



TFA

Monthly Newsletter

March 2023

IN THE NEWS

POSITIVE REINFORCEMENT - CREDIT AGREEMENT BASICS VOL. 2: AFFIRMATIVE COVENANTS

By David Howard

This is part two of our series – Revisiting Credit Agreement Basics. In our December 2022 newsletter, we provided an overview of Tribal Covenants and the potential landmines Tribal leaders should know are contained in their debt agreements. We counted a staggering 140 loan covenants in our review of a recent loan agreement. In our second installment of Credit Agreement Basics, we provide some insight on the Affirmative covenants which primarily relate to the borrower and not the tribe. As with most things in life, you have to read the fine print as there are some instances where tribal leaders may have responsibility in order to comply with these covenants.

Affirmative Covenants (aka Positive Covenants): Actions and responsibili-

ties the borrower promises that they will comply with during the life of the credit agreement. Some common affirmative covenants include:

- Delivering financial statements by a certain date – which may be both for the borrower and the Tribe;
- Paying all your bills and complying with all your contracts – while typically in a different section of the agreement, cross default thresholds have a high potential for creating issues during the life of a loan;
- Maintaining your property in good working order;
- Maintaining appropriate insurance (this can be negotiated but often this includes minimum levels of

Tribal Education Is A Matter Of Cultural Survival — Navajo, Pueblo Leaders Urge Lawmakers To Show They're 'Willing To Invest In The Hopes And Dreams Of Native children'

2/9/23 – [ictnews.org](https://www.ictnews.org)

EBCI Treasury Details American Rescue Plan Spending

2/18/23 – [theonefeather.com](https://www.theonefeather.com)

The Indian Gaming Tradeshow & Convention in San Diego Confirms Dates

2/21/23 – [yogonet.com](https://www.yogonet.com)

Minnesota Bill: Tribal Exclusivity and Pushing The Bounds Of IGRA?

2/23/23 – [sportshandle.com](https://www.sportshandle.com)

Pandemic Spurs Native American Tribes To Diversify Beyond Gaming

2/26/23 – [bostonherald.com](https://www.bostonherald.com)

IGA Joins 27th Annual National Indian Women's Honorary Luncheon

3/1/23 – [indiangaming.com](https://www.indiangaming.com)

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coverage);

- Maintaining legal existence;
- Allowing the lender to inspect the property and financial records;
- Complying with environmental laws (important even if the subject asset is on trust land)
- Providing notices for certain events

The Notices covenant is where tribal leaders should pay particular attention. There may be between 10 to 20 or more events that require a borrower provide notice to lenders. These can include letting lenders know about any judgments, litigation, arbitration, breach of contract or default on any obligation, communication with any gaming agency that is investigating the borrower, or any new governmental fees charged to the borrower (e.g., changes to the terms of a Compact).

Two areas to note: (1) how much time do you have to give the notice and (2) which parties are responsible to give the notice. The typical time period to provide notice is 5 to 10 business days or promptly



(which can be argued this means sooner than 5 days). The parties responsible for giving the notice often include tribal leaders and officers, not just the borrower's officers. If a tribal leader were to receive a letter regarding a lawsuit or potential investigation, they may be required to provide notice to lenders within the required time period or risk triggering an event of default.

Another area to understand regarding affirmative covenants is cure periods. If the borrower does happen to trip one of these covenants, can they fix it and how long do they have to make it right? In the Events of Default section, lenders will typically provide a 30-day cure period

for affirmative covenants; however, there are always exceptions inserted for several affirmative covenants that the lender does not provide any cure period. These exceptions are usually highly negotiated.

In addition to having a general understanding of the debt agreements to which they are a party, TFA recommends that tribal leaders review the notice provisions and understand their responsibility for providing notices on tribal matters outside of the responsibility of casino management, and the associated remedies to cure. TFA is always available to discuss these issues further.

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