



**HO-CHUNK NATION CODE (HCC)
TITLE 8 – HOUSING, REAL ESTATE AND PROPERTY CODE
SECTION 6 – TRIBAL LANDS LENDING ACT**

ENACTED BY LEGISLATURE: AUGUST 17, 2005

CITE AS: 8 HCC § 6

*This Act supersedes the Ho-Chunk Nation Tribal Lands Lending Code enacted by
Legislative Resolution 7/11/01A.*

TABLE OF CONTENTS

1. Authority	1
2. Purpose	2
3. Scope	2
4. Lien Priority	2
5. Recording of Mortgage Loan Documents	2
6. Pre-Foreclosure Procedures	4
7. Foreclosure Complaint and Summons	5
8. Commencement of Foreclosure; Service of Process and Expedited Procedures	6
9. Cure of Default	7
10. Judgment and Remedy	7
11. Foreclosure Evictions	7
12. No Mergers of Estates	9
13. Certified Mailing to Nation	10
14. Intervention	10
15. Appeals	10

1. Authority.

a. Article V, Section 2(a) of the Constitution of the Ho-Chunk Nation (“Constitution”) grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.

b. Article V, Section 2(b) of the Constitution grants the Legislature the power to establish Executive Departments, and to delegate legislative powers to the Executive Branch to be administered by such Departments, in accordance with the law; any Department established by the Legislature shall be administered by the Executive; the Legislature reserves the power to review any action taken by virtue of such delegated power.

c. Article V, Section 2(d) of the Constitution grants the Legislature the power to authorize expenditures by law and appropriate funds to the various Departments in an annual budget.

d. Article V, Section 2(i) of the Constitution grants the Legislature the power to negotiate and enter into treaties, compacts, contracts, and agreements with other governments, organizations, or individuals.

2. Purpose. This Act shall govern lien priority, recording, foreclosure, and eviction of and under leasehold mortgages on the Nation's Tribal Lands.

3. Scope.

a. This Act shall apply to all mortgages on Tribal lands; provided that:

(1) In the case of the Nation's Home Ownership and Benefit Housing Programs (HOP) (8 HCC § 5 and 8 HCC § 7) or other financing of which the Nation is the holder of the sole mortgage on the subject parcel, the application of this Act shall be limited as specifically provided herein.

(2) If there is any conflict between this Act and HOP policy or other applicable Nation law with respect to a mortgage of which the Nation is the sole mortgage holder, the HOP policy or other applicable Nation law shall govern.

b. For the purposes of this Act, Tribal Lands means all lands held in trust for the Ho-Chunk Nation by the United States, including all additions to such trust lands holdings from time to time, and all allotted trust and restricted lands of which a majority in interest of the allottees are members of the Ho-Chunk Nation and which is leased pursuant to a lease agreement providing for enforcement pursuant to this Act.

4. Lien Priority. All mortgage loans recorded in accordance with the recording procedures set forth in this Act, including Leasehold Mortgages, and including loans made, guaranteed, insured, or held by a governmental agency, shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim excepting a lien or claim arising from a tribal leasehold tax assessed after the recording of the mortgage. In those cases where the government direct, guaranteed, or insured mortgage is created as a second mortgage, the loan shall assume that position.

5. Recording of Mortgage Loan Documents.

a. The Nation's Lands Records Office shall maintain a system for the recording of mortgage loans and such other documents as the deemed necessary.

b. The Lands Records Manager shall endorse upon any mortgage loan or other document received for recording:

(1) The date and time of receipt of the mortgage or other document.

copying. Rules for copying shall be established and made available by the Lands Records Office.

g. All mortgages will be recorded with the Bureau of Indian Affairs (BIA) in addition to any Tribal recording provisions, except that mortgages of which the Nation is the named Mortgagee need not be recorded with the BIA.

6. Pre-Foreclosure Procedures.

a. A Borrower shall be considered to be in default when he or she is thirty (30) days past due on his or her mortgage payment(s) or is in violation of any covenant under the mortgage for more than thirty (30) days to the Lender (i.e., the 31st day from payment due date). When a Borrower is in default and before any foreclosure action is taken, the Lender shall take the following actions.

(1) Make a reasonable effort to arrange a face-to-face interview with the Borrower. This shall include at least one trip to meet with the Borrower at the mortgaged property. The Lender may appoint an agent to arrange for and conducting the face-to-face interview.

(2) Document that the Lender it has made at least one phone call to the Borrower (or the nearest phone as designated by the Borrower able to receive and relay messages to the Borrower) for the purpose of trying to arrange a face-to-face interview.

b. The Lender shall give notice to the Borrower, at least ten (10) days in advance before initiating foreclosure action in the Nation's Trial Court, by mail or prominently posting on the mortgaged property and the Lender shall give a copy of the notice to the Nation's Land Records Office. The notice shall contain the following information:

(1) That information regarding the loan and default/delinquency will be given to credit bureaus.

(2) That homeownership counseling opportunities/programs are available through the Lender or otherwise.

(3) The availability of other assistance regarding the mortgage/default.

(4) Provide notice that if the Leasehold Mortgage remains past due on three (3) installment payments, the Lender may ask the applicable governmental agency to accept assignment of the Leasehold Mortgage if this is an option of the governmental program.

(5) Provide notice of the qualifications for forbearance relief from the Lender, if any, and that forbearance relief may be available from the government.

(6) Provide the names and addresses of governmental officials to whom further communications may be addressed, if any.

c. If a Borrower is past due on three (3) or more installment payments and the Lender has complied with the procedures set forth above, the Lender may commence a foreclosure proceeding in the Nation's Trial Court by filing a verified complaint as set forth in Section 7.

d. If the sole Lender of the subject parcel is the Nation and HOP policies or other applicable Nation law shall provide for an alternate pre-foreclosure procedure, said alternate pre-foreclosure procedures shall apply in lieu of the above.

7. Foreclosure Complaint and Summons.

a. The verified complaint in a mortgage foreclosure proceeding shall contain the following:

(1) The name of the Borrower and each person or entity claiming through the Borrower subsequent to the recording of the mortgage loan, including each Subordinate Lienholder (except the Nation with respect to a claim for a tribal leasehold), as a defendant.

(2) A legal description and a physical address of the property subject to the mortgage loan.

(3) A concise statement of the facts concerning:

(a) The execution of the mortgage loan or, in the case of a Leasehold Mortgage, the lease.

(b) The recording of the mortgage loan or the Leasehold mortgage.

(c) The alleged default(s) of the Borrower.

(d) Such other facts as may be necessary to constitute a cause of action.

(4) True and correct copies of each promissory note, mortgage, deed of trust, or other recorded real property security instrument (each a "security instrument") and any other documents relating to the property and, if a Leasehold Mortgage, a copy of the lease and any assignment of any of these documents.

(5) Any applicable allegations concerning relevant requirements and conditions prescribed in any of the following:

(a) Federal statutes and regulations.

(b) Ho-Chunk Nation Code.

(c) Provisions of the promissory note, security instrument, and, if a Leasehold Mortgage, the lease.

b. The complaint shall be verified by the Ho-Chunk Nation Trial Court Clerk (Clerk of Court), along with a summons specifying a date and time of appearance for the Defendant(s).

8. Commencement of Foreclosure; Service of Process and Expedited Procedures.

a. The Foreclosure Action shall be commenced by filing a complaint with the Clerk of Court pursuant to Rule 3 of the Ho-Chunk Nation Rules of Civil Procedure (Rules). The Trial Court shall have jurisdiction from the time the complaint is filed.

b. Pursuant to Rule 5(C)(1), a summons and copy of the complaint shall be personally served on the Borrower by the bailiff, or if authorized by the Court, a law enforcement officer from any jurisdiction or any other person not a party to the action who is eighteen (18) years of age or older. Pursuant to Rule 5(D), the Court shall approve personal service by a professional process service firm proposed by Lender absent any notice to the Court of a pattern of professional or ethical misconduct by such firm from any source.

c. If the Court or the Lender, notwithstanding the exercise of due diligence, is unsuccessful in pursuing personal service and in the interest of inducing Lenders to make homeownership loans to Tribal members, which the Legislature finds to constitute good cause per se, the Court shall then permit service by either of the following:

(1) Delivery of service to the Borrowers/Mortgagor's home of usual place of business or employment to someone of suitable age and discretion over fourteen (14) years of age.

(2) Service by publication in accordance with Rule 5(C)(5).

d. In addition, pursuant to its authority under Rule 5(A), if it is the most likely to result in actual notification of parties, the Court shall allow service by securely posting a copy of the notice to the main entry door of the mortgage property in such a manner that it is not likely to blow away and by posting a copy of the notice in some public place near the premises, including a Tribal office, public store, branch office, or other commonly frequented place, and by sending a copy by first-class mail, postage prepaid, addressed to the Borrower at the premises.

e. In order to meet the timeframe stated in Section 10, the Court shall schedule the action so that a trial on the foreclosure claim (or hearing to decide a default motion) is held not later than fifteen (15) days after the expiration of the twenty (20) day answer period allowed by Rule 6.

9. Cure of Default. Prior to the entry of judgment of foreclosure, any Borrower or a Subordinate Lienholder may cure the default(s) under the Mortgage by making a full payment of the delinquency to the Lender and all reasonable legal and Court costs incurred in foreclosing on the property. Any Subordinate Lienholder who has cured a default shall thereafter have included in its lien the amount of all payments made by such Subordinate Lienholder to cure the default(s), plus interest on such amounts at the rate stated in the note for the mortgage. There shall be no right of redemption in any Leasehold Mortgage foreclosure proceeding.

10. Judgment and Remedy. This matter shall be heard and decided by the Court in a prompt and reasonable time period not to exceed sixty (60) days from the date of service of the Complaint on the Borrower. If the alleged default has not been cured at the time of trial and the Court finds for the Lender, the Court shall enter the following judgment:

a. Foreclosing the interest of the Borrower and each other defendant, including Subordinate Lienholder, in the mortgaged property; and

b. Granting title to the property to the Lender or the Lender's designated assignee. In the case of a Leasehold Mortgage, the Lease and the Leasehold Estate will be assigned to the Lender or the Lender's designated assignee, subject to the following provisions:

(1) The Lender shall give the Nation the right of first refusal on any acceptable offer to purchase the Lease and the Lessee's leasehold interest in the property described in the lease which is subsequently obtained by the Lender or Lender's designated assignee.

(2) The Lender or Lender's designated assignee may only transfer, sell, or assign the Lease and Lessee's leasehold interest in the property described in the Lease to a Tribal member, the Nation, or the Ho-Chunk Housing and Community Development Agency, or any successor thereto.

(3) Until issues are resolved, Section 248 financing will not be considered.

11. Foreclosure Evictions. Foreclosure evictions shall be handled according to the general eviction process that follows.

a. Jurisdiction. The provisions of this Section shall apply to all persons and property subject to the governing authority of the Nation as established by the Constitution of the Ho-Chunk Nation, the Ho-Chunk Nation Code, and applicable federal law.

b. Unlawful Detainer. A Lessee, Sublessee, or other occupant of a Leasehold Estate subject to a Leasehold Mortgage shall be guilty of unlawful detainer if such person shall continue occupancy of such Leasehold Estate without the requirement of any notice by the Lessor, after such person's Leasehold Estate has been foreclosed in a Leasehold Mortgage foreclosure proceeding in the Nation's trial Court.

c. Complaint and Summons. The lender or the federal agency (which made, guaranteed, or insured the mortgage loan) as appropriate, shall commence an action for unlawful detainer by filing with the Court, in writing, the following documents:

(1) A complaint, signed by the lender or federal agency, or an agent or attorney on their behalf:

(a) Citing facts alleging jurisdiction of the Nation's Trial Court.

(b) Naming as defendants the mortgagors and any other record owner (including sublessees and subordinate lienholders), of which the complainant has record notice (except the Nation with respect to a claim for a Tribal tax on the Leasehold Estate subject to the Leasehold Mortgage).

(c) Describing the Leasehold Estate subject to the Leasehold Mortgage.

(d) Stating the facts concerning (i) the execution of the lease and the Leasehold Mortgage, (ii) the recording of the Leasehold Mortgage, and (iii) the facts upon which he or she seeks to recover.

(e) Stating any claim for damages or compensation due from the persons to be evicted.

(f) Otherwise satisfying the requirements of the Ho-Chunk Nation Rules of Civil Procedure.

(2) A copy of the summons, issued in accordance with established Ho-Chunk Nation Rules of Civil Procedure, requiring the defendants to file a response to the complaint by the date specified in the summons. The deadline specified in the summons for filing a response shall be twenty (20) dates from the date of service of the summons and complaint. The summons shall notify the defendants that judgment will be taken against them in accordance with the terms of the complaint unless they file a response with the Court by the date specified in the summons.

d. Service of Process and Expedited Procedures. The provisions regarding service of process and expedited procedures described in Section 8 shall likewise apply to evictions in order to produce a final judgment within sixty (60) days of service of the complaint, subject only to continuances allowed pursuant to paragraph 11g, below.

e. Powers of the Trial Court.

(1) The Nation's Trial Court shall enter an Order of Repossession if:

(a) Notice of suit is given by service of summons and complaint in accordance with the procedures provided herein;

(b) The Court finds during pre-trial motion proceedings or at trial that the Lessee, Sublessee, or other occupant under color of law of the Leasehold Estate subject to the Leasehold Mortgage is guilty of an act of unlawful detainer.

(2) Upon issuance of an Order of Repossession, the Court shall have the authority to enter a judgment against the defendants for the following, as appropriate:

(a) Back rent, unpaid utilities, and any other charges due the Nation, Ho-Chunk Housing Authority or any successor agency, the Nation's Department of Housing, or Sublessor under any sublease or other written agreement (except for a Leasehold Mortgage).

(b) All amounts secured by the Leasehold Mortgage that are due the lender (or federal agency).

(c) Damages to the property caused by the defendants, other than ordinary wear and tear.

(3) The Court shall have the authority to award to the prevailing party its costs and reasonable attorney's fees in bringing the suit.

f. Enforcement.

(1) Upon issuance of an Order of Repossession by the Court, Nation tribal law enforcement officers then shall help plaintiffs enforce the Order by evicting the defendants and their personal property from the unlawfully occupied Leasehold Estate. If the Nation does not have tribal law enforcement officers, the Court's Order shall be delivered to the appropriate County Sheriff for enforcement under the Wisconsin full faith and credit statute.

(2) In all cases involving the lender or federal agency, the Order shall be enforced no later than forty-five (45) days after a pre-trial proceeding or trial in which the Court finds against the defendants, subject to paragraph 11g, below.

g. Continuances in Cases Involving Lender or Federal Agency. Except by agreement of all parties, there shall be no continuances in cases involving the lender or federal agency that will interfere with the requirement that the Order of Repossession be enforced not later than forty-five (45) days after a pre-trial proceeding or trial in which the Court finds against the defendants, subject to the sound discretion of the Court.

12. No Merger of Estates. There shall be no merger of estates by reason of the execution of a Lease or a Leasehold Mortgage or the assignment or assumption of the same, including an assignment adjudged by the Court, or by operation of law, except as such merger may arise upon satisfaction of the Leasehold Mortgage.

13. **Certified Mailing to Nation.** In any foreclosure proceedings on a Leasehold Mortgage where the Nation is not named as a defendant, a copy of the summons and complaint shall be mailed to the Nation by certified mail, return receipt requested, within five (5) days after the issuance of the summons. If the lessor is not the Nation, this notice will also be mailed to the lessor at the same time the notice is mailed to the Nation. If the location of the lessor cannot be ascertained after reasonable inquiry, a copy of the summons and complaint shall be mailed to the lessor in care of the Superintendent of the applicable agency of the BIA.

14. **Intervention.** The Nation or any lessor may petition the Court for permission to intervene in any Lease or Leasehold Mortgage foreclosure proceeding under this Act. Neither the filing of a petition for intervention by the Nation, nor the granting of such petition by the Court shall operate as a waiver of the sovereign immunity of the Nation, except as may be expressly authorized by the Nation.

15. **Appeals.** Appeals under this Act shall be handled in accordance with the Nation's Rules of Appellate Procedure.

Legislative History:

7/11/01	Enacted by Legislative Resolution 7/11/01A.
11/24/04	Tribal Lands Lending Act reformatted IAW Legislative Resolution 11/16/04A as a Proposed Bill (8 HCC § 6) and submitted to the Office of the President for Executive Review and Coordination.
6/10/05	Legislature places Draft Bill out for 45-Day Public Review.
8/13/05	45-Day Public Review period ends. Comments provided by the Department of Housing.
8/17/05	Legislature adopts Tribal Lands Lending Act as 8 HCC § 6 by Legislative Resolution 8/17/05M.