Cherokee Nation Code Annotated
Title 33: Housing
Chapter 1: Cherokee Nation Mortgage Foreclosure Act
§ 3. Definitions
Cite as: 33 CNCA § 3

For the purpose of this chapter, unless the context otherwise requires, the terms defined in this section shall have the meaning ascribed to them as follows:

1. **"Borrower/mortgagor"** shall mean the Nation, the Indian Housing Authority, or any individual Indian(s) or any heir(s), successor(s), executor(s), administrator(s), or assign(s) of the Nation or such Indian(s) or non-Indian(s) who has executed a mortgage as defined in this act or a leasehold mortgage as defined in this act.

2. **"Default"** shall mean the failure by a borrower to make any payment or to perform any other obligation under the terms of a loan, when such failure continues for a period of more than thirty (30) days.

3. **"Department"** or **"HUD"** shall mean the U.S. Department of Housing.

4. **"Guarantee fund"** shall mean the Indian Housing Loan Guarantee Fund established under 12 U.S.C. § 1715z-13a(i).

5. **"Housing Authority"** shall mean the Cherokee Nation Housing Authority, established pursuant to Oklahoma law for the purpose of constructing and maintaining dwellings for public use within the territorial jurisdiction of Cherokee Nation.

6. **"Indian"** or **"Native American"** shall mean any person recognized as being Indian or Alaska Native by an Indian tribe, the federal government, or any state.

7. **"Indian area"** shall mean the area within which an Indian housing authority is authorized to provide housing.

8. **"Indian country"** shall mean property within the territorial jurisdiction of the Nation, all lands owned by or held in trust for the Nation as well as any such ownership or use by an entity of the Nation; and including any and all areas which constitute the Indian country of the Nation under applicable provisions of its laws or the laws of the United States.

9. **"Lease assignments"** shall mean a transfer or conveyance of a valid existing lease to a third party, who becomes the new lessee. Generally, an assignment must cover the entire leasehold interest, although some leases do provide for the creation of several leases in place of the original lease (so- called spin-off leases) each of which may then be assigned.

10. **"Lease or lease contract"** shall mean the complete agreement between the parties as it exists at any given time. It is the original lease as it has been modified to date.

11. **"Leasehold encumbrance"** shall mean a mortgage, deed of trust, or other lien on the leasehold interest given to secure the repayment of a loan obtained by the lessee.

12. **"Leasehold interest"** shall mean the interest conveyed by the lessor to the lessee under the lease; in other words, the lessee's interest in the land. It consists of the right to the quiet enjoyment of the leased premises for the term of the lease, subject to the requirements of the contract.

13. **"Leasehold mortgage"** shall mean the mortgage of a lease of property given to secure a loan, and may be created under the auspices of any federal agency home buyer program, the Mutual Help Home Ownership administered by the Indian Housing Authority, or any other agreement entered between a borrower/mortgagor and a lender/mortgagee.

14. **"Lender/mortgagee"** shall mean any private lending institution established to primarily loan funds and not to invest in or purchase properties, the Nation, an Indian Housing Authority, or a U.S. government agency which loans money, guarantees or insures loans to a borrower for construction, acquisition, or rehabilitation of a home. It is also any lender-designated assignee(s) or successor(s) of such lender/mortgagee.

15. **"Lessee"** shall mean a tenant of a dwelling unit, user and/or occupier of real property, or the home buyer under any federal mortgage program including the Mutual Help program. The lessee may, for purposes of federal agency home mortgage programs, be the Indian Housing Authority.

16. **"Lessor"** shall mean the legal, beneficial, or equitable owner of property under a lease. Lessor may also include the heir(s), successor(s), executor(s), administrator(s), or assign(s) of the lessor.

17. **"Mortgage"** shall mean a first lien as is commonly given to secure advances on, or the unpaid purchase of, real estate under the laws of the jurisdiction where the property is located, and may refer both to a security instrument creating a lien, whether called a mortgage, deed of trust, or security deed, as well as the credit instrument, or note secured thereby.

18. **"Mortgage foreclosure proceeding"** means a proceeding:

a. To foreclose the interest of the borrower(s)/mortgagor(s), and each person or entity claiming through the borrower(s)/mortgagor(s), in real property, a building, or in the case of a leasehold mortgage, a lease for which a mortgage has been given under the home purchase program of any federal agency; and

b. To assign where appropriate the borrower(s)/mortgagor(s) interest to a designated assignee.

19. **"Mortgagor"** shall mean all persons who to the knowledge of the mortgagee owe payment or other performance of the obligation secured by the mortgage, and for the purpose of receipt of notice, includes a surety, guarantor or co-signor.

20. **"Nation"** shall mean Cherokee Nation.

21. **"Owner"** shall mean any person or entity jointly or individually having legal title to all or part of land or a dwelling, including the legal right to own, manage, use, or control a dwelling unit under a mortgage, long-term lease, or any other security arrangement.

22. **"Principal residence"** shall mean the dwelling where the mortgagor maintains (or will maintain) his or her permanent place of abode, and typically spends (or will spend) the majority of the calendar year. A person may have only one (1) principal residence at any one time. This term also includes mobile homes which have been affixed to the land.

23. **"Recording Clerk"** shall mean the Director of the Cherokee Nation Real Estate Service or such other person designated by the Nation to perform the recording functions required by this document or any deputy or designee of such person.

24. **"Secretary"** shall mean the Secretary of Housing and Urban Development.

25. **"Shall"** for the purposes of this act, shall be defined as mandatory or must.

26. **"Standard housing"** shall mean a dwelling unit or housing that complies with the requirements established by federal law.

27. **"Subordinate lienholder"** shall mean the holder of any lien, including a subsequent mortgage, perfected subsequent to the recording of a mortgage under this code, except the Nation shall not be considered a subordinate lienholder with respect to any claim regarding a tribal tax on real property.

28. **"Title status report"** shall mean a report issued after a title examination that shows the proper legal description of a tract of Indian land; current ownership, including any applicable conditions, exceptions, restrictions, or encumbrances of record; and whether the land is in unrestricted, trust, or other status as indicated by the records in a land titles and records office.

29. **"Trust land"** shall mean land or any interest therein held in trust by the U.S. Government for an individual Indian or tribe.

Historical Data

LA 21–96, eff. December 16, 1996.