



TO: Legislative Operating Committee (LOC)
FROM: Krystal L. John, Staff Attorney
DATE: July 20, 2016
RE: Mortgage and Foreclosure Law: Public Meeting Comment Review

On June 16, 2016, a public meeting was held regarding a new Mortgage and Foreclosure law, which would:

- Contain the minimum framework for the Nation's mortgage programs and foreclosure process;
- Delegate joint rulemaking authority to Division of Land Management and the Land Commission to develop rules that may contain more detailed requirements;
- Require that at least one Tribal member must be included on a mortgage application;
- Allow non-tribal member spouses to remain in the mortgaged property in the event of death or divorce of the Tribal member;
- Allow mortgagors in default an opportunity to enter into an agreement to cure default prior to foreclosure at the discretion of the Division of Land Management;
- Require an order to vacate once a judgment to foreclose has been issued by the Judiciary;
- Provide the mortgagor has a 6 month redemption period if the home was occupied prior to the judgment to foreclose, or 5 weeks if the home was abandoned prior to the judgment to foreclose. The mortgagor may redeem the mortgage by paying the full amount of the mortgage and any related fees. If this occurs, the Judiciary will vacate the order to foreclose;
- Prohibit the Nation from reselling the foreclosed property until after the redemption period has lapsed and all appeals have been exhausted; and
- Transfer hearing body authority regarding foreclosure judgments from the Land Commission to the Judiciary.

This memorandum is submitted as a review of the oral comments received during the public meeting process; there were not any written comments received within the public comment period. The public meeting draft with comments is attached for your review.

Comment 1 – Mortgage Satisfaction/Agreement to Cure Default Prior to Judgment of Foreclosure

64.7-2. Mortgage Satisfaction or Agreement to Cure Default Prior to Judgment of Foreclosure.
If the mortgagor satisfies the mortgage that is the subject of a foreclosure complaint or the parties

reach an agreement to cure default prior to the Judiciary's entering of a judgment of foreclosure, the Judiciary shall dismiss the foreclosure complaint.

Leyne Orosco: My name is Leyne Orosco. I have only one question and that is on line 206 of the document. Where it reads:

64.7-2. Mortgage Satisfaction or Agreement to Cure Default Prior to Judgment of Foreclosure. If the mortgagor satisfies the mortgage that is the subject of a foreclosure complaint or the parties reach an agreement to cure default prior to the Judiciary's entering of a judgment of foreclosure, the Judiciary shall dismiss the foreclosure complaint.

Shouldn't that be the Nation would request a dismissal? I think that is just the language. I understand what it is standing there saying but without something from the petitioner or the respondent the Judiciary will not dismiss anything. So that statement where the "Judiciary shall dismiss the foreclosure complaint" I think shall read in there the Nation will submit a motion to dismiss or something to that effect.

Response

The commenter is correct that absent a request for dismissal from one of the parties, the Judiciary would not initiate a dismissal itself. However, the language the commenter is requesting is already included in subsections (a) and (b) which further detailed the process and read as follows, the highlighted portions speak directly to the commenter's concerns:

(a) *Mortgage Satisfaction.* A mortgagor named in a foreclosure complaint may satisfy the subject mortgage at any time prior to the Judiciary's entering of a judgment of foreclosure. Under such circumstances, the mortgagor shall submit to the Judiciary proof of payment in full of the mortgage principal, any interest owed and any court costs incurred by the Nation. Upon receipt of verified proof of satisfaction, the Judiciary shall dismiss the foreclosure complaint based on satisfaction of the mortgage.

(b) *Agreement to Cure Default.* Should the Nation and the mortgagor reach an agreement to cure default in accordance with section 64.6 after foreclosure proceedings have been initiated, which may include provisions requiring the mortgagor to reimburse the Nation for any court costs incurred, the mortgagor shall submit to the Judiciary a copy of the executed agreement to cure default. Upon receipt of an executed agreement to cure default, the Judiciary shall dismiss the foreclosure complaint without prejudice based on the agreement to cure default.