



**PUEBLO OF LAGUNA COUNCIL**

**Resolution No. 76-14**

**Re: Enacting Pueblo of Laguna Code Concerning Mortgages, Foreclosures, and Evictions**

At a duly called meeting of the Pueblo of Laguna Council held on the 26th day of September, 2014, the following resolution was adopted:

**WHEREAS**, the Pueblo of Laguna (“Pueblo”) is a federally recognized Indian Tribe with all the inherent sovereign governing powers; and

**WHEREAS**, Article IV, Section 2 (e) of the Pueblo of Laguna Constitution provides that the Pueblo of Laguna Council is the governing body of the Pueblo, with the authority to establish and enact ordinances governing the conduct and civil relations of residents of the Pueblo; and

**WHEREAS**, Article IV, Section 2 (g) of the Pueblo of Laguna Constitution provides that the Pueblo of Laguna Council has the authority “to regulate trade, inheritance, land holdings and use, and private dealings in land among members and other persons or entities regarding or engaged in an activity on the lands of the Pueblo subject to Article IX of this Constitution;” and

**WHEREAS**, Article IV, Section 2 (k) of the Pueblo of Laguna Constitution provides that the Pueblo of Laguna Council has the authority “to promote and protect the public health and the welfare of the members and other residents of the Pueblo...;” and

**WHEREAS**, Article IV, Section 2 (v) of the Pueblo of Laguna Constitution provides that the Pueblo of Laguna Council has the authority to “exercise all inherent power of the Pueblo of Laguna not expressly excluded from its authority by Federal Law;” and

**WHEREAS**, there is a housing shortage on the Pueblo’s lands, and many Pueblo members with housing desire to improve their homes; and

**WHEREAS**, due to the misunderstandings about Pueblo law and the lack of legal infrastructure necessary to record and enforce mortgages on the Pueblo’s lands, banks and mortgage financing institutions have been unwilling to lend to (i) Pueblo members to construct, reconstruct, renovate, or purchase Residential Units; (ii) Pueblo members to establish agricultural ventures; and (iii) Pueblo members, Pueblo enterprises, and other entities to establish business ventures on the Pueblo’s lands; and

**WHEREAS**, the Pueblo wishes to assist members of the Pueblo and others providing

valuable community development functions on the Pueblo with obtaining financing for (i) the construction, reconstruction, renovation, or purchase of Residential Units, (ii) agricultural ventures, and (iii) business ventures, on Pueblo lands; and

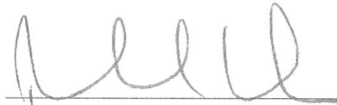
**WHEREAS**, the Pueblo desires to establish the legal framework to allow Pueblo members, Pueblo enterprises, and other entities wishing to establish enterprises on the Pueblo of Laguna's lands, to secure mortgages on leasehold estates and to provide for proper recordation of encumbrances on leasehold estates, procedures for foreclosing and reselling mortgages, and orderly eviction procedures; and

**WHEREAS**, the purpose of Mortgage, Foreclosure and Eviction Code is to assist members and enterprises of the Pueblo of Laguna, and other entities wishing to establish enterprises on the Pueblo of Laguna's lands, with obtaining mortgage financing for: (i) construction, reconstruction, renovation, or purchase of Residential Units; (ii) agricultural ventures; and (iii) business ventures, on certain leasehold estates; and

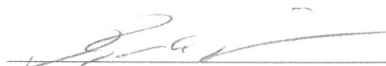
**WHEREAS**, the attached Mortgage, Foreclosure and Eviction Code prescribes procedures relating to recording, record keeping, foreclosure, and evictions;

**NOW, THEREFORE, BE IT RESOLVED**, that Council hereby repeals Title VIII, Chapter 1, "Landlords-Tenants," and Chapter 2, "Leasehold Mortgaging," of the current Pueblo of Laguna Law and Order Code, and replaces it with the attached Mortgage, Foreclosure and Eviction Code as Pueblo of Laguna law. Such law shall be incorporated into the Pueblo of Laguna Law and Order Code as Title VIII, Chapter 1, with the title, "Mortgage, Foreclosure and Eviction Code." Such law is incorporated herein and made a part of this resolution.

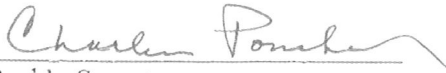
**BE IT FURTHER RESOLVED** that the Pueblo Council hereby directs that the date of this Resolution shall be the effective date of the Pueblo of Laguna Mortgage, Foreclosure and Eviction Code.

  
\_\_\_\_\_  
Governor

  
\_\_\_\_\_  
Council Member

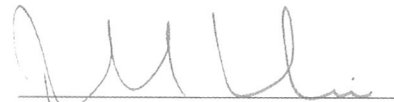
  
\_\_\_\_\_  
Council Member

**ATTEST:**

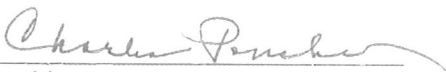
  
Pueblo Secretary

**CERTIFICATION**

The foregoing resolution was enacted upon by the Pueblo of Laguna Council on the 26th day of September, 2014, by a vote of 12 for and 7 opposed, at a duly called meeting at which a quorum of the Council was present.

  
Governor

**ATTEST:**

  
Pueblo Secretary

**PUEBLO OF LAGUNA**  
**CODE CONCERNING MORTGAGES, FORECLOSURE, AND EVICTIONS**

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## **I. SHORT TITLE**

This Code shall be known as the “Mortgage, Foreclosure and Eviction Code.”

## **II. FINDINGS**

1. The Pueblo of Laguna finds that:

- (a) there is a housing shortage on the Pueblo’s lands, and many Pueblo members with housing desire to improve their homes;
- (b) due to the misunderstandings about tribal law and the lack of legal infrastructure necessary to record and enforce mortgages on the Pueblo’s lands, banks and mortgage financing institutions have been unwilling to lend to (i) Pueblo members to construct, reconstruct, renovate, or purchase Residential Units; (ii) Pueblo members to establish agricultural ventures; and (iii) Pueblo members, Pueblo enterprises, and other entities to establish business ventures on the Pueblo’s lands;
- (c) the Pueblo wishes to assist members of the Pueblo and others providing valuable community development functions on the Pueblo with obtaining financing for (i) the construction, reconstruction, renovation, or purchase of Residential Units, (ii) agricultural ventures, and (iii) business ventures, on Pueblo lands; and
- (d) the Pueblo desires to establish the legal framework to allow Pueblo members, Pueblo enterprises, and other entities wishing to establish enterprises on the Pueblo of Laguna’s lands, to secure mortgages on leasehold estates and to provide for proper recordation of encumbrances on leasehold estates, procedures for foreclosing and reselling mortgages, and orderly eviction procedures.

## **III. PURPOSE**

The purpose of this chapter is to assist members and enterprises of the Pueblo of Laguna, and other entities wishing to establish enterprises on the Pueblo of Laguna’s lands, with obtaining mortgage financing for: (a) the construction, reconstruction, renovation, or purchase of Residential Units, (b) agricultural ventures, and (c) business ventures, on certain leasehold estates. In furtherance of this purpose, this chapter prescribes procedures relating to record-keeping and foreclosure and evictions in connection with leasehold mortgages given to secure loans. Loans may include those pursuant to any federal, state, tribal or tribally-approved governmental loan program or private-sector commercial loan program, such as the programs of the Department of Housing and Urban Development, United States Department of Agriculture, Veterans Administration, and Bureau of Indian Affairs. Loans may also include any secondary

mortgage market program of the Federal National Mortgage Program, Federal Home Loan Mortgage Corporation, Government National Mortgage Association, the New Mexico Mortgage Finance Authority, or any other secondary mortgage market program approved by the Pueblo.

#### IV. GENERAL

1. **Definitions.** Unless otherwise provided, the following definitions shall apply throughout this Code:

- (a) “Borrower or Mortgagor” means the Pueblo, its Tribally Designated Housing Entity (if applicable), or any Member who has the legal right and capacity to execute a Mortgage and who has executed a Mortgage on his or her Leasehold Interest, including any heir(s), successor(s), executor(s), administrator(s), or assign(s) of such Borrower.
- (b) “Cure Period” means the time between an initial event of default and the time at which the Lender can commence a Mortgage Foreclosure Proceeding. The use of the term does not limit the Borrower’s right to cure the default, which right extends to the date the Lender commences the Mortgage Foreclosure Proceeding.
- (c) “Default” means the occurrence of a violation of any material term or condition of the Mortgage. A Borrower will be considered to be in default if a Mortgage payment is thirty (30) days past due or if he or she has violated any other material term or condition of the Mortgage.
- (d) “Deficiency Judgment” means a personal judgment that the Pueblo Court may issue against a debtor for the amount of the debt unsatisfied by the sale or transfer of the foreclosed property. The Court may issue a deficiency judgment after an evidentiary hearing where the security is inadequate to satisfy the mortgage debt.
- (e) “Federal Agency” means any agency of the federal government that makes, guarantees, or insures mortgage loans, including but not limited to the Veteran’s Administration (“VA”), the Department of Housing and Urban Development (“HUD”), the Federal Home Administration (“FHA”), and the United States Department of Agriculture (“USDA”).
- (f) “Forbearance Relief” means an action that results in the Lender or the federal, state, or tribal government refraining from pursuing Mortgage Foreclosure.
- (g) “Governor” means the Governor of the Pueblo.
- (h) “Land Assignment” means an assignment of land within the exterior boundaries of the Pueblo of Laguna obtained by qualified members of the Pueblo and used only for the purposes for which it is assigned. All assignments will be obtained in accordance with the Mayordomo's Ordinance

and/or other applicable processes and procedures and will be located in such areas within Pueblo of Laguna jurisdiction as may hereafter be prescribed in the ordinances of the Pueblo. The Pueblo Council shall have the power to establish maximum acreage limitations for different types of assignments and shall have the power to cancel assignments for non-use over a fixed period of time as established by ordinance.

- (i) “Lease” means the residential ground lease or other agreement for use of Trust Land or Restricted Land on which a Mortgage has been or may be given.
- (j) “Leasehold Interest” means the Borrower’s right, title, and interest under a Lease from the Pueblo, as Lessor, and may include improvements.
- (k) “Leasehold Mortgage” means a loan that is used to aid tenants in financing a project associated with the land that is leased; the Lender’s lien covers the buildings but not the land itself.
- (l) “Lender or Mortgagee” means any mortgage lender or any successors or assigns of any such lender, and includes any subsequent holder, whether by assignment, succession, or otherwise, of the original Lender’s or Mortgagee’s right, title, or interest in and to the Mortgage.
- (m) “Lessee” means a person who has acquired a legal right of possession of tribal Trust or Restricted Lands by a Lease.
- (n) “Lessor” means the Pueblo of Laguna.
- (o) “Member” means an enrolled member of the Pueblo of Laguna.
- (p) “Mortgage” means the leasehold mortgage given to secure a mortgage loan or other loan made by a Lender to a Borrower.
- (q) “Mortgage Foreclosure Proceeding” means a proceeding in the Pueblo Court (i) to foreclose on the Leasehold Interest or other interests of the Borrower and/or (ii) to assign such interest of the Borrower to the Lender or other person or entity.
- (r) “Nuisance” means maintenance on the mortgaged property of a condition that:
  - (1) unreasonably threatens the health or safety of a resident of the community, the mortgaged property, or neighboring land users; or
  - (2) unreasonably and substantially interferes with the ability of neighboring real property users to enjoy the reasonable use and occupancy of their property.
- (s) “Order of Repossession” is an order of the Pueblo Court:



- (1) restoring the Lessor or Lender to possession of property located on Trust Land or Restricted Land; and/or
  - (2) evicting a Borrower or other occupant from such property.
- (t) “Pueblo” means the Pueblo of Laguna.
- (u) “Pueblo Court” means (i) the Court established by the laws of the Pueblo of Laguna, or (ii) such body as may now or hereafter be authorized by the laws of the Pueblo to exercise the powers and functions of a court of law
- (v) “Record Owner” means a person of record holding legal title or ownership interest in property.
- (w) “Residential Unit” means a building constructed or used for residential purposes.
- (x) “Restricted Land” means any land within the jurisdiction of the Pueblo that is subject to restrictions against alienation imposed by federal treaty, statute, Executive Order, or the Pueblo.
- (y) “Secretary of Interior,” unless otherwise indicated, means the Secretary of the United States Department of the Interior or their duly designated representative.
- (z) “Secretary’s Office” means the Pueblo of Laguna’s Secretary’s Office, or other office designated by the Pueblo Council to maintain records related to this code.
- (aa) “Subordinate Lienholder” means the holder of any lien, including a mortgage perfected subsequent to the recording of a Mortgage under this Code; provided, however, such definition shall not include the Pueblo with respect to a claim for a tribal tax on the Mortgaged property, where applicable.
- (bb) “Council” means the Pueblo of Laguna Council, being the governing authority of the Pueblo.
- (cc) “Trust Land” means any land within the jurisdiction of the Pueblo, title to which is held by the United States for the benefit of the Pueblo or an individual member of the Pueblo.
- (dd) “Unlawful Detainer Action” means a suit brought before the Pueblo Court to terminate a Borrower’s interest in Trust Land or Restricted Land and/or to evict any person from occupancy of such property.

(ee) “Waste” means spoilage or destruction of land, buildings, landscaping, trees, or other improvements on the mortgaged property, which result or will likely result in substantial injury to such property.

2. **Applicability.** Except as otherwise specifically stated, this Code shall apply to any and all Mortgages, leasehold Mortgages, and agreements to secure an interest in all Residential Units, housing, dwellings, or accommodations for human occupation or residence, or other buildings or improvements on Trust or Restricted Land, and supersedes and replaces all other codes and codes previously adopted by the Pueblo specifically relating to residential Mortgages. In addition, the section on eviction contained herein may be applied against any person or entity occupying Trust or Restricted lands without right, and supersedes any code or ordinance previously adopted by the Tribe relating to evictions from Trust or Restricted lands.

3. **Purpose and Interpretation.** The Pueblo Court shall interpret and construe this Code to assist tribal members, and others with the consent of the Council, in obtaining Mortgage financing for the construction or purchase of residences, Residential Units, or other building improvements on certain Trust Land or Restricted Land within the jurisdiction of the Pueblo, by prescribing procedures for recordation, priority, and foreclosure and evictions in connection with Mortgages given to secure loans made by or through any Lenders.

4. **Jurisdiction.** The Pueblo Court shall exercise jurisdiction over all matters arising within the jurisdiction of the Pueblo with respect to the subjects of this Code, and with respect to any person or entity acting or causing actions which arise under this Code.

5. **Conflict with Mortgage Documents.** If any provision in the Mortgage or other loan documents is determined to conflict with this Code, this Code shall control.

6. **Conflicts with Other Laws.** If this Code is determined to conflict with any other law of general application adopted by the Pueblo, this Code shall control.

7. **Appeals.** Appeals under this Code shall be in accordance with the Pueblo’s general appellate provisions.

8. **No Mortgage of Leasehold Interest Without Lease.** Notwithstanding anything to the contrary contained herein or in any Mortgage document, no Borrower may mortgage a Leasehold Interest without first (1) having a valid Lease for such property from the Pueblo.

9. **Merger of Estates.** 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 same, including an assignment adjudged by the Pueblo Court or by operation of law, except as such may arise upon satisfaction of the Leasehold Mortgage.

10. **Alternative Remedies.** If the persons or property are subject to the jurisdiction of the courts of the United States, the remedies and procedures provided by this Code are in the alternative to the remedies and procedures provided by the laws of the United States.

**11. Recording of Mortgages and Leases.** The appropriate offices for recording Mortgages and Leases are the Pueblo of Laguna Secretary's Office and the Bureau of Indian Affairs Regional Land, Titles, and Records Office. For documents recorded at the Pueblo of Laguna Secretary's Office:

- (a) The Pueblo of Laguna Secretary's Officer shall endorse upon any Lease and/or Mortgage or other security instrument received for recording the following:
  - (1) The date and time of receipt of the Lease and/or Mortgage or other security instrument;
  - (2) The filing number, to be assigned by the Pueblo of Laguna Secretary's Officer, which shall be a unique number for each Lease and/or Mortgage or other security instrument received; and
  - (3) The name of the Pueblo of Laguna Secretary's Officer receiving the Lease and/or Mortgage or other security instrument.
- (b) Upon completion of the above endorsements, the Pueblo of Laguna Secretary's Officer shall make true and correct copies of the Lease and/or Mortgage or other security instrument and shall certify each copy as follows:

PUEBLO OF LAGUNA

ss.

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 \_\_\_\_\_, 20\_\_\_\_.

(SEAL)

\_\_\_\_\_  
Signature Title

- (c) The Pueblo of Laguna Secretary's Office shall maintain such copies in the records of the recording system and shall return the original Lease and/or Mortgage or other security instrument to the person or entity that presented the same for recording.
- (d) The Pueblo of Laguna Secretary's Officer shall also maintain a log of each Lease and/or Mortgage or other security instrument recorded in which log there shall be entered the following:

- (1) The name(s) of the Borrower(s) of each Mortgage or Lessor of each Lease, identified as such;
  - (2) The name(s) of the Lender(s) of each Mortgage or Lessee or each Lease, identified as such;
  - (3) The name(s) of the parties and their designation in any other security instrument;
  - (4) The date and time of receipt;
  - (5) The filing number assigned by the Pueblo of Laguna Secretary's Officer; and
  - (6) the name of the Pueblo of Laguna Secretary's Office receiving any Lease, Mortgage or other security instrument.
- (e) Certified copies of Leases, Mortgages and other documents and the log maintained by the Pueblo of Laguna Secretary's Office shall be made available for public inspection, pursuant to guidelines and procedures promulgated by the Secretary's Office.

**12. Priority.** All Mortgages recorded in accordance with the recording procedures set forth in this Code, including Leasehold Mortgages and loans guaranteed or held by a governmental agency, shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim except a lien or claim arising from a Pueblo of Laguna tax assessed after the recording of the Mortgage.

**13. Assignment.** Unless otherwise prohibited in the mortgage documents or under applicable law, Borrower may assign any mortgaged property at any time prior to commencement of foreclosure proceedings; provided that:

- (a) The successor Borrower is a member of the Pueblo, the Pueblo, a Pueblo entity, or Federal Agency; and
- (b) Borrower receives all required consents in writing from the Pueblo, Lender, and or applicable Federal Agency, if any.

## V. FORECLOSURE

**1. Avoiding or Curing Defaults; Avoiding Foreclosures** In light of the acute shortage of adequate housing on the Pueblo's lands, and thus the lack of alternate housing for members of the Pueblo and their families in the event of an eviction:

- (a) All Borrowers shall exhaust all reasonable possibilities of avoiding or curing a default under a leasehold mortgage, including but not limited to

full cooperation with and participation in an applicable Borrower counseling program or foreclosure avoidance program, if applicable.

- (b) Before the expiration of any applicable cure periods under a leasehold mortgage, all Lenders and Mortgage Investors shall exhaust all reasonable possibilities of collection, including, but not limited to full cooperation with and participation in an applicable borrower counseling program or foreclosure avoidance program, as appropriate; and
- (c) Before the expiration of any applicable cure periods under a leasehold mortgage, if the Borrower, Lenders, and Mortgage Investors have entered into a cure agreement they shall have the right to file such cure agreement with the Pueblo Court, which shall have the authority to enter an order enforcing the agreement. Cure agreements may provide for an equitable resolution of the default, including but not limited to garnishment, establishing a payment schedule, or evicting a Borrower.

**2. Actions Upon Default.**

- (a) A Borrower shall be considered to be in default when he or she is in violation of any material term or condition of the Mortgage.
- (b) When a Borrower is thirty (30) days past due on his or her Mortgage payment or the Lender has received actual notice that the Borrower is in violation of any other material term or condition of the Mortgage, and before any foreclosure action or activity is initiated, the Lender shall:
  - (1) provide written notice to the Borrower specifying the default and outlining curative actions that may be taken. The notice must include:
    - (i) a statement that, if the Mortgage remains past due on three (3) consecutive monthly installment payments or if the Borrower fails to cure any other material default within sixty (60) days from receipt of the notice, the Lender may ask the applicable Federal Agency and/or Lessor to accept assignment of the Mortgage if required;
    - (ii) a statement of the qualifications for Forbearance Relief from the Lender, if any, and that Forbearance Relief may be available from the federal government or other Lender; and
    - (iii) names and addresses of government officials to whom further communication may be addressed, if any.

- (c) In addition to the preceding notification requirements, the Lender shall, prior to commencing an action in Foreclosure:
  - (1) make a reasonable effort to arrange a face-to-face interview with the Borrower. The Lender may appoint an agent to arrange and conduct the face-to-face meeting. This shall include at least one trip to meet with the Borrower at the mortgaged property; and
  - (2) document that it has made at least one phone call to the Borrower (or to a phone designated by the Borrower as able to receive and relay messages to the Borrower) for the purpose of arranging a face-to-face meeting.
  - (3) If attempts to reach Borrower by phone are not successful, then Lender shall send a certified letter, return receipt requested to Borrower's last known address, with a copy to the property, making arrangements for a face-to-face meeting.
- (d) When a Borrower is past due on three (3) consecutive monthly installment payments or another default has continued to exist for at least sixty (60) days from the receipt of written notice of such default by Borrower and at least ten (10) days before initiating a foreclosure action, the Lender shall, in writing by mail, certified return receipt requested, and by posting prominently on the Residential Unit or other building subject to the Mortgage, with a copy provided to the Pueblo, advise the Borrower:
  - (1) that information regarding the loan and default/delinquency will be given to credit bureaus;
  - (2) of the availability of homeownership counseling opportunities/programs offered by the Lender or otherwise;
  - (3) of available assistance regarding the Mortgage/default;
  - (4) Lender's right to Foreclosure;
  - (5) Lessor's Right of First Refusal

**3. Notice to the Pueblo.** The Lender must serve notice, by certified mail, return receipt requested, to the Office of the Pueblo Governor and the Pueblo of Laguna Secretary's Office contemporaneously with any notice required to be served on the Borrower pursuant to this Code or the Mortgage documents.

**4. Cure of Default.** The Borrower or any Subordinate Lienholder may cure the default(s) at any time before entry of a judgment of foreclosure by payment of amounts in arrears up to date of payment along with any interest, all reasonable legal and court costs incurred

through foreclosing, and any standard and normal late fees. Under no circumstances shall the amount required to be tendered include any amounts due pursuant to an acceleration clause. Any Subordinate Lienholder who has cured a default may thereafter include in its lien the amount of all payments made by such Subordinate Lienholder to cure such default(s), plus interest on such amounts at the rate stated in the promissory note secured by the subordinate lien. There shall be no right of redemption in any Foreclosure.

**5. Right of First Refusal.**

- (a) In the event of default by the Borrower on any Mortgage or other loan agreement for which a Lease is pledged as security the Lessor shall have the Right of First Refusal to acquire the Borrower's interest in the premises (subject to all valid liens and encumbrances) upon:
  - (1) payment of all sums then in arrears; and
  - (2) either payment of the balance of the loan or assumption of the Mortgage.
  - (3) The Right of First Refusal may be exercised at any time after the Lessor receives notice from the Lender of the Borrower's default in writing, certified mail, return receipt requested, up to the date the Lender commences a Mortgage Foreclosure Proceeding. The Notice of the Lessor's Intent to Exercise its Right of First Refusal shall be provided in writing from the Lessor to the Borrower, all Subordinate Lienholders, and the Lender; The estate acquired by the Lessor through exercise of its Right of First Refusal shall not merge with any other estate or title held by the Lessor as long as the Lease is mortgaged or otherwise pledged as security for any loan.
- (b) If the Borrower defaults on a Mortgage, the Right of First Refusal may not be exercised by the Lessor unless the Borrower has been advised of Forbearance Relief that may be available, if any, and the Lender of the relevant federal agency has found the Borrower to be ineligible.

**6. Mortgage Foreclosure Proceedings.** Upon expiration of the cure period for a default under a Mortgage, as identified in the Mortgage documents or otherwise provided in this Code, whichever period is longer, if there is a failure to cure, and the Lender has complied with the provisions set forth in this Code, including but not limited to requirements found at §V(1), (2), and (3), the Lender may commence a Mortgage Foreclosure Proceeding in the Pueblo Court as follows:

- (a) by filing a complaint verified by the Pueblo Court Clerk:
  - (1) citing authority for jurisdiction of the Pueblo Court;

- (2) Signed by Lender;
  - (3) naming as defendant(s) the Borrower and each record owner claiming through the Borrower subsequent to the recording of the Mortgage, including each Subordinate Lienholder;
  - (4) describing the property subject to the Mortgage;
  - (5) stating the facts concerning (i) the execution of any Lease and/or the Mortgage; (ii) the recording of the Mortgage; and (iii) the alleged default(s) of the Borrower(s); and (iv) any other facts necessary to support a cause of action for Mortgage Foreclosure;
  - (6) appending as exhibits true and correct copies of each promissory note, deeds of trust or other recorded real property security instruments, any other documents relating to the property, Lease, if any, Mortgage, and any assignment thereof relating to such mortgaged property;
  - (7) including an allegation that all relevant requirements and conditions prescribed in federal and Pueblo of Laguna law, and in the promissory note, security instrument, and the Lease, if any, have been complied with by the Lender;
  - (8) otherwise satisfying the requirements of the Pueblo Court;
- (b) by obtaining and serving upon each defendant a summons verified by the Pueblo Court Clerk requiring the defendants to appear for a trial upon the complaint on a date and time specified in the summons, and filing a copy of such summons with the Pueblo Court.
- (1) The summons must be issued in accordance with established Pueblo of Laguna Rules of Civil Procedure, and must be served by an adult.
  - (2) In the event that service is accomplished by posting, in addition to the provisions required by the Pueblo of Laguna Rules of Civil Procedure, notice must be sent to the lessee, and, if applicable, to the sub-lessee or to any other occupant under color of law, by certified mail, return receipt requested, properly addressed, postage prepaid.
  - (3) The trial date specified in the summons shall be no less than 30 not more than 45 days from the date of service of the summons and complaint and 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; and

- (c) by delivering, faxing, or sending such complaint and summons to the Pueblo of Laguna Office of the Secretary, the Governor, and Council by means capable of verification.

7. **Deficiency Judgment Allowed.** Where appropriate and lawful, a Lender may file a claim with the Pueblo Court for a deficiency judgment.

8. **Procedures.** The Pueblo of Laguna Rules of Civil Procedures relating to the conduct of Pueblo Court proceedings shall apply to any Mortgage Foreclosure Proceeding.

9. **Continuances.** No continuances shall be granted, except for good cause shown and:

- (a) by agreement of all parties with the consent of the Pueblo Court; or
- (b) in the sole discretion of the Pueblo Court.

10. **Power of the Pueblo Court.**

(a) If a Notice of Default has been properly provided to all persons or entities required, if the Right of First Refusal has not been exercised or the default is not cured within the allowable period, as identified in the Mortgage documents or otherwise provided in this Code, and if the Pueblo Court should find for the Lender, the Pueblo Court shall enter judgment in favor of the Lender:

- (1) In a prompt and reasonable time period not to exceed sixty (60) days from the date of service of complaint to the Borrower;
- (2) foreclosing the Borrower's interest in the mortgaged property, and each other defendant named in the complaint upon whom proper and timely service has been made, including each Subordinate Lienholder; and
- (3) Granting title to the property to the Lender or the Lender's designated assignee;
- (4) Assigning the Leasehold Interest in the mortgaged property to the Lender or any purchaser of the Leasehold Interest at a foreclosure sale. The proceeds of such sale shall be applied first toward satisfaction of any lien resulting from the assessment of any Pueblo Imposed Tax, next toward any lien having a priority date prior to that of the Mortgage documents, next as provided in the Mortgage

documents, finally toward any liens having a priority date subsequent to the Mortgage documents.

- (5) Assignment of such mortgaged property shall be subject to:
- (i) limitations as to who may become an assignee of a Leasehold Interest as determined by the Pueblo or as stated in the Lease;
  - (ii) the right, under HUD Section 248 guarantees, to convey the Leasehold Interest to the HUD Secretary without providing the Pueblo the right of first refusal.
- (b) The Pueblo Court shall have the authority to enter against the Borrower a judgment for the following: (1) past due payments, unpaid utilities, and any charges due the Pueblo or Lessor under any Lease or occupancy agreement; (2) any and all amounts secured by the Mortgage that are due the Lender; and (3) damages caused by the Borrower to the property other than ordinary wear and tear. The Pueblo Court shall have the authority to award to the prevailing party costs and reasonable attorney's fees in bringing suit.
- (c) The Pueblo Court shall have the authority to enter a deficiency judgment..

**11. Intervention.** The Pueblo may petition the Pueblo Court to intervene in any Lease or Leasehold Mortgage Foreclosure Proceeding under this Code. Neither the filing of a petition for intervention by the Pueblo, nor the granting of such petition by the Pueblo Court, shall operate as a waiver of the sovereign immunity of the Pueblo, except as expressly authorized by the Pueblo.

**12. Subleases.** In the event a Federal Agency or the Lender is assigned the leasehold mortgage pursuant to an action in, and a subsequent purchaser cannot be found pursuant to the terms and conditions of this Code, the Federal Agency or Lender may lease the leased premises to a member of the Pueblo, the Pueblo, or a Pueblo entity. If the Pueblo, a Pueblo member or entity willing to lease the property cannot be found within six (6) months of assignment of the Mortgage, the Federal Agency or Lender may sublease the lease to a non-member, provided that the Pueblo gives its prior written consent.

## **VI. EVICTION**

**1. No Self-Help Eviction.** Unless otherwise provided in Pueblo of Laguna Law, no person or entity may compel an occupant to vacate any premises by force or in a way that causes a breach of the peace. All persons or entities attempting to regain possession of any property shall give a notice to quit and obtain a court order as provided in this Code.

**2. Notice to Quit.**

- (a) If anyone claiming a right to possession desires to obtain possession of real property from another, he or she shall give notice to the occupant to quit possession of the property.
- (b) The purpose of the notice to quit is to provide advance notice of a specific problem that needs to be addressed.
- (c) The notice to quit shall be addressed to the adult occupant(s) of the real property and shall state the reasons(s) for termination of possession and the date by which the occupant is required to quit possession of the property. The notice to quit shall be in writing substantially in the following form:

I (or we) have a legal right to possession of the property now occupied by you at (here insert the address or other reasonable description of the location of the property), and hereby give you notice that you are to quit possession or occupancy on or before the (here insert the date) for the following reason (here insert the reason(s) for the notice to quit possession).

Signed, (here insert the signature, name and address of the party with a right to possession, as well as the date and place of signing).

- (d) The notice must be delivered within the following periods of time:
  - (1) At least seven (7) calendar days prior to the date to quit specified in the notice for any failure to pay rent or other payments required by an agreement with the occupant.
  - (2) At least three (3) calendar days prior to the date to quit specified in the notice for nuisance, serious injury to property, or injury to persons.
  - (3) If there is an emergency or condition making the dwelling unsafe or uninhabitable, or in situations involving an imminent or serious threat to public health or safety, the notice may be made in a reasonable period of time, given the situation.
  - (4) At least fourteen (14) calendar days in all other situations.

**3. Unlawful Detainer.** An occupant may be charged with unlawful detainer if such person has received notice to quit and continues in occupancy of real property under any of the following situations:

- (a) after the expiration of the term of a Lease;

- (b) 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 under a lease or title to such property;
- (c) after the Lessor has terminated a person's tenancy pursuant to court procedures providing a hearing;
- (d) after a Leasehold Interest has been foreclosed in a Mortgage Foreclosure Proceeding and the Borrower, Lessee, Sub lessee, or other occupant of the property has received notice of such foreclosure and has remained in possession of the property for at least thirty (30) days contrary to the terms of the notice;
- (e) when a person has received notice (i) that he or she is in default under a Lease; and (ii) requiring him or her to cure such default or surrender possession of the occupied property, and such person has not done either within the period provided in such notice;
- (f) when a person continues to fail to keep or perform any condition or covenant of any lease or other use agreement under which the property is held after he or she has been given notice to comply with such condition or covenant or else to surrender the property;
- (g) when a person fails to comply with applicable Pueblo of Laguna housing policies and/or regulations; or
- (h) 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.

**4. Petition and Summons.** Any person claiming a right to possess property held by another, including but not limited to a Lender or a Federal Agency, as appropriate, may commence an action in unlawful detainer in Pueblo Court as follows:

- (a) by filing a verified petition for eviction:
  - (1) citing authority for jurisdiction of the Pueblo Court;
  - (2) Petition must be signed by the Petitioner, or an agent or attorney on their behalf;
  - (3) naming as defendant(s) the occupant(s) of the property and, if the property is subject to a Mortgage, the Borrower and each record owner claiming through the Borrower subsequent to the recording of the Mortgage, including each Subordinate Lienholder;

- (4) describing the property subject to the petition;
  - (5) stating the facts concerning the alleged unlawful possession of the property by the defendant and, if the property is subject to a Leasehold Interest and/or a Mortgage (i) the execution of any Lease and/or the Mortgage; (ii) the recording of the Mortgage; and (iii) the alleged default(s) of the Borrower(s); and (iv) any other facts necessary to support a cause of action;
  - (6) appending as exhibits true and correct copies, if any, of each occupancy agreement, promissory note, lease, loan agreement, security instrument, and/or Mortgage, and, if applicable, any assignment thereof relating to such mortgaged property;
  - (7) including an allegation that all relevant requirements and conditions prescribed in federal and Pueblo of Laguna law, and in the occupancy agreement, promissory note, lease, loan agreement, security instrument, and/or Mortgage, and the assignment, if any, have been complied with by the petitioner;
  - (8) stating any claim for damages or compensation from the evicted party;
  - (9) otherwise satisfying the requirements of the Pueblo Court;
- (b) by obtaining and serving upon each defendant a summons requiring him or her to appear for a hearing upon the complaint on a date and time specified in the summons, and filing a copy of such summons with the Pueblo Court. The summons must be issued in accordance with established Pueblo of Laguna Rules of Civil Procedure, and must be served by an adult. In the event that service is accomplished by posting, in addition to the provisions required by the Pueblo of Laguna Rules of Civil Procedure, notice must be sent to the lessee, and, if applicable, to the sub-lessee or to any other occupant under color of law, by certified mail, return receipt requested, properly addressed, postage prepaid.
  - (c) The hearing date specified in the summons shall be at least six (6) but not more than thirty (30) days from the date of service of the summons and petition and must notify each defendant that judgment will be taken against him or her in accordance with the terms of the petition unless he or she appears for the hearing at the time, date, and place specified in the summons to provide evidence as to why he or she should not be evicted; and
  - (d) by delivering, faxing, or sending such complaint and summons to the Governor and Council by means capable of verification.

5. **Service of Process and Procedures.** The Pueblo of Laguna Rules of Civil Procedure shall apply to any proceeding.

6. **Power of the Pueblo Court.** The Pueblo Court shall enter an order of repossession at trial or pre-trial proceedings if :

- (a) Notice of suit is given in accordance with procedures provided herein; and
- (b) the Pueblo Court finds at the hearing that the defendant, Lessee, Sub-lessee, or other occupant under color of law of the Leasehold Estate subject to the Leasehold Mortgage has committed an act of unlawful detainer; or
- (c) the defendant(s) fails to appear pursuant to the summons.
- (d) Upon issuance of an order of repossession, the Pueblo Court shall have the authority to enter a judgment against the defendant(s) for the following, as may be deemed appropriate:
  - (1) back rent, unpaid utilities, and any charges due the Pueblo, tribal housing authority, or Sub-lessor under any Sublease or other written agreement, except for a Leasehold Mortgage;
  - (2) if the property is subject to a Leasehold Mortgage, any and all amounts secured by a Leasehold Mortgage that are due the Lender or the appropriate Federal Agency;
  - (3) damages to the property caused by the defendant(s), other than ordinary wear and tear; and
  - (4) costs and reasonable attorney s fees.

7. **Continuances.** No continuances shall be granted in cases involving the Lender or a Federal Agency, except for good cause shown and:

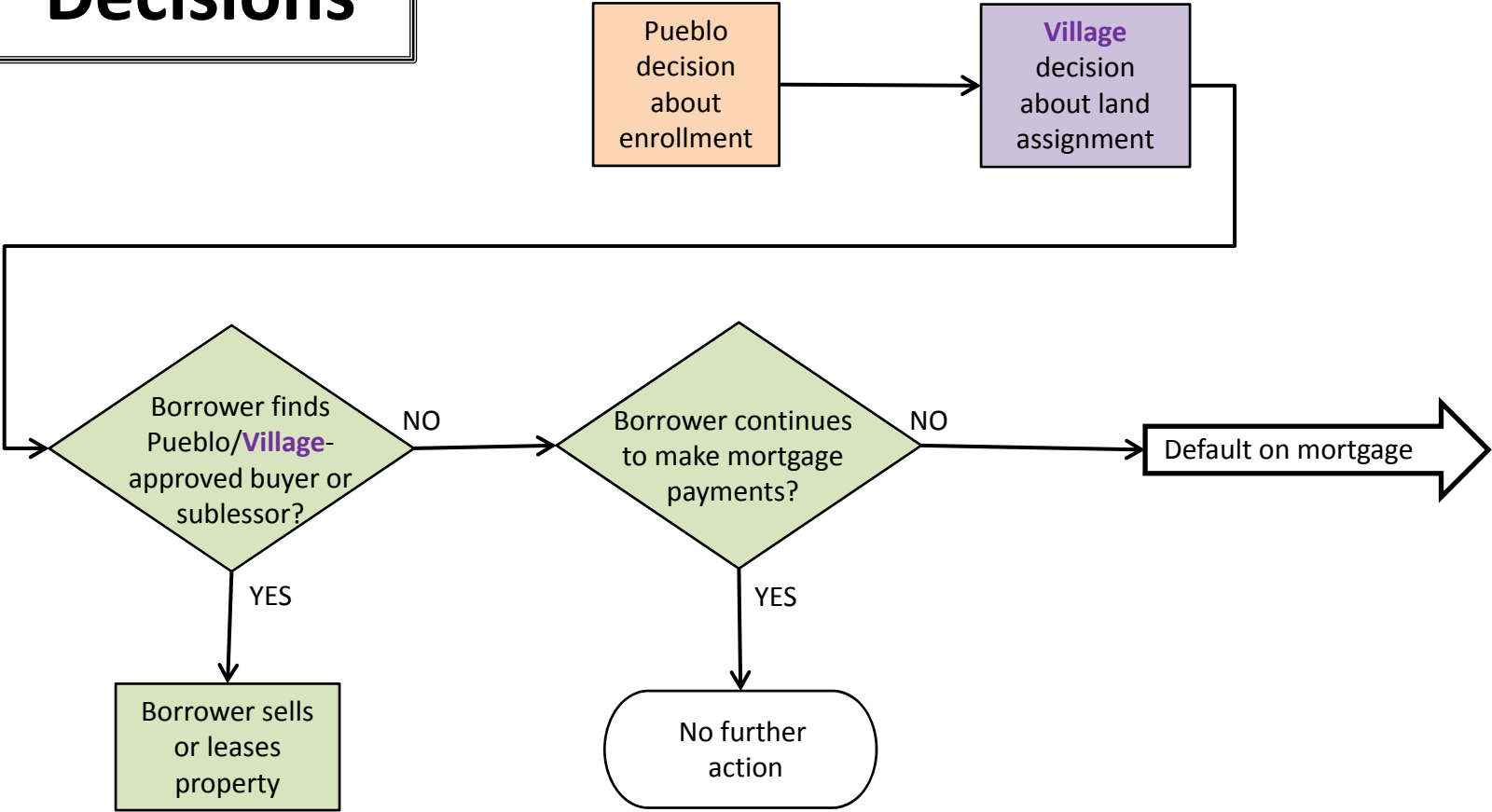
- (a) by agreement of all parties with the consent of the Pueblo Court; or
- (b) in the sole discretion of the Pueblo Court.

8. **Enforcement.** Upon issuance of an order of repossession by the Pueblo Court, tribal or federal law enforcement officers shall enforce the order by evicting the defendant(s) from the property that is unlawfully occupied, within fifteen (15) days after the order.

9. **Storage of Property.** Following forcible eviction of the defendant(s) and/or other occupants, the former occupant's personal property shall be stored by the Lessor for at least thirty (30) days, at a suitable location off of the premises. In order to reclaim their property, the former occupants shall pay the reasonable costs of its removal and storage. If they do not pay

such costs within thirty (30) days, the Lessor is authorized to sell the property in order to recover these costs. The Lessor shall provide the evicted occupants with pertinent information concerning the sale, including the time, date and location. Any proceeds from the sale in excess of the storage and removal costs shall be remitted to the former occupants. Nothing in this section shall prevent the former occupants from reclaiming property remaining after the sale if they can arrange to do so in a manner satisfactory to the Lessor. Personal property that is not reclaimed by the former occupants or cannot be sold in accordance with the provision stated herein may be disposed of in the sole discretion of Lessor.

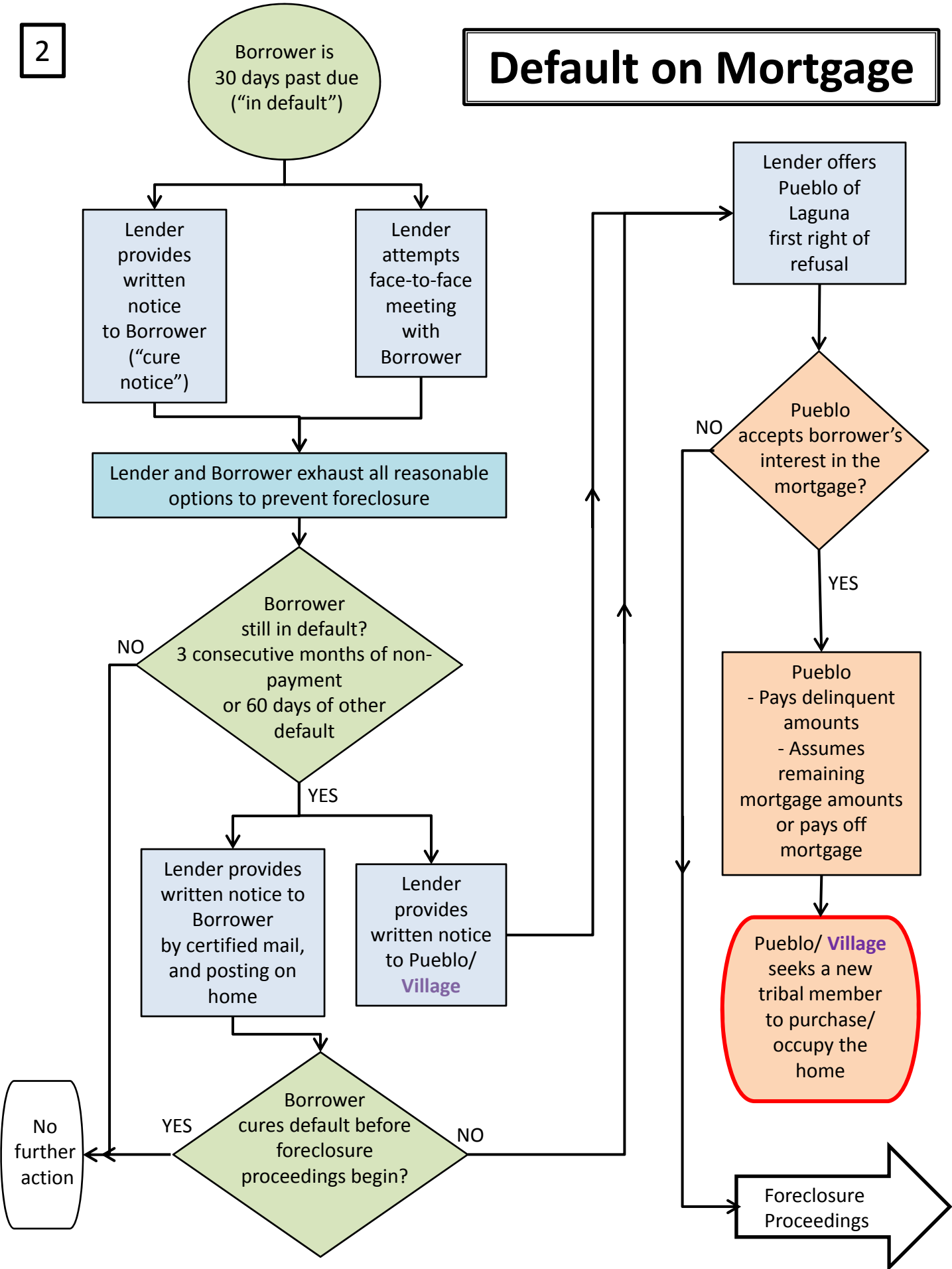
# Pueblo Decisions



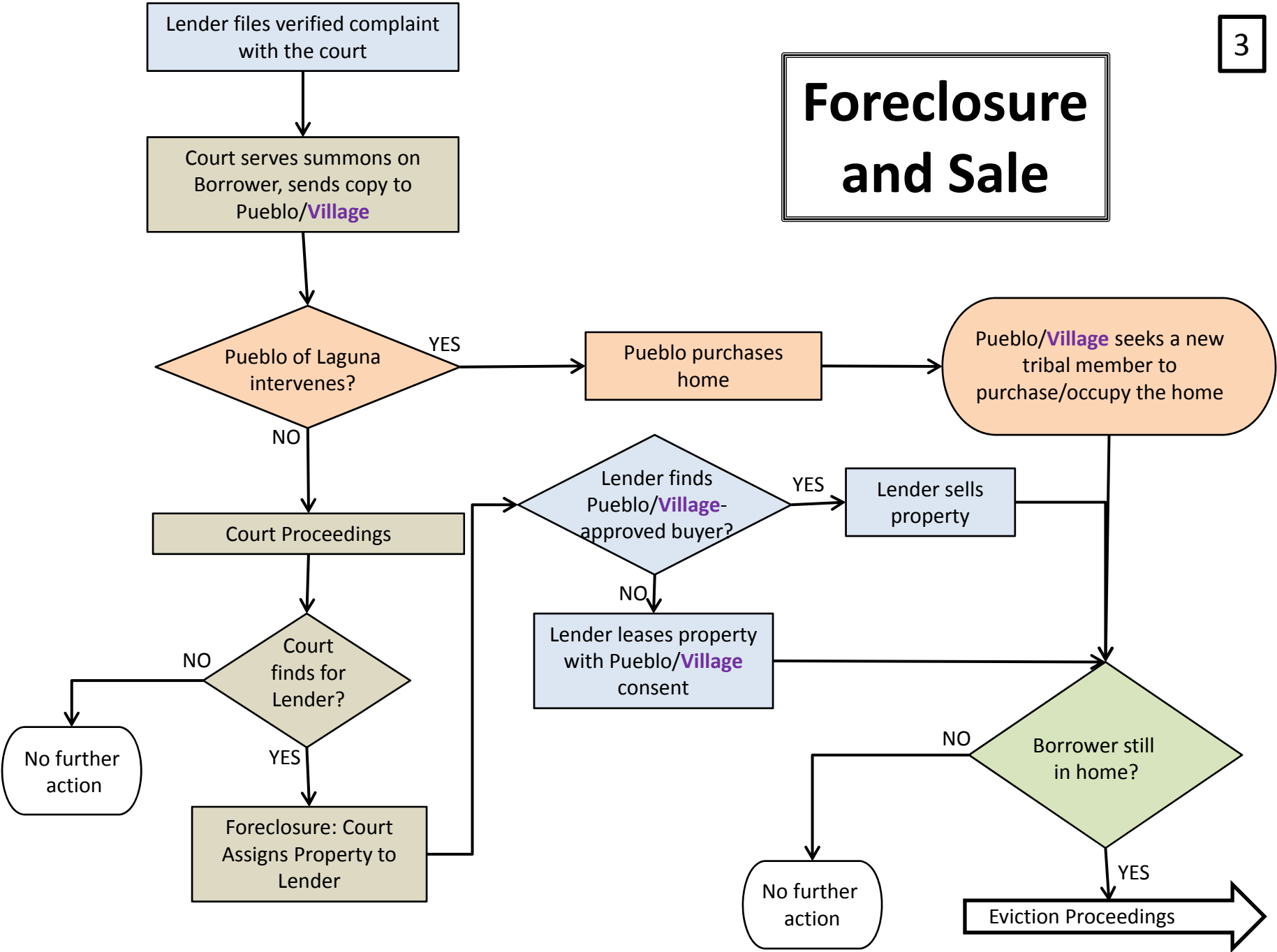


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# Default on Mortgage



# Foreclosure and Sale



# Eviction

