

# PUEBLO OF SANTA ANA

## RESOLUTION OF THE TRIBAL COUNCIL

### RESOLUTION NO. 2018-R-13

#### Re: AMENDING THE SANTA ANA PUEBLO MORTGAGE ORDINANCE

**WHEREAS**, the Pueblo of Santa Ana (the Pueblo) is a federally recognized Indian nation, possessing inherent sovereign powers of self-government; and

**WHEREAS**, the Tribal Council of the Pueblo of Santa Ana is the duly recognized decision and policy making body for the Pueblo; and

**WHEREAS**, the Tribal Council through Resolution 2016-R-47, dated August 31, 2016, adopted the Santa Ana Pueblo Mortgage Ordinance to provide for leasehold mortgaging on tribal lands and a residential lease form to be used for leasehold mortgages; and

**WHEREAS**, it is in the best interest of the Pueblo to amend the Santa Ana Pueblo Mortgage Ordinance to include language in *Section 2. Jurisdiction*, giving the U.S. Department of Housing and Urban Development the option of filing foreclosure actions in federal court, and said amended provision is set forth in the attached Exhibit A;

**NOW THEREFORE BE IT RESOLVED** that the Tribal Council of the Pueblo of Santa Ana hereby approves an amendment to the Santa Ana Pueblo Mortgage Ordinance adopted by Resolution 2016-R-47, dated August 31, 2016, to include language in *Section 2. Jurisdiction*, giving the U.S. Department of Housing and Urban Development the option of filing foreclosure actions in federal court, as set forth in Exhibit A; and

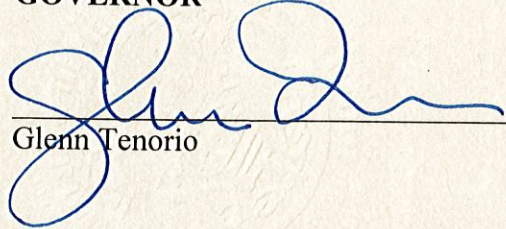
**BE IT FURTHER RESOLVED** that *Section 2. Jurisdiction* in the Santa Ana Pueblo Mortgage Ordinance adopted by Resolution 2016-R-47, dated August 31, 2016 shall be replaced in its entirety by the language in the attached Exhibit A; and

**BE IT FURTHER RESOLVED** that the Governor or his designee of the Pueblo of Santa Ana is hereby authorized and directed to prepare and/or execute all documents necessary to carry out the intent of this Resolution on behalf of the Pueblo.

**CERTIFICATION**

I, the undersigned as Governor of the Pueblo of Santa Ana, hereby certify that the Santa Ana Tribal Council at a duly called meeting held on the 8<sup>th</sup> day of August, 2018 at Santa Ana Pueblo, New Mexico approved this resolution, a quorum being present and that 27 voted for and 0 opposed.

**GOVERNOR**

  
\_\_\_\_\_  
Glenn Tenorio

**SECRETARY**

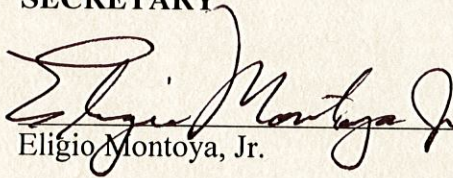
  
\_\_\_\_\_  
Eligio Montoya, Jr.

Exhibit A

**SECTION 2. JURISDICTION**

A. The Tribal Court shall exercise jurisdiction over all matters arising within the jurisdiction of the Santa Ana Pueblo with respect to the subject matter of this Ordinance, and with respect to any person or entity acting or causing actions which arise under this Ordinance.

B. Notwithstanding any other provision in this Ordinance, if the U.S. Department of Housing and Urban Development (HUD) becomes the holder of a leasehold mortgage or other lien under the Section 184 Indian Home Loan Guarantee program or other HUD loan program, the United States may file a foreclosure action in the appropriate federal court, and in any such instance, references to the "Tribal Court" in this Ordinance shall mean to include a federal court, except as limited by the subsequent sentence. A foreclosure action filed in a federal court shall be governed by the laws governing the applicable federal program and any other applicable federal law.

**PUEBLO OF SANTA ANA**  
**MORTGAGE ORDINANCE**

Adopted August 31, 2016, Tribal Council Resolution No. 2016-R-47  
Amended August 8, 2018, Tribal Council Resolution no. 2018-R-13

**TABLE OF CONTENTS**

SECTION 1.	PURPOSE, DEFINITIONS AND SCOPE.....	1
SECTION 2.	JURISDICTION .....	4
SECTION 3.	CONFLICTS WITH OTHER LAWS .....	4
SECTION 4.	LEASES/MORTGAGES .....	4
SECTION 5.	RECORDING OF MORTGAGE LOAN DOCUMENTS .....	5
SECTION 6.	LIEN PRIORITY.....	7
SECTION 7.	FORECLOSURE .....	7
SECTION 8.	FORECLOSURE COMPLAINT .....	10
SECTION 9.	EVICCTIONS .....	14
SECTION 10.	NO MERGER OF ESTATES .....	19
SECTION 11.	PUEBLO APPROVALS .....	19
SECTION 12.	LIMITED WAIVER OF SOVEREIGN IMMUNITY .....	19
SECTION 13.	AMENDMENTS.....	19
SECTION 14.	APPEALS.....	20

**PUEBLO OF SANTA ANA  
MORTGAGE ORDINANCE**

Adopted August 31, 2016, Tribal Council Resolution No. 2016-R-47  
Amended August 8, 2018, Tribal Council Resolution no. 2018-R-13

**SECTION 1. PURPOSE, DEFINITIONS AND SCOPE**

A. Purpose

- 1) The purpose of the Pueblo of Santa Ana Mortgage Ordinance (herein “Ordinance”) is to establish the legal authority and procedures that will allow tribal members to utilize mortgage financing to purchase, construct, rehabilitate, improve, or refinance a home. Loans may be obtained under any loan program approved or authorized to lend on the lands of the Pueblo, including but not limited to, mortgage loan guarantee and insurance programs sponsored by the U.S. Department of Housing and Urban Development (“HUD”), U.S. Department of Agriculture’s Rural Housing Service (“USDA”), U.S. Department of Veteran’s Affairs (“VA”), and any other Federal Agency.
- 2) This Ordinance prescribes procedures for obtaining a lease of tribal trust or other restricted lands, mortgaging the lease to secure a loan, the recording, priority and foreclosure of mortgages.

B. Definitions

As used in this Ordinance, the below terms shall be defined as follows:

- 1) “Borrower/Mortgagor” shall mean the Pueblo of Santa Ana, its Tribally Designated Housing Entity, or any tribal member who has executed a Mortgage, or any heir, successor, executor, administrator, or assign of such borrower.
- 2) “Days” shall mean calendar days unless specifically stated otherwise.
- 3) "Deficiency Judgment" shall mean a monetary judgment entered by a Court against a Borrower for any remaining balance owing on a Mortgage after the sale of the foreclosed property. The monetary judgment amount typically consists of the remaining principal balance owed on a loan, accrued interest from the date of judgment, reasonable collection costs and costs of sale, and attorney fees, less the amount the lender sold the property for at a foreclosure sale.
- 4) “Federal Agency” shall mean any agency of the Federal Government that makes, guarantees, or insures mortgage loans, including but not limited to, the Veteran’s Affairs (VA), the Department of Housing and Urban Development (HUD), the Federal Home Administration (FHA), and Department of Agriculture (USDA).

- 5) “Forbearance Relief” shall mean an action that results in the Lender or the Federal, State, or Tribal Government refraining from pursuing Mortgage Foreclosure.
- 6) “Infrastructure” shall mean water, sewage, utilities and road access to a home.
- 7) “Laws of the Pueblo of Santa Ana” shall mean any written law in the form of an ordinance, resolution or other instrument, as well as customary and traditional law practiced by the Pueblo of Santa Ana.
- 8) “Lease” shall mean the residential ground lease for use of Trust Land or Restricted Land on which a Mortgage has or will be given.
- 9) “Lender/Mortgagee” shall mean any mortgage lender under any Mortgage or the successors or assigns in interest of any such Lender, and includes any subsequent holder, whether by assignment, succession, or otherwise, of the Lender’s right, title, or interest in and to the Mortgage.
- 10) “Lessee” shall mean a person who has acquired a legal right of possession of Tribal Trust or Restricted Lands by a written Lease.
- 11) “Lessor” shall mean the Pueblo of Santa Ana, who is the beneficial or equitable owner of trust or otherwise restricted property under a lease for which a Mortgage has been or will be given, or the successors, or assigns of such Lessor.
- 12) “Mortgage” shall mean the mortgage of a lease given to secure a loan made by a Lender to a Borrower.
- 13) “Mortgage Foreclosure Proceeding” shall mean a proceeding in the Tribal Court (i) to foreclose on the Leasehold Interest or other interests of the Borrower; and/or (ii) to assign such interest of the Borrower to the Lender or other person or entity.
- 14) “Nuisance” shall mean the maintenance on the mortgaged property of a condition that:
  - i. Unreasonably threatens the health or safety of a resident of the community, the mortgaged property, or neighboring land users; or
  - ii. Unreasonably and substantially interferes with the ability of neighboring real property users to enjoy the reasonable use and occupancy of their property.
- 15) “Order of Repossession” shall mean an order of the Tribal Court that either restores an owner or Lessor or the Mortgagee to possession of real property, and/ or evicts a tenant or other occupant therefrom.
- 16) “Pueblo” shall mean the Pueblo of Santa Ana.

- 17) “Redemption” shall mean the right of the Borrower or other person with an interest in property subject to a Mortgage pursuant to this Ordinance to regain possession of the property within sixty (60) days after a Foreclosure Judgment upon payment or performance of other conditions prescribed by this Ordinance and the Mortgage documents.
- 18) “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.
- 19) “Secretary” shall mean unless otherwise indicated, the Secretary of the United States Department of the Interior or his or her duly designated representative.
- 20) “Subordinate Lienholder” shall mean the holder of any lien, including a subsequent mortgage, perfected subsequent to the recording of a Mortgage under this Ordinance, except the Pueblo of Santa Ana with respect to a claim for a tribal tax if applicable.
- 21) “Tribal Court” shall mean the Pueblo of Santa Ana Contemporary Tribal Court.
- 22) “Tribal members” shall mean members of the Pueblo of Santa Ana as determined by the laws of the Pueblo.
- 23) “Tribally Designated Housing Entity” shall mean the entity designated by the Pueblo of Santa Ana to administer HUD funds and programs according to federal law.
- 24) “Tribal Recording Clerk” shall mean the Director of the Pueblo of Santa Ana Tribal Resources Office or any other tribal office or entity designated by the Pueblo of Santa Ana to perform the recording functions required by this Ordinance, or any deputy or designee of such person.
- 25) “Trust Land” shall mean any land within the jurisdiction of the Pueblo, title to which is held by the United States for the benefit of the Pueblo or an individual member of the Pueblo.
- 26) “Unlawful Detainer” shall be a suit brought before the Tribal Court to terminate a tenant’s interest in real property and/or to evict any person from occupancy of real property.
- 27) “Waste” shall mean spoilage or destruction of land, buildings, landscaping, trees, or other improvements on the mortgaged property which result or will likely result in substantial injury to such property.

C. Scope of Ordinance

- 1) Except as otherwise specifically stated, this Ordinance shall apply to any and all Mortgages and other agreements to secure an interest in residential units or dwellings, or other buildings on Trust or Restricted Land and supersedes and replaces all other codes and ordinances

previously adopted by the Santa Ana Pueblo specifically relating to residential Mortgages. In addition, the Eviction section of this Ordinance may be applied against any person or entity occupying Trust or Restricted lands after tenancy has been terminated by the landlord or without right. However, this Ordinance shall not be interpreted to in any way supersede, or add additional requirements to, the Santa Ana Homeownership Program administered by the Pueblo.

- 2) No mortgage loan shall be recognized by the Pueblo, nor shall the Pueblo issue a residential lease for purposes of mortgaging the lease, on the following lands:
  - a. The lands associated with the old Tamaya village or agricultural lands as determined by the Tribal Council;
  - b. Other lands that the Pueblo may from time to time determine by Tribal Council resolution are not eligible for leasing or mortgage financing.

## **SECTION 2. JURISDICTION**

- A. The Tribal Court shall exercise jurisdiction over all matters arising within the jurisdiction of the Santa Ana Pueblo with respect to the subject matter of this Ordinance, and with respect to any person or entity acting or causing actions which arise under this Ordinance.
- B. Notwithstanding any other provision in this Ordinance, if the U.S. Department of Housing and Urban Development (HUD) becomes the holder of a leasehold mortgage or other lien under the Section 184 Indian Home Loan Guarantee program or other HUD loan program, the United States may file a foreclosure action in the appropriate federal court, and in any such instance, references to the “Tribal Court” in this Ordinance shall mean to include a federal court, except as limited by the subsequent sentence. A foreclosure action filed in a federal court shall be governed by the laws governing the applicable federal program and any other applicable federal law.

*Annotation: This Section was amended on August 8, 2018 by Tribal Council Resolution 2018-R-13 to give HUD the option of suing for foreclosure in federal court. Subsection A was amended to remove the following language from the beginning of the first sentence: “Except as limited by applicable federal law”. Subsection B was added.*

## **SECTION 3. CONFLICTS WITH OTHER LAWS**

If this Ordinance is determined to conflict with any other law of general application adopted by the Santa Ana Pueblo, this Ordinance shall control.

## **SECTION 4. LEASES/MORTGAGES**

- A. Any tribal member may obtain a residential lease of tribal Trust or Restricted Land or other Pueblo lands and mortgage the leasehold for the purpose of obtaining a loan to purchase, construct, rehabilitate or refinance a home. The size of the land to be leased shall not exceed



that amount necessary to include the necessary infrastructure to the home.

- B. The Tribal Council has the authority to approve a Lease form for use with mortgages under this Ordinance. This authority includes the power to negotiate a Lease form with any Federal Agency. The Tribal Council has the authority to approve individual Leases of tribal Trust or Restricted Lands to eligible Borrowers and to create an ingress and egress easement to the leased property, if such is deemed necessary. When approving a Lease, the Tribal Council shall ensure there is access to the property. The Leases must be substantially in the form as the Lease form approved by the Tribal Council. The Tribal Council also has the authority to cancel a Lease if the Borrower does not obtain a Leasehold mortgage within six (6) months of the date of the Secretary's approval of a Lease. However, the authority to cancel a Lease does not apply to sites upon which a Borrower holds a Land Assignment or to a site upon which the Borrower extinguished his/her Land Assignment for the purpose of obtaining a Lease.

C. No Mortgage of Leasehold Interest Without Lease

Notwithstanding anything to the contrary contained herein or in any Mortgage document, no Borrower may mortgage a Leasehold Interest without first: (1) having a valid written Lease for such property from the Santa Ana Pueblo; and (2) obtaining the prior written approval of the Secretary of all applicable Mortgage and loan documents, if such is required by federal law. Any Mortgage given in violation of this Section shall be void and of no effect.

**SECTION 5. RECORDING OF LEASE AND MORTGAGE LOAN DOCUMENTS**

- A. The appropriate offices for recording leases and mortgages are the Santa Ana Tribal Resources or other office or entity designated by the Tribal Council Office and the Bureau of Indian Affairs Regional Land, Titles, and Records Office. A Lender may also require that a lease and mortgage be recorded in the County Clerk's Office in the County in which the mortgaged properties are located; provided, however, that recording in the state county shall be for notice or convenience purposes only, and such recording is not intended to nor shall it be deemed to grant jurisdiction over such property or Mortgage to the state or county.
- B. For documents recorded at the Santa Ana Pueblo Recording Office or the office designated by the Pueblo for recording:
- 1) The Tribal Recording Clerk shall maintain a system for the recording of mortgage loans and such other documents as the Pueblo 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.
- 3) 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:

) )  
*Santa Ana Pueblo* ) 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 \_\_\_\_\_, 20\_\_.*

(SEAL)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

- 4) 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.
- 5) 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.

- 6) The certified copies of the mortgage loan and other documents maintained by the Tribal Recording Clerk shall be made available for Tribal Council review for official Pueblo of Santa Ana purposes only. The log of executed mortgage loans shall be available for public inspection. The log will not contain any personal information. Personal information of tribal members contained in the mortgage loan or other documents shall not be viewed or copied by the Tribal Council or the public under any circumstances.

## **SECTION 6. LIEN PRIORITY**

- A. 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 federal agency, shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim.
- B. Any mortgage loan created as a second mortgage, including a federal agency direct, guaranteed or insured mortgage, shall assume that position.

## **SECTION 7. FORECLOSURE**

### A. Assignment

Unless otherwise prohibited in the mortgage documents or under applicable law, a Borrower may assign any mortgaged property at any time prior to commencement of foreclosure proceedings; provided that:

- 1) The successor Borrower is a member of the Santa Ana Pueblo, a Santa Ana Pueblo Entity, or Federal Agency; and
- 2) Borrower receives all required consents in writing from the Santa Ana Pueblo Tribal Council, Lender, and or applicable Federal Agency, if any.

### B. Notice of Default Required

If a Borrower defaults as defined in Section C. 1 below in performance under a Mortgage, the Lender must provide a written Notice of Default prior to enforcing the terms and conditions of the Mortgage and prior to availing itself of the remedies under this Ordinance. All Notices of Default on a Mortgage shall be properly served in accordance with Section C. 4 and Section D below by Lender on Borrower, all Subordinate Lien holders, and the Santa Ana Pueblo. Prior to initiating a Mortgage Foreclosure Proceeding on any HUD guaranteed mortgage, notice shall be provided to the Secretary of HUD or his or her duly appointed representative. Prior to initiating a Mortgage Foreclosure Proceeding on any Mortgage guaranteed by any other Federal Agency, notice should be provided to the individual designated by the agency to receive such notice.

### C. Required Actions Upon Default

- 1) A Borrower/Mortgagor shall be considered to be in default when he or she is in material violation of any term or condition under the mortgage, including being past due on the mortgage payment as defined in Section C. 2 below.
- 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 comply with 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.
- 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 three (3) or more installment payments and at least ten (10) days before initiating a foreclosure action in Tribal Court, the Lender shall advise the Borrower/Mortgagor in writing by certified mail, return receipt requested or by posting prominently on the unit, with a copy provided to the Pueblo, as follows:
  - a. Advise the Borrower/Mortgagor whether the 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. Lender's right to Foreclosure.
  - e. Lessor's Right of First Refusal.
  - f. 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, the Lender/Mortgagee may ask the Pueblo of Santa Ana 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
  - iii. 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 ninety (90) days 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 E of this Ordinance.

#### D. Notice to the Pueblo and Required Consents

- 1) Notice. The Lender must serve notice, by certified mail, return receipt requested, to the Office of the Santa Ana Pueblo Governor simultaneously with any notice required to be served on the Borrower pursuant to this Ordinance or the Mortgage documents.
- 2) Required Consents. No lender may enter Santa Ana Pueblo without first obtaining consent from the Governor.

#### E. Cure of Default

The Borrower or any Subordinate Lien holder may cure the default(s) at any time before entry of a judgment of foreclosure by payment of amounts past due up to date of payment along with any interest and any standard and normal late fees and charges, including reasonable attorney fees. Under no circumstances shall the amount required to be tendered include any amounts due pursuant to an acceleration clause. Any Subordinate Lien holder who has cured a default may thereafter include in its lien the amount of all payments made by such Subordinate Lien holder to cure such default(s), plus interest on such amounts at the rate stated in the promissory note secured by the Subordinate Lien.

#### F. Right of First Refusal

- 1) In the event of default by the Borrower on any Mortgage or other loan agreement for which a Lease is pledged as security, the Lessor shall have the Right of First Refusal to acquire the Borrower's interest in the premises (subject to all valid liens and encumbrances) upon:
  - a. Payment of all sums past due; and
  - b. Either payment of the balance of the loan or assumption of the Mortgage.
- 2) The Right of First Refusal may be exercised at any time after the Lessor receives notice from the Lender of the Borrower's default in writing, certified mail, return receipt requested, up to

the date a Judgment for Foreclosure is entered. The Notice of the Lessor's Intent to Exercise its Right of First Refusal shall be provided in writing from the Lessor to the Borrower, all Subordinate Lien holders, and the Lender; provided, however, that even upon the Lessor's exercise of the Right of First Refusal, the Borrower may cure the default at any time up to the date of a judgment for foreclosure. The estate acquired by the Lessor through exercise of its Right of First Refusal shall not merge with any other estate or title held by the Lessor as long as the Lease is mortgaged or otherwise pledged as security for any loan.

- 3) If the Borrower default(s) on a Mortgage, the Right of First Refusal may not be exercised by the Lessor unless the Borrower has been advised of Forbearance Relief that may be available, if any, and the Lender or the relevant federal agency has found the Borrower to be ineligible.

## **SECTION 8. FORECLOSURE COMPLAINT**

A. Upon expiration of the cure period for a default under a Mortgage, as identified in the Mortgage documents or otherwise provided in this Ordinance, if there is a failure to cure, and the Lender has complied with the provisions set forth in this Ordinance, the Lender may commence a Mortgage Foreclosure Proceeding in the Tribal Court, unless otherwise limited by applicable federal law, by filing a verified complaint.

B. 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 loan, including each Subordinate Lienholder, except the Pueblo 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 Borrowers/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, or other recorded real property 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) an allegation that all relevant requirements and conditions prescribed in Federal and Tribal Law, and in the promissory note, security instrument, and the Lease have been complied with by the Lender
- 6) Otherwise satisfying the requirements of the Tribal Court.

C. 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).

D. Service of Process and Procedures

Any foreclosure complaint must be in writing, and must be served on the Borrower/Mortgagor in accordance with the tribal court rules of services of process. If there are none, service of the complaint must be done in the following manner:

- 1) Delivery must be made by an adult person and is effective when it is:
  - a. Personally delivered to a Borrower/Mortgagor with a copy sent by mail, or
  - b. Personally delivered to an adult living in the property with a copy sent by mail, or
  - c. Personally delivered to an adult agent or employee of the Borrower/Mortgagor with a copy sent by mail.
- 2) If the notice cannot be given by means of personal delivery, or the Borrower/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 Borrower/Mortgagor, or
  - b. Securely taping 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 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.
- 3) The person giving notice must keep a copy of the notice and proof of service in accordance with this section, by affidavit or other manner recognized by law.

E. Certified Mailing to Pueblo

In any foreclosure proceedings on a Leasehold Mortgage where the Pueblo is not named as a defendant, a copy of the summons and complaint shall be mailed to the Pueblo by certified mail, return receipt requested, within five (5) days after the issuance of the summons.

F. Continuances

No continuances shall be granted in cases involving the Lender or a Federal Agency, except for good cause shown and:

- 1) By agreement of all parties with the consent of the Tribal Court; or

- 2) In the sole discretion of the Tribal Court.

#### G. Cure of Default

- 1) 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 and other amounts set forth in Section 7. E above to the Lender/Mortgagee, plus all reasonable legal and Court costs incurred in foreclosing on the property.
- 2) 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.

#### H. Judgment and Remedy

- 1) The Tribal Court shall hear and decide this matter 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.
- 2) The Tribal Court shall enter judgment in favor of the Lender if:
  - a. a Notice of Default has been properly provided to all persons or entities required, and
  - b. i) if the Right of First Refusal has not been exercised, or ii) the default is not cured within the allowable period as identified in the Mortgage documents or otherwise provided in this Ordinance, and
  - c. if the Tribal Court determines that the Borrower is in default of the Mortgage.
- 3) A Judgment for Foreclosure shall:
  - a. foreclose the Borrower'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 Lien holder; and
  - b. Assign the Leasehold Interest in the mortgaged property to the Lender or any purchaser of the Leasehold Interest at a foreclosure sale. The proceeds of such sale shall be applied first toward any lien having a priority date prior to that of the Mortgage documents, next as provided in the Mortgage documents, and finally toward any liens having a priority date subsequent to the Mortgage documents.
  - c. Assignment of such mortgaged property shall be subject to:
    - i. The Borrower's right of redemption, if applicable; and



- ii. Limitations as to who may become an assignee of a Leasehold Interest as stated in the Lease.
- 4) The Tribal Court shall have the authority to enter against the Borrower a judgment for the following: (1) past due payments, unpaid utilities, and any charges due the Pueblo or Lessor under any Lease or occupancy agreement; (2) any and all amounts secured by the Mortgage that are due the Lender; and (3) damages caused by the Borrower to the property other than ordinary wear and tear. The Tribal Court shall have the authority to award to the prevailing party costs and reasonable attorney's fees in bringing suit. The Tribal Court shall not have the authority to enter a deficiency judgment except as may be required pursuant to a federal loan guarantee program as set forth in the mortgage documents.
- 5) The Tribal Court shall have the authority to order the sale of the foreclosed property and use the proceeds to satisfy the Judgment.

#### I. Redemption

The Redemption period shall end sixty (60) days after a Judgment of Foreclosure has been entered but prior to sale of the home. The defendant Borrower of the mortgaged property, his heirs, personal representatives, or assigns, may exercise the right of redemption, by paying to the Lender or Lender's assigns, at any time within sixty (60) days from the date of the Judgment of Foreclosure, the amount due on the Judgment, with interest from the date of Judgment at the rate of ten percent a year, together with all taxes, interest and penalties thereon, and all payments made to satisfy in whole or in part any prior lien or mortgage not foreclosed, with interest on such taxes, interest, penalties and payments made on liens or mortgages at the rate of ten percent a year from the date of payment. If the Lender is assigned the Borrower's Leasehold Interest, the Lender may subsequently sell or assign such Leasehold Interest to an eligible Borrower or the Lessor. If HUD acquires the Leasehold Interest, it may transfer the same subject to the terms and conditions of the Lease and pursuant to applicable law.

#### J. Intervention

The Pueblo 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 Santa Ana Pueblo, nor the granting of such petition by the Tribal Court, shall operate as a waiver of the sovereign immunity of the Santa Ana Pueblo, except as expressly authorized by the Santa Ana Pueblo.

#### K. Subleases

In the event a Federal Agency or the Lender is assigned the leasehold mortgage pursuant to a foreclosure action, and a subsequent purchaser cannot be found pursuant to the terms and conditions of this Ordinance, the Federal Agency or Lender may sublease the leased premises to a member of the Santa Ana Pueblo, the Santa Ana Pueblo or a Santa Ana Pueblo entity, or as otherwise allowed in the lease.

L. Foreclosure Sales

- 1) All sales of mortgaged property under a Judgment of Foreclosure shall be made by the Mortgagee. The sale shall be by auction to tribal members, with priority given to eligible family members of the defaulting borrower, and tribal entities after such notices as required by this Ordinance.
- 2) Notice of sale must:
  - a. be published in a newspaper or newsletter or general circulation in the Pueblo; and
  - b. be mailed at least thirty (30) days before the sale to each party in the foreclosure case at the address provided for service of papers in the case and to the Governor; and
  - c. be posted at the Governor's Office and in other tribal buildings open to the public.
- 3) All proceeds from sale of the foreclosed property shall be brought to the Court to be applied to the payment of the Judgment. The proceeds shall be applied as follows:
  - a. First, to the expenses of the sale, including the costs of notice and a reasonable fee for the official conducting the sale, except that no Pueblo or federal employee or employee of a tribal entity shall be paid a fee for such service.
  - b. Second, to the discharge of the Judgment amount.
  - c. Third, to the discharge of the claims for other mortgage holders whether or not foreclosed, which are junior to the first priority lien on the mortgage foreclosed, in order of seniority.
  - d. The remainder returned to the Mortgagor.

**SECTION 9. EVICTIONS**

A. No Self-Help Eviction

No person or entity may compel an occupant to vacate any premises by force or in a way that causes a breach of the peace. All persons or entities attempting to regain possession of any property shall upon the failure of an occupant to voluntarily vacate property, give a notice to quit and obtain a court order of eviction as provided in this Ordinance. This Section 9 shall not apply (1) to the Santa Ana Homeownership Program which is wholly funded by the Santa Ana Pueblo; (2) to any other tribal program falling outside the scope of this Ordinance; or (3) to impede the authority of the Tribal Council or Governor in enforcing evictions under and in accordance with the Santa Ana Homeownership Program.

**B. Notice to Quit**

- 1) If anyone claiming a right to possession desires to obtain possession of real property from another, he or she shall give notice to the occupant to quit possession of the property.
- 2) The purpose of the notice to quit is to provide advance notice of a specific problem that needs to be addressed.
- 3) The notice to quit shall be addressed to the adult occupant(s) of the real property and shall state the reasons(s) for termination of possession and the date by which the occupant is required to quit possession of the property. The notice to quit shall be in writing substantially in the following form:

*I (or we) have a legal right to possession of the property now occupied by you at (here insert the address or other reasonable description of the location of the property), and hereby give you notice that you are to quit possession or occupancy on or before the (here insert the date) for the following reason (here insert the reason(s) for the notice to quit possession).*

*Signed, (here insert the signature, name and address of the party with a right to possession, as well as the date and place of signing).*

- 4) The notice must be delivered within the following periods of time:
  - a. At least seven (7) calendar days prior to the date to quit specified in the notice for any failure to pay rent or other payments required by an agreement with the occupant.
  - b. At least three (3) calendar days prior to the date to quit specified in the notice for Nuisance, serious injury to property, or injury to persons.
  - c. If there is an emergency or condition making the dwelling unsafe or uninhabitable, or in situations involving an imminent or serious threat to public health or safety, the notice may be made in a period of time which is reasonable, given the situation.
  - d. At least fourteen (14) calendar days in all other situations.

**C. Unlawful Detainer**

A person may be charged with unlawful detainer if such person has received notice to quit and continues in occupancy of real property under any of the following situations:

- 1) After the expiration of the term of a Lease;
- 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 or Landlord has terminated a person's tenancy pursuant to court procedures providing a hearing;
- 4) After a Leasehold Interest has been foreclosed in a Mortgage Foreclosure Proceeding and the Borrower, Lessee, Sublessee, or other occupant of the property has received notice of such foreclosure and has remained in possession of the property beyond the date set forth to vacate the Property in the notice;
- 5) When a person has received notice (i) that he or she is in default under a Lease or other occupancy agreement; and (ii) requiring him or her to cure such default or surrender possession of the occupied property, and such person has not done either within the period provided in such notice;
- 6) When a person continues 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;
- 7) When a person fails to comply with applicable Tribal Housing Policies and/or regulation; or
- 8) 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.

#### D. Petition and Summons

Any person claiming a right to possess property held by another, including but not limited to a Lender or a Federal Agency, as appropriate, may commence an action in unlawful detainer in Tribal Court, unless otherwise limited by applicable federal law, as follows:

- 1) By filing a verified petition for eviction:
  - a. Citing authority for jurisdiction of the Tribal Court;
  - b. Naming as defendant(s) the occupant(s) of the property and, if the property is subject to a Mortgage, the Borrower and each record owner claiming through the Borrower subsequent to the recording of the Mortgage, including each Subordinate Lien holder;
  - c. Describing the property subject to the petition;
  - d. Stating the facts concerning the alleged unlawful possession of the property by the defendant and, if the property is subject to a Leasehold Interest and/or a Mortgage (i) the execution of any Lease and/or the Mortgage; (ii) the recording of the Mortgage; and (iii) the alleged default(s) of the Borrower(s); and (iv) any other facts necessary to support a cause of action;

- e. Appending as exhibits true and correct copies, if any, of each occupancy agreement, promissory note, lease, loan agreement, security instrument, and/or Mortgage, and, if applicable, any assignment thereof relating to such mortgaged property;
  - f. Including an allegation that all relevant requirements and conditions prescribed in Federal and Tribal Law, and in the occupancy agreement, promissory note, lease, loan agreement, security instrument, and/or Mortgage, and the assignment, if any, have been complied with by the petitioner;
  - g. Including claims for damages, if any; and
  - h. Otherwise satisfying the requirements of the Tribal Court.
- 2) By obtaining and serving upon each defendant a summons requiring the defendants to appear for a hearing upon the complaint, and filing a copy of such summons with the Tribal Court. The summons must be issued in accordance with the Tribal Court rules and procedures. The hearing date shall be in accordance with the Tribal Court Rules of Civil Procedure, but no less than six (6) days and not more than thirty (30) days from the date an Answer is filed, or if no Answer is filed, no more than forty-five (45) days from the date of service of the summons and complaint. The summons must notify each defendant that judgment will be taken against him or her in accordance with the terms of the complaint unless he or she appears for a hearing at the time, date, and place specified in the summons to provide evidence as to why he or she should not be evicted; and

#### E. 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 following two methods.

- 1) delivering a copy personally to the Borrower/ Mortgagor or to any other occupant under color of law, or to any adult residing in the unit and, if applicable, to any Sublessee; or
- 2) posting said notice in a conspicuous place near the entrance to said unit, and sending an additional copy to the Lessee or to any other occupant under color of law, and, if applicable, to the Sublessee, by certified mail, return receipt requested, properly addressed, postage paid. Proof of service may be made by affidavit of any adult person stating the he has complied with the requirements of one of the above methods of service.

#### F. Power of the Tribal Court

The Tribal Court shall enter an order of repossession if:

- 1) Notice of suit is given in accordance with procedures provided herein; and

- 2) The Tribal Court finds at the hearing that the defendant has committed an act of unlawful detainer; or
- 3) The defendant(s) fails to appear pursuant to the summons.
- 4) Upon issuance of an order of repossession, the Tribal Court shall have the authority to enter a judgment against the defendant(s) for the following, as may be deemed appropriate:
  - a. Back rent, unpaid utilities, and any charges due the Santa Ana Pueblo, Tribal Housing Authority, or Sublessor under any Sublease or other written agreement, except for a Leasehold Mortgage;
  - b. If the property is subject to a Leasehold Mortgage, any and all amounts secured by a Leasehold Mortgage that are due the Lender or the appropriate Federal Agency;
  - c. Damages to the property caused by the defendant(s), other than ordinary wear and tear; and
  - d. Costs and reasonable attorney's fees.

#### G. Enforcement

Within fifteen (15) days of issuance of an order of repossession by the Tribal Court, Tribal or Federal Law Enforcement Officers shall enforce the order by evicting the defendant from the property that is unlawfully occupied.

#### H. Storage of Property

Following forcible eviction of the defendant(s) and/or other occupants, the former occupant's personal property shall be stored by the Lessor or Landlord for at least thirty (30) days, at a suitable location off of the premises. 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 Landlord is authorized to sell the property in order to recover these costs. The Lessor or Landlord 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 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 Landlord. Personal property that is not reclaimed by the former occupants or cannot be sold in accordance with the provision stated herein may be disposed of in the sole discretion of Lessor or Landlord.

#### I. Continuances

Except for good cause shown and by agreement of all parties with the consent of the Court, or the sound discretion of the Court, there shall be no continuances in cases involving a lender or Federal

Agency that will interfere with the requirement that the order of repossession be enforced not later than 45 days after the Tribal Court finds against defendants.

## **SECTION 10. 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.

## **SECTION 11. PUEBLO APPROVALS**

- A. The Pueblo must approve all transfers or assignments of the leasehold interest, except at foreclosure and except as provided in the lease.
- B. The Federal Agency which made, insured or guaranteed the mortgage loan, or the lender may assume title to the leasehold interest without Pueblo approval of such transfer. However, anyone who subsequently purchases or rents the leasehold property must be approved by the Pueblo except as otherwise provided in the lease.
- C. In the event of a foreclosure and subsequent eviction, the Pueblo:
  - 1) Shall have the right to sublease a leasehold estate only to tribal members and tribal entities; and
  - 2) May impose other qualifying criteria on a potential sub-lessee related to Pueblo customs, traditional law, health and safety of the Pueblo community, not otherwise prohibited by applicable federal law.

## **SECTION 12. LIMITED WAIVER OF SOVEREIGN IMMUNITY**

The Santa Ana Pueblo hereby authorizes a limited waiver of sovereign immunity from suit that Santa Ana Pueblo may enjoy with respect to any and all controversies or claims arising out of or related to the obligations of Santa Ana Pueblo under a Lease or any Mortgage document or instrument to which Santa Ana Pueblo may be a party pursuant to a Mortgage assumption. In connection with such waiver, Santa Ana Pueblo hereby consents to the personal jurisdiction of the Santa Ana Pueblo Courts with respect to any action to enforce any obligations owed by it to any other party, including a Federal Agency, or to enforce any other party's rights and/or remedies under such Lease(s) or Mortgage documents. THE AUTHORITY PROVIDED HEREIN IS NOT INTENDED TO NOR SHALL IT BE CONSTRUED TO WAIVE THE IMMUNITY OF THE SANTA ANA PUEBLO FOR ANY OTHER PURPOSE OR WITH RESPECT TO ANY CLAIM OR OTHER MATTER NOT SPECIFICALLY MENTIONED HEREIN, AND IS NOT INTENDED TO, NOR SHALL IT, EXTEND TO THE BENEFIT OF ANY PERSON OTHER THAN THE PARTIES TO SUCH AGREEMENTS OR THEIR SUCCESSORS OR ASSIGNS.

## **SECTION 13. AMENDMENTS**

This Ordinance may be amended by the Tribal Council. No amendment to this Ordinance shall be applied to affect adversely the rights and privileges of persons who entered into mortgages pursuant to this Ordinance prior to the effective date of such amendment.

#### **SECTION 14. APPEALS**

Appeals of Tribal Court decisions made under this Ordinance shall be handled in accordance with the general Pueblo Tribal Court appellate provisions.

This Mortgage Ordinance was approved by the Santa Ana Tribal Council on August 31, 2016 by Tribal Council Resolution No. 2016-R-47, and amended on August 8, 2018 by Tribal Council Resolution No. 2018-R-13.