BIA Disclosure Statement

***Important Information Regarding Default on Payments under Mortgages of Trust Lands***

***(Please initial at the bottom of this page that you have read and understand this page.)***

*You are advised that in the event that you default on payments, the bank or other lending institution which holds a mortgage may foreclose on the trust lands. Foreclosure is a legal action in which a mortgaged property is sold to satisfy the debt.*

*Specifically, 25 U.S.C. Section §5135 (formerly 25 U.S.C. §483a) the federal law provides:*

1. *Foreclosure or sale of land*

*The individual Indian owners of any land which either is held for the United States in trust for them or is subject to a restricted status against alienation imposed by the United States are authorized, subject to approval by the Secretary of the Interior, to execute mortgage or deed of trust to such land. Such land shall be subject to foreclosure or sale pursuant to the terms of such mortgage or deed of trust in accordance with the laws of the tribe which has jurisdiction over such land or, in the case where no tribal foreclosure law exists, in accordance with the laws of the State or Territory in which the land is located. For the purpose of any foreclosure or sale proceeding, the Indian owners shall be regarded as vested with unrestricted fee simple title to the land, the United States shall not be a necessary party to the proceeding, and any conveyance of the land pursuant to the proceeding shall divest the United States of title to the land. All mortgages and deeds of trust to such land heretofore approved by the Secretary of the Interior are ratified and confirmed.*

1. *Prohibition; removal from trust or restricted status; application to Secretary*

*In the event such land is acquired by an Indian tribe, such land shall not be removed from trust or restricted status except upon application to the Secretary under existing law.*

*Under the terms of the statute, trust land may be treated as non-Indian land for purposes of foreclosure. As a result, after foreclosure the land will no longer belong to the Indian owner, and will lose its trust or restricted status. The BIA will cease administrative responsibility over the land, unless the property is purchased by another Indian or tribe. Please note that the statute provides that the United States (and therefore, the BIA) does not have to be made a part of a foreclosure action and cannot defend the interest of the Indian landowner. Indian landowners are responsible for making payments under the mortgage, and upon default, the Indian landowner is responsible for any legal expenses and other costs which are incurred in a foreclosure action.*

*This does not mean that once trust lands are mortgaged, the BIA no longer has responsibilities for the property. During the term of the mortgage, the lands continue in trust or restricted status.*

***Initials: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_***

***Information Sheet: Mortgages on Trust Properties***

*Under the 25 U.S.C. §5135 (former 25 U.S.C. §483a) and 25 C.F.R. 152.34 Indian landowners may mortgage their trust lands with a bank, savings and loan institution, or other recognized lender, with the approval of the BIA. This permits Indian landowners to borrow money in the form of a loan. These loans can be used for home purchases, home improvements, businesses or other purpose.* ***If the landowner is refinancing, an original or certified copy of the release documents must be forwarded to BIA Land Titles and Records Office (LTRO) for recording to expire previous mortgage liens.*** *The BIA has trust responsibility for the land in other matters and the lands during this period.*

*Lands that are owned in undivided fractionated interest or subject to a life estate will not be approved unless consents are obtained. The applicant must be of legal age to apply for a BIA approved mortgage. The BIA does not provide commercial abstracts but will provide a Title Status Report (TSR). The TSR is a title evidence report maintained by the LTRO, and will list any encumbrances on title, as well as current landowners.*

*The borrower should request a* ***Certified TSR*** *and the legal description from the Realty office at the Agency (or Tribal office, if applicable). After the applicant is pre-approved by a lender and the loan terms are worked out, the lender will send a copy of their application and the commitment letter to the Agency Realty office. The application is reviewed to see if the loan is in the best interest of the landowner.*

*If the landowner becomes delinquent and the lender forecloses, the lender is required to notify all interested parties. The lender can file suit and proceed with the action under state law. The BIA should be notified for title purposes but cannot intervene. Foreclosure removes trust status and vests fee title in the lender. When a mortgage is foreclosed upon, the BIA will release the property from its records with the receipt of proper documentation. Landowners are responsible for making their own payments, for their own legal expenses, and for protecting their property rights.*

*An application may be disapproved, and the applicant may appeal the decision within 30 days of the disapproval date under 43 CFR Part 4.*