

**TITLE 8 – REGULATORY CODE
PART IV- PROPERTY
CHAPTER 4-1 – LAND**

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SUBCHAPTER A GENERAL PROVISIONS

Section 10 Constitutional Provisions (8 PYTC § 4-1-10)

Article XIII of the Constitution of the Pascua Yaqui Tribe ("Tribe"), provides that *"the Pascua Yaqui Reservation is the property of the Tribe and shall not be granted or divided by allotment in whole or in part to individual members or groups of individual members as private property."* Article XIII further requires the Pascua Yaqui Tribal Council ("Tribal Council") to enact an assignment ordinance, subject to approval by the United States Secretary of the Interior, governing the assignment of the Tribe's lands to members of the Tribe for their private use.

Article VI, Section I (g) of the Constitution of the Tribe provides that the Tribal Council shall have the express and sole power to sell and convey, lease, encumber, and grant interests in lands and property belonging to the Tribe and held in trust by the federal government. Additionally, Article VI, Section I(n) of the Tribe's Constitution provides that the Tribal Council has the power to create offices, committees, boards, and associations.

Section 20 Statutory Provisions (8 PYTC § 4-1-20)

The Tribal Council previously passed legislation known as the Home Ownership and Mortgage Settlement Act of 2000, which requires the Tribe to create a system for conveying the right to possess and use real property or any interest therein located on the Reservation, registering the ownership thereof and encumbering such ownership to secure the payment and/or performance of obligations of the owner, and giving public notice of other documents and/or instruments.

Section 30 Existing Use or Land (8 PYTC § 4-1-30)

Although certain enrolled members of the Tribe ("Members"), and certain non-members of the Tribe, have been permitted by the Tribe to use certain portions of the Tribe's Land (defined below) (specific recognized parcels of the Tribe's Land may hereinafter be referred to as a "Parcel" or "Parcels") for residential purposes, the Tribe does not

have a formal system to: (i) resolve competing claims for ownership of the same Parcel; (ii) grant the right to possess and use a specific Parcel or interests therein; (iii) maintain a public record regarding the rights to a specific Parcel and/or interests therein; and (iv) deal with any transfer of rights of an individual in and to a specific Parcel. Lenders (defined below) are unwilling to make loans secured by a security interest in real property occupied and used by individuals who reside on the Tribe's Land because a recognized system of perfecting and enforcing security interests has not been created.

Section 40 Determination of Tribal Council (8 PYTC § 4-1-40)

The Tribal Council has determined that it would be in the best interest of the Tribe and its Members to establish a formal system concerning the Tribe's Land that will:

- (A) Identify which Parcels are presently claimed and/or utilized by individuals;
- (B) Identify which Parcels are being used by individuals for residential purposes;
- (C) Provide a recognized way to transfer interests in a Parcel;
- (D) Establish a process to evaluate competing claims regarding the rights to a specific Parcel and confirm the rights of specific individuals in each specific Parcel;
- (E) Establish a central public recording system for all interests in Parcels of the Tribe's Lands;
- (F) Establish a system for the granting of future rights to Parcels; and
- (G) Establish certain requirements that apply to all individuals claiming and/or holding an interest in specific Parcels of the Tribe's Lands.

Section 50 Scope (8 PYTC § 4-1-50)

This chapter is intended to meet the needs of the Tribe as enumerated in the preceding section of this chapter. This chapter applies to all of the Tribe's Land, and supersedes the Original Land Code passed by the Council on November 8, 2001 by Resolution No. C11-90-01. All references herein to the "chapter" shall be deemed to be to this revised chapter dated August 9, 2006.

Section 60 Map (8 PYTC § 4-1-60)

A map showing the location, size, and relationship of recognized Parcels, the address of each Parcel and the Ownership of each Parcel (the "Map") has been prepared based upon the current records of the Tribe and the United States Department of Interior, Bureau of Indian Affairs ("BIA"). The Map and accompanying information has been approved by the Tribal Council. The Tribal Council hereby directs the Land Office and Housing Department, in consultation with the Office of the Attorney General, to also gather information regarding the claims to Parcels that are not currently being used for residential purposes (the "Vacant Parcel Information"). After review by the Tribal Council, the Vacant Parcel Information shall be added to the Map. The Land Office is also directed to update the Map and publish it on a periodic basis in the manner provided in this Chapter.

Section 70 Definitions (8 PYTC § 4-1-70)

In addition to the defined terms set forth above, the following terms shall apply unless indicated otherwise.

- (A) "Abandonment" means absence of a Holder (defined below) from the Holder's recorded Parcel on which a Dwelling is located ("Occupied Parcel") for a period of six months without giving notice to the Tribe's Land Office. The concept of Abandonment shall apply only to Occupied Parcels. Ownership of Parcels on which no Dwelling is located ("Vacant Parcels") shall not be subject to Abandonment.

- (B) "Assignment Certificate" means the document approved by the Tribal Council and executed by the Tribal Council, or its authorized designee, evidencing the Tribe's Transfer (as defined herein) to a Member of the right to occupy and use a Parcel ("Ownership"). Upon such transfer and assignment, the Member holding Ownership of a Parcel may be referred to as the "Landholder." The Assignment Certificate may also be referred to as a "Land Assignment Certificate", a "Deed of Assignment" or a "Deed." All Transfers of Ownership by the Tribe shall involve only those rights of possession and use held by the Tribe and shall be further subject to:
- (1) All rights reserved in this chapter or other applicable law of the Tribe or federal law of the United States ("Federal Law"); and
 - (2) Prior existing rights affecting the subject Parcel arising under or determined under laws of the Tribe, state law, and federal law.
- (C) "BIA" means the United States Department of the Interior, Bureau of Indian Affairs.
- (D) "Building, Housing, Zoning and Environmental Codes" means any applicable law, ordinance or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance of any Parcel or Dwelling.
- (E) "Certificate Holder" means the holder of a valid Certificate of Use and Possession pursuant to this chapter.
- (F) "Certificate of Use and Possession" means a certificate approved by the Tribal Council, filed with the Land Office, permitting a person who is not eligible to be a Landholder to occupy a Parcel and reside in a Dwelling on that Parcel pursuant to this chapter.
- (G) "Chairman" means the Chairperson of the Pascua Yaqui Tribe.
- (H) "Child" means the direct issue of an individual, including an adopted child, and may include a step-child or a foster child.
- (I) "Committee" or "Land Assignment Committee" means the Land Assignment Committee established pursuant to Title 2, Part II, Chapter 2-14.
- (J) "Council" or "Tribal Council" means the duly elected Tribal Council of the Pascua Yaqui Tribe.
- (K) "Crimes against the Interest of the Tribe" means any crime against the Tribe which impugns the integrity of the Tribe, or harms the pecuniary interest of the Tribe. Such Crimes against the Interest of the Tribe are evidenced by a final judicial determination by an appropriate court of competent jurisdiction that an individual has committed any of the following acts:
- (1) Stealing from the Tribe (including, but not limited to, theft of property or money, embezzlement, and conspiracy to commit these acts);
 - (2) Bribing or attempting to bribe an official of the Tribe or judiciary;
 - (3) Other actions involving physical violence, bodily injury, or threat of physical violence or bodily injury to officials or employees of the Tribe acting in the course of their duties as officials or employees of the Tribe.
- (L) "Director" means the Director of the Land Office, as established pursuant to Title 2, Part II, Chapter 2-14.

- (M) "Dwelling" means a structure or the part of a structure that is used as a home, residence or sleeping place by one person who maintains a household or two or more persons who maintain a common household.
- (N) "Family Member" means any of the following: parent, spouse, children, aunt, uncle, son-in-law, daughter-in-law, sister-in-law, brother-in-law, niece, nephew, grandparent, grandchildren, stepsister, stepbrother, godparents, godchildren, foster children, and first cousins.
- (O) "Holder" means a valid Landholder or Certificate Holder pursuant to this chapter.
- (P) "Housing Department" means the Tribe's Housing Department.
- (Q) "Initial Land Assignment" means the initial transfer of a Parcel from the Tribal Council to a Landholder.
- (R) "Land" or "Tribe's Land" means:
- (1) All lands held by the United States for the benefit of the Tribe;
 - (2) Any additional lands acquired by the United States for the benefit of the Tribe;
 - (3) All lands owned by the Tribe.
 - (4) The term "Land" and/or the "Tribe's Land" shall include all water, air, surface, subsurface, natural resources, and any interests therein, notwithstanding the issuance of any Land Assignment, Certificate, Certificate of Use and Possession, or right of way in fee or otherwise, by the Tribe.
- (S) "Land Assignment" means the right of a Landholder, established by action of the Tribal Council pursuant to this chapter, to make use of an identified Parcel in compliance with this chapter.
- (T) "Landholder" means:
- (1) an individual whose Ownership of a Parcel has been granted by the Tribe in the form of an Initial Land Assignment pursuant to this chapter (which right is evidenced by an Assignment Certificate issued by the Tribal Council or its authorized designee) (an "Initial Landholder"); and/or
 - (2) Any individual properly deriving Ownership from an Initial Landholder under this chapter; and/or
 - (3) Any individual otherwise properly acquiring Ownership of a Parcel under this chapter.
- (U) "Land Office" means the Land Office of the Tribe.
- (V) "Land Records" means the records concerning the Ownership of the Tribe's Land maintained by the Recorder's Office.
- (W) "Lease" means a lease by the Tribe, to an eligible Holder, of a particular parcel of the Tribe's Land for the purpose of permitting the Holder to enter into a mortgage with a Lender.
- (X) "Lender" means a person or entity from which money is borrowed, including a bank or other lending institution.
- (Y) "Map" means the map referred to in Section 60.
- (Z) "Member of the Tribe" or "Member" means an enrolled member of the Pascua Yaqui Tribe as shown on the Tribe's enrollment records.
- (AA) "Occupied Parcel" means a parcel of Land upon which a dwelling is located.

- (BB) "Ownership" means the right of a Landholder to occupy and use a Parcel (or any interest therein) subject to the terms of this chapter.
- (CC) "Petitioner" means the person filing a Petition to Show Cause under 2 PYTC § 2-14-150.
- (DO) "Recorder's Office" means the office created by this chapter and charged with the establishment and maintenance of the public records of the Tribe regarding the Ownership of the Tribe's Lands and any interests therein.
- (EE) "Reservation" means all Land held in trust by the United States Government for the benefit of the Pascua Yaqui Tribe, as it may change from time to time.
- (FF) "Responding Party" means the person or persons responding to a Petition to Show Cause under 2 PYTC § 2-14-150.
- (GG) "Secretary" means the United States Secretary of the Interior.
- (HH) "Section 184 Housing Program" means a federal mortgage guarantee program in which qualified Members enter into mortgage agreements with private lenders that are guaranteed or insured by the United States Department of Housing and Urban Development ("HUD").
- (II) "Spouse" means a person lawfully married under the laws and traditions of the Pascua Yaqui Tribe or under the laws of the jurisdiction in which the marriage took place. (1J) "Sub-assignment" means a sub-assignment of a Land Assignment made by a Landholder pursuant to 2 PYTC § 2-14-330. (KK) "Transfer" means the assignment, grant, and conveyance of the rights in a Parcel, or any interest or rights therein (including a Lender to secure an obligation of the Landholder).

Section 80 Eminent Domain (8 PYTC § 4-1-80)

The Tribe, acting through the Land Office, shall have the power of eminent domain as provided herein.

- (A) In the exercise of the power of eminent domain, the Tribe may condemn an assignment and replace it with an assignment of land similar in nature to the condemned land, and such offer of a replacement assignment shall be the only compensation to which the holder of the assignment shall be entitled to respecting the assignment itself.
- (B) In the exercise of the power of eminent domain as to improvements on the land, the Tribe shall pay just compensation for said improvements in the form of:
 - (1) Cash in the amount of the full market value of the improvement, or replacement value, whichever is greater; or
 - (2) Replacement improvements elsewhere on the Reservation which are worth as much, or more than, the condemned improvements.
- (C) If there is an encumbrance on the improvement, which has been permitted pursuant to Subchapter D, it shall be paid by the Tribe in full, and the amount thereof deducted from the gross amount of any award of just compensation.

Section 90 Zoning (8 PYTC § 4-1-90)

The Tribe may, in the future, implement zoning regulations or ordinances on the Reservation. All pre-existing Assignments shall then be subject to such zoning, but shall otherwise remain valid unless condemned by the Tribe in accordance with Section 80 provided, however, that:

- (A) The Tribe shall not be required to implement zoning.
- (B) If the Tribe implements zoning, there will be no expectation that said zoning shall remain the same, either on assigned lands, or lands adjacent to assigned lands.
- (C) In the event the Tribe creates a system of zoning, to the Tribe may change zoning at any time, or grant waivers (variances) for uses not otherwise permissible in said zoning areas.

Section 100 Easements and Rights of Way (8 PYTC § 4-1-100)

All Easements and Rights-of-Way affecting the Tribe's Land or any portion thereon shall be recorded in the Recorder's Office in accordance with this chapter, and recorded at the Land Titles and Records Office of the Bureau of Indian Affairs. All Easements and Rights-of-Way shall be in a form approved by the Director.

SUBCHAPTER B LAND ASSIGNMENTS

Section 110 Eligibility for a Land Assignment (8 PYTC § 4-1-110)

In order to be eligible for a Land Assignment, an individual must be at least 18 years of age, an enrolled member of the Tribe and meet the other requirements of this chapter.

Section 120 Restrictions on Eligibility (8 PYTC § 4-1-120)

Any Member who is otherwise eligible to receive a Land Assignment shall be ineligible if any of the following conditions exist:

- (A) The Member has committed a Crime Against the Interest of the Tribe, as defined in this Code;
- (B) The Member is already in possession of another Land Assignment, provided however that Members who are in possession of a rental unit through the Housing Department are eligible to apply for a Land Assignment; or
- (C) The Member is in arrears of more than 30 days to the Tribe for any debt.

Section 130 Background Checks (8 PYTC § 4-1-130)

All persons applying for a Land Assignment are subject to criminal background checks for the purpose of determining their eligibility for an Assignment consistent with this chapter.

Section 140 Certificate of Use and Possession (8 PYTC § 4-1-140)

Individuals who are not eligible for Ownership of a Parcel under this Title solely as a result of not being a Member of the Tribe may make application for a Certificate of Use and Possession under the following circumstances:

- (A) Caregiver. Where a non-Member is legally responsible for the care of a Member of the Tribe, and:
 - (1) The Member is residing on the assigned parcel,

- (2) The member is under the age of 18 or is adjudicated legally incompetent,
 - (3) No existing Holder of an Assignment to that Parcel contests the granting of the Certificate of Use and Possession, and
 - (4) The non-Member Caregiver has not been found, in either a civil or criminal proceeding, to have neglected or abused any child.
- (B) Non-Member Surviving Spouse. Where the surviving spouse of the deceased Holder of that Assignment is not a Member of the Tribe and the non-Member Surviving Spouse applies for a Certificate of Use and Possession directly to the Tribal Council. The non-Member Surviving Spouse's eligibility for a Certificate of Use and Possession shall be decided on a case by case basis by the Tribal Council in its absolute discretion, and conditioned upon any terms set by the Council.
- (C) Non-Member Surviving Child. Where a surviving child of the deceased Holder of that Assignment is not a Member of the Tribe, and
- (1) Was residing on the assigned parcel with the Holder at the time of the Holder's death, and
 - (2) Is under the age 18, or under the age of 24 and attending college full time, and
 - (3) No existing Holder of an Assignment to that Parcel contests the granting of the Certificate of Use and Possession, and
 - (4) If the non-Member surviving child is a minor, his/her guardian or caregiver may not be a person who has been found, in either a civil or criminal proceeding, to have neglected or abused a child.

Section 150 Guidelines (8 PYTC § 4-1-150)

The Council hereby directs the Director to prepare and submit proposed guidelines for issuance of Certificates of Use and Possession to the Tribal Council within 120 days after the Council enacts this chapter. Said guidelines shall then be adopted by the Council by resolution. Said guidelines shall be at the absolute discretion of the Tribal Council, and shall be subject to change at any time at the discretion of the Tribal Council. Certificates of Use and Possession are in the nature of a Gift by the Tribe of the privilege of temporary occupancy and use. They are discretionary with the Tribal Council under the guidelines contemplated by this section, and receipt of a Certificate of Use and Possession is a privilege, not a right. No property rights are created by the granting of a Certificate of Use and Possession.

Section 160 Confirmation of Existing Assignments (8 PYTC § 4-1-160)

- (A) Approval of the Map. The Map presented to the Tribal Council and approved by Resolution simultaneously with this chapter shall be filed in the Land Office and updated and maintained on a current basis by the Director.
- (B) Posting of the Map. Within 30 days after approval of this chapter by the Secretary (following adoption of this Chapter by the Tribal Council), the Director of the Land Office shall cause the Map to be posted at the Administrative Tribal Offices and the Housing Department.
- (l) The Map shall also be posted in a public place in each of the following Yaqui communities:
 - (a) New Pascua (Pascua Pueblo Reservation)
 - (b) Old Pascua

- (c) Barrio Libre
- (d) Yoem Pueblo (Marana)
- (e) Coolidge
- (f) Guadalupe
- (g) High Town (Chandler)
- (h) Penjamo (Scottsdale)

(2) Reasonable notice shall be given to Members of the Tribe regarding:

- (a) The posting of the Map;
- (b) The date the Map will be posted;
- (c) The period of time in which to object to the information set forth on the Map; and
- (d) The effect of not making a timely objection.

(C) Any person wishing to challenge the information regarding the Ownership set forth on the Map of a specific Parcel shall file a Petition to Show Cause in compliance with 2 PYTC § 2-14-150(A) within 180 days of the posting of the Map.

(D) If no Petition to Show Cause with respect to the information regarding the Ownership of a specific parcel is filed within 180 days of the posting, the rights of the person, as indicated on the Map, shall be confirmed as a Land Assignment (or holder of a Certificate of Use and Possession in the case of non-members) under this chapter.

**Section 170 Issuance of Land Assignment Certificates and Certificates of Use and Possession
(8 PYTC § 4-1-170)**

(A) The Director shall prepare and obtain the signature of the Chairman on each Initial Land Assignment Certificate and Certificate of Use and Possession issued by the Tribe under this chapter.

(B) The description of the Parcel that is the subject of each Land Assignment and Certificate of Use and Possession shall be made by reference to the Map and by reference to such other recognized system of reference as is deemed appropriate by the Director (such as BIA and Pima County Recorder's Office records).

(C) After obtaining the signature of the Chairman on a Land Assignment or Certificate of Use and Possession, the Director shall cause the document to be placed of record in the Recorder's Office and shall deliver a certified copy of such to the Landholder or to the recipient of the Certificate of Use and Possession.

**Section 180 Procedures for the Issuance of a Land Assignment or Certificate of Use and Possession
(8 PYTC § 4-1-180)**

(A) Filing. Except with regard to those individuals confirmed as Landholders (or holders of a Certificate of Use and Possession) as provided above, a Member eligible to be a Landholder seeking a Land Assignment from the Tribe shall file an application with the Tribal Land Office. The application shall include the following information:

- (1) Full name of applicant and name of applicant's spouse if any;
- (2) Current address and phone number;
- (3) Tribal identification number or enrollment number;
- (4) If the applicant is requesting a specific Parcel, the identity of the Parcel;
- (5) Description of any existing structure(s) and/or structure(s) to be placed or built on the Parcel; and
- (6) Description of any financing.

Section 190 Determination (8 PYTC § 4-1-190)

The Director shall make a determination on each application within 30 days of filing. Failure of the Director to act within 30 days of the filing of an application shall be deemed to be a denial of the application, from which the applicant may file a Petition for Review to the Land Committee pursuant to 2 PYTC § 2-14-150(B).

Section 200 Procedures (8 PYTC § 4-1-200)

The Council hereby directs the Director to prepare and submit proposed procedures for applications for issuance of certificates of Use and Possession and submit the same to the Tribal Council within 120 days after the Tribal Council enacts this chapter.

Section 210 Term of Rights (8 PYTC § 4-1-210)

Each Land Assignment issued by the Tribe shall be valid for 100 years, unless earlier terminated as described in this chapter. No subsequent Transfers by any Landholder shall extend the term of the 9 original Land Assignment. Each Certificate of Use and Possession shall be valid only during the lifetime of the Certificate Holder, and shall be subject to any conditions imposed upon it by the Tribal Council, either when it is granted, or at any subsequent time, unless earlier terminated as described in this chapter.

Section 220 Responsibilities of Holder (8 PYTC § 4-1-220)

Each Holder shall comply with all Building, Housing, Zoning, Environmental Codes, and any other applicable laws of the Tribe.

Section 230 Ownership of Improvements (8 PYTC § 4-1-230)

A Holder may construct or place improvements on a Parcel. Upon termination or expiration of a Land Assignment or Certificate of Use and Possession pursuant to this chapter, the improvements, fixtures, appurtenant, and utilities shall be removed from the Parcel within one year after such termination or expiration. If such improvements, fixtures, appurtenant and utilities are not removed they will become property of the Tribe.

Section 240 Termination of Land Assignment or Certificate of Use and Possession (8 PYTC § 4-1-240)

- (A) A Land Assignment (or Certificate of Use and Possession) shall be terminated and all rights thereunder canceled upon a determination by the Land Office that any of the following events have occurred:
 - (1) The Abandonment by the Holder of an Occupied Parcel.
 - (a) A finding of Abandonment may only be made pursuant to the procedure set forth in of this chapter.
 - (b) Any dispute relating to the Abandonment of a Parcel shall be resolved by the dispute procedures set forth in this chapter.
 - (2) The Landholder is no longer an enrolled Member of the Tribe.
 - (3) A Certificate of Use and Possession shall terminate automatically and without further action when the conditions upon which it was issued no longer apply.
 - (4) The Holder committed fraud or misrepresentation on the Land Assignment application.
 - (5) The Assignment was relinquished voluntarily by the Holder and terminated by the Director, pursuant to this section.
 - (6) A Certificate of Use and Possession may be terminated at any time by the Tribal Council.
- (B) Upon termination of a Land Assignment, the Assignment reverts to the Tribe. Upon termination of a Certificate of Use and Possession, possession of the Parcel goes to the Holder of the Assignment.
- (C) In the event that a Land Assignment is terminated and the Holder has a property interest in improvements on the assigned Parcel, the Holder shall have one year from the date of the termination to sell or convey the improvements to an eligible Holder. Failure to convey the property in accordance with this section shall constitute an Abandonment of the improvements on the Parcel and the former Holder shall not be entitled to compensation from the Tribe for the loss of any interests in the improvements.
- (D) No Lease of tribally owned land may be terminated while a federal loan, guarantee, or insurance is in effect on the leased parcel without the consent of the applicable federal agency, nor will such Lease be subject to forfeiture or reversions or otherwise subject to termination while such federal loan, guarantee, or insurance is in effect on the leased parcel without the consent of the applicable federal agency.

Section 250 Voluntary Termination for Mortgage Purposes (8 PYTC § 4-1-250)

If a Holder of a Land Assignment wishes to participate in a federal loan program, or obtain a private leasehold mortgage, then the Holder must relinquish the Land Assignment, and enter into a Lease pursuant to 8 PYTC § 4-1-420(D). This voluntary termination is subject to the right of re-assignment of the Land Assignment upon a showing of full satisfaction of the leasehold mortgage.

Section 251 Leases for Purposes of Mortgage (8 PYTC § 4-1-251)

- (A) A member of the Tribe who already possess a Land Assignment may apply for a Lease for purposes of obtaining a loan from a Lender.
- (B) Only the current Land Assignment holder can apply for, or receive a Lease for that assigned Land.

- (C) An applicant for a Lease must provide a copy of pre-qualification from the Lender with the application, or within 10 business days thereafter.
 - (1) If a pre-approval from a Lender is not submitted within ten business days after the filing of the application, the application will be deemed denied automatically.
 - (2) The holder of a Land Assignment may file an unlimited number of applications for a Lease. The denial of any previous application does not affect the right of a Land Assignment Holder to file another application for a Lease.
- (D) The lessee of a Lease given under this section must obtain a loan for purposes of constructing improvements within a period of two years.
- (E) If the property for which a Lease is approved is not actually encumbered with a loan for purposes of constructing improvements within the two years, the director may, at his/her discretion, terminate the Lease and reassign the property to the applicant.
- (F) A Lease shall only be approved for a maximum of thirty years, or such shorter period as may be the longest period permitted for such leases under applicable Federal Regulations then in effect.
- (G) To be valid a Lease must be approved by, and signed by, the Land Office Director, and then submitted to, and approved by, the Bureau of Indian Affairs Land Office. Leases will only become effective upon approval from BIA.
- (H) Leases may be terminated in the following circumstances;
 - (1) No loan/encumbrance was obtained and recorded as per the requirements of subsection 8 PYTC § 4-1-251 (E) above.
 - (2) A loan secured by a Lease has been paid in full and an acknowledgement of full payment and release of the loan has been received from the Lender.
 - (3) The lessee has been found to be in violation of this code, and termination of the Lease is not prohibited due to existence of recorded loan secured by the lease.
- (I) There shall be recording and processing fees for Applications for Leases, Leases, and mortgages as established pursuant to the authority of 8 PYTC § 4-1-400.
- (J) No loan secured by a lease issued pursuant to this Code shall have an interest rate that exceeds the greater of 12% per annum or such higher rate as may be established by the Tribe's subsequently enacted statute(s) regarding usury."

Section 260 Abandonment Procedure (8 PYTC § 4-1-260)

The Director of the Land Office shall make a finding that an Abandonment of an Occupied Parcel has occurred in accordance with the procedures set forth herein.

- (A) Upon receiving information that an Occupied Parcel has been abandoned, the Director shall:
 - (1) Record the date the Director received such information leading the Director to believe Abandonment has occurred;
 - (2) Record the name of the individual providing such information; and

- (3) Identify the information (or other evidence) upon which the Director is relying to support a finding that Abandonment has occurred.
- (B) Between 30 and 90 days from the date of record of receipt of an alleged Abandonment (as provided in Section 260(A) (1)), the Director shall provide a Notice of Abandonment to the Holder (by regular mail, and by posting at the Dwelling), specifying that an Abandonment of the Parcel is alleged to have occurred. Such notice must include:
 - (1) The mailing address of the Land Office;
 - (2) A statement notifying the Holder of his/her rights under this Chapter; and
 - (3) A statement that a finding of Abandonment will result in termination of the Holder's rights to the Parcel.
 - (C) The Holder shall respond to the Notice of Abandonment in writing, and may dispute the alleged Abandonment, or offer a justification for his/her extended absence from the Parcel. Upon receiving the Holder's response to the Notice of Abandonment, the Director shall withdraw the Notice of Abandonment within 30 days, or be deemed to have rejected the sufficiency of the Holder's response.
 - (D) Failure of the Holder to respond to the Notice of Abandonment within 90 days of receipt of the Notice, or within 180 days from the record date of the alleged Abandonment (whichever is longer), shall result in a final determination by the Director that the Parcel has been abandoned.
 - (E) Upon a final determination of Abandonment, the Director shall record an instrument indicating the termination of the Holder's rights to the Parcel due to Abandonment.
 - (F) In the case of the termination of a Land Assignment due to Abandonment, the Land Assignment shall not pass to a designee of the Holder, but shall revert to the Tribe.

Section 270 Conveyance of Rights in a Parcel (8 PYTC § 4-1-270)

A Landholder may Transfer his or her rights in a Parcel to another person who meets the eligibility requirements of this chapter, provided that the transferee is not already the Holder of record for any other Parcel.

- (A) Any Holder who takes an Assignment by conveyance, purchase, bequest, or gift has the option of petitioning the Tribal Council for a new Assignment to that Parcel in the name of the Holder. Granting of a new Assignment in the Holder's name establishes a new term of 100 years for that Assignment.
- (B) All transfers shall be made on forms approved by the Land Office. All documents executed in connection with a Transfer ("Transfer Documents") shall be submitted to the Recorder's Office for recording. A copy of such Transfer Documents shall be provided to the individual submitting the document for recording.
- (C) Transfers of Occupied Parcels may be made for consideration; Vacant Parcels may only be transferred by gift or devise, and may not be transferred for value.
- (D) Under no circumstances may an individual obtain rights to more than one parcel, whether that parcel is an Occupied or a Vacant Parcel. Any transfer to a person already holding an Assignment shall be deemed void.

Section 280 Transfer by Order of the Court (8 PYTC § 4-1-280)

- (A) A Land Assignment may be transferred by order of the Pascua Yaqui Tribal Court if:

- (1) The Land Assignment is determined to be community property subject to the division in dissolution of marriage or legal separation action in Pascua Yaqui Tribal court; and
 - (2) The Land Assignment is transferred to one of the parties to the action; and
 - (3) The proposed transferee meets all of the requirements to be the Holder of a Land Assignment set forth in this chapter.
- (B) A Lease may be transferred by order of the Pascua Yaqui Tribal Court if;
- (1) The Lease is determined to be community property subject to the division in dissolution of marriage or legal separation action in Pascua Yaqui Tribal court; and
 - (2) The Lease is transferred to one of the parties to the action; and
 - (3) The proposed transferee meets all of the requirements to be the Holder of a Land Assignment set forth in this chapter.
- (C) Provided however, that the Tribal Court may not order the transfer of a Lease approved under this Chapter on which there is a lien as security for a loan under a federal loan program without the consent of the Lender, which shall not be withheld unless the proposed transferee would not otherwise qualify for a loan from Lender under its underwriting guidelines then in effect."

Section 290 Death of a Landholder (8 PYTC § 4-1-290)

Except as provided for in Section 320 upon the death of a Landholder, the Assignment may be transferred only to a Member eligible under Section 110.

- (A) In the event the deceased party's designee(s) is (i) a Member who is under the age of 18 years; or (ii) a Member who has been determined to be legally incompetent, the Ownership of the Parcel may be held in trust by a responsible person over eighteen years of age, whether that person is a Member or not.
- (B) The Ownership of the Parcel shall automatically pass to the Member who was the deceased party's heir upon the Member reaching the age of 18 years or upon a legal determination of competency, as appropriate.

Section 300 Landholder's List of Designees (8 PYTC § 4-1-300)

Upon the issuance of a Land Assignment, the Landholder shall designate no more than five qualified designees, one of whom shall (in descending order) take the Assignment upon the death of the Landholder.

- (A) Upon the death of the Landholder, the Director shall review the list of designees for that Parcel and assess the eligibility of the individuals on that list. The first individual on the list who is eligible for a Land Assignment shall take the Assignment from the deceased Landholder, and the Director shall record a document to that effect regarding that Parcel.
- (B) The Director shall notify each Landholder by mail, on an annual basis, of the need to maintain an accurate and updated list of designees.
- (C) In the event that there are no designees who are eligible to own or possess the Parcel under this Chapter, the assignment shall revert to the Tribe.

Section 310 Transfers of a Parcel (8 PYTC § 4.1-310)

Any Transfer of a parcel shall include the improvements, fixtures, appurtenant and utilities, unless specifically provided otherwise in the document of Transfer.

Section 320 Transfer to Ineligible Person(s) (8 PYTC § 4.1-320)

In the event the deceased Landholder is survived by a surviving spouse or child who is not eligible to be a Landholder, the surviving spouse or child may continue to possess and use the parcel during her or his lifetime, if permitted under a Certificate of Use and Possession obtained in accordance with Section 140. Whether by death, or otherwise, upon termination of privileges of the holder under a Certificate of Use and Possession, ownership of the parcel shall pass to the deceased Landholder's first listed designee who is eligible to own the parcel under this chapter.

Section 330 Sub-Assignments (8 PYTC § 4-1-330)

A Landholder shall not sub-assign a parcel in any manner except as expressly permitted herein. Any attempted purported sub-assignment in violation of this section shall be void.

- (A) The Director shall make all determinations regarding sub-assignments.
- (B) The Director shall approve the sub-assignment, provided:
 - (1) No extraordinary circumstances exist;
 - (2) The proposed sub-assignee is eligible to possess a parcel under this chapter;
 - (3) The Landholder complies with the sub-assignment procedures, as outlined herein;
 - (4) The duration of the sub-assignment is less than one year; and
 - (5) The activity to be conducted on the Parcel is not illegal.

Section 340 Sub-Assignment Procedures (8 PYTC § 4-1-340)

The Landholder shall submit a Notice of sub-assignment to the Land Office on their prescribed forms.

The Notice of Sub-Assignment shall set forth the following information:

- (A) An identification of the parcel to be sub-assigned, including the identification of the Dwelling and any other improvements on the Parcel;
- (B) An identification of the individual Member to whom the Landholder proposes to sub-assign the parcel, including the name, address and relationship of such person to Landholder, whether the proposed sub-assignee is a Member of the Tribe and whether he or she is eligible to hold a Land Assignment under Subchapter B;
- (C) The reason for the sub-assignment; and
- (D) The duration of the sub-assignment.

Section 350 Effect of Termination of an Assignment (8 PYTC § 4-1-350)

In the event of an abandonment of an assignment, with or without improvements thereon, or any other determination by the Land Office that an assignment has been terminated in accordance with Section 190, said abandonment or termination shall not impose upon the Tribe an obligation to pay compensation as though the Tribe was exercising its power of eminent domain, and the assignee shall be deemed to have waived the right to any compensation therefore under this Section, the United States Constitution, or the Constitution of the Pascua Yaqui Tribe.

SUBCHAPTER C RECORDING

Section 360 Recording; Priority (8 PYTC § 4-1-360)

- (A) Land Office Records. The Land Office shall keep a Torrens System (parcel-specific) record of each parcel of land on the Reservation. Said records shall be available to the public for inspection in the Land Office during normal hours of operation.
- (B) Validity of Records. Only documents filed with the Land Office under its recording system shall be valid as to the Land Assignment, Certificate of Use and Possession, or sub-assignment in question.

Section 370 Requirements for Filing Records (8 PYTC § 4-1-370)

The Land Office's records of land parcel assignments, sub-assignments, leases, encumbrances, and court orders and probate matters affecting parcels shall be the only records which affect said interests in assignments on the Reservation, and shall be filed accordingly:

- (A) A document filed with the Land Office shall be perfected by filing the document with the Land Office and obtaining a file-stamped copy of said document from the Land Office.
- (B) A document filed with the Land Office shall have the Tribe's Torrens systems assignment parcel identification number on it to be properly filed.
- (C) If the filed document does not have the Tribe's Torrens system parcel number listed thereon, it shall nevertheless be valid if it is filed by the Land Office under the proper Torrens system parcel identification number.

Section 380 Limitation on Recording of Documents (8 PYTC § 4-1-380)

The Land Office shall only be permitted to record documents which touch and concern the Tribe's lands, and shall not be required to record any other documents for any other purposes.

Section 390 Mortgage Documents (8 PYTC § 4-1-390)

- (A) The Land Office Director shall maintain in the Land Office a system for the recording of mortgage loans and such other documents as the Tribe may designate by ordinance, law, or resolution.
- (B) The Land Office Director 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;
 - (2) The filing number, to be assigned by the Land Office Director, which shall be a unique number for each mortgage or other document received; and
 - (3) The name of the Land Office Director or designee receiving the mortgage or document.

(4) The parcel number of the parcel to which the mortgage applies.

(C) Upon completion of the above-cited endorsements, the Land Office Director shall make a true and correct copy of the mortgage or other document and shall certify the copy as follows:

Pascua Yaqui Tribe)
)ss.
Pascua Pueblo)

I certify that this is a true and correct copy of a document received for recording this date.

Given under my hand and seal this ___ day of _____.

(SEAL)

(Signature)

(Date)

(D) The Land Office Director shall maintain the copy in the records of the recording system and shall return the original of the mortgage loan or other document to the person or entity that presented the same for recording.

(E) The Land Office Director shall also maintain a log of each mortgage loan or other document recorded in which there shall be entered:

- (1) The name(s) of the Borrower/Mortgagor of each mortgage loan, identified as such;
 - (2) The name(s) of the Lender/Mortgagee of each mortgage loan, identified as such;
 - (3) The name(s) of the grantor(s), grantee(s) or other designation of each party named in any other documents filed or recorded;
 - (4) The date and time of the receipt;
 - (5) The filing number assigned by the Land Office Director;
 - (6) The name of the Land Office Director or designee receiving the mortgage or document; and
 - (7) The parcel number of the parcel to which the mortgage applies.
 - (8) The certified copies of the mortgage loan and other documents and the log maintained by the "Land Office Director shall be made available for public inspection and copying. Rules for copying shall be established and disseminated by the Land Office Director.
- (F) All mortgages will be recorded with the BIA in addition to the recording provisions under this chapter.

Section 400 Fee Schedule (8 PYTC § 4-1-400)

The Tribal Council delegates to the Director the authority to establish a schedule of fees relating to the recording of documents with Tribe's Land Office. Within 60 days from the passage of this chapter, the Director shall publish the fee schedule. The Director may amend the fee schedule from time to time as necessary.

Section 410 Lien Priority (8 PYTC § 4-1-410)

All mortgage loans recorded in accordance with the recording procedures set forth in this section, including Leasehold Mortgages, and including loans made, guaranteed, insured or held by a governmental agency, shall have priority over any lien not perfected by being recorded at the Land Office at the time of the recording of such mortgage and over 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).

SUBCHAPTER D ENCUMBRANCES OF LAND ASSIGNMENTS (8 PYTC § 4-1-420)

Section 420 Encumbrances of Land Assignments (8 PYTC § 4-1-420)

- (A) A Landholder may not encumber an Assignment. If a Landholder desires to encumber the land subject to an Assignment, they must surrender the Assignment pursuant to Subsection 250 above and receive an approved Lease.
- (B) The Director of the Land Office shall limit consent for the encumbrance of a Lease to those Lenders that register with the Tribe, affirmatively agree to limit their foreclosure sales as provided in Section 480 of this Chapter, and agree to other terms and conditions as may be imposed on Lenders by the Tribal Council. Any attempted encumbrance of an Assignment or a Lease in violation of this Section shall be void.
- (C) Any encumbrance must utilize the mortgage and note forms approved by the Land Office and be filed with the Recorder's Office, and with the Bureau of Indian Affairs Land Titles and Records Office in Albuquerque, New Mexico, or its successor.
- (D) To participate in any federal loan program on trust land, or to obtain a private loan from an approved Lender, a qualified Member shall lease the land from the Tribe through a Lease. If the Member already has an Assignment, the Member must enter into a Lease with the Tribe for the same Land Assignment and voluntarily terminate his or her Land Assignment as required by Section 250 above.
- (E) The Lease, which shall be entitled "Lease of Tribal Owned Land," will be in a form adopted by the Tribal Council and approved by the BIA.
- (F) Upon full satisfaction of an individual's obligations under the leasehold mortgage, the Lender shall issue a release by Lender, and the Tribe shall terminate the Lease and assign/re-assign the leased Land to the Member. If a Lender fails to issue a release after full satisfaction, the borrower may petition the Tribal Court which, upon satisfactory proof of payment, shall issue a release upon which the Tribe may rely.
- (G) Members attempting to obtain a Leasehold Mortgage on a Lease shall enter into the mortgage agreement subject to the Tribe's ownership of the land. The Land Office Director shall record all mortgages in the Land Office, in accordance with this Chapter. The form of the mortgage must be approved by the Land Office, pursuant to Subsection 420(C) above.
- (H) A residential Lease encumbered by a lien for a loan from any federal loan program is not permitted to be assigned without the consent of the Lender/mortgagee.
 - (1) Provided however, that if a lessee of a Lease encumbered by a lien for a loan from a federal loan program should die before said loan is repaid, the person who would be the deceased borrower's designee under Section 300 had the decedent had a Land Assignment instead of a Lease shall be entitled to assume said loan if the designee would otherwise qualify for a new loan under Lender/mortgagee's then existing underwriting policies.

- (2) If there is no designee under Section 300, or if the designee of a deceased holder of a Lease does not qualify for a new loan under the Lender/mortgagee's then existing underwriting policies, the Tribe shall be entitled to assume said loan.
- (3) If the Tribe assumes the loan under Subsection 420(H)(2) above, the Tribe shall then be entitled to assign said Lease to any person eligible under this Chapter to hold a Land Assignment who qualifies for a loan with Lender under Lender's then existing underwriting policies, and such assignment shall relieve the Tribe of any further liability under the loan."

Section 421 Approval Leases and Encumbrances of Approved Leases (8 PYTC § 4-1-421)

- (A) A Landholder holding a Lease may only encumber the Lease with the prior consent of the Director. Such consent, together with execution of the encumbrance form approved under Subsection 421 (C) below by the Holder of a Lease, when recorded in the Land Office, shall constitute a lien upon the interest of a Holder of a Lease.
- (B) The Director of the Land Office shall limit consent for the encumbrance of a Lease to those Lenders that register with the Tribe, affirmatively agree to limit their foreclosure sales as provided in Section 480 of this Chapter, and agree to other terms and conditions as may be imposed on Lenders by the Tribal Council. Any attempted encumbrance of an Assignment or a Lease in violation of this Section shall be void.
- (C) Any encumbrance of a lease must utilize the mortgage and note forms approved by the Land Office and be filed with the Recorder's Office, and with the Bureau of Indian Affairs Land Titles and Records Office in Albuquerque, New Mexico, or its successor.
- (D) To participate in any federal loan program on trust land, or to obtain a private loan from an approved Lender, a qualified Member shall lease the land from the Tribe through a Lease. If the Member already has an Assignment, the Member must enter into a Lease with the Tribe for the same Land Assignment and voluntarily terminate his or her Land Assignment as required by Section 250 above.
- (E) The Lease, which shall be entitled "Lease of Tribal Owned Land," will be in a form adopted by the Tribal Council and approved by the BIA.
- (F) Upon full satisfaction of an individual's obligations under the leasehold mortgage, the Lender shall issue a release by Lender, and the Tribe shall terminate the Lease and assign/re-assign the leased Land to the Member. If a Lender fails to issue a release after full satisfaction, the borrower may petition the Tribal Court which, upon satisfactory proof of payment, shall issue a release upon which the Tribe may rely.
- (G) Members attempting to obtain a Leasehold Mortgage on a Lease shall enter into the mortgage agreement subject to the Tribe's ownership of the land. The Land Office Director shall record all mortgages in the Land Office, in accordance with this Chapter. The form of the mortgage must be approved by the Land Office, pursuant to Subsection 421 (C) above.
- (H) A residential Lease encumbered by a lien for a loan from any federal loan program is not permitted to be assigned without the consent of the Lender/mortgagee.
 - (1) Provided however, that if a lessee of a Lease encumbered by a lien for a loan from a federal loan program should die before said loan is repaid, the person who would be the deceased borrower's designee under Section 300 had the decedent had a Land Assignment instead of a Lease shall be entitled to assume said loan if the designee would otherwise qualify for a new loan under Lender/mortgagee's then existing underwriting policies.

- (2) If there is no designee under Section 300, or if the designee of a deceased holder of a Lease does not qualify for a new loan under the Lender/mortgagee's then existing underwriting policies, the Tribe shall be entitled to assume said loan.
- (3) If the Tribe assumes the loan under Subsection 421 (H)(2) above, the Tribe shall then be entitled to assign said Lease to any person eligible under this Chapter to hold a Land Assignment who qualifies for a loan with Lender under Lender's then existing underwriting policies, and such assignment shall relieve the Tribe of any further liability under the loan."

Section 430 Mortgages (8 PYTC § 4-1-430)

Members attempting to obtain a mortgage for a Parcel on trust land (either through an approved private Lender, or through a federally guaranteed program) shall enter into the mortgage agreement subject to the Tribe's ownership of the land. The Land Office Director shall record all mortgages in the Land Office, in accordance with this Chapter.

Section 440 Foreclosure Procedures (8 PYTC § 4-1-440)

A borrower/mortgagor under an approved loan secured by a lien or mortgage on a Lease shall be considered to be in default when he or she is thirty days past due on his or her mortgage payment(s) or is in violation of any covenant under the approved mortgage for more than thirty days to the Lender/mortgagee (i.e. the 31st day from the payment due date).

- (A) When a borrower/mortgagor is thirty days past due on his or her mortgage and before any foreclosure action or activity is initiated, the Lender/mortgagee shall complete the following:
 - (1) Make a reasonable effort to arrange a face-to-face interview with the borrower/mortgagor. This shall include at least one trip to meet with the Borrower/Mortgagor at the mortgaged property.
 - (2) Lender/mortgagee shall document that it has made at least one phone call to the Borrower/Mortgagor (or the nearest phone as designed by the borrower/mortgagor, able to receive and relay messages to the borrower/mortgagor) for the purpose of trying to arrange a face-to-face interview.
- (B) Lender/mortgagee may appoint an agent to perform the services of arranging and conducting the face-to-face interview specified in this action.
- (C) When the borrower/mortgagor is past due on three installment payments, or is three continuous months in violation of a non-monetary covenant of the Lease, and at least ten days before initiating a foreclosure action in Tribal Court, the Lender shall advise the borrower/mortgagor in writing by mail or by posting prominently on the unit, with a copy provided to the Tribal Council, as follows:
 - (1) Advise the borrower/mortgagor that information regarding the loan and default/delinquency will be given to credit rating bureaus.
 - (2) Advise the borrower/mortgagor of homeownership counseling opportunities/programs available through the Lender or otherwise.
 - (3) Advise the borrower/mortgagor of other available assistance regarding the mortgage/default.
 - (4) In addition to the preceding notification requirements, the Lender/mortgagee shall complete the following additional notice requirements:
 - (a) Notify the borrower/mortgagor that if the leasehold mortgage remains past due on three installment payments, or remains in default of non-monetary covenants of the lease, for

90 continuous days, the Lender/mortgagee may ask the applicable federal agency to accept assignment of the leasehold mortgage, if this is an option of the federal loan program;

- (b) Notify the borrower/mortgagor of the qualifications for forbearance relief from the Lender/mortgagee, if any, and that forbearance relief may be available from the government; and
 - (c) Provide the borrower/mortgagor with names and addresses of federal agency officials to whom further communications may be addressed, if any.
- (D) If a borrower/mortgagor is past due on three or more installment payments, or is in breach of non-monetary covenants of the Lease for three continuous months, and the Lender/mortgagee has complied with the procedures set forth in the first part of this section, the Lender/mortgagee may commence a foreclosure proceeding in the Tribal Court by filing a verified complaint as set forth in this subchapter."

Section 450 Foreclosure Complaint and Summons (8 PYTC § 4-1-450)

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

- (A) The name of the Borrower/Mortgagor and each person or entity claiming through the Borrower/Mortgagor subsequent to the recording of the mortgage loan, including each Subordinate Lienholder (except the Tribe with respect to a claim for a tribal leasehold), as a defendant;
- (B) A description of the property subject to the mortgage loan;
- (C) A concise statement of the facts concerning the execution of the mortgage loan and in the case of a Leasehold Mortgage the lease; the facts concerning the recording of the mortgage loan or the Leasehold Mortgage; the facts concerning the alleged default(s) of the Borrowers/Mortgagor; and such other facts as may be necessary to constitute a cause of action;
- (D) 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; and
- (E) Any applicable allegations concerning relevant requirements and conditions prescribed in;
 - (1) Federal statutes and regulations;
 - (2) Tribal codes, ordinances and regulations; and/or
 - (3) Provisions of the promissory note, security instrument and if a Leasehold Mortgage, the lease.
- (F) The complaint shall be verified by the Tribal Court Clerk along with a summons specifying a date and time of appearance for the Defendant (s).

Section 460 Service of Process and Procedures (8 PYTC § 4-1-460)

Any foreclosure complaint must be in writing, and must be delivered to the Borrower/Mortgagor in the following manner:

- (A) Delivery must be made by an adult person and is effective when it is:
 - (1) Personally delivered to a Borrower/Mortgagor with a copy sent by mail, or

- (2) Personally delivered to an adult living in the property with a copy sent by mail, or
 - (3) Personally delivered to an adult agent or employee of the Borrower/Mortgagor with a copy sent by mail.
- (B) If the notice cannot be given by means of personal delivery, or the Borrower/Mortgagor cannot be found, the notice may be delivered by means of:
- (1) Certified mail, return receipt requested, at the last known address of the Borrower/Mortgagor, or
 - (2) Securely taping a copy of the notice to the main entry door of the 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, or other commonly-frequented place and by sending a copy first class mail, postage prepaid, addressed to the Borrower/Mortgagor at the premises.
- (C) The person giving notice must keep a copy of the notice and proof of service in accordance with this section, by affidavit or other manner recognized by law.

Section 470 Cure of Default (8 PYTC § 4-1-470)

Prior to the entry of a judgment of foreclosure, any Borrower/Mortgagor or a Subordinate Lienholder may cure the default(s) under the Mortgage by making a full payment of the delinquency to the Lender/Mortgagee 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.

Section 480 Judgment and Remedy (8 PYTC § 4-1-480)

An action to foreclose upon a lien upon a Lease under this Subchapter D shall be heard and decided by the Tribal Court in a prompt and reasonable time period not to exceed 60 days from the date of service of the Complaint on the Borrower/Mortgagor. If the alleged default has not been cured at the time of trial and the Tribal Court finds for the Lender/mortgagee, the Tribal Court shall enter judgment:

- (A) Determining the arrearages due under the mortgage, including all Lender/mortgagee's costs, interest and expenses, and foreclosing the interest of the borrower/mortgagor and each other defendant, including any subordinate lien holder(s), in the property subject to the Lease; and
- (B) Granting an option to the Pascua Yaqui Tribe, which may be exercised anytime within 30 days of the service of the Notice of Entry of the Judgment of Foreclosure upon the Tribe's Attorney General's Office, to assume the loan secured by a lien on the Lease, under all of the terms and conditions applicable to the borrower/mortgagor, by curing a non-monetary breach of the covenants of the lease, and/or paying to the Lender/mortgagee, or the Lender/mortgagee's designated agent, the amount of arrearages, costs, interest and expenses determined by the Court under subsection 480(A) above within said 30 days.
 - (1) Said option shall be exercised by the Tribe tendering to the Lender/mortgagee the amount of arrearages, interest and costs determined under Subsection 480(A) by certified funds.
 - (2) Said tender must be made by certified mail, return receipt requested, mailed at any time within said 30 days, or the next business day thereafter if the 30th day is a Saturday, Sunday, Federal Holiday or Tribal Holiday, to the address of the Lender/mortgagee or its attorney of record as shown in the Court's records in the foreclosure action filed pursuant to this Section 480.

- (3) In the event the Tribe exercises the option provided for in this Subsection 480(B) in a timely manner, the Judgment shall provide that title to the Lease shall be awarded to the Pascua Yaqui Tribe as substitute mortgagor/borrower, subject to all the terms and conditions of the Lease and the loan, and that the Lender/mortgagee, or the Lender/mortgagee's designated assignee shall retain the lien on said Lease.
 - (4) In the event the Tribe exercises the option provided for in this Subsection 480(B), the Tribe shall thereafter have the ability to assign the Lease and the obligation under the loan and mortgage secured by the lease to a new borrower/mortgagor meeting Lender/mortgagee's qualifications for other borrowers of an amount of similar size, and the Lender/mortgagee must permit said new borrower/mortgagor to assume said loan and lease pursuant to its terms, giving credit for all payments made by, or credits allowed to, the original mortgagor/borrower or the Tribe. Said assignment shall relieve the Tribe of any further liability on the loan;
- (C) And finally, said Judgment shall provide that if the Tribe does not exercise the option provided for in Subsection 480(B) above, in the manner and within the time limits provided for therein, title to the Lease shall be awarded to the Lender/mortgagee or the Lender/mortgagee's designated assignee on the first business day after the option period provided for in Subsection 480(B) expires without the option having been exercised, subject to the following conditions;
- (1) The Tribe shall have the right of first refusal to match any acceptable offer received by the Lender/mortgagee or the Lender/mortgagee's designated assignee to purchase the Lease.
 - (2) The Lender/mortgagee or Lender/mortgagee's designated assignee may only transfer, sell or assign the Lease in the manner, and according to the terms, permitted in said Lease."

Section 490 Foreclosure Evictions (8 PYTC § 4-1-490)

- (A) The procedures in this section shall apply to all federal loan program participants, and to all mortgage foreclosures with private Lenders, and to the extent these procedures conflict in any way with any other laws of the Pascua Yaqui Tribe, this section will apply.
- (B) Foreclosure evictions shall be handled according to the general eviction process set forth below:
- (1) Jurisdiction. The provisions of this section shall apply to all persons and property subject to the governing authority of the Tribe as established by the Tribal Constitution, Tribal law, or applicable federal law.
 - (2) 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 in 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 Tribal Court;
 - (3) Complaint and Summons. The lender or federal agency (which made, guaranteed or insured the mortgage loan) as appropriate, shall commence an action for unlawful detainer by filing with the Tribal Court, in writing, the following documents:
 - (a) A complaint, signed by the lender or federal agency, or an agent or attorney on their behalf:
 - (i) Citing facts alleging jurisdiction of the Tribal Court;

- (ii) Naming as defendants the mortgagors and any other record owner (including sublessees and subordinate lienholders), of which the complainant has record notice (except the Tribe with respect to a claim for a Tribal tax on the Leasehold Estate subject to the Leasehold Mortgage);
 - (iii) Describing the Leasehold Estate subject to the Leasehold Mortgage;
 - (iv) 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;
 - (v) Stating any claim for damages or compensation due from the persons to be evicted; and
 - (vi) Otherwise satisfying the requirements of the Tribal Court.
 - (b) A copy of the summons, issued in accordance with established Tribal Court rules and procedures, 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 no less than six nor more than 30 days 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.
- (4) Service of Summons and Complaint. A copy of the summons and complaint shall be served upon the defendants in the manner provided by the Tribal Court rules for service of process in civil matters. In the absence of such Tribal Court rules, the summons and complaint shall be served by one of the following two methods.
- (5) Procedures for Service of Notice. Notices required or authorized in the immediately preceding section shall be given in writing either by:
- (a) Delivering a copy personally to the Borrower/Mortgagor or to any other occupant under color of law, or to any adult residing on the Leasehold Estate and, if applicable, to any Sub-lessee; or
 - (b) Posting said notice in a conspicuous place near the entrance to said Leasehold Estate, and sending an additional copy to the Lessee or to any other occupant under color of law, and, if applicable, to the Sub-lessee, by certified mail, return receipt requested, properly addressed, postage paid.
 - (c) Proof of service may be made by affidavit of any adult person stating that he has complied with the requirements of one of the above methods of service.
- (6) Power of the Tribal Court. The Tribal 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; and
 - (b) The Tribal Court shall find during pre-trial proceedings or at trial that the Lessee, Sub-lessee, or other occupant under color of law of the Leasehold Estate subject to the Leasehold Mortgage is guilty of an act of unlawful detainer.

- (7) Upon issuance of an Order of Repossession, the Tribal Court shall have the authority to enter a judgment against the defendants for the following, as appropriate:
- (a) Back rent, unpaid utilities, and any charges due the Tribe, Tribal Housing Department, other public Housing Authority, or Sub-lessor under any sublease or other written agreement (except for a Leasehold Mortgage);
 - (b) Any and all amounts secured by the Leasehold Mortgage that are due the lender (or Federal Agency); and
 - (c) Damages to the property caused by the defendants, other than ordinary wear and tear. The Tribal Court shall have the authority to award to the prevailing party its costs and reasonable attorney's fees in bringing suit.
- (8) Enforcement. Upon issuance of an Order of Repossession by the Tribal Court, Tribal law enforcement officers shall help plaintiffs enforce same by evicting the defendants and their property from the unlawfully occupied Leasehold Estate. In all cases involving the lender or federal agency, the Order of Repossession shall be enforced no later than 45 days after a pre-trial proceeding or trial in which the Tribal Court finds against defendants, subject to subsection (9) below, and provided, that no party exercised the right to cure a default or right of first refusal as described in Sections 470 or 480(B)(I).
- (9) Continuances in Cases Involving the Lender or Federal Agency (which originally made, insured or guaranteed the mortgage loan). 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 45 days after a pre-trial proceeding or trial in which the Tribal Court finds against defendants, except in the case of an actual emergency, and then for a period not to exceed 10 court days."

Section 500 No Merger of Estates (8 PYTC § 4-1-500)

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 Tribal Court, or by operation' of law, except as such merger may arise upon satisfaction of the Leasehold/Mortgage.

Section 510 Certified Mailing to Tribe (8 PYTC § 4-1-510)

In any foreclosure proceedings on a Leasehold Mortgage where the Tribe is not named as a defendant, a copy of the summons and complaint shall be mailed to the Tribe by certified mail, return receipt requested, within five days after the issuance of the summons. If the lessor is not the tribe, this notice will also be mailed to the lessor at the same time the notice is mailed to the tribe. 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 Bureau of Indian Affairs.

Section 520 Intervention (8 PYTC § 4-1-520)

The Tribe or any Lessor may petition the Tribal Court to intervene in any Lease or Leasehold Mortgage foreclosure proceeding under this chapter. Neither the filing of a petition for intervention by the Tribe, nor the granting of such petition by the Tribal Court shall operate as a waiver of the sovereign immunity of the Tribe, except as may be expressly authorized by the Tribe.

Section 530 Appeals (8 PYTC § 4-1-530)

Appeals under this section shall be handled in accordance with the Pascua Yaqui Tribe Rules of Appellate Procedure."

SUBCHAPTER E

SPECIAL LAND ASSIGNMENTS

Section 540 Purpose and Intent (8 PYT § 4-1-540)

The Pascua Yaqui Tribe recognizes and acknowledges the valuable contributions made by the original families, tribal members who settled the original 202 acres prior to the Federal recognition of the Pascua Yaqui Tribe and the establishment of the Pascua Yaqui Reservation (e.g. “Pascua Pueblo”), through their participation in tribal ceremonies and efforts to preserve the culture, language and ceremonies of the Yaqui tribe. In recognition of their contributions to the Yaqui people, the Pascua Yaqui Tribe makes Special Land Assignments available for the original families and their descendants. It is the purpose of this subchapter to provide a procedural means for the original families and their descendants to apply for and receive such assignments.

Section 550 Definitions (8 PYT § 4-1-550)

- (A) All terms shall have the same meanings as defined in Section 70 of this Chapter 4-1, except the following terms have the meanings as defined herein:
- (1) “202 Acres” shall mean the lands described in 78 Stat. 1197 (1964), and placed into trust status by 92 Stat. 712 (1978). These lands are the original 202 acres conveyed to the Pascua Yaqui Association, then conveyed to the United States by the Association to establish the Pascua Yaqui Reservation.
 - (2) “Department” means the Pascua Yaqui Land Department.
 - (3) “Original Families” means tribal members who settled the original 202 acres prior to the Federal recognition of the Pascua Yaqui Tribe and the establishment of the Pascua Yaqui Reservation (e.g. “Pascua Pueblo”),
 - (4) “Special Land Assignment” means a land assignment within the 202 acres issued pursuant to this subchapter.

Section 560 Areas Affected (8 PYT § 4-1-560)

The Special Land Assignment shall be limited to unassigned vacant residential parcels located within the original “202 acres” of the Pascua Yaqui Reservation.

Section 570 Eligibility (8 PYT § 4-1-570)

- (A) The eligibility for a special land assignment is limited to tribal members who are members of the original families and their descendants.
- (B) Cultural participation by the applicant or by the applicant’s original family member or original family member’s descendants shall be a favorable factor in granting a special land assignment.
- (C) The applicant must meet the eligibility criteria set forth in Sections 110 and 120 of this Chapter 4-1.
- (D) First time home owners will be prioritized for special land assignments.
- (E) The applicant must obtain a homebuyer certificate prior to applying for the special assignment.
- (F) The applicant must be pre-qualified for a residential building construction loan for an amount set by the Department at the time of the filing of the application. The applicant must provide proof of his or her pre-qualified loan approval.

Section 580 Application Procedure (8 PYT § 4-1-580)

- (A) An eligible applicant must apply for the special land assignment with the Pascua Yaqui Land Department.
- (B) The Pascua Yaqui Land Department will provide application forms to applicants and when an application is completed, it shall be filed the Department. The Department will date stamp the application with the filing date on the front page of the application.
- (C) Within thirty (30) days of the filing of an application, the Department shall complete its verification for the applicant's eligibility.
- (E) If the applicant is eligible, the Department will identify a potential lot, if any, for assignment.
- (F) After the applicant agrees to the lot, the Department will make a recommendation to the Pascua Yaqui Tribe to assign the lot as a Special Land Assignment.

Section 590 Application Deadline. (8 PYT § 4-1-590)

- (A) Applications for a Special Land Assignment will be accepted by the Land Department through May 29, 2020.
- (B) After the May 29, 2020 deadline, no further applications for special land assignment will be accepted unless this Ordinance is amended.
- (C) This subchapter shall not affect the acceptance of applications for land assignments submitted under other subchapters of this Chapter.

Section 600 Publication of Application Deadline (8 PYT § 4-1-600)

- (A) The Land Department shall mail a notice of the May 29, 2020 Application Deadline to the last known address on tribal membership records maintained by the Enrollment Department to any original family member and their immediate descendants.
- (B) The Land Department shall also publish a notice of the May 29, 2020 Application Deadline in a newspaper of general circulation in Pima, Pinal and Maricopa counties for a period of once a week for 4 successive weeks after the effective date of this subchapter.
- (C) Notice of the May 29, 2020 Application Deadline shall be physically posted at the tribal administration, Department of Housing, and the Tribal Courts.

Section 610 Priority (8 PYT § 4-1-620)

Waiting List

- (A) Priority. All timely submitted applications shall be considered in the order of their filing date.
- (B) Waiting List. After the deadline in Section 580 passes, if there are pending applications without special land assignments, and land lots within the original 202 acres remain available, the Land Department shall maintain a waiting list and continue to process those applications until either there are no more available special land assignments or all applicants on the list have been either granted or denied a special assignment. The waiting list will be prioritized in the order of the application filing date.
- (D) Council Approval. The Department is authorized to recommend to the Council applicants for special land assignments from this waiting list until all applicants have been issued or denied a special assignment.

(E) Withdrawal. An applicant may, at any time, withdraw their application from consideration.

Section 620 Special Conditions (8 PYT § 4-1-620)

- (A) Upon the issuance of a Special Land Assignment pursuant to this subchapter, the following conditions apply to the assignment:
- (1) The applicant shall qualify for and obtain a construction loan for a residence on the approved parcel within one year of the assignment. The failure to obtain a loan within the one year will result in the automatic revocation of the assignment.
 - (2) The applicant will also be required to substantially complete construction of a residence on the approved parcel within two (2) years of the assignment. The failure to substantially complete construction within two years will result in the revocation of the assignment. The Department may extend upon request the two year period for an additional year if construction has begun and can be completed within the extended period.
 - (3) Revoked land assignments pursuant to this section are subject to reassignment by the Land Department.
 - (4) A special land assignment cannot be transferred prior to the construction of a home without Tribal Council approval.

Section 630 Effective Date (8 PYT § 4-1-630)

- (A) The provisions of this subchapter shall take effect upon the enactment of the ordinance adding this subchapter to the Pascua Yaqui Tribal Code. All applications filed after the effective date of this subchapter for special assignments shall be governed by the provisions of this subchapter.
- (B) Applications for Special Land Assignment received by the Land Department prior to the enactment of this subchapter will be processed under the existing Land Code Policies and Procedures authorized by Resolution No. C06-246-05.

SUBCHAPTER F REPEAL

Section 640 Repeal (8 PYTC § 4-1-640)

This chapter and all other rules, regulations, and provisions adopted in pursuance hereof shall supersede any other acts, codes, ordinances, rules, regulations, provisions or parts of acts, codes, ordinances, rules, regulations, or provisions dealing with subjects covered in this ordinance, and any such acts, codes, ordinances, rules, regulations, provisions or parts of acts, codes, ordinances, rules, regulations or provisions are hereby repealed.

DISPOSITION TABLE

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Section 1419	Section 200
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Section 1512-1513	Section 420
NEW	Section 421
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Former Section	New Section
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Section 1520	Section 480
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