of the Borrower/Mortgagor of each mortgage loan, identified as such;

(b) The name(s) of the Lender/Mortgagee 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;

(d) The date and time of the receipt;

(e) The filing number assigned by the Tribal Recording Clerk; and

(f) The name of the Tribal Recording Clerk or designee receiving the mortgage or document.

(4) 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. Rules for copying shall be established and disseminated by the Tribal Recording Clerk. (5) All mortgages will be recorded with the BIA in addition to any Tribal recording provisions.

### C. Foreclosure Procedures

(1) A Borrower/Mortgagor shall be considered to be in default when he or she is thirty (30) days past due on his or her mortgage payment(s) or is in violation of any covenant under the mortgage for more than 30 days to the Lender/Mortgagee (i.e. the 31<sup>st</sup> day from the payment due date).

(2) When a Borrower/Mortgagor is thirty days past due on his or her mortgage and before any foreclosure action or activity is initiated, the Lender/Mortgagee shall complete the following:

(a) 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.

(b) Lender/Mortgagee shall document that it has made at least one phone call to the Borrower/Mortgagor (or the nearest phone as designed 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. In the event that phone contact with the Borrower/Mortgagor is not successful, Lender/Mortgagee shall by certified or return receipt requested mail request that Borrower/Mortgagor contact Lender/Mortgagee for purposes of arranging a face-to-face interview.

(3) Lender/Mortgagee may appoint an agent to perform the services of arranging and conducting the face-to-face interview specified in this action.

(4) When the Borrower/Mortgagor is past due on three installment payments and at least fifteen (15) days before initiating a foreclosure action in Tribal Court, the Lender shall advise the Borrower/Mortgagor in writing by mail and by posting prominently on the unit, with a copy provided to the Tribe, as follows:

(a) Advise the Borrower/Mortgagor that information regarding the loan and default/delinquency will be given to credit bureaus.

(b) Advise the Borrower/Mortgagor of homeownership counseling opportunities/programs available through the Lender or otherwise.

(c) Advise the Borrower/Mortgagor of other available assistance regarding the mortgage/default.

(d) In addition to the preceding notification requirements, the Lender/Mortgagee shall complete the following additional notice requirements (i) notify the Borrower/Mortgagor that if the Leasehold Mortgage remains past due on three installment payments, the Lender/Mortgagee 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 Borrower/Mortgagor of the qualifications for forbearance relief from the Lender/Mortgagee, if any, and that forbearance relief may be available from the government; and (Hi) provide the Borrower/Mortgagor with names and addresses of government officials to whom further communications may be addressed, if any.

(5) If a Borrower/Mortgagor is past due on three or more installment payments and the Lender/Mortgagee 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 Section D.

#### D. Foreclosure Complaint and Summons

(1) The verified complaint in a mortgage foreclosure proceeding shall contain the following:

- (a) The name of the Borrower/Mortgagor and each person or entity claiming through the Borrower/Mortgagor subsequent to the recording of the mortgage loan, including each Subordinate Lienholder (except the Tribe with respect to a claim for a tribal leasehold), as a defendant;
- (b) A description of the property subject to the mortgage loan;
- (c) 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 Borrower/Mortgagor; and such other facts as may be necessary to constitute a cause of action;
- (d) 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
- (e) 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. (2) 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).
- (f) Statement of compliance with all notice sections of C (4) above and attachment of the actual notice provided to Borrower/Mortgagor.

(2) The complaint shall be filed with the Tribal Court Clerk and summons issued by the Tribal Court Clerk specifying a date and time of appearance for the Borrower/Mortgagor.

E. Service of Process and Procedures. The complaint and summons must be in writing, and copies must be served on the Borrower/Mortgagor in the following manner:

(1) Service must be made by an individual eighteen years of age or older and is effective when it is:

- (a) Personally served on a Borrower/Mortgagor with a certified copy sent by mail, or
- (b) Personally served on an adult living in the property with a certified copy sent by mail, or
- (c) Personally served on an adult agent or employee of the Borrower/Mortgagor with a certified copy sent by mail.

(2) If the service of copies of the complaint and summons cannot be given by means of personal delivery, or the Borrower/Mortgagor cannot be found, the service may be by means of completing all of the following:

- (a) Certified mail, return receipt requested, at the last known address of the Borrower/Mortgagor, or
- (b) Securely taping a copy of the summons and complaint 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 some public place near the premises, including a tribal office, public store, or other commonly-frequented place and by sending a copy first class mail, postage prepaid, addressed to the Borrower/Mortgagor at the premises.
- (c) At least three attempts at personal service must be documented showing dates and times of attempted service.

(3) The person serving the summons and complaint must then file the proof of service in accordance with this section, by affidavit or other manner recognized by law reciting how service of the Summons and Complaint was accomplished.

#### F. Cure of Default

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. For purposes of their section F only, the Bishop Paiute Tribe (Tribe) may cure any of the

Borrower/Mortgagor default and then stand in the shoes of the Borrower/Mortgagor as to any right/title in the property so mortgaged.

#### G. Judgment and Remedy

The complaint 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 summons and 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:

(1) Foreclosing the interest of the Borrower/Mortgagor and each other defendant, including Subordinate Lienholder, in the mortgaged property and

(2) Granting title to the property to the Lender/Mortgagee 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/Mortgagee 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 the 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 Tribal member, the Tribe, or the Tribal Housing Authority;

(c) The mortgagee has the right to convey the leasehold interest to the Secretary of HUD without providing the right of first refusal to the Tribe for Section 248 .

(3) In the event that the Tribe at the time of trial pays into the Tribal Court any and all of the defaults, costs and expenses due to the Lender/Mortgagee, the Tribal Court shall grant title to the property to the Tribe.

#### H . Foreclosure Evictions and Unlawful Detainer Actions

(1) Jurisdiction. Foreclosure evictions and unlawful detainer actions shall be handled according to the general eviction process set forth below. The unlawful detainer process in section H shall apply to "Program" foreclosure/unlawful detainer evictions and shall be subject to all Tribal laws, customs and practice. All non-Program unlawful detainer causes of action reservation-wide involving both Tribal and private party landlords and tenants are addressed in section I.

(2) Unlawful Detainer. A Lessee, Sublessee, or other occupant of a Leasehold Estate subject to a Leasehold Mortgage and/or Residential Lease of Tribal Owned Land shall be guilty of unlawful detainer if such person shall continue in occupancy of such Leasehold Estate, after

such person's Leasehold Estate has been foreclosed in a Leasehold Mortgage foreclosure proceeding (Program) in the Tribal Court;

(3) Complaint and Summons. The lender, Federal Agency (which made, guaranteed or insured the mortgage loan) or Tribe as appropriate, shall commence an action for unlawful detainer by filing with the Tribal Court, in writing, the following documents:

- (a) A complaint, signed by the lender, Federal Agency or Tribe, or an agent or attorney on their behalf:
  - (i) Citing facts alleging jurisdiction of the Tribal Court;
  - (ii) Naming as defendants the mortgagors and any other record owner (including Sublessees and subordinate Lienholders), 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);
  - (iii) Describing the Leasehold Estate subject to the Leasehold Mortgage;
  - (iv) Stating the facts concerning (1) the execution of the lease and the Leasehold Mortgage; (2) the recording of the Leasehold Mortgage; and (3) the facts upon which he or she seeks to recover;
  - (v) Stating any claim for damages or compensation due from the persons to be evicted; and
  - (vi) Otherwise satisfying the requirements of the Tribal Court.
- (b) A summons to be 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 as provided by the Clerk of the Tribal Court. The deadline specified in the summons for filing a response shall be no less than 6 nor more than 30 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.

(4) 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 following two methods.

(5) Procedures for Service of Summons and Complaint. The summons and complaint shall be served either by:



- (a) Defendant(s) or to any adult residing on the Leasehold Estate and, if applicable, to any Sublessee; or
- (b) posting copies of the summons and complaint in a conspicuous place near the entrance to the Leasehold Estate, and sending an additional copies of the summons and complaint to the Lessee or to any other occupant and, if applicable, to the Sublessee, by certified mail, return receipt requested, properly addressed, postage paid.

Proof of service may be made by affidavit or declaration of any adult person stating that he has complied with the requirements of one of the above methods of service.

(6) Power of the Tribal Court. The Tribal Court shall enter an Order of Repossession and issue a Writ of Possession if:

- (a) Notice of suit is given by service of summons and complaint in accordance with the procedures provided herein; and
- (b) The Tribal Court shall determine at trial or through default that the Defendant(s), Sublessee; or other occupant under color of law of the Leasehold Estate subject to the Leasehold Mortgage and/or Residential Lease of Tribal Owned Land is guilty of an act of unlawful detainer.

Upon issuance of an Order of Repossession and a Writ of Possession, the Tribal Court shall have the authority to enter a judgment against the defendants for the following, as appropriate: (1) back rent, unpaid utilities, and any charges due the Tribe, Tribal Housing Authority, other public Housing Authority, or Sublessor under any sublease or other written agreement (except for a Leasehold Mortgage); (2) any and all amounts secured by the Leasehold Mortgage that are due the lender (or Federal Agency); and (3) damages to the property caused by the defendants, other than ordinary wear and tear. The Tribal Court shall have the authority to award to the prevailing party its costs and reasonable attorney's fees in bringing suit.

(7) Enforcement. Upon issuance of an Order of Repossession and a Writ of Possession by the Tribal Court, Tribal law enforcement officers shall assist plaintiffs to enforce same by evicting the defendants and their property from the unlawfully occupied Leasehold Estate. In all cases involving the lender, Federal Agency or Tribe, the Order of Repossession shall be enforced no later than 45 days after trial in which the Tribal Court finds against defendants, subject to Paragraph H7 below, and provided, that no party exercised the right to cure a default or right of first refusal as described in Paragraphs F and G above.

(8) Remedies. In the event that a Defendant fails or refuses to comply with an order/judgment of the Tribal Court, whether for the payment of sums awarded under (4) (b) above, or refusal to relinquish possession of property pursuant to a writ of possession issued by the Tribal Court, the Tribal Court has and is given further grant of authority to order one or more of the following penalties within its discretion in order to obtain compliance of its orders/judgments:

- (a) Suspension of selective Tribal services or all Tribal services being provided to Defendant as within the discretion of the Tribal Court.
- (b) Suspension of eligibility for participation in Tribal programs.
- (c) Suspension of eligibility to receive Tribal per capita payments or the use of such per capita payments as directed by the Tribal Court to satisfy any and all outstanding orders or judgments of the Tribal Court.

Once Defendant is in compliance with the appropriate Tribal Court order/judgment, the Tribal Court will order that any and all of the above remedies as set out shall no longer be in effect and the Defendant will be reinstated if then eligible for either Tribal services, Tribal programs or Tribal per capita payments.

(9) Continuances in Cases Involving the Lender or Federal Agency which originally made, insured or guaranteed the mortgage loan. 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 trial in which the Tribal Court finds against defendants, subject to the sound discretion of the Tribal Court.

#### I. Non-Program Unlawful Detainer Actions

A Lessee, Sublessee or other occupant of property shall be guilty of unlawful detainer if such person shall continue in occupancy of such Leasehold in violation of the unlawful detainer rules and regulations promulgated by the Tribal Council. Cause for such a complaint to be filed shall include, but is not limited to, failure to pay rent, creation of a nuisance and/or destruction of property. Such unlawful detainer actions shall be commenced in the Tribal Court. The following requirements are a minimum. The Tribal Council as it deems necessary shall promulgate additional rules and regulations, both substantive and procedural, concerning unlawful detainer actions.

(1) Complaint and Summons. An unlawful detainer action shall be commenced by the filing of a complaint for unlawful detainer by filing with the Clerk of the Tribal Court in writing the following documents:

- (a) A complaint, verified by the individual named in the complaint, stating at the minimum the following:
  - (i) Name of the parties
  - (ii) Description of the property in contention
  - (iii) Relief requested of the Tribal Court
  - (iv) Reason for the complaint (failure to pay rent, creation of a nuisance, destruction of property, or other reason)

(b) A summons to be 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 as provided by the Clerk of the Tribal Court. The deadline specified in the summons for filing a response shall be no less than 6 nor more than 30 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.

(2) 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 following two methods.

(3) Procedures for Service of Summons and Complaint The summons and complaint shall be served either by:

- (a) delivering copies personally to the Defendant(s) or to any adult residing on the Leasehold Estate and, if applicable, to any Sublessee; or
- (b) posting copies of the summons and complaint in a conspicuous place near the entrance to the Leasehold Estate, and sending an additional copies of the summons and complaint to the Lessee or to any other occupant and, if applicable, to the Sublessee, by certified mail, return receipt requested, properly addressed, postage paid.

Proof of service may be made by affidavit or declaration of any adult person stating that he has complied with the requirements of one of the above methods of service.

(4) Power of the Tribal Court. The Tribal Court shall enter an Order of Repossession and issue a Writ of Possession if:

- (a) Notice of suit is given by service of summons and complaint in accordance with the procedures provided herein; and
- (b) The Tribal Court shall determine at trial whether the Defendant(s), Sublessee, or other occupant is guilty of an act of unlawful detainer.

Upon issuance of an Order of Repossession, the Tribal Court shall have the authority to enter a judgment against the defendants for the following, as appropriate: (1) back rent, unpaid utilities, and any charges due the landlord under any lease, sublease or other written or oral agreement; (2) any and all amounts that are due the landlord because of damages to the property caused by the Defendant(s), other than ordinary wear and tear. The Tribal Court shall have the authority to award to the prevailing party its costs and reasonable attorney's

fees in bringing suit if there is a written provision in the Lease providing for attorney fees and issue a Writ of Possession.

(5) Enforcement. Upon issuance of an Order of Repossession and a Writ of Possession by the Tribal Court, Tribal law enforcement officers or officers so designated by the Tribal Court shall assist plaintiffs to enforce same by evicting the defendants and their property from the unlawfully occupied Leasehold Estate. In all cases, the Writ of Possession shall be enforced no later than 10 days after trial in which the Tribal Court finds against defendants. The Writ of Possession is issued and served on the property by personal service to Defendant or posting on the property in question and sending by certified mail to Defendant(s) a copy of the writ of possession.

(6) Remedies. In the event that a Defendant fails or refuses to comply with an order/judgment of the Tribal Court, whether for the payment of sums awarded under (4) (b) above, or refusal to relinquish possession of property pursuant to a writ of possession issued by the Tribal Court, the Tribal Court has and is given further grant of authority to order one or more of the following penalties within its discretion in order to obtain compliance of its orders/ judgments:

- (a) Suspension of selective Tribal services or all Tribal services being provided to Defendant as within the discretion of the Tribal Court.
- (b) Suspension of eligibility for participation in Tribal programs.
- (c) Suspension of eligibility to receive Tribal per capita payments or the use of such per capita payments as directed by the Tribal Court to satisfy any and all outstanding orders or judgments of the Tribal Court.

Once Defendant is in compliance with the appropriate Tribal Court order/judgment, the court will order that any and all of the above remedies as set out shall no longer be in effect and the Defendant will be reinstated if then eligible for either Tribal services, Tribal programs or Tribal per capita payments.

#### J. 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.

#### K. Certified Mailing to Tribe

In any foreclosure proceedings on a Leasehold Mortgage under the Program, a copy of the summons and complaint shall be mailed to the Tribe by certified mail, return receipt requested, within five (5) days after the issuance of the summons.

L. Intervention

The Tribe 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 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 in writing at the time of intervention.

M. Appeals

Appeals under this Code shall be handled in accordance with the general tribal appellate provisions from Tribal Court orders/judgments.

CERTIFICATION

The foregoing Bishop Paiute Tribe Mortgage Lending and Unlawful Detainer Ordinance was enacted by the Tribal Council on the 26<sup>th</sup> day of January, 2006, by a vote of **4** for, **0** opposed, and **0** abstaining, at a dully-called meeting at which a quorum of the Tribal Council was present.

*/s/Gerald Howard*

**Tribal Chairman**

ATTEST:

/s/Wanda Summers  
Tribal Secretary