

CHAPTER X FORECLOSURE OF MORTGAGES

Section 1

Proceedings in Foreclosure

There can be but one action by the Shoshone-Bannock Tribes for the enforcement of any right secured by mortgage upon real estate or personal property, situated or located within the boundaries of the Fort Hall Reservation, which action must be in accordance with the provisions of this chapter. In such action, commenced by the filing of a complaint of foreclosure in the Shoshone Bannock Tribal Court, the Court may, by its judgment, direct a sale of the encumbered property (or so much thereof as may be necessary) and direct the application of the proceeds of the sale to the payment of the costs of the Court and the expenses of said sale, and the amount due to the plaintiff; and sales of real estate under judgments of foreclosures of mortgages authorized by 25 United States Code Section 483(a) or any other federal statute are subject to redemption; and if it appears from the Law Enforcement Officer's return that the proceeds from the sale are insufficient, and a balance still remains due, judgment can then be docketed for such balance against defendant or defendants personally liable for the debt, and it becomes a lien on the non-trust real estate of such judgment debtor.

No person holding a conveyance from or under the mortgagor of a property mortgage, or having a lien thereon, which conveyance or lien does not appear of record in the proper office, at the commencement of the action, need be made a party to such action; and the judgment therein rendered, and the proceedings therein had, are as conclusive against the party holding such unrecorded conveyance or lien as if he had been made a party to the action.

Section 2

Disposition of Surplus Money

If there be surplus money remaining after payment of the amount due on the mortgage, lien or encumbrance, with costs, the Court may cause the same to be paid to the persons entitled to it, and in the meantime, may direct it to be deposited with the Court.

Section 3

Partial Sales

If the debt for which the mortgage, lien or encumbrance is held is not all due, but is payable in installments, whether such debt be evidenced by one or more principal notes or otherwise, such mortgage, lien or encumbrance may be foreclosed, at the election of the holder thereof, for the installment or installments due, or other charges or obligations which the mortgage provides shall be paid by the mortgagor, and the Court may, by its judgment, direct the sale of the encumbered property or of the equity

of defendants therein, or so much thereof as may be necessary, to satisfy the amount due for such installment, charge or obligation and such mortgage, lien or encumbrance shall otherwise remain in full force and effect, and the holder thereof shall have the right to foreclose for the balance of the same or any part thereof, notwithstanding the provisions of Section 1.

Section 4

Execution Under Foreclosure on Property

In all actions to foreclose a mortgage or other lien upon real property, law enforcement officers of the Shoshone Bannock Tribe shall have the power and it is hereby made his duty to enforce execution issued upon such decree.

Section 5

Duty of Clerk on Return of Execution

Upon the return of such execution, the clerk of the Court issuing the execution shall file such execution in the Court record and in the case of non-trust real property shall also file such execution with the County Recorder in the County where the property is situated, and shall request that office to record said execution and return as in other cases of sale of real property. In the case of trust property, the Clerk shall file such execution with the Office of Realty on the Fort Hall Indian Reservation.

Section 6

Certificates of Sale

In the case of the sale of non-trust property, the said law enforcement officer making such sale shall make as many certificates of such sale as there are counties in which such real property is situated, adding a sufficient number to deliver one to each purchaser of such real property and deliver one copy to the Tribal Court for filing. The officer shall file one of said certificates with the County Recorder of the county where such sale was made; and he shall also send one to each of the County Recorders of the several counties in which any portion of said non-trust real estate is situated, by United States mail, postage prepaid. Such certificate of sale shall be filed and recorded by the several County Recorders as is now provided by law in sales of real property under execution. In the case of the sale of trust real property pursuant to judicial proceedings under 25 United States Code Section 483(a), the law enforcement officer shall deliver said certificates to each purchaser of such real property and shall file one with the Office of Realty on the Fort Hall Indian Reservation, and one with the Tribal Court for filing therein.

Section 7

Deficiency Judgments - Amount Restricted

The Shoshone Bannock Tribal Court shall have jurisdiction to enter a deficiency judgment in any case involving a foreclosure of a mortgage on real property by the Shoshone-Bannock Tribes in any amount greater than the difference between the mortgage indebtedness, as determined by the decree, plus costs of foreclosure and sale, and the reasonable value of the mortgaged property to be determined by the Shoshone Bannock Tribal Court, in the decree upon the taking of evidence of such value.

Section 8

Sale of Property - Notice

Before the sale of property subject to a decree of foreclosure and order of sale, notice thereof must be given as follows:

- (1) In case of perishable property, by posting written notice of the time and place of sale in three public places on the reservation, including one copy posted at the post office, and one copy posted where the sale is to take place, for such time as may be reasonable, considering the character and condition of the property.
- (2) In case of other personal property, by posting a similar notice in three public places on the reservation, one copy being at the post office and one copy posted where the sale is to take place, for not less than 5 nor more than 10 days before the time set for the sale.
- (3) In case of real property, by posting a similar notice particularly describing the property, for 20 days in four public places on the reservation, including one copy posted at the post office, one copy posted in Tribal Headquarters, one copy posted where the property is situated, and one copy where the property is to be sold. If the judgment under which the property is to be made payable in specified kind of money or currency, the several notices required by this section must state the kind of money or currency in which bids may be made at such sale, which must be the same as that specified in the judgment.

Section 9

Sale Without Notice

If ever there is a sale of property conducted without notice first being given as described by the last section, said sale shall be declared void and of no effect. Any person willfully taking down or defacing the notice posted, if done before the sale and the satisfaction of the judgment (if the judgment be satisfied before sale) shall be guilty of misdemeanor and shall be subject to a fine not to exceed \$300.00 or six months in jail, or both the jail sentence and fine.

Section 10

Conduct of Sale

All sales of property under decrees of foreclosure and orders for sale must be made at auction to the highest bidder, between the hours of 9:00 in the morning and 5:00 in the afternoon. After sufficient property has been sold to satisfy the judgment, no more can be sold. Neither the officer holding execution or his deputy can become a purchaser, or be interested in any purchase at such sale.

If the property being sold includes trust real property situate on the Fort Hall Indian Reservation, only members of the Shoshone-Bannock Tribe may bid at such sale and purchase such property.

When the sale is of personal property, capable of manual delivery, it must be within view of those who attend the sale, and be sold in such parcels as are likely to bring the highest price; and when the sale is of real property consisting of several known lots or parcels, they must be sold separately, or when a portion of such real property is claimed by a third person, and he requires it be sold separately, such portion must be thus sold. The Judgment debtor, if present at the sale, may also direct the order in which property, real or personal, shall be sold, when such property consists of several known lots or parcels, or of articles which can be sold to advantage separately, and the Tribal Law Enforcement Office must follow such directions.

Section 11

Refusal to Pay Purchase Price in Money - Resale

If a purchaser refuses to pay the amount bid by him for property struck off to him at a sale, the officer may again sell the property at any time to the highest bidder; if any loss be occasioned thereby, the officer may recover the amount of such loss, with costs, from the bidder so refusing, in the Shoshone Bannock Tribal Court.

Section 12

Refusal to Pay Purchase - Money - Rejection of Subsequent Bid

When a purchaser refuses to pay, the officer may, in his discretion, thereafter reject any subsequent bid of such person.

Section 13

Delivery of Property to Purchaser - Certificate of Sale

When the purchaser of any personal property capable of manual delivery pays the purchase money, the officer making the sale must deliver to the purchaser the property, and if desired, execute and deliver to him a Certificate of Sale. Such Certificate conveys to the purchaser all the right which the debtor had in such property on the day the sale took place.

Section 14

Certificate of Sale - Title Conveyed

When the purchaser of any personal property not capable of manual delivery pays the purchase money, the officer making the sale must execute and deliver to purchasers a certificate of sale. Such certificate conveys to the purchaser all the right which the debtor had in such property on the day of sale.

Section 15

Title to Real Property - Right of Redemption - Certificate of Sale

On a sale of real property, the purchaser is substituted to, and acquires all the right, title and interest and claim of the judgment debtor thereto; and all his right, title, interest and claim thereto at any time during any subsisting lien thereon by attachment in action or by docketing the judgment. The property is subject to redemption, as provided in this Chapter. The officer must give to the purchaser his Certificate of Sale containing (1) particular description of the real property sold, (2) Price bid for each distinct lot or parcel (3) the whole price paid, (4) when subject to redemption, it must be so stated. And when the judgment, under which the sale has been made, is made payable in specified kind of money or currency, the certificate must also show the kind of money or currency in which such redemption may be made, which must be the same as that specified in the judgment. In the case of sale of non-trust real property, a duplicate of such certificate of sale must be filed for record by the officer in the Office of the Recorder of the County in which the property was situated. In the case of the sale of trust real property, such certificate of sale must be filed for record by the officer in the Office of Realty, Fort Hall Indian Reservation.

Section 16

Failure of Title - Revival of Judgment

If the purchaser of real property sold pursuant to sale, or his successor in interest be evicted therefrom, in consequence of irregularities in the proceedings concerning the sale, or of the reversal or discharge of the judgment, he may recover the price paid, with interest, from the judgment creditor. If the purchaser of property at the officer's sale, or his successor in interest, fail to recover possession in consequence of irregularity in the proceedings concerning the sale, or because the property sold was not subject to execution and sale, the Court having jurisdiction thereof must, after notice and on motion of such party in interest, revive the original judgment in the name of the petitioner, for the amount paid by such purchaser at sale, with interest thereon from the time of payment at the same rate that the original judgment was for; and the judgment so revived has the same force and effect as would the original judgment of the date of revival and no more.

Section 17

Redemption - Persons Entitled to Make

Property sold subject to redemption, or any part sold separately, may be redeemed in the manner hereinafter provided by the following persons, or their successors in interest: the judgment debtor or his successor in interest in the whole or any part of the property.

Section 18

Redemption - How Made

Judgment debtor or redemptioner may redeem real property from the purchaser within One (1) year after the sale on paying the purchaser for the amount of his purchase with interest thereon at the rate of six percent (6%) per annum from the date of sale to the date of redemption, together with the amount of any assessments, additional costs which the purchaser may have paid thereon after the commencement of the action and which was not included in the judgment, and interest at the rate of six percent (6%) per annum on such amount.

Section 19

Certificate of Redemption

Written notice of redemption must be given to the Tribal Police and a duplicate filed for record with the Recorder in the county in which the real property is situate or, in the case of trust real property, with the Office of Realty, Fort Hall Indian Reservation.

If no redemption be made within one year after the sale, the purchaser or his assignee is entitled to a conveyance and is entitled to a Tribal Police Officer's deed at the expiration of one year after sale; in all cases, the judgment debtor shall have the entire period of one year from the date of sale to redeem the property.

If the debtor redeems, the effect of the sale is terminated and he is restored to his estate.

Upon redemption by the debtor, the person to whom the payment is made must execute and deliver to him a Certificate of Redemption acknowledged and proved before an officer authorized to take acknowledgments of conveyances of real property.

In the case of non-trust real property, such Certificate must be filed and recorded in the office of the Recorder of the county in which the property is situated, and the Recorder must note the record thereof in the margin of the record of the Certificate of Sale. In the case of trust real property, such certificate must be filed in the Realty Office, Fort Hall Indian Reservation and it shall be noted in the record of the Certificate of Sale on file with the Realty Office.

Section 20

Payment of Redemption Money

The payments mentioned in the foregoing sections must be made to the purchaser or for him to the officer who made the sale, or to his successor in office. When the judgment under which the sale has been made is payable in specified kind of money or currency, payment must be made in the same kind of money or currency and a tender of money equivalent to payment.

Section 21

Service of Papers by Debtor Desiring to Redeem Property

A judgment debtor desiring to redeem real property sold at a sale, must produce to the officer or person from whom he seeks to redeem, and serve with his notice to the Tribal Police (1) a certified copy of the docket of the judgment under which he claims the right to redeem, (2) the verified Affidavit by himself establishing his claim, and (3) an Affidavit by himself showing the amount then actually due on the lien.

Section 22

Restraint of Waste Pending Expiration of Redemption Period

Until expiration of the time allowed for the redemption, the Court may restrain the commission of waste on the property, by order granted with or without notice on the application of the purchaser or the judgment creditor, but it is not waste for the person in possession of the property at the time of sale, or entitled to possession afterward, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used; or to use it in the ordinary course of husbandry; or to make the necessary repairs to buildings thereon; or to use wood or timber on the property therefor; or for the repair of fences; or for fuel and his family, while he occupies the property.

Section 23

Right to Rents and Profits After Sale

The purchaser, from the time of the sale until redemption, is entitled to receive from the tenant in possession, the rents of the property sold, or the value of the use and occupation thereof, But when any rents or profits have been received by the creditor or purchaser, or his or their assigns, from the property thus sold, preceding such redemption, the amount of such rents and profits shall be a credit on the redemption money to be paid; and if the redemptioner or judgment debtor, before the expiration of the time allowed for such redemption, demands in writing from such purchaser, or creditor, or his assigns, a written and verified statement of the amount of such rents and profits thus received, the period of redemption is extended five days after such sworn statement is given by such purchaser or his assigns, to such redemptioner or debtor. If such purchaser or his assigns shall for a period of one month from and after such demand, fail or refuse to give such

Section 23

(Continued)

statement, such redemptioner or debtor may, within sixty (60) days after such demand, bring an action in the Shoshone Bannock Tribal Court to compel an accounting and disclosure of such rents and profits, and until fifteen days from and after final determination of such action, the right of redemption is extended to such redemptioner or debtor.