



Mortgage Lending-Guarantee & Direct Loan Programs (Partnership Training)

GOAL

- OUR GOAL IS TO WORK WITH OTHER FEDERAL AGENCIES AND PRIVATE LENDING INSTITUTIONS IN SUCCESSFULLY ASSISTING NATIVE AMERICANS & ALASKA NATIVES IN OBTAINING HOME OWNERSHIP IN PRIMARILY TWO (2) OF THREE (3) SEPARATE AREAS OF THE MORTGAGE LENDING PROCESS WHEN LEASING IS REQUIRED.

THESE AREAS ARE:

- A. Fee Simple Mortgage Approval: (No Restriction against alienation or encumbrance whereby land serves as collateral for loan purposes) Must be within Tribal servicing area for eligibility.
- B. Leasehold Mortgage Approval on Tribal Trust: (Restrictions against alienation or encumbrance; leasehold interest serves as collateral) BIA approval
- C. Trust Mortgage Approval on Individual Allotted Trust Land: (Restriction against alienation or encumbrance- Allottee must document interest in land to serve as collateral). BIA approval.

OBJECTIVES:

- To work successfully with entities in resolving issues in the processing of residential & homesite lease concerns regarding:
 - ✓ Tribes, Tribal Housing Authorities, Individual Indians
 - ✓ Concerns regarding Title ownership & via Title Status Report (TSR) or the Endorsement Document
 - ✓ Credit & Mortgage Conditions pursuant w/25CFR 152.34
 - ✓ Underwriting Requirements & Foreclosure Conditions under the Act of March 29, 1956 & others
 - ✓ Environmental Compliance

General Authorities:

- 25 U.S.C. § 415, as amended (The Long-Term Leasing Act of 1955)
- 25 U.S.C. § 4211, (NAHASDA) The Native American Housing Assistance Act of 1996
- 25 CFR Part 162 (Subpart F- Non-Agricultural Leases)

Resource References:

- Residential Leasing Handbook (March 06)
- 54 IAM, Supplement 47, 1.4
- BIA, Indian Lands Trust Boundary Standards Handbook
- Bureau's NEPA Handbook
- Office of Appraisal Services, Appraisal Handbook
- BIA/OST Interagency Handbook

General Purpose & Scope:

- The primary process in securing a successful negotiated residential or home-site lease is to have all participating parties understand the requirements for approval of a lease when private financing is required
- Thus, this training process is designed for both Agency & Regional BIA, other federal agencies, both Self-Governance & 638 Tribes and the private sector providing loans on Indian lands

General Purpose & Scope.....

- The BIA has and will continue to make every effort to recognize tribal governmental jurisdictional authority over respective tribal lands for the authorization & approval of leases with leasehold interests
- Should questions arise regarding applicable tribal statutes, laws, policies questions should be referred to the either Regional and/or Solicitor's Offices for assistance

Process and Procedures:

Lease Negotiation

Lease Issuance

Lease Amendment, Assignment, Sublease & Leasehold Mortgage (Leasehold Mortgages Only)

Lease Administration

Lease Compliance

Lease Negotiation:

1. The first step in responding to a potential Lessee is to assist them in understanding the lease requirements.
2. The initial intake of a residential or homesite lease application or the submission of a proposed lease is to understand the type or purpose of lease ie; for individual or tribal land purposes.
See Intake Form.

Lease Negotiation.....

3. By using the Intake process with an application the Realty Specialist must confirm the identity of the applicant via tribal enrollment card, drivers license, social security or other acceptable identification for eligibility purposes
4. If the applicant is a Tribe or tribal entity, or tribal lands are being leased a Tribal resolution or other authorizing document is required for the lease application & approval

Lease Negotiation.....

5. Once the identity and the initial intake are addressed, the Realty Specialist will proceed with explaining the requirements for the lease by utilizing Checklists, or
6. The determination at this point may be to establish a preliminary meeting and establish who the participating parties may be and when to confirm a meeting date

Lease Negotiation.....

7. The potential participating parties for scheduled meeting may include:

- ✓ BIA/Tribal/HUD/USDA/Private Lender
- ✓ Potential Lessees or Representative
- ✓ Landowner(s) or Representative(s)
- ✓ Indian Health Service (if water involved)
- ✓ Others, if necessary

Lease Negotiation.....

8. Once a meeting is confirmed, the following requirements may or will be discussed:
 - ✓ Landownership through addressing a certified -Title Status Report (TSR)
 - ✓ Other Agency Records ie; A& E cards, Probate etc..
 - ✓ Endorsement Document (See Exhibit)

Lease Negotiation.....

8. Continued.....

- ✓ Identify & confirm legal description, (If a survey is necessary, prospective lessee is responsible for completion of this
- ✓ Obtain a site plan for the application which identifies the infrastructure with the location of; utilities, improvements, driveways ensure ingress & egress, identify any potential conflicts of use etc..

Lease Negotiation.....

9. An Appraisal for establishing the fair market value (fmv) or value is required. (Reference the Appraisal Handbook for compliance) And, it is used for the purposes of:
 - ✓ The fmV/value even if a lease for less than
 - ✓ For tribal lands even if for nominal rent for home sites provided land is not commercial or industrial in nature
 - ✓ An appraisal may not be required on tribal land upon receipt of a Tribal Ordinance and/or a Tribal Resolution
 - ✓ If an appraisal is completed by the applicant/Lender it must still be reviewed by Appraisal Services

Lease Negotiation.....

10. NEPA, NHPA & ESA Compliance must be completed. The Agency Real Estate Services staff should coordinate projects with the Regional staff in addressing the different compliance requirements.
11. Consent. The consent for a lease must be secured based upon if it is tribal or individual allotted lands.

Lease Negotiation.....

11 continued.....

- ✓ If tribal lands are being leased a duly executed tribal resolution or other authorizing document is required
- ✓ If the lease is individual allotted lands, consent is required based upon statutory authority under ILCA (25 U.S.C.2218). Please reference the Residential Lease Handbook for guidance

Lease Negotiation.....

11 continued...

- ✓ Consent requirements for residential leases in Alaska may be negotiated by the landowners, or their designated representatives pursuant with § 162.601:
Please reference the Residential Handbook or the above cited regulatory requirement for consent compliance

Leasehold or Trust Mortgage

- The requirements for a Tribal Leasehold Mortgage & Individual Trust Mortgage packages should be coordinated between the Tribe, Tribal Housing Authorities, HUD, USDA, VA & the Private Lender and the Agency and Regional Realty Officers and Credit Officers.

Leasehold & Trust Mortgages

- The requirements pursuant with 47 BIAM Supplement No. 3. Financing by Customary Financial Institutions will be followed as appropriate.
- Regional Offices should have their own redelegation authorities and guidance memorandums in addressing these transactions.

Leasehold & Trust Mortgages

- Coordination should occur beginning with the process of initial intake, application, the Commitment to Mortgage to the recordation of all approvable documents. These include:
 - ✓ Intake/Application
 - ✓ Certified-Title Status Report or Endorsement Document
 - ✓ Legal Description (Survey), Plat maps and any other related maps
 - ✓ Appraisal

Leasehold & Trust Mortgage

Continued.....

✓ Credit Report

✓ Income Verification for the purposes of repaying the loan

✓ Trust Mortgage Worksheet

✓ Credit Memorandum

Leasehold & Trust Mortgage

- Continued.....
- ✓ Determine if proper landowner consent(s) has been secured
- ✓ A residential lease may be mortgaged without further consent of the landowners, if the lease contains authorization for such mortgage and it contains which law would apply in the case of foreclosure

Leasehold & Trust Mortgage

- Continued.....
- ✓ Except for foreclosure, all encumbrances require Secretarial consent/approval
- ✓ Consent must be obtained from the sureties, if applicable
- ✓ Ensure the leasehold mortgage is for the purpose of borrowing capital for the development and improvement of the leased premises

Leasehold & Trust Mortgage

- Continued.....
 - ✓ Ensure that the borrower is able to perform the lease obligation without being adversely affected by cumulative mortgage obligations
 - ✓ Review the mortgage to ensure that all requirements have been met
 - ✓ Obtain and secure approval for the mortgage from the redelegated official

Lease Issuance

- Once a complete package is received, the BIA will proceed with review and approval of a lease. A complete lease package must contain:
 - ✓ A Proposed lease
 - ✓ Check Lease for Mandatory & Option Language
 - ✓ Certified-Title Status Report
 - ✓ Endorsement Document (If applicable)
 - ✓ Survey, plat map and any other applicable maps
 - ✓ Subdivision Plat (If applicable)

Lease Issuance.....

- Continued.....
 - ✓ Appraisal
 - ✓ NEPA-Compliance Document
 - ✓ NHPA-Section 106 Compliance
 - ✓ Verification of Ingress & Egress
 - ✓ Provide the legal description and whether it is contained within body of lease or as an attachment/exhibit to lease

Lease Issuance.....

Continued.....

- ✓ Review lease for proper statutory authority
- ✓ Ensure the lease is in compliance with 25 CFR 162, any other applicable laws, tribal ordinances, etc..
- ✓ Review for proper Redelegation Authority
- ✓ Provide the purpose of lease and if property will be used as single family, public housing or other residence

Lease Issuance.....

- Continued.....
- ✓ Provide a description and identify the location of all existing structures
- ✓ Describe the duration of lease
- ✓ Describe the rental Amount and where payment is to be made(See OST/BIA Interagency Handbook)

Lease Issuance.....

- Continued.....
- ✓ Confirm Consents.
- ✓ Provide a Memorandum Of Recommendation (MOR) by approving official for approval or denial of the lease (See Sample MOR)
- ✓ A decision to approve or deny must be provided to non-consenting landowners pursuant with 25 CFR Part 2. If all landowners consent to approval, appeal rights not applicable

Lease Issuance.....

- Continued.....
 - ✓ The BIA has a thirty (30) day timeframe for a decision to approve a lease and it will be effective immediately notwithstanding any administrative appeal filed under 25 CFR Part 2
 - ✓ All files will contain all supporting documentation to support an administrative decision

Lease Issuance.....

- Continued.....
- ✓ Determine the appropriate administrative fee as applicable for covering costs for:
 - Leases
 - Amendments
 - Assignments
 - Subleases
 - Mortgages

Lease Issuance.....

- Continued.....
- The minimum admin.fee is \$10.00, and the maximum is \$500.00. Any fees that have been paid are non-refundable. However, all or part of these fees may be waived.
- Also, if all or part of the expenses for the work is paid from tribal funds, the tribe may establish its own additional or alternate schedule of fees.
- If a waiver for fees is granted, the waiver must be documented

Lease Issuance.....

- Continued.....
- ✓ Once a lease is approved, the original is sent to LTRO for recording purposes
- ✓ Tribes which have compacted or contracted the LTRO functions are responsible for sending the original lease to the Tribal-LTRO.
- ✓ LTRO will send a recorded copy of the lease to RES for a permanent record

Lease Issuance.....

- Continued.....
- ✓ Send a copy of the approved lease to the lessee, and upon written request to the landowner(s)
- ✓ Complete transaction by logging into the agency tracking system as complete

Lease Issuance.....

- Continued.....
- ✓ Assign a contract and Lessee identification number via manual and automated system and enter into TAAMS for approval & submit to Line-Official for approval. Check Regional Redelegating Authority for approval procedures within respective Region

Lease Amendment, Assignment, Sublease & Leasehold Mortgage

- The only transaction addressed in this section for this training session is the Leasehold Mortgage portion. All other transactions can be reviewed by referring to the Residential Lease Handbook, dated March 2006 or the appropriate guidelines within each Region.

Lease Administration

- Please review the Residential Lease Handbook and Regional Office guidance for procedures for transactions related to this section

Lease Compliance

- Please review the Residential Lease Handbook and Regional Office guidance for procedures for transactions related to this section