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# **Mortgage Lending on South Dakota's Indian Trust Land:**

## **Findings from a Survey of Lenders**

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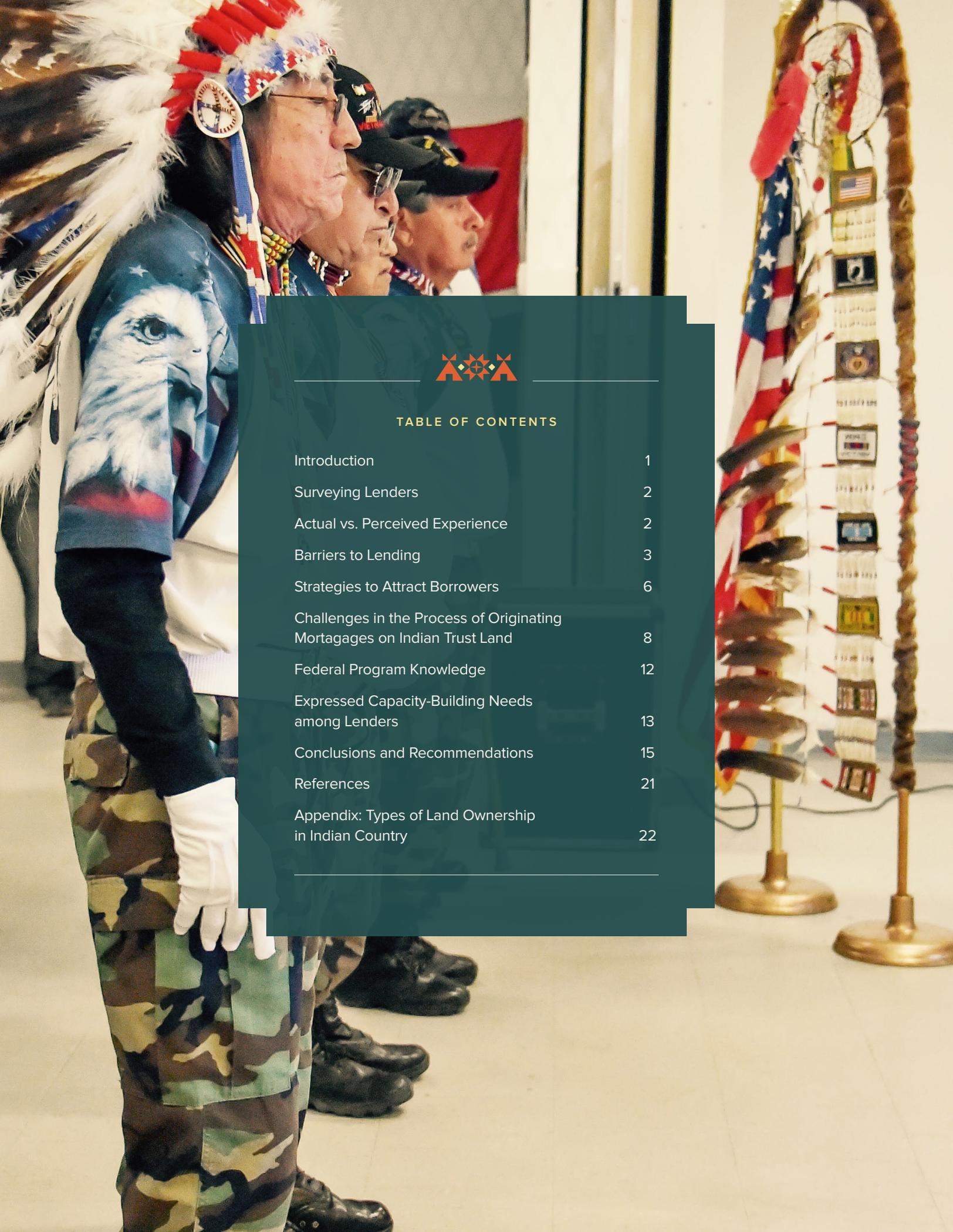
#### **ACKNOWLEDGMENTS**

The South Dakota Native Homeownership Coalition (SDNHOC) acknowledges the generous support of Freddie Mac, which made possible this study, *Mortgage Lending on South Dakota's Indian Trust Land: Findings from a Survey of Lenders*. As part of its Duty to Serve Program and recognizing the Coalition's core focus on expanding homeownership on Indian lands across South Dakota, Freddie Mac enabled SDNHOC to explore ways to boost responsible mortgage financing on trust land. In this report, we share insights that can help promote homeownership opportunities.

#### **DISCLAIMER**

The contents of this report reflect the views of the authors and do not necessarily reflect the views or policies of the South Dakota Native Homeownership Coalition, its members, Freddie Mac, or the tribes that share a geography with South Dakota.

*October 2019*



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# **Mortgage Lending on South Dakota's Indian Trust Land:**

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Since its formation in 2013, the South Dakota Native Homeownership Coalition (SDNHOC or “the Coalition”) has brought together a diverse group of more than 75 tribal, state, federal, nonprofit, and private sector stakeholders to identify barriers, share innovative solutions, and leverage resources to create a clear path to homeownership for Native people in South Dakota.<sup>1</sup> In 2019, as part of this mission, SDNHOC commissioned two capacity-building needs assessments—one to identify the specific capacity-building needs of housing practitioners and other Coalition members, the other to evaluate the barriers and opportunities for lenders providing mortgage financing on Indian trust land. This document is the second of those reports, the needs assessment for lenders. ✨

<sup>1</sup> In 2019, stakeholders included representatives of South Dakota's tribes, federal and state agencies, the South Dakota's Governor's Office, tribally designated housing entities (TDHEs), nonprofit organizations, housing developers, lenders, and community development financial institutions.

## Surveying Lenders

Policy reports on housing, asset building, and economic development in Indian Country long have noted low rates of Native American homeownership on Indian trust lands.<sup>2</sup> Homeownership rates among reservation residents in South Dakota are no exception—and these low rates have consequences. Without pathways to homeownership, well-being goals such as creating safe environments for families, building family assets, and facilitating intergenerational wealth transfers are more difficult to attain.

The limited flow of mortgage capital to Indian Country is a leading cause of low levels of homeownership on Indian trust lands. In broad strokes, the challenges to lending reflect borrower characteristics, lender capacities, and the complexity of mortgage financing on trust lands. An additional challenge is the severe shortage of marketable housing stock. As these challenges overlay and intersect with one another, they create substantial barriers to progress with homeownership on Native lands.

To assess the challenges associated with lending on Indian trust land in South Dakota and to learn what lenders need in order to accomplish more trust-land mortgage lending, this project surveyed lenders working across the state. Outreach for inclusion in the survey sample included commercial lenders (banks), institutional lenders (for example, the US Department of Agriculture Rural Development Program and the Veterans Administration), and practitioner-lenders (for example, Native Community Development Financial Institutions, or Native CDFIs).<sup>3</sup> Survey questions were aimed at developing a better understanding of the specific factors that affect applications for mortgages on Indian trust lands, mortgage origination on trust lands, institutional knowledge about lending on trust lands, and organizational practices that facilitate such lending. Surveys were distributed through Survey Monkey. Twenty unique institutions responded to the survey, but two contributed only their institutions' names, leaving all other answers blank. Another respondent answered a single substantive question and left all other answers blank. Due to attrition throughout the survey, most questions received between 10 and 15 responses. ✨

## Actual vs. Perceived Experience

Among the group of 18 respondents, 10 had tried at least once to originate a mortgage on trust land, while eight had not yet attempted to do so. Even fewer had experience taking the process through to completion; while the question was asked much later in the survey, which led to some attrition, only four respondents affirmed that they had ever closed a loan on Indian trust land.<sup>3</sup> When asked “how many?” only two provided specific numbers: one lender shared that their institution had closed 20 loans on Indian trust land and another noted that their institution had closed at least two loans on fee simple land within the borders of a reservation.

Yet another responded that their institution had closed “many” loans on both tribal trust land and allotted trust land.<sup>4</sup>

This reported experience suggests that the information shared by survey respondents may reflect perception as much as real experience with lending on trust land. Of course, perceptions are themselves a barrier to lending, which points to an important theme in this report: finding solutions or workarounds in the process of lending on Indian lands is critical but not enough; broad-based lender education is also key. ✨

2 See CDFI Fund 2001, Dimitrova-Grajzl et al. 2015, Kingsley et al. 1996, Jorgensen 2016, Jorgensen & Akee 2017, Pettit et al. 2012, among others. See the appendix for full definitions of land types in Indian Country.

3 The six other respondents who noted that they had originated mortgages on Indian trust land did not answer this question at all. In other words, it would be inappropriate to interpret the lack of a response as a “no.”

4 Significantly, US Code §25 provides for allotted trust land (which also may be referred to as individual trust land) to be used as collateral for a mortgage and, ultimately, alienated if the borrower defaults. While borrowers and lenders still must obtain a Title Status Report and follow other aspects of the trust land lending process (environmental review, for example), this remains an important difference between the two land types. Because allotted trust land that has been used as mortgage collateral can be seized during foreclosure, taken out of trust, sold by the lender, and used for loan repayment, many borrowers with allotted land use only a subdivided leasehold interest in the land as collateral for a home mortgage.

## Barriers to Lending

In order to determine the importance of known issues and to identify additional concerns in the process of mortgage lending on Indian trust land, the survey offered participants a variety of opportunities to consider specific barriers they experience or perceive.

Table 1 lists the specific barriers survey participants considered in the question “To what extent do the following issues affect your company’s ability to attract mortgage applicants on Indian lands?” The list itself was gleaned from both previously published research and field experience.

Respondents assessed the importance of each potential barrier to lending on a scale of 1 to 5, where 1 indicated that a particular issue had “no effect on mortgage origination” and 5 indicated that the issue “strongly affects mortgage origination.” Analysis then focused on responses at the upper end of the scale: those issues receiving the most “4” and “5” responses were interpreted as the most pressing barriers. A secondary analysis, which gave greater weight to 5s over 4s, helped differentiate between similar overall scores.

While the overall number of responses was low (11 lending institutions provided responses), the analysis suggests substantial agreement about

**TABLE 1: Potential Barriers to Lending on Indian Trust Land**

\*\* Most important | \* Next most important

- \*\* Borrower’s credit history
- \*\* Not enough affordable housing available
- \* Fractional property ownership
- \* Lack of familiarity with mortgage process
- \* Other borrower characteristics, including job stability and reliability (but excluding credit history)
- \* Processing hurdles (delays in environmental review and land title reports)
- Borrower capacity to repay a loan
- Borrower mistrust of formal institutional lenders
- Language barriers between borrowers and lenders
- Limited available resources for down payment
- Limited borrower demand - minimal interest in or familiarity with homeownership
- Perceived quality of available housing stock
- Trust status of tribal and allotment lands
- Uncertainty about recovering your institution’s investment in the event of foreclosure



**“During a training provided by a Native American, we were told to slow down, get to know us, let us get to know you, be patient...”**

the issues lenders view as the greatest impediments to lending on Indian trust land. The two factors identified as most strongly affecting lenders' ability to attract mortgage applications are borrower credit histories and the lack of affordable housing for purchase on tribal lands.

There also was considerable consensus that four other factors—fractional property ownership, processing hurdles (delays in environmental review and land title reports), borrower characteristics other than credit history, and lenders' lack of familiarity with the mortgage process—posed significant barriers to mortgage lending on Indian land.

Open-ended responses to this and related survey questions focused on three broad categories of barriers to lending—borrower qualifications and effective demand, inaction and slowdowns at the tribal level, and lender knowledge.<sup>5</sup> Comments in each of these categories provide additional context for the particular issues identified as important in the scoring analysis.

With respect to borrower qualifications and characteristics, one respondent stated directly that the institution's issue was a "lack of qualified applicants." Others cited a lack of demand for mortgage loans on Indian trust lands—and while this is a broader problem with multiple causes (including a lack of affordable housing to purchase), borrower characteristics are a key determinant of demand. Borrowers who do not realize that home ownership is even an option, or whose financial situation is too uncertain or risky to be considered by lenders, cannot contribute to the effective demand for mortgage products. Again, lenders were to the point in their comments:

**I have never had a customer apply for this product.**

**Our company had been approved to be a HUD 184 lender since 9-2015 but thru 4-2019 we had only received two applications that resulted in loans closing.**

Still other comments identify a follow-on problem from the limited number of qualified borrowers and limited demand. They point to the fact that even when lending occurs, lending volume may be insufficient to justify institutional investment in the programs. For example:

**When we have attempted to make Section 184 loans, the overall volume of the loans has not supported the overhead of training and product implementation.**

**[For us], the overhead required to properly offer these programs and the [low] projected volume of business we would have in the markets we serve [is a barrier to lending].**

In Table 1, only "fractional property ownership," is an aspect of inaction and slowdowns at the tribal level. Yet it is clear from the number and content of write-in comments that a wider range of tribal-level issues—from a lack of program participation by tribes, to limited demonstrated interest from tribal leadership, to the pace of engagement dictated by tribal culture—are front and center in some respondents' minds as they consider the barriers to mortgage lending on trust land. These statements are indicative:

**Lack of support from tribal leaders/entities [is a barrier].**

**The most difficult challenge is consistency in documentation for the trust land property — either from the Tribe or from the BIA.**

**We can't make trust land loans if tribe is not approved with HUD to use 184 on trust lands.**

**Culture.**

<sup>5</sup> The responses discussed are to these questions: 1) "To what extent do the following issues affect your company's ability to attract mortgage applicants on Indian lands?" Rank scoring followed, as well as this open-ended prompt: "Name any other mortgage origination challenges." 2) "What are some reasons you do not lend at all on Indian trust land or do not lend as much as you would like to?" 3) "What are some other reasons that your lending activity on Indian trust land may be limited?"



One respondent also described how these concerns can compound:

**During a training provided by a Native American, we were told to slow down, get to know us, let us get to know you, be patient and talked about “Indian time.” Most times we don’t get a complete lending package and request more information, and it takes anywhere from several weeks to several months to get the required documents if we can get them at all. We talk about communication and the need to get more housing, [but] when given the opportunity to apply, it doesn’t seem to be important anymore.**

With respect to lender knowledge, several comments expand on the finding that lenders lack familiarity with the mortgage process on trust land:

**[This is] not our issue, but most lenders lack the knowledge on how to really navigate the process.**

**[Our institution is] not approved to do the programs and not familiar with the process of approvals [necessary to participate in them].**

**“Instead of complaining we need to step in and try to understand and work towards understanding.”**

Yet another respondent observed that an impediment for their institution is “the legal process [for foreclosure] if a loan would go delinquent,” which suggests that some lenders remain unaware of programs that support the mortgage process by providing loan guarantees. A related response was that “we cannot get clear title to Indian trust land, so we do not loan against those properties with [secondary market] underwriting standards.” The comment may have been correct in the past and for the particular products this lender offered, but it might have been tempered had the respondent’s institution been up to date on the Indian land mortgage process: throughout 2018 and 2019, in response to Duty to Serve regulatory requirements, the Government Sponsored Enterprises (GSEs) have developed variances to allow their loan products to be used on Indian trust land.

In sum, lenders that serve or have the potential to serve the homeownership market on Indian trust lands experience and perceive a variety of barriers to mortgage lending; some of the most acute are potential borrowers’ credit scores and the limited inventory of affordable properties for sale. Nonetheless, not all barriers are external to lenders. In making this point, one respondent observed:

**Instead of complaining we need to step in and try to understand and work towards understanding. ✨**

## Strategies to Attract Borrowers

Lenders participating in the survey reported that a variety of tactics can be valuable for attracting potential borrowers. However, they consistently identified one approach as being most effective: working collaboratively with tribes, Tribally Designated Housing Entities (TDHEs), and other tribal institutions such as Native CDFIs and credit unions. This type of community-level collaboration likely serves to build a foundation of trust between borrowers and lenders and to facilitate direct connections between qualified applicants and lenders.

Table 2 lists all the items respondents considered in the question “How effective are the following strategies at attracting mortgage applicants on trust land?” and the ranking results.<sup>6</sup> As shown, responses to this question suggest that in addition to community-level engagement, lender presence on or near Indian lands, direct advertising through

**TABLE 2: Effective Strategies for Attracting Applicants for Mortgages on Indian Trust Land**

\*\* Most important | \* Next most important

- \*\* Working in collaboration with tribes, TDHEs, and other tribal institutions, including Native CDFIs and credit unions
- \* Lender presence on/near Indian lands
- \* Advertising on social media
- \* Advertising through media that reaches Native borrowers living in reservation communities
- Advertising at Native community events (on and off reservations)
- Advertising on reservation grocery store message boards
- Including culturally sensitive language and messaging in outreach materials
- Mobile bank branches
- Outreach through employers of Native Americans



media that reaches Native borrowers living in reservation communities, and advertising on social media also may be highly effective strategies. One respondent specifically noted that local radio was an effective traditional media mechanism; two others mentioned Facebook as their most used social media platform. Additionally, while it is not a “strategy” per se, several lenders cited personal testimony, in the form of referrals and word of mouth, as a critical means for connecting them with individuals and families interested in owning a home on Indian trust land:

**Referrals from current and past clients are HUGE!**

**Word of mouth. Once one person is able to close a mortgage, it will spread like wildfire.**

When asked to identify processes that help them identify qualified borrowers, lenders again emphasized that the most effective approach is to work with community institutions and tribal programs. At the same time, they also expressed significant support for homebuyer education and counseling, affordable and flexible lending products, flexible and culturally appropriate underwriting related to credit, and fair access to credit.

When queried about management strategies for fostering mortgage lending on Indian land, community-level engagement was one of three strongly valued strategies in the ranking analysis.

<sup>6</sup> Identical to the process used to better understand barriers to lending, survey respondents used a 1 to 5 scale to rank the effectiveness of a variety of possible strategies for attracting mortgage applications. Aggregate scores were calculated focusing on the upper end of the scale—that is, on those strategies perceived to be the most effective. A secondary calculation gave greater weight to 5s over 4s to differentiate among similar overall scores. Because only seven respondents scored these questions, the results are at best indicative. However, the identified “top strategies” are those for which seven of seven or six of seven respondents gave the strategy a 4 or 5 on the “effectiveness” scale; in other words, there was full or substantial agreement that these strategies work.

**“Referrals from current and past clients are HUGE! Once one person is able to close a mortgage, it will spread like wildfire.”**



**TABLE 3: Management Strategies for Fostering Lending on Indian Trust Land**

\*\* Most important | \* Next most important

- \*\* Working with TDHEs and other tribal institutions such as Native CDFIs and credit unions
- \*\* Senior management commitment
- \*\* Specific lending goals
- \* Market research
- Compensation formulas that encourage affordable lending
- Staff who are familiar with issues associated with originating mortgages on Indian land
- Workforce development and education
- Targeted outreach activities
- Clear methods for including trust-land lending when reporting on CRA obligations

Table 3 shows that senior management commitment and specific lending goals also were viewed as important to creating a lender culture capable of increasing the engagement of reservation-based tribal citizens in the mortgage market.

Finally, while several lenders participating in this study have had some success attracting mortgage borrowers on Indian trust land, just over half (seven of 15 responding to the question) indicated that they would like information about how to expand their reach in Indian Country. An even larger majority (11 of 16 respondents) said they would be interested in learning more about ways to develop their portfolios in Indian Country. One way to summarize these findings is that, in general, lenders that already are

engaged in mortgage lending on trust land in South Dakota would like to do more and those that are not yet active in the market would like to be. ✨

## Challenges in the Process of Originating Mortgages on Indian Trust Land

Whenever lenders are working with first-time homeowners, applicants for whom manual underwriting may be required, or individuals who are buying homes in markets with “nonstandard” characteristics, the mortgage origination process—the multiple steps that occur after attracting applicants but before closing loans—is challenging. Lending in Indian Country fits this profile, so friction in the process is expected. Nonetheless, too much friction can shut the process down entirely. Survey questions probed specific aspects of the origination process to better understand these hurdles (some of which are unique to the trust-land mortgage market) and whether lenders are meeting with success in overcoming them. Findings suggest that several hurdles continue to be of significant concern to many active and potential lenders. At the same time, the findings also show that as lending institutions develop capacity for Indian Country outreach, build relationships, and gain practical experience with lending on trust land, they are able to address or to avoid several barriers to progress with mortgage origination.

### Property Appraisals on Indian Trust Land

To originate a mortgage loan, a lender must know the value of the property to be mortgaged, a number that is provided by an independent property appraiser. In the off-reservation mortgage market, comparable properties offered for sale help appraisers gauge value. In rural and trust-land markets, the limited (or nonexistent) number of comparable sales necessitate an approach to valuation based on cost rather than sale prices, which is not always well-known. These characteristics of the appraisal process—that it requires the services of professionals independent from the lending system, that it relies on a non-standard approach to valuation, and that appraisers may not be trained in this alternative approach or may not know how to implement it well—all increase the level of difficulty of this phase of the origination process for loans on Indian trust land.

In fact, based on survey feedback, obtaining property appraisals for homes on trust land is among the greatest challenges to lending in Indian Country. When asked to identify specific speedbumps in the appraisal process, the primary issue identified by active lenders was the lack of qualified appraisers who understand Indian trust land. One lender painted a vivid picture of this struggle:

**Very few appraisers have the skill or interest in appraising trust land. The appraising industry does not provide time to learn the cost-based approach during its training, therefore appraisers have to learn on the job. Additionally, they aren't monitored closely on the cost-based approach, [and] therefore there are inconsistencies and questions whether they are even doing them correctly. Because of the cost to the appraiser to travel to rural areas for one appraisal, the appraiser charges an “inconvenience” fee to the appraisal price, making the appraisals cost more.**

Significantly, lenders not yet active in the market also perceive these challenges—perceptions that can discourage market entry. Said one,

**[It is] extremely difficult to find an appraiser, and then they are so booked out that it takes forever for an appraisal.**

In the face of these difficulties, at least one lender has found a way to help the process along. This survey participant noted, “we typically have to educate new appraisers surrounding the allowed cost approach method”—a remark which suggests that just-in-time education, delivered by lending institution personnel to one appraiser at a time, can work. Even so, a broader approach, aimed at strengthening the profession overall, might be more efficient.

## Title Status Reports for Trust Land

Mortgage origination also requires that lenders gain clarity about the title status of the trust land parcels associated with their mortgages. Because the US government has a fiduciary responsibility for Indian trust assets, responsibility to certify the title status of trust land lies with the US Department of the Interior Bureau of Indian Affairs (BIA). The BIA fulfills this responsibility by issuing Title Status Reports (TSRs).

Survey respondents identified the BIA process for obtaining TSRs as another significant challenge to originating mortgages in Indian Country. One active lender noted that their institution already had waited six months for a TSR—and still was waiting. Such delays and other difficulties with the BIA led to numerous complaints, including:

**Too much time is involved in this process.**

**Significant fault [for limited mortgage loan origination in Indian Country] lies with the BIA in their delayed and inconsistent processes.**

**[Our problem is] getting the recorded lease and TSR in a timely fashion so we can property originate the loan with all land/sites.**

**We can't get the local realty officer to even respond so we can gauge a timeline or if we have the correct paperwork.**

**It is impossible to find a regional representative to give you more than 15 minutes of their time. They will cite the information needed and ask you to turn it in, and you will wait months to get a response. As you wait for a response, you are constantly reminding them, and they do not communicate back. The undue costs are associated with the administrative expense of chasing down BIA employees and begging for a response.**

These refrains are repeated even among lenders that have not pursued lending on trust land:

**The information [on Indian land title status] does not seem readily available.**

**The time to obtain [a TSR] is excessive, and [BIA] staff are unresponsive.**

**It takes a while.**

Yet there also is a subset of active lenders who report that for them, obtaining a TSR is not a problem:

**We have experienced very few challenges. We can get a TSR within 30 days.**

**[We can get a TSR in] two weeks.**

**No challenge**

Overall, findings concerning the TSR process mirror those concerning property appraisals—some lenders have had direct negative experiences, some lenders not yet active in the market are highly skeptical of the TSR process, and a few lenders appear to have developed capacity, workflow flexibility, and relationships that minimize their concerns. An additional finding is that nine of 11 responding lenders indicated that if the TSR process were streamlined, their institution would be more willing and better able to engage in lending on tribal lands. Based on this evidence, change may be needed on several fronts: within the BIA, to speed the processing of TSRs; outside the BIA, perhaps by finding ways to reduce dependence on the BIA for TSR processing; and within the lender community to create and strengthen lender-BIA relationships.

## Underwriting Mortgages on Indian Trust Land

Underwriting is the process through which a lending institution assesses a potential borrower's capacity to repay a loan. Underwriting takes account of the borrower's creditworthiness, available collateral, and other indicators of capacity to repay (such as salary and other sources of income). A few survey



respondents identified underwriting as the greatest challenge they faced in the process of originating mortgages on Indian trust land.

When questioned about the specific aspects of underwriting that were problematic, survey participants pointed to applicants' credit as a key source of concern. While it is likely that a significant fraction of applicants for Indian Country mortgages have relatively low credit scores, many others may simply have thin files, which makes it difficult for lenders to quickly assess creditworthiness.<sup>7</sup> Employing alternative approaches to credit scoring is a possible response. Yet elsewhere in the survey, when participants were asked whether assistance with such alternatives would be helpful in their efforts to provide home mortgage financing on trust land, only three responded that they were interested in alternative credit scoring models. All of these were practitioner-lenders (Native CDFIs, Native loan funds, and tribal housing authorities). These data suggest not only that lenders generally may require more information about alternative approaches to credit scoring but also that traditional

commercial lending institutions may have more difficulty implementing such approaches, either because staff are not trained in how to employ them or because bank policies prevent their use.

Survey respondents also expressed concern about meeting underwriting standards when making mortgage loans for properties on trust land. In mortgage lending on fee land, the home and associated land that a borrower is purchasing are used as collateral in the case of default. While not all mortgages on trust land in Indian Country require collateral (see below), when a lender needs this type of surety, alternative underwriting practices offer options. Survey findings show that several banks working in Indian Country in South Dakota have experience using some of these alternatives to conventional collateral, including interest in a leasehold on Indian trust land, proceeds from land and property leases (on trust or fee land), and home improvements. Given that one third of survey respondents expressed interest in learning about alternative underwriting practices and half reported that they already rely on them, information sharing

<sup>7</sup> Dimitrova-Grajzl et al. 2015.

among lenders about what has been workable and how may be another opportunity for increasing market engagement and improving outcomes.

### Risk Mitigation

In some corners, there has been a misperception that mortgage lending in Indian Country is risky because it is impossible to foreclose on Indian trust land. The statement is false on two counts. As noted in footnote 5, it is possible for an individual to mortgage, and if necessary, for a lender to foreclose on parcels of *allotted* trust land. Second, even when a mortgage is associated with a property on trust land, risk can be substantially mitigated; the key is knowing, absent traditional collateral, how to do so.

In South Dakota, an outstanding example of risk mitigation for trust-land lending is the Sisseton Wahpeton Oyate (SWO) Risk Pool, a foreclosure avoidance program for qualified borrowers seeking to acquire, build, repair, renovate, or relocate a home. Monies in the tribally established fund are used to purchase a home and keep it in tribal hands in the event of a homebuyer default. While pool participation is available only to citizens of the Sisseton Wahpeton Oyate, it is an important model for other tribes and an opportunity for lenders. Even so, responses to this survey suggest that its existence is not well known: only four of seven practitioner-lenders and two of eight commercial and institutional lenders responding to the survey indicated that they knew about the program.

The federal government also provides loan guarantee options to support Native borrowers—through the US Department of Housing and Urban Development (HUD) Section 184 Indian Home Loan Guarantee Program and the US Department of Agriculture (USDA) Section 502 Guaranteed Rural Housing Loan Program.<sup>8</sup> Survey responses show that practitioner-lenders are aware of these options (seven of seven responding institutions), while commercial and institutional lenders are somewhat less knowledgeable (five of eight responding institutions).



**“Be available to help them through a hard time. Give them the ability to trust you and to come to you when an issue first comes up.”**

Lenders participating in the survey also were asked to describe other ways they mitigate loan risk among borrowers. Answers focused on early intervention strategies and personalized customer service in which the lender develops a relationship with the borrower and works to understand the borrower’s specific financial situation and need. Examples are as follows:

**We work with TDHEs and tribes that offer these services to try and work through each individual deal. [Named individual] does a great job for us on this piece with our past due list. Not all lenders will do this with this much personal touch. Our borrowers are not just loan numbers.**

**Be available to help them through a hard time. Give them the ability to trust you and to come to you when an issue first comes up. Let them know help is available if they come in right away and not wait until it is too late. ✨**

<sup>8</sup> The Veterans Administration also offers a loan guarantee program (to all veterans not just Native veterans), but it has not been used much, if at all, on Indian trust land.

## Federal Program Knowledge

In addition to loan guarantees, the federal government provides other supports—including direct loans—to individuals seeking to buy homes on Indian trust land. The survey drilled down on lender knowledge with respect to the following federal program opportunities:

- The HUD Section 184 Indian Home Loan Guarantee Program provides a 100% loan guarantee on private lender loans to enrolled tribal members purchasing homes on and off reservation lands (as designated by the tribe).
- The VA Native American Veteran Direct Loan Program provides direct loans to Native American veterans purchasing homes on Indian trust lands where the VA has a memorandum of understanding with the tribe.
- The USDA Rural Housing Section 502 direct loan program provides loans at below-market interest rates for home purchases on rural and reservation lands, and the Section 504 program provides loans and grants to very low income homeowners for home repair, improvements, or modernization.

- The USDA Section Rural Housing 502 loan guarantee program guarantees private lender loans made at below-market interest rates for home purchases on rural and reservation lands.
- The Federal Home Loan Bank of Des Moines (FHLB) Native American Homeownership Initiative provides down payment, closing cost, and home repair grant assistance to Native homebuyers.

Not surprisingly, the findings show that active lenders are both more knowledgeable about federal programs that support mortgage lending in Indian Country and more likely to use them (see Table 4). By contrast, lenders who have not yet attempted mortgage lending on trust land are less knowledgeable and less likely to have used the programs even in other allowed circumstances (all of the programs may be used by Native borrowers purchasing homes on fee simple land). In other words, there appears to be a critical progression from a lack of program knowledge, to awareness, to use.

**TABLE 4: Connection Between Federal Program Knowledge and Federal Program Use**

Program	Lender Type			
	Practitioner-Lenders	Institutional/Commercial Lenders	Practitioner-Lenders	Institutional/Commercial Lenders
	Lender <i>Has</i> Originated Mortgages on Trust Land		Lender <i>Has Not</i> Originated Mortgages on Trust Land	
HUD 184 Loan Guarantee	●●●●	●●●●	●●●●	●●●●
VA Direct Loan	●●●●	●●●●	●●●●	●●●●
USDA Direct Loans	●●●●	●●●●	●●●●	●●●●
USDA Loan Guarantee	●●●●	●●●●	●●●●	●●●●
FHLB Down Payment & Closing Assistance	●●●●	●●●●	●●●●	●●●●

**Key:** ● Use program ● Know about program but do not use ● Don't know about the program

A total of 15 respondents are represented in this table; each dot represents one respondent.

Among survey respondents, the HUD Section 184 Indian Home Loan Guarantee Program was both the most well-known federal loan assistance program and the most frequently used. Program features most appreciated by lenders include low down payments for borrowers, cost-approach appraisals, low insurance costs for borrowers, good relationships between HUD and participant lenders, timely responses, and long experience working in Indian Country. Nonetheless, respondents also expressed several criticisms of the 184 process. Among these were the requirement “for multiple NEPA [National Environmental Policy Act] environmental assessments,” which is not precisely true but nevertheless highlights the fact that HUD may require additional environmental assessments on top of those already required for development on federal land.<sup>9</sup> Implicitly, this suggests a need for federal regulatory reform. Other comments expressed concern about timelines (although it was unclear exactly which timelines in the HUD 184 process were problematic) and about closing locations that were sometimes inconvenient for reservation-based clients.

The USDA 502 direct loan program was second most frequently used federal program among



survey participants. According to respondents, the best features of this program include low interest rates and loan affordability, the lack of a down payment requirement for borrowers, and the direct lending approach. On the other hand, lenders also noted the administrative costs to deploy USDA Rural Housing Program funds and the required subsidy to the borrower create lending challenges. ✨

## Expressed Capacity-Building Needs among Lenders

Estimates by the South Dakota Native Homeownership Coalition suggest that the demand for mortgage lending in Indian Country will increase substantially in the next five years. If lenders working in the region intend to be involved in—and potentially benefit from—this new wave of demand, capacity development may be necessary.

When queried, lenders indicated that probable capacity responses would include ramping up homebuyer outreach and education, especially efforts focused on financial capability and credit counseling; hiring more staff or finding ways to flex staff given the “roller coaster ride of the mortgage industry”; investing in professional development focused on Indian Country mortgage lending; looking for additional capital for trust-

land lending; finding ways to cooperate more with industry partners; and re-implementing lapsed HUD Section 184 programs.

When asked how the existence of programs that support mortgage lending in Indian Country—that is, the homebuyer education, credit repair assistance, down payment assistance, and flexible lending programs that are offered by nonprofits, CDFIs, the federal government, and others—affects current and future lending, six of nine question respondents noted that their lending volume would decrease without such programming; several suggested that trust land mortgage lending might dry up altogether.

Reflecting on these extant supports and on their ongoing and future needs, lenders had a variety of

<sup>9</sup> Indian land held in trust by the US federal government is considered to be federal land and thus must meet all requirements set by the federal government for development on federal land, including NEPA surveys and archaeological reviews.

suggestions about the ways the SDNHOC could be of continued usefulness to them. The number one request, made by a majority of survey participants, was that the Coalition should continue to reach out to and educate lenders. As one respondent put it, SDNHOC should continue to “work on reducing the negative perceptions of the programs that are available and work on creating an environment of learning and understanding.” Another urged the Coalition to keep up its locally focused efforts but also to “gain federal support as needed.”

Survey respondents also provided feedback on the possible content of outreach and education efforts. Using a scale of 1 to 5, where 1 indicated “this would not be helpful to my team” and 5 indicated “my team absolutely needs this information,” respondents identified how they would like to build capacity to better serve borrowers interested in mortgages on Indian trust land.<sup>10</sup>

As shown in Table 5, among the 13 lenders responding to this question, learning how to navigate the leasehold mortgage process and how to identify and secure land titles (or TSRs) were the most pronounced areas of interest. There also was significant interest in training on working with federal loan guarantee products, reclaiming foreclosed properties, and understanding Indian trust land history and its implications for lenders.

**TABLE 5: Desired Training to Build Capacity for Mortgage Lending on Indian Trust Land**

\*\* Most important | \* Next most important

- \*\* Identifying and securing titles
  - \*\* Navigating the leasehold mortgage process
  - \* How to reclaim foreclosed property—mitigation processes
  - \* Indian trust land history and implications for lenders
  - \* Working with federal loan guarantee products
- Cultural trainings specific to the Native communities you serve
- How to develop culturally responsive outreach and services for working in Native communities
- Tribal policies and protocols

Other tasks that lenders suggested for the SDNHOC were to help connect lenders with organizations “that are willing to provide low interest capital/ grant capital for development on reservations,” to “find a champion at the BIA to speed along the TSR process,” and to continue to support “homebuyer education on the reservations now to prepare Native borrowers for future homeownership.” ✨



<sup>10</sup> Identical to the process discussed previously in this report, survey respondents used a 1 to 5 scale to rank the necessity of various capacity-increasing training options. Aggregate scores were calculated focusing on the upper end of the scale—that is, on the most needed training and education options. A secondary calculation gave greater weight to 5s over 4s to differentiate similar overall scores. Thirteen respondents scored these questions, with the two top-scoring options receiving at least six 5s and three 4s.

## Conclusions and Recommendations

Findings from this survey point to several conclusions and recommendations for lenders serving the home mortgage market in South Dakota and for the SDNHOC. Critically, they indicate the need for both short-term and longer-term efforts aimed at increasing Native homeownership on Indian trust lands and, in so doing, underscore the importance of creating institutional, tribal, and sectoral strategies to ensure both quality demand for finance and an appropriately structured supply of funds.



### Conclusion I: Volume and success matter to increased lender participation

**“The ability to generate a profit is necessary. Serving the greater good for housing in Indian Country is important as well, so profitability doesn’t need to match other lines of business necessarily.”**

Through financial education, coaching, and specialized loan programs, member organizations of the SDNHOC have helped clients strengthen their credit, save for down payments and closing costs, and develop the financial habits necessary for successful loan repayment. Through homebuyer education, they have helped their clients imagine themselves as homeowners and develop capabilities essential for homeownership, such as skills to address basic home repairs. These efforts create a pipeline of qualified borrowers that both practitioner-lenders and commercial and institutional lenders can confidently take on as mortgage clients.

Study results suggest that many more such clients are needed. Among active lenders, a larger group of qualified prospective borrowers (volume) and an increased likelihood of generating revenue (profit potential) help make the case for continuing this line of business. If the number of borrowers grows larger still, and if these continue to be “good” loans for which there can be a high expectation of repayment, even more lenders have an incentive to enter the market. At present, survey findings suggest that some lenders’ presence in the market remains fragile, that some have exited because Indian Country lending didn’t offer the volume they needed to continue, and that others have stayed away for this reason.

Of course, qualified borrowers are only part of what is needed to increase

<sup>11</sup> Some tribes’ mortgage ordinances include a “right of first refusal” that allows the tribe or Tribally Designated Housing Authority to purchase a foreclosed property before it is sold outside the tribal hands. Lenders can negotiate this with a tribe before making a claim on a loan guarantee (for example against a loan guaranteed under HUD Section 184).

market volume. Legal and physical infrastructure must be created, the capacity to meet regulatory guidelines must expand, and new human capital must be developed. The SDNHOC has attempted to address these issues by encouraging tribes to adopt policies and practices that support lending (for example, opting in to various federal programs, identifying parcels of trust land suitable for homeownership efforts, funding risk pools, clarifying tribal leasing processes, creating land banks, writing mortgage codes, developing “right of first refusal” policies<sup>11</sup>); by advocating with the BIA to improve TSR processing; and by working with industry partners to increase the number of building contractors, appraisers, and inspectors capable of working on Indian trust lands. Efforts on all of these fronts also must continue in order to promote and accommodate market growth.

In other words, if volume and success are to characterize the market for mortgage lending on Indian trust lands, the SDNHOC cannot ease off in any of its core activities. In fact, more and more targeted efforts may be needed, which suggests an additional role for the Coalition: helping raise resources that can support member organizations or other community actors to work (perhaps on a contract basis) with individual tribes, nonprofit partners, lenders, funders, and federal agencies to create, refine, and coordinate specialized strategies for their locations, client pools, regulatory environments, or tribal-specific needs. Given the results of the practitioner survey that was a companion to this effort, such highly tailored approaches may need to take a hard look at what’s working, where, and why and consider ways to kick-start the process of financial and homebuyer education among each tribe’s youngest members.

### **Associated Recommendations:**

- I.1.** SDNHOC member organizations should continue their efforts to increase clients’ financial capability through credit counseling, credit repair, home buyer readiness preparation, and home buyer education; future local efforts should be tailored, comprehensive, and focused on creating ladders into homeownership.
- I.2.** The SDNHOC should continue its efforts to increase the number of appraisers working in Indian Country; changes to industry-provided certification training and opportunities for post-certification professional development both are needed. To be relevant, appraiser education must focus on the cost-based approach and other unique aspects of trust-land property valuation.
- I.3.** The SDNHOC should continue its efforts to increase the number of building contractors and home inspectors capable of working on tribal lands and advocate that professional groups invest in similar pre- and post-licensing training.

- I.4. Tribes should adopt policies, practices, and programs that support lending on trust land, including mortgage codes, land banks, risk pools, and building codes; the SDNHOC should assist by facilitating the sharing of sample policies and best practices.
- I.5. The SDNHOC should continue its advocacy with the Bureau of Indian Affairs to speed Title Status Report processing, and the BIA should make every effort to improve TSR processing.
- I.6. The SDNHOC should help facilitate the creation of tailored strategies for member organizations and South Dakota tribes that, given each client pool or setting, can move the most tribal citizens toward homeownership.



### Conclusion II: Knowledge and relationships are necessary for improved lender performance

**“I don’t think lenders should partially commit, if they want to do this type of lending it takes a real commitment and that may take a lot of time and money. Finding the right person/team to take lead is key.”**

Study findings emphasize the many speedbumps in the process of issuing mortgages for homes located on Indian trust land. Lenders perceive or have experienced these concerns, and rightly view many as beyond their control.

These circumstances should focus lenders’ attention squarely on the things they can control—their knowledge of lending products unique to the industry (such as HUD Section 184 mortgages and the SWO risk pool), their knowledge of regulations and laws that affect mortgage lending on trust land, their understanding of trust-land lending and how they can help lower hurdles in that process, their familiarity with various nonprofit organizations (especially Native CDFIs) that serve the region, and their familiarity with the specific tribes in the state. Two-thirds of question respondents expressed interest in learning more about how to increase the number of Indian Country loans in their portfolios, and this is the way to do it: lenders should consciously invest in such learning, and the SDNHOC should help facilitate it.

All lenders—practitioner-lenders and commercial lenders—also should build relationships with the elected officials, program managers, department heads, and line staff in the realty, housing, leasing, economic development offices of the tribes they serve. They should make a point to develop contacts within the federal and state agencies that regulate, fund, or otherwise support homeownership on trust land. For example, they should know the BIA staffers who process TSRs in their area. They should strive to work with local and regional nonprofit agencies supporting homeownership in Indian Country and develop collegial, trusting partnerships with these practitioners.

Commercial and institutional lenders in particular should aim to shift from being “unknown commodities” or even “honored guests” when interacting with community-level colleagues to being well-known, knowledgeable partners. They should make regular visits to tribal communities. They should strive to work with Native CDFIs to realize comparative advantages in lending. It is these kinds of efforts, consistently and deliberately pursued, that will help lenders implement the strategy that so many survey respondents identified as critical to attracting qualified borrowers: “Working with TDHEs and other tribal institutions such as Native CDFIs and credit unions.”<sup>12</sup>

### **Associated Recommendations:**

- II.1.** The SDNHOC should facilitate lender trainings—perhaps in partnership with the South Dakota Housing Development Authority (SDHDA)—for those lending institutions interested in learning more about lending on Indian trust land.
- II.2.** The SDNHOC should identify best practices for recruiting qualified borrowers, managing the TSR process, and mitigating risk—and for institutional and commercial lenders not based in tribal communities, best practices for engaging with tribal partners—and share these ideas across the group of lenders in the state. Advocacy with lenders should stress that there are things lenders can do to reduce friction in the lending process.
- II.3.** The SDNHOC should advocate for creation of an award or other annual recognition of the most active lenders on Indian trust land in the state.
- II.4.** Lenders should seek to build relationships with other organizations, officials, and practitioners—in Native CDFIs, within tribal government, in state agencies, and in federal program offices, among others—whose work affects the mortgage lending process on Indian land.

<sup>12</sup> In fact, the success of the USDA Rural Development Section 502 relending pilot program in South Dakota (through which Native CDFIs borrow capital from Rural Development and then relend to eligible Section 502 borrowers) shows that this kind of community-focused, relationship-centered strategy works.



### **Conclusion III: Creative thinking and innovation may be needed to address funding gaps**

In the early 1990s, the market for home mortgage finance on Indian trust land changed dramatically with the development of the HUD Section 184 Indian Home Loan Guarantee Program. Starting in 2001, the US Department of the Treasury CDFI Fund developed a series of Native initiatives, and new capital became available through the subsequent growth of the Native CDFI sector. In the mid-2010s, opportunities changed again for citizens of the Sisseton Wahpeton Oyate with creation of the SWO Risk Pool. In 2018-2019, some secondary market lenders adjusted their underwriting standards through variances so that their lending products could be used for trust land mortgages, another significant structural change that eases the process of mortgage lending in Indian Country and improves access to affordable mortgage capital.

Each of these changes required creative thinking and a willingness to innovate. Addressing the remaining barriers to mortgage lending on Indian trust land is likely to require additional creativity and innovation. Might there be ways to extend the benefits of the SWO Risk Pool to other tribes, for example, allowing tribes with adequate resources and strong homeownership development services to “buy in” to the pool? Might it be possible for banks or foundations to prospectively fund “land bank inventories” at each tribe in the state through CRA investment and grants—and help such offices become self-supporting with implementation of a modest fee structure? Are there ways to encourage tribes to exercise their sovereignty by compacting with the BIA for land management and TSR processes, perhaps with financial support from banks and foundations? Might the creation of a roving probate clinic—perhaps offered as a clinical program by the University of South Dakota School of Law—assist not only in reducing fractionation of Indian land but clarify the recipients of housing assets, incentivizing homeownership and family asset preservation? Might policy changes that allow tribes and TDHEs to become HUD-approved housing counseling agencies help to improve the homebuyer readiness of borrowers on trust land?

In the past, the SDNHOC has facilitated brainstorming sessions focused on exactly such big ideas. Given the renewed need for system change, the time appears ripe for another brainstorming meeting and for testing some of the disruptive ideas that emerge.

**Associated Recommendations:**

- III.1.** The SDNHOC should host a brainstorming session focused on developing a slate of initiatives with the potential to significantly increase the volume of mortgage lending on Indian trust land in South Dakota.
- III.2.** The SDNHOC should work with lenders, tribes, and funders to develop a strategic plan for moving forward on at least one of the initiatives that emerges from the brainstorming.
- III.3.** The SDNHOC should develop an educational campaign to change the negative perceptions of lenders who tend to think that mortgage lending on trust land is just too hard and to increase the engagement of lenders already in the market. ✨



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## APPENDIX: TYPES OF LAND OWNERSHIP IN INDIAN COUNTRY

### **Tribal Trust Land**

Tribal trust lands are held in trust for the tribe by the federal government. The Department of the Interior, through the Bureau of Indian Affairs (BIA), administers the federal government's trust responsibilities.

- Tribal trust land cannot be alienated (taken out of trust) or encumbered without BIA approval.
- Tribes may lease or otherwise assign portions of tribal trust land for use by specific individuals or for specific purposes, but ownership, through the federal trust, remains with the tribe.
- Generally, tribal courts, together with BIA, have jurisdiction over real estate transactions (lien recording, eviction, and foreclosure procedures) on tribal trust lands.

### **Individual Allotted Trust Land**

Individual allotted trust land is held in trust by the federal government for individual Native Americans or held by individual Indians subject to federal restrictions against alienation or encumbrance.

- Tribes generally have no property interest in allotted trust lands. However, like tribal trust land, allotted trust land cannot be alienated or encumbered without BIA approval.
- Real estate transactions (lien recording, eviction, and foreclosure) are sometimes governed by tribal law but in other areas may be under the jurisdiction of state or local government laws.

### **Fee Simple Land**

Fee simple land is unrestricted land within Indian Areas. The term “fee title” or “fee simple title” generally denotes an estate in land in which the ownership interest allows the owner to dispose of the entire property or various interests in the property without hindrance. In other words, the interest is absolute and unrestricted.

- Tribes generally have no property interest in fee simple land, and this land may be alienated or encumbered without BIA approval.
- Real estate transactions (lien recording, eviction, and foreclosure) are generally under the jurisdiction of state or local government laws. However, in some areas, fee land within an Indian Area may be under the jurisdiction of the tribe.

### **Fractionated Ownership**

Fractionated ownership is the term used to note ownership of a property in the name of more than one individual. The term typically is used in conjunction with allotted or individual trust lands to describe situations where, over time and through division of inheritance, multiple parties have claim to a single property.

**Source:** Office of Native American Programs 2011.

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Hope Nation, LLC. brings a combined 47 years of academic leadership and community development experience to provide capacity-building consultation to indigenous and rural communities across the country. The core values driving our work are to: 1) use hope as a catalyst for change, 2) build community wealth, 3) create authentic community partnerships, and 4) honor community.

Hope Nation works with national and local nonprofits, educational institutions, corporate organizations, as well as tribal, local, state, and federal governmental entities.