

INDIAN AFFAIRS MANUAL

- 1.1 Purpose.** This chapter establishes the Bureau of Indian Affairs' (BIA) policy, responsibilities, and procedures for the management and processing of leasehold and land mortgages of trust property. All references to "days" within this policy are calendar days, not business days.
- 1.2 Scope.** This policy applies to all BIA management and staff involved in processing mortgages of trust property. This policy may also apply to entities carrying out activities on behalf of BIA under contracts or other agreements if expressly agreed to in the contracts or agreements, or if the requirement to abide by such policy is otherwise required by law. These entities may include contractors or Tribes operating through contracts issued pursuant to Public Law (P.L.) 93-638.
- 1.3 Policy.** It is the policy of Indian Affairs (IA) to:
- A.** assist Native Americans/Alaska Natives and Tribal organizations with home ownership and economic development;
 - B.** implement fiduciary practices to protect and preserve Indian trust assets from loss, damage, unlawful alienation, waste, depletion, and to make decisions concerning trust lands that are in the best interest of the Indian landowner; and
 - C.** process mortgages of trust land in an accurate, standardized, and timely manner, and in compliance with all applicable regulations and standards.
- 1.4 Authority.**
- A. Statutes and Regulations.**
 - 1) 25 U.S.C. § 5135, Mortgages and deeds of trust by individual Indian owners
 - 2) 25 CFR 152.34, Approval of mortgages and deeds of trust
 - 3) 25 CFR 162.357, Residential leasehold mortgages
 - 4) 25 CFR 162.457, Business leasehold mortgages
 - 5) 25 CFR 162.582, Wind and Solar Resource leasehold mortgages
 - 6) 25 CFR 169.210, Rights-of-way mortgages

1.5 Responsibilities.

- A. **Director, Bureau of Indian Affairs (BIA)** is responsible for ensuring that appropriate organizational arrangements, resources, and personnel are available to implement and maintain the mortgage program. The Director serves as the Senior Accountable Official for the mortgage program, and has primary responsibility for implementing and executing BIA programs in accordance with statute, regulation, and Departmental policy.
- B. **Deputy Bureau Director, Field Operations, BIA** is responsible for overseeing the Regional Directors (RDs) and for ensuring that processes and resources are in place to disseminate policy which impacts the regions.
- C. **Deputy Bureau Director (DBD), Office of Trust Services (OTS), BIA** is responsible for ensuring that statutory or regulatory timetables for mortgage application processing are met, and that guidance is available to regional and agency staff tasked with processing mortgage applications.
- D. **Chief, Division of Real Estate Services, OTS** is responsible for establishing BIA's mortgage program policies, guidance, and standards for complying with statutory and regulatory requirements; providing technical assistance and training to BIA regions as appropriate; managing BIA's federal reporting requirements for real estate services; initiating periodic reviews of regional and agency programs; and assisting in the development and dissemination of trust resource policy to the RDs.
- E. **BIA RDs** serve as the senior accountable official for the mortgage program in their respective regions. RDs are responsible for approving or disapproving land mortgage applications; interacting with federal and Tribal governments and lending institutions; assuring their respective region meets mortgage processing deadlines; requiring accountability from regional and agency managers in their respective regions; and conducting mortgage program reviews.
- F. **BIA Agency Superintendents** are responsible for managing and maintaining their respective organization's mortgage program compliance, including: meeting mortgage processing deadlines; interacting with federal and Tribal governments and lending institutions; identifying opportunities for performance and process improvements; and/or submitting recommendations for approval or disapproval to the RD.
- G. **Regional Realty Officer** is responsible for reviewing land mortgage applications and responding to mortgage reporting requirements.

1.6 Definitions.

- A. Land mortgage** means a mortgage obtained by an individual Indian who owns a tract of trust land for the purpose of home acquisition and construction, home improvements, and/or economic development.
- B. Lease** is a written contract between an Indian landowner(s) and a lessee that grants the lessee a right to possess Indian land for a specified purpose and duration. The lessee's right to possess will limit the Indian landowner's right to possess the leased premises only to the extent provided in the lease. A "lease document" means a lease, amendment, assignment, sublease, or leasehold mortgage.
- C. Leasehold** is a condition of holding property by lease.
- D. Leasehold mortgage** is a mortgage, deed of trust, or other instrument that pledges a lessee's leasehold interest as security for a debt or other obligation owed by the lessee to a lender or other mortgagee.
- E. Mortgage/Deed of Trust** is sometimes called a mortgage loan. It is a security interest in real property held by a lender as a security for a debt, usually a loan of money. A mortgage in itself is not a debt, but rather it is the lender's security for a debt. It is a transfer of an interest in land (or the equivalent).

1.7 Procedures. The items listed below summarize critical requirements in order to facilitate the timely processing of mortgages and ensure compliance with regulations and standards. These steps differ slightly depending on the type of mortgage being processed.

A. Leasehold Mortgages – Leases

- 1) Agency staff conducts a **preliminary review** within **ten (10) days** of receipt of the proposed mortgage package to ensure it contains all required documents.
- 2) Agency staff conducts a **comprehensive review** within **20 days** of receipt of a complete mortgage package and prepares a Decision Letter to approve or disapprove. If the decision is to disapprove, the letter will contain appeal language. The letter must be sent to the lender by the 20th day.
- 3) If the decision is to approve the mortgage, Agency staff issues a **Certificate of Approval**, which is signed by the Superintendent. A blank "Certificate of Approval – Leasehold Mortgages" document can be found on the IA Online Forms webpage: <https://www.bia.gov/policy-forms/online-forms> under the "Indian Affairs Specific Forms and Guidance" tab.

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- 4) Agency staff transmits the approved mortgage documents to the Land Titles and Records Office (LTRO) for **recording** within **two (2) days** of approval.
- 5) Agency staff requests a **Certified Title Status Report (TSR)** using the Trust Asset Accounting Management System (TAAMS) TSR module *concurrently* with the request to record the leasehold mortgage documents.
- 6) Agency staff returns the recorded approved mortgage documents and Certified TSR to the lender within **two (2) days** of receiving the documents from LTRO.

B. Leasehold Mortgages – Rights of Way

- 1) Agency staff conducts a **preliminary review** within **ten (10) days** of receipt of the proposed mortgage package to ensure it contains all required documents.
- 2) Agency staff conducts a **comprehensive review** within **30 days** of receipt of a complete mortgage package and prepares a Decision Letter to approve or disapprove. If the decision is to disapprove, the letter will contain appeal language. The letter must be sent to the lender by the 30th day.
- 3) If the decision is to approve the mortgage, Agency staff issues a **Certificate of Approval**, which is signed by the Superintendent. The same “Certificate of Approval – Leasehold Mortgages” document posted on the IA Online Forms webpage can be used for this purpose.
- 4) Agency staff transmits the approved mortgage documents to LTRO for **recording** within **two (2) days** of approval.
- 5) Agency staff requests a **Certified TSR** using the TAAMS TSR Module *concurrently* with the request to record the leasehold mortgage documents.
- 6) Agency staff returns the recorded approved mortgage documents and Certified TSR to the lender within **two (2) days** of receiving the documents from LTRO.

C. Land Mortgages

- 1) Agency staff conducts a **preliminary review** after receipt of the proposed land mortgage package to ensure it contains all required documents. Agency staff then transmits the package to the applicable regional office for further review and approval.

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- 2) Regional staff conducts a **comprehensive review** of the complete land mortgage package and prepares a Decision Letter indicating approval or disapproval. If approved, a Commitment Letter must be sent to the lender.
- 3) Upon approval of the mortgage documents, the regional staff issues a **Certificate of Approval**, signed by the RD. A blank “Certificate of Approval – Land Mortgages” document can be found on the IA Online Forms webpage: <https://www.bia.gov/policy-forms/online-forms> under the “Indian Affairs Specific Forms and Guidance” tab.
- 4) Regional staff requests a **Certified TSR** using the TAAMS TSR Module *concurrently* with the request to **record** the land mortgage documents.
- 5) Regional staff returns the recorded approved mortgage documents and Certified TSR to the lender within **two (2) days** of receiving the documents from LTRO.

Approval



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Acting Director, Bureau of Indian Affairs

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Date