

**POKAGON BAND OF POTAWATOMI INDIANS
EVICTION PROCEDURES ACT**

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CHAPTER 1

Short Title; Authority; Purpose; Applicability; Construction ; Severability; Effective Date; and Definitions

Section 1.01 Short Title

This Act shall be known and may be cited as the "Pokagon Band Eviction Procedures Act".

Section 1.02 Authority

The Tribal Council enacts this Act pursuant to the legislative powers of the Tribal Council as enumerated in Article IX, subsections 2(a) and 2(j) of the Constitution and in accordance with the duties the Tribal Council stated in Article IX, subsections 1(a) and 1(d) of the Constitution.

Section 1.03 Purpose

The purpose of this Act is to provide fair procedures for the eviction of Persons from real property within Territory of the Band when such Persons have violated the terms of a lease, or otherwise are unlawfully occupying such real property.

Section 1.04 Applicability

This Act shall apply to the Band, including the Housing Department and any Lessor, and all Persons within the Territory of the Band.

Section 1.05 Construction

(a) This Act, to the extent reasonable, shall be read and interpreted in a manner that is consistent with the Constitution, but in the event of any inconsistency, the provisions of the Constitution shall control.

(b) This Act shall be construed liberally in order to accomplish its purpose as set forth in Section 1.03 of this Act.

Section 1.06 Severability

(a) If any provision of this Act or the application thereof to any Person or circumstance, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act, which shall continue in full force and effect.

(b) To the extent this Act conflicts with any provision of any Band law or any resolution or motion of the Tribal Council or any rule, regulation, policy or procedure of the Band or the Housing Department, the provisions of this Act shall govern and the conflicting provisions are hereby superseded and repealed.

Section 1.07 Effective Date

This Act shall become effective for all purposes on the date of its enactment.

Section 1.08 Definitions

As used in this Act:

- (a) "Act" means the Pokagon Band Eviction Procedures Act.
- (b) "Band" means the Pokagon Band of Potawatomi Indians.
- (c) "Business Days" mean the days of the week other than Saturdays, Sundays, and official holidays recognized by the Band.
- (d) "Citizen" means a duly enrolled member of the Band.
- (e) "Constitution" means the Constitution of the Band, as amended.
- (f) "Court of Appeals" means the Band's Court of Appeals.
- (g) "Housing Department" means the Band's Department of Housing.
- (h) "Lessor" means the Band, the Housing Department, and any Person who is leasing or renting real property within the Band's Territory to a Tenant pursuant to a lease.
- (i) "Nuisance" is the maintenance of real property within the Band's Territory in a condition which:
 - (1) Unreasonably threatens the health or safety of the public or of users of neighboring real property; or
 - (2) Unreasonably and substantially interferes with the ability of users of neighboring real property to enjoy the reasonable use and occupancy of such real property.
- (j) "Occupant" means any Person who has entered and is occupying real property within the Band's Territory, excluding however, a Tenant pursuant to a lease.
- (k) "Person" means any natural person, including a Citizen or Non-Citizen; any firm, limited partnership, limited liability partnership, co-partnership, partnership, joint venture, association, corporation, subchapter S corporation, limited liability company, estate, business trust, or any other entity, group or combination acting as a unit in the plural as well as the singular.
- (l) "Tenant" means any Person who occupies real property within the Band's Territory under a lease, agreement or other contract with a Lessor.

(m) "Territory of the Band" or "Band Territory" means all real property held in trust for the Band by the Secretary of the Interior, and when the Tenant or Occupant is a Citizen, all real property held in fee by the Band or any entity wholly owned by the Band.

(n) "Tribal Council" means the Tribal Council of the Band established under Article X of the Constitution as the governing body of the Band.

(o) "Tribal Court" means the Band's Tribal Court.

(p) "Unlawful Possession Action" is a suit brought in Tribal Court to terminate a Tenant's interest in real property within the Band's Territory or to evict an Occupant from real property within the Band's Territory.

(q) "Waste" is spoil or destruction of lands, resources, buildings, or other improvements which results in substantial injury to real property within the Band's Territory.

(r) "Writ of Possession" is an order of the Tribal Court (1) restoring the Band, the Housing Department or the Lessor to possession of real property within the Band's Territory; and (2) evicting a Tenant or Occupant.

CHAPTER 2

Unlawful Possession; and Service of Required Notice

Section 2.01 Unlawful Possession

Any Tenant or Occupant, who continues to occupy real property, shall have committed unlawful possession in any of the following situations:

(a) Without the requirement of any form of notice:

(1) If the term of a lease, agreement or other contract has expired or the lease, agreement or other contract is terminated;

(2) If the Band, the Housing Department or the Lessor has not granted permission to occupy the real property within the Band's Territory or the scope of permission has been exceeded;

(3) If an Occupant occupies the Band's Territory without a lease, agreement, or other contract that complies with Band law and federal law, or under other authority granted by the Band pursuant to Band law and federal law; or

(4) If the Housing Department has terminated the tenancy in accordance with procedures providing notice and a hearing before the Housing Department.

(b) If, after receiving a thirty (30) day notice in compliance with Section 2.02, a Tenant or Occupant has remained in possession of real property within the Band's Territory, in violation of any of the following:

- (1) that the Tenant is in default in the payment of rent, and that the Tenant shall pay the rent or surrender possession of the real property within the Band's Territory;
- (2) that the lease, agreement or other contract of the real property within the Band's Territory for an indefinite term with rent paid monthly or by some other period will terminate at the end of the month or other period;
- (3) that the Tenant has failed to keep or perform a condition or covenant of the lease, agreement or other contract and that the Tenant shall perform the condition or covenant or surrender the real property within the Band's Territory;
- (4) that the Tenant or Occupant has committed or permitted waste upon the real property within the Band's Territory and shall either cease and, or surrender the same; or
- (5) that the Tenant or Occupant maintains a nuisance upon the Band's Territory and shall either cease maintaining the nuisance or surrender the same.

Section 2.02 Service of Required Notice

(a) Notices required as a prerequisite to an Unlawful Possession Action under subsection 2.01(b) of this Act shall be given in writing by either:

- (1) delivering a copy personally to the Tenant or Occupant or to any adult residing on the real property, or, in the case of a business or other entity, to such business's agent or employee, and mailing a copy by First Class United States mail to the Tenant or Occupant at his or her last known address; or
- (2) posting the notice in a conspicuous place near the appropriate entrance and by mailing a copy by First Class United States mail to the Tenant or Occupant at his or her last known address.

(b) Proof of service by either method of service in subsection 2.02(a) may be made by affidavit of any adult person stating that such person has complied fully with the requirements of the method of service used.

CHAPTER 3

Complaint and Summons; Service of Summons and Complaint; Answer; Writ of Possession; Judgment; and Enforcement

Section 3.01 Complaint and Summons

(a) The Band, the Housing Department or the Lessor of the real property within the Band's Territory shall commence an Unlawful Possession Action by filing a complaint in the Tribal Court, which at a minimum, shall:

- (1) be signed by the Band, the Housing Department or the Lessor (or the attorney for such party);
- (2) state the facts upon which recovery of the real property within the Band's Territory is sought;
- (3) describe with reasonable certainty the real property within the Territory of the Band;
- (4) state any claims for damages or compensation due from the defendant(s) to be evicted;
- (5) be accompanied by an affidavit showing service of the notice, if such notice is required by subsection 2.01(b) of this Act; and
- (6) be accompanied by a filing fee for a civil action as may be specified by the rules of the Tribal Court.

(b) When a complaint is filed, in accordance with the requirements of Section 3.01(a), the Tribal Court shall issue a summons, signed by the Judge, which shall direct the defendant(s) named in the complaint to answer within ten (10) Business Days from service and appear before the Tribal Court on date stated therein for a hearing on the complaint or face default and entry of judgment, a Writ of Possession, or both.

(c) The hearing shall be scheduled on a date not more than thirty (30) calendar days from the date of the filing of the complaint; provided, however that for good cause, the Tribal Court may stay or postpone the hearing upon motion of either party or on initiative of the Tribal Court.

(d) The Tribal Court shall retain the original executed summons and immediately return a copy of the executed summons to the plaintiff (or the plaintiff's attorney).

Section 3.02 Service of Summons and Complaint

(a) The plaintiff shall cause the defendant(s) to be served with a copy of the summons and complaint by one of the methods set forth in subsection 2.02(a) of this Act.

(b) Proof of service of the summons and complaint shall be made by affidavit of any adult person stating that he or she has complied fully with the requirements of the method of service used under subsection 2.02(a) and shall be immediately filed with the Tribal Court with a copy of the proof of service mailed to the defendant(s) by First Class United States Mail.

Section 3.03 Answer

Except as otherwise ordered by the Tribal Court for good cause shown, the defendant(s) shall file an answer within ten (10) Business Days from service of the summons and complaint.

Section 3.04 Entry of Default

(a) Upon receipt of the proof of service under section 3.02(b), the Tribal Court clerk or administrator shall enter on the docket the date of service, the date defendant(s) answer is due, and the time and date of the hearing.

(b) If a defendant(s) duly served with a complaint and summons fails to file an answer on the due date entered on the docket, the Tribal Court shall enter a default against the defendant(s); grant the complaint; and issue a Writ of Possession.

(c) If a defendant(s) duly served with a complaint and summons fails to appear at the hearing, the Tribal Court shall enter a default against the defendant(s); grant the complaint; and issue a Writ of Possession.

(d) An entry of default and Writ of Possession may be subject to a motion for reconsideration filed by a defendant(s) within ten (10) Business Days of the entry, and the entry may be lifted if the defendant(s) shows good cause for failure to file a timely answer or to appear for hearing. Absent a stay of the Writ of Possession by the Tribal Court, it shall remain in effect, or in modified form, as the Tribal Court may see fit, while any motion for reconsideration is pending. If a motion for reconsideration is granted, the default and order shall be lifted, new dates for filing the answer (if not already filed) and for the hearing shall be set, and the complaint shall proceed pursuant to Section 3.05.

Section 3.05 Writ of Possession

(a) The burden of proof shall be upon the plaintiff to establish by a preponderance of the evidence that one or more of the grounds for unlawful possession stated in Section 2.01 of this Act have been met and, if required, that notice has been provided in accordance with Section 2.02 of this Act.

(b) The Tribal Court shall enter a Writ of Possession, specifying a date and time for the defendant(s) to vacate the property, including removal of all personal property therefrom, if:

- (1) The summons and complaint were served on the defendant(s) in accordance with the requirements provided in subsection 3.02(a) of this Act; and
- (2) The plaintiff met its burden pursuant to subsection 3.05(a) above.

(c) If the Tribal Court finds that the plaintiff failed to meet its burden pursuant to subsection 3.05(a) above or that the summons and complaint was not served in accordance with the requirements provided in subsection 3.02(a) of this Act, the Tribal Court shall dismiss the action. If the reason for dismissal is solely because of a failure to serve the summons and complaint in accordance with the requirements provided in subsection 3.02(a) of this Act or that notice, if

required, was not provided in accordance with Section 2.02 of this Act, the Court shall dismiss the action without prejudice.

Section 3.06 Judgment

Upon entry of Writ of Possession, the Tribal Court shall have authority to enter judgment against the defendant(s) for back rent; unpaid utilities; charges due the plaintiff under any lease, agreement or other contract for occupancy; and for damages to real property, buildings or improvements within the Band's Territory other than ordinary wear and tear. The Tribal Court shall have further authority to order the plaintiff to return to the defendant(s) any pro rata share of rent or money paid by the defendant(s) to the plaintiff.

Section 3.07 Enforcement

If the defendant(s) subject to a Writ of Possession fails to comply with the Writ, then upon motion for enforcement by the plaintiff, the Tribal Court shall order the Band's law enforcement officers to enforce the Writ of Possession by evicting the defendant and the removing the personal property of the defendant(s) from the real property by use of reasonable force.

Section 3.08 Rules

(e) Except as otherwise provided in this Act, Unlawful Possession Actions shall proceed pursuant to civil rules and procedures applicable to the Tribal Court and Court of Appeals.

CHAPTER 4

Appeal; and Stay Pending Appeal

Section 4.01 Appeal

Any party to an action for Unlawful Possession Action may appeal a final judgment of the Tribal Court to the Court of Appeals by filing a notice of appeal no later than twenty-eight (28) calendar days after entry of the final Tribal Court judgment.

Section 4.02 Stay Pending Appeal

A defendant subject to a Writ of Possession under Section 3.05 of this Act or a judgment under Section 3.06 of this Act may move for a stay of the judgment, the Writ of Possession, or both, pending appeal, upon a showing of:

- (a) that the defendant will suffer irreparable injury if the stay is not entered;
- (b) that the defendant has a strong likelihood of success on the merits;
- (c) that the public interest will not be harmed if the stay is entered; and

(d) that the harm to the defendant in the absence of the stay outweighs the harm to plaintiff;

provided that continued occupation of the real property within the Band's Territory by the defendant(s) is not inconsistent with public policy reflected in the laws, customs, or traditions of the Band or in federal Indian law. Any such stay may be conditioned by the posting of a bond or other security at the discretion of the Tribal Court.

CHAPTER 5

Right to File; No Bar Other Actions; and No Waiver of Sovereign Immunity

Section 5.01 Right to File

(a) In accordance with the inherent sovereign powers of the Band, the Band shall have the right to commence an Unlawful Possession Action under this Act against any Tenant or Occupant irrespective of whether the Band is the Lessor.

(b) Subsection 5.01(a) above shall not prohibit the Housing Department or any other Lessor from commencing an Unlawful Possession Action under this Act.

(c) The Tribal Court may consolidate actions initiated under this Act by more than one party pursuant to applicable rules of the Tribal Court.

Section 5.02 No Bar to Other Actions

The prosecution of an Unlawful Possession Action or the issuance of a Writ of Possession or entry of judgment under this Act shall not bar or prevent the plaintiff from pursuing or prosecuting any other action under Pokagon Band law against the defendant.

Section 5.03 No Waiver of Sovereign Immunity

Nothing in this Act shall be construed to provide a waiver of the sovereign immunity of the Band or any of its governmental officers, representatives, employees, or agents.

LEGISLATIVE HISTORY

Eviction Procedures Act, enacted November 7, 2011 by Res. No. 11-11-07-05.