

Great Plains Region


Mortgage of Leasehold Interest

Authority:


- Pursuant to 25 CFR 162.12 (c)
- Made it possible for an individual Indian and Tribe to mortgage a leasehold interest of trust land.
- By delegated authority, the leasehold mortgage is subject to the approval by the Agency Superintendent (GPR).




What is a leasehold mortgage?




A leasehold mortgage is a mortgage taken by a financial institution for an individual Indian or business entity on the leasehold interest in tribal or individually owned trust or restricted lands.




The individual or business entity receives an approved lease from the BIA and the lease may be used as collateral for a loan.



The mortgage is approved by the BIA on the “condition” that the mortgage is subject to the terms and provisions of the Secretary of the Interior relating to the leasing of tribal and individually owned trust or restricted lands.



Further, the approval is based upon the condition that the mortgage relates only to the leasehold estate and is not to be construed as an encumbrance or lien against the tribe's or individual owner's title to the land involved.



Should the lender be willing to make the loan with the stipulation that a leasehold mortgage is required, the lender may proceed with a leasehold mortgage.

If the Agency Supt finds the leasehold mortgage is not feasible, the request will be disapproved.

Should foreclosure be necessary, the mortgagee shall give written notice to the BIA prior to initiation of the foreclosure proceedings.

“Commitment to Approve Leasehold Mortgage” Procedures:

- The lender or borrower may obtain a certified or uncertified Title Status Report (TSR). The TSR can be obtained from the Agency Realty Office or LTRO.
- If the borrower does not have an existing homesite or business lease, one needs to be acquired. BIA Realty Office can provide guidance.
- The lender will provide the following to the Agency Supt:
 - * Unrecorded, unsigned leasehold mortgage document
 - * Unsigned promissory mortgage note & security agreement
 - * Lender’s credit analysis or borrower’s loan application

“Commitment to Approve Leasehold Mortgage” Procedures (cont’d):

- * Business plan (not necessary on home loans)
- * Pro forma cash flow for one year (not necessary on home loans) (Pro forma: Financial statement on what is expected to occur in the coming year).
- Agency Supt will complete the “BIA Trust Mortgage Checklist” and “BIA Worksheet”. Note: If there are any questions on feasibility, the Regional Credit Officer will be consulted.
- A complete file will be maintained at the Agency.

“Commitment to Approve Leasehold Mortgage” Procedures (cont’d):

- If “Commitment” is approved, the Agency Supt will send the lender a “Commitment to Approve Leasehold Mortgage” form and cover letter notifying the lender that he/she should return the signed, dated, original leasehold mortgage document for recording, once the loan is finalized.
- If the “Commitment” is disapproved, the Agency Supt will notify the lender and borrower of the reasons “why” and provide the borrower with their appeal rights.



If the loan is approved, what happens next???

“Certificate of Approval for Leasehold Mortgages” Procedures:

- After the lender closes the loan they return the original mortgage to the Agency Supt for final approval. The Agency reviews the legal description and mortgage document for any changes since the commitment was initially issued.
- The Supt then signs and attaches the “Certificate of Approval for Leasehold Mortgage” form and sends the signed original mortgage and “Certificate of Approval” to the LTRO for recording, imaging and processing in the Trust Asset Accounting Management System (TAAMS).

“Certificate of Approval for Leasehold Mortgage” Procedures (Cont’d):

The LTRO will look at the following data elements:

- * Cert of Approval must be signed/dated by the Supt
- * Notary Acknowledgement
- * Mortgagor/Mortgagee (name & signature must be consistent)
- * Legal Description

“Certificate of Approval for Leasehold Mortgages” Procedures (Cont’d):

- * Principal (Promissory Note)
- * Mortgagee’s Initials (where appropriate)
- * Mortgagee’s Signature
- * Correct Delegation of Authority is Cited

“Certificate of Approval for Leasehold Mortgage” Procedures (Cont’d):

- If acceptable, the LTRO will record/scan/process the documents and return the entire package to the Agency. LTRO will also provide a certified TSR showing the leasehold mortgage encumbrance.
- The Agency Superintendent will file copies of the recorded documents and return the originals to the lender.
- Also, the Agency Supt will forward an original or a copy of the “certified” TSR to the lender.