

LEASEHOLD MORTGAGE- BIA RESPONSIBILITIES

By Theresa Cavasos, Realty Specialist

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TRIBES SERVICED BY NWRO

- ▣ The NWRO services the following Tribes:
- ▣ Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians (152)
- ▣ Confederated Tribes of the Grand Ronde Community of Oregon (141)
- ▣ Confederated Tribes of the Siletz Indians of Oregon (142)
- ▣ Coquille Indian Tribe (155)
- ▣ Cow Creek Band of Umpqua Tribe of Indians Klamath Tribes(140)
- ▣ Makah Indian Tribe of the Makah Indian Reservation (108)
- ▣ Kalispel Indian Community of the Kalispel Reservation (103)



Bureau of Indian Affairs (BIA) approval process: If a mortgage loan to an Indian is secured by interests in trust or restricted Indian land, it must be approved by the BIA, per 25 CFR §152.34 and 162.12. BIA approval is not necessary for mortgages secured by fee simple land, even if it is located on a reservation, unless the fee simple land is owned by a tribe.

Generally the bank must submit the mortgage loan documents to the BIA area director or agency superintendent with jurisdiction over the property. Items the area director or agency superintendent may require include the following: mortgage or deed of trust; promissory note and security agreement; appraisal; evidence of title (TSR or abstract of title); and the borrower's loan application, credit report, and income verification. If the applicant is a self-employed businessperson, the area director or agency superintendent may also request the company's financial statements and business plan.

To approve the mortgage, the area director or agency superintendent must be reasonably certain that the applicant has the repayment capacity to avoid default and foreclosure. The BIA may also appraise the subject property to ensure that the borrower is not over collateralizing the loan.

BIA approval benefits the bank by removing restrictions against encumbrances that otherwise apply to property held in trust or restricted status for an individual, per 25 USC§ 483a and 25 CFR § 152.34. As a result, the bank will have authority to foreclose and take possession of the property interest upon the default of the borrower. The property interest in individual trust or restricted land could be the land itself or a leasehold. If is tribal land, the property interest will be a leasehold, not the land itself. Failure by the bank to obtain BIA approval of the loan contract renders it void.

ANY QUESTIONS OR COMMENTS?

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