

Bureau of Indian Affairs-Palm Springs Agency
 Checklist for Commercial **Deed of Trust** (25 CFR §162.457-460)

REVIEW Yes/No/NA	ITEMS TO CONSIDER	CROSS REFERENCE	STAFF COMMENTS / NOTES
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LEASEHOLD MORTGAGES
 We have 20 days from receipt of a complete package to approve or disapprove under §162.459
 A INCOMPLETE PACKAGE WILL BE RETURNED

<input type="checkbox"/>	Lease Number:		
<input type="checkbox"/>	Lessee:		
	BIA REQUIRED DOCUMENTATION FOR A COMPLETE PACKAGE		LESSEE TO FILL OUT THIS SECTION ↓
<input type="checkbox"/>	(2) Original (LEASEHOLD) Deeds of Trust (DOT) ___ Parties to submit no less than 2 originals ___ BIA will retain 1 Original ___ DOT must state amount and maturity date ___ There must be no Cross-Collateralization ___ 162.458 Lessee must notify all Indian landowners of the proposed mortgage.	Tab 1	Title must state: (Leasehold) Deed of Trust. Proof of mailing received:
<input type="checkbox"/>	(1) Promissory Note - ___ 1 Certified copy of the Promissory Note - Signed ___ "Stamped in Blue Ink as "Certified to be a true and correct copy" on every page and initialed.	Tab 2	
<input type="checkbox"/>	<ul style="list-style-type: none"> • Trustee 		
<input type="checkbox"/>	<ul style="list-style-type: none"> • Beneficiary 		
<input type="checkbox"/>	<ul style="list-style-type: none"> • Loan Amount • 		
<input type="checkbox"/>	Purpose of Loan : See §162.460		
<input type="checkbox"/>	Case initiation letter (stating what you are requesting and purpose)	Tab 3	
<input type="checkbox"/>	Administrative Fee ___ Master Lease (Cost \$2,000) ___ Sublease (Cost \$500) ___ \$500 Rush Status (5 to 10 days) ___ \$250 Pre-review before executed document ___ \$250 for BIA additional services Payable to the "ACBCI Commercial" Palm Springs Agency PO Box 2245 Palm Springs CA 92263	Tab 4	
<input type="checkbox"/>	Request Corporate Documents : ___ Evidence of signing authority – must match the signatures on DOT ___ Articles of Incorporation / Corp./ HOA ___ Partnership Agreement / LP ___ Articles of Organization or Cert. of formation/ LLC	Tab 5	

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	_____ Financial Statement and income verification _____ Certificate of Good Standing/ or Credit report _____ Fictitious Name Filing _____ Homeowner's Association (List of Officers)		
<input type="checkbox"/>	Certificate of Liability Insurance Must state the following: Example: <i>Business Lease No. PSL-XXX, NAME OF LEASE</i> <i>Additional insured parties: The United States Department of Interior, Bureau of Indian Affairs-Palm Springs Agency, Indian landowners (Lessors) (names) or heirs of . . .and their Allotment(s): 12x, 12x</i>	Tab 6	_____ Liability Insurance _____ Property Insurance
<input type="checkbox"/>	Preliminary Title Report	Tab 7	
<input type="checkbox"/>	A statement from the Lessee's mortgagees or sureties that they consent to the above transaction and signed by them. _____ (If a sublessee, you must also obtain Lessor's consent, as well) as require by 162.460(a)(2)	Tab 8	
<input type="checkbox"/>	Statement from lender on the payoff balance (if this is a refinance)		
<input type="checkbox"/>	Lender's appraisal to make certain that the Deed of Trust does not over-encumber the leasehold estate	Tab 9	
<input type="checkbox"/>	If applicable- <input type="checkbox"/> Certified signed escrow instructions/ <input type="checkbox"/> Lenders loan application/ <input type="checkbox"/> Lender's analysis worksheet/ <input type="checkbox"/> Copy of Truth in Lending Statement, <input type="checkbox"/> Certificate of Indebtedness _____ You must Justify reason for non-record (written statement)	Tab 10	
<input type="checkbox"/>	If applicable - Reconveyance of any prior Deed of Trust encumbering the trust land. (if this is a refinance, submit letter stating you will provide proof or reconveyance after escrow closes- within 10 days) _____ You must Justify reason for non-record (written statement)	Tab 11	
(BIA)	BIA to Run a Title Status Report and ensure there are no other encumbrances	Tab 12	
(BIA)	Request reconciliation from accounting on the Master Lease, if applicable, to ensure the lease and sublease are not in default. Request if Certified Statements of Gross Receipts have been received.	Tab 13	Date requested: Date received: Any amounts Due: Statements of Gross Receipts:
(BIA)	BIA to prepare CEER for signature:	Tab 14	
	BIA will insert its own Approval page		

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COMMENTS: Leasehold Mortgages

Purpose of DOT:

§162.460 (a) We may disapprove if one of the following is true.

- (1) The Indian landowners have not consented and their consent is required;*
- (2) The lessee’s mortgagees or sureties have not consented;*
- (3) The requirements of this subpart have not been met; or*
- (4) We find a compelling reason to withhold our approval in order to protect the best interests of the Indian landowners***

(b) In making the finding required by paragraph (a)(4) of this section, we may consider whether:

- (1) The leasehold mortgage proceeds would be used for purposes unrelated to the leased premises; and***
- (2) The leasehold mortgage is limited to the leasehold.***

(c) We will defer, to the maximum extent possible, to the Indian landowners’ determination the leasehold mortgage is in their best interest. (d) We may not unreasonably withhold approval of a leasehold mortgage.

§ 162.457 May a lessee mortgage a business lease?

- (a) A lessee may mortgage a business lease by meeting the consent requirements in § 162.458 and obtaining our approval of the leasehold mortgage under §§ 162.459 and 162.460.
- (b) Refer to § 162.449(c) for information on what happens if a sale or foreclosure under an approved mortgage of the leasehold interest occurs.

§ 162.449

- (c) The lessee may assign the lease without our approval or meeting consent requirements if:
 - (1) The assignee is a leasehold mortgagee or its designee, acquiring the lease either through foreclosure or by conveyance;
 - (2) The assignee agrees in writing to assume all of the obligations and conditions of the lease; and
 - (3) The assignee agrees in writing that any transfer of the lease will be in accordance with applicable law under § 162.014.