

# TRIBAL CODE

## CHAPTER 83:

### EVICCTIONS AND FORECLOSURES

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**HISTORY NOTE:**

Current Ordinance: Resolution 96-22, adopted February 6, 1996, enacts Tribal Code Chapter 83: Evictions and Foreclosures, effective immediately, and rescinds all earlier Landlord-Tenant actions.

Amendments:

Resolution 2013-129, adopted June 3, 2013, amends Tribal Code Chapter 83: Evictions and Foreclosures by rewording and amending §83.602 and §83.804 to clarify sections in a way that is beneficial to the Tribe and its members.

Resolution 2003-106, adopted August 19, 2003, adopts changes to ' 83.212 and ' 83.217.

Resolution 97-4, adopted January 7, 1997, amends Tribal Code Chapter 83: Evictions and Foreclosures by deleting the language from ' 83.502 and thereby reserving ' 83.502 for future use.

# TRIBAL CODE

## CHAPTER 83:

### EVICCTIONS AND FORECLOSURES

#### SUBCHAPTER I: GENERAL PROVISIONS

##### **83.101 Short Title.**

The following Chapter shall hereinafter be referred to as Chapter 83: Evictions and Foreclosure. It shall apply to any and all arrangements, formal or informal, written or agreed to orally or by the practice of the parties, in selling, buying, renting, leasing, occupying, or using any and all housing, dwellings, or accommodations for human occupation and residence.

The following arrangements are not governed by this Chapter:

- (1) residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious or similar service; or
- (2) transient occupancy in a hotel, motel or other commercial lodging.

##### **83.102 Jurisdiction.**

(1) Jurisdiction is extended over all buildings and lands intended for human dwelling, occupation or residence which may lie within:

- (a) the exterior boundaries of the tribal reservation;
- (b) lands owned by, held in trust for, leased or used by the Tribe, its housing authority, or any other entity of the Tribe; or
- (c) the Indian Country of the Tribe, as may be defined from time to time by the laws of the Tribe or of the United States.

(2) Jurisdiction is extended over all persons or entities within the jurisdiction of the Tribe who sell, rent, lease or allow persons to occupy housing, dwellings or accommodations for the purpose of human dwelling, occupation or residence, and all persons who buy, rent, lease or occupy such structures. Such personal jurisdiction is extended over all person and entities, whether or not they are members of the Tribe, whether they are Indian or non-Indian, and whether they have a place of business within the tribal reservation. Any act within the reservation dealing with the subject

matter of this Chapter shall be subject to the jurisdiction of the Tribe.

(3) Jurisdiction over all matters arising within the jurisdiction of the Tribe with respect to the subjects of this Chapter, and jurisdiction with respect to any person or entity acting or causing actions which are within this Chapter shall be exercised by the Tribal Court.

### **83.103 Purposes and Interpretation.**

This Chapter shall be liberally interpreted and construed to fulfill the following purposes:

(1) to simplify, clarify, modernize and revise the law governing the occupation of dwelling units and accommodations, as well as the rights, obligations and remedies of the owners, sellers, lessors, landlords, lessees, tenants and occupiers of such structures;

(2) to preserve the peace, harmony, safety, health and general welfare of the people of the Tribe and those permitted to enter or reside on the reservation;

(3) to protect tribal housing by providing eviction procedures under this Chapter and providing for evictions when necessary;

(4) to encourage landlords and tenants to maintain and improve dwellings on the reservation in order to improve the quality of housing as a tribal resource;

(5) to encourage landlords and tenants to use the procedures established under this Chapter to provide a mechanism and a forum to resolve housing disputes;

(6) to avail the Tribe, tribal entities and tribal members of financing for the construction and/or purchase of family residences on trust land within the jurisdiction of the Tribe by prescribing procedures for the recording, priority and foreclosure of leasehold mortgages given to secure loans made by any federal agency;

(7) to strictly apply specific provisions of this Chapter as necessary in order to obtain federal or state funding for tribal housing programs.

### **83.104 Relation to Other Laws.**

(1) Applicable Law: Unless affected or displaced by this Chapter, principles of law and equity in the common law of the Tribe and tribal customs and traditions are applicable, and the general principles of law of any other Tribe or any other state may be used as a guide to supplement and interpret this Chapter.

(2) Conflicts with other laws:

(a) Tribal Laws: To the extent that this Chapter may conflict with tribal laws or

ordinances which have been enacted to comply with statutes or regulations of any agency of the United States, such tribal laws or ordinances may govern over the provisions of this Chapter if it has specific applicability and it is clearly in conflict with the provisions of this Chapter.

(b) Federal Laws: Where a conflict may appear between this Chapter and any statute, regulations or agreement of the United States, the federal law may govern if it has specific application and if it is clearly in conflict with the provisions of this Chapter.

(c) State Laws: To the extent that the laws of any state may be applicable to the subject matter of this Chapter, such laws shall be read to be advisory and not directly binding and shall not govern the relations of the parties.

## **SUBCHAPTER II: DEFINITIONS**

### **83.201 General Provisions.**

For the purpose of this Chapter, certain terms are defined in this Section. When not inconsistent with the context, words used in the present tense include the future, words in the singular number include the plural number, words in the plural include words in the singular, and words in the masculine gender include the feminine gender. The word shall is always mandatory and not merely directory.

### **83.202 Action, Suit or Lawsuit, Claim, Complaint or Defense.**

"Action, Suit or Lawsuit, Claim, Complaint or Defense" shall include any dispute between persons or entities which relates to the sale, rental, use or occupancy of any housing, dwelling or accommodation for human occupancy, including claims for the payment of monies for such housing, dwellings or accommodations, damage to such units, condition of such units or the relationships between owners and occupiers of such units, including the right to occupy them.

### **83.203 Borrower/Mortgagor.**

"Borrower/Mortgagor" means the Tribe, Housing Authority, or any individual Indian(s) or any heir(s), successor(s), executor(s), administrator(s), or assign(s) of the Tribe or such Indian(s) who has executed a mortgage as defined in this Chapter or a leasehold mortgage as defined in this Chapter.

### **83.204 Building/Housing Codes.**

"Building/Housing Codes" means any law, ordinance or governmental regulation of the Tribe or any agency of the United States which deals with fitness for habitation, health conditions or the safety, construction, maintenance, operation, occupancy, use or appearance of any dwelling unit. Where appropriate to the situation, standard or recognized building standards or codes may be applied as building or housing codes.

**83.205 Drug-Related Criminal Activity.**

"Drug-Related Criminal Activity" means the illegal manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute or use of a controlled substance as defined in Section 102 of the Controlled Substance Act (21 U.S.C. 802).

**83.206 Dwelling or Dwelling Unit.**

"Dwelling or Dwelling Unit" means a structure or part of a structure that is used as a home, residence or sleeping place by any person who maintains a household; and is not for purposes of this Chapter any public transient accommodation, such as a hotel room.

**83.207 Housing Authority.**

"Housing Authority" means the Sault Ste. Marie Tribe of Chippewa Indians Housing Authority, pursuant to Chapter 90 for the purpose of constructing and maintaining dwellings for public use within the territorial jurisdiction of the Tribe.

**83.208 Indian.**

"Indian" means any person recognized as being an Indian or Alaskan Native by any tribe, or by the government of the United States.

**83.209 Indian Country, Territorial Jurisdiction or Jurisdiction.**

"Indian Country, Territorial Jurisdiction or Jurisdiction" means the Tribe shall include all lands owned by, held in trust for, leased, occupied or otherwise controlled by the Tribe, as well as any such ownership or use by an entity of the Tribe; and those terms shall include any and all areas which may constitute the Indian Country of the Tribe under applicable provisions of its laws or the laws of the United States.

**83.210 Landlord.**

"Landlord" means any person, entity or agency of government that is the owner, lessor or sublessor of a dwelling unit, and it also means a manager of any such dwelling unit, as well as the Housing Authority for purposes of the low-rent or Mutual Help Home Ownership (HMO) programs.

**83.211 Lease.**

"Lease" means the lease of property, for which a qualified leasehold mortgage, as defined in ' 83.212, has at the same time been given.

**83.212 Leasehold Mortgage.**

"Leasehold Mortgage" means the mortgage of a lease of property given to secure a loan made under the auspices of any federal agency or other lender or mortgage investor homebuyer program except for purchase arrangements under the Mutual Help Home Ownership program administered by the Housing Authority.

**83.213 Leasehold Mortgage Foreclosure Proceeding.**

"Leasehold Mortgage Foreclosure Proceeding" means a proceeding in the Tribal Court:

(1) to foreclose the interest of the borrower(s)/mortgagor(s), and each person or entity claiming through the borrower(s)/mortgagor(s), in a lease for which a mortgage has been given under the home purchase program of any federal agency; and

(2) to assign such lease to the applicable federal agency or the agency's assignee.

**83.214 Lender Designated Assignee.**

"Lender Designated Assignee" means any Lender may assign or transfer its interest in a lease and/or leasehold mortgage to a designated assignee. Any time prior to such assignment, transfer or assumption, the lender must seek written approval from the Tribe of a proposed designated assignee. U.S. government and federal agencies guaranteeing or insuring leasehold mortgages during foreclosure actions do not need approval from the Tribe to act as a lender designated assignee.

**83.215 Lender/Mortgagee.**

"Lender/Mortgagee" means any private lending institution established to primarily loan funds and not to invest in or purchase properties, the Tribe, the Housing Authority or a U.S. governmental agency which loans money, guarantees or insures loans to a Borrower for construction, acquisition, or rehabilitation of a home. It is also any lender designated assignee(s) or successor(s) of such lender/mortgagee as preapproved or approved by the Tribe.

**83.216 Lessor.**

"Lessor" means the beneficial or equitable owner of property under a lease for which a mortgage has been given, or the heir(s), successor(s), executor(s), administrator(s) or assign(s) of the Tribe or such Indian(s).

**83.217 Lessee.**

"Lessee" means the homebuyer under any federal or other mortgage program (but not the Mutual Help program, under which the homebuyer is considered a tenant). The lessee may, for



purposes of federal agency home mortgage programs, be the Housing Authority.

**83.218 Mortgage.**

"Mortgage" means a first lien as is commonly given to secure advances on or the unpaid purchase price of, real estate, and may refer both to a security instrument creating a lien, whether called a mortgage, deed of trust, security deed or other term, as well as the credit instrument, or note, secured thereby.

**83.219 Nuisance.**

"Nuisance" means the maintenance or allowance on real property of a condition which:

- (1) unreasonably threatens the health or safety of the public or neighboring land users; or
- (2) unreasonably and substantially interferes with the ability of neighboring property users to enjoy the reasonable use and occupancy of their property.

**83.220 Owner.**

"Owner" means any person or entity jointly or individually having legal title to all or part of land or a dwelling, including the legal right to own, manage, use or control a dwelling unit under a mortgage, long-term lease or any other security arrangement.

**83.221 Person.**

"Person" means an individual or organization, public agency, corporation, partnership or any other entity recognized by the Tribe.

**83.222 Premises.**

"Premises" means a dwelling unit and the structure of which it is a part, and all facilities and areas connected with it, including grounds, areas and facilities intended for the use of tenants or the use of which is either promised or practiced for tenants.

**83.223 Rent.**

"Rent" means all payments to be made to an owner or landlord for the lease, purchase or occupancy of a dwelling under an express or implied agreement for the purchase or occupancy of it. For the purposes of this Chapter, the term rent will be used to refer to payments to be made under any agreement for occupation of a dwelling, and includes all lease or mutual help and occupancy agreements between the Housing Authority and any person. It shall also be deemed to include any

payment due and owing for the purposes of any eviction due to a default in a mutual help and occupancy agreement, purchase agreement and other agreement for the rental or lease/purchase of housing.

**83.224 Rental Agreement.**

"Rental Agreement" means any agreement, written, oral or by practice of the parties, as well as valid rules and regulations regarding the terms and conditions for any use or occupancy of a dwelling or premises. For the purposes of this Chapter, it shall also include any agreement which governs the use and occupancy of a dwelling under a use and occupancy agreement, a Mutual Help Home Ownership (HMO) agreement or any lease/purchase agreement under which a person has not yet achieved home ownership under that agreement.

**83.225 Reservation.**

"Reservation" means the Sault Ste. Marie Tribe of Chippewa Indians reservation.

**83.226 Subordinate Lienholder.**

"Subordinate Lienholder" means the holder of any lien, including a subsequent mortgage, perfected subsequent to the recording of a leasehold mortgage under this Chapter, except the Tribe shall not be considered a subordinate lienholder with respect to any claim regarding a tribal tax on real property.

**83.227 Tenant.**

"Tenant" means any person who rents, purchases or occupies a dwelling under an agreement to rent, occupy, or lease/purchase a dwelling; and it includes any person actually occupying a dwelling that he does not own. It will also include any person of the same household of a tenant, including guests, actual occupiers, heirs or successors to any interest in a dwelling. Tenants include lease/purchasers of Mutual Help Home Ownership unit under the administration of the Housing Authority.

**83.228 Tribal Court.**

"Tribal Court" means the Sault Ste. Marie Chippewa Tribal Court.

**83.229 Tribe.**

"Tribe" means the Sault Ste. Marie Tribe of Chippewa Indians.

**83.230 Waste.**

"Waste" means spoilage or destruction by a tenant/lessee of land, buildings, gardens, trees or other improvements which result in substantial injury to the lessor's interest in the property.

## **SUBCHAPTER III: LANDLORD/TENANT RIGHTS, OBLIGATIONS AND REMEDIES**

### **83.301 Sources of Rights, Obligations and Remedies.**

The rights, obligations and remedies of landlords and tenants, as defined in this Chapter, are contained in:

- (1) the laws of the Tribe;
- (2) applicable statutes, regulations and agreements with agencies of the United States;
- (3) agreements with occupiers of dwellings;
- (4) building or housing codes; or
- (5) other laws which are made applicable through the provisions of this Chapter.

### **83.302 Effect of Any Agreement Regarding Dwellings.**

Unless an agreement or an applicable provision of the agreement is clearly contrary to this Chapter or the laws identified in ' 83.104 or ' 83.301, the agreement or provision will govern the rights and obligations of any party before the Tribal Court, and the Tribal Court must grant the relief provided for in the agreement according to its terms. Where there is no written agreement, the intent of the parties expressed in their oral agreement or relationship will govern, as well as applicable provisions of this Chapter.

### **83.303 Landlord Rights.**

Each landlord under this Chapter has the following rights:

(1) To be paid any rent or money due under an agreement within ten (10) calendar days from the agreed date of payment, or within ten (10) calendar days following the first day of the month in a month-to-month agreement for dwelling occupancy. Rent is payable without demand or notice at the time and place agreed upon by the parties. In the absence of a definite term in the agreement, the tenancy is month-to-month, and if not stated in the agreement, the amount of rent shall be the fair market value of the rental unit.

(2) To adopt reasonable rules and regulations for the use and occupancy of a dwelling which are designed to promote the convenience, safety or welfare of occupants.

(3) To have access to the dwelling for maintenance, repairs, decorations, alterations or improvements, to inspect the premises, supply necessary or agreed services or show the dwelling to

prospective buyers or tenants, and to otherwise have reasonable access to the premises. Such access must be at reasonable times when the tenant is present, and upon a notice of at least twenty (24) hours, except in situations involving an emergency, or where the tenant consents. No tenant who unreasonably denies access to a landlord for these purposes may pursue an action or grievance maintaining that any services or repairs were not provided.

(4) To require that tenant comply with codes or regulations regarding housing, health, safety or public order, keep the premises reasonably clean and safe, dispose of all ashes, garbage, rubbish and waste in a clean and safe manner, keep the premises and its parts in good repair, reasonably use all electrical, plumbing, sanitary, heating, ventilating, air-conditioning or other facilities and appliances. Require the tenant to conduct himself and require others on the premises to conduct themselves in a way that will not disturb the peaceful enjoyment of others or abuse property, use all parts of the premises in a way they were intended or designed, and refrain from destroying, defacing, damaging or removing any part of the premises, or allow any other to do so.

(5) Where a dwelling has been abandoned (the tenant has vacated without notice and does not intend to return which is evidenced by removal of possessions, nonpayment of rent, disconnected utilities or expressed to the landlord or third party) a landlord, without further notice to the tenant may post a notice on the dwelling stating that the landlord intends to take possession and that the tenant's possessions will be inventoried and removed within ten (10) days from the posting. If the tenant's possessions are not claimed within thirty (30) days from their removal from the abandoned dwelling, the landlord may dispose of the possessions.

(6) To apply to the Tribal Court in any action authorized by this Chapter or law to enforce rights under this Chapter.

### **83.304 Landlord Obligations.**

Every landlord under this Chapter has the following obligations:

(1) To maintain the dwelling in a decent, safe and sanitary condition.

(2) To guarantee the right of quiet enjoyment of the dwelling to the tenant and insure that the conduct of other tenants and those with them does not cause a nuisance, endangerment of public health and safety, breach of peace or interference with the quiet enjoyment of others.

(3) To comply with applicable tribal law or building or housing codes.

(4) To make necessary repairs to put the premises in a fit and habitable condition, except where the premises are intentionally rendered unfit or uninhabitable by the tenant, a member of his family or other person on the premises with his consent, in which case such duty shall be the responsibility of the tenant.

(5) To keep common areas which are not assigned to a specific tenant in a clean and safe

condition.

(6) To expeditiously repair, upon tenant notification, any premises defects hazardous to life, health or safety, the financial responsibility for which will lie with the tenant only if the defects result from damage caused by the tenant, tenant's household or guests.

(7) To maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, where such things are not the responsibility of the tenant, except if such things are generated by an installation within the exclusive control of the tenant or supplied by a direct public service utility connection.

(8) To provide and maintain proper and appropriate receptacles and facilities (except for those of the individual tenant) for the proper disposal of ashes, garbage, rubbish and other waste from the dwelling.

(9) To provide running water, hot water and heat in accordance with applicable housing and health codes, except to the extent the tenant is required to provide such for himself.

(10) To disclose, in writing, the name, address and telephone number of any person authorized to manage the dwelling, the owner of the premises or his agent, the person responsible for receiving rent, notices and demands under this Chapter, and the person responsible for making repairs, where they are required. If such a disclosure is not made, then any person who receives payments or deals with a tenant as an apparent landlord or manager will be deemed to be the proper landlord for actions under this Chapter.

(11) To give possession of the premises to the tenant in accordance with the agreement to occupy, and if rules and regulations are issued to communicate those rules and regulations to the tenant.

(12) To respect the rights of tenants as set forth in this Chapter.

### **83.305 Landlord Remedies.**

Where a tenant has not complied with this Chapter or the agreement of the parties, the landlord has the right to:

(1) Give reasonable notice to the tenant to comply with his obligations, pay any monies due and owing under the agreement of the parties or landlord has right to terminate the agreement under which the tenant occupies the premises, and demand that he and those with him leave the premises.

(2) Require repairs or maintenance which are the responsibility of the tenant and compliance with reasonable rules and regulations for occupancy.

(3) Seek a court order or judgment for the payment of monies or costs, for compliance with

the agreements and obligations of tenants, for termination of an agreement, payment of damages, eviction of tenants or any other relief to which he may be entitled by law or the agreement of the parties.

**83.306 Tenant Rights.**

Each tenant under this Chapter shall have the following rights:

(1) To quiet enjoyment of the premises and protection of that right by the landlord against offending persons or things that are under his control.

(2) To a warranty of habitability that the premises are decent, safe, sanitary and suitable for human occupancy.

(3) To receipt of reasonable notice for compliance with the agreement of the tenant, termination of an agreement or eviction.

(4) To landlord compliance with applicable building or housing codes.

(5) To a reasonable and effective means of dealing with the landlord or his agents, making complaints regarding the premises or agreement and having them resolved in a reasonable manner, and otherwise having an effective opportunity to be heard and fairly treated.

(6) Adequate and timely maintenance and repair of the premises, facilities and appliances. The maintenance and repair are obligations of the landlord.

(7) Apply to the Tribal Court in any action authorized by this Chapter or law to enforce rights under this Chapter.

**83.307 Tenant Obligations.**

Every tenant under this Chapter shall have these obligations:

(1) To pay rent, purchase payments, costs, fees or damages in accordance with the agreement of the parties, this Chapter and applicable law.

(2) To immediately notify the landlord of any defects in the premises hazardous to life, health or safety.

(3) To maintain the premises in a safe and clean manner, and to otherwise maintain the premises as may be required by agreement or this Chapter, and conduct himself in using the premises and common areas in a way which does not disturb the quiet enjoyment of others or cause a breach of the peace. These obligations include the duty to require that those who occupy or use the premises as guests or by invitation conduct themselves in a similar way.

(4) To not give up the premises to others, assign a lease arrangement, sublease, provide accommodations for boarders, lodgers or others who are not parties to the agreement over the premises without the permission of the landlord.

(5) To use the premises only for a personal and private dwelling as agreed, and not to use or permit its use for any other purpose, including refraining from illegal conduct or any other activity that is contrary to written or traditional law which may harm the physical or social environment of the premises or the area around it.

(6) To abide by necessary and reasonable rules and regulations made by the landlord that have been communicated to the tenant.

(7) To dispose of all ashes, garbage, rubbish and other waste, as well as junk, abandoned vehicles or other unnecessary items, in a proper, sanitary and safe manner.

(8) To use all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances that are part of the premises, and the property of the landlord, in a proper, safe, sanitary and reasonable manner.

(9) To refrain from destroying, defacing, damaging or removing any part of the premises or common tenant areas, and to require family members and guests to act in like manner.

(10) To pay reasonable charges (other than for wear and tear) for the repair of damages to the premises or common areas caused by the tenant, his household or guests, or to make repairs for such damages where that is the obligation of the tenant, all within thirty (30) calendar days of such damage.

(11) To conduct himself and cause other persons to conduct themselves in a way that will not disturb or injure neighbors, and in a way that will keep the dwelling and common areas in a decent, safe and sanitary condition.

(12) To perform seasonal maintenance or other maintenance reasonably required by the agreement of the tenant or the reasonable rules and regulations of the landlord.

### **83.308 Tenant Remedies.**

Where a landlord has not complied with this Chapter or the agreement of the parties, the tenant has the following rights:

(1) To give reasonable notice to the landlord to comply with his obligations, demand repairs which are the responsibility of the landlord, to terminate the agreement under which the tenant occupies the premises.

(2) To require repairs or maintenance which are the responsibility of the landlord.

(3) Should landlord fail to make repairs, as duly noticed by tenant, within a reasonable time, tenant may make necessary repairs and deduct cost from the rent payment.

(4) To seek a Tribal Court order or judgment for the payment of monies or costs, compliance with the agreements and obligations of landlords, terminate an agreement, pay damages, or any other relief to which he may be entitled by law or the agreement of the parties.

#### **SUBCHAPTER IV: TERMINATION OF RENTAL AGREEMENT/TERMINATION NOTICE REQUIREMENTS**

##### **83.401 Termination Procedures.**

An agreement of the parties for the rental of a premises, and for the lease/purchase of a premises, may be terminated in the following manner:

(1) Termination shall be for good cause under this Chapter or by the terms of the rental/lease agreement of the parties.

(2) The written notice must contain the reasons for the termination, and inform the person receiving notice of the right to make a reasonable reply.

##### **83.402 Termination Notice Requirement.**

The notice must be delivered within the following periods of time:

(1) No less than seven (7) calendar days prior to the termination of the rental agreement for any failure to pay rent or other payments required by the agreement.

(2) No less than three (3) calendar days prior to the termination of the rental agreement for nuisance, serious injury to property, or injury to persons. In situations in which there is an emergency, such as a fire or condition making the dwelling unsafe or uninhabitable, or in situations involving an imminent or serious threat to public health and safety, the notice may be made in a period of time which is reasonable, given the situation.

(3) No less than fourteen (14) calendar days in all other situations.

##### **83.403 Termination of Public Housing/Indian Housing Authority Tenancy.**

Subchapter VIII contains further notice provisions concerning termination of public housing/Indian housing authority tenancies.



## **SUBCHAPTER V: EVICTION PROCESS**

### **83.501 Grounds for Eviction.**

After proper notice terminating a tenant's tenancy a tenant may be evicted from any premises, ordered to pay damages and costs, or otherwise be subjected to the order or judgment of the Tribal court for the breach of any obligation under this Chapter, any agreement, including an agreement to purchase or rent any dwelling, or for any other obligation provided by law. A tenant may be evicted for:

(1) Nonpayment of rent under an agreement for the lease purchase or occupation of a dwelling when such payments are not made after ten (10) calendar days of the agreement date of payment, or ten (10) calendar days following the first day of the month in a month-to-month tenancy.

(2) Any arrearage in rent, costs or damages which have been due and owing for thirty (30) calendar days or more. The receipt by a landlord or partial payments under an arrangement shall not excuse the payment of any balance due upon demand.

(3) Nuisance, property damage, or destruction, injuries to the property, person, or peace of other tenants, or injuries or damage to common areas and property.

(4) Noncompliance with this Chapter, building or housing codes, or the reasonable rules and regulations of the landlord.

(5) Occupation of any premises without permission or agreement, following any reasonable demand by a person in authority over the premises to leave.

(6) Failure to comply with any tenant obligation outlined in this Chapter.

### **83.502 [RESERVED FOR FUTURE USE]**

### **83.503 No Self-Help Eviction.**

Except by mutual consent of the parties, no landlord may compel a tenant to vacate any premises in a forceful fashion or way which causes a breach of the peace without giving a notice to quit, and obtaining a Tribal Court order as provided in this Chapter.

### **83.504 Forcible Eviction.**

(1) Where the Tribal Court orders an eviction, and the defendant or any other occupant of

the premises refuses to vacate voluntarily by the effective date of that order, the defendant or other occupants may be forcibly removed from the premises by a tribal law enforcement officer. At the hearing where the eviction is ordered, the Tribal Court shall inform the defendant that if he does not vacate the premises voluntarily by the effective date, he and the other occupants will be subject to forcible eviction, and their property will be subject to storage, sale and disposal as set forth in ' 83.505.

(2) Following eviction, the Court may allow the landlord, the Housing Authority or the United States Government access to any property leased by either of them for purposes of preserving and securing it.

**83.505 Storage of Personal Property Following Forcible Eviction.**

Following forcible eviction of the defendant and/or other occupants, the former occupants' personal property shall be stored by the owner of the premises for at least thirty (30) days, either on the premises or at another suitable location. In order to reclaim their property, the former occupants must pay the reasonable costs of its removal and storage. If they do not pay such costs within thirty (30) days, the owner is authorized to sell the property in order to recover these costs. Upon request by the former occupants, the landlord must provide them with pertinent information concerning the sale, including the time, date and location. Any proceeds from the sale in excess of the storage and removal costs must be remitted to the former occupants. Nothing in this section shall be construed to prevent the former occupants from reclaiming property remaining after the sale if they can arrange to do so in a manner satisfactory to the owner.

**83.506 Public Housing/Indian Housing Authority Eviction Process.**

Subchapter VIII of this Chapter contains further provisions concerning public housing/Indian housing authority eviction process.

**SUBCHAPTER VI: NOTICE PROCEDURES**

**83.601 Notices Other Than Notices to Cancel or Terminate an Agreement.**

Any notice to a landlord or tenant to comply with the agreement of the parties or this Chapter, other than a notice to cancel or terminate the agreement of the parties, may be given in any reasonable manner, or as provided by the agreement of the parties.

**83.602 Notice to Cancel or Terminate Agreements, and Notices to Leave the Premises.**

Any notice to cancel or terminate an agreement for the lease/purchase, use, or occupancy of a dwelling, or to leave a premises, must be in writing, and must be delivered to the tenant or landlord in the following manner:

(1) Delivery must be made by:

(a) a law enforcement officer of the Tribe or an agency of the United States Government; or

(b) any person authorized by the Tribal Court; or

(c) any adult person.

(2) Delivery will be effective when it is:

(a) personally delivered to a tenant with a copy delivered by mail; or

(b) personally delivered to an adult living in the premises with a copy delivered by mail; or

(c) personally delivered to an adult agent or employee of the landlord or the tenant with a copy delivered by mail.

(3) If the notice cannot be given by means of personal delivery, or the landlord or tenant cannot be found, the notice may be delivered by means of:

(a) by sending it by first class-mail and by certified mail addressed to the person in possession, at the address identified in the lease or rental agreement.

### **83.603 Copy of Notice/Proof of Service.**

The person giving notice must keep a copy of the notice and proof of service in accordance with this Chapter, by affidavit or other manner recognized by law.

### **83.604 Public Housing/Indian Housing Authority Notice Procedures.**

Subchapter VIII of this Chapter contains further provisions concerning public housing/Indian housing authority notice procedures.

## **SUBCHAPTER VII: COURT PROCEDURES**

### **83.701 Summons and Complaint.**

At any time after the expiration of the time set in the notice to quit, if the tenant or occupant of the premises refuses to quit possession or occupancy of the premises, the landlord may file a complaint in the Tribal Court for eviction and other relief. The complaint must state:

(1) the name and known address of the tenants against whom the suit is brought, but it need not state the names of any other occupants, who will be considered to be bound by a Tribal Court order;

(2) a description of the agreement of the parties or the terms under which the person being sued occupies the premises;

(3) the address or location of the premises in sufficient terms to allow a law enforcement officer to carry out any order of the Tribal Court;

(4) a description of the obligation the tenant has breached or the reason for the action;

(5) a statement showing that any required termination notices and the notice to quit have been served in accordance with the provisions of this Chapter requiring them; and

(6) the relief demanded, including any claims for damages, fees, costs or other special relief, which may include non-payment of rent or other costs between the time of notice and the Execution of Judgment described at ' 83.708.

### **83.702 Defenses.**

(1) The Court must grant the remedies allowed in this Chapter, unless it appears by the evidence that:

(a) The premises are untenable, uninhabitable or constitute a situation where there is a constructive eviction of the tenant, in that the premises are in such a condition, due to the fault of the landlord, that they constitute a real and serious hazard to human health and safety and not a mere inconvenience.

(b) The landlord has failed or refused to make repairs which are his responsibility after a reasonable demand by a tenant to do so, without good cause, and the repairs are necessary for the reasonable enjoyment of the premises.

(2) No defense may be founded upon either of the grounds listed in (1)(a) or (1)(b) unless:

(a) the obligation to maintain or repair is that of the landlord under this Chapter or the agreement of the parties, and a clear and reasonable demand was made by the tenant to correct such conditions or the landlord knew of them; and

(b) the landlord has had a reasonable opportunity to maintain or make repairs and the tenant has been cooperative in allowing them.

(3) There are monies due and owing to the tenant because he has been required to make repairs which are the obligation of the landlord, and the landlord has failed or refused to make them after a reasonable notice. Such sums may be a complete or partial defense to a complaint for eviction, but only to the extent that such sums set off monies owed for occupancy. A tenant may be evicted after such a period if he fails or refuses to pay the reasonable rental value of the premises.

(4) That due to the conduct of the landlord there is injury to the tenant in such a way that justice requires that relief be modified or denied. This shall include the equitable defenses of estoppel, laches, fraud, misrepresentation and breaches of serious and material obligations for public health, safety and peace standards.

(5) That there are such serious and material breaches of applicable housing law on the part of the landlord that it would be unjust to grant him a remedy.

(6) The landlord is evicting the tenant because of his race, sex, sexual orientation, religion, age, marital status, family status or because the tenant is disabled.

(7) Any other material or relevant fact the tenant might present that may explain why his eviction is unjust and unfair.

**83.703 Discovery and Rehearing Proceedings.**

Extensive, prolonged, or time-consuming discovery and prehearing proceedings will not be permitted, except in the interests of justice and for good cause shown by the moving party. Discovery shall be informal, and reasonably provided on demand of a party, and it shall be completed within five (5) calendar days of the date of hearing. Requests for discovery must be made no later than three (3) calendar days following the setting of a hearing date. The Tribal Court may enter reasonable orders requiring discovery or protecting the rights of the parties upon reasonable notice.

**83.704 Evidence.**

Evidence in proceedings under this Chapter shall be according to the following provisions:

(1) All evidence may be admitted which can be shown to be relevant and material to the case.

(2) Fairness will dictate the decision of the judge on challenges to admissibility of evidence.

(3) The Tribal Court may avail itself of any recognized and authoritative materials, books or documents as guidance in reaching a decision on the admissibility of evidence.

(4) Evidence of customs and traditions of the Tribe shall be freely admitted.

(5) At the discretion of the Judge, evidence may be excluded if its value as proof is outweighed by the risk that its admission will create a substantial risk of undue prejudice; confuse the issues; or, mislead the jury or unfairly surprise the opposing party.

(6) Upon request of a party, the Tribal Court may take judicial notice, of specific facts which are so certain as not to be subject to reasonable dispute.

### **83.705 Burden of Proof.**

The burden of proof in all proceedings under this Chapter shall be clear and convincing evidence.

### **83.706 Judgment.**

(1) Within five (5) calendar days of the date of the hearing, the Tribal Court must grant and enter judgment and the judgment must grant all relief that the parties are entitled to as of the date of the judgment. The judgment may:

(a) order the immediate eviction of a tenant and delivery of the premises to the landlord;

(b) grant actual damages as provided in the agreement of the parties or this Chapter, including interest;

(c) order the parties to carry out an obligation required by law;

(d) establish a payment plan for the tenant;

(e) order rent payments out of per capita payments or through garnishment;

(f) establish a Power of Attorney in another person/agency to fulfill rights or obligations of either landlord or tenant;

(g) remediate the action - in part or in whole - through a conversion from a lease/purchase agreement to a rental tenant status;

(h) order the tenant to perform work for the landlord or the public housing/Indian

housing authority to pay off back rent due and/or damages;

(i) order the payment of attorneys' fees and, where allowed by law or agreement, costs and expenses of litigation; or

(j) grant any relief provided in this Chapter or allowed in law or equity.

(2) If a tenant fails to appear in person or in writing on or before the date of appearance, the Tribal Court must enter judgment on behalf of the plaintiff following a hearing to determine whether relief should be granted and the kind of relief that should be granted.

### **83.707 Form of Judgment.**

The judgment shall state the relief granted by the Tribal Court to any party, but need not state finding of fact or conclusions of law in support of the judgment. The judgment may state brief reasons for it. If a trial is held, the judge will make his decision immediately after both parties have rested their case and award costs and restitution as appropriate.

### **83.708 Execution of Judgment.**

Any judgment may be immediately executed, and the judgments and orders of the Court must be enforced by a duly-authorized law enforcement officer or officer of the Court, appointed by the Court for such a purpose. Any law enforcement officer must, upon receipt of an order of the Court, execute the judgment or order made by it within five (5) calendar days of the date of the judgment or order and make a report to the Court on what was done to enforce it. Any law enforcement officer to whom a judgment order is given for enforcement who fails or refuses to execute it shall be subject to dismissal from employment and the payment of reasonable damages, costs and expenses to a party for failure to execute the judgment. This section shall also apply to any judgment on behalf of a tenant obtained under the general tribal civil procedure Chapter.

### **83.709 Appeals.**

Appeals under this Chapter shall be according to Chapter 82.

### **83.710 Miscellaneous Complaints and Claims.**

Any miscellaneous complaint or claim including a complaint or claim by a tenant which does not fall within the procedures of this Chapter may be made under the general tribal civil procedure Chapter.

## **SUBCHAPTER VIII: PUBLIC HOUSING/INDIAN HOUSING AUTHORITY**

### **83.801 General Applicability.**

The following Chapter is a supplement to the provisions set forth elsewhere in this Chapter. There are landlord/tenant rights, obligations and remedies which may apply to public housing/Indian housing authority dwelling accommodations in addition to the landlord/tenant rights, obligations and remedies set forth in Subchapter III of this Chapter. There are also provisions concerning termination, eviction process, notice procedures and court procedures which may apply to public housing/Indian housing authority dwelling accommodations in addition to the provisions set forth in Chapters IV and V of this Chapter. These additional provisions may be set forth in the rental or lease/purchase agreement; the laws and regulations of the United States Government; the tribal ordinance establishing the Housing Authority; and/or this Chapter.

### **83.802 Termination/Eviction Requirements.**

Where the landlord is the public housing/Indian housing authority, the agreement may be terminated under Subchapter IV and the tenant evicted under Subchapter V only where there is serious or repeated violations of the terms or conditions of the agreement or for other good cause, and/or for criminal activity that threatens the health, safety or rights to peaceful enjoyment, or drug related criminal activity engaged in by tenant, member of the household, guest or other person under the tenant's control.

### **83.803 Notice to Quit Requirements.**

The following requirements shall apply to notices to quit issued by public housing/Indian housing authorities:

(1) The notice must provide for not less than a reasonable time but not to exceed thirty (30) days following the date of service of the notice to quit in order to leave, except in cases of where the safety of other tenants or IHA employees is threatened, and in cases of nuisance as provided in ' 83.402.

(2) All tenants shall be given fourteen (14) days in the case of nonpayment of rent.

(3) The Tribe must be notified in cases where a lease/purchase agreement or a mortgage is involved.

### **83.804 Housing Authority Notice Procedure.**

Where the person giving notice is the public housing/Indian Housing Authority, the notice must be sent to both the Tribe and the Tenant, and both notices must include a statement that the tenant and Tribe may each be represented by or accompanied by a person of their choice.

## **SUBCHAPTER IX: MORTGAGES AND FORECLOSURES**

### **83.901 Priority.**



All mortgages, including leasehold mortgages recorded in accordance with the recording procedures set forth in this Chapter and including loans guaranteed or held by the U.S. Government, shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim excepting a lien or claim arising from a tribal leasehold tax assessed after the recording of the mortgage. Nothing in this document shall prevent any person or entity from recording a leasehold mortgage in accordance with state law or from filing a leasehold mortgage with the Bureau of Indian Affairs.

### **83.902 Recording.**

All mortgages, including leasehold mortgages, shall be recorded in the appropriate county Register of Deeds.

### **83.903 Leasehold Mortgage Foreclosure Procedures.**

(1) A borrower/mortgagor shall be considered to be in default when they are thirty (30) days past due on their mortgage payment(s) to the lender/mortgagee.

(2) Before a borrower/mortgagor becomes ninety (90) days delinquent on their mortgage payments and before any foreclosure action or activity is initiated, the lender/mortgagee must complete the following:

(a) Make a reasonable effort to arrange a face-to-face interview with the borrower/mortgagor. This shall include at least one trip to meet with the borrower/mortgagor at the mortgaged property.

(b) Lender/mortgagee shall document that it has made at least one phone call to the borrower/mortgagor (or the nearest phone as designated by the borrower/mortgagor, able to receive and relay messages to the borrower/mortgagor) for the purpose of trying to arrange a face-to-face interview.

(3) Lender/mortgagee may appoint an agent to perform the services or arranging and conducting the face-to-face interview specified in this action.

(4) Before the borrower/mortgagor has been delinquent for ninety (90) days and at least ten (10) days before initiating a foreclosure action in Tribal Court, the lender must advise the borrower/mortgagor in writing by mail or by posting prominently on the unit, with a copy provided to the Tribe, as follows:

(a) Advise the borrower/mortgagor that information regarding the loan and default will be given to credit bureaus.

(b) Advise the borrower/mortgagor of homeownership counseling

opportunities/programs available through the lender or otherwise.

(c) Advise the borrower/mortgagor of other available assistance regarding the mortgage/default.

(d) Notify the borrower/mortgagor that if the leasehold mortgage remains in default for more than ninety (90) days, the lender/mortgagee may ask the applicable U.S. Government agency to accept assignment of the leasehold mortgage if this is a requirement of the U.S. Government program.

(e) Notify the borrower/mortgagor of the qualifications for forbearance relief from the lender/mortgagee, if any, and that forbearance relief may be available from the U.S. Government if the mortgage is assigned.

(f) Provide the borrower/mortgagor with names and addresses of government officials to whom further communications may be addressed, if any.

(5) If a borrower/mortgagor has been in default under a leasehold mortgage for ninety (90) days or more and the lender/mortgagee has complied with the procedures set forth in the first part of this section, the lender/mortgagee may commence a foreclosure proceeding in the Tribal Court by filing a verified complaint as set forth in ' 83.904 of this Chapter.

#### **83.904 Leasehold Mortgage Foreclosure Complaint and Summons.**

(1) The verified complaint in a leasehold mortgage foreclosure proceeding shall contain the following:

(a) the name of the borrower/mortgagor and each person or entity claiming through the borrower/mortgagor subsequent to the recording of the mortgage, including each subordinate lienholder (except the Tribe with respect to a claim for a tribal leasehold), as a defendant;

(b) a description of the property subject to the leasehold mortgage;

(c) a concise statement of the facts concerning the execution of the lease and the leasehold mortgage; the facts concerning the recording of the leasehold mortgage; the facts concerning the alleged default(s) of the borrower/mortgagor; and such other facts as may be necessary to constitute a cause of action;

(d) true and correct copies of each promissory note, if a leasehold mortgage then a copy of the lease, the mortgage, or assignment thereof relating to the property (appended as exhibits); and

(e) any applicable allegations concerning relevant requirements and conditions prescribed in (1) federal statutes and regulations (2) tribal codes, ordinances and regulations;

and/or (3) provisions of the lease or leasehold mortgage.

(2) The complaint shall be verified by the Tribal Court Clerk along with a summons specifying a date and time of appearance for the Defendant(s).

**83.905 [RESERVED FOR FUTURE USE]**

**83.906 [RESERVED FOR FUTURE USE]**

**83.907 Judgment and Remedy.**

This matter shall be heard and decided by the Tribal Court in a prompt and reasonable time period not to exceed sixty (60) days from the date of service of the complaint on the borrower/mortgagor. If the alleged default has not been cured at the time of trial and the Tribal Court finds for the lender/mortgagee, the Tribal Court shall enter judgment:

(1) foreclosing the interest of the borrower/mortgagor and each other defendant, including subordinate lienholders, in the lease and leasehold mortgage; and

(2) assigning the lease to the lender/mortgagee or the lender's designated assignee subject to the following provisions:

(a) The lender must give the Tribe the right of first refusal on any acceptable offer to purchase the lease or leasehold mortgage which is subsequently obtained by the lender or lender's designated assignee.

(b) The lender or lender's designated assignee may only transfer, sell or assign the lease and/or leasehold mortgage to a tribal member, the Tribe or the tribal Housing Authority.

(c) Any other transfer, sale or assignment of the lease or leasehold mortgage shall only be made to a tribal member, the Tribe or the tribal Housing Authority during the remaining period of the leasehold.

**83.908 Foreclosure Evictions.**

Foreclosure evictions shall be handled according to the general eviction process set forth in Subchapter V of this Chapter. All foreclosure evictions shall occur no later than sixty (60) days from the date of service of notice upon the borrower/mortgagor that foreclosure was completed.

**83.909 No Merger of Estates.**

There shall be no merger of estates by reason of the execution of a lease or a leasehold mortgage or the assignment or assumption of the same, including an assignment adjudged by the

Tribal Court, or by operation of law, except as such merger may arise upon satisfaction of the leasehold mortgage.

**83.910 Certified Mailing to Tribe and Lessor.**

Any foreclosure proceedings on a lease or leasehold mortgage where the Tribe or the lessor(s) is not named as a defendant, a copy of the summons and complaint shall be mailed to the Tribe and to the lessor(s) by certified mail, return receipt requested, within five (5) days after the issuance of the summons. If the location of the lessor(s) cannot be ascertained after reasonable inquiry, a copy of the summons and complaint shall be mailed to the lessor(s) in care of the Superintendent of the applicable agency of the Bureau of Indian Affairs.

**83.911 Intervention.**

The Tribe or any lessor may petition the Tribal Court to intervene in any lease or leasehold mortgage foreclosure proceeding under this Chapter. Neither the filing of a petition for intervention by the Tribe, nor the granting of such a petition by the Tribal Court shall operate as a waiver of sovereign immunity of the Tribe, except as may be expressly authorized by the Tribe.