

## Ordinance 01-95

An ordinance establishing procedures to secure loans made by the Department of Veterans Affairs under the Native American Veteran Direct Loan Program.

The District I Representative introduced the following bill on the 4th day of October, 1994.

### Preamble

The purpose of this act is to promote the general welfare of the Band by allowing for or increase in available housing. This act is intended to aid Mille Lacs Band Veterans in processing financing for the construction or purchase of single family residences on Trust lands withing the jurisdiction of the Non-Removable Mille Lacs Band of Ojibwe Indans.

### Title I

**Section 1. Finding and Determinations.** The Band Assembly hereby finds and determines that there is a history of inadequate housing for Band members and that adequate housing and related services are vital to the health and well being of all members of the Band.

**Section 1.01** The Band Assembly hereby finds and determines that our Armed Service veterans made great sacrifices for our country, their communities and their families and are a valuable resources to the Band and that our Veterans should have adequate housing and related services made available to them.

**Section 1.02** This act prescribes procedures for the recording, priority and foreclosure of leasehold mortgages given to secure loans made by the United States Department of Veterans Affairs under the Native American Veterans Direct Loan Program under Title 38 U.S.C. 3761 et. seq.

**Section 1.03.** Lease shall mean the lease of trust property for which a Leasehold Mortgage, as defined in this document, has or will be given.

**Section 1.04.** Leasehold Mortgage shall mean the mortgage of a lease of trust property given to secure a loan made under the VA Native American Direct Loan Program and 38 U.S.C. e 3761 et. seq.

**Section 1.05.** Leasehold Mortgage Foreclosure Proceeding shall mean a proceeding in the Court of Central Jurisdiction:

**Section 1.051.** To foreclose the interest of the Mortgagor(s), and each person or entity claiming through the Mortgagor(s), in a Lease for which a Mortgage has been given under the VA Native American Direct Loan Program and 38 U.S.C. e 3761 et. seq.; and

**Section 1.052.** To assign such Lease to the Secretary or the Secretary's assignee.

- Section 1.06.** Lessor shall mean the beneficial or equitable owner of trust or otherwise restricted property under a Lease for which a Mortgage, as defined in this document, has been given, or the heir(s), successor(s), executor(s), administrator(s), or assign(s) of such Lessor.
- Section 1.07.** Mortgagor shall mean any Mille Lacs Band member who has executed a Leasehold Mortgage as defined in this document, or any member heir(s), successor(s), executor(s), administrator(s) or assign(s) of the Mille Lacs Band or any member.
- Section 1.08.** Mortgagee shall mean the mortgagee under any Leasehold Mortgage as defined in this document or the successor(s) in interest of any such mortgagee, including the Secretary as defined in this document, or the Secretary's assignee under any such mortgage.
- Section 1.09.** Nuisance shall mean the maintenance on real property of a condition which:
- Section 1.091.** Unreasonably threatens the health or safety of the public or neighboring land users; or
- Section 1.092.** Unreasonably and substantially interferes with the ability of neighboring property users to enjoy the reasonable use and occupancy of their property.
- Section 1.10.** Secretary shall mean the Secretary of the United States Department of Veterans Affairs (VA) or designee.
- Section 1.11.** Subordinate Lienholder shall mean the holder of any lien, including a subsequent mortgage, perfected subsequent to the recording of a Leasehold Mortgage under this document (except the Mille Lacs Band with respect to a claim for a tribal leasehold tax).
- Section 1.12.** Tenant shall mean any person who occupies real property under a lease, rental agreement or other agreement with a lessor as defined in this document.
- Section 1.13.** Tribal Court shall mean the Court of Central Jurisdiction as established by the laws of Mille Lacs Band of Ojibwe to exercise the powers and functions of a court of law.
- Section 1.14.** Recording Clerk shall mean the person designated by the Mille Lacs Band to perform the recording functions required by this document or any deputy or designee of such person.
- Section 1.15.** Band shall refer to the Non-Removable Mille Lacs Band of the Mille Lacs Indian Reservation as defined in the Minnesota Chippewa Tribal Constitution and the statutes of the Non-Removable Mille Lacs Band.
- Section 1.16.** Unlawful Detainer Action shall be a suit brought before the Court of Central Jurisdiction to terminate a tenant's interest in real property and/or to evict any person from occupancy of real property.
- Section 1.17.** Waste is spoil or destruction by a tenant of land, buildings, gardens, trees or other improvements which result in substantial injury to the lessor's interest in the property.
- Section 1.18.** Writ of Restitution is an order of the Tribal Court:
- Section 1.181.** Restoring an owner or lessor or the Secretary to possession of real property and,
- Section 1.182.** Evicting a tenant or other occupant therefrom.

**Section 2. PRIORITY.** A Leasehold Mortgage recorded in accordance with the recording procedures set

forth in this Title shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim excepting a lien or claim arising from a tribal leasehold tax assessed after the recording of the mortgage. Nothing in this document shall prevent any person or entity from recording a Leasehold Mortgage in accordance with State law or from filing a Leasehold Mortgage with the Bureau of Indian Affairs.

**Section 3. RECORDING.** The Band Recording Clerk shall maintain in the Department of Natural Resources Real Estate Division a system for the recording of leasehold Mortgages and such other documents as the Band may designate by law or resolution.

**Section 3.01.** The Band Recording Clerk shall endorse upon any Leasehold Mortgage or other document received for recording:

**Section 3.011.** The date and time of receipt of the Leasehold Mortgage or other document; and

**Section 3.012.** The filing number, to be assigned by the Recording Clerk, which shall be a unique number for each Leasehold Mortgage or other document received; and

**Section 3.013.** The name of the Band Recording Clerk receiving the Leasehold Mortgage or document.

**Section 3.02.** Upon completion of the above endorsements, the Tribal Recording Clerk shall make a true and correct copy of the Leasehold Mortgage or other document and shall certify the copy as follows:

MILLE LACS BAND OF OJIBWE )

)ss.

MILLE LACS RESERVATION )

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

\_\_\_\_\_  
Title

**Section 3.03.** The Band Recording Clerk shall maintain the copy in the records of the recording system and shall return the original of the Leasehold Mortgage or other document to the person or entity that presented the same for recording.

**Section 3.04.** The Band Recording Clerk shall also maintain a log of each Leasehold Mortgage or other document recorded in which there shall be entered:

**Section 3.041.** The name(s) of the Mortgagor(s) of each Leasehold Mortgage, identified as such;

**Section 3.042.** The name(s) of the Mortgagee(s) of each Leasehold Mortgage, identified as such;

**Section 3.043.** The name(s) of the grantor(s), grantee(s), or other designation of each party named in any other documents;

**Section 3.044.** The date and time of receipt;

**Section 3.045.** The filing number assigned by the Band Recording Clerk; and

**Section 3.046.** The name of the Band Recording Clerk receiving the Leasehold Mortgage or document.

**Section 3.05.** The certified copies of the Leasehold Mortgages and other documents and the log maintained by the Tribal Recording Clerk shall be made available for public inspection and copying.

**Section 4. LEASEHOLD MORTGAGE FORECLOSURE PROCEEDINGS.** Upon the default of the Mortgagor(s) under a Leasehold Mortgage, the Secretary may commence a Leasehold Mortgage foreclosure proceeding in the Tribal Court by filing:

**Section 4.01.** A verified complaint:

**Section 4.011.** Naming the Mortgagee(s) and each person or entity claiming through the Mortgage(s) subsequent to the recording of the Leasehold Mortgage, including each Subordinate Lienholder (except the Band with respect to a claim for a tribal leasehold tax), as a defendant;

**Section 4.012.** Describing the property;

**Section 4.013.** Stating the facts concerning the execution of the Lease and the Leasehold Mortgage; the facts concerning the recording of the Leasehold Mortgage; the facts concerning the alleged default(s) of the Mortgagor(s); and such other facts as may be necessary to constitute a cause of action;

**Section 4.014.** Having appended as exhibits true and correct copies of each promissory note, Lease, Leasehold Mortgage, or assignment thereof relating to the property; and

**Section 4.015.** Including an allegation that all relevant requirements and conditions prescribed in (i) title 38 U.S.C. e 3761 et. seq., (ii) the regulations promulgated thereunder by the Secretary, and (iii) the provisions of the Lease, have been complied with by the Secretary.

**Section 4.016.** A summons, issued as in other cases, requiring the Mortgagor(s) and each other defendant to appear for a trial upon the complaint on a date and time specified in the summons.

**Section 5. SERVICE OF PROCESS AND PROCEDURES.** The laws of the Band governing service of process and all other matters relating to the conduct of Court of Central Jurisdiction proceedings shall apply to any Leasehold Mortgage Foreclosure Proceeding pursuant to this Statute.

**Section 6. CURE OF DEFAULT BY SUBORDINATE LIENHOLDER.** Prior to the entry of a judgment of foreclosure, any Mortgagor or any Subordinate Lienholder may cure the default(s) under the Leasehold Mortgage. Any Subordinate Lienholder who has cured a default shall thereafter have included in its lien the amount of 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 Leasehold Mortgage.

**Section 7. POWER OF THE COURT OF CENTRAL JURISDICTION.** If the alleged default(s) have not been cured, and if the Court should find for the Secretary, the Court of Central Jurisdiction shall enter judgment:

**Section 7.01.** Foreclosing the interest in the Lease of the Mortgagor(s) and each other defendant named

in the complaint upon whom proper and timely service has been made, including each such Subordinate Lienholder; and

**Section 7.02.** Assigning such Lease to the Secretary or the Secretary's assignee.

**Section 8. EVICTION PROCEDURES / JURISDICTION.** The provisions of this section shall apply to all persons and property subject to the governing authority of the Mille Lacs Band as established by the laws of the Non-Removable Mille Lacs Band.

**Section 8.01. UNLAWFUL DETAINER.** A tenant or other occupier of land shall be guilty of unlawful detainer if such person shall continue in occupancy of real property under any of the following situations:

**Section 8.011.** Without the requirement of any notice:

**Section 8.0111.** After the expiration of the term of the lease or other agreement; or

**Section 8.0112.** If such person has entered onto or remains on the real property of another without the permission of the owner and without having any substantial claim of a lease or title of the property; or

**Section 8.0113.** After the Mille Lacs Housing Authority has terminated such person's tenancy pursuant to procedures providing such person a hearing before the Housing Authority involved; or

**Section 8.0114.** After the interest of such person in a lease has been foreclosed in a leasehold mortgage foreclosure proceeding in the Tribal Court.

**Section 8.02.** After having received 30 days' notice, the tenant or occupier shall remain in possession of the property contrary to the terms of the notice as follows:

**Section 8.021.** When such person has received notice:

**Section 8.0211.** That he or she is in default in the payment of rent; and

**Section 8.0212.** Requiring him or her, to either pay the rent or surrender possession of the occupied property; and such person has remained in possession after receipt of such notice without either surrendering possession of the property or paying the rent; or

**Section 8.03.** When the lease of the property is for an indefinite time, with rent to be paid monthly or by some other period, and the lessor has given notice of termination of the tenancy at least 30 days prior to the end of such month or period; or

**Section 8.04.** When such person shall continue to fail to keep or perform any condition or covenant of the lease or agreement under which the property is held after he has been given notice to surrender the property; or

**Section 8.05.** When such person continues to commit or to permit waste upon or maintain a nuisance upon the occupied property after having been given notice, to either cease such waste or maintenance of nuisance or to surrender the property.

**Section 9. PROCEDURES FOR SERVICE OF NOTICE.** Notices required or authorized in the immediately preceding section shall be given in writing by either:

**Section 9.01.** Delivering a copy personally to the tenant or occupier or to any adult members of his or her family residing on the premises; or

**Section 9.02.** Posting said notice in a conspicuous place near the entrance to said premises, and by

sending an additional copy to the tenant or occupier by certified mail, return receipt requested, properly addressed, postage prepaid.

**Section 9.03.** Proof of service by either of the above methods may be made by affidavit of any adult person stating that he or she has complied fully with the requirements of either of these two methods of service.

**Section 10.** **COMPLAINT AND SUMMONS.** The owner of real property or lessor or Secretary shall commence an action for unlawful detainer by filing with the Court, in writing, the following documents:

**Section 10.01.**A complaint, signed by the owner, lessor, the Secretary, an agent, or attorney, stating:

**Section 10.011.**The facts on which he or she seeks to recover,

**Section 10.012.**Describing the property so that it can be identified with reasonable certainty; and

**Section 10.013.**Any claims for damages or compensation due from the persons to be evicted;

**Section 10.02.**A summons, issued as in other cases, requiring the defendants to appear for trial upon the complaint on a date and time specified in the summons. The trial date specified in the summons shall not be less than 20 nor more than 30 days from the date of service of the summons and complaint. The summons must notify the defendants that judgment will be taken against them in accordance with the terms of the complaint unless they file with the court an answer and appear for trial at the time, date and place specified in the summons.

**Section 11.** **SERVICE OF SUMMONS AND COMPLAINT.** A copy of the summons and complaint shall be served upon the defendants in the manner provided by the Mille Lacs Band Statute for service of process in civil matters.

**Section 12.** **POWER OF THE COURT OF CENTRAL JURISDICTION.** The Court of Central Jurisdiction shall enter a Writ of Restitution if:

**Section 12.01** Notice of suit and trial is given by service of summons and complaint in accordance with the procedures provided in this document; and

**Section 12.02.**The Court of Central Jurisdiction shall find that the occupier of the real property is guilty of an act of unlawful detainer.

**Section 12.021.**Upon issuance of a Writ of Restitution, the Court of Central Jurisdiction shall have the authority to enter against the defendants a judgment for the following: back rent, unpaid utilities, charges due the Band, Indian Housing Authority, or land owner under any lease or occupancy agreement (not including a leasehold mortgage); and for damages caused by the defendants to the property other than ordinary wear and tear. The Court of Central Jurisdiction shall have the authority to award to the prevailing party his costs and reasonable attorney's fees in bringing suit.

**Section 13.** **CONTINUANCE IN CASES INVOLVING THE SECRETARY.** Except by

agreement of all parties, there shall be no continuances in the cases involving the Secretary which will interfere with the requirement that the Writ of Restitution in a case involving the Secretary be enforced not later than 60 days from the date of service of the summons and complaint.

**Section 14. ENFORCEMENT.** Upon issuance of a Writ of Restitution by the Court of Central Jurisdiction law enforcement officers shall enforce the Writ of Restitution by evicting the defendants and their property from the premises which are unlawfully occupied. In all cases involving the Secretary, the Writ of Restitution shall be enforced not later than 60 days after the date of service of the summons and complaint.

**Section 15. Reservation of Right.** The Band Assembly hereby fully reserves the right to alter, amend or repeal the provisions of the Chapter, and all rights and privileges granted or extended thereunder shall be subject to such right.

**Section 16. Sovereign Immunity.** Nothing contained herein shall be construed as a waiver of sovereign immunity by the Mille Lacs Band of Ojibwe.

**Section 17. Severability.** The Solicitor General or exterior legal counsel and the Court of Central Jurisdiction whichever is applicable, shall liberally construe the provisions of this Act so as to provide for the full force and effect of the purposes therein stated.

**Section 17.01** If any provisions of the Band Statute, or the application thereof, to any person, business corporation or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Band Statute which can be given effect without the invalid, the invalidity shall not affect other provisions or applications of this Band Statute which can be given effect without the invalid provisions or application and to this end, the provisions of this Band Statute are declared severable.

**Section 18. Public Policy of the Band.** Any provisions, whether oral or written, of any lease or other agreement whereby any provisions of this Statute is waived by a tenant is contrary to public policy and void.

**Section 19. Purpose to Provide Additional Remedies.** The purpose of this law is to provide remedies for the Veterans Affairs Loan Program and nothing herein contained shall alter the ultimate financial liability of the owner of tenant for repairs or maintenance of any building located on lands under the jurisdiction of the Band.

**Ordinance 01-95**

Introduced to the Band Assembly on this fourth day of October in the year one thousand nine hundred ninety four.

Passed by the Band Assembly on this fourth day of October in the year one thousand nine hundred ninety four.

  
David Matrious, Speaker of Assembly

APPROVED  
DATE: 10/7/94

  
Marge Anderson, Chief Executive

FILED  
DATE: 10/7/94

  
James Genia, Solicitor General

OFFICIAL SEAL OF THE BAND