

TITLE 18 – HOUSING

CHAPTER 5 – RESIDENTIAL LAND LEASES FOR LEASEHOLD MORTGAGES

Legislative History: The Residential Land Leases for Leasehold Mortgages was enacted and codified as 18 T.O.C. Chapter 5 by Resolution No. 15-211 effective June 3, 2015; provided that Section 5103(H), Section 5106(B)(9), Section 5106(C)(10), Section 5111(B) are only applicable in a district adopting a resolution making those sections applicable within its boundaries.

Related History: As of October 8, 2016, the Gu Achi District Council, Sells District Council, and Sif Oidak District Council had adopted resolutions making Section 5103(H), Section 5106(B)(9), Section 5106(C)(10), Section 5111(B) applicable within the boundaries of those districts.

TITLE 18 – HOUSING

CHAPTER 5 – RESIDENTIAL LAND LEASES FOR LEASEHOLD MORTGAGES

Section 5101 Purpose

The purpose of this Chapter is to enable Nation’s members to receive the benefits of a Federally Sponsored Loan Program supporting homeownership by authorizing interests in Nation’s Land to be pledged as security for a leasehold mortgage while protecting the interests of the Nation, borrower, lender, and any federal agency or tribal housing entity involved in such program.

Section 5102 Definitions

“Federally Sponsored Loan Program” refers to loans insured by private loan insurers, federal agencies or lending institutions, including but not limited to the Veteran’s Administration (“VA”), the Department of Housing and Urban Development (“HUD”), the Federal Home Administration (“FHA”), or Department of Agriculture (“USDA”), which loan money, guarantee or insure loans to Native Americans for construction, acquisition, refinancing or rehabilitation of a home under Section 184 or 248 of the National Housing Act, such as but not limited to, the Native American Veterans Direct Loan Program, HUD Section 184 Home Loan Guarantee Program or any other similar federal law or loan guarantee program intended to provide loans to Native Americans secured by property within the Nation or within the jurisdiction of the Nation.

“Leasehold Mortgage” means the mortgage of a Residential Land Lease, as defined in this Chapter, given to secure a loan made under a Federally Sponsored Loan Program for residential housing.

“Nation’s Land” means all land within the exterior boundaries of:

- (a) the Sells Tohono O’odham Reservation established by the Executive Order of February 1, 1917, and the Act of February 21, 1931 (46 Stat. 1202, chapter 267);
- (b) the San Xavier Reservation established by the Executive Order of July 1, 1874;
- (c) the Gila Bend Indian Reservation established by the Executive Order of December 12, 1882, and modified by the Executive Order of June 17, 1909;
- (d) the Florence Village established by Public Law 95-361 (92 Stat. 595); and
- (e) such other lands as may have been or may hereafter be added thereto by purchase, gift, act of Congress or otherwise.

“Residential Land Lease” or “Lease” means a written agreement entered into between the lessor and a lessee or between a sublessor and a sublessee where the lessee or sublessee is granted a right to possess, occupy, and use Nation’s Land for a residential purpose and for a specific duration in accordance with this Chapter.

“Secretary” means the Secretary of the Department of the Interior.

“TOKA” means the Tohono O’odham Ki:Ki Association, the Nation’s Tribally Designated Housing Entity.

Section 5103 Residential Land Leases

(A) Any eligible tribal participant may apply for a Residential Land Lease within the Tohono O’odham Nation for the purpose of participating in a Federally Sponsored Loan Program.

(B) A Residential Land Lease shall not exceed the acreage necessary for the residential purpose specified, as determined by the lessor of such land, and shall comply with the applicable laws and requirements of the Federally Sponsored Loan Program.

(C) No Residential Land Lease shall lose its designation as such by Legislative Council resolution or otherwise. It is the intent and purpose of this Chapter that such designation shall be for the term designated in the Lease and is irrevocable.

(D) The Nation’s Realty Office shall process the application for a Residential Land Lease, which shall be subject to approval by the Legislative Council and the Secretary. TOKA shall provide homeowner and housing related information.

(E) A Residential Land Lease shall be limited to a maximum term of 25 years, with an automatic option to renew for an additional 25 years. Each lessee shall be provided notice by the Nation’s Realty Office of the automatic renewal 60 days prior to the expiration of the first term of 25 years. All executed Leases and Leasehold Mortgages will be recorded in accordance with the procedures established by the Nation’s Realty Office and with the Bureau of Indian Affairs’ Land Titles and Records Office.

(F) Residential Land Leases are distinct and separate conveyances of interests in land from the interests in land conveyed by District Councils with respect to homesite assignments.

(G) For the purposes of implementing this Chapter, Residential Land Leases shall include such mandatory provisions as required by and set forth in model lease forms approved by the federal agencies administering the Federally Sponsored Loan Program.

(H) To participate in a Federally Sponsored Loan Program on Nation’s Lands, either an eligible tribal participant or the Nation’s TOKA must lease or sublease the land from the Nation, or from a designated Master Lessee through a Residential Land Lease. If the eligible tribal participant already has a homesite assignment, the eligible tribal participant may apply for a Lease on the same parcel or tract of land, provided that in the event of a conflict between the terms of an approved Lease and homesite assignment, the terms of the Lease shall control.

(I) The respective Legislative Council oversight committee will recommend an annual rental payment for proposed Residential Land Leases entered into directly by and between the Nation

and an eligible tribal participant that will be subject to approval by the Legislative Council and eligible tribal participant. The annual rental payment for a proposed Residential Land Lease entered into directly by and between the TOKA and an eligible tribal participant shall be determined by the TOKA in conformance with applicable federal tribally designated housing entity regulations.

Section 5104 Eligible Tribal Participants

Residential Land Leases are limited to eligible tribal participants. An eligible tribal participant is:

- (A) An enrolled member of the Nation:
 - (1) who is at least 18 years of age, or if below the age of 18, has a guardian or conservator who has been appointed by a court of competent jurisdiction; and
 - (2) whose residential lease has not been terminated due to a Federally Sponsored Loan Program lender's enforcement of its rights under a leasehold mortgage.
- (B) The Nation's tribally designated housing entity.
- (C) The Nation.

Section 5105 Nation's Realty Office

- (A) The Nation's Realty Office will provide information about the Residential Land Lease application process, including referrals to the TOKA or appropriate federal agencies and options for obtaining the information required under Section 5106 or other relevant homebuyer education information.
- (B) In coordination with respective Nation's programs or entities, the Nation's Realty Office shall develop an informational document for potential applicants, including a list of relevant factors to consider when selecting a potential Residential Land Lease site. The Nation's Realty Office may update this document as it deems appropriate.
- (C) Upon request, the Nation's Realty Office will contact the Bureau of Indian Affairs to provide a preliminary title status report to a prospective applicant.
- (D) The Nation's Realty Office and TOKA shall have available copies of the model lease forms approved by federal agencies administering the Federally Sponsored Loan Program.

Section 5106 Application Process

- (A) Subject to final approval by the Legislative Council and Secretary, the TOKA or any eligible tribal participant may apply to the Nation's Realty Office for a Residential Land Lease.

(B) The Nation's Realty Office may develop a standard application form, which shall at a minimum include the following:

- (1) full name of the applicant and name of applicant's spouse, if any;
- (2) current address and phone number;
- (3) enrollment number;
- (4) written confirmation that eligible participant pre-qualifies or is pre-approved by the respective Federally Sponsored Loan Program;
- (5) a description of the tract or land parcel that will be subject to a Leasehold Mortgage, either in the form of a legal description and an accompanying (i) survey plat map signed by and attested to by seal of a registered land surveyor; (ii) a survey-grade global positioning system description; or (iii) such description prepared by a registered land surveyor that is sufficient to identify the requested tract or land parcel in a form acceptable by the Federally Sponsored Loan Program or lender thereunder;
- (6) the purpose of the Lease and authorized uses of the leased premises;
- (7) a preliminary site plan identifying the proposed location of residential development, roads, utilities, availability of police and fire rescue, if applicable, and a description of existing structures, if any;
- (8) information concerning ownership of any permanent improvements and the responsibility for constructing, operating, maintaining, and managing permanent improvements;
- (9) the respective District Council's resolution supporting the applicant's Lease request; provided that if an applicant requests a Residential Land Lease on his or her current homesite assignment, the District Council resolution shall state that in the event of a conflict between the terms of the Residential Land Lease and homesite assignment, the terms of the Residential Land Lease and Leasehold Mortgage shall control;
- (10) environmental and archeological reports, surveys, and site assessments and/or clearances as needed or required for compliance with applicable federal and Nation's environmental laws and regulations; and
- (11) if eligible tribal participant is applying for a Federally Sponsored Loan Program loan with a non-member or non-Indian, written confirmation that loan co-signor understands that he or she will not be an authorized lessee in the event of separation, divorce, or death.

(C) The application of the TOKA shall include the following:

- (1) full names of the eligible tribal participants;
 - (2) current address and phone number of the eligible tribal participants;
 - (3) enrollment number of the eligible tribal participants;
 - (4) written confirmation that eligible participant pre-qualifies or is pre-approved by the respective Federally Sponsored Loan Program or the TOKA;
 - (5) a description of the tract or land parcel that will be subject to a Residential Land Lease and Leasehold Mortgage, either in the form of a legal description and an accompanying (i) survey plat map signed by and attested to by seal of a registered land surveyor; (ii) a survey-grade global positioning system description; or (iii) such description prepared by a registered land surveyor that is sufficient to identify the requested tract or land parcel in a form acceptable by the Federally Sponsored Loan Program, TOKA or lender thereunder;
 - (6) the purpose of the Lease and authorized uses of the leased premises;
 - (7) a preliminary site plan identifying the proposed location of residential development, roads, utilities, availability of police and fire rescue, if applicable, and a description of existing structures, if any;
 - (8) a copy of the proposed sublease between the TOKA and the eligible tribal participants;
 - (9) environmental and archeological reports, surveys, and site assessments and/or clearances as needed or required for compliance with applicable federal and Nation's environmental laws and regulations; and
 - (10) the respective District Council's resolution supporting the TOKA's request; provided that if TOKA's request includes an eligible tribal participant with a current homesite assignment, the District Council resolution shall state that in the event of a conflict between the terms of the Residential Land Lease or sublease and homesite assignment, the terms of the Residential Land Lease or sublease shall control.
- (D) Upon receipt and review of a complete application, the Nation's Realty Office shall contact the Bureau of Indian Affairs to obtain a certified title status report to verify any existing liens or encumbrances for the requested tract or parcel.
- (E) As soon as the Nation's Realty Office receives a certified title status report for the requested tract or parcel, the Nation's Realty Office shall notify the applicant.
- (F) The Nation's Realty Office and applicant shall present information required under this subsection to the Legislative Council in accordance with the Legislative Rules.

(G) All Residential Land Leases must be approved by Legislative Council resolution before the Lease is sent to the Bureau of Indian Affairs for approval by the Secretary and thereafter, for recording.

Section 5107 Rights Conveyed By Residential Land Lease

The proper execution, delivery, and recording of a Residential Land Lease shall vest the named lessee or sublessee, as the case may be, with the rights as a lessee to occupy, use and control the leased premises as described in the Residential Land Lease or sublease for the duration of its term to the exclusion of the rights of other persons subject to the following:

(A) Any right of the United States of America under federal laws that restrict alienation of tribal lands for the benefit of the Nation.

(B) The Nation's authority to assert its police powers, including but not limited to the enforcement of public health, safety, and welfare laws, land use control laws, building or zoning codes, or criminal laws.

(C) The rights of a Federally Sponsored Loan Program lender arising under the terms of a Leasehold Mortgage authorized by this Chapter.

(D) The Nation's or, in the event that the TOKA is a party thereto, the TOKA's right of access over, under, into, and upon any parcel or tract of land that is subject to a Residential Land Lease, as deemed necessary by either the Nation for governmental activities, including but not limited to providing utility services; or the TOKA, as sublessor, in accordance with the terms of the Residential Land Lease or sublease.

(E) The Nation's right to and authority over the Nation's lands, water resources, minerals, sand, gravel, other natural resources, archeological resources, flora, fauna, and other resources on the Nation's lands.

(F) The rights of the Nation in and to all ceremonial, burial, and sacred grounds.

Section 5108 Rights Conveyed by Leasehold Mortgage

(A) The proper execution, delivery by the parties thereto and recording of a Leasehold Mortgage shall vest the Federally Sponsored Loan Program lender with a valid and enforceable security interest in the leased premises that is subject to a Residential Land Lease and the rights thereunder. The security interest is enforceable in the Tohono O'odham Judicial Court in accordance with the terms of the Leasehold Mortgage, the provisions of the Nation's Housing Code and other applicable Nation's laws. Any purported security interest granted to and/or for the benefit of any person, entity or agency other than a lender pursuant to and/or under a Federally Sponsored Loan Program shall be deemed null and void and of no legal force or effect. In addition, any provision of a Leasehold Mortgage shall be deemed null and void and unenforceable if it is:

(1) Contrary to the terms, conditions or regulations of the applicable Federally Sponsored Loan Program; or

(2) Contrary to the provision of any Nation's law in effect at the time the Leasehold Mortgage was executed.

(B) The security interest of a Federally Sponsored Loan Program lender in the leased premises that is subject to a Leasehold Mortgage and a Residential Land Lease, shall be perfected by recording the Leasehold Mortgage in accordance with the Nation's Housing Code.

(C) A Leasehold Mortgage recorded in accordance with the Nation's Housing Code shall have priority over any lien that has not been perfected by being recorded at the Nation's Realty Office at the time of recording such Leasehold Mortgage and over any subsequent lien or claim except a lien or claim arising from any leasehold tax of the Nation assessed after the date of recording of the Leasehold Mortgage.

Section 5109 Assignment and Sublease of Residential Land Lease

(A) The lessee or sublessee under a Residential Land Lease shall have the right to assign, sublet, or encumber a Residential Land Lease only as follows:

(1) Subject to the security interest of a Federally Sponsored Loan Program lender in the Residential Land Lease pursuant to the terms of a Leasehold Mortgage perfected in accordance with Section 5108(B) of this Chapter.

(2) With prior written approval of the Nation, lessor, and Federally Sponsored Loan Program lender.

(3) In the case of a Residential Land Lease with the TOKA as sublessor, subject to any applicable TOKA program policies, federal regulations and the terms of the Residential Land Lease with the eligible TOKA housing program participants.

(B) Any other conveyance, unless otherwise permitted by law, shall be null, void, and of no legal force or effect.

Section 5110 Leasehold Mortgage Default

(A) In the event a lessee or sublessee under a Residential Land Lease encumbered by a Leasehold Mortgage is 30 days past due on his or her mortgage payment, the lender may proceed under Section 4503 of the Nation's Housing Code, Foreclosure Procedures, and other applicable sections of the Housing Code.

(B) Lessee may assign the Residential Land Lease and deliver possession of the leased premises, including any improvements thereon, to the lender or its successors, or federal agency guaranteeing or insuring the loan, if lessee or sublessee defaults under the terms of a Leasehold Mortgage or other loan agreement for which the Residential Land Lease and/or improvements,

including a dwelling unit on the leased premises, are pledged as security for the repayment of such loan, and in such event, the Federally Sponsored Loan Program lender or its successors in interest thereafter may transfer the lessee's or sublessee's interest in such Residential Land Lease or possession of the leased premises to a successor lessee or sublessee, subject to all of the terms and provisions of the Residential Land Lease and in the case of a Residential Land Lease with the TOKA as sublessor, subject to any applicable TOKA program policies and federal regulations, provided, however, that the Lease may only be transferred to another eligible tribal participant.

Section 5111 Construction

(A) In the event of a conflict between this Chapter and any other Nation's laws affecting Residential Land Leases, the provisions of this Chapter shall control.

(B) Nothing in this Chapter shall be interpreted as restricting, limiting or otherwise diminishing in any manner, a District's authority under Article XVI, Section 4 of the Constitution of the Tohono O'odham Nation to assign homesites; provided that in the event of a conflict between a Residential Land Lease and a homesite assignment for the same parcel of land, the terms of the Residential Land Lease shall control.

Section 5112 Enforcement

(A) The Nation's Realty Office and Office of the Attorney General may file an action or proceeding in the Tohono O'odham Judicial Court for the enforcement of any provision of this Chapter and the enforcement of the terms of any instrument in which the Nation has an interest including but not limited to a Residential Land Lease. The foregoing notwithstanding, unless pursuant to the rights of the Nation arising under the terms of any Federally Sponsored Loan Program pursuant to which a Leasehold Mortgage is made, only the Federally Sponsored Loan Program lender or its approved successor or assignee, shall be entitled to enforce its security interest arising under a Leasehold Mortgage.

(B) The Tohono O'odham Judicial Court shall have exclusive jurisdiction and authority to hear any enforcement action or proceeding brought under this Chapter or the Nation's Housing Code.

(C) The Tohono O'odham Judicial Court is authorized to award monetary damages and to grant equitable relief in accordance with the purposes and intent of this Chapter; provided that the Nation's sovereign immunity is not waived with regard to the award of any damages, costs of suit, including attorney's fees, or other monetary relief against the Nation. In all such cases, the immunity of the Nation is expressly preserved.