

**INDIAN AFFAIRS**  
**MORTGAGE HANDBOOK**  
**52 IAM 4-H**



Bureau of Indian Affairs  
Office of Trust Services  
Division of Real Estate Services  
1839 C Street, NW - Mailstop 4642-MIB  
Washington, DC 20240

#19-02, Issued: 7/15/19  
New

## FOREWORD

This handbook documents the procedures required to implement the Indian Affairs (IA) policy, 52 IAM 4: Processing Mortgages of Trust Properties. It supersedes all procedures, handbooks, and other guidance related to processing mortgages that may have been created and/or distributed throughout IA previously.

This handbook is primarily a resource for Bureau of Indian Affairs (BIA) Division of Realty staff. It provides standardized procedures and other guidance to assist BIA staff in the efficient and consistent processing of leasehold mortgages and land mortgages of trust property from various mortgage lenders and lending programs.



7-15-2019

---

Darryl LaCounte  
Director, Bureau of Indian Affairs

Date

# Table of Contents

|  |    |
|--|----|
| Chapter 1: Purpose.....  | 1  |
| Chapter 2: Overview of Mortgage Types .....  | 2  |
| 2.1 Differences Between Leasehold and Land Mortgages.....                              | 2  |
| 2.2 Timeframes for Approval.....   | 2  |
| Chapter 3: Leasehold Mortgages .....   | 3  |
| 3.1 Overview .....   | 3  |
| 3.2 Pre-Review Process.....  | 3  |
| 3.3 Review Process .....   | 4  |
| 3.4 Satisfaction/ Release/Reconveyance .....   | 10 |
| 3.5 Lender Assignment .....  | 10 |
| 3.6 Foreclosure .....  | 11 |
| Chapter 4: Deed Assignment & Release (DAR) or Quit Claim Deed Assignment & Release ... | 13 |
| 4.1 Overview .....   | 13 |
| 4.2 Purposes of DAR Documents .....  | 13 |
| 4.3 Review Process .....   | 14 |
| Chapter 5: Trust Land Mortgages/Deeds of Trust .....                                   | 17 |
| 5.1 Overview .....   | 17 |
| 5.2 Purpose.....   | 17 |
| 5.3 Review and Analysis Process.....   | 17 |
| 5.4 Review Process .....   | 19 |
| 5.5 Modifications .....  | 23 |
| 5.6 Satisfaction or Release .....  | 24 |
| 5.7 Default/Foreclosure.....   | 24 |
| 5.8 Lender Assignment .....  | 25 |
| Definitions and List of Acronyms.....  | 27 |
| Definitions.....   | 27 |
| List of Acronyms .....   | 32 |
| Attachment 1 – Types of Loans .....  | 33 |
| Attachment 2 - Leasehold Mortgage Lender Checklist .....                               | 37 |
| Attachment 3 - Leasehold Mortgage Loan Checklist .....                                 | 38 |
| Attachment 4 - Template Leasehold Acknowledgement Incomplete letter.....               | 41 |
| Attachment 5 - Template Leasehold Acknowledgement Complete letter .....                | 42 |

|  |    |
|--|----|
| Attachment 6 - Template Leasehold ROW Acknowledgement Complete letter.....     | 43 |
| Attachment 7 - NEPA Cat Ex Checklist.....                                      | 44 |
| Attachment 8 - Template Superintendent Recommendation memorandum.....          | 47 |
| Attachment 9 - Template Leasehold Approved Decision letter.....                | 49 |
| Attachment 10 - Template Leasehold Certificate of Approval.....                | 51 |
| Attachment 11 - Template Leasehold Disapproval Decision letter .....           | 52 |
| Attachment 12 - Template Leasehold Lender Transmittal letter .....             | 54 |
| Attachment 13 – Trust Land Mortgage Loan Checklist .....                       | 55 |
| Attachment 14 - Template Land Mortgage Acknowledgement Incomplete letter ..... | 58 |
| Attachment 15 - Template Land Mortgage Agency Transmittal memorandum.....      | 59 |
| Attachment 16 - Template Trust Land Mortgage Commitment to Approve letter..... | 60 |
| Attachment 17 - BIA Disclosure Statement.....                                  | 62 |
| Attachment 18 - Template Land Mortgage Certificate of Approval .....           | 64 |
| Attachment 19 - Template Land Mortgage Disapproval letter .....                | 65 |
| Attachment 20 - Template Land Mortgage Lender Transmittal letter.....          | 67 |
| Attachment 21 - Template RD Recommendation memorandum .....                    | 68 |
| Attachment 22 – Land Mortgage Lender Loan Checklist .....                      | 69 |

## Chapter 1: Purpose

The purpose of this handbook is to provide guidance to BIA staff for processing leasehold and trust land mortgages on trust or restricted land; specifically, how to review and analyze a mortgage loan request from a lender using a minimum, streamlined, and standardized process. The handbook contains checklists, templates, and other documents to assist staff throughout this process. All references to “days” within this handbook are calendar days, not business days. Additionally, all references to “Agency” and “Region” within this handbook are to the applicable BIA Agency and/or Region.

The following items will be addressed in more detail in the following pages:

- Mortgage documents required from the lender
- Requesting a certified Title Status Report (TSR)
- Process for reviewing & approving leasehold and trust land mortgages
- Completion of the BIA checklist for the required documents
- Review of the lender’s appraisal
- Reviewing certified TSRs for land status and encumbrances
- Preparing the Regional Director’s (RD) or Agency Superintendent’s Decision Letter
- Recording process in Land Titles and Records Office (LTRO)
- Actions taken in the event of defaults and foreclosures

Note that all Attachments to this handbook are included as informational and/or as “samples” only. For actual templates, please use the versions posted on the IA Online Forms webpage here: <http://www.bia.gov/WhoWeAre/AS-IA/ORM/OnlineIAForms/index.htm>

## Chapter 2: Overview of Mortgage Types

Given the complexity involved in processing mortgages, it is important to understand the differences in the types of mortgages as well as the related regulatory requirements. Additional guidance on types of loans is provided in Attachment 1.

### 2.1 Differences Between Leasehold and Land Mortgages

**Leasehold mortgage:** A mortgage, deed of trust, or other instrument that pledges a lessee's leasehold interest as security for a debt or other obligation owed by the lessee to a lender or other mortgagee.

Leasehold mortgages include all lease types and rights-of-way (ROW). ROW can now be mortgaged pursuant to 25 CFR 169.210.

**Land mortgage:** A mortgage obtained by an individual Indian who owns a tract of trust land for the purpose of home acquisition and construction, home improvements, and/or economic development.

### 2.2 Timeframes for Approval

There are established regulatory time frames for the review and approval of leasehold (25 CFR 162) and ROW mortgages (25 CFR 169). There are currently no established regulatory time frames for review and approval of trust land mortgages and deeds of trust (25 CFR 152.34).

- Leasehold mortgages must be reviewed and approved within 20 days of receipt of required documentation (25 CFR 162.359, 162.459, and 162.584).
- ROW mortgages must be reviewed and approved within 30 days of receipt of required documentation (25 CFR 169.211(a)).

## Chapter 3: Leasehold Mortgages

### 3.1 Overview

A leasehold mortgage means a mortgage, deed of trust, or other instrument that pledges a lessee's leasehold interest as a security for a debt or other obligation owed by the lessee to a lender or other mortgagee.

Often a leasehold mortgage is used by a tenant under a long term ground lease in order to secure financing for construction or major renovations on the leased premises. The lessee may wish to apply for financing to build, renovate, or refinance an existing housing or economic development loan, and offer his lender a mortgage on leasehold interest as security for the loan.

A complete leasehold mortgage package must include all of the required information and supporting documents in accordance with policy and the following regulations and statutory authorities:

- 25 CFR 162.244 - 162.246, agricultural leasehold mortgages
- 25 CFR 162.357 - 162.360, residential leasehold mortgages
- 25 CFR 162.457 - 162.460, business leasehold mortgages
- 25 CFR 162.582 - 162.585, wind and solar resource leasehold mortgages
- 25 CFR 169.210 - 169.212, rights-of-way mortgages
- 25 U.S.C. § 415, Leases of restricted land, Long Term Leasing Act of 1955
- 25 U.S.C. § 4211, The Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA)

A lessee may mortgage a lease by meeting the consent requirements in the applicable regulations and lease contract. A lease, sublease, and/or Master Lease must be approved and recorded in the Bureau's system of record, by the LTRO of jurisdiction in the Trust Asset Accounting Management System (TAAMS) *prior* to being encumbered by a leasehold mortgage.

The leasehold mortgage is subject to the terms of the lease and/or sublease. The mortgage amount should not be used for purposes unrelated to the leased premises and should be limited only to the leasehold. A leasehold mortgage does not require underwriting by the BIA for credit worthiness before approval.

### 3.2 Pre-Review Process

The procedures in this section should be completed prior to the leasehold mortgage package being submitted to BIA for review and approval.

1. The applicant must have a BIA approved lease prior to submitting a leasehold mortgage loan application. The lease must be encoded, approved, and recorded in TAAMS.

2. The applicant will contact the lender to begin the application process for a leasehold mortgage loan.
3. The lender may contact the Agency and request a certified TSR to verify a lease exists.
  - a. Upon request from the lender, the Agency will request a certified TSR through the TAAMS TSR module.
  - b. LTRO will notify the Agency when the TSR is certified. If a TSR is requested for a mortgage case, the LTRO will give the request for a mortgage TSR priority over other non-mortgage TSR requests. The issuance of a subsequent TSR to report the existence of the completed and recorded mortgage on title will be a verification of title status.
  - c. The Agency will forward the certified TSR to the lender.
4. The Agency may send the lender/and or borrower the Leasehold Mortgage Lender Checklist (Attachment 2).

### **3.3 Review Process**

The review of a leasehold mortgage application must be completed in accordance with the procedures outlined below. These procedures facilitate due diligence and risk management, but should also be initiated and completed in an orderly and timely manner. Tools, forms, and template letters should be used to ensure the review complies with applicable federal laws, regulations, policies, and Tribal ordinances.

#### **3.3.1 Step 1 - Receive and Enter in Realty and Mortgage Trackers**

Upon receipt of a proposed leasehold mortgage package by the Agency, BIA will encode the package in the Realty Tracking System (RTS) and in the Mortgage Tracker.

#### **3.3.2 Step 2 - Preliminary Review**

Within 10 days after receipt of a proposed leasehold mortgage, the Agency/Region will conduct a preliminary review of the submitted package to determine if there are any missing documents or details.

Using the Leasehold Mortgage Loan Checklist - Part 1 (Attachment 3), the Agency/Region will determine whether all of the required documents for the leasehold mortgage package are complete; whether a lease has been encoded, approved, and recorded in TAAMS; and whether the checklist is included in the case file.

The leasehold mortgage package **must include**:

1. BIA lease number or a copy of approved lease;
2. Original or certified copy of leasehold mortgage/deed of trust document;



3. Original or certified copy of Promissory Note;
4. Consents of landowners or notice to landowners, if applicable;
5. Program Rider, if applicable;
6. Survey Map with legal description and/or lot number, if applicable; and
7. If refinancing a mortgage, a Satisfaction/Release of the previous mortgage must be included.

As part of this preliminary review, the following mortgage document details must be confirmed by the Agency prior to sending an Acknowledgement Letter:

1. Request National Environmental Policy Act (NEPA) review for the Leasehold Mortgage (Attachment 7 or NEPA Tracker). The NEPA review may involve a Cat Ex, Environmental Assessment (EA), or Environmental Impact Statement (EIS), depending on the circumstance.
2. Verify that the leasehold mortgage applies only to a lease and not to a land mortgage. For example, the documents should specifically state “leasehold” on the mortgage/deed of trust and not refer to any right to title or interest in any ownership rights.
3. Verify that the lease terms authorize a mortgage/deed of trust.
  - a. If the lease prohibits a mortgage/deed of trust, the following actions should be taken:
    - i. Update the RTS and Mortgage Tracker as incomplete.
    - ii. Return the mortgage package to the lender/sender, acknowledging receipt and stating the mortgage/deed of trust is not authorized by the lease terms (Attachment 4).
  - b. If there is a prohibition on a mortgage/deed of trust in the lease, a modification to the lease is required. Unless the lease provides otherwise, consent from the individual landowners and/or Tribe will need to be acquired for the modification.

Upon receipt of the mortgage package containing the modified lease, a new regulatory 20-day time frame will begin.
4. The term of a sublease and/or leasehold mortgage/deed of trust cannot exceed the term of the Master Lease. If the term of the leasehold mortgage is beyond the term of the lease or sublease, the Agency will need to:

- a. Reconcile with the lender and/or sender prior to approval; OR, notify the landowner for a new lease to coincide with the mortgage term.
  - b. Return the mortgage package to the lender/sender, acknowledging receipt and state the reason for incompleteness (Attachment 4).
5. Print and review an uncertified copy of the TSR with the lease and mortgage. If defects exist with the lease, work with the LTRO to correct the defects while continuing the review process.
- a. After defects are corrected, re-approve the lease in TAAMS.
  - b. Make a request to the LTRO to record the corrected lease.
  - c. After the lease has been re-recorded, print an uncertified TSR to ensure all defects are corrected.
6. Compare the uncertified TSR to the Agency lease files for any other mortgages, assignments, and/or releases related to the lease, for documents that may need to be recorded.
7. Examine the TSR for standard encumbrance attributes which are to include the following:
- Land Mortgage(s)
  - Leasehold Mortgages
  - Satisfactions Reconveyances
  - Assignments

Sample language for the above documents in the remarks field of the TSR should read as follows: Land Mortgage/Leasehold Mortgage approved date\_\_\_\_\_, for Borrowers full name\_\_\_\_\_ in the amount of \$\_\_\_\_\_, lease Document No. \_\_\_\_\_.

8. Prior to the expiration of the ten days, and after the preliminary review is complete:
- For leasehold mortgages:
- a. For an incomplete package, prepare an Acknowledgement Letter (Attachment 4) and reference any missing items; OR
  - b. For a complete package, prepare an Acknowledgement Letter (Attachment 5).
- For ROW mortgages:
- a. For an incomplete package, prepare an Acknowledgement Letter (Attachment 4) and reference any missing items; OR

- b. For a complete package, prepare an Acknowledgement Letter (Attachment 6).
9. Update the RTS and the Mortgage Tracker with the required information and dates.

### **3.3.3 Step 3 - Comprehensive Review**

Within 20 days from the date of the receipt of a complete package, the Agency must prepare a Decision Letter to approve or disapprove the leasehold mortgage. The Decision Letter must state the basis for approval or disapproval. The comprehensive review of the leasehold mortgage package should be completed in accordance with the following procedures.

1. Create a Contractor ID Number in TAAMS for the lender, if applicable.
2. Confirm that the NEPA review has been requested.
  - a. If NEPA is approved, include it in the leasehold package.
3. Confirm that the location described in the leasehold mortgage is the same location described in the lease. If the descriptions do not match, the Agency will need to reconcile with the lessee and lessor prior to approval. The Agency will also need to verify:
  - a. Lot number. In some instances, the lot number cited on a survey map may not be the same as a housing authority lot number, unit number, or homesite number.
  - b. Verify the physical address, and if necessary, correct the address. In residential leases, the physical address of a home may be different from the mailing address.
  - c. If necessary, the Agency may prepare an affidavit for the Superintendent's signature confirming that all addresses are for the same property.
4. Review the dollar amounts on the leasehold mortgage and Promissory Note. If there are any differences, contact the lender and/or sender for clarification.
5. Confirm that any Program Riders, if applicable, are referenced in the mortgage document and are attached to the mortgage.
6. Landowner Consents
  - a. Unless the lease provides otherwise, the lessee must notify all Indian landowners of the proposed leasehold mortgage.
  - b. If landowner consents are required, they are to be included with the application package.

- c. Ensure landowners are familiar with subordination of interest and the resulting consequences if it is permitted in the lease document. For example, if a landowner subordinates his/her lease compensation, the landowner could stop receiving rent payments until a time specified in the subordination agreement.

### 3.3.4 Step 4 - Approval Process

After the receipt of a complete application, a Decision Letter must be sent to the lender/sender by the 20<sup>th</sup> day for a leasehold mortgage, and by the 30<sup>th</sup> day for a ROW leasehold mortgage. The Agency should perform the following steps unless noted otherwise:

1. Prepare a recommendation memorandum to the Approving Official with a brief analysis and recommendation to either approve or disapprove the transaction. The analysis must include whether the transaction is in the best interest of the Indian landowner (Attachment 8).
2. Prepare a Decision Letter to approve or disapprove the leasehold mortgage to the approving official. BIA's determination whether or not to approve the leasehold mortgage will be in writing and will state the basis for the decision.
  - a. If the decision is to **approve**:
    - Prepare a Decision letter (Attachment 9).
    - Prepare and attach a Certificate of Approval of the leasehold mortgage for the Approving Official who has the delegated authority (Attachment 10).

Submit the following leasehold mortgage package for approval:

- Original or certified copy of the mortgage document
  - Original/certified copy of a Promissory Note
  - Certificate of Approval
  - NEPA review document
  - Other documents, as applicable
- b. If the decision is to **disapprove**:
    - Prepare a Decision Letter (Attachment 11), with appeal language, and state reasons for disapproval.
  3. Enter leasehold mortgage/deed of trust information in the TAAMS Remarks tab (i.e., Leasehold mortgage approved on (date) for (homeowner name)).
  4. Enter the approval date of the leasehold mortgage into the RTS and Mortgage Trackers.

### **3.3.5 Step 5 - Recording Process**

1. Within two business days after receipt of the approved leasehold mortgage, the following steps must be completed by the Agency before requesting recordation by LTRO:
  - a. Assign a legal document number to the leasehold mortgage/deed of trust document, if applicable.
  - b. Create/select a Contractor ID in the TAAMS Name & Address module for the lender as stated on the leasehold mortgage/deed of trust.
  - c. Scan the leasehold mortgage document into the Legal Document module via the TAAMS Imaging Repository (TIR).
  - d. If applicable, reference the base lease Contract ID Number and the lease recording number when sending to LTRO for recording.
  - e. Once the scanning process is complete, notify LTRO of pending document recording, and hold the original documents until the leasehold mortgage document is recorded.
2. After the recording of the document, LTRO will complete the cross-reference (X-REF) to the associated TAAMS lease in the Realty module.
3. After recording is completed, the Agency needs to confirm the legal document is cross-referenced to the TAAMS lease.
  - a. If the legal document is not cross-referenced to the TAAMS lease, the Agency should open the TAAMS lease document related to the leasehold mortgage/deed of trust, click on the X-REF or Lease Association tab, and attach the legal document.

### **3.3.6 Step 6 – Request/Receive the TSR**

1. The Agency requests a certified TSR using the TAAMS TSR request module *concurrently* with the request to record the leasehold mortgage documents.
  - a. Use the Remarks field in the Examination Request tab of the TSR Request module to advise LTRO that a leasehold mortgage document is pending.
  - b. LTRO may notify the BIA Agency when the TSR is certified and completed, and/or the BIA Agency can check the status in the TSR Request module.
2. After the certified TSR is completed, the Agency:
  - a. Prints all pages of the recorded mortgage to retain in the Agency records case files.

- b. Returns the original approved documents to the lender (Attachment 12) along with a printed copy of the recorded mortgage document with the certified TSR.
  - c. Files according to the Agency's file maintenance plan.
3. Update the Mortgage Tracker.

### **3.4 Satisfaction/ Release/Reconveyance**

When the loan is satisfied, the lender submits an original or certified copy of either a release, satisfaction, or a reconveyance document to the Agency or Region for recording. BIA approval of these documents is not required; however, the Agency or Region needs to review the document prior to recording.

1. Review the document:
  - a. Compare the document to the original mortgage document to verify that the information such as tract number, borrower, original recording number, and/or legal description is the same.
  - b. If applicable, the Agency assigns a legal document number to the release/satisfaction document.
  - c. The Agency then scans the release/satisfaction document into the Legal Document module via TIR.
  - d. When the scanning process is complete, notify LTRO of pending document recording, and hold the original until the document is recorded.
2. If the lender is requesting a certified TSR, concurrently request one using the TAAMS TSR request module.
3. Update the Mortgage Tracker.

### **3.5 Lender Assignment**

In some cases, a lender will transfer or assign an existing mortgage to another entity. These types of documents do not require BIA approval. When this occurs, the lender will send a document that cites the mortgage information, including the specific loan numbers. Upon receipt, the Agency should do the following:

1. Read the document carefully to identify the borrower cited in the transfer document.
2. Identify the TAAMS legal document number for the original mortgage that should have been recorded.
3. Enter the new lender/Trustee information in the TAAMS Remarks tab.

4. Check the TAAMS Name & Address for the new lender/Trustee with the correct Land Area Code.
  - a. If there is an existing Contractor ID Number for the lender's name, use the existing number.
  - b. If there is no existing Contractor ID number, create a new ID in the Name & Address module.
5. If applicable, the Agency assigns a legal document number to the assignment document.
6. Scan the assignment document into the Legal Document module via TIR.
7. When the scanning process is complete, hold the original documents until the assignment document is recorded.

### **3.6 Foreclosure**

If a borrower is unable to make their regular payments and becomes delinquent, they will be considered in default with the lender. The lender may provide notice to all parties of a default if required under the terms of the lease.

If a default is not cured, the lender will proceed with foreclosure actions. A foreclosure may commence at the time specified in the foreclosure provision. For leasehold mortgages, a foreclosure will often result in an assignment of the lease to a new contractor. A lease can be assigned without approval or consent if the assignee is a leasehold mortgagee or its designee, acquiring the lease either through foreclosure or by conveyance (per 25 CFR 162.349(b)(1) for residential leases, 25 CFR 162.449(c)(1) for business leases, or 25 CFR 162.574(c)(1) for wind and solar leases).

BIA approval of this document is not required; however, the Agency needs to review the document prior to recording.

After the foreclosure action is deemed final by the lender or other entity, the leasehold interest will be transferred to a new assignee by the foreclosure document. The lender will provide an original or certified copy of the foreclosure or assignment document to the Agency. Upon receipt, the Agency will:

1. Enter document information in the Mortgage Tracker.
2. Review the original lease to determine if it contains a foreclosure provision. If there is a lease provision, the lender must follow those procedures.
3. If there is no foreclosure provision, the foreclosure process will follow applicable law (i.e., Tribal, state or federal).

4. Verify there are no discrepancies in the legal/property description referenced in the leasehold mortgage document and the foreclosure document.
5. Read the foreclosure document carefully to identify the Grantee/Assignee of the mortgage. Create a new TAAMS Name & Address ID with the new Grantee/Assignee information, if necessary.
6. Scan the foreclosure document into the Legal Document module via TIR. When the scanning process is complete, the original document should be held until recorded.
7. Notify LTRO to record the foreclosure document.
8. After recordation, scan the foreclosure document as a “non-recordable” document to the associated lease/ROW contract.
9. Modify the TAAMS lease/ROW contract:
  - a. In the Contractor section of the General screen, replace the contractor name with the new Grantee/Assignee.
  - b. Enter the foreclosure information in the Remarks tab of the lease/ROW contract.
  - c. On the Approval tab in the TAAMS lease/ROW contract:
    - Enter the Effective Date of the foreclosure
    - Enter in the “Title” field: Per Lease Provision No. \_\_\_\_\_
    - Enter in the “Name” field: Foreclosure approval not required
10. Request a certified TSR using the TAAMS TSR Request module upon completion of recording by LTRO.
11. Update the Mortgage Tracker.



## Chapter 4: Deed Assignment & Release (DAR) or Quit Claim Deed Assignment & Release

Throughout the Bureau, these documents may be titled differently and should be carefully read in order to understand the purpose of the document. Typically, a DAR and Quit Claim Deed Assignment & Release are the same.

### 4.1 Overview

A Tribal Housing Authority may have a Master Lease approved by the BIA that involves several home sites located within a subdivision, townsite, or a scattered location within the reservation boundaries.

A DAR, also referred to as a Quit Claim Deed Assignment & Release, is a type of assignment for which a Housing Authority issues the deed to a home when an individual completes agreed upon payments. For BIA purposes, a DAR is usually prepared by a Tribal Housing Authority for a home that was given to an individual under a Mutual Help Occupancy Agreement (MHOA) or sublease. The assignment is a transfer of the leasehold interests in a property to another. The assignment will convey the same rights, title, and interest as the lease.

**DO NOT** encode a DAR as a separate contract in the TAAMS Business module. DAR documents are generally approved by the BIA and must be recorded by LTRO to the Legal Document module. In most Master Leases covering subdivisions, when the DAR is approved by the BIA, the leased premises (including improvements) are no longer part of the original Master Lease.

### 4.2 Purposes of DAR Documents

DAR documents generally, but not always, serve three purposes:

1. The Housing Authority **assigns\*** the individual any right, title, and interest it has in the leasehold interest for the leased property (individual site or lot).
  - a. The individual site or lot are no longer a part of the Master Lease with the Housing Authority.
  - b. The assignment will have the same rights, title, and interest under the lease.
  - c. May require Secretarial approval under 25 CFR 162.349-352.
2. The Housing Authority (Master Lessee) **deeds and conveys\*** to the individual all its rights, title, and interest in the home and all related improvements. This document does not require BIA approval.
3. The Housing Authority and individual **release each other from any and all obligations\*** under MHOA.

- a. Provides satisfaction of the mortgage.
- b. Does not require BIA approval.

\* If an assignment, a deed, and a release are combined in one document, the document may require BIA approval.

### **4.3 Review Process**

The purpose of the review is to provide a streamlined and consistent process. The DAR review process as outlined below is completed by the Agency staff in an orderly and timely manner.

#### **4.3.1 Step 1 - Enter DAR information in the Realty Tracking System**

#### **4.3.2 Step 2 - Pre-Review Process**

1. Search for the associated Master Lease and project number or a direct lease in TAAMS before processing approval of a DAR.
2. Make sure the Master/Direct Lease has been approved and recorded in TAAMS with no errors or defects.
3. If there are defects on the Master/Direct Lease noted in TAAMS or on a certified TSR, they will need to be corrected prior to approval of the DAR:
  - a. Modify the TAAMS lease/contract to make corrections to the contract.
  - b. After defects are corrected, re-approve the Master/Direct Lease.
4. Send a request to LTRO for system recordation of the previously recorded lease. After the lease has been recorded, proceed with step #5.
5. Review the DAR prior to approval:
  - a. Check for all required signatures and dates.
  - b. Check the recording numbers, if cited on the DAR.
  - c. Check the physical address with the lot number.
  - d. Check the DAR legal description and lot numbers to verify they are the same as the Master/Direct Lease legal description and/or survey for that specific lot number.

### 4.3.3 Step 3 - DAR Approval or Disapproval

1. If the DAR is correct, prepare the DAR for approval by the Agency Superintendent or RD. Attach a certificate of approval sheet to the DAR (if applicable).
2. If the DAR is incorrect, return the DAR to the sender citing the reasons the document is being returned unapproved.

### 4.3.4 Step 4 - TAAMS Realty Contract

1. Enter the approval date in the RTS once the DAR is approved by the Agency Superintendent or RD.
2. Open the Homesite (HS)/Residential (RS) Contract in the TAAMS Business module:
  - a. For a Master Lease with a Housing Authority - In the Remarks tab, enter the DAR information for the individual, add the lot number, physical address (if available), approval date, and any other pertinent data. Do not change the contractor name.

For a Direct Lease - Enter the new homeowner name into the Name & Address module for a new contractor ID number, as stated on the DAR.

- b. Modify the contract - The original TAAMS contract needs to be approved and recorded before doing a TAAMS modification.
    - c. Enter the current date.
    - d. Add the following comment in the Remarks field - “To remove \_\_\_\_\_ Housing Authority as Lessee/Contractor in accordance with Deed Assignment & Release approved \_\_\_\_\_, Recording No. \_\_\_\_\_.”
3. After the modification action:
  - a. Remove the Housing Authority as Lessee in the Contractor section of the General Screen.
  - b. Add the new homeowner name, or if the new homeowner is listed as Lessee, mark them as Primary.
  - c. Check the address of the homeowner and if there is no address, check the deed for an address (if available), or contact the Housing Authority.
  - d. Make sure the homeowner name is in the Contract Name/Number field.

- e. Add the following comment in the Remarks field - “Assignment of Lease per DAR scanned to Legal Document module on \_\_\_\_\_ (date), Recording No. \_\_\_\_\_ to: {name}, Lot No.\_\_\_\_\_.”
4. Request recordation of the DAR document:
  - a. Assign a document number to the DAR (if applicable).
  - b. Scan the DAR document(s) into the Legal Document module.
  - c. Print a recorded copy after recordation for each DAR, and return the original documents to the Housing Authority with a copy of the recorded DAR.
5. Enter approval dates and other required data in the RTS.
6. Only upon a request from the Housing Authority or other party would BIA request a certified TSR using the TAAMS TSR Request module.

## **Chapter 5: Trust Land Mortgages/Deeds of Trust**

### **5.1 Overview**

Congress created the statutory framework (25 U.S.C. §5135; 70 Stat. 62 and 25 CFR 152.34) that provides American Indians owning an individual tract of trust land the ability to mortgage their land for the purpose of home acquisition and construction, home improvements, and economic development. The BIA is required to review the trust mortgage application for conformity to statutes, policies, and regulations.

The authority to approve land mortgages has been delegated to the RDs in 3 IAM 4.

### **5.2 Purpose**

The purpose of this section is to provide guidance and information for the review and approval of trust land mortgage applications for individually owned allotted or restricted lands.

The lender will verify and analyze the documents received in a loan package, including credit and financial records, to determine the creditworthiness of a borrower. The borrower's trust property is used as collateral to secure the trust land mortgage.

The lender's review does not replace the federal responsibility of the BIA. BIA Division of Realty staff is responsible for conducting a review and approval of mortgage applications, and making a recommendation to approve or disapprove the requests. The BIA will not be performing underwriting activities.

The goal is to complete the review and approval of the application within 30 days of receipt. If BIA is unable to do so, that should be communicated to the applicant/lender and documented.

### **5.3 Review and Analysis Process**

The purpose of the review is to gather key information about the borrower(s) and provide a written analysis of a mortgage loan request. The review and analysis determines whether the mortgage is in the landowner's best interest.

The Agency initially receives all trust land mortgage applications submitted for preliminary review. Agencies/Regions should stay in contact with the lender throughout the process and document the case file each time contact is established.

#### **5.3.1 Pre-Application Process**

1. The borrower(s) contacts the lender to begin the application process.
2. The lender may contact the Agency to request a certified TSR. Lenders require certified TSRs be issued within the last six months.

- a. An informational TSR can be reviewed prior to requesting the certified TSR to check for any defects that may need to be corrected. If defects are noted, corrections must be completed.
  - b. Request a certified TSR using the TAAMS TSR Request module.
  - c. LTRO may notify the Agency when the certified TSR is complete.
  - d. The Agency will forward the certified TSR to the lender.
3. The Agency may send the lender and/or borrower the Mortgage Lender Loan Checklist (Attachment 22) for a Trust Land Mortgage.

### **5.3.2 Lender Document Submission Requirements**

The following documents are submitted for review to the Agency from the lender. Agency staff will examine the mortgage documents to ensure completeness of the package. These documents will determine the applicant's eligibility to mortgage trust land.

1. Copy of the borrower(s) loan application (signed by the borrower(s)) - The application contains information about the borrower and is considered personally identifiable information (PII) under the Privacy Act. *Safeguard the information carefully.*
  - a. Compare the information to other documents provided.
  - b. Clarify any inconsistencies with the lender.
2. Copy of the lender's appraisal – The appraisal provides information on the Fair Market Value of the land. It is reviewed to ensure that the loan is not over-collateralized (i.e., value of property is higher than the loan amount). The Department of the Interior's (DOI) Appraisal and Valuation Services Office (AVSO) does not need to review the appraisal.
3. Commitment Letter Stating Loan Terms and Conditions – The Letter documents the name(s) of the borrower(s) and contains a summary of the pending mortgage terms and conditions of the loan. It should also state:
  - the purpose of the loan (i.e., rehab, new construction, refinance, consolidation, or purchase); and
  - what loan program has been utilized, if applicable.
4. Draft mortgage/deed of trust, Promissory Note, and any applicable riders – The Agency reviews the terms of these documents to make sure the mortgage matches the terms as they were outlined in the Commitment Letter (i.e., rate, term, fees, foreclosure guidelines, etc.).

5. Authorization/Consent to Share Information with BIA – This must be signed by the borrower(s) stating they are allowing the bank to share all of the information provided to the lender with the BIA staff.
6. Legal Description/Survey – The Agency reviews the legal description to make sure it is consistent with the legal description used in TAAMS for the tract.
7. Original/Certified Copy of Satisfaction, if applicable – If there is an existing mortgage on title, the new mortgage package should contain an original or certified copy of the Satisfaction or Release document.

### **5.3.2 Additional Documents**

There may be additional documents that also accompany the mortgage documents, such as:

1. Certified TSR – A certified TSR provided by the LTRO that shows ownership and encumbrances of a parcel/tract of land.
2. ROW Ingress/Egress – The borrower(s) must have legal ROW ingress/egress to their mortgaged land if the land is a landlocked parcel. Mortgages are subject to any existing ROW of record on a mortgaged parcel.
3. Statement that borrower is not delinquent on any federal debt – Written statement that a borrower(s) does not owe any delinquent debt to any federal agencies (i.e., Internal Revenue Service (IRS), student loans, U.S. Department of Agriculture (USDA) or U.S. Department of Housing and Urban Development (HUD) loans, etc.). This statement is optional depending on the lender. Typically, these documents are only required when a federal program is used to guarantee the loan or fund the loan directly by a federal source such as the HUD 184 loan, U.S. Department of Veterans Affairs (VA), or USDA.
4. Proof of employment

## **5.4 Review Process**

This section details Agency and Regional responsibilities in the review and analysis of a trust land mortgage/deed of trust application.

### **5.4.1 Step 1 - Agency Preliminary Review**

When the Agency receives a land mortgage package, a preliminary review will be conducted as follows:

1. Upon receipt of a land mortgage/deed of trust, encode applicable information into the Mortgage Tracker.

2. Review the contents of the mortgage package using the Trust Land Mortgage Loan Checklist (Attachment 13).
3. If the mortgage package is **complete**, proceed with the review (go to step #5).
4. If the mortgage package is **incomplete**:
  - a. Return the package to the lender.
  - b. Include notification of the documents that need to be submitted for a complete mortgage package (Attachment 14).
5. Request appropriate NEPA review documentation required for this federal action, if applicable:
  - Cat Ex (Attachment 7); or
  - EA for NEPA documentation.
6. Confirm that the legal/property description referenced in the mortgage document matches the legal description on the TSR. Note the Land Area Code and Tract ID for future reference.
7. Confirm the landowner's signature(s) and dates exist on applicable documents, except the draft deed of trust. If signatures and dates are missing, immediately contact the lender for copies of the signed and dated documents.
8. Review foreclosure clauses in the mortgage package and clarify any questions with the lender. Document any discussions with the lender for the file.
9. Counsel the landowners regarding foreclosure potential and document any counseling for the file.
10. After the Agency's review is complete, the Agency prepares a transmittal memorandum (Attachment 15) signed by the Agency Superintendent, and transmits the complete mortgage package to the Regional Office for further processing.

#### **5.4.2 Step 2 - Regional Comprehensive Review**

When the Regional Realty staff receives a mortgage package, a comprehensive review must be conducted. As part of this review, the following actions must be taken:

1. Upon receipt of the package, update the Mortgage Tracker.
2. Review the lender's appraisal.



3. Review the terms of the loan and the lender's credit analysis. If there are any questions, contact the lender.
4. Review the draft deed of trust/mortgage and Promissory Note to verify terms are consistent in both documents.
5. Submit the written recommendation to the RD for approval or disapproval.

### **5.4.3 Step 3 - Regional Decision on Application**

The RD will either approve or disapprove the application.

1. If the application is **disapproved**, Regional Realty staff will:
  - a. Prepare a letter for disapproval (Attachment 19) to send to the lender stating the reasons for denial.
  - b. Include 25 CFR 2 appeal rights in the disapproval letter. The borrower/lender has the right to appeal the decision.
  - c. Send copies of the letter to all interested parties.
  - d. If an appeal is filed, BIA staff will follow the appeal process.
2. If the application is **approved**, the Regional Realty staff will:
  - a. Prepare a Commitment to Approve Letter (Attachment 16) for RD signature.
  - b. Send the signed Commitment to Approve Letter to the lender enclosing a BIA Disclosure Statement (Attachment 17) for the borrower(s) to initial.
3. The Commitment Approval Letter will instruct the lender to submit the following mortgage documents after lender closing:
  - Signed, original mortgage/deed of trust – Ensure the start and end dates are incorporated in the language of the document. If the dates are not included in the document, return the package to the lender for correction.
  - A certified copy of the Promissory Note – Send with the mortgage instrument to LTRO for recording.
  - Rider(s), if applicable – For example, a Section 184 Construction Rider.
  - Initialed BIA Disclosure Statement.
  - Releases and Satisfactions (if applicable) – Applicable only when the request is for refinancing a current mortgage loan. The loan proceeds will pay off the current

mortgage, which may or may not be with the same lender. It is the lender's responsibility to ensure a "release" document is obtained when the mortgage amounts are paid. The original or a certified copy of the "release" document will need to be sent to BIA for recording.

#### **5.4.4 Step 4 - Final Approval**

The RD approves the mortgage by issuing a Certificate of Approval. Upon receipt of the requested documented stated in the Commitment to Approve Letter, the Regional Office staff will proceed as follows:

1. Attach the Certificate of Approval (Attachment 18) with the original documents.
2. Route the mortgage documents with the Certificate of Approval to the RD using the recommendation to approve memorandum (Attachment 21).

#### **5.4.5 Step 5 - Recording Process**

After receipt of the approved land mortgage, the following steps should be completed before requesting recordation by LTRO:

1. If applicable, the Regional Realty staff assigns a legal document number to the land mortgage document. A number may need to be requested from the Agency.
2. If applicable, the Regional Realty staff creates/selects a Contractor ID in the TAAMS Name & Address module for the lender as stated on the mortgage document.
3. If applicable, the Regional Realty staff scans the land mortgage document to the Legal Document module via TIR.
4. When the scanning process is complete, notify LTRO of pending document recording, and hold the original documents until the mortgage is recorded.
5. LTRO completes a post-quality check of the land mortgage document.
6. LTRO encodes the mortgage documents in the Legal Documents module and X-REF to Title Tract.
7. After recording, Regional Realty staff completes a X-REF to the borrower's associated Owner Name & Address ID.
8. The Regional Realty staff then transmits the approved recorded mortgage package to the lender using a transmittal letter (Attachment 20), and sends a copy to the Agency.

#### **5.4.6 Step 6 - Request/Receive the TSR**

The Regional Realty staff will request a certified TSR using the TAAMS TSR request module *concurrently* with the request to record the land mortgage documents:

1. Use the Remarks field in the Examination Request tab of the TSR Request module to advise LTRO that a land mortgage document is pending.
2. LTRO will notify the TSR requestor when the TSR is certified and completed and/or the requestor can check the status in the TSR Request module.
3. After the certified TSR is completed, Regional Realty staff will:
  - a. Print all pages of the recorded mortgage to retain in the Regional records/files.
  - b. Forward the certified TSR to the lender and make a copy for the case file.

#### **5.4.7 Step 7 - Close and File**

The Regional Office should perform the following steps in order to close out the transaction:

1. Update the Mortgage Tracker.
2. File the documents according to the Regional Office's file maintenance plan.

### **5.5 Modifications**

The lender must inform the BIA of any modifications to the loan after approval, and document them in writing (i.e., full disclosure of all changes to terms and reasoning). Modifications to the loan require careful review by BIA staff.

Agency Realty staff will need to determine if the modification should be treated as a new mortgage application or a modification to the existing mortgage transaction by considering the following:

1. Any change in the amount of the loan, term, or interest rate would be treated as a re-finance, and a new application submitted.
2. Corrections to the legal description or other item on the mortgage document that does not affect loan amount, rate, or terms may be treated as a modification.
3. A corrected document may be submitted which will be encoded as a non-recordable document and attached to the original legal document record.

## 5.6 Satisfaction or Release

When the loan is satisfied, the lender submits an original or certified copy of either a release, satisfaction, or a reconveyance of a deed of trust to the Agency/Regional Office for recording. BIA approval of these documents is not required; however, the Agency/Region needs to review the document prior to recording.

1. Review the document:
  - a. Compare the document to the original mortgage document to verify the information such as the tract number, borrower, original recording number, or legal description.
  - b. If applicable, the Agency/Region assigns a legal document number to the release/satisfaction document.
  - c. The Agency/Region scans the release/satisfaction document into the Legal Document module via TIR.
  - d. When the scanning process is completed, notify LTRO of pending document recording, and hold the original document(s) until the document is recorded.
2. Once recorded by LTRO, a copy should be made for the case file and the original returned to the lender by transmittal letter.
3. If requested by the lender, enter a certified TSR request into the TAAMS TSR request module.
4. Update the Mortgage Tracker.

## 5.7 Default/Foreclosure

The lender should provide notice to all parties (including BIA) of a default or foreclosure, as required under the terms of the mortgage/deed of trust.

In the event a loan defaults or goes into foreclosure, the lender provides an original or certified copy of the foreclosure or assignment document to the BIA. Upon receipt of this documentation from the lender, Agency staff will:

1. Enter the foreclosure document information in the Mortgage Tracker.
2. Notify the Tribe with jurisdiction over the land that BIA has received a notice of foreclosure.
3. Review the mortgage documents to determine if they contain a default/foreclosure provision:
  - a. **If Yes**, the foreclosure process should follow those procedures as identified in the mortgage; these may include:

- Options for Right of First Refusal – Check for a Tribal ordinance regarding foreclosures and the right of first refusal. Require the lender to provide proof they have offered the right of first refusal as stated in the lease and Tribal ordinance.
  - Time frame to cure the default – Require the lender to provide proof they have offered the mortgagor a time frame to cure a default.
  - Foreclosure can commence at the time specified in the default/foreclosure provision.
- b. **If No**, the foreclosure process will follow Tribal law; if there is no Tribal law, it will follow state law.
4. After the foreclosure action is complete, the following steps should be taken:
- a. Obtain an original or certified copy of foreclosing documents, as determined by applicable law.
  - b. Verify there are no discrepancies in the legal/property description referenced in the mortgage document and the foreclosure document.
  - c. Create (if necessary) a new TAAMS Name & Address ID with the new Grantee information. Read the document carefully to identify who the Grantee is.
  - d. Scan/image the foreclosure document(s) to LTRO. Send a request to LTRO to record the foreclosure document according to established procedures.
  - e. Upon completion of recording by LTRO, request a certified TSR.

## 5.8 **Lender Assignment**

In some cases, a lender will transfer or assign an existing mortgage to another entity. These types of documents do not require BIA approval.

When this occurs, the lender will send a document to the Agency/Regional Office that references the mortgage information, including the specific loan numbers. Upon receipt, the Agency/Regional Office should do the following:

1. Read the document carefully:
  - Identify the borrower cited in the transfer document.
  - Identify the TAAMS legal document number for the original mortgage that should have been recorded.
2. In the TAAMS Lease Remarks tab, enter the new lender/Trustee information.

3. Check TAAMS Name & Address for the new lender/Trustee information with the correct Land Area Code.
  - If there is an existing Contractor ID Number for the lender's name, use the existing number.
  - If there is no existing Contractor ID Number, create a new ID in the Name & Address module.
4. If applicable, the Agency assigns a legal document number to the assignment document.
5. The Agency then scans the assignment document into the Legal Document module via TIR.
6. When the scanning process is completed, notify LTRO of pending document recording, and hold the original document(s) until the document is recorded.
7. Once recorded by LTRO, the Agency transmits the recorded document to the lender using a transmittal letter.

## Definitions and List of Acronyms

### Definitions

**Agency:** An Indian Agency or other field unit of the BIA having trust or restricted Indian land under its immediate jurisdiction.

**Allotted lands:** Lands held in trust or restricted status for the use of individual Indians. With allotted trust lands, the federal government holds the title, and the individual holds the beneficial interest. With restricted allotments, title is held by the individual Indian, with restrictions by the United States against alienation.

**Appraisal:** A written document that shows an opinion of how much a property is worth. The appraisal gives useful information about the property. It describes what makes it valuable and may show how it compares to other properties in the neighborhood. An appraisal helps assure the borrower and the lender that the value of the property is based on facts, and not solely the seller's opinion.

**Assignee:** A person to whom a right or liability is legally transferred.

**Assignment:** The transfer of ownership of a property, or the interests in a property, to another.

**Borrower:** A person or company that has received money from another party with the agreement that the money will be repaid.

**Categorical Exclusion:** A Categorical Exclusion (Cat Ex) is a class of actions that an Agency has determined does not individually or cumulatively affect the quality of the human environment (40 CFR 1508.4). BIA's categorical exclusions are listed in the DOI NEPA regulations at 43 CFR Part 46, including extraordinary circumstances at 43 CFR 46.215; and in 516 DM 10, specifically 516 DM 10.5 I. for the purposes of this handbook.

**Certificate of Approval:** The language inserted into a letter of approval for a mortgage encumbrance.

**Collateral:** A Borrower's pledge of specific property to a lender, to secure repayment of a loan. The collateral serves as protection for a lender against a Borrower's default; that is, it can be used to offset the loan to any Borrower failing to pay the principal and interest under the terms of a loan obligation.

**Credit Report:** A detailed report of an individual's credit history. Credit bureaus collect information and create reports based on that information, and lenders use the reports along with other details to determine a loan applicant's creditworthiness. In the United States, there are three major credit reporting bureaus: Equifax, Experian, and TransUnion.

***Deed Assignment and Release, OR Quitclaim Deed Assignment and Release (DAR):***

These documents are prepared by a Tribal Housing Authority for a home that was given to an individual under a Mutual Help Occupancy Agreement or Sublease. The Housing Authority issues a DAR to an individual when they complete the home ownership program. A DAR serves three purposes: 1) deeds the home to an individual; 2) assigns the home site lot within a Master Lease to an individual; and 3) releases the individual from future obligations to a housing authority.

***Deed of Trust:*** A deed wherein a legal title in real property is transferred to a Trustee, which holds it as security for a loan (debt) between a borrower and lender. The equitable title remains with the borrower. The borrower is referred to as the Trustor, while the lender is referred to as the Beneficiary.

***Deed of Reconveyance:*** A deed of reconveyance is a document issued by a mortgage holder indicating that the borrower is released from the mortgage debt, and transfers the property title from the lender, also called the Beneficiary to the borrower.

***Default:*** Failure of a borrower to comply with the terms of a loan agreement (pay interest or principal on a loan or security) when due.

***Down Payment:*** An initial payment made when something is bought on credit.

***Equity:*** The monetary value of a property or of an interest in a property in excess of claims or liens against it.

***Fee Simple Land:*** Land held absolute and clear of any condition or restriction, and where the owner has unconditional power of disposition.

***Fixed Rate of Interest:*** An interest rate that doesn't fluctuate during the term of the loan. This allows the borrower to accurately predict their future payments.

***Foreclosure:*** The legal process in which a lender attempts to recover the balance of a loan from a borrower, who has stopped making payments to the lender, by forcing the sale of the asset used as the collateral for the loan.

***Good Faith Estimate (GFE):*** A form that lists basic information about the terms of a mortgage loan; it includes the estimated costs a borrower will pay for a home loan.

***Guarantor/Guarantee Agency:*** The entity who guarantees to pay for someone else's debt if he or she should default on a loan obligation, such as HUD for the Section 184 loan guarantee program, or USDA for the 502 loan program.

***Housing Authority (HA):*** Created through a Tribal government action, the HA is typically a separate entity from the Tribal government that is responsible for providing housing within its jurisdiction to Tribal members.



**Indian:** Any person who is an enrolled member of any Indian Tribe is eligible to become a member of any Indian Tribe, or any person who has been found to meet the definition of 'Indian' under a provision of federal law.

**Indian Land:** Any restricted or trust land, even if such land stands outside of reservation boundaries.

**Indian Landowner:** A Tribe or individual Indian who owns an interest in Indian land in trust or restricted status.

**Individually Owned Indian land:** Any tract, or interest therein, in which the surface estate is owned by an individual Indian in trust or restricted status (see allotted land).

**Land Mortgage:** A mortgage obtained by an individual Indian who owns a tract of trust land for the purpose of home acquisition and construction, home improvements, and/or economic development.

**Lease:** A written contract between Indian landowners and a lessee, whereby the lessee is granted a right to possess Indian land, for a specified purpose and duration. The lessee's right to possess will limit the Indian landowners' right to possess the leased premises only to the extent provided in the lease. A lease document means a lease, amendment, assignment, sublease, or leasehold mortgage.

**Leasehold:** A condition of holding property by lease.

**Lessee:** One to whom a lease is given; a person who has possession of real and/or personal property under a lease; specifically a tenant of real property under a lease.

**Leasehold mortgage:** A mortgage, deed of trust, or other instrument that pledges a lessee's leasehold interest as security for a debt or other obligation owed by the lessee to a lender or other mortgagee.

**Lot:** Any odd shaped portion, piece, division or parcel of land, usually a fractional or odd shaped tract of land not generally describable by aliquot parts.

**Maturity:** The final payment date of a loan or other financial instrument, when the principal (and all remaining interest) is due to be paid.

**Mortgage/Deed of Trust:** Sometimes called a mortgage loan, it is a security interest in real property held by a lender as a security for a debt, usually a loan of money. A mortgage in itself is not a debt, it is the lender's security for a debt. It is a transfer of an interest in land (or the equivalent) from the owner to the mortgage lender, on the condition that this interest will be returned to the owner when the terms of the mortgage have been satisfied or performed. In other words, the mortgage is a security for the loan that the lender makes to the borrower.

**Mortgage Tracker:** A Google spreadsheet that is used for tracking leasehold and trust land mortgage transactions.

**Mortgagor:** The borrower(s) who pays the mortgage to those lending them money to purchase things like a home.

**Mortgagee:** The entity that lends money to borrowers who want to purchase real property like a home.

**Program Rider:** Add-on documents with certain provisions not otherwise mentioned in the other documents. For example, a document regarding the type of federal guarantee incurred.

**Promissory Note:** A contractual document that one person gives to another as an unconditional promise to pay them a sum of money. It will be agreed that the issuer will pay the money by a certain date or on demand of the payee.

**Realty Tracking System (RTS):** A tracking system utilized by the BIA Division of Real Estate Services (DRES or Realty) to track all wind, solar, business, or homesite leases. The RTS can be accessed through the DRES website.

**Refinancing:** The replacement of an existing debt obligation (asset backed security) with another debt obligation under different terms. The terms and conditions of refinancing may vary widely. A common form of refinancing is a mortgage for a place of primary residence.

**Repayment:** The action to pay back.

**Restricted Land:** Land or any interest therein, the title to which is held by an individual Indian, subject to federal restrictions against alienation or encumbrance.

**Right-of-Way:** The legal right, established by usage or grant, to pass along a specific route through grounds or property belonging to another, including but not limited to, building and operating a line or road. This term may also refer to the land subject to the grant of right-of-way; however, in all cases, title to the land remains vested in the landowner.

**Section 184 Indian Loan Guarantee Program (184):** Housing legislation created the Section 184 Indian Loan Guarantee Program, which is administered by HUD-ONAP. The program guarantees loans made to Tribal members or TDHEs for the purchase or construction of a home on Tribal or individual trust lands. The Section 184 Loan Guarantee Program was created by the Housing and Community Development Act of 1992 to address the lack of mortgage lending in Indian Country. The 184 program offers a 100% loan guarantee.

**Secretary:** The Secretary of the Interior or his/her authorized representative acting under delegated authority.

**Single-family residence:** A building with one to four dwelling units on a tract of land under a single residential lease, or as defined by applicable Tribal lease or other Tribal authorizations.

**Sublease:** A written agreement by which the lessee grants to an individual or entity a right to possession no greater than that held by the lessee under the lease.

***Subordination of Interest:*** When the landowner's rent is subordinated to any lien or mortgage that is current or might be placed on this property in the future, through refinance or a sale of the property. A practical example in Indian Country is if a landowner subordinates his/her lease compensation, the lessee could cease paying rent to the landowner until a time specified in the Subordination Agreement.

***Substitution of Trustee:*** A form filed when a successor trustee takes the place of a previous trustee. A successor is a person or entity who takes over and continues the role or position of another.

***Title Status Report (TSR):*** A report issued after a title examination which provides the proper legal description of a tract of Indian land, and current ownership including any applicable conditions, exceptions, or encumbrances on record. The land status of unrestricted, restricted, or other trust status is listed in the records by the BIA Land Title and Records Office (LTRO).

***Tribally Designated Housing Entity (TDHE):*** As part of the Native American Housing and Self Determination Act of 1996, the Tribal government may designate an entity of its choosing to receive and administer its Indian Housing Block Grant (hence the term "Tribally designated housing entity"). This may or may not be the Indian Housing Authority. It can vary from Tribe to Tribe.

***Tribal Trust Land:*** Land held in trust by the United States government for the benefit of a particular Tribe. This type of land may not be mortgaged.

***Tribe:*** A federally recognized Indian Tribe.

***Trust land:*** Land, or any interest therein, held in trust by the United States for an individual Indian or a Tribe.

***Underwriting:*** The process a lender uses to determine if the risk of offering a mortgage loan to a particular borrower under certain parameters is acceptable.

## **List of Acronyms**

The following list of acronyms and terms are commonly used by BIA's Division of Real Estate Services and in mortgage loan packages.

|        |  |
|--------|--|
| AVSO   | Appraisal and Valuation Services Office (formerly OAS) |
| BIA    | Bureau of Indian Affairs                               |
| CAT EX | Categorical Exclusion                                  |
| CFR    | Code of Federal Regulations                            |
| DAR    | Deed Assignment and Release                            |
| DLTR   | Division of Land Title and Records                     |
| DOI    | U.S. Department of the Interior                        |
| DRES   | Division of Real Estate Services                       |
| EA     | Environmental Assessment                               |
| FHA    | Federal Housing Administration                         |
| FSA    | Farm Services Agency                                   |
| GFE    | Good Faith Estimate                                    |
| HA     | Housing Authority                                      |
| HOA    | Homeowner's Association                                |
| HUD    | U.S. Department of Housing and Urban Development       |
| MHOA   | Mutual Help and Ownership Agreement                    |
| MOU    | Memorandum of Understanding                            |
| NADL   | Native American Direct Loan                            |
| ONAP   | Office of Native American Programs                     |
| OST    | Office of the Special Trustee                          |
| ROW    | Rights-of-Way (grant of easement for right-of-way)     |
| RTS    | Realty Tracking System                                 |
| TIR    | TAAMS Imaging Repository                               |
| TDHE   | Tribally Designated Housing Entity                     |
| TAAMS  | Trust Asset and Accounting Management System           |
| TSR    | Title Status Report                                    |
| USDA   | U.S. Department of Agriculture                         |
| VA     | U.S. Department of Veterans Affairs                    |
| X-REF  | Cross-Reference  |

*Note: Attachments identified as checklists, templates, or forms are located on the IA Forms webpage: <https://www.bia.gov/policy-forms/online-forms>*

## **Attachment 1 – Types of Loans**

Types of loans that BIA staff might receive for processing include the following:

### **1. Mortgage**

A mortgage is a legal agreement by which a bank or other creditor lends money at interest in exchange for taking title of the debtor's property, with the condition that the conveyance of title becomes void upon the payment of the debt.

Individually owned trust or restricted land may be mortgaged as security for loans. Such a loan is secured by the borrower's trust land offered for collateral.

- A mortgage is allowable where real property is held in trust or a restricted status by the federal government for an individual Tribal member.
- The BIA has trust responsibility for the land.
- Mortgage lenders can secure mortgage loans with a Tribal member who is sole owner of real trust property.
- Indian landowners may borrow money for loans to be used for home purchases, home improvements, businesses, or similar purposes which promote individual and/or family economic improvement.
- A mortgage is allowable on rights-of-way.
- Any mortgage or deed of trust land must be approved by the BIA Regional Director and cannot be delegated to an Agency Superintendent. Authority to approve leasehold mortgages under 25 CFR part 162 and right of way mortgages under part 169 may be redelegated only to the Agency Superintendent (3 IAM 4).

### **2. Refinancing**

Refinancing may refer to the placement of an existing debt obligation with another debt obligation under different terms. The terms and conditions of refinancing may vary widely by program, state, or county, based on several economic factors such as inherent risk, projected risk, currency stability, banking regulations, and borrower's creditworthiness. A debt might be refinanced (contingent on the interest rate, fees, etc.) to:

1. Take advantage of a better interest rate to reduce the monthly payment or shorten the term of the loan.
2. To consolidate other debt(s) into one loan (a potentially longer/shorter term contingent on interest rate and fees).
3. Reduce or alter risk by switching from a variable-rate (subject to change) to a fixed-rate loan.
4. Reduce monthly repayment amount through a longer term.
5. Free up cash by extending the loan term.

## Attachment 1 continued

Refinancing for reasons 2, 3, and 5 are usually undertaken by borrowers who are in financial difficulty in order to reduce their monthly repayment obligations, with the penalty that they will take longer to pay off their debt.

In the context of personal (as opposed to business or corporate) finance, refinancing multiple debts makes management of the debt easier. If high-interest debt, such as credit card debt, is consolidated into the home mortgage, the borrower is able to pay off the remaining debt at mortgage rates over a longer period.

### 3. Refinancing as Debt Restructuring

If the replacement of debt occurs under financial stress, refinancing could also be referred to as debt restructuring. Borrowers who are in financial difficulty refinance to reduce their repayment obligations with the penalty being that they will take longer to pay off their debt. Debt restructuring may:

- Consolidate other debts into one loan over a potentially longer/shorter term.
- Make management of multiple debts easier. For example, high-interest debt, such as credit card debt, is consolidated into the home mortgage.
- Allow the borrower to pay off the remaining debt at mortgage rates over a longer period.

### 4. Debt Consolidation

A form of debt refinancing that entails taking out one loan to pay off multiple debts owed by the borrower(s).

- The borrower can secure a lower overall interest rate to the entire debt load.
- Provides the convenience of having only one loan and one payment.
- Debt consolidation is not typically approved by the BIA, however, serious consideration should be provided to the requests as there are some circumstances that might warrant an approval.
- Ensure borrowers have been counseled so the same circumstances do not re-occur, if approval takes place.

### 5. New Construction Loans

A traditional home loan is a mortgage on an existing home that typically lasts for 30 years at a fixed rate where the borrower makes principal and interest payments for the life of the loan. There are circumstances where a longer than 30-year term may be proposed. For example, when a United States Department of Agriculture (USDA) loan is utilized, there may be a 40 year term proposed. Terms less than 30 years are also possible, often at higher interest rates.

- Mortgages are obtained through a conventional lender or through special programs like those run by the Federal Housing Administration (FHA), Veterans Administration (VA), Housing and Urban Development (HUD 184), USDA Farm Services Agency (FSA), or Rural Development (RD).
- Loan is underwritten for only the length of time it takes to construct the home (about 12 months on average.)

## Attachment 1 continued

- ❑ Borrowers are given a line of credit up to a specified limit, and they submit “draw requests” to the lender to pay the contractor accompanied by documentation required by the lender.
- ❑ Borrowers pay interest only on the loan during the construction period.  
*Example: A construction loan is made for \$400,000. The borrower may not make an interest payment on the loan until the builder submits an initial draw request (perhaps something like \$25,000 to start). The borrower then pays interest on the \$25,000.*
- ❑ When construction is complete, at or before the 12 months, permanent financing will begin.
- ❑ Typically, there are no prepayment (early payoff) penalties during the construction period. Basically, a construction loan has a balloon payment at the end, but a permanent mortgage loan will pay the construction loan.
- ❑ Interest rates are also calculated differently than a traditional loan because the lenders keep these “portfolio loans” rather than selling them to investors in the bond market.
- ❑ A borrower does not have to keep the same lending institution for the permanent financing but typically does.
- ❑ Borrowers should be encouraged to shop the lenders for the best rates and lower fees attached to the lending conditions.

### 6. One-Step Construction Loans

One-step financing for constructing a home is sometimes referred to as simple-close or one-time close. Simply put, the borrower selects the same lender for both the construction loan and the permanent mortgage loan.

- ❑ Borrower prepares one application process and the content for both loans simultaneously; at closing, a permanent loan is effected at the end of the construction period automatically. When a one-step closing loan takes place, the borrower is in effect closing on the construction loan and the permanent loan.
- ❑ Complications can occur in the form of an increase in time or construction costs especially where custom homes are constructed and not track homes.
- ❑ Lenders will provide documentation for the BIA case file.
- ❑ If the borrower decides not to continue a relationship with the lending institution providing the construction financing for whatever reason, then it becomes a two-step close.

### 7. Two-Step Construction Loans

Two-step financing for construction of a home splits up the construction loan and the permanent mortgage loan. The home is constructed and then the permanent financing for the mortgage loan starts the closing process.

- ❑ Borrowers should be cautioned not to open new credit accounts or increase credit lines during the construction time as this may negatively impact the mortgage loan process.
- ❑ Provides flexibility to enable modifications on the home during construction and to make certain unexpected decisions for changes as they happen.

## Attachment 1 continued

- Borrowers can make changes (within reason) to the scope of the home and add change orders.
- The borrower will still be able to close on the mortgage.
- The clock is not running like the one-step close, therefore the borrower can take longer to finish constructing the house, always with the concurrence of the lending institution for all of the above.
- Delays may occur due to weather, economics, or other unforeseen circumstances. A two-step close will have the flexibility of extending the construction loan.

### 8. Business Loans

Businesses require an adequate amount of capital to fund startup expenses or pay for expansions. It's not uncommon for companies to take out business loans to gain the financial assistance they need. A business loan is debt that the company is obligated to repay according to the loan's terms and conditions. Before a borrower approaches a lender for a loan, it is imperative for the business owners to understand how mortgage loans work and what the lender will want from the owner.

- These loans are in high demand, but not all applicants are successful because lenders evaluate the company's history, amount of debt, business risk and business plan.
- Business loans are risky and require careful analysis.

### 9. Agriculture Loans

Farmers use these loans to finance their farming operations.

- Farmers need low interest agricultural loans to help them with the financing end of their jobs. The Federal Government offers low interest loans and subsidies which help farmers turn a profit. The farming enterprises can use agriculture related loans to purchase farmland regardless of whether it is a start-up kind of business or an expansion to their current enterprise.
- Agricultural related loans cover operating expenses for both equipment and crops.
- Collateral inspections are required and will be performed by the lenders such as USDA.
- Collateral for farming related loans is basically the same as for other kinds of loans but can also include crops, cattle, etc.
- USDA provides a thorough analysis to each of the case files and will provide a copy of it in every loan package submitted to the BIA for review and approval.

### 10. Rights-of-Way Mortgage Loans

- Rights-of-Way can be mortgaged.

Other types of transactions taking place will dictate the forms and documents to be completed. For example, if the mortgage request involves a transaction of a sale from one Tribal member to another, then the case file will need a copy of the completed and signed document.



## Attachment 2 - Leasehold Mortgage Lender Checklist

*Please return this form to the following Agency:*

|   |  |                  |
|---|--|------------------|
| REGION  |  |                  |
| AGENCY  |  |                  |
| AGENCY POC  |  |                  |
| PHONE NO.   |  |                  |
| <b>COMPANY INFORMATION</b>  |  |                  |
| Lender Name and mailing address (including dba):  |  |                  |
| Lender's Contact Name:  |  | Phone Number:    |
| Lender Case File No.:   |  |                  |
| Lender's Fax Number:  | Lender's Email Address:  |                  |
| Borrower(s) Name(s) and Address, City, State, Zip:  |  |                  |
| Borrower(s) Loan Amount: \$   |  |                  |
| Maturity Date of Loan:  |  |                  |
| <b>RESIDENTIAL/MASTER LEASE/ROW INFORMATION – NOTE: Borrower must have an encoded, approved and recorded Residential lease with the BIA Agency.</b> |  |                  |
| LAND AREA CODE/Tract or Allotment Number:<br>(attach copy of latest TSR)  |  |                  |
| BIA LEASE/ROW NUMBER:   |  |                  |
| Lease/ROW Expiration Date:  |  |                  |
| <b>CHECKLIST</b>  |  |                  |
| 1.  | Does borrower have a BIA approved (master or direct) lease?<br>- If NO, <b>STOP</b> , do not proceed. Contact borrower and/or BIA Agency to confirm a Residential Lease has been filed, approved and recorded. A Mortgage/Deed of Trust cannot be filed for approval or recording without an approved lease. | YES or NO        |
|   | - If YES, attach a copy of an approved and recorded Residential/Master Lease (1 <sup>st</sup> page is sufficient).   |                  |
| 2.  | Attach a copy of TSR. Dated:   | YES or NO or N/A |
| 3.  | Original Mortgage/Deed of Trust document. Dated:   |                  |
| 4.  | Attach a copy of the legal description (Metes and Bounds)/Survey Plat of the home site location to the Deed of Trust/Mortgage.   |                  |
| 5.  | Attach an original or certified copy of Promissory Note.   | YES or NO or N/A |
| 6.  | Attach Consents or Notice (as applicable). As required by 25 CFR Part 162.358, unless the lease states otherwise; notify all landowners of a Mortgage/Deed of Trust filing.  | YES or NO        |
| 7.  | Program Rider (if applicable)  | YES or NO        |
| 8.  | Release or Satisfaction (if applicable)  | YES or NO        |

### Attachment 3 - Leasehold Mortgage Loan Checklist

|  |                          |  |  |
|--|--------------------------|--|--|
| <b><u>LEASEHOLD MORTGAGE INFORMATION</u></b>       |                          |  |  |
| Borrower(s) Name(s) and Address, City, State, Zip: |                          |  |  |
| Borrower's Email:                                  |                          |  |  |
| Lender Name and mailing address (including dba):   |                          |  |  |
| Lender's Email:                                    |                          |  |  |
| Lender phone number:                               |                          |  |  |
| Lender fax number:                                 |                          |  |  |
| Package Request Received date:                     |                          |  |  |
| Loan Number:                                       |                          | Loan Amount:   |  |
| <b><u>LEASE INFORMATION</u></b>                    |                          |  |  |
| LAC/Tract/Al lotment Number:                       |                          | BIA Lease/ROW Number:  |  |
| LTRO Recording Number (for lease):                 |                          | Lessee/Contractor Name:  |  |
| <b><u>CHECKLIST</u></b>                            |                          |  |  |
| <b>Notes</b>                                       |                          |  |  |
| <b>Preliminary Review:</b>                         |                          |  |  |
| 1.   | <input type="checkbox"/> | Enter in RTS (Realty Tracking System) and Mortgage Tracker   |  |
| 2.   | <input type="checkbox"/> | Request NEPA review for the Leasehold Mortgage   | Attachment 7   |
| 3.   | <input type="checkbox"/> | Does borrower have a BIA approved lease?   | If no or if the lease prohibits a mortgage, STOP, contact the mortgage lender. Applicant will need to obtain a BIA approved lease, or modify existing lease to allow for leasehold mortgage. |
| 4.   | <input type="checkbox"/> | Is Leasehold Mortgage/Deed of Trust term the same as the lease term?<br><input type="checkbox"/> Yes <input type="checkbox"/> No | If no, STOP. The leasehold mortgage term cannot exceed the lease term.   |
| 5.   | <input type="checkbox"/> | Original Leasehold Mortgage/Deed of Trust document   |  |

**Attachment 3 continued**

|  |                          |  |  |
|--|--------------------------|--|--|
| 6.   | <input type="checkbox"/> | Original/Certified copy of Promissory Note   |  |
| 7.   | <input type="checkbox"/> | Consents or Notice (as applicable)   |  |
| 8.   | <input type="checkbox"/> | Program Rider (if applicable)  |  |
| 9.   | <input type="checkbox"/> | Survey Plat (if applicable), legal description, and/or lot number/physical address                       |  |
| 10.  | <input type="checkbox"/> | Satisfaction/Release for previous mortgage (if applicable)   |  |
| 11.  | <input type="checkbox"/> | Mail Incomplete letter or Acknowledgement letter and update tracking systems (Attachments 4-6.)          | <b>Within 10 days of receipt of leasehold mortgage application</b>   |
| 12.  | <input type="checkbox"/> | Print uncertified TSR  | Review for any updates/ defects that may need to be corrected        |
| <b>Comprehensive Review:</b>   |                          |  |  |
| 13.  | <input type="checkbox"/> | Create a TAAMS Contractor ID Number for the leasehold mortgage lender (if applicable)                    |  |
| 14.  | <input type="checkbox"/> | Confirm legal/property description   | Verify property described is the same as property described in lease |
| 15.  | <input type="checkbox"/> | Review dollar amounts on promissory note and leasehold mortgage document, verify that they match         | If no, contact lender for clarification/correction                   |
| <b>Approval Process:</b>   |                          |  |  |
| <b>Must be completed by 20th day after receipt of complete application</b> |                          |  |  |
| 16.  | <input type="checkbox"/> | Prepare recommendation memo to the Approving Official for approval/disapproval                           | Attachment 8   |
| 17.  | <input type="checkbox"/> | Prepare a Decision Letter per the templates.   | Attachment 9 - approval<br>Attachment 11 - disapproval               |
| 18.  | <input type="checkbox"/> | Prepare Certificate of Approval for Approving Official<br>- If disapproved, do not prepare this document | Attachment 10  |
| 19.  | <input type="checkbox"/> | Submit mortgage package for approval/signature, include all documents and attachments                    |  |
| 20.  | <input type="checkbox"/> | Update tracking systems with decision date   |  |

**Attachment 3 continued**

| <b>Recording Process: Within 2 working days of receipt of approved documents<br/>(EXCEPTION: agencies/regions that submit the documents directly to LTRO for<br/>recording.)</b> |                          |   |  |
|--|--------------------------|---|--|
| 21.  | <input type="checkbox"/> | Assign a Legal Document number for the mortgage documents, if applicable.                             |  |
| 22.  | <input type="checkbox"/> | Create/Select Name & Address ID for the lender  |  |
| 23.  | <input type="checkbox"/> | Scan/Image the Mortgage/Deed of Trust and all Exhibits and attachments to TIR - Legal Document Module | Date of scan/image:<br><br>Hold originals until recorded by LTRO |
| 24.  | <input type="checkbox"/> | X-REF to associated lease if applicable   |  |
| 25.  | <input type="checkbox"/> | Request certified TSR   | Request date:  |

| <b>AGENCY/REGION TO RETURN TO LENDER: Within two (2) days after<br/>recording</b> |                          |  |                 |
|---|--------------------------|--|-----------------|
| 26.   | <input type="checkbox"/> | After recording <b>A)</b> print one (1) copy of recorded document for the official file and <b>B)</b> one (1) copy for the lender plus the original document.          |                 |
| 27.   | <input type="checkbox"/> | Prepare final letter with recorded leasehold mortgage package, with copy of the certified TSR for Superintendent's/Regional Director's signature and return to lender. | Attachment 12   |
|   | <input type="checkbox"/> | a) Recorded Mortgage/Deed of Trust document  |                 |
|   | <input type="checkbox"/> | b) Recorded Promissory Note  |                 |
|   | <input type="checkbox"/> | c) Recorded Certificate of Approval  |                 |
|   | <input type="checkbox"/> | d) Certified TSR   |                 |
|   | <input type="checkbox"/> | e) Other documents, as applicable  |                 |
| 28.   | <input type="checkbox"/> | Close transaction in tracking systems  | Date Completed: |

**Notes:**

## Attachment 4 - Template Leasehold Acknowledgement Incomplete letter

United States Department of the Interior  
Bureau of Indian Affairs  
Region or Agency  
Address  
City, State, Zip Code

Real Estate Services  
CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Name of Lender  
Address  
City, State and Zip Code

Dear Lender:

On **[date received]**, we received your request for review and approval of a proposed Leasehold **Mortgage/Deed of Trust** between \_\_\_\_\_, Mortgagor  
\_\_\_\_\_ Mortgagee.

Upon our preliminary review, it appears you have provided an incomplete package missing relevant documents required by: [Check one]

- 25 C.F.R. §162.244 - .246, agricultural leasehold mortgages;
- 25 C.F.R. §162.357-.360 , residential leasehold mortgages;
- 25 C.F.R. §162.457-.460, business leasehold mortgages;
- 25 C.F.R. §162.582-.585, renewable energy leasehold mortgages;
- 25 C.F.R. §169.210-212, rights-of-way mortgages

These documents are necessary for BIA review. Specifically, you are missing the following item(s):

**[Missing documents as identified on Checklist]**

Your incomplete package is being returned to you. If you would like for us to consider your leasehold mortgage package, simply re-submit the entire package, including any referenced missing item(s) at your convenience.

We thank you for your submission and look forward to working with you. If you have any questions regarding this matter, please contact **[application creator name]**, Realty Specialist, at **[insert phone, extension]**, or by email at **[insert email address of agency contact]**.

Sincerely,

Superintendent or Regional Director

cc: Applicant(s)

## Attachment 5 - Template Leasehold Acknowledgement Complete letter

United States Department of the Interior  
Bureau of Indian Affairs  
Region or Agency  
Address  
City, State, Zip Code

Real Estate Services

[Note: mail regular postal mail, not certified]

Name of Lender

Address

City, State and Zip Code

Dear Lender:

On **[date received]**, we received your request for review and approval of a proposed **Leasehold Mortgage/Deed of Trust** between \_\_\_\_\_, Mortgagor and \_\_\_\_\_ Mortgagee.

Upon our preliminary review, it appears you have provided a complete package including all the information and supporting documents required by: [check one]

- 25 CFR §162.244-.246, agricultural leasehold mortgages;
- 25 CFR §162.357-.360 , residential leasehold mortgages;
- 25 CFR §162.457-.460, business leasehold mortgages;
- 25 CFR §162.582-.585, renewable energy leasehold mortgages;

This notice of a complete package starts the **20-day** approval time frame, whereby we must make a determination that this application is in the best interest of the landowner. Within **twenty (20)** days from the date we received your request for approval of the leasehold mortgage, you will be notified, in writing, of our determination to approve or disapprove this package.

We thank you for your submission and look forward to working with you. If you have any questions regarding this matter, please contact **[application creator name]**, Realty Specialist, at **[insert phone, extension]** or by e-mail, **[insert email address of agency contact]**.

Sincerely,

Superintendent or Regional Director

cc: Applicant(s)

**Attachment 6 - Template Leasehold ROW Acknowledgement Complete letter**

United States Department of the Interior  
Bureau of Indian Affairs  
Region or Agency  
Address  
City, State, Zip Code

Real Estate Services  
CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Name of Lender  
Address  
City, State and Zip Code

Dear Lender:

On **[date received]**, we received your request for review and approval of a proposed Right-of-Way Leasehold Mortgage/Deed of Trust between \_\_\_\_\_, Mortgagor and \_\_\_\_\_ Mortgagee, for [contract type) Lease No. **[Enter lease no.]**.

Upon our preliminary review, it appears you have provided a complete package for a Right-of-Way Leasehold Mortgage including all the information and supporting documents required by 25 CFR 169.210.

This notice of a complete package starts the **30-day** time frame whereby we must make a determination that this application is in the best interest of the land owner. Within **thirty (30)** days from the date of this letter, you will be notified, in writing, of our determination to approve, or disapprove, this package.

We thank you for your submission and look forward to working with you. If you have any questions regarding this matter, please contact **[application creator name]**, Realty Specialist, at **[insert phone, extension] or by e-mail, [insert email address of agency contact]**.

Sincerely,

Superintendent or Regional Director

cc: Applicant(s)

# Attachment 7 - NEPA Cat Ex Checklist



Cat Ex No. \_\_\_\_\_

## CATEGORICAL EXCLUSION EXCEPTION REVIEW (CEER) CHECKLIST

Date: \_\_\_\_\_ Proponent/Lessee \_\_\_\_\_

Project: \_\_\_\_\_

Letter and Text of Category: (BIA – 516 DM 10.5; DOI – 43 CFR 46.210)

### Evaluation of Extraordinary Circumstances (43 CFR 46.215)

- |    |   |                             |                              |
|----|---|-----------------------------|------------------------------|
| 1. | This action would have significant adverse effects on public health or safety.  | No <input type="checkbox"/> | Yes <input type="checkbox"/> |
| 2. | This action would have significant impacts on:<br>natural resources & unique geographical features as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild & scenic river; national natural landmarks; sole or prime drinking water aquifers; prime farmlands wetlands; floodplains; national monuments; migratory birds; and other ecologically significant areas. | No <input type="checkbox"/> | Yes <input type="checkbox"/> |
| 3. | The action will have highly controversial environmental effects or unresolved conflicts concerning alternate uses of available resources.   | No <input type="checkbox"/> | Yes <input type="checkbox"/> |



**Attachment 7 continued**

- |     |   |                             |                              |
|-----|---|-----------------------------|------------------------------|
| 4.  | The action will have highly uncertain environmental effects or involve unique or unknown environmental risks.   | No <input type="checkbox"/> | Yes <input type="checkbox"/> |
| 5.  | This action will establish a precedent for future actions.  | No <input type="checkbox"/> | Yes <input type="checkbox"/> |
| 6.  | This action is related to other actions with individually insignificant, but cumulatively significant environmental effects.  | No <input type="checkbox"/> | Yes <input type="checkbox"/> |
| 7.  | This action will affect properties listed or eligible for listing in the National Register of Historic Places.  | No <input type="checkbox"/> | Yes <input type="checkbox"/> |
| 8.  | This action will affect a species listed, or proposed to be listed as endangered or threatened, or Critical Habitat of these.   | No <input type="checkbox"/> | Yes <input type="checkbox"/> |
| 9.  | This action threatens to violate federal, state, local, or tribal law or requirements imposed for protection of the environment.  | No <input type="checkbox"/> | Yes <input type="checkbox"/> |
| 10. | This action will have a disproportionately high and adverse effect on low income or minority populations.   | No <input type="checkbox"/> | Yes <input type="checkbox"/> |
| 11. | This action will limit access to, and ceremonial use of Indian sacred sites on federal lands, by Indian religious practitioners, and/or significantly adversely affect the physical integrity of such sacred sites. | No <input type="checkbox"/> | Yes <input type="checkbox"/> |

**Attachment 7 continued**

12. This action will contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area, or may promote the introduction growth, or expansion of the range of such species. No  Yes

A “yes” to any of the above exceptions will require that an EA be prepared.

NEPA Action - - - CE \_\_\_\_ EA \_\_\_\_

Preparer’s Name and Title: \_\_\_\_\_

Regional Archeologist Concurrence with Item 7: \_\_\_\_\_

Concur: \_\_\_\_\_ Date: \_\_\_\_\_  
Superintendent/Regional Director

Concur: \_\_\_\_\_ Date: \_\_\_\_\_  
Environmental Protection Specialist

## Attachment 8 - Template Superintendent Recommendation memorandum

United States Department of the Interior  
Bureau of Indian Affairs  
Agency  
Address  
City, State, Zip Code

Real Estate Services

Memorandum

To: Superintendent  
From: Realty Officer, Real Estate Services  
Subject: Leasehold Mortgage/Deed of Trust Certification

I certify that the *{Enter Lease Type}* Leasehold Mortgage for Lease No. *{enter Lease No.}* with *{Enter Contractor name}* is in the best interest of the Indian landowner(s). In making this determination, we have:

1. Reviewed the leasehold mortgage and supporting documents;
  - a. Purpose of the lease and mortgage is to provide housing.
2. Ensured compliance with NEPA;
  - a. Identified potential environmental impacts including preparation of the appropriate review of NEPA documents;
3. Confirmed landowner consents were obtained; and
4. Confirmed legal description reconciled with lease description.
5. Assured that adequate consideration has been given to the Lessee/Applicant:
  - a. The relationship between the use of the premises and the use of neighboring lands;
  - b. The height, quality, and safety of any structures or facilities to be constructed on the leased premises;
  - c. The availability of judicial forms for all criminals and civil matters arising on the leased premises;
  - d. The effect on the environment of the proposed land

**Attachment 8 continued**

Affirmed:

Concur:

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attachments

## Attachment 9 - Template Leasehold Approved Decision letter

United States Department of the Interior  
Bureau of Indian Affairs  
Region or Agency  
Address  
City, State, Zip Code

Real Estate Services  
Name  
Address  
City, State and Zip Code

Dear Lender:

On **[date received]**, we received your request for review and approval of a proposed leasehold mortgage **[contract type]** between \_\_\_\_\_, Mortgagor and \_\_\_\_\_ Mortgagee.

We received all of the required documents that constitute a complete package. This letter serves as official notification that we approved this document on \_\_\_\_\_, in accordance with 25 CFR\_\_\_\_\_.

Date of Receipt:

Borrower:

Leasehold Mortgage Loan No.: (TAAMS No. \_\_\_\_\_)

Residential Lease No.:

Property Location:

We are currently processing the mortgage documents for recording with the BIA Land Titles and Records Office (LTRO) and will also request for a certified Title Status Report (TSR). Upon receipt of both documents, they will then be forwarded to you for further disposition.

In the event of delinquency, default, or any change to this mortgage, you are required to notify this office in writing. Additionally, when this loan is paid in full, please forward the original or a certified copy of the lien release to this office so it may be properly recorded in LTRO.

### Superintendent Decision:

This decision may be appealed to the Regional Director, in accordance with the regulations found at 25 CFR § 2.7 Notice of Administrative Decision or Action. Your Notice of Appeal MUST be filed in this office within 30 days of the date you receive this decision. 25 CFR 2. The date of filing your Notice of Appeal is the date it is postmarked or the date it is personally delivered to this office. Your Notice of Appeal must include your name, address and telephone number. It should clearly identify the decision being appealed. If possible, attach a copy of the decision. The notice and the envelope in which it is mailed should be clearly labeled "Notice of Appeal." You must certify that your Notice of Appeal has been served upon the interested parties.

## Attachment 9 continued

You must also file a “Statement of Reasons.” This statement may be included in or filed with the notice of appeal. If it is not filed at the time of the Notice of Appeal, it must be filed within 30 days after the Notice of Appeal was filed.

### Regional Director Decision:

This decision may be appealed to the Interior Board of Indian Appeals, 801 North Quincy Street, MS-300-QC, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310 - 4.340 (copy enclosed). Your Notice of Appeal to the Board must be signed by you or your attorney and **must be mailed within 30 days of the date you receive this decision**. Your Notice of Appeal must be original; **no facsimile copies (faxes) will be accepted**. The Notice of Appeal should clearly identify the decision being appealed. If possible, attach a copy of the decision. You must send copies of your Notice of Appeal to (1) the Assistant Secretary - Indian Affairs, 4140 MIB, U.S. Department of the Interior, 1849 C Street, N.W., MS 4141, Washington, D.C. 20240, (2) each interested party known to you, and (3) this office. Your Notice of Appeal sent to the Board must certify that you have sent copies to these parties. If you are not represented by an Attorney, you may request assistance from this office in the preparation of your appeal. If you file a Notice of Appeal, the Board will notify you of further appeal procedures. **If the Notice of Appeal is not timely filed, this decision will become final for the Department of the Interior at the expiration of the thirty (30) day appeal period.** A timely appeal will stay this decision. No extension of time can be granted for the filing of the Notice of Appeal.

We thank you for your submission and look forward to working with you. If you have any questions regarding this matter, please contact [**application creator name**], Realty Specialist, at [**insert phone, extension**].

Sincerely,

Superintendent or Regional Director

cc: Applicant

**Attachment 10 - Template Leasehold Certificate of Approval**

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

**CERTIFICATE OF APPROVAL  
FOR LEASEHOLD MORTGAGE/DEED OF TRUST**

|  |  |
|--|--|
| Legal Document No. <i>(BIA use only)</i> |  |
| Residential Lease No.:                   |  |
| Property Location:                       |  |

The Mortgage/Deed of Trust dated \_\_\_\_\_ between \_\_\_\_\_, as Mortgagor, and \_\_\_\_\_, as Mortgagee, is hereby approved, and in accordance with 25 CFR\_\_\_\_\_.

Pursuant to authority delegated to the Assistant Secretary – Indian Affairs by 209 DM 8, 230 DM 1, by 3 IAM 4.

Date \_\_\_\_\_  
\_\_\_\_\_ Superintendent/Regional Director

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss: ACKNOWLEDGMENT

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me, a Notary Public for the State of \_\_\_\_\_, personally appeared \_\_\_\_\_ known to me to be the person(s) whose name is subscribed to the within instrument, and acknowledged to me that he/she has executed the same. IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal the day and year in this certificate first above written.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public for the State of \_\_\_\_\_  
Residing at \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

## Attachment 11 - Template Leasehold Disapproval Decision letter

United States Department of the Interior  
Bureau of Indian Affairs  
Region or Agency  
Address  
City, State, Zip Code

Real Estate Services  
CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Name  
Address  
City, State and Zip Code

Dear Applicant:

On **[date received]**, we received your request for review and approval of a proposed **[contract type]** between \_\_\_\_\_, Mortgagor and \_\_\_\_\_, Mortgagee.

An analysis has been performed on a Leasehold Mortgage/Deed of Trust, and in accordance with 25 CFR 162.360, we regret to inform you that we cannot approve the document, at this time, for the following reasons:

- 1.
- 2.

### Superintendent Decision:

This decision may be appealed to the Regional Director, in accordance with the regulations found at 25 CFR § 2.7 Notice of Administrative Decision or Action. Your Notice of Appeal MUST be filed in this office within 30 days of the date you receive this decision. 25 CFR 2. The date of filing your Notice of Appeal is the date it is postmarked or the date it is personally delivered to this office. Your Notice of Appeal must include your name, address and telephone number. It should clearly identify the decision being appealed. If possible, attach a copy of the decision. The notice and the envelope in which it is mailed should be clearly labeled “Notice of Appeal.” You must certify that your Notice of Appeal has been served upon the interested parties.

You must also file a “Statement of Reasons.” This statement may be included in or filed with the notice of appeal. If it is not filed at the time of the Notice of Appeal, it must be filed within 30 days after the Notice of Appeal was filed.

### Regional Director Decision:

This decision may be appealed to the Interior Board of Indian Appeals, 801 North Quincy Street, MS-300-QC, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310 - 4.340 (copy enclosed). Your Notice of Appeal to the Board must be signed by you or your attorney and **must be mailed within 30 days of the date you receive this decision.**



**Attachment 11 continued**

Your Notice of Appeal must be original; **no facsimile copies (faxes) will be accepted.** The Notice of Appeal should clearly identify the decision being appealed. If possible, attach a copy of the decision. You must send copies of your Notice of Appeal to (1) the Assistant Secretary - Indian Affairs, 4140 MIB, U.S. Department of the Interior, 1849 C Street, N.W., MS 4141, Washington, D.C. 20240, (2) each interested party known to you, and (3) this office. Your Notice of Appeal sent to the Board must certify that you have sent copies to these parties. If you are not represented by an Attorney, you may request assistance from this office in the preparation of your appeal. If you file a Notice of Appeal, the Board will notify you of further appeal procedures. **If the Notice of Appeal is not timely filed, this decision will become final for the Department of the Interior at the expiration of the thirty (30) day appeal period.** A timely appeal will stay this decision. No extension of time can be granted for the filing of the Notice of Appeal.

If you have any questions regarding this matter, please contact **[name]**, Realty Specialist, at **[insert phone, extension]**.

Sincerely

Superintendent or Regional Director

cc: Applicant(s)

## Attachment 12 - Template Leasehold Lender Transmittal letter

United States Department of the Interior  
Bureau of Indian Affairs  
Region or Agency  
Address  
City, State, Zip Code

Real Estate Services  
CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Name of Lender  
Address  
City, State, and Zip Code

Dear Lender:

We have enclosed an approved and recorded Leasehold Mortgage/Deed of Trust for Residential/  
Business/Rights-of-Way/Agricultural Lease No. [ex. 685-4200005678]. This Leasehold  
Mortgage/Deed of Trust is given a Document No. of [ex. 685-4200000123]. Please refer to this  
number in future reference.

Please find enclosed the following documents:

- Recorded Leasehold Mortgage Document
- *(List all documents being returned)*
- Certified TSR

If you have any questions regarding this matter, please contact [Name], Realty Specialist, at  
[insert phone, extension].

Sincerely,

Superintendent or Regional Director

Enclosures

## Attachment 13 – Trust Land Mortgage Loan Checklist

| <b><u>TRUST LAND MORTGAGE INFORMATION</u></b>       |                          |   |   |
|---|--------------------------|---|---|
| Borrower(s) Name(s) and Address, City, State, Zip:  |                          | Borrower(s) phone/email:  |   |
| Lender Name and mailing address (including dba):    |                          | Lender Email:   |   |
| Lender phone No.:                                   |                          | Lender Fax No.:   |   |
| Package Request Received date:                      |                          |   |   |
| Loan No. or MIN:                                    |                          | Loan Amount:  |   |
| Name of Loan Program (i.e. HUD, Sec. 184, VA, etc.) |                          |   |   |
| <b><u>TRACT INFORMATION</u></b>                     |                          |   |   |
| TAAMS LAC/Tract No./Allotment No.:                  |                          |   |   |
| <b><u>CHECKLIST</u></b>                             |                          |   |   |
| <b><u>Notes</u></b>                                 |                          |   |   |
| <b>Agency Preliminary Review:</b>                   |                          |   |   |
| 1.  | <input type="checkbox"/> | Encode into Mortgage Tracker  |   |
| 2.  | <input type="checkbox"/> | Review package to confirm all required documents received<br><input type="checkbox"/> Commitment Letter Stating Loan Terms and Conditions, loan purpose (rehab, new construction, refinance, consolidation, purchase)<br><br><input type="checkbox"/> Copy of borrower’s Application (signed by borrower(s))<br><input type="checkbox"/> Copy of the lender’s Appraisal<br><input type="checkbox"/> Authorization/Consent to Share Information with BIA (if applicable)<br><input type="checkbox"/> Legal Description/Survey<br><input type="checkbox"/> BIA Disclosure Statement (terms and conditions information)<br><input type="checkbox"/> Original/Certified Copy of Satisfaction, if applicable<br><input type="checkbox"/> Draft Deed of Trust and Promissory Note | If incomplete, return using Attachment 14 |

**Attachment 13 continued**

|                                     |                          |   |               |
|-------------------------------------|--------------------------|---|---------------|
|                                     |                          | <p><b>Additional documents that may also accompany the mortgage:</b></p> <p><input type="checkbox"/> ROW/Legal Ingress/Egress (if landlocked parcel)</p> <p><input type="checkbox"/> Statement: Borrower is not delinquent on Federal debt (HUD 184 only)</p> <p><input type="checkbox"/> Certified Title Status Report (TSR) if not included in package</p> <p><input type="checkbox"/> Proof of Employment</p>  |               |
| 3.                                  | <input type="checkbox"/> | Prepare NEPA Documentation (as applicable). May utilize HUD NEPA review document, if applicable (516 DM 10.5 M. (3))  | Attachment 7  |
| 4.                                  | <input type="checkbox"/> | <p>Review Mortgage Documents</p> <ul style="list-style-type: none"> <li>● Correct legal description</li> <li>● Confirm Foreclosure clause</li> <li>● Confirm landowners signature on applicable documents</li> </ul>  |               |
| 5.                                  | <input type="checkbox"/> | Prepare transmittal letter to Regional Office   | Attachment 15 |
| <b>Region Comprehensive Review:</b> |                          |   |               |
| 6.                                  | <input type="checkbox"/> | Update Mortgage Tracker   |               |
| 7.                                  | <input type="checkbox"/> | Review lender's appraisal   |               |
| 8.                                  | <input type="checkbox"/> | Review terms of loan and lender's credit analysis   |               |
| 9.                                  | <input type="checkbox"/> | Review Draft Deed and Note  |               |
| 10.                                 | <input type="checkbox"/> | Submit recommendation to Regional Director for approval/disapproval   |               |
| <b>If package is approved:</b>      |                          |   |               |
| 11.                                 | <input type="checkbox"/> | Prepare Commitment to Approve for Regional Director signature   | Attachment 16 |
| 12.                                 | <input type="checkbox"/> | <p>Send Commitment letter to lender</p> <ul style="list-style-type: none"> <li>● Enclose BIA Disclosure Statement</li> </ul>  | Attachment 17 |
| <b>If package is disapproved:</b>   |                          |   |               |
| 13.                                 | <input type="checkbox"/> | Prepare letter for disapproval with appeal rights   | Attachment 19 |
| <b>Final Approval Process:</b>      |                          |   |               |
| 14.                                 | <input type="checkbox"/> | <p>Mortgage documents from the lender:</p> <ul style="list-style-type: none"> <li>● Original Mortgage/Deed of Trust; ensure starting and ending dates are stated</li> <li>● Certified True and Correct copy of Promissory Note</li> <li>● Rider (if applicable)</li> <li>● Disclosure Statement, initialed by the borrower</li> <li>● Copies of all signed and finalized loan documents</li> <li>● Releases and Satisfactions, if applicable</li> </ul> |               |

**Attachment 13 continued**

|                   |                          |  |  |
|-------------------|--------------------------|--|--|
| 15.               | <input type="checkbox"/> | Attach Certificate of Approval with mortgage documents for Regional Director's signature   | Attachment 18  |
| 16.               | <input type="checkbox"/> | RD recommendation memo routing mortgage documents & Certificate of Approval to Regional Director for Signature   | Attachment 21  |
| <b>Recording:</b> |                          |  |  |
| 17.               | <input type="checkbox"/> | If applicable, Regional Office assigns a legal document identification number to the land mortgage document  | May need to request from Agency                              |
| 18.               | <input type="checkbox"/> | If applicable, create Contractor Name & ID in TAAMS for lender   |  |
| 19.               | <input type="checkbox"/> | Scan mortgage documents to TIR   |  |
| 20.               | <input type="checkbox"/> | LTRO Recording process <ul style="list-style-type: none"> <li>● Complete post quality review of mortgage documents</li> <li>● Encode in Legal Document Module</li> <li>● X-REF to title tract</li> </ul> |  |
| 21.               | <input type="checkbox"/> | Realty to X-REF to borrower's Name & Address ID  |  |
| 22.               | <input type="checkbox"/> | Request Certified TSR  | Can submit request concurrently with documents for recording |
| 23.               | <input type="checkbox"/> | Transmit approved and recorded package to the lender   | Attachment 12  |
| 24.               | <input type="checkbox"/> | Transmit certified TSR to lender   | Copy to case file  |
| 25.               | <input type="checkbox"/> | Update Mortgage Tracker and close transaction  |  |

**Attachment 14 - Template Land Mortgage Acknowledgement Incomplete letter**

United States Department of the Interior  
Bureau of Indian Affairs  
Regional Office  
Mailing Address  
City, State, Zip

Real Estate Services  
CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Name of Lender  
Address  
City, State and Zip Code

Dear Lender:

On **[date received]**, we received your request for review and approval of a proposed **Trust Land Mortgage** between \_\_\_\_\_, Mortgagor \_\_\_\_\_ Mortgagee.

Upon our preliminary review, it appears you have provided an incomplete package that is missing relevant documents.

These documents are necessary for BIA review. Specifically, you are missing the following item(s):

**[Missing documents as identified on Checklist]**

Your incomplete package is being returned to you. If you would like for us to consider your mortgage package, simply re-submit the entire package, including any referenced missing item(s) at your convenience.

We thank you for your submission and look forward to working with you. If you have any questions regarding this matter, please contact **[application creator name]**, Realty Specialist, at **[insert phone, extension]**, or by email at **[insert email address of agency contact]**.

Sincerely,

Regional Director

cc: Applicant(s)

**Attachment 15 - Template Land Mortgage Agency Transmittal memorandum**

**United States Department of the Interior**  
Bureau of Indian Affairs Agency  
Mailing Address  
City, State, Zip

Memorandum

To: Regional Director, \_\_\_\_\_ Regional Office

From: (Agency name)

Subject: Trust Land Mortgage for \_\_\_\_\_

Our office received a trust land mortgage package, from \_\_\_\_ (name of bank/lender) \_\_\_\_\_, dated \_\_\_\_\_, in the amount of \$\_\_\_\_\_. In accordance with the Mortgage Handbook, we are transmitting the complete package for your review, analysis, and approval or disapproval.

The trust land mortgage is for the following individual:

1. BORROWER:
2. LENDER:
3. TYPE OF REQUEST:

ADDITIONAL COMMENTS:

For your reference, the Mortgage Tracker number that references this trust land mortgage is \_\_\_\_\_, to be updated and completed by your office.

If you have any questions, please contact \_\_\_\_\_, at \_\_\_\_\_.

**Attachment 16 - Template Trust Land Mortgage Commitment to Approve letter**

**United States Department of the Interior**

Bureau of Indian Affairs

Region or Agency

Address

City, State, Zip Code

Name of Lender

Address

City, State and Zip Code

Dear Lender:

We have performed a review and analysis of your request for a trust land mortgage in the approximate amount of \$ \_\_\_\_\_ for \_\_\_\_\_.

The purpose of this letter is to provide a commitment to approve a mortgage to you for securing a loan in the approximate principal amount of \$\_\_\_\_\_. The proposed loan conditions are for permanent financing with a fixed \_\_\_\_\_% interest rate of and a term of \_\_\_\_\_ years.

Please note the property upon which the mortgage will be held is in a trust status, and is not taxable.

Surface and Surface Rights only to the following tract of land: Allotment #\_\_\_\_\_:

*(Enter Section/Township/Range, metes and bounds or aliquot parts legal description and acreage.*

Final approval of the mortgage is subject to our office receiving the following information and documents:

1. Original signed and dated mortgage document along with a certified copy of the promissory note. Ensure the starting date and ending date for the mortgage payments is stated within the language of the mortgage instrument.
2. Copies of all signed and finalized loan documents, including applicable environmental documents and promissory notes.
3. Original disclosure information sheet to be initialed by the borrower(s), which is enclosed.
4. Submit all Releases and Satisfactions for any previous mortgages noted in the Title Status Report for recordation in the Land Titles and Records Office (LTRO).
5. Ensure the legal description referenced in the mortgage instrument is consistent with the certified Title Status Report.



**Attachment 16 continued**

In the event of delinquency, default, or any change to this mortgage, notify this office in writing.

Additionally, when this loan is paid in full, please forward the original or a certified copy of the lien release to this office to be recorded in our LTRO.

If you have any questions, please contact \_\_\_\_\_, at \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_.

Sincerely,

Regional Director

Enclosure  
Cc: Borrower

## Attachment 17 - BIA Disclosure Statement

### **Important Information Regarding Default on Payments under Mortgages of Trust Lands** **(Please initial at the bottom of this page that you have read and understand this page.)**

*You are advised that in the event that you default on payments, the bank or other lending institution which holds a mortgage may foreclose on the trust lands. Foreclosure is a legal action in which a mortgaged property is sold to satisfy the debt.*

*Specifically, 25 U.S.C. Section §5135 (formerly 25 U.S.C. §483a) the federal law provides:*

*(a) Foreclosure or sale of land*

*The individual Indian owners of any land which either is held for the United States in trust for them or is subject to a restricted status against alienation imposed by the United States are authorized, subject to approval by the Secretary of the Interior, to execute mortgage or deed of trust to such land. Such land shall be subject to foreclosure or sale pursuant to the terms of such mortgage or deed of trust in accordance with the laws of the tribe which has jurisdiction over such land or, in the case where no tribal foreclosure law exists, in accordance with the laws of the State or Territory in which the land is located. For the purpose of any foreclosure or sale proceeding, the Indian owners shall be regarded as vested with unrestricted fee simple title to the land, the United States shall not be a necessary party to the proceeding, and any conveyance of the land pursuant to the proceeding shall divest the United States of title to the land. All mortgages and deeds of trust to such land heretofore approved by the Secretary of the Interior are ratified and confirmed.*

*(b) Prohibition; removal from trust or restricted status; application to Secretary*

*In the event such land is acquired by an Indian tribe, such land shall not be removed from trust or restricted status except upon application to the Secretary under existing law.*

*Under the terms of the statute, trust land may be treated as non-Indian land for purposes of foreclosure. As a result, after foreclosure the land will no longer belong to the Indian owner, and will lose its trust or restricted status. The BIA will cease administrative responsibility over the land, unless the property is purchased by another Indian or tribe. Please note that the statute provides that the United States (and therefore, the BIA) does not have to be made a part of a foreclosure action and cannot defend the interest of the Indian landowner. Indian landowners are responsible for making payments under the mortgage, and upon default, the Indian landowner is responsible for any legal expenses and other costs which are incurred in a foreclosure action.*

*This does not mean that once trust lands are mortgaged, the BIA no longer has responsibilities for the property. During the term of the mortgage, the lands continue in trust or restricted status.*

**Initials:** \_\_\_\_\_

## Attachment 17 continued

### ***Information Sheet: Mortgages on Trust Properties***

*Under the 25 U.S.C. §5135 (former 25 U.S.C. §483a) and 25 C.F.R. 152.34 Indian landowners may mortgage their trust lands with a bank, savings and loan institution, or other recognized lender, with the approval of the BIA. This permits Indian landowners to borrow money in the form of a loan. These loans can be used for home purchases, home improvements, businesses or other purpose. **If the landowner is refinancing, an original or certified copy of the release documents must be forwarded to BIA Land Titles and Records Office (LTRO) for recording to expire previous mortgage liens.** The BIA has trust responsibility for the land in other matters and the lands during this period.*

*Lands that are owned in undivided fractionated interest or subject to a life estate will not be approved unless consents are obtained. The applicant must be of legal age to apply for a BIA approved mortgage. The BIA does not provide commercial abstracts but will provide a Title Status Report (TSR). The TSR is a title evidence report maintained by the LTRO, and will list any encumbrances on title, as well as current landowners.*

*The borrower should request a **Certified TSR** and the legal description from the Realty office at the Agency (or Tribal office, if applicable). After the applicant is pre-approved by a lender and the loan terms are worked out, the lender will send a copy of their application and the commitment letter to the Agency Realty office. The application is reviewed to see if the loan is in the best interest of the landowner.*

*If the landowner becomes delinquent and the lender forecloses, the lender is required to notify all interested parties. The lender can file suit and proceed with the action under state law. The BIA should be notified for title purposes but cannot intervene. Foreclosure removes trust status and vests fee title in the lender. When a mortgage is foreclosed upon, the BIA will release the property from its records with the receipt of proper documentation. Landowners are responsible for making their own payments, for their own legal expenses, and for protecting their property rights.*

*An application may be disapproved, and the applicant may appeal the decision within 30 days of the disapproval date under 43 CFR Part 4.*

**Attachment 18 - Template Land Mortgage Certificate of Approval**

ATTACHMENT TO MORTGAGE DATED \_\_\_\_\_, BETWEEN \_\_\_\_\_,  
MORTGAGOR, AND \_\_\_\_\_, AS MORTGAGEE, IN THE AMOUNT OF \_\_\_\_\_.

THE MATURITY DATE FOR THE MORTGAGE IS \_\_\_\_\_, AND IS SUBJECT TO  
ANY AND ALL EXISTING MORTGAGES, LIENS, AND ANY OTHER ENCUMBRANCES.

CERTIFICATE OF APPROVAL

Pursuant to the authority delegated by the Secretary of the Department of the Interior to the Assistant Secretary-Indian Affairs (AS-IA) in 209 Department Manual (DM) 8; re-delegated by the AS-IA through the Principal Deputy-Assistant Secretary to the Director, Bureau of Indian Affairs (DBIA) in 230 DM 1; and further re-delegated from the DBIA to the Regional Directors through 3 Indian Affairs Manual (IAM) 4, the foregoing mortgage is hereby approved on behalf of the AS-IA pursuant to 25 U.S.C. §5135, formerly known as §483a.

Approval of this foregoing mortgage shall not be construed to be an agreement or assurance that the lands covered by the mortgage will remain in trust or restricted status during the period of the mortgage agreement.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Regional Director

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss: ACKNOWLEDGMENT

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me, a Notary Public for the State of \_\_\_\_\_, personally appeared \_\_\_\_\_ known to me to be the person(s) whose name is subscribed to the within instrument, and acknowledged to me that he/she has executed the same. IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal the day and year in this certificate first above written.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public for the State of \_\_\_\_\_  
Residing at \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

## Attachment 19 - Template Land Mortgage Disapproval letter

United States Department of the Interior  
Bureau of Indian Affairs  
Region or Agency  
Address  
City, State, Zip Code

IN REPLY REFER TO:  
Real Estate Services  
Code 428

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Name of Applicant/Lender(s)  
Address  
City, State and Zip Code

Dear Applicant/Lender:

An analysis has been performed on your mortgage request. We regret we cannot approve the request for the following reasons:

- 1.
- 2.

This decision may be appealed to the Interior Board of Indian Appeals, 801 North Quincy Street, MS-300-QC, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310 - 4.340 (copy enclosed). Your Notice of Appeal to the Board must be signed by you or your attorney and **must be mailed within 30 days of the date you receive this decision**. Your Notice of Appeal must be original; **no facsimile copies (faxes) will be accepted**. The Notice of Appeal should clearly identify the decision being appealed. If possible, attach a copy of the decision. You must send copies of your Notice of Appeal to (1) the Assistant Secretary - Indian Affairs, 4140 MIB, U.S. Department of the Interior, 1849 C Street, N.W., MS 4141, Washington, D.C. 20240, (2) each interested party known to you, and (3) this office. Your Notice of Appeal sent to the Board must certify that you have sent copies to these parties. If you are not represented by an Attorney, you may request assistance from this office in the preparation of your appeal. If you file a Notice of Appeal, the Board will notify you of further appeal procedures. **If the Notice of Appeal is not timely filed, this decision will become final for the Department of the Interior at the expiration of the thirty (30) day appeal period.** A timely appeal will stay this decision. No extension of time can be granted for the filing of the Notice of Appeal.

**Attachment 19 continued**

Please call \_\_\_\_\_, Realty Specialist at \_\_\_\_\_, if you have questions or would like to discuss this further.

Sincerely,

Regional Director

Enclosure

cc: lender/applicant

## Attachment 20 - Template Land Mortgage Lender Transmittal letter

United States Department of the Interior  
Bureau of Indian Affairs  
Region  
Address  
City, State, Zip Code

Real Estate Services  
CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Name of Lender  
Address  
City, State and Zip Code

Re: \_\_\_\_\_ Loan

Dear Lender:

Enclosed is an approved recorded land mortgage and supporting documentation for the above described loan on behalf of \_\_\_\_\_ mortgagor, and \_\_\_\_\_ mortgagee. The included documents are listed below:

- Mortgage
- Promissory Note
- Certificate of Approval
- Rider

The mortgage has been recorded in our Land Titles and Records Office under Document No. \_\_\_\_\_. A copy of the approved mortgage will be retained for our records. The original mortgage package has been returned to you with this letter.

If you have any questions or require further information, please contact (name) at (telephone number).

Sincerely,

Regional Director/Realty Officer

Enclosures  
cc: Superintendent

## Attachment 21 - Template RD Recommendation memorandum

United States Department of the Interior  
Bureau of Indian Affairs  
Mailing Address  
City, State, Zip

Real Estate Service

### **MEMORANDUM**

TO: Regional Director

THROUGH: Deputy Regional Director - Trust

FROM: Regional Realty Officer

SUBJECT: Application for Mortgage – (Landowner Name), (LAC & Tract ID)

Enclosed are the documents pertaining to the Application for Mortgage received from (lender/landowner) on (date received).

(Lender/landowner) submitted the application and (landowner) has been counseled regarding the options available to him, and regarding the associated risks of a mortgage. All subsequent required documents and reviews have been completed and submitted, and a draft Deed of Trust provided by the lender for review.

The documents submitted are in compliance with the 25 C.F.R. §152.34 and we recommend approval of the following:

1. Application for Mortgage;
2. Superintendent's recommendation memo
3. Commitment to Approve Mortgage.
4. Other documents, if applicable

If you have any questions regarding the attached package, please contact (name), Realty Specialist at (telephone number).

Attachments



## **Attachment 22 – Land Mortgage Lender Loan Checklist**

### **Instructions for the Trust Land Mortgage Checklist**

We are committed to providing prompt and courteous service in the processing of a mortgage request. In order to help expedite this process the following checklist is provided for your convenience.

This checklist guides you through submitting documents to BIA for a mortgage request review and to provide you with general guidance for documents required for a complete package.

Place a checkmark in each box as the documentation is added to the package contents. Write N/A in the space to the right of the unnecessary items to indicate they are not pending and the review is complete. We recommend submitting an electronic copy of the package, however, we will accept a paper copy.

The documentation should be gathered and completed for all borrowers listed on the loan request. The required documentation may vary by loan type, lender, program, and borrower circumstances. Additional documentation may be required after initial submission. Documents listed may or may not apply to all packages since required documents are based on each borrower's situation and application type.

## Attachment 22 continued

### Land Mortgage Lender Loan Checklist

#### COMPANY INFORMATION

Borrower(s) Name(s) and Address, City,  
State, Zip:

Lender Name and mailing address:

Lender phone number:

Lender fax number:

Request Received date:

Lender Email Address:

Loan Amount:

Allotment Name and Number:

#### CHECKLIST\*

##### NOTES

- Commitment Letter Stating Loan Terms and Conditions, loan purpose (rehab, new construction, refinance, consolidation, purchase)
- Original/Certified Copy of Satisfaction, if this is a request for refinance
- Copy of borrower's Application (signed by borrower(s))
- Copy of the Lender's Appraisal
- Authorization/Consent to Share Information with BIA (if applicable)
- NEPA review (if applicable)
- Survey(s)/Site Reports/Site Assessments (if applicable)
- Preliminary Site Plan Drawings (if applicable)
- ROW Ingress/Egress (if applicable)
- Certified Title Status Report (TSR)
- Draft mortgage/deed of trust, promissory note, and any applicable riders
- Loan Program Utilized (HUD 184, VA, etc.) [Could be stated in the commitment letter stating loan terms and conditions].
- Statement: Borrower is not delinquent on Federal debt (HUD 184 only).
- Proof of Employment
- Request Certified Title Status Report (with new mortgage noted)

\*BIA reserves the right to request additional information as needed.