

MAY 2004 CROW TRIBAL LEGISLATURE

BILL NO. CLB04-04

INTRODUCED BY CARL E. VENNE, CHAIRMAN
CROW TRIBAL EXECUTIVE BRANCH

A BILL FOR AN ACT ENTITLED "AN ACT TO AMEND TITLE 5, TO CREATE TITLE 14, AND TO ADOPT THE FINANCE PROTECTION AND PROCEDURES ACT."

WHEREAS, the Crow Tribe has been advised that numerous lending institutions within the exterior boundaries of the Crow Indian Reservation have expressed an interest in providing loans and a commitment to provide loans to Crow Tribal members for real estate purchases and other interests in land,

WHEREAS, the existing Crow Tribal law dealing with enforcement of mortgages, Title V, Rule 20 (m), does not meet the requirements of the lending institutions who are interested in making loans to Crow Tribal members, and

WHEREAS, the Crow Tribal Council, acting through the Executive Branch and the Crow Legislature, is desirous of improving the Crow Tribal laws in order to permit Crow Tribal members to borrow from the lending institutions of their personal choice,

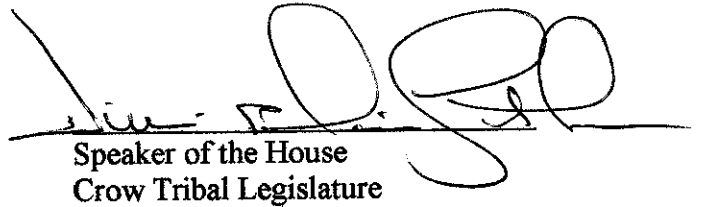
NOW, THEREFORE, BE IT ENACTED BY THE CROW TRIBAL LEGISLATURE AND APPROVED BY THE EXECUTIVE BRANCH:

1. That the Crow Tribal Legislature hereby formally approves and adopts the bill which shall be known as the Finance Protection and Procedures Act, attached hereto as "Version 15" and incorporated by this reference, with an immediate effective date of implementation.
2. That the Finance Protection and Procedures Act makes the following changes to the Crow Tribal Code:
 - a. amends Title 5, Rules of Civil Procedure, Rule 20 (l);
 - b. creates Title 14, Commercial and Consumer Transactions; and
 - c. creates Chapter 1 of Title 14, entitled the "Finance Protection and Procedures Act."
3. That the action taken by the Legislature in approving and adopting this bill shall be given public notice and circulation.

CERTIFICATION

I hereby certify that this Bill, known as the Finance Protection and Procedures Act, was duly approved by the Crow Tribal Legislature with a vote of 17 in favor, 0 opposed, and _____ abstained and that a quorum was present on this 17th day of

May, 2004.

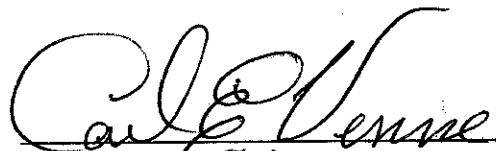

Speaker of the House
Crow Tribal Legislature

ATTEST:


Secretary, Crow Tribal Legislature

EXECUTIVE ACTION

I hereby X approve, _____ veto this Bill, known as the Finance Protection and Procedures Act, pursuant to the authority vested in the Chairman of the Crow Tribe by Article V, Section 8 of the Constitution and Bylaws of the Crow Tribe of Indians, on this 18 day of May, 2004.


Carl E. Venne, Chairman
Crow Tribal Executive Branch

Description of Vote: Title 14 - Finance Protection & Procedures Act.

Bill or Resolution Number _____ Introduced by: Executive Date of vote: 5/17/04
 Representative _____

	Yes	No	Abstain
Cloud	<u>X</u>	_____	_____
D. Goes Ahead	<u>X</u>	_____	_____
O. Costa	<u>X</u>	_____	_____
Crooked Arm	<u>X</u>	_____	_____
Iron	<u>X</u>	_____	_____
Stewart	<u>X</u>	_____	_____
L. Costa	<u>X</u>	_____	_____
C. Goes Ahead	<u>X</u>	_____	_____
Hogan	<u>X</u>	_____	_____
Old Elk	<u>X</u>	_____	_____
K. Real Bird	_____	_____	_____
Pease	<u>X</u>	_____	_____
Medicine Horse	<u>X</u>	_____	_____
Not Afraid	<u>X</u>	_____	_____
P. Real Bird	<u>X</u>	_____	_____
Wilson	<u>X</u>	_____	_____
Stone	<u>X</u>	_____	_____
<i>Secretary of the House</i>			
Plain Feather	<u>X</u>	_____	_____
<i>Speaker of the House</i>			
Totals:	<u>17</u>	<u>0</u>	<u>0</u>

Results of Vote: Passed Not Passed Tabled Veto Override

Signature of Officer: [Signature] Date: May 17, 04

**FINANCE PROTECTION AND PROCEDURES ACT: a Bill Submitted to
the Crow Legislature to Establish Procedures for Regulation of Loans
Secured by Real Property Interests**

May 2004

AMENDING TITLE 5 AS FOLLOWS:

TITLE 5. RULES OF CIVIL PROCEDURE

RULE 20. EXECUTION OF JUDGMENTS.

(l). Foreclosure of mortgages and mortgaged leasehold interests are governed by Title 14, Chapter 1, Finance Protection and Procedures Act.¹

CREATING TITLE 14 AND CHAPTER 1 OF TITLE 14 AS FOLLOWS:

TITLE 14

COMMERCIAL AND CONSUMER TRANSACTIONS

Chapter 1. Finance Protection and Procedures Act

Section 1. Definitions.

- a. **Mortgage** shall mean a contract or other written instrument in which real property or an interest in real property is provided as security for the performance of a duty or the payment of a debt and that will become void or extinguished upon payment or performance according to the stipulated terms.
- b. A **residential mortgage** is one given to secure payment or performance in connection with the acquisition or refinancing of a building containing one to

¹ Previously, foreclosure was provided for in Title V, Rules of Civil Procedure, Rule 20 (l), which is amended to refer all related issues to the Finance Protection and Procedures Act, which will be Chapter 1 of the new Title 14, Commercial and Consumer Transactions.

four living units, one of which is intended to be used, and is actually used, by the borrower as the borrower's personal residence.

- c. A **commercial mortgage** is one given to secure payment or performance in connection with an agricultural, business or commercial venture in which the security is not solely the personal residence of the borrower.
- d. A **leasehold mortgage** is the mortgage of a lease of property given to secure a loan, and may be created under the auspices of any federal agency homebuyer program or any other agreement entered between a borrower/mortgagor and a lender/mortgagee and may be a residential or commercial mortgage. A residential leasehold mortgage in trust property beneficially owned by the Crow Tribe or allotted to individual Indian owners shall be granted using the documents approved by any federal agency homebuyer program. **A form of residential lease of tribal owned land and a form of residential lease of allotted land approved by the United States Department of Housing and Urban Development shall be used when leasing trust land or allotted land for residential development.**²
- e. The **mortgagor**, also sometimes referred to as the borrower or debtor, is the person or entity borrowing funds or contracting for another benefit from a lender.
- f. The **mortgagee**, also sometimes referred to as the lender or creditor, is the person or entity lending funds or granting another benefit to a borrower.
- g. A **foreclosure** is the judicial proceeding initiated by the lender (the mortgagee) to terminate the borrower's (the mortgagor) interest in real property in order to gain title or force a sale to satisfy the unpaid debt secured by the property. The lender may, through the foreclosure, gain title to the property or force a sale of the property to satisfy the debt.
- h. **"Authorized bidders"** shall mean the (1) Crow Tribe, (2) members of the Crow Tribe who are enrolled in accord with the enrollment policies of the Tribe, exclusive of members whose enrollment status is only as a descendent of an enrolled member, (3) corporations in which the Crow Tribe is the sole owner of the shares or other instruments of ownership, and (4) other entities, such as partnerships or associations, created by the Tribe and operated solely for the benefit of members of the Tribe.

² The residential lease forms which are attached will not become part of the codification of this Bill. These forms, which have been approved by HUD, will be offered for approval by the Legislature by Resolution, along with a Memorandum of Agreement between the Crow Tribe and HUD.

- i. **Real property** is the land and all things permanently attached to the land; a thing is **permanently attached to the land** if it is affixed and is not built or manufactured with the intention that it may be removed from the land.

Section 2. Proceedings in Foreclosure.

- a. This Chapter provides the sole method by which an action may be brought for the enforcement of any rights secured by a mortgage.
- b. An action to foreclose a mortgage on real property shall be commenced by filing a complaint in the Tribal Court, in accordance with Title 5, Rules of Civil Procedure. The complaint shall name as parties all persons who claim an interest in the property as a result of proper recording of such interest and all persons known to the mortgagee to claim an interest in the property.
- c. Proper recording of an interest in trust or allotted land is with the Bureau of Indian Affairs in compliance with the agency's regulations; proper recording of property owned in fee is with the Clerk and Recorder of the county in which the property is located. Notice of the filing of any mortgage foreclosure complaint, whether on trust land or fee land located within the exterior boundaries of the Crow Reservation, shall be given to the Crow Tribe by service of a copy of the complaint on the Chair of the Executive Branch. The interests of the Crow Tribe may not be affected in any action in which the Tribe is not a party by its own affirmative action or consent. Interests in property which are not recorded may be affected as if recorded and the owner thereof made a party.
- d. All mortgages recorded in accordance with the recording procedures set forth in this Title, including leasehold mortgages, and including 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 excepting a lien or claim arising from a tribal leasehold tax assessed after the recording of the mortgage.
- e. The Tribal Court may determine the issues presented and may, by its judgment, order the Chief Law Enforcement Officer of the Crow Reservation or another person appointed for that purpose by the Court to conduct the sale of the property or a portion of the property which serves as the security for the mortgage, and direct the application of the proceeds of the sale to court costs, the expenses of the sale, and to satisfy the debt.

- f. The Tribal Court shall set the matter for non-jury trial within a reasonable time after the mortgagee notifies the Court that the matter is ready for decision and shall promptly enter its findings and order thereafter. For purposes of this Chapter, thirty (30) days or less is deemed to be a reasonable time.

Section 3. Injunction To Prevent Injury To Property.

The Court may issue an injunction, upon good cause shown, to restrain the party in possession from doing any act to injure, destroy or transfer real property which serves as the security for a mortgage during the foreclosure of the mortgage or any redemption period.

Section 4. Sale of Property Notice.

- a. At least 20 days prior to the date set for such sale, the entity appointed by the Tribal Court to conduct the sale shall post prominently on the Reservation at the Tribal Office Building, the Post Office, and the Tribal Court, all located in Crow Agency, and on the property to be sold, and shall publish in a paper of general circulation in Bighorn County, a notice of sale, including the legal description of the property to be sold and the time and place of sale. The published notice shall appear at least twenty (20) days prior to the date of sale and once a week thereafter until the sale is held.
- b. The sale may be declared void and of no effect by the Tribal Court if there has not been substantial compliance with the above notice requirements or if the sale of the property has not been conducted in good faith by the entity appointed by the Tribal Court to conduct the sale. If a sale is voided, all rights and interests are reinstated without prejudice as of the date of the judgment authorizing foreclosure. Any claims under this section must be brought within thirty (30) days of the date of the sale or be forever barred.

Section 5. Conduct of Sale.

- a. All sales of property under decree of foreclosure and orders for sale must be made at auction and conducted at the Tribal Court Complex between the hours of 9:00 a.m. and 5:00 p.m, Monday through Friday except on legal holidays declared by the federal government. The property shall be sold to the highest bidder. The entity conducting the sale, including its agents, any person assisting in the sale and the debtor shall not be permitted to participate in the bidding on the property.
- b. Once sufficient property has been sold to satisfy the judgment decree plus costs of court and costs of the sale, no more property shall be sold.

- c. If the property being sold consists of several known lots or parcels, they may be sold separately at the request of the debtor. If a third party claims an interest in part of the property to be sold, that person may also request that such part be sold separately. The entity conducting the sale shall honor such requests if feasible; failure to honor the requests shall not be grounds to void the sale.
- d. The successful bidder at the sale shall by 5:00 p.m. on the next business day tender payment in cash or by certified or cashier's check, unless the successful bidder is the mortgagee. If a purchaser fails or refuses to pay the amount bid for property sold at sale, the person conducting the sale may again sell the property at any time to the highest bidder and if any loss be occasioned thereby, the amount of such loss, plus costs, may be recovered in any court of competent jurisdiction from the bidder that failed or refused to pay. The person failing or refusing to pay the cost which has accrued by reason of a bid shall be responsible for damages incurred by such act as determined by the Tribal Court. When a purchaser fails or refuses to pay, the entity conducting the sale may thereafter reject any subsequent bid of such person.
- e. Except as provided in Section 9 (b), federal law, or the agreement of the parties, the mortgagee or its successor may bid at the foreclosure sale and, if no higher bid is made, may purchase the property by crediting the amount due and owing under the foreclosure judgment to the purchase price.
- f. The entity conducting the sale shall make a report to the Tribal Court immediately after the conclusion of the sale reciting all of the details of the sale.

Section 6. Title to Property.

- a. On a sale of real property, the purchaser acquires all of the right, title, and interest and claim of the judgment debtor, free and clear of all liens and claims foreclosed by the judgment authorizing the sale.
- b. The property so acquired may be subject to redemption as provided herein.
- c. At the time payment is made, the person conducting the sale must give to the purchaser a Certificate of Sale, containing: 1) the name of the purchaser; 2) the name of the judgment debtor; 3) a specific description of the property sold; 4) the total purchase price, and the purchase price for each separate lot or parcel, if any, and 5) a statement that the property is subject to redemption, if applicable.

A duplicate certificate shall be filed with the Tribal Court, the Crow Tribal Land Office and the County Clerk and Recorder's Office for the county in which the property is located.

Section 7. Redemption.

- a. All real property sold as provided herein is subject to redemption by the judgment debtor or his successor in interest in the whole or any part of the property except that redemption shall not apply to:
 - i. loans made under the Section 184 Indian Housing Loan Guarantee Program or other federally related mortgage loans, as that term is defined in Section 3 of the Real Estate Settlement Procedures Act (RESPA), 12 USC 2602 (1) which require, by their terms, that the borrower immediately vacate the property upon entry of a judgment of foreclosure;
 - ii. real property securing a commercial mortgage unless specifically provided for in the agreement of the parties.
- b. The judgment debtor or the judgment debtor's spouse, if the spouse is either a co-mortgagor or a person who could be an authorized bidder as defined above, (referred to collectively as the judgment debtor) may redeem real property from the purchaser within six months after the date of sale by paying the full purchase price, plus interest at the rate set by the Tribal Court in the foreclosure judgment, together with the amount of any assessments or additional costs which the purchaser may have paid thereon to maintain the property after the date of the purchase. Payment must be in United States currency or by certified or cashier's check and be made to the purchaser or the Clerk of Court, who shall thereupon deliver it to the purchaser from whom the property is redeemed. The judgment debtor must present to the person from whom the judgment debtor seeks to redeem: 1) a certified copy of the judgment and order of sale under which the judgment debtor claims a right to redeem; and 2) an affidavit that the person is the judgment debtor and is entitled to redeem and showing the amount due to effect the redemption.
- c. Upon redemption, the person to whom the payment is made must execute and deliver to the debtor a certificate of redemption, which is acknowledged and sworn to before an officer authorized to take acknowledgements a of conveyances of real property. Copies of such certificate must be filed with the Tribal Court, the Crow Tribal Land Office and the Clerk and Recorder's Office for the county in which the property is located.

- d. If the judgment debtor redeems the property, the sale is voided and the property is restored to the debtor, and all liens prior to entry of judgment or subsequently attached to the property are restored to their original lien priority, except the lien of the mortgagee whose claim is satisfied by redemption, as if no foreclosure action had taken place.
- e. If no redemption is made within six months after sale, title of the property shall be conveyed to the purchaser by the Clerk's issuance of a deed at the expiration of six months after sale. A deed issued by the Clerk shall have the same effect as a sheriff's deed issued under state law.
- f. The purchaser of lands at a residential mortgage foreclosure is not entitled to the possession thereof as against the debtor during any period of redemption while the debtor, or his or her spouse and/or children, personally occupy the land as a home, in which case the debtor shall be deemed a tenant in possession. It is unlawful to insert in any mortgage of real estate any provision intended to constitute a waiver of this right of occupation during the redemption period.
- g. The purchaser, from the time of sale until the time of redemption, is entitled to receive from the tenant in possession, the rents of any property sold, or the value of the use and occupation thereof. The value of the use and occupation of the property by the debtor/tenant in possession shall be deemed to be the monthly principal and interest payment on the obligation secured by the mortgage, unless otherwise ordered by the Tribal Court. However, when any rents or profits have been received by the purchaser from the property prior to redemption, the amount of such rents and profits shall be a credit on the redemption amount to be paid. If the judgment debtor or person entitled to redeem, prior to the expiration of the time for redemption, makes written demand that the purchaser provide a written and verified statement of the amount of such rents and profits received, the period of redemption is extended until five days after such sworn statements are received by the judgment debtor. If the purchaser fails or refuses for a period of thirty (30) days to provide such statement, the judgment debtor may bring an action in Tribal Court to compel an accounting and disclosure of such rents and profits. The judgment debtor's right of redemption is extended fifteen (15) days after the final determination of the accounting and disclosure action.
- h. Until expiration of the time of redemption, the Court may restrain the commission of waste on the property, by order with or without notice, on the application of the purchaser or the judgment creditor. It shall not be waste for the person entitled to possession of the property to continue to use it in the manner it had been previously used, or used in the course of husbandry, or to make necessary

provisions as being vested with unrestricted fee simple title to the lands involved, and such land shall be subject to foreclosure in Tribal Court in accordance with this Chapter.

- b. In the case of foreclosure of individual trust land pursuant to 25 U.S.C. Sec. 483a or otherwise, only the Crow Tribe, members of the Crow Tribe, tribal corporations or tribal organizations (the "authorized bidders") may bid on such property at the foreclosure sale. If the authorized bidders do not bid an amount sufficient to pay the amount due to the mortgagee under the foreclosure judgment, then the mortgagee may bid the amount due and owing and receive title to the property, subject to the restriction that the property may subsequently only be sold to persons who could have been authorized bidders at the sale.
- c. In cases where the Crow Tribe is the mortgagee, beneficial title to trust property subject to foreclosure shall vest in the Crow Tribe without public sale upon payment to the mortgagor of the difference between the appraised value of the land, plus costs, and the amount of the debt if the appraised value exceeds the amounts due.
- d. In all cases where the Crow Tribe is not the mortgagee, the Crow Tribe shall have the first option to purchase the property subject to foreclosure at private sale.
- e. Notices of a judgment of foreclosure shall be sent by certified mail to the Tribal Chair and the Chair of the Land Resources Committee by the mortgagee.
- f. Notice of intent to exercise the first option to purchase shall be mailed to the mortgagee within thirty (30) days of the date of mailing the notice of judgment.
- g. If the Crow Tribe exercises its option to purchase, beneficial title shall pass in the manner prescribed above in (c).

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

⁴ Sec. 152.34. - Approval of mortgages and deeds of trust. Any individual Indian owner of trust or restricted lands, may with the approval of the Secretary execute a mortgage or deed of trust to his land. Prior to approval of such mortgage or deed of trust, the Secretary shall secure appraisal information as he deems advisable. Such lands shall be subject to foreclosure or sale pursuant to the terms of the mortgage or deed of trust in accordance with the laws of the State in which the lands are located. For the purpose of foreclosure or sale proceedings under this section, the Indian owners shall be regarded as vested with unrestricted fee simple title to the lands (Act of March 29, 1956). (70 Stat. 62; 25 U.S.C. 483a).

h. In cases where the Crow Tribe is not the mortgagee and the Crow Tribe does not exercise its option to purchase, the property shall be offered to individual Crow Indians in the following manner:

i. Notice of the offering shall be published in a weekly publication of general circulation on the Reservation for at least thirty (30) consecutive days prior to sale. The notice shall include the appraised value of the property, and the date, time, and place for accepting bids.

ii. The sealed bids of individual Crow Indians shall be accepted at a time, date, and place specified by the mortgagee, provided that the place for accepting bids shall be within the Crow Reservation.

iii. If no bid of an individual Crow Indian is equal to or greater than the appraised value of the land, the mortgagee may accept the highest bid or the property may be offered for public sale in the manner prescribed in this Chapter.

iv. Beneficial title to the property shall pass to the individual Crow Indian upon payment to the mortgagee of the accepted bid, provided that the proceeds of the sale shall be distributed in the manner prescribed in Section 8 of this Chapter. For the purposes of this part (h), "appraised value" shall be defined as the fair market value of the property as determined by a certified appraiser.

i. Legal title to trust property subject to foreclosure shall be considered to have remained in the United States throughout the proceedings in Tribal Court if:

(i) Beneficial title passes to the Crow Tribe in the manner described in part (c), or

(ii) Beneficial title passes to the individual Crow Indian in the manner described in part (h) (iv). If beneficial title, does not pass to the Crow Tribe or an individual Crow Indian, the Indian mortgagor shall be considered to have been vested with an unrestricted fee simple interest from commencement of the suit.

j. A bid at foreclosure sale from the Tribe or an individual member of the Tribe in an amount equal to or greater than the mortgage debt being foreclosed is sufficient for all purposes without regard to the appraised value of the property.

k. Should any part(s) of this Chapter be held violative of the United States Constitution, an act of Congress, or the Constitution of the Crow Tribe, all remaining parts of this Chapter shall continue in effect until held invalid or amended in accordance with Crow law.

Section 10. Foreclosure of Leasehold Interest in Tribal Land.

a. The provisions of this Chapter may be used to foreclose on leasehold interests in tribal land, provided the action is also in conformity with this section.

b. In any action to foreclose on a leasehold interest or any other interest in tribal real property, notice shall be served on the Crow Tribe and the Tribe shall be made a party upon filing a notice of intent to participate in the proceedings in court. Nothing in this provision constitutes or shall be construed as a waiver of immunity by the Crow Tribe.

c. Where the Crow Tribe by law or policy has restricted the persons who may obtain a lease in the tribal property or type of tribal property involved, only those restricted persons, the Tribe itself, or the judgment creditor, may bid at the foreclosure sale. If the judgment creditor purchases the property, the creditor may not subsequently sell or lease the property except to a person or entity authorized to bid at the sale.