



DESIGNING AND OPERATING HOMEOWNERSHIP PROGRAMS ON TRIBAL LANDS



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DESIGNING AND OPERATING HOMEOWNERSHIP PROGRAMS ON TRIBAL LANDS

A Guide for New Mexico's Tribal Leaders

Prepared by
New Mexico Tribal Homeownership Coalition

Created with support from
New Mexico Mortgage Finance Authority (MFA)
The Enterprise Foundation
U. S. Department of Housing and Urban Development
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The Enterprise Foundation Native American Program

Less than one-fourth of all tribes have legal systems that permit government or conventional mortgages. Fewer than 2,000 mortgages have been closed on tribal lands, where there is an immediate need for at least 200,000 decent, affordable homes. The Indian Housing Block Grant, the main resource for tribes, has financed only 25,000 homes since 1996, due to funding constraints and lack of private financing mechanisms.

Since 2000, The Enterprise Foundation has packaged almost \$20 million in financing for the construction and purchase of more than 177 homes, including 66 for homes for ownership, on six tribal reservations and pueblos. Enterprise, the U.S. Departments of Housing and Urban Development and Agriculture, the New Mexico Mortgage Finance Authority (MFA) and Fannie Mae also created a partnership with several tribes to train tribal council members on the value and use of mortgages.

The Enterprise Foundation's role has included packaging financing for homeownership and rental housing and training Tribally Designated Housing Entities on their use, providing intensive pre-development technical assistance and sharing information on housing programs and their implications for tribal governance and laws. Enterprise strives to provide programs and financial support that improve the lives of Native Americans in a culturally responsible and respectful manner.

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Introduction

Purpose of Guide

The purpose of this guide is to offer tribal leadership in New Mexico a comprehensive overview of the steps required to create homeownership programs on reservation land, with a particular focus on the mortgage lending process.

This guide provides an introduction to the basic elements of the mortgage loan industry, the organizations that work within that industry, and their roles and responsibilities. It also provides an assessment of the barriers to homeownership that have existed on reservation land.

This guide will help you to introduce mortgage lending processes on reservations in a way that:

- Leverages existing federal funding so that you can significantly increase financial resources for housing on reservation land
- Leverages government and private mortgage programs and resources for housing on reservation land
- Allows tribes or tribal affiliates to develop or sponsor many more homes for ownership by tribal members
- Helps tribes manage the mortgage process on tribal land

Mission of New Mexico Tribal Homeownership Coalition

The New Mexico Tribal Homeownership Coalition created this guide to help fulfill its mission of promoting homeownership opportunities on Indian reservations in New Mexico. The Coalition is working collectively to provide resources and technical assistance to pueblos and tribes in New Mexico interested in developing mortgage programs.

The New Mexico Tribal Homeownership Coalition is comprised of homeownership professionals dedicated to increasing housing opportunities for tribal members

through advocacy, technical and financial assistance, and implementation of housing programs. Membership in the Coalition is all on a personal, volunteer basis.

The Coalition is broad-based and open to all. The All Indian Pueblo Council (AIPC) endorsed the Coalition in Resolution 1999-42 “Support for the New Mexico Tribal Homeownership Coalition” in November 1999. Tribal housing entities representing Acoma, San Felipe, Pojoaque, Isleta, Laguna, Santa Clara, Jemez, Zuni, San Juan, Santa Ana, Santo Domingo, Cochiti, San Felipe, Sandia, Picuris, Tesuque, San Ildefonso, Taos Pueblos, and the Jicarilla and Navajo Nation are members of the Coalition. Additional native organizations include the All Indian Pueblo Council and the Southwest Indian Housing Association.

Federal government representatives in the Coalition include the U.S. Department of Housing and Urban Development (HUD), the HUD Office of Native American Programs (ONAP), the Department of Agriculture Rural Development (RD), the Interior Department’s Bureau of Indian Affairs (BIA), the Veterans Administration (VA), the Indian Health Service (IHS), and the office of New Mexico Senator Bingaman. New Mexico’s Department of Indian Affairs is also participating, along with Fannie Mae and the New Mexico Mortgage Finance Authority, the two largest purchasers of mortgage loans originated on New Mexico Trust lands.

Nonprofit and community development organizations include The Enterprise Foundation, Homewise (formerly known as Neighborhood Housing Services of Santa Fe), the Rural Development Response Council, Rural Community Assistance Corporation, ACCION and the Housing Assistance Council.

Active mortgage lender and private sector participants include Bank of Albuquerque, Century Bank, Community Bank, First National Bank of Santa Fe, Suburban

Mortgage Company, Wells Fargo Home Mortgage, AMERIND Risk Management Corporation, Chee Law Offices, Nordhaus Law Firm and Stetson Law Offices.

Collectively, the New Mexico Tribal Homeownership Coalition is a resource for tribes interested in developing homeownership programs on their reservations. More information about how to contact the Coalition or its member organizations is included in Appendix A.

Tenets of Tribal Guide

Three fundamental tenets guided the development of this guide.

First, although the lack of capital is a critical barrier to housing development and homeownership in tribal communities, increasing access to financial resources for housing is vital to the long-term growth and prosperity of the tribal community.

Second, bank loan products, such as mortgages, enable tribes to leverage federal and state government funding and to increase housing production in their communities. Where applied appropriately, mortgage financing can help tribal members achieve homeownership.

Third, while the ability to secure substantial private capital resources for housing on tribal lands is a significant opportunity to improve housing conditions, tribal governments must carefully manage the mortgage lending process in order to take advantage of these resources, while preserving tribal lands and social customs.

Importance of Housing and Homeownership to Tribal Communities

Providing decent, affordable housing is one of the most important challenges facing tribal leadership in New Mexico today. Studies suggest that affordable housing is a key element to any effort by low-income households to join the economic mainstream. Communities need a range of housing to accommodate varying incomes, household sizes and housing preferences. And communi-

ties thrive when housing reflects cultural traditions incorporating careful design and quality craftsmanship.

For a variety of reasons – some explored in this guide – the tribes and pueblos in New Mexico do not currently possess adequate housing, either in terms of quality or quantity. In addressing the need for housing, tribal leaders are faced with:

- Providing housing opportunities for tribal members of all incomes
- Helping tribal members remain on reservation lands
- Allowing tribal members living off reservations to return
- Reducing the influx of mobile homes financed at high interest rates
- Laying the foundation for healthy and viable communities

Providing housing is only part of the job. Economic development, job creation, quality education, health care and infrastructure improvements are also critical needs. However, for many communities, as for many individuals, housing is the necessary first step. Off-reservation, most small business owners use home equity loans to finance start-up costs. With mortgage lending limited on trust lands, the opportunity to use home equity – the owner’s value in a home – to start a small business is correspondingly limited. However, as homeownership becomes more prevalent on Indian reservations, small business and economic development growth will surely follow.

Background

The Old Way: Low Rent and Mutual-Help Programs

Since 1962, HUD's Office of Native American Programs (ONAP) has provided funding to Indian Housing Authorities (IHAs) in American Indian and Alaskan Native communities. Before the passage of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), this funding constituted the majority of all resources for housing in tribal communities. There were many problems with previous HUD programs. First, the funding assistance was restricted to low-income tribal members. Second, the Low-Rent and Mutual-Help Programs created a proscribed development process, with limited vision for creative, culturally appropriate site and housing design. Finally, the amount of funding available was inadequate.

As a consequence, IHAs could not build enough homes to meet the housing requirements of their communities, often could not maintain homes that they did build, and had to build without regard to traditional designs and layouts. In too many instances, the only homes available to tribal members were little box houses in unattractive subdivisions. It was housing that could be identified as "government" housing, and its residents tended to treat it as such, compounding problems with maintenance.

Income restrictions left tribal members who exceeded income limits with few options. There was virtually no homeownership market, private development or mortgage lending on reservations. To make matters worse, there were few advocates in Indian Country working towards the development of new homeownership opportunities. In this environment, over-income households faced difficult choices: they could buy a mobile home, try to build their home without mortgages (usually with

credit card financing), or move off the reservation.

Insufficient funds for low-income members and little or no mortgage credit have led to a severe shortage of adequate housing on New Mexico pueblos and reservations. Long waiting lists have led to overcrowding and political selection procedures. In some cases, mutual-help programs have created communities in which families own their homes but enjoy little or none of the benefits of homeownership. They have no financial investment in the home, little or no say about its design and, consequently, little pride of ownership.

Unlike rental or mutual-help housing on reservations, homeownership financing almost always has an element of funding that is distributed through loans, not grants. Earlier homeownership efforts in tribal communities, like mutual-help, were usually federally funded, heavily bureaucratic and involved no private sector financing. Mutual-help was subject to federal funding allocations and design guidelines, among other regulations and restrictions. It was available to households without requirements based on the ability to repay a loan. Monthly payments were calculated as a percentage of income. In contrast, homeownership is available primarily to households with steady income and takes into consideration debts and other obligations.

Whether funded by government or private sources, homeownership financing involves a mortgage. On trust land, a mortgage is a pledge of the borrower's leasehold interest against the loan used to buy or construct the home. If the borrower cannot make the payments, the lender can take title to, or repossess, the leasehold interest in the land, including the home, through a foreclosure process. Before any tribal community or tribal member embarks on a path toward homeownership, a full understanding of the mortgage and foreclosure process is essential.

Exercising Sovereignty: Leveraging NAHASDA and Other Resources for Homeownership

NAHASDA offers tribal governments some clear advantages over earlier housing laws and programs. Although NAHASDA funding levels are still too low for tribes to fully address housing shortages, the new law does allow tribal governments to:

- Design housing programs better suited for their members.
- Leverage federal block grants with private funding.
- Set-aside a portion of funding for families with higher incomes in need of housing.

Leverage The action of a lever or the mechanical advantage gained by it

– *Merriam-Webster's Collegiate Dictionary.*

“Leverage” is a term that is used so often – and often so differently – by government agencies and other sources that it is hard sometimes to understand what it means. An example helps to illustrate the meaning.

Under the old HUD programs, ONAP provides \$150,000 in IHBG grant funding to an IHA. The IHA uses that \$150,000 to build two \$75,000 mutual-help houses for two families, using no other funding. Net result: two homes.

Under NAHASDA, ONAP provides \$150,000 in IHBG grant funding to a Tribally Designated Housing Entity. The TDHE uses the \$150,000 grant, blends it with \$150,000 in bank mortgage financing and builds four \$75,000 homes for four families. Net result: four homes.

In this second case, the TDHE used the \$150,000 grant to create a program that allows individual tribal members to “leverage” bank financing. This leverage frees grant money that allows the TDHE to build two additional homes for tribal members. Each of the households will need to pay a monthly mortgage on a bank loan of \$37,500. Some families will have adequate incomes to build houses without NAHASDA or IHBG assistance.

The ability to leverage government subsidies with bank and other private investment is the key to building more and better homes for tribal members.

While NAHASDA is focused primarily on low-income households, tribes can use NAHASDA funds to leverage government-guaranteed and conventional loans for homeownership, thereby providing more housing options to members of all income levels.

For instance, in using more bank funding for moderate-income homeownership, tribes are able to preserve block grant funds to build more rental housing for poorer households. In the leveraging example given rather than building a total of four homeownership units, the Tribally-Designated Housing Entity (TDHE) could have used \$150,000 in bank financing to build two homeownership units and the \$150,000 in NAHASDA funding to assist in the construction of low-income rental housing.

By leveraging NAHASDA funding, tribes are also able to create mortgage programs to allow households to enlarge existing homes, renovate deteriorated houses or refinance mobile homes at reduced interest rates or for longer terms, among other possibilities.

Although the number of tribal members who can afford to finance their own homes is increasing, it is still difficult to buy or build a home on reservation land. Given the growing demand, the New Mexico Tribal Homeownership Coalition is working collectively to serve as a resource to tribal leadership seeking to take advantage of the new flexibility under NAHASDA to make homeownership available on their reservations.

Community Benefits and Responsibilities

Homeownership is not for everyone. However, careful home-buyer education can extend the benefits of homeownership to additional tribal members, including those with lower incomes and histories of poor credit.

The advantages of homeownership for those who can afford to buy – and maintain – a home far outweigh the disadvantages, in most instances.

Homeowners can:

- Build wealth as the equity increases in their homes.
- Make decisions about their homes in terms of design, expansion, occupancy and inheritance (subject to tribal law and custom).
- Secure housing now and for the future at a predictable monthly cost.
- Create an economically diverse community.

Homeownership also carries certain risks, responsibilities and burdens that make it inadvisable for certain households, including those with very low or sporadic incomes. These risks include:

- Homeownership requires certain upfront costs that can include down payments and closing costs.
- Homeownership transfers the responsibility for maintenance and upkeep from the tribe or the housing authority to the homeowner.
- Failure to make mortgage payments will result in the loss of the home and any investment made in its purchase and upkeep.

In most cases, homeownership benefits not only the homeowner, it also benefits the community. Studies indicate that homeownership can:

- Strengthen the economy through investment in homes, furniture and appliances.
- Promote stronger communities and good schools.
- Provide housing opportunities for professional and middle-class tribal members who would like to move back to the reservation, bringing both wealth to the community and models of employment for children and youth.

Tribes that promote individual homeownership in tribal communities should be aware of the importance for community and land-use planning. Scattered site homeownership can have unexpected consequences for the infrastructure or landscape of a community, including sprawl around historic sites, proliferation of roads and intrusion on important scenic areas and impacts on religious sites. Housing subdivisions, as tribes have seen with HUD projects, can have severe consequences for family and community.

Equity The money value of a property . . . in excess of claims or liens against it

– *Merriam-Webster's Collegiate Dictionary*

Homeownership allows a homeowner to accumulate wealth if the value of the property increases as he or she pays down the mortgage. This accumulated wealth – the difference between what a homeowner owes and what the home is worth – is called “equity.”

Equity is one of the principal financial advantages to homeownership. Even in real estate markets where the value of property is not rising, homeowners' equity increases because they are paying off their mortgages over time. A renter, who may be paying as much or more in rent as his or her neighbor is paying in mortgage payments, earns no equity.

Homeowners can obtain equity loans at an affordable interest rate to buy a car, start a business or send a child to college.

Barriers to Financing Homeownership Development

Homeownership is not new to tribal environments, but it lags behind the national average of 68 percent. The disparity between tribal and non-tribal homeownership development is attributable almost entirely to the absence of mortgage financing. As discussed earlier, federal programs historically were targeted to low-income rental and mutual-help housing. Mortgage lenders generally would not provide private mortgage financing to prospective home buyers on tribal or trust lands. As a consequence, tribal members attempting to build homes on reservations had only their savings or credit cards as financial resources, making it difficult, if not impossible, to build a house.

A number of causes have contributed to the absence of mortgage financing. The most significant barriers stem from the legal issues surrounding the land status and foreclosure. Tribes have been reluctant to place tribal land at any risk of foreclosure for clear historic, cultural and political reasons.

In addition lenders have been averse to lending in situations where they were unsure of their ability to foreclose as a remedy to nonpayment of a loan. The status of the land has raised questions for lenders about the value of the collateral. And lenders' uncertainty about legal infrastructure, legal precedent and tribal courts has raised questions about exercising a legal claim where one does exist.

Other issues or barriers to homeownership include lenders' concerns about the home-buyer readiness of tribal members, the prevalence of poor credit histories and the lack of physical infrastructure on Native American lands, including water, waste water, fire safety and utility systems. Finally, because housing has traditionally been provided through HUD-funded Indian Housing Authorities, tribal governments' roles have been limited, and few tribal resources have been committed to homeownership.

This chapter details some of the past barriers to home-

ownership development on tribal trust lands. These barriers are not insignificant, and many – if not most – still persist in most of New Mexico's tribal communities. However, there are mechanisms to overcome impediments to homeownership, and Chapter 4 outlines solutions to the issues raised here.

Legal Issues

Tribal Concerns Over the Loss of Trust Land Status

Confusion about tribal and federal restrictions against conveyance of land out of trust status has prevented tribal members from accessing traditional mortgage products, which require mortgaging lands and homes. Any possibility that a lender could subsequently foreclose, taking the land away from the tribe and its membership, has been and remains unacceptable to tribal leadership for historic and political reasons. Previous federal efforts, like the Dawes Allotment Act, saw Native American land holdings fall from 138 million acres in 1887 to 52 million in 1934, a total loss of 86 million acres. As a consequence, legal protections against alienation of trust lands are now both essential and comprehensive. With the proper tribal laws governing a homeownership program, tribal leadership can protect its land from leaving trust status and/or Indian control in all situations.

Mortgage lending on tribal lands occurs using a leasehold interest in the land as collateral. A leasehold is temporary conveyance of tribal land to an individual tribal member. With a leasehold interest, ownership of the land remains with the tribe or with the federal government in trust for the tribe. The home buyer obtains up to a 50-year residential lease of the trust land. The 50-year lease term is long enough for the home buyer to build a home and to repay the loan or for a subsequent owner to repay

the loan if the original borrower defaults. If a borrower defaults, the lender can foreclose on the leasehold mortgage and resell the leasehold to a third party; however, the third party's rights to the land may terminate with the end of the lease.

Each Native American mortgage loan program has its own process for resolving foreclosures. However, tribal governments can also define their own foreclosure procedures in their mortgage codes. Most foreclosure procedures allow for the tribe to approve the third-party purchaser from a pool of prospective purchasers or through advertisements; however, in the event the tribe cannot identify a qualified buyer to buy the leasehold itself, the bank or lender will sell to any qualified buyer, subject to any restrictions in tribal law. For example, there may be a requirement that a new buyer be a tribal member.

The primary concern for an individual tribal member is the possible loss of a family land assignment. If a borrower defaults on a mortgage, the tribe may attempt to substitute another family member as a qualified borrower, but if no family member is interested or qualified, the property may be offered to a tribal member from another family. Clearly, this is a significant risk that needs to be weighed carefully. Again, tribal governments can define this process in their mortgage codes.

Lender Collateral Requirements

Collateral, the pledge of something of value as security for a loan, is a fundamental part of most loan transactions. Banks and other lenders are not interested in the collateral in itself, whether the collateral is a house or a car. Banks do not want to own and manage real estate. A bank's business is financial services and lending. Collateral is only a means to recover some or all of a defaulted loan.

Because trust land cannot be directly mortgaged, banks cannot use the land itself as collateral for mortgage loans. As a result, in order to avoid the potential complications and delays resulting from collateral requirements, some families on trust land have opted, or been forced, to purchase manufactured or mobile homes

with a chattel or personal property loan instead of a mortgage loan.

Banks and finance companies will provide loans for these homes because they can be repossessed, hauled off, and resold if a tribal member fails to pay the loan as agreed. Mobile homes are trucked in and placed on blocks. If loan payments are not made, the lender can go to the tribal court and obtain permission to truck the home away. The land is not affected because there is no leasehold interest required for a chattel or personal property loan. However, interest rates on these types of loans for mobile homes are much higher than rates for mortgage loans, and often the terms of the loans are not as favorable to the borrowers.

But now, because the federal government and private lenders have developed mortgage products that accept a leasehold interest in tribal land as collateral for the loan – rather than the land itself as it is used off-reservation, mortgage financing for permanent housing is now available where tribes have adopted codes acceptable to the federal and private mortgage markets.

A home buyer purchasing a home with private financing through a mortgage loan will sign two important papers:

- A *note*, in which the borrower acknowledges that he or she has received money from the bank and agrees to pay it back with interest on a monthly basis over a period of years. The borrower agrees that if he or she fails to make these monthly payments, the lender can demand immediate payment of the entire loan. The note is also known as the *debt instrument*.
- A *mortgage*, in which the borrower pledges the house and his or her right to use the land as security or collateral and agrees that the bank or lender has a right to that property if he or she fails to make payments as required in the note. The mortgage is the *security instrument*. On trust land in New Mexico, the security pledge is the leasehold interest – the use of the land and of the home.

Foreclose To deprive a mortgagor of the right to redeem a mortgaged property, as when payments have not been made.

– *Merriam-Webster's Collegiate Dictionary*

In New Mexico off-reservation, if a mortgage borrower falls behind on payments, the lender usually makes every effort to work out the delinquency. But if the borrower falls three months past due, the lender will send a demand letter asking for the entire balance due within 30 days. The loan is “accelerated,” and full payment of the entire debt is requested.

After those 30 days have passed, the lender gives the case to a lawyer to begin the foreclosure. The case is heard in state court, and the court will order a foreclosure sale, which is a public auction. The lender can bid the debt owed, and in rare cases other prospective purchasers may also bid. When the court approves the sale, a deed is issued to the lender or other successful bidder. The borrower has one month to “redeem” the property by paying cash for the price bid at the sale, plus interest.

After this redemption period is over, if payment is not made the lender has full ownership of the property and will resell it at the highest possible price in order to recover his investment.

New Mexico state law covers and allows for the enforcement of this procedure. On reservation, tribal leaders need to enact comparable laws to provide this legal framework.

Tribal and Lender Legal Protections

Off-reservation, the mortgage industry relies on an established set of federal and state laws and guidelines that form a legal structure that provides protections to both home buyer and lender. This legal structure defines and governs ownership and transfer of ownership, use privileges, loan and mortgage documents, the form of mortgages or other liens on land and improvements, consumer protections and lien rights of mortgage holders.

As a result of this legal structure, the entire mortgage process is predictable. Borrowers know their rights and

protections. Lenders are assured of certain legal remedies if a loan is not repaid as agreed. Predictability leads in turn to efficiencies in scale, cost savings for both lenders and borrowers, increased competition among lenders and greater inflows of financial resources through the activities of the secondary market.

In the past, there were few comparable legal structures for mortgage lending on reservations. In this environment, lenders needed to negotiate every transaction, a costly and time-consuming process. The uncertainty extended to the tribal courts where lenders sometimes felt they did not receive equitable treatment. Banks and other private lenders had sought to adjudicate legal disputes in state courts familiar to them.

Federal loan guarantees, direct loans, and non-government conventional mortgage loans have now been developed which mirror the off-reservation mortgage loans and accept the leasehold interest. Each tribe can have some control over the process depending upon how they draft their mortgage codes.

Today, tribal leaders are recognizing the demand for privately financed homeownership from their members. As a result, they are learning the need to enact tribal laws that afford legal protections and certainty to both borrowers and lenders and provide an adequate forum to resolve any legal disputes.

Home-Buyer Readiness

While a Native American family may live in a home built on land passed down for generations, the home was probably built and improved as time, money or materials were available. In all likelihood, no banks, mortgage lenders, mortgage brokers or mortgage guarantors were involved. Financing a home is, in most instances, a new concept. As a result, many Native American prospective home buyers have little or no understanding of the mortgage process, and the tribal government may need to help develop certain types of programs to assist their members to become ready to purchase a home with a mortgage.

Home-Buyer Education

In lower-income neighborhoods across the county, lenders have concerns about the readiness of prospective home buyers to take on the costs and responsibilities of homeownership. In urban neighborhoods, banks and non-profit community development organizations address homeownership readiness by offering training classes and workshops. In rural communities and on Native American reservations, these resources are harder to find.

Tribal leadership must assist in the development of home-buyer education resources within their communities for their tribal membership.

Credit Counseling

Credit is a significant barrier to homeownership in many low-income and minority communities. Credit refers to a prospective borrower's history of making payments on financial obligations, including loans, credit cards, utility bills and rent. Banks and other lenders receive detailed individual credit histories from national credit bureaus that compile information from hundreds of different sources, and these credit histories are a crucial part of the mortgage loan approval process.

For many lower-income Native American families, it is more difficult to obtain loans or credit cards, or to maintain good credit with scarce expendable income.

Both no credit and bad credit create obstacles to homeownership, because banks and mortgage lenders may not provide affordable mortgages to individuals with these credit profiles.

For many Native Americans, the difficulty in developing or maintaining a good credit history is compounded by the prevalence of predatory lenders in their communities. These lenders make loans at very high interest rates to borrowers who have no other options if they want to buy a car or mobile home. High interest rate loans contribute to high rates of default and repossession and create severe credit problems for borrowers, affecting their ability to get a mortgage loan.

Tribal leaders must help to overcome this barrier by identifying resources to develop credit counseling programs to help members build or repair credit.

Need for Financial Assistance to Home Buyers

Mortgage financing provides a substantial portion of the purchase price or cost of a home, up to 100 percent in some cases. Even so, prospective home buyers need to have cash both at the time they sign a contract to buy the home, typically a percentage of the purchase price, and at the time they actually purchase it. At purchase, buyers

Standardization and the Secondary Market

Any analysis of the mortgage financing system in the United States would notice one overwhelming trend: the move to standardization. There was a time when a home buyer went to a bank, sat down with a bank mortgage officer, discussed his or her job, loan payment history and the amount of his or her savings. Bank officers were trained in the three "Cs": collateral (the value of the home), credit (the borrower's loan payment history) and character.

Banks now employ standard automated credit scoring systems to analyze credit histories generated by national credit bureaus that accumulate and report standard information on all types of financial transactions, including credit card payments, car and loan payments and tax arrears, among others. Home appraisals are performed on standard forms; employment verifications are generated on another standard form. Character is not considered, because it is hard to reduce to a form.

There are several reasons for this move to standardization, but the main reason is the secondary market. The secondary market consists of financial organizations – including the two largest secondary market entities, Fannie Mae and Freddie Mac – that buy mortgages from the banks and mortgage companies that make them. The secondary market is far removed from the individual home buyer and makes a decision to buy a mortgage based on standard calculations about the borrower.

However, home buyers benefit from this process too, because it increases the flow of capital to lenders. That allows them to originate more affordable mortgage loans, which in turn makes homeownership more accessible to low-income and minority communities.

need to pay the difference between the amount of their mortgage and the purchase price plus closing costs. In many instances, this requirement exceeds the savings of prospective home buyers, even those who could cover the necessary mortgage payments and maintenance costs from their earned income.

For example, for the purchase of a \$70,000 home, a buyer might be able to finance up to \$68,000 in some instances, leaving a \$2,000 gap. With closing costs of approximately \$2,200, the buyer would need \$4,200 to complete the transaction, a considerable sum for a low-income family.

Programs do exist for financial and closing cost assistance. Programs also exist to reduce interest rates as another means of closing the affordability gap for lower-income households. However, until recently, these programs did not exist on tribal lands or were not used to attract private mortgage financing. The New Mexico Mortgage Finance Authority (MFA) has recently extended its down payment assistance and rate reduction programs to tribal communities. The Federal Home Loan Bank's Affordable Housing Program (AHP) can also be used to subsidize mortgage programs. These and other programs are discussed in the next chapter.

Lack of Infrastructure

One of the most significant barriers to developing housing in rural areas is the lack of an adequate infrastructure for homesites, including water and sewer systems, utility systems and roads. There are few funding options for infrastructure development. Beyond tribal funds, the two primary sources of infrastructure funding are Indian Health Service (IHS) and USDA Rural Utility Services. Neither source currently provides sufficient assistance.

Congress prohibits the use of IHS funding in conjunction with NAHASDA funds, despite NAHASDA preferences for leveraged, rather than sole-source, funding. IHS also places first priority on assisting existing units and has limited funding for new units, despite the strong need. The IHS may be able to provide some technical assistance with infrastructure development, so even

though funding may be limited, it may be worthwhile consulting with the IHS to see what, if any, assistance they can provide.

USDA Rural Utility Services funds are largely spoken for in the New Mexico region for in-pipeline developments with two- to three-year timelines. Because NAHASDA and state programs mandate construction completion much faster, these funds are not as useful now as they might be in the future, when they can be better coordinated with housing funding.

The absence of available infrastructure funding invariably stalls – and at times stops – affordable housing developments on tribal land. Bank financing, even with loan guarantees, is not a viable source of funding for larger road and utility work. This is partly due to the land status (conveyance of leasehold interest does not include these improvements) and limits on the amount of debt financing that an affordable housing project can carry.

Financing the infrastructure for roads, water, wastewater and utilities is essential to building. The absence of infrastructure improvements impedes homeownership development in three ways:

- It puts enormous burdens on tribal resources, TDHEs and individual home buyers to find other funds to complete infrastructure improvements, limiting funding for housing development and occupying significant staff time and resources.
- It impedes the development of a housing market, which impacts appraised values for homes.
- It increases the per-unit development costs, which pushes the total development costs beyond the reach of many potential home buyers.

Off-reservation, state and county governments usually subsidize infrastructure improvement because new subdivisions occupied by new homeowners will mean a larger tax base and growth that may repay in time the initial government expenditure. Local governments are less likely to subsidize infrastructure development in poorer communities, where an increased tax base may not cover increased demands on government services.

Limited Role of Tribal Government

The most successful housing and homeownership programs are those in which critical decisions about program design and implementation are made at a local level, involving community residents, community organizations and the tribal government. Unfortunately, on many Native American reservations, little local involvement occurred in the past, with the exception of Indian Housing Authorities, which served primarily to implement the policies and priorities of off-reservation, federal agencies. The results are all too clear: insufficient and substandard housing and high indices of poverty, need and unemployment.

The lessons of underserved minority communities suggest that affordable housing development requires a strong community advocate for housing, such as a group of concerned citizens, a nonprofit organization or enlightened local government. Federal government policy prior to NAHASDA encouraged little, if any, involvement from tribal government with respect to housing or homeownership.

With the enactment of NAHASDA, tribes have more authority and more responsibility to make decisions affecting housing and homeownership. The next chapter of this guide covers what a tribal government should do to ensure a strong homeownership program on its reservation.

Role of Tribal Governments in Creating Homeownership Opportunities

This chapter provides concrete suggestions on ways that tribes can overcome the traditional barriers to mortgage lending in Indian Country and bring in significant amounts of private financing in a controlled and cost-effective manner.

Homeownership development for low and moderate-income households is a complicated process with a number of different roles requiring different experience and expertise, including infrastructure development, housing development, homeownership counseling and training, program design, mortgage underwriting and mortgage packaging, among others. As a result, a comprehensive, effective homeownership development program is a machine with many moving parts.

There are two, sometimes conflicting, factors that tribes need to weigh when considering the design and implementation of a homeownership program:

- **Complexity:** Prospective home buyers need assistance navigating the process. In order to provide continuity for the home buyer, this assistance is best provided by one organization that either offers the full range of services or coordinates services provided by it and other organizations. In either case, one organization functions as a one-stop mortgage center for home buyers. This is particularly important in a tribal context where a one-stop center that is familiar with the unique cultural and economic characteristics of the community can mediate between tribal members and agencies and external organizations like banks, secondary market institutions and federal agencies.
- **Cost:** The variety of different roles and areas of expertise means that a homeownership program needs a number of professionals to adequately staff the program. Tribes need to assess whether there is a sufficient market for homeownership to justify a number of full-time staff positions, whether there are operat-

ing funds to support staff, and whether there are existing organizations that can fill some of the program needs. The result of this assessment will help tribes to determine the best organizational structure for the one-stop mortgage center, which could take the form of a separate nonprofit organization, an unincorporated tribal entity, or an initiative under an existing Housing Authority or TDHE. Appendix B offers an outline of these major options in mortgage financing.

Establish Lead Agency or One-Stop Mortgage Center

The cornerstone to an effective, coordinated homeownership program in a tribal community is the designation of a lead agency to oversee the development and implementation of the program. It's up to the tribal government and the community to decide the best candidate for serving as a one-stop mortgage center. In some cases, the best candidate may be a new entity.

Analyze Appropriate Organizational Structures

A one-stop mortgage center could take a number of different organizational forms. The form of any organization is usually predicated on its purpose and what it intends to do. Therefore, the tribe should first conduct strategic planning sessions to identify the homeownership services and products to be delivered based on the results of a survey or needs assessment about the market for homeownership. Then, the tribe should determine the best form of entity. (See Appendix C for a model community survey.) As noted above, demand for homeownership is one primary factor in determining the best structure. Other related considerations include: operating funding; compatibility with existing organizations and government agencies, both on and off the reservation;

and cost and ease of implementation. Legal counsel advice on the advantages and disadvantages of each are important.

Some structural options include:

- Nonprofit organizations, both state incorporated and tribally-incorporated
- Unincorporated tribal subsidiaries
- Tribal departments
- Initiatives under an existing housing authority or TDHE
- For-profit companies
- Other tax-exempt structures, such as Section 17 corporations

Determine the Role of a One-Stop Mortgage Center

A one-stop mortgage center can perform a variety of functions depending on the needs of the tribal community. Its knowledge of tribal needs, culture, laws and practices, on the one hand, and government and private-sector processes and mortgage financing requirements on the other, allows a one-stop mortgage center to bridge the gaps between lenders, customers and tribal governments. In each tribal community, the specific needs and market gaps will determine the actual roles that a particular mortgage center will fill. Where there are strong existing organizations providing some services, the mortgage center will concentrate on partnering with these organizations. In every case, the mortgage center should help tribal members navigate the various federal, tribal and private-sector homeownership requirements.

The New Mexico Tribal Homeownership Coalition, through its membership, can provide expertise and guidance to tribal mortgage centers to identify the best possible mix of programs. All programs should be available, but with counseling from the mortgage center, each home buyer should be accessing the best and least expensive mortgage loan for his or her personal situation.

One-stop mortgage centers may also take on one or more of the following tasks.

Market Homeownership Opportunities

For many rural, remote tribal communities, this task may be handled in-house. The mortgage center must develop expertise in mortgage finance programs in order to properly promote the programs, to conduct community and one-on-one meetings with potential homeowners to explain the mortgage programs and to negotiate loan terms for the benefit of the tribal members. (See the section titled “Evaluate Mortgage Financing Products” later in this chapter.) Monthly payment “shock” is tested during marketing. The shock can be significant if the current mortgage payment is 15 percent of their monthly income and the new mortgage payment will be 33 percent. It is important to differentiate between what people *will* pay versus what people *can* pay.

Conduct Home-Buyer Education Courses and Credit Counseling

One of the most important steps in the homeownership process is home-buyer education and credit counseling, particularly for low-income and Native American households, for whom mortgage financing may be a new concept.

Native American home buyers need education in a variety of areas. Home-buyer education and credit counseling is generally divided into four different phases: pre-qualification interview, pre-purchase counseling, post-purchase counseling and mortgage delinquency and default resolution.

Pre-qualification interview: During this interview the mortgage center determines a family’s or individual’s ability to qualify for a mortgage. Staff from the mortgage center will obtain information on income and debt, analyze credit reports and calculate the key income-to-debt ratios for various mortgage programs. If the family or individual does not qualify, the staff will help them develop a long-term work plan to qualify in the future. This plan may include restructuring debt, repairing credit issues and increasing savings.

Pre-purchase counseling: This includes budgeting and financial management, purchasing procedures, mortgage financing, savings for down payment and closing costs,

and, if appropriate, credit counseling and debt consolidation.

Post-purchase counseling: This includes training on maintaining a home and on budgeting for mortgage obligations.

Mortgage delinquency and default resolution: This includes guidance on restructuring debt and methods to avoid default and mortgage foreclosure.

A number of organizations have substantial experience and expertise in delivering home-buyer education courses and credit counseling sessions. In addition, many home-buyer courses are available in print or electronic formats. However, very few organizations and curricula are targeted to Native American communities, so that a tribal one-stop mortgage center would very likely need to provide new or augment existing homeownership counseling and training.

Every home-buyer or homeownership counseling course or training has variations and different emphases. Some common recommendations for developing a strong home-buyer education program include:

- Have minimum entrance requirements.
- Get to people early in the home-buying process.
- Pre-qualify and counsel clients in the intake interview.
- Do not turn away unqualified applicants but give them a plan and a timeline to success.
- Offer training after initial intake and individual counseling.
- Provide in-depth training – a standard eight-hour course may not be sufficient.
- Provide ongoing counseling as required through one-on-one meetings.

The mortgage center will evaluate the home buyer using the same criteria as the mortgage lenders will: by looking at the prospective borrowers' finances in five ways:

Savings tells a bank whether the borrower can pay the down payment and closing costs required at closing, as well as whether he or she has sufficient reserves to manage problems in the future, like unexpected home repairs or periods of unemployment.

Calculating Housing and Debt Ratios

Mortgage ratios are calculated to determine if the borrower meets the ratio limits established by the various mortgage programs or lenders. These ratio limits vary by program and lender.

The **housing expense-to-income ratio** is often called the “front-end” ratio. The lender will measure the borrowers' monthly gross income against their housing expenses, including mortgage payments, taxes and property insurance costs. (Mortgage lenders often call housing expenses “PITI,” for principal and interest of the mortgage payment, plus taxes and insurance.) Since most trust land is not subject to taxes, the ratio is really a PII ratio – that is principal and interest on the loan plus a monthly charge to pay the homeowners insurance.

The **total debt-to-income ratio** is often called the “back-end” ratio. It is calculated by adding the current debts to the PII, then comparing that total to the gross monthly income.

Income tells a bank whether the borrower has steady, reliable earnings that will allow him or her to continue to pay the mortgage payments and all additional expenses. Generally, the mortgage lender wants a two-year history of steady employment, preferably with the same company. Employment of six to 12 months often is not sufficient, particularly if the borrower has no recent history of extended employment with one employer or of steady income if he or she is self-employed.

Current debts, when calculated as a total debt-to-income ratio, tell the bank how much mortgage payment the borrower can afford under the mortgage underwriting guidelines.

Credit history allows the bank to review payment history for rent, auto, installment and credit cards. Too much debt or too many late payments may result in a denial of or delay in receiving mortgage credit.

Credit scores tell the bank how the borrower ranks statistically with other borrowers as a potential risk for default. Generally, scores above 690 are “good” credit risks for banks. Scores are affected (or lowered) by loan

Housing or *Front-End Ratio* Calculation

A	B	C
Gross monthly income	Monthly mortgage, interest, and \$50.00 insurance payment (PII) for \$80,000 mortgage loan @ 8% for 30 years	Housing or front-end ratio (B divided by A)
\$2,000.00	\$637.00	32%

Total Debt-to-Income or *Back-End Ratio* Calculation

A	B	C	D
Gross monthly income	Monthly mortgage, interest, and \$50.00 insurance payment (PII) for \$80,000 mortgage loan @ 8% for 30 years	Monthly car payment, college tuition loans, credit cards, personal loans	Total debt-to-income or back-end ratio (B + C divided by A)
\$2,000.00	\$637.00	\$300.00	47%

defaults, judgments, liens, amount of revolving credit, etc.

The charts above provide examples of how to calculate “front-end” and “back-end” ratios:

The borrower in this example would not qualify for the HUD 184 Mortgage Loan Guarantee Program, which requires a back-end ratio under 41 percent – meaning total debts including housing debt must be below 41 percent of the borrower’s income. In this case, it is 47 percent.

Rather than deny this borrower, counselors from a tribal mortgage program could help in several ways. First, staff might verify the debts are accurate because there are sometimes errors on credit reports. They might also work with the borrower to restructure or consolidate the debts to lower monthly payments. Another mechanism to lower monthly payments is to shop around for a lower interest rate or blend a lower interest rate product with a market rate product. In this case, an interest rate of 5.50 percent versus 8 percent lowers the monthly housing payments enough to bring the ratio into the program guidelines.

Another strategy might be reducing the loan amount with a soft second mortgage or grant. But how does a counselor determine how much to allocate in a soft second mortgage or grant? The difference between what a family can qualify for in a mortgage and the housing cost is called the *affordability* or *financing gap*. Using the previous example, and detailed in the following chart, this borrower has a financing gap of \$8,911. The counselor needs to identify a source of funds to cover that gap so that the borrower can qualify to purchase the home.

The staff would also ask the borrower whether the new mortgage payment is substantially larger than the current housing payment. If the borrower has been paying \$200 per month in rent, has no savings and is now considering a mortgage payment of \$690, he probably needs counseling on how to adjust his budgeting and saving practices to compensate for that increased monthly housing payment.

Computing the FINANCING GAP in affordability

A. Household income of typical buyer	\$30,000
B. Divided by 12 (monthly income)	\$2,500
C. Allowable installment debt (back end ratio 41%)	\$1,025
D. Less existing family installment debt (monthly)	\$400
E. Available for PITI	\$625
Plus rental income	\$0
Total PITI	\$625
F. Less insurance (monthly)	\$30
G. Available for principal and interest (E - F)	\$595
H. Mortgage interest rate	8.00%
I. Sustainable mortgage amount	\$81,089
J. House price	\$90,000
K. GAP (J - I)	\$8,911

Evaluate Mortgage Financing Products

As a part of its assistance to prospective home buyers, a one-stop mortgage center needs to evaluate suitability of mortgage financing products available for tribal communities. This evaluation cannot consist merely in reviewing product terms and conditions but requires meetings with private mortgage lenders and with government agencies. As with any line of products, there are mortgages that may appear attractive on the basis of loan rates and terms but, in practice, are administered poorly or underwritten too strictly to be useful tools. Through meetings, agreements and memoranda of understanding, a one-stop center can ascertain what lenders will work closely with a particular community as part of an effort to extend appropriate financing at affordable terms.

The one-stop center functions primarily as an intermediary between lenders and tribal borrowers, and it needs to understand the expectations and capacity of the lending community – both government and banks – as well as the expectations and capacity of prospective borrowers.

The mortgage products available on trust or tribal land are:

- HUD Section 184 Loan Guarantee Program
- Federal Housing Administration Section 248 Mortgage Insurance Program
- Rural Housing Services Section 502 Direct Loan Program

- Rural Housing Services Section 502 Loan Guarantee Program
- Veterans Administration Direct Loan Program
- Conventional mortgage loans through a local lender made available through Native American Conventional Lending Initiative
- Mortgage revenue bond issued by a state housing finance agency, such as the Building Trust Program in New Mexico

Appendix C, Mortgage Products for Indian Country, presents a chart that compares the major components such as interest, fees, income limits and housing price limits of each of these products.

Develop Appropriate Financing Structures

Another critical role for some one-stop mortgage centers – rather than helping individuals on scattered sites – is the development of financing structures that make homes more affordable. Key to this process is the ability to leverage a tribe's Indian Housing Block Grant (IHBG) funding by securing private and other government investment at rates and terms that are affordable to low-income tribal members.

There are many sources of funding available for homeownership for low and moderate-income households. Unfortunately, little of this funding is available in amounts sufficient to complete any one project. As a result, most affordable housing development requires two or more sources of funding. It is not uncommon to see projects that have drawn resources from five or more different funding sources, including banks, government agencies, nonprofit lenders, foundations and equity investors. While developing complex financing models can be challenging and prolonged, it is necessary for tribes to begin closing the gap between the need for housing and housing production. The best of these structures creatively draw on limited grant dollars and provide decent affordable housing to more individuals and families.

Both the type and size of the project and the availability of financial resources determine the complexity of the financing. As most financing programs and grants vary from year to year and within specific communities,

Sources		Uses	
Bank first mortgage	\$83,000	Total development cost	\$100,000
NAHASDA soft second mortgage	\$13,000	Closing costs	\$ 3,000
Home Loan Bank AHP grant	\$ 5,850		
Borrower's savings	\$ 1,150		
Total Funding	\$103,000	Total Cost	\$103,000

one-stop mortgage center staff needs to investigate and be aware of all available resources when considering an appropriate financing structure for a particular development project or program.

Public lender participation in the development of affordable housing can provide financing at longer terms than the conventional market and at interest rates below market or at zero percent, as well as *forgivable* second mortgages and loans with higher loan-to-value ratios than conventional market loans. Public lenders include state and local governments (cities, counties and municipalities) as well as the federal government. Many state and local programs are the direct result of allocations passed at the federal and state level to local governments and municipalities.

Affordable homeownership programs layer public funding with private financing in a number of ways. In every program, however, there is a need to bridge the affordability gap between the cost of building the home and the maximum mortgage that a prospective home buyer can afford.

Affordable housing developers generally employ two mechanisms to bridge the affordability gap: grant funds and deferred or “soft second” mortgage loans. Soft second loans are typically deferred loans and payable only upon sale and on a sliding scale. As such, there is no monthly loan payment required to repay them. These loans also follow the bank, or “first” mortgage, as security in the event of a default. In cases of default, the first mortgage is paid from the proceeds of the sale of the house. Only if there are any remaining proceeds is the second mortgage paid. Often affordable housing lenders

use both grants and soft second mortgages in one program. The chart above illustrates a program that would meet a borrower’s needs by using a combination of a first mortgage loan, a NAHASDA-funded soft second mortgage loan, grant funds secured through the Federal Home Loan Bank Affordable Housing Program (AHP) and savings from the borrower.

Create and Manage Home-Buyer Financial Assistance

To facilitate homeownership efforts, a one-stop mortgage center may also develop and operate financial assistance programs, like the NAHASDA soft second mortgage program described above. These programs might include:

- Down payment or closing-cost assistance programs that assist households with the actual purchase of a home
- Grants or soft second mortgage programs that help families bridge the affordability gap by reducing their mortgages to affordable levels

Down Payment or Closing-Cost Assistance: While mortgage financing for homeownership provides a substantial portion of the cost of a home, home buyers still need to fund the difference between a mortgage lender’s maximum loan and the cost of the home plus closing costs. In most instances, home buyers cover this gap in two phases. First, the home buyer must pay an earnest money deposit based on a percentage of the cost or value of the home at the time she or he signs a purchase contract. Second, the buyer must pay the remaining difference between the mortgage and the purchase price, as well as closing costs, at closing or settlement.

These payments can be significant, particularly for lower-income tribal members. A one-stop mortgage center can provide grant funding to help with these costs, although the one-stop center should ensure that its support fits within the guidelines of the mortgage lender. Some lenders limit the amount of grant funding or gifts and have minimum percentages that the buyer must provide from personal savings.

The one-stop center might consider making down payment and closing costs assistance programs contingent on participation in home-buyer training classes, both to ensure the expenditure of limited tribal resources on qualified buyers and to encourage participation in training classes and workshops.

Soft Second Mortgage Programs: The one-stop center can also administer a soft second mortgage program or link prospective home buyers to soft second mortgage programs administered by the tribe or TDHE. As noted above, in some programs soft second loans are forgiven over time if the borrower retains the property as a principal residence and keeps first mortgage payments current. In other programs, repayment of the soft second mortgage is required when the home is sold. In communities where housing costs are escalating rapidly, soft second mortgages often contain provisions limiting resale prices in order to preserve scarce affordable housing resources.

Offer Design and Construction Contract Assistance

The one-stop center may also consider the difficulty families may have in negotiating and managing the design and construction process when building their own home. The one-stop center can provide guidance on selecting qualified contractors and construction administration services to control budget and schedule and ensure construction quality. Most stock house plans are created with urban home buyers in mind or without concern for siting, energy costs and weather. It is important for the one-stop center to provide design review services through their own qualified staff or consultant architects familiar with tribal customs and, if available, design guidelines.

Support Tribal Governments Through Advocacy and Funding

Private developers, lenders and capital markets generally do not meet the housing needs of residents in low-income communities off-reservation. Housing does happen in these communities, but only with the involvement of a wide mix of government agencies, nonprofit organizations, foundations, secondary market entities and other organizations. Nonprofit developers now constitute an industry of their own, with hundreds of experienced development organizations supported by hundreds of nonprofit community development financial institutions (CDFIs) and strong advocacy organizations at the state level and on Capitol Hill.

As federal resources for Indian housing decrease, one-stop mortgage centers and tribal governments need to work together to replicate these types of partnerships in Indian Country. Homeownership on tribal or trust land is a very complex undertaking with many organizational players and a variety of legal and regulatory issues. Native American one-stop mortgage centers, with a single focus on homeownership in Indian Country, can play the same role as nonprofit housing developers play off-reservation. They can provide a range of information on industry trends and models to policy-makers on the tribal, federal and state levels. They can also secure grant funding and financial and technical assistance resources from foundations and other philanthropic sources.

Understand the Home-Buying Process for Tribal Members

Even though tribal governments can rely on their lead agencies or one-stop mortgage centers to manage the day-to-day operations of a homeownership initiative, it is important for tribal leaders to educate themselves about how homeownership works. This knowledge will help the leaders make decisions about how to design the program to fit within the tribe's culture and traditions, needs and available resources.

Get to Know Players and Establish Partnerships

Any successful affordable homeownership program includes many players. This is true because each of the three key elements of homeownership connect to a number of systems and organizations. The three elements are the home, the home buyer and the home mortgage.

- The home itself requires design and construction, roads, electrical and telephone lines, and water, sewer and safety systems.
- The home buyer, particularly a lower-income, first-time home buyer, requires home-buyer and homeownership training, credit counseling, down payment assistance and post-closing counseling.
- The home mortgage requires a lender, a secondary market investor, a mortgage servicing company, a guarantor, a home insurance company and a legal structure that, in Native American communities, involves the tribe, the tribal courts and the Bureau of Indian Affairs.

In addition, affordable homeownership requires grants and low-interest loans from foundations and a number of state and federal agencies, depending on the particular project.

A one-stop mortgage center may help to coordinate the activities of all of the players that participate in a homeownership program. In doing so effectively, the one-stop mortgage center, along with the tribal leaders, must understand the motivations and requirements of each.

The home buyer is a tribal member who wants to buy or build a home. The tribal member's family and any other individuals who will live in the home should also be a part of the home-buying and education process.

The tribe can facilitate homeownership by developing a one-stop mortgage center or a homeownership initiative and by dedicating resources, including NAHASDA funding and tribal employees. Tribes have a variety of interests in homeownership, including decent housing, retention of tribal members on tribal lands, employment and economic growth.

The Tribally Designated Housing Entity (TDHE), often an Indian Housing Authority, is charged by the

tribe with providing housing and housing services to tribal members consistent with the traditions and cultural priorities of the tribe. The TDHE's interests include leveraging NAHASDA funds with bank and other private financing in order to build as much housing as possible.

Lenders provide the mortgage loans to prospective home buyers. Banks and mortgage companies earn money on mortgage loans. Their primary motivation is profit. They earn money in loan processing fees and interest on mortgages they "hold" or keep until fully repaid by the borrowers. They also earn money in loan processing fees and other transactional revenue when they sell the mortgages to secondary market investors, such as Fannie Mae or Freddie Mac. Banks are also motivated to make mortgage loans in underserved communities by the requirements of the Community Reinvestment Act (CRA). As a homeownership program is developed, the tribe and the one-stop mortgage center are best served by identifying one or two lenders who will commit to their program.

Mortgage loan servicing companies collect the payments on the mortgages from the home buyers. These companies make a fee for servicing loans. Most are for-profit organizations, although some public agencies, like the New Mexico Mortgage Finance Authority, and non-profit organizations can also act as a servicing company for mortgage loans. The U.S. Department of Agriculture services the Rural Housing Service Direct loans.

Secondary market mortgage investors buy mortgage loans from banks and mortgage companies provided the loans meet their underwriting guidelines. These quasi-public and governmental agencies make money by bundling mortgages as securities and selling them to other investors. Examples in New Mexico include: Fannie Mae, Freddie Mac, Ginnie Mae and the New Mexico Mortgage Finance Authority. Secondary market entities are also profit-driven, and they must answer to their shareholders if they fail to deliver profits as expected.

Mortgage brokers provide assistance to home buyers by locating mortgages at the best possible interest rate

and terms and by packaging mortgage applications. In return for their services, mortgage brokers earn fees paid by the home buyer or lender or both. Mortgage brokers are generally not suited to the delivery of special mortgage products as they are being developed.

Federal and state agencies provide direct mortgage loans, grants and loan guarantees to support homeownership in Native American communities. Federal government agencies are compelled to meet congressional and administration mandates and goals. Also, the federal government has a trust responsibility to help protect the welfare of tribal communities. The federal and state agencies with programs in Indian Country include:

- U.S. Department of Housing and Urban Development (HUD), through its Office of Native American Programs (ONAP) and other programs, works to develop affordable housing, for rent, ownership and special needs, in low and moderate-income communities.
- U.S. Department of Agriculture (USDA), through its Rural Housing and Rural Utilities Services Programs, works to create affordable housing, both rental and homeownership, in rural communities.
- U.S. Department of Veterans Affairs (VA) provides assistance, primarily through direct and mortgage guarantee programs, to veteran military personnel seeking homes.
- U.S. Department of the Interior – Bureau of Indian Affairs (BIA) approves leases that establish a leasehold mortgage interest in the land. The BIA also provides title status reports (TSR) required by lenders. The BIA has a federal trust responsibility to protect Indian Lands.
- U.S. Department of Health and Human Services – Indian Health Services (IHS) provides water and sewer design and infrastructure development oversight for housing development projects in Native American communities as part of its mission to provide federal health services to Native Americans.

New Mexico Mortgage Finance Authority (MFA) operates a wide variety of single family and multifamily affordable housing programs to support the development

of affordable homeownership and rental housing. MFA manages a down payment assistance program, and it recently developed the Build It 50-percent construction loan guarantee program to encourage bank investment on trust land.

Nonprofit community development organizations develop affordable homeownership housing and provide home-buyer counseling services, among other community development efforts. They also work to serve poor and underserved communities in a number of different ways depending on their specific mission. Examples in New Mexico of nonprofit housing organizations include: Homewise, formerly known as Santa Fe Community Housing Trust; Neighborhood Housing Services of Santa Fe; Navajo Partnership for Housing, Inc.; United South Broadway Corporation and YES Housing.

Nonprofit community development intermediaries are national and regional nonprofit organizations that support the work of local and regional community development organizations through a combination of technical assistance, grants and low-interest loans. Examples in New Mexico include Neighborhood Reinvestment Corporation and The Enterprise Foundation.

Federal Home Loan Bank of Dallas – Affordable Housing Program (AHP) provides grants to support affordable homeownership development. The Federal Home Loan Bank of Dallas is one of 12 regional Federal Home Loan Banks, which are privately capitalized government-sponsored enterprises created by Congress in 1932 to expand and strengthen the country's home financing system.

Foundations offer grants and below-market financing to facilitate the creation of affordable housing. Foundations also provide operating support to nonprofit community development organizations, such as a nonprofit one-stop mortgage center. There are thousands of foundations in the country, many of which support community development efforts. Foundations are required to spend a certain percentage of their interest and investment income annually on philanthropic giving.

Learn the Steps in the Mortgage Lending Process

The mortgage lending process is complicated and depends on the processes of others: the tribal council, home buyer, bank and BIA. The players' timelines are not always synchronized, and interest rate lock-ins, construction schedules and other time-sensitive factors can be jeopardized. The following is an outline process for obtaining a mortgage on a reservation, based on the process used by the New Mexico Southern Pueblos BIA.

Step One: Pre-qualify the borrower.

Step Two: The Application for Lease and Residential Lease Forms may be completed and signed by applicants at the same time, then submitted to the Governor's Office for Tribal Council approval.

Step Three: After tribal approval, the forms, along with the original Tribal Resolutions for either Section 184 or Section 248 (or other mortgage) are then submitted to the Realty Office at the Southern Pueblos Agency for preparation of the following items:

1. Survey plat and legal description – with a minimum of .75-acre area required for the lease, unless the lease site has access to sewer lines.
2. Environmental documentation – either an Environmental Assessment or a Categorical Exclusion Checklist will be prepared – after consultation with the U.S. Fish and Wildlife Service, for threatened or endangered species that may be in the project area. The soil scientist at Southern Pueblos Agency is also consulted if it appears the proposed home site may be in a “water table” area.
3. A Cultural Resources Survey and a Clearance or Compliance Survey are required. A compliance memorandum, prepared by a BIA archeologist, will be issued on project areas that have previous ground disturbance.

Step Four: With help from the one-stop center, the applicant should contact the bank or mortgage company for the loan process, as well as contact the builder or contractor. In addition, the applicant should:

- Obtain pre-purchase counseling from one-stop center (initial qualification, etc).

- Follow the home-buyer work plan (savings, etc).
- Contact banks to compare mortgage interest rates, fees, etc. and certification to originate preferred loan product.
- Initiate application with bank (application, credit reports, etc.).
- Compare, select and negotiate with a builder, and execute a contract for design and construction.
- Obtain an appraisal.

Step Five: After steps two through four have been completed, the residential lease can be approved by the superintendent of the Southern Pueblos Agency.

Step Six: The residential lease, with attached survey map, legal description, the rider for the mortgage (Section 184/248 mortgage or other mortgage), and the tribal council resolution, are then submitted to the BIA office of Land Titles and Records for the BIA recording process and preparation for the title status report.

Step Seven: After the Title Status Report process is completed, the following documents are then provided to the applicant, the pueblo and the bank or mortgage company; the originals are filed with the Southern Pueblos Agency:

1. Residential lease, survey map, legal description, rider and tribal council resolutions
2. Environmental documentation
3. Cultural resources survey/clearance or compliance
4. Title status report

Implement Legal Framework

Once the tribal leaders and the one-stop mortgage center understand the players and the mortgage process, it is time to consult with legal counsel to design a legal framework that meets the needs of the tribal community.

Mortgage lending, like other loan transactions, relies on a legal foundation that protects the interests of both lender and borrower. These legal protections include ways for lenders to secure their loans and ways for lenders to foreclose on mortgages in the event of defaults. They also provide borrowers with defenses

against unwarranted penalties or intrusions.

Legal protections are included in mortgage and loan documents, but they are implemented by the courts and enforced by officers of the court. Lenders will not provide loans to individual tribal members or TDHEs without protections included in loan documents.

Tribes can enact balanced, appropriate legal infrastructures through tribal resolutions and ordinances. The elements of these infrastructures must be legally enforceable and must be sufficient to protect the interests of borrower, lender and any guarantor, including HUD or some other federal agency. The steps to building this legal framework are outlined below:

Review Models for Standard Legal Documents

A variety of model legal documents are available to tribal governments from federal agencies and secondary market providers. Some are also available from other tribal homeownership initiatives. Tribes should consult with technical assistance providers, federal agencies, banks and other tribes to obtain model documents that most closely match their own communities and prospective lending programs. Tribal legal counsel should review any legal documents, as should banking and other lending partners.

As part of the One-Stop Mortgage Center Initiative in Indian Country, HUD, USDA, VA and BIA released a set of model documents for tribes seeking to become eligible to use federal direct, insured or guaranteed mortgage programs. These agencies adopted a memorandum of understanding that provides a streamlined review and approval process provided that a tribe adopts the Model Tribal Lending Procedures for Lien Priority, Eviction and Foreclosure and Leasing and the Model Lease.

If a tribe adopts these documents and executes an agreement with one of the federal agencies, that federal agency will share that agreement and approval with each of the other agencies, making the tribe eligible to participate in all federal programs. Copies of these model documents are posted on the Internet at www.codetalk.fed.us.

The New Mexico Tribal Homeownership Coalition believes all tribes, especially those who are just implementing mortgage codes, should use the new model documents as their starting point. Each mortgage program has strengths and weaknesses; therefore the community will be best served if all or most of the programs are available.

As with every aspect of a homeownership program, partnerships are critical to creating and adopting effective legal documents: it makes no sense to create documents that satisfy tribal leaders but not lenders, or vice versa. A legal framework exists to balance conflicting interests. Both the lender and/or guarantor on the one hand and the tribe as the landowner and representative of the home buyer on the other should participate in creating the legal infrastructure and in drafting and approving guidelines and documents.

The most critical and difficult legal matters, particularly for tribal communities, entail the adoption of uniform leases and foreclosure and eviction procedures.

The land lease document: For the purposes of homeownership, a land lease is a legal document establishing a prospective borrower's claim to the land on which his or her house will be built. Because the borrower offers this claim as security when he or she approaches the lender for a mortgage loan, it is essential that the claim, or lease, be acceptable to the bank. If the lease document is not satisfactory to the bank, the bank will not provide a mortgage loan. As a consequence, it is important to adopt a form of lease that is acceptable to as many lenders and loan programs as possible so that a home buyer has many financing options once he or she has secured a leasehold interest in the land.

The lease allows the tribal member to occupy the land for a set period of time and to improve it with a home or other structures. The lease also establishes conditions for occupancy, including, in the case of a homeownership initiative, payment of a mortgage.

Indian housing authorities have used leases as part of mutual-help programs for many years. The long-term leases used for homeownership are similar in that the

	Land Assignment	Land Lease
Ownership Status	A land assignment offers many of the features of ownership.	Sufficient control to obtain a mortgage, but not ownership
Length of Control	Usually understood as permanent	Has a specified term – usually 50 years. Lease expires at the end of the term and may become a land assignment again.
Inheritance/ Assignability	Can be passed down to heirs	Varies according to particular lease agreement
Use Rights	Not a “legal right of use” enforceable by law, unless the tribal law provides for this	Has “legal right of use.” Lease specifies both rights (can build a house, for example) and defaults (can be evicted for non-payment of mortgage).
Mortgages	Cannot be used as security for a loan	Can mortgage “improvements” – the home – on the land
Tribal customs and standards	Remain in place, including rights of banishment	Subject to the particular lease. Traditional rights of use must be specified in the lease and any relevant codes.
Surveys	Standard surveys are not required.	The land is specifically described and surveyed.
BIA approval	BIA approval is not required for a traditional land assignment.	BIA approval is required for lease document issued by tribe.

tribe (or the U.S. government in trust for the tribe) continues to own the land. While a lender, under certain circumstances, may control the use of the land for the period of the lease, the tribe will never lose the land.

However, an individual tribal member may, in fact, lose rights to the land. Failure to pay the mortgage will result in the tribal member’s losing the lease and the right to stay on the land, which may have been in the family for generations.

As a consequence, a tribal member’s decision to convert a traditional assignment into a lease in order to obtain a mortgage loan is a very serious step. Tribal leaders should design a leasing process that clearly defines those differences for tribal members. They should also be aware that the leasing process need not replace the way

land has traditionally been assigned – the systems can be integrated. The table above illustrates some significant differences between a traditional land assignment and a land lease.

Foreclosure and Eviction Procedures: The foreclosure procedure itself is discussed in some detail in the sidebar in Chapter 3. A foreclosure allows the lender or guarantor to take legal possession of mortgaged property in the event of non-payment of a mortgage – not unlike a car dealer repossessing a car for non-payment of the car loan. In the case of homes on trust land, the lender or guarantor would transfer the leasehold interest in the land to a new homeowner through the foreclosure process. The new homeowner would either repay the existing mortgage loan if it is transferred before the fore-

closure or agree to pay a new mortgage on terms similar to the original homeowner's.

The mortgage process rests on the ability of a lender to complete this process according to tribal codes and tribal legal documents in a quick and – just as importantly – predictable way. A pattern or history of unexpected delays in foreclosure proceedings in tribal courts would deter many lenders.

An inability to enforce court rulings would also act as a powerful deterrent to continued lending. As a result, the legal framework for homeownership must develop eviction procedures that allow for the physical removal of a household after a mortgage has been foreclosed. As with the foreclosure, eviction needs to be an expedited and predictable process. Defaulted homeowners have little reason to care for their former homes. Leaving them in possession for any length of time has consequences for the physical condition of the property.

Negotiate Eligibility with Federal Agencies and Investors

After reviewing model lease documents and determining how to address leasing and foreclosure issues, tribal leaders or their representatives should negotiate with federal agencies and investors about using language that addresses tribal concerns.

In most instances, affordable housing entails the participation of many different funding entities, including a number of government agencies. On Native American lands, the involvement of the Bureau of Indian Affairs introduces another layer of complexity to affordable housing. Tribes considering homeownership initiatives must ensure that their projects or programs conform to the guidelines of all relevant federal programs. If tribes are considering initiatives that fall outside of particular program guidelines, it is critical to negotiate variances early in the process, before spending time and scarce resources on ventures that will not secure government approval.

Investors and banks that process thousands of mortgage applications off-reservation may hesitate to provide

mortgage financing for projects on trust or tribal land. As a result, tribes should negotiate with individual lenders and secondary market organizations like Fannie Mae at the outset of a particular program or initiative. If the involvement of one lender or one mortgage product, such as a lease/purchase mortgage, is central to a homeownership initiative, a tribe or tribal one-stop mortgage center should consider developing a memorandum of understanding or some other document confirming or committing a lender's participation.

Revise and Adopt Legal Documents by Tribal Resolution

Just as a tribe or tribal one-stop mortgage center will want to secure written commitments or memoranda of understanding from prospective investors and government agencies, so investors and agencies will want tribes to adopt legal documents and standards. Tribal resolutions addressing all aspects of mortgage lending, including defaults and remedies, offer banks and government guarantors a secure framework for predictable investment in Native American communities.

Tribes should be prepared to adopt standard forms of land leases, mortgages, loan agreements and mortgage assignments. In addition, tribes will have to adopt tribal statutes stipulating foreclosure and eviction processes, among others.

Some tribes have chosen to adopt more comprehensive housing codes that govern the licensing of builders and contractors and regulate construction-related professions such as appraisers, inspectors and title insurance providers. They may also adopt other ordinances governing dog control or residential-use restrictions.

Consider Impact on Sovereignty and Culture

As tribal leaders design their homeownership programs, they should consider the impact that mortgage lending will have on the tribe's sovereignty and how it will affect cultural traditions. It is important to remember that tribal

leaders can accommodate many conflicting concerns by carefully balancing issues upfront and addressing them appropriately in their legal codes and processes. So while the model documents provide a template, each tribe must consider and propose additional language that addresses their sovereignty and cultural and social issues.

Property Disposition During Foreclosure

There are a number of ways for tribes to manage the foreclosure process to ensure disposition of the property in a manner consistent with overall tribal policies or preferences. Two standard safeguards are tribal rights of first refusal and default funds.

Tribal right of first refusal: A right of first refusal allows tribes the first option to purchase a defaulted house from the bank or guarantor. A right of first refusal is included in the loan documents and requires the bank or guarantor to offer the property at a set price (usually the amount of the outstanding debt on the house plus interest and fees) before a foreclosure auction. In order to be in a position to exercise this right of first refusal to purchase a defaulted home, the tribe may wish to create a reserve fund with which to make the purchase. This right is generally provided in the documents to both the tribe and to the IHA.

Tribal delinquency fund: A tribal delinquency fund provides emergency funding for households in arrears on mortgage payments and in danger of foreclosure. The delinquency fund pays the lender directly while the one-stop mortgage center works with the household either to bring the mortgage current or to transfer the home to a family member or third-party purchaser. A delinquency fund is an earlier intervention than a right of first refusal; however, it carries the risk that homeowners will come to rely on this assistance. A tribe should consider whether the delinquency fund would require the family to repay the funds.

Integrating Traditional Practices

Homeownership initiatives are not all the same. Among other differences, they address different income levels,

include different design elements, accommodate different ownership structures and rely on different funding mechanisms. One-stop mortgage centers can and, in many instances, should integrate traditional practices into homeownership programs. This integration can strengthen both homeownership and community development efforts by weaving homeownership into the traditional fabric of the community, with respect to land assignments, design and layout.

Traditional land assignments: If a tribal community allocates its land to tribal members through traditional land assignments, this process should be taken into consideration when developing the legal leasing process to support mortgage lending. For example, if land assignments have been made by *Cacique* – traditional Pueblo leaders – the tribe may want to build this step into the legal leasing process.

Traditional housing developments: As sovereign nations, tribes have the authority to shape most aspects of their homeownership programs. For example, if a tribal community prefers not to have certain types of housing – such as manufactured housing – on its reservations, tribal leaders should include this restriction into its housing codes.

Other issues tribal leaders may want to address in their codes may include requiring certain traditional elements to be used in housing design or restricting housing construction in certain sacred areas. In order for these restrictions to be followed, however, tribal leaders should also consider developing an enforcement program along with the housing code.

Preservation of Historic Plazas: Many tribal members may choose to use mortgage financing to renovate or expand homes on historic plazas. These undertakings present several challenges. First, if tribal and traditional leaders have preferences as to how this development on the plaza should occur, these should be reflected in the housing code. Second, the one-stop mortgage center may need to help members navigate tribal or state historic preservation requirements, which can be extremely onerous. Finally, in order to obtain mortgage financing, the

Concerns	Scattered Sites	Subdivisions
Infrastructure costs	More costly because of distances and individual site costs	Less expensive due to shared expenses and economies of scale
Environmental and archeological costs	Individual environmental and archeological clearances are required.	Blanket environmental and archeological clearances are possible.
Construction costs	Construction and architectural costs may be higher.	Less expensive due to economies of scale
Contractor and construction financing	Choice of contractors limited by job scope; financing may be more expensive.	Greater choice of contractors; financing may be cheaper; fees may be shared.
Proximity to pueblo center	Ability to stay close to pueblo center	Subdivisions may need to be remote from pueblo center.
Proximity to neighbors	Allows building at a distance from other homes	May increase possibility of subleases and re-sales

tribal member must have a legal leasehold interest in the land on which the home is located. The tribe may need to amend its leasing program to accommodate this situation.

In some communities, the tribe may choose to design a renovation program for tribal members living on the plaza. This type of program may not require individual mortgages or leasehold assignments.

Promoting Scattered Sites or Subdivisions

Tribes and one-stop mortgage centers need to decide at the beginning of their homeownership efforts what kind of physical development they wish to promote. Almost all new housing relies on an infrastructure of roads, utilities and other systems, although there are some new homes that are “off the grid” and rely on solar power or other individual systems. As discussed earlier in this guide, the cost of infrastructure development is very high, and developing scattered site housing requires an extended infrastructure.

In addition to the cost, tribes and one-stop mortgage centers need to weigh cultural and other considerations in thinking about the type of homeownership that is most

appropriate for their communities. Do tribal members value proximity to the pueblo center? Do they want to live at a distance from neighbors? Do tribal members want detached or row homes? Is there a resale market within the tribal community for a distant house if the original owner defaults on a mortgage?

The chart above provides a brief overview of some of these considerations.

Facilitate Homeownership Development

Tribes and one-stop mortgage centers can make it easier to build homes on a reservation in a number of key ways, including:

- Land use planning to assess the best sites for new homes
- Allocation of tribal funds to fill gaps in homeownership financing
- Development of housing codes to ensure quality construction and design
- Evaluation of homeownership programs both to meas-

ure program performance and to demonstrate success to current or prospective funders

As with other aspects of homeownership programs, this assistance is both necessary and interconnected. No matter how affordable it may be, nobody wants to own a poorly built or ugly home. No matter how well designed a house may be, nobody wants to live in areas that are undesirable for one reason or another. Tribes and one-stop mortgage centers need to address each of these aspects of homeownership development in order to create an effective and sustainable program.

Conduct Strategic Land Use Planning

Tribes and one-stop mortgage centers can conduct land use planning assessments to determine the highest and best use for particular areas of their pueblos or reservations, including areas that best suit homeownership development. Land use planning allows tribes to identify existing and needed infrastructure, to site community facilities and to focus efforts in particular geographic locations, such as plaza rehabilitation. Land use planning also permits tribes to prioritize development efforts by first developing a comprehensive vision of a community's future and then creating timelines for the implementation of that vision. Because strategic land use planning describes a vision of the future, it should involve tribal leaders, tribal members, engineers and community planners, among others.

NAHASDA requires that Indian Housing Plans include a map delineating the geographic boundaries of the tribal legal area of operation. Tribes can use additional thematic maps as analytic tools to describe a variety of current and projected conditions in a graphic format. Tribes can secure assistance in mapping efforts from community development intermediaries, like The Enterprise Foundation, and from other sources, including universities.

Thematic maps include the following, although maps can be designed to show other features or uses:

- **Land Use Maps** delineate existing residential and commercial uses as well as their densities. A land use

map should also locate vacant lots, abandoned buildings, open spaces and parking. The map should display tribally owned land and non-tribally owned property, among other features.

- **Housing Conditions Maps** delineate the community's housing density and conditions, including houses in need of rehabilitation or demolition.
- **Community Facilities Maps** delineate location of schools, churches, retail centers, day care, medical and other facilities.

Master, or land use, planning maps allow tribes to make informed decisions about zoning, design guidelines and infrastructure development. As such, they are critical tools to the thoughtful development of communities.

Allocate Tribal Funds to Mortgage Program

Tribes provide critical support to homeownership and housing on tribal lands through land assignments and minimal-cost leases; however, if they are available, some tribes may chose to allocate tribal funds to support housing programs for tribal members. Housing efforts in Native American communities with tribal financial support have a much greater chance of success.

How best to allocate scarce tribal resources varies from community to community and varies over time and according to available government subsidies and private investment. Tribes and one-stop mortgage centers should decide on the appropriate allocation of funds after careful analysis and planning. Possible financial support includes: soft second mortgage programs, infrastructure development for housing development, guarantees for construction and development loans, closing and other home-buyer assistance, project development capital and ongoing support for the operating costs of one-stop mortgage centers.

Enact Housing Code

In addition to enacting foreclosure and eviction codes, tribal leaders may want to consider other laws addressing housing and housing construction such as licensing of contractors, housing inspections, building permits, qual-

ity of life ordinances, design guidelines and enforcement mechanisms.

Again every financing source has its rules, including design. Be proactive. It is in the interest of the tribe to preserve cultural architecture. Tribal members also benefit from living in homes that are energy efficient. Working with tribal architects, builders, planners and energy experts can produce a simple set of design guidelines for new housing developments.

Evaluate Homeownership Program

A periodic, systematic assessment of the outcomes of a homeownership program will help tribal leadership and housing professionals determine next steps and identify gaps in funding or technical assistance provision. As a consequence, it is important to establish measurable goals and timelines. How many tribal members secured mortgage financing? How many prospective homeowners did the one-stop mortgage center assist directly? How many prospective homeowners were rejected by banks and for what reasons? What was the average income of home buyers?

By collecting this data, a tribe or one-stop mortgage center can shape a homeownership program to serve tribal members more effectively. Data can point to greater subsidy needs, for example, or a need for more technical assistance or credit counseling.

Evaluating the success of a homeownership program is not only good management, it is an increasingly important aspect of fundraising. Funders, both private foundations and government agencies, look for concrete evidence that the programs they support or may support have demonstrated effectiveness in their previous work.

Program goals should be based on the results of a comprehensive survey, which would identify the homeownership market on the reservation and be detailed in the Tribe's 1 and 5-year Indian Housing Plan. The more specific the goals, the easier it is to track performance and success and identify problems. Therefore, goals should specify the number of homes to be built, the number of

families to be counseled, and the dollar amounts to be leveraged.

For example, a program goal may be to help tribal members who were part of the original survey attain homeownership. Evidence of success could be measured by how many potential home buyers received education and how many tribal members obtained affordable mortgage financing.

Conclusion and Appendices

In the current political and economic climate, available public resources for affordable housing are not sufficient to meet the need. This is true of homeownership as well. While federal and tribal resource dollars may be able to build some housing, the demand for affordable homeownership will never be met without the infusion of private financing into tribal communities in the form of mortgage loans.

Mortgages do carry a risk that traditional ways of funding housing development in tribal communities do not. A mortgage is a debt. It carries an obligation to repay. If the obligation is not satisfied, the lender has the right to exercise certain remedies to recover its money, including foreclosure. This risk can be lessened for individual homeowners through careful pre-purchase training and post-acquisition counseling and assistance. This guide describes ways that tribes and tribal leaders can control the risk to their communities from foreclosure, unplanned development and other consequences of private investment.

By the careful planning, design and implementation of mortgage finance systems, tribal leaders can introduce the benefits of mortgage financing to tribal communities. As a result, tribes can:

- Access private financial resources from banks, mortgage companies and other conventional lenders.
- Leverage tribal resources and federal grants to expand homeownership opportunities.
- Build individual and tribal wealth through the appreciation of home values.
- Control choices over type and location of homes and decisions about inheritance.
- Create homes for higher-income tribal members who have been forced to live off the reservation because of federal income restrictions or lack of housing.

Yet many barriers have historically prevented access to affordable mortgage financing for tribal communities and tribal members, including tribal and trust land status, low household incomes and irregular employment and credit histories. Concerns about collateral and treatment in tribal courts have deterred some investors. And the absence of an infrastructure for homeownership housing has made costs prohibitive or resale prospects too remote.

Tribal leaders can develop homeownership programs that surmount impediments to mortgage investment by the creation of a one-stop mortgage center to lead the homeownership effort. One-stop mortgage centers can:

- Assess tribal housing needs, resources and strategies.
- Design and deliver homeownership training and home-buyer counseling programs.
- Evaluate existing mortgage products.
- Leverage philanthropic and public grants and other resources.
- Structure and administer home-buyer financial assistance programs.
- Advise tribal leaders on appropriate housing and homeownership strategies.

One-stop mortgage centers can manage the development and financing of homeownership systems in ways that preserve and protect tribal values and histories, while substantially increasing housing opportunities for tribal members and building the wealth and autonomy of the community as a whole.

Homeownership is a goal that many low and moderate-income tribal members have already achieved. This guide points the way home for many more.

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Options in Mortgage Financing Products

	HUD	Federal Government and Private	Tribal
Governing Law	Ordinance establishing IHA and resolution naming TDHE; federal laws and regulations	Tribal mortgage ordinance	Tribal housing program ordinance
Federal and Other Approvals	HUD, BIA	HUD/FHA, banks, BIA, USDA, IHS, VA, FannieMae, (singly or in combination)	BIA
Funding	HUD	HUD, banks, SHFA, VA, USDA, FHLB, tribe, tribal members, TDHE	Tribe, tribal members
Eligible Participants	80% and below median income (10% of NAHASDA funds exception)	All members, based on ability to qualify	All members, based on tribal program
Documents	Rental or mutual-help agreements	Lease, mortgage and note, purchase agreement, soft second mortgage, grant agreements, title and hazard insurance, appraisal	Purchase agreement, land assignment
Payments	30% of adjusted annual income	Based on cost of mortgage (principal, interest and insurance)	Based on tribal program (e.g., amount of subsidy from tribal sources)
Term	15-25 years	30 years maximum	Based on tribal program

Key

IHA - Indian Housing Authority

FHA - Federal Housing Administration

IHS - Indian Housing Service

FHLB - Federal Home Loan Bank

TDHE - Tribally Designated Housing Entities

USDA - U.S. Department of Agriculture

SHFA - State Housing Finance Agency

Mortgage Products for Indian Country

	Guaranteed Rural Housing	Veterans Administration Direct	Rural Housing Service 502
Income Restrictions	115% of median	None	80% of median
Max Loan Amount	None	\$80,000	Cost based on 1,500 sq. ft. home
Down Payment	0	0	0
Construction/permanent	No	Yes	Yes
Rehabilitation	No	Yes	Yes
Refinance	No	No	No*
Manufactured Housing	New approved dealer/contractor	New with engineered oundation	New approved dealer/contractor
Housing and Debt Ratios	29/41	Residual (29/41)	29/41 to 33/41
Guarantee Fee Private Mortgage Insurance	1.5% of mortgage guarantee fee	1.25% of base loan guarantee fee	None
Closing Costs can be Financed	Yes	Yes	Yes
ARMs are Allowed	No	No	No
Downpayment or Closing Cost Assistance	Allowable	Allowable	Allowable
Gift Restrictions	None	None	None
Assumable	Yes, subject to eligibility	Yes, subject to eligibility	Yes, subject to eligibility
Reserve Requirements	None	None	None
Credit Standards	Good credit	Good credit	Good credit
Buy-Downs	2/1 paid by seller or with gift	No	No
Homebuyer Education Recommended or Require	Yes	Yes	Yes
Foreclosure Prevention	Intervention	Intervention	Intervention
Title Insurance	Investor decision	No	No
Limited Waiver of Sovereign Immunity	No	No	No
Legal Documents	One stop documents or negotiated	One stop documents or negotiated	One stop documents or negotiated
Agreement Documents	RHS/tribe and investor	MOU VA/tribe	RHS/tribe

*502 Refinance limited to loan in default due to income loss or major rehabilitation **Negotiated

	Federal Housing Administration 248	HUD Office of Native American Programs 184	Conventional
Income Restrictions	None	None	None
Max Loan Amount	FHA limit \$154,896 base	1.5 x FHA limit \$232,344 base	\$322,700
Down Payment	3% of first \$25,000 + 5% of additional	2.25% of acquisition cost	5%
Construction/permanent	Yes	Yes	Yes
Rehabilitation	Yes	Yes	Yes**
Refinance	Yes including cash-outs	Yes (no cash outs)	Yes**
Manufactured Housing	New or existing with engineered foundation	New or existing with engineered foundation	New or existing with engineered foundation
Housing and Debt Ratios	29/41 or 31/43 on new construction	41	33/38
Guarantee Fee Private Mortgage Insurance	.5% per year mortgage insurance	1% of base loan guarantee fee	.75% per year private mortgage insurance
Closing Costs can be Financed	Yes	Yes	No
ARMs are Allowed	Yes	No	No
Downpayment or Closing Cost Assistance	Allowable	Allowable	Allowable
Gift Restrictions	None	None	Allowed to 1%
Assumable	Yes, subject to eligibility	Yes, subject to eligibility	Yes, subject to eligibility
Reserve Requirements	None except for construction/permanent	None except for construction/permanent	2 months
Credit Standards	Good credit	Good credit	Good credit
Buy-Downs	Yes	Yes	No
Homebuyer Education Recommended or Require	Yes	Yes	Yes
Foreclosure Prevention	Intervention	Intervention	Delinquency counseling
Title Insurance	No	No	Yes
Limited Waiver of Sovereign Immunity	No	No	No
Legal Documents	One stop documents or negotiated	One stop documents or negotiated	One stop documents or negotiated
Agreement Documents	FHA/tribe	ONAP/tribe	Fannie/Freddie with tribe

The conventional parameters can be expanded through individual negotiations between the tribe and the investor (Fannie Mae or Freddie Mac).

Sample Housing and Business Survey

Conducting Community Surveys

This community survey is designed to give tribal members the opportunity to voice their opinion of conditions in their community and neighborhoods and to identify community development issues that need to be addressed. In addition, the survey aims to identify the demographic characteristics of the community, and gauge the effectiveness of existing community development programs.

It is important to note that this sample survey is offered only as a starting point. The most successful surveys include residents in the design and implementation. The final survey instrument should be created collaboratively with community residents. Best results are also achieved when the survey is carried out by a team of residents who have received some training on how to interview residents.

It is crucial to remember that the survey is only means to an end. Consequently, before you begin, carefully consider the information you will be collecting and how the results will be used to help define a direction for community development practitioners.

Survey Process

The survey should be conducted in person. The interviewer can note the residents' responses on the survey, or the resident can personally complete the survey in the presence of the interviewer. A survey manager would verify the interviewers' work (number of surveys), assign case numbers (to preserve the respondents' anonymity), and enter the survey responses into a database.

The database can be a simple Excel spread sheet with case number (family), question number, and, for each question, a response number (1, 2, etc.). The response

numbers are a simple way to identify how many families responded to a particular question. For example, in Question 1, a family indicates they have lived in this community for five to 10 years – and the interview circles "3." The number of "3" responses to Question 1 are then tallied at the end of the survey. Once aggregated, or added up, the survey data can give the tribe a picture of the needs that the residents identify in their community. Programs, resources and efforts can then be more efficiently used to address these issues.

Introductory Narrative

We are doing a survey for the _____.

The information is part of an effort to create a comprehensive plan for the _____ tribe. Your answers are strictly confidential. The information will not be reported in any way that allows you, your house or your apartment to be individually identified.

(circle one:)

Male	1
Female	2

Your Community

1. How long have you lived in this community?	
less than one year	1
1-4 years	2
5-10 years	3
11-20 years	4
21 years or more	5
Not sure or no response	9

2. What are the three things you like most about living in your community?

(If they lived in the same place for five or more years:)

3. Five years ago, did you live

In some other community	1
Somewhere else in:	2
Outside of:	3
Not sure or no response	9

4. Compared with five years ago, how would you rate your community as a place to live? Is it....
(Read list and circle one)

A better place to live today?	1
A worse place to live today?	2
About the same?	3
Not sure or no response	9

Retail Services

5. Would you say the majority of the stores in your community serve . . .
(Read List)

Tribal residents		
Yes	No	Not applicable
1	2	9
People from other communities		
Yes	No	Not applicable
1	2	9

6. Compared to five years ago, do the stores serve the community . . .

Better	1
Worse	2
The same	3
Did not live here 5 years ago	4
Not sure or no response	9

7. What type of retail would you like to see added to your community?

Grocery	1
Pharmacy	2
Automotive service (includes gas stations)	3
Clothing	4
Convenience	5
Household goods and appliances	6
Not sure	7
Other	9

Community Involvement

8. Have you ever wanted to change something or address a problem in your community?

No	1
Yes	2
Not sure or no response	9

9. Have you ever contacted anyone about changing something or addressing a problem?

No (Go to Question 11)	1
Yes	2
Not sure or no response	9

10. Who have you contacted?

Tribal Council	1
Indian Housing Authority	2
Other (specify)	3
Not sure or no response	9

11. Why have you not contacted anyone?

Lack of time	1
Wouldn't make a difference	2
Not interested or feel it's not important	3
Tried it, but frustrated with lack of results	4
Didn't know who to contact	5
Language or cultural barriers	6
Not sure or no response	9

12. Do you feel you know enough about the development plans for your community?		
Yes		1
No		2
Not sure or no response		9

13. In what ways would you like to get information about development plans in your community?		
Would you like to get information through:		
Newspaper articles		
Yes	No	Not Applicable
1	2	9
Community meetings		
Yes	No	Not Applicable
1	2	9
Meetings at tribal offices		
Yes	No	Not Applicable
1	2	9
Neighborhood newsletters		
Yes	No	Not Applicable
1	2	9
Mail or flyers		
Yes	No	Not Applicable
1	2	9
Word of mouth		
Yes	No	Not Applicable
1	2	9
Other		
Yes	No	Not Applicable
1	2	9

14. If a group were organized, would you be interested in working with that group to advise on physical and community improvements?		
Yes, I would be interested		1
No, not interested		2
Not sure or no response		9

<i>(If yes)</i>	
How often do you think you would attend meetings of this group?	
Weekly	1
Monthly	2
Four times per year	3
Less than four times per year	4
Not sure or no response	9

Housing

15. Do you think there is a need for more affordable housing opportunities for residents in your neighborhood?	
Yes	1
No (Skip to Question 18)	2
Not sure or no response	9

16. In your neighborhood, which is needed more – rental housing or homeownership opportunities?	
Rental housing	1
Homeownership	2
Both are equally needed	3

17. If you could afford to buy a house anywhere you like, would you buy . . .	
In your community (Skip to Question 21)	1
Some other area on your reservation	2
Outside of the reservation altogether	3
Not sure or no response (Skip to Question 21)	9

18. Why would you buy outside of the tribal community?	
<i>(Do NOT read list.)</i>	
Affordability	1
Location	2
Availability	3
Safety or crime	4
Job or employment	4
Other, not sure or no response	9

19. Are you aware of any programs that help you buy a home of your own?	
Yes	1
No	2
Not sure or no response	9

20. How much does your household pay in rent or mortgage each month?	
\$150 or less	1
\$151 - 300	2
\$301 - 600	3
\$601 - 900	4
\$901 - 1,200	5
\$1,201- 1,500	6
More than \$1,500	7
Not sure or no response	9

21. Does the housing authority own your housing?	
Yes	1
No	2
Not sure or no response	9

22. If you are renting, does your rent include utilities?	
Yes	1
No	2
Not sure or no response	9

23. If you are renting, is your rent subsidized? (For example: Section 8, Section 7087 or rent vouchers)	
Yes	1
No	2
Not sure or no response	9

24. (Homeowners only) Are you aware of any programs to help you finance home repairs?	
Yes	1
No	2
Not sure or no response	9

25. What type of building do you live in?	
Single family house	1
Two-family house or duplex	2
Three or more family house (attached)	3
Building with four or more apartments	4
Not sure or no response	9

26. Is your home in need of repairs or improvements?	
Yes	1
No	2
Not sure or no response	9

Employment

27. Which of the following best describes your situation?	
Working full time (Skip to Question 30)	1
Working part time (Skip to Question 30)	2
Own business (Skip to Question 30)	3
A homemaker (Skip to Question 34)	4
Unemployed	5
Retired (Skip to Question 34)	6
Not sure or no response	9

(If unemployed)

28. How long have you been out of work?	
Less than 6 months	1
6 - 12 months	2
More than 12 months	3
Not sure or no response	9

29. What are the reasons for your current unemployment?	
Need G.E.D. (high school diploma)	1
Need job or skill training	2
Lack of transportation	3
Need child care	4
Taking care of parents	5
Limited job opportunities	6
Disability	7
Other	9

(If working)

30. Do you work . . .	
In your immediate neighborhood	1
In the city of:	2
In:	3
Not sure or no response	9
31. How do you usually get to work?	
Car, van, truck, motorcycle	1
Bus, train	2
Taxicab	3
Bicycle	4
Walk	5
Work at home	6
Other	7
Not sure or no response	9

32. What kind of business or industry do you work in?
(For example, college, hospital, government, manufacturing plant, research and development, restaurant, retail store).

33. What kind of work do you do? *(For example, registered nurse, assembler, sales clerk, bookkeeper) (If the respondent works more than one job, use the one job worked most.)*

34. What kind of job skills do you currently have?	
Computer	1
Construction	2
Accounting	3
Teaching	4
Law	5
Retail	6
Administrative or secretarial	7
Health care	8
Child care	9
Technical (automotive)	10
Finance (banking)	11
Not sure	12
Other	

35. Last year was your income derived from:	
Wages or salaries (including own business)	1
Social Security, pensions, annuities, or other retirement income	2
Public assistance such as AFDC, or welfare	3
Scholarships, stipends, support from family or friends	4
Child support or alimony	5
Other	6
Not sure or no response	9

Household

36. How long have you lived at your current address?	
Less than one year	1
1 - 5 years	2
6 - 10 years	3
11 - 20 years	4
21 years or more	5
Not sure or no response	9

37. How would you describe your household? Are you...	
A couple with children	1
A couple without children	2
A single parent	3
Roommates	4
A single person living alone	5
Two or more families sharing living quarters	6
Not sure or no response	9

38. Are you . . .	
American Indian, Eskimo, or Aleutian	1
Black	2
Asian or Pacific Islander	3
White	4
Not sure or no response	9

39. Are you of Spanish or Hispanic origin?	
Yes, Mexican-American or Chicano	1
Yes, Puerto Rican	2
Yes, Cuban	3
Yes, Central American	4
Yes, other Spanish or Hispanic	5
No, (not Spanish or Hispanic)	6
40. Do you speak a language other than English at home?	
Yes	1
No (Skip to Question 43)	2
No response	9
41. If so, what language?	
Cambodian	1
Portuguese	5
Chinese	2
Spanish	6
Creole (Haitian)	3
Native American	7
French	4
No response	9
Other	
42. What is the highest grade or year of school you have completed?	
Eighth grade or less	1
Some high school	2
High school grad or GED	3
Some college or technical school	4
College or technical school grad	5
Post grad or professional degree	6
No response	9
43. Did anyone in your household drop out of school?	
Yes	1
No	2
Not sure or no response	3

44. If so, did they return to complete their studies?	
Yes	1
No	2
Not sure or no response	3
45. Do you have any children enrolled in school?	
Yes	1
No	2
No response	9
46. What is your age (within the following ranges)?	
15-19 years	1
20-34 years	2
35-44 years	3
45-54 years	4
55-64 years	5
65+ years	6
No response	9
47. How many people in your household are in the following age groups?	
0-4 years:	1
5-14:	2
15-19:	3
20-34:	4
35-44:	5
45-54:	6
55-64:	7
65+ years:	8
No response:	9
48. For household members who are age 65 or older, is there a need for assisted-living services?	
Yes	1
No	2
Not sure	3
No response	9

49. Does anyone in your household receive Medicare or Medicaid?

Yes	1
No	2

If yes, how many?

50. Are any members of your household in need of supportive social services (*alcohol treatment, drug treatment, domestic violence, family planning, etc.*)?

Yes	1
No	2

If yes, how many?

51. What type of treatment is needed?

Alcohol	1
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Drug	2
------	---

Domestic violence	3
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Family planning	4
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Other:

52. How many people live in your household? Include everyone staying or visiting who has no other home. Include family members away at school or military service.

Number of people:

53. Last year, what was the total yearly income of your **household** from all sources?

\$6,000 or less	1
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\$6,000 - 11,000	2
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\$11,001 - 15,000	3
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\$15,001 - 20,000	4
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\$20,001 - 25,000	5
-------------------	---

\$25,001 - 30,000	6
-------------------	---

\$30,001 - 35,000	7
-------------------	---

\$35,001 - 40,000	8
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\$40,001 - 45,000	9
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\$45,001 - 50,000	10
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\$50,001 or more	11
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