

**POKAGON BAND OF POTAWATOMI INDIANS
HOUSING ACT**

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CHAPTER 1

Short Title; Authority; Purpose; Applicability; Jurisdiction; Relation to Other Laws; Severability; Effective Date; and Definitions

Section 1.01 Short Title

This Act shall be known, and may be cited, as the “Housing Act.”

Section 1.02 Authority

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

Section 1.03 Purpose

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

(a) to provide Band Law governing the occupation and use of Housing Units and protecting the rights of Landlords and Tenants, consistent with Band self-governance;

(b) to preserve the peace, harmony, safety, health and general welfare of Citizens and those permitted to enter or reside on Band Land;

(c) to provide procedures for evicting Tenants, Household Members, Guests, and all other persons from Housing Units and Band Land;

(d) to encourage Landlords and Tenants to maintain and improve Housing Units to improve the quality of housing;

(e) to avail the Band and Citizens of financing for construction, acquisition, or rehabilitation of Housing Units by prescribing procedures for priority, recording, foreclosure and evictions in connection with Leasehold Mortgages;

(f) to establish Band Law and procedures which are necessary to obtain governmental funding for Band housing programs and loan guarantees for the Band and Citizens to construct, acquire, or rehabilitate Housing Units; and

(g) to establish Band Law governing the inheritance, devise or transfer of Leasehold Estates and Improvements.

Section 1.04 Applicability

(a) Except as excluded under subsection 1.04(b) below, this Act shall apply:

(1) to all existing and future Leases, and other arrangements, providing for the occupation or use of any Housing Unit for residential use;

(2) to all existing and future Leases, and other arrangements, providing for the occupation or use of any Band Land for residential use; and

(3) to all existing and future Mortgages of a Leasehold Estate in any Housing Unit or in Band Land for residential use.

(b) This Act shall not apply:

(1) to any residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious or any similar service;

(2) to any occupancy in a hotel, motel or other similar commercial lodging; or

(3) to any commercial or business lease.

Section 1.05 Jurisdiction

(a) The Tribal Court shall have personal jurisdiction over all persons and entities with respect to any conduct, transaction or matter, governed by this Act, regardless of whether the person or entity resides or maintains a place of business within Band Land.

(b) The Tribal Court shall have subject matter jurisdiction with respect to any action or proceeding arising from any conduct, transaction or matter governed by this Act.

Section 1.06 Relation to Other Laws

(a) Except to the extent in conflict with this Act, principles of law and equity contained in the common law and customs and traditions of the Band shall apply in interpreting this Act.

(b) To the extent that this Act conflicts with any Band Law, this Act shall control, except to the extent such Band Law has been enacted to comply with any applicable federal statutes or regulations or any agreement between the Band and agencies of the United States.

(c) To the extent that this Act conflicts with any applicable federal statutes or regulations or any agreement between the Band and agencies of the United States, the federal law or agreement shall control.

(d) To the extent that any word, sentence, paragraph or provision of any Lease, Mortgage, Leasehold Mortgage or any other document or agreement with respect to a Housing Unit or Band Land to which this Act applies conflicts with any provision of this Act, this Act shall control, and such inconsistent provision shall be null, void, unenforceable and of no effect.

(e) To the extent a Federally Approved Lease Form has been approved by the Tribal Council pursuant to Section 2.01 of this Act, and such Federally Approved Lease Form contains any

provisions or requirements which are inconsistent with this Act, such provisions or requirements of the Federally Approved Lease Form shall control and be deemed to amend this Act, solely for purposes of the transaction or transactions contemplated by the Federally Approved Lease Form.

Section 1.07 Severability

If a court of competent jurisdiction shall adjudge any word, sentence, paragraph or provision of this Act, or the application thereof to any person or entity to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act, which shall continue in full force and effect.

Section 1.08 Effective Date

This Act shall become effective as Band Law, for all purposes, on the Effective Date.

Section 1.09 Definitions

For the purpose of this Act, the below terms are defined:

(a) “Abandon” means the Tenant: (1) has vacated a Housing Unit prior to the expiration of Tenant’s Lease thereof; (2) does not intend to return, as evidenced by: (A) a personal inspection of the Premises by the Landlord; or (B) an express statement by the Tenant, or any other person, to the Landlord, which reveal that the Tenant is not presently occupying, or does not intend to occupy, the Housing Unit; and (3) is in default under the Lease.

(b) “Act” means this Housing Act.

(c) “Adopted” as used in the phrase “Adopted or Biological Child” means legally adopted by a Citizen pursuant to the laws of the Band, or recognized as having been so adopted under Band Law.

(d) “Adult” means any person eighteen (18) years of age or older.

(e) “Amount of Delinquency” means the sum of the Rent and other amounts due and owing under the Lease up to and including the date payment is tendered.

(f) “Assignment” means an agreement between a Lessee and an assignee, whereby the assignee acquires all or some of Lessee’s rights and assumes all or some of Lessee’s obligations under a Lease.

(g) “Band” means the Pokagon Band of Potawatomi Indians, its instrumentalities, agencies, departments, programs and any entity, regardless of form, which is wholly owned by the Band.

(h) “Band Land” means all lands now held or hereafter acquired in trust by the United States of America for the benefit of the Band.

(i) “Band Law” means all acts, codes, ordinances, or other legislative action of the Band, along with all rulings of the Tribal Court or Court of Appeals.

(j) “Child” means any person who is not an Adult.

(k) “Citizen” means a duly enrolled member of the Band.

(l) “Constitution” means the Constitution of the Band.

(m) “Court of Appeals” means the Band’s Court of Appeals.

(n) “Criminal Sexual Conduct” means any criminal sexual offense defined as a felony in the laws of the state in which the offense was committed, or any act which constitutes a “sex offense” pursuant to the Band’s Sex Offender Registration Code.

(o) “Department of Housing” means the Band’s Department of Housing.

(p) “Designated Assignee” means any lender to which a Mortgagee has or may transfer or assign its interest in a Lease or Leasehold Mortgage.

(q) “Director” means the Director of the Department of Housing.

(r) “Drug” means a controlled substance as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802.

(s) “Drug-related Criminal Activity” means the illegal manufacture, sale, distribution, or use of a Drug, or the possession of a Drug with intent to manufacture, sell, distribute, or use the Drug.

(t) “Effective Date” means the date of enactment of this Act by the Tribal Council.

(u) “Federally Approved Lease Form” means any form of Lease intended to be used on Band Land, which has been accepted for use by a federal agency (including but not limited to HUD, the U.S. Department of Agriculture, and the Veteran’s Administration) for purposes of encouraging tribal housing through mortgage insurance, direct or guaranteed loans, or other subsidies or measures.

(v) “Form Lease” means a form Lease which has been approved by the Tribal Council under subsection 2.01(a) and which, pursuant to subsection 2.01(b), may be signed on behalf of the Band by the Director, or in his or her absence, the Government Manager.

(w) “Government Manager” means the Band’s Government Manager.

(x) “Guest” means any person who is present in or around a Housing Unit with the permission and consent of the Tenant or another Household Member who has express or implied authority to so consent on behalf of the Tenant.

(y) “Holdover” means a Lessee who remains in possession of the Premises after the Lease term has expired.

(z) “Household Member” means any person who resides at the Housing Unit with the permission of Landlord.

(aa) “Housing Unit” means all or any portion of any house, home, building or other structure used as a residence by any person, which is subject to a Lease, or located on Band Land subject to a Lease, to which this Act applies.

(bb) “HUD” means the U.S. Department of Housing and Urban Development.

(cc) “Improvements” means the Housing Unit, and all garages, barns, sheds and similar structures, which are situated upon the Leasehold Estate.

(dd) “Landlord” means the Band, or any person, entity or governmental agency which is the Lessor, or sub-lessor of a Housing Unit or Band Land for residential use.

(ee) “Lease” means a written contract between a Lessor and Lessee, whereby the Lessee is granted a right to possess a Housing Unit or Band Land for residential use for a specified purpose and duration, and includes any Assignment, Sublease or any lease-to-purchase agreement.

(ff) “Leasehold Estate” means the possessory interest in Band Land established pursuant to a Lease between a Lessor and a Lessee.

(gg) “Leasehold Mortgage” means a Mortgage that pledges the Leasehold Estate of Lessee as security for a debt or other obligation owed by the Lessee to a lender or other Mortgagee.

(hh) “Leasehold Mortgage Foreclosure Proceeding” means any proceeding in Tribal Court to foreclose the interest of the Mortgagor, and every person or entity claiming through Mortgagor, in the Leasehold Estate.

(ii) “Lessee” means any person who has acquired a legal right to possess a Housing Unit or Band Land by executing a Lease of a Housing Unit or Band Land, and includes any Tenant under any Assignment, Sublease or lease-to-purchase agreement.

(jj) “Lessor” means the legal, beneficial, or equitable owner of a Housing Unit or Band Land subject to a Lease, including the Band, and any heir, successor, executor, administrator, or assign of the Lessor.

(kk) “Mortgage” means a lien on a Leasehold Estate given to secure advances on a loan to purchase, construct, refinance or renovate a Housing Unit or Improvement, 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.

(ll) “Mortgagee” means any person, entity or governmental agency which lends under a Leasehold Mortgage, and includes any Designated Assignee, or any heir, successor, executor, administrator, or assign thereof.

(mm) “Mortgagor” means the Band or any person or entity who has executed a Leasehold Mortgage, including any heir, successor, executor, administrator, or assign thereof.

(nn) “Nuisance” means the maintenance on the Premises of any condition which unreasonably threatens the health or safety of the public or of a neighboring property user or unreasonably and substantially interferes with the ability of a neighboring property user to enjoy the reasonable use and occupancy of such property.

(oo) "Non-Citizen" means any person who is not a Citizen.

(pp) “Officer” means a police officer employed by the Band’s Department of Law Enforcement.

(qq) “Premises” means any portion of a Housing Unit or Band Land, as described in any Lease, and any common areas and grounds appurtenant thereto.

(rr) “Rent” means all periodic payments to be made by a Lessee to a Landlord or Lessor under a Lease.

(ss) “Resident Owner” means any person who has entered into a Lease of Band Land for the purpose of purchasing or constructing a Housing Unit thereon.

(tt) “Residential Leasing Act” means the Band’s Residential Lease Act.

(uu) “Section 184 Program” means the HUD program to guarantee loans to construct, acquire, refinance or rehabilitate housing on tribal trust or restricted lands under section 184 of the Housing and Community Development Act of 1992 as amended by the Native American Housing Assistance and Self-Determination Act of 1996, codified at 12 U.S.C. 1715z-13a.

(vv) “Spouse” means any person married to, or recognized as being married to, another person pursuant to the Band’s Marriage Code.

(ww) “Sublease” means a written agreement whereby the Lessee grants a right to possession no greater than that held by the Lessee under the Lease.

(xx) “Subordinate Lienholder” means the holder of any lien perfected subsequent to the recording of Leasehold Mortgage under this Act, except the Band with respect to any claim regarding any tax imposed by the Band on Band Land.

(yy) “Surety” means person, entity or governmental agency which has guaranteed or insured performance by the Mortgagor.

(zz) “Surviving Citizen Child” means any living Child who is a Citizen and who is the Adopted or Biological Child of a Citizen at the time of the parental Citizen’s death.

(aaa) “Surviving Citizen Spouse” means a Citizen who is alive at the time of death of his or her Spouse.

(bbb) “Surviving Non-Citizen Spouse” means a Non-Citizen who is alive at the time of death of his or her Spouse.

(ccc) “Tenant” means any person entitled under a Lease to occupy a Housing Unit or Band Land for residential use to the exclusion of others.

(ddd) “Tribal Council” means the governing body of the Band established pursuant to Article X of the Constitution.

(eee) “Tribal Court” means the Band’s Tribal Court.

(fff) “Unlawful Possession Action” is an action brought in Tribal Court under this Act to terminate a Lease and to obtain an order of eviction and judgment for damages, equitable relief, and such other relief to which the Landlord may be entitled under the Lease or Band Law.

(ggg) “Violent Criminal Activity” means any criminal activity that has as one or more of its elements the use, attempted use, or threatened use or physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage, including without limitation, murder, non-negligent manslaughter, rape, kidnapping, aggravated assault, robbery, burglary, and arson.

CHAPTER 2

Approval of Leases; Lease Requirements; Policies and Procedures; Landlord Obligations; Tenant Obligations; and Household Member Obligations

Section 2.01 Approval of Leases

(a) All Leases shall be approved by the Tribal Council in accordance with Band Law and the Constitution. The approval of a Form Lease by the Tribal Council shall constitute approval under this subsection.

(b) All Leases shall be signed on behalf of the Band by the Director, or in his or her absence, the Government Manager.

(c) All Leases shall be approved by the Bureau of Indian Affairs to the extent required under the Residential Leasing Act.

(d) All Leases shall be recorded as set forth in the Residential Leasing Act.

Section 2.02 Lease Requirements

(a) All Leases shall be in writing, and at a minimum, shall contain all provisions required by the Residential Leasing Act.

(b) No Lease shall contain any provision of the nature described below, and any such provision shall be null, void and unenforceable:

(1) agreement by the Tenant to the filing of legal action by the Landlord against the Tenant in connection with the Lease and to entry of a judgment in favor of the Landlord;

(2) agreement by the Tenant that Landlord is authorized to take property of the Tenant and hold it as a pledge until the Tenant performs the obligation which the Landlord has determined the Tenant has failed to perform;

(3) agreement by Tenant not to hold the Landlord or Landlord's agent liable for any actions or omissions whether intentional or negligent on the part of the Landlord or Landlord's authorized agent, excluding however, any Lease with the Band or the Department of Housing;

(4) agreement by the Tenant that the Landlord may file action without any notice to the Tenant, thus preventing the Tenant from defending against the action;

(5) authorization to the Landlord to evict the Tenant and hold or sell the Tenant's possessions whenever the Landlord determines that a breach or default has occurred without notice to the Tenant or any determination by the Tribal Court of the rights and liabilities of the parties; or

(6) agreement by the Tenant to pay attorney's fees or other legal costs whenever the Landlord decides to take action against the Tenant regardless of whether the Tenant prevails in the action.

(c) A Lease may provide for payment of a security deposit in an amount not to exceed one and one-half (1 ½) month's Rent. The Landlord shall maintain security deposits in a separate account. Upon termination of a tenancy, the Landlord may apply the security deposit to the payment of accrued unpaid Rent and the amount of damages incurred as a result of Tenant's failure to comply with the obligations under the Lease or this Act. The Tenant shall notify the Landlord in writing of the address at which the Tenant may receive mail after termination of the tenancy. The Landlord shall mail the Tenant any remaining balance of the security deposit, without interest, along with an itemized statement of all deductions, as applicable, within thirty (30) days after termination of the tenancy, provided that the Tenant has given the Landlord written notice of the new address at which the Tenant may receive mail.

(d) No Lease shall be extended by Holdover.

(e) Any Lease or rental agreement which is not in writing; or does not contain all provisions

required under subsection 2.02(a); or which otherwise has not been approved in accordance with any Band Law or applicable federal statutes or regulations shall be null, void, and unenforceable.

(f) A Lease may provide that either the Landlord or Tenant may terminate the Lease without cause by providing the other party with at least thirty (30) calendar days prior written notice of intent to terminate.

(g) A Lease may specify the circumstances under which the Tenant shall be in default, which may include, without limitation, a violation of any obligation set forth in Section 2.5 of this Act.

Section 2.03 Policies and Procedures

(a) The Band, including the Department of Housing, may develop reasonable policies and procedures, including but not limited to, standards governing eligibility, admission, and use and occupancy of leased Premises. Such policies and procedures shall be in writing and sufficiently explicit so as to inform the Tenant of permitted and prohibited conduct, as applicable. The Department of Housing shall notify Tenant of such policies and procedures at the time the Lease is entered or within a reasonable time following adoption of the policies and procedures. Upon notice thereof, such policies and procedures shall be deemed incorporated into any Lease.

(b) Regardless of whether the Band or the Department of Housing is the Landlord, to be admitted or to occupy any Housing Unit, all Tenants and Household Members shall satisfy all eligibility requirements stated in the applicable policies and procedures of the Department of Housing, including but not limited to, passing a criminal history check; provided, however, status as a Non-Citizen shall not prohibit transfer of a Lease in accordance with and subject to Chapter 13 of this Act.

(c) All policies and procedures of the Department of Housing shall be subject to the approval of the Tribal Council. The Director of Housing may sign form assistance agreements, form landlord agreements, form release of lien documents, and similar form documents, provided that the Tribal Council has approved such forms. The Department of Housing is authorized to develop forms and similar documents, as necessary to implement this Act and such policies and procedures.

Section 2.04 Landlord Obligations

(a) Except as otherwise provided in subsection 2.04(b) below, every Landlord in a Lease of a Housing Unit shall:

- (1) maintain the Premises in a fit, habitable, safe, and sanitary condition;
- (2) comply with applicable Band Law regarding building and housing;
- (3) make all necessary repairs to put and maintain the Housing Unit in a fit, habitable, safe and sanitary condition;

(4) maintain in good condition and safe working order all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities, except as installed by the Tenant;

(5) provide running water, hot water, heat, and other essential utilities, provided this obligation shall not prohibit the Tenant from agreeing to be responsible for the same under the Lease;

(6) deliver possession of the Housing Unit to the Tenant in accordance with the Lease and this Act;

(7) provide the Tenant with quiet enjoyment of the Housing Unit and refrain from conduct which unreasonably interferes with such quiet enjoyment; and

(8) disclose to the Tenant, in writing, the name, address, and telephone number of all representatives of Landlord who are responsible for managing the Premises, for receiving Rent, notices and demands under the Lease or this Act and for making inspections or any required repairs.

(b) With respect to a Lease of Band Land for residential use by a Resident Owner, the Landlord or Lessor shall be subject only to the obligations set forth in subsections 2.04(a)(7) and (8) above, as the Resident Owner shall have assumed all other obligations in subsection 2.04(a), unless the parties to the Lease have agreed otherwise in the Lease or another written agreement.

Section 2.05 Tenant Obligations

Every Tenant shall:

(a) pay, without demand or notice, at the time and place specified in the Lease, all Rent and any damages, costs, and similar amounts due and owing under the Lease;

(b) pay reasonable charges for the repair of damages, other than normal wear and tear, to the Premises caused by the Tenant, any Household Member, Guest, or any other person under the control of the Tenant or any Household Member, as applicable; or make repairs for such damages if the Lease imposes the obligation of the Tenant, upon written demand of the Landlord;

(c) immediately notify the Landlord of any defect in the Premises which is hazardous to life, health, or safety or which is likely to result in damage to the Premises;

(d) keep the Premises reasonably clean and dispose of all ashes, garbage, rubbish, junk, and abandoned vehicles in a timely, proper, sanitary, and safe manner;

(e) not maintain, store or dispose of any hazardous chemicals or materials on or near the Premises in a manner contrary to applicable law;

(f) not disable any fire alarm or suppression system or any other system installed by the Landlord on or near the Premises;

(g) use all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances which are part of the Premises, in a proper, safe, sanitary, and reasonable manner;

(h) not destroy, deface, damage, remove any part of the Premises or otherwise commit waste;

(i) not give up the Premises to others, or transfer, assign or sublet the Premises, or provide accommodations for boarders, lodgers or others who are not parties to the Lease, without the written permission of the Landlord;

(j) use the Housing Unit only for residential purposes, and not use or permit, aid, or encourage any Guest, or any other person under the control of Tenant or any Household Member, to use the Premises for any other purpose, except for home occupations to the extent expressly permitted under policies and procedures of the Landlord;

(k) provide the Landlord or Landlord's representatives with access to the Housing Unit to perform maintenance and repairs, inspect the Housing Unit, supply necessary or agreed services, or show the Housing Unit to prospective buyers or the Tenants, provided: (1) that such access shall be at reasonable times when the Tenant is present, or upon a notice of at least twenty-four (24) hours, except in emergency situations or where the Tenant consents; and (2) no Tenant who unreasonably denies access to a Landlord or Landlord's representative for the above purposes may pursue an action alleging that services or repairs were not provided;

(l) not engage in, or permit, aid or encourage any Guest, or any other person under the control of the Tenant or any Household Member, as applicable, to engage in any activity that causes a breach of the peace, a Nuisance, or threatens the health or safety or the right to peaceful enjoyment of any person residing in the community or the development;

(m) not engage in, or permit, aid or encourage any Guest, or any other person under the control of the Tenant or any Household Member, as applicable, to engage in any criminal activity on the Band Land;

(n) not engage in any Violent Criminal Activity, Drug-related Criminal Activity, or Criminal Sexual Conduct, regardless of location;

(o) comply fully with, and ensure that all Guests, and all other persons under the control of the Tenant or any Household Member, as applicable, comply fully with all policies and procedures of the Band which are communicated to the Tenant pursuant to subsection 2.03(a) of this Act; and

(p) comply fully with, and ensure that all Guests, and all other persons under the control of Tenant or any Household Member, as applicable, comply fully with all Band Law,

including but not limited to, this Act and all obligations imposed under the Lease, except as otherwise provided in subsection 2.02(b) of this Act.

Section 2.06 Household Member Obligations

(a) All Household Members shall be bound by and must comply fully with all obligations of the Tenant under Section 2.05; excluding, however, subsection 2.05(a).

(b) Any violation by any Household Member of any obligation under this Act shall be deemed a violation by the Tenant, which shall entitle the Landlord to exercise all available remedies pursuant to Section 5.01 of this Act.

CHAPTER 3

Sublease or Assignment; Approval of Sublease and Assignment; Expiration of Leasehold Estate; and Compliance

Section 3.01 Sublease or Assignment of Leasehold Estate

(a) Except as provided in subsection 11.05(b)(2) of this Act, and subject to this Chapter 3, a Lessee may sublease or assign a Leasehold Estate only to a Citizen or the Band and must give notice thereof to the Department of Housing.

(b) Any Lease that expressly prohibits any Sublease or Assignment shall not be subleased or assigned.

Section 3.02 Approval of Sublease and Assignment

(a) All Subleases and Assignments, other than to a Mortgagee, or the Designated Assignee pursuant to subsection 11.05(b)(2) of this Act, shall be subject to the approval of the Director, or in his or her absence, the Government Manager in a manner consistent with Band Law and the Constitution.

(b) All Subleases and Assignments shall be approved by the Bureau of Indian Affairs to the extent required under the Residential Leasing Act.

(c) All approvals of Subleases and Assignments shall be signed on behalf of the Band by the Director, or in his or her absence, the Government Manager.

(d) All Subleases and Assignments shall require the prior approval of any Mortgagee or Surety, if required by the Mortgagee or Surety agreement.

(e) All Subleases and Assignments shall be recorded as set forth in the Residential Leasing Act.

Section 3.03 Expiration of Leasehold Estate

The term of any Leasehold Estate which is subleased or assigned pursuant to this Act, shall expire at the end of the term of the Lease which was subleased or assigned.

Section 3.04 Compliance

Except as provided in subsection 11.05(b)(2) of this Act, all persons to whom a Leasehold Estate is to be assigned or subleased must satisfy all eligibility requirements in accordance with subsection 2.03(b) of this Act and, at all times, shall be subject to and comply fully with Band Law, all applicable policies and procedures, and the Lease and Sublease, as applicable.

CHAPTER 4

Ownership of Improvements; Restoration of Premises; and Failure to Sell and Remove Improvements;

Section 4.01 Ownership of Improvements

Resident Owners, who have exercised the option to purchase, may sell, give, or devise, and remove Improvements; subject, however, to all required approvals of any Mortgagee or Surety, as applicable, and the requirements of this Act, including but not limited to, the Band's right of first refusal pursuant to Section 12.02 of this Act.

Section 4.02 Restoration of Premises

Any Resident Owner or any other person who removes, or authorizes the removal of, any Improvements, shall immediately repair any damage to Band Land and restore the Premises as close as possible to the same condition before construction of the Improvements.

Section 4.03 Failure to Sell and Remove Improvements

Notwithstanding any other provision of this Act, all Improvements which are located upon the Leasehold Estate upon expiration or termination of the Lease shall be deemed abandoned and shall automatically revert to the Band.

CHAPTER 5

Landlord Remedies; Tenant Remedies; and Abandonment

Section 5.01 Landlord Remedies

(a) If a Tenant does not comply with the Lease or this Act, the Landlord shall have the following rights:

- (1) to terminate the Lease, provided that the Landlord must notify any Mortgagee

of the Lease termination;

(2) to bring an Unlawful Possession Action seeking from the Tribal Court an order of eviction and judgment for damages, equitable relief, and such other relief to which the Landlord may be entitled under the Lease or Band Law; and

(3) to bring an action separate from an Unlawful Possession Action seeking from the Tribal Court a judgment for damages to the Premises and costs.

(b) A Landlord may exercise the remedies stated in subsection 5.01(a) of this Act if the Landlord determines that any Tenant, Household Member, Guest, or any other person under the control of Tenant, as applicable, engaged in conduct prohibited under subsection 2.05(m) or (n) of this Act, regardless of whether such person was arrested or convicted for such activity and without satisfying the standard of proof for criminal conviction.

(c) The Landlord shall take reasonable steps to mitigate damages.

Section 5.02 Tenant Remedies

(a) If the Landlord does not comply with the Lease or this Act, the Tenant shall provide the Landlord with prompt written notice describing the noncompliance, and if Landlord fails to cure such noncompliance within a reasonable time after receipt of such written notice, the Tenant shall have the following rights:

(1) to vacate the Premises and terminate the Lease; or

(2) subject to the limitations of this Act, seek judgment from the Tribal Court for actual damages, equitable relief, and such other relief to which the Tenant may be entitled under the Lease or Band Law.

(b) If the Landlord's noncompliance involved the failure to make necessary repairs, and the Landlord is not the Band or the Department of Housing, then Tenant may either exercise rights under subsection 5.02(a) above or notify the Landlord in writing of Tenant's intention to correct the condition at the expense of Landlord, subject to the following:

(1) If the Landlord fails to cure the noncompliance within seven (7) calendar days after receipt of written notice from the Tenant describing the noncompliance, or in the case of an emergency, as promptly as conditions reasonably require, the Tenant may cause necessary work to be done in a workmanlike manner; and

(2) If the Tenant submits an itemized receipt or bill to the Landlord for such necessary work, the Tenant may deduct from the next Rent due the actual costs of such repair; provided a Tenant shall not be entitled to repair at the Landlord's expense if the condition was caused by noncompliance with any Tenant obligation under the Lease or Section 2.05 of this Act.

(c) If another Tenant does not comply with a building or use restriction contained in any policies or procedures of the Department of Housing promulgated pursuant to Section 2.03 of this Act, then an aggrieved Tenant may initiate an enforcement action in Tribal Court and seek judgment against the subject Tenant for actual damages, equitable relief, and such other relief to which the aggrieved Tenant may be entitled under Band Law; subject to the following.

(1) the aggrieved Tenant must provide the Department of Housing and the subject Tenant with written notice describing the noncompliance and requesting the Department of Housing to initiate enforcement;

(2) the aggrieved Tenant must attend a resolution meeting on the date and time scheduled by the Department of Housing; and

(3) the aggrieved Tenant shall be permitted to initiate an enforcement action only if the Department of Housing does not initiate such an action within thirty (30) calendar days after the date of the resolution meeting, or the Director indicates in writing that the Department of Housing does not intend to initiate such an action within such time period.

Section 5.03 Abandonment

(a) Any Landlord who complies with the procedures stated in this Section 5.03 shall not be required to bring an Unlawful Possession Action pursuant to Chapters 6 and 7 of this Act to obtain possession of a Housing Unit when a Tenant Abandons a Housing Unit and, upon the Landlord obtaining such possession, the Lease shall terminate.

(b) If a Tenant Abandons a Housing Unit, the Landlord, shall securely post a copy of a notice of abandonment on the main entry door of the Housing Unit and mail a copy by first class United States mail to Tenant's last known address.

(c) The notice of abandonment shall state the date of posting and inform the Tenant of the following:

(1) that the Landlord intends to take possession of the Housing Unit within ten (10) calendar days from the date of posting of the notice of abandonment and, upon the Landlord obtaining such possession, the Lease shall terminate;

(2) that upon the Landlord obtaining such possession, the Landlord retains the right to inventory and remove all personal property from the Housing Unit; and

(3) that if the Tenant does not claim all such personal property within thirty (30) calendar days from the date of posting of the notice of abandonment, then the Landlord shall have no duty to store and protect such personal property after expiration of such time, and may dispose of the same without obligation.

(d) Notwithstanding any other provision of this Section 5.03, if any personal property of

the former Tenant appears, in any way, to be of cultural, religious, or ceremonial significance, then before disturbing any such personal property, the Landlord shall contact the Band's Department of Language and Culture, which shall coordinate collection or delivery of such personal property. All such personal property shall be collected by, or delivered to, the Band as directed, and the Band shall make reasonable attempts to arrange for its return to the former Tenant. If the former Tenant does not retrieve such personal property from the Band within six (6) months from the date of posting, such personal property shall revert to the ownership of the Band.

(e) Subject to the requirements of this Act, including but not limited to the Landlord's duty to mitigate damages under subsection 5.01(b) above, any Tenant who Abandons a Housing Unit shall remain liable for the Rent for the period up to either expiration or termination of the term of the tenancy, or such time as the Landlord agrees in writing to accept surrender of the Housing Unit, and for utilities, damages, and other amounts due and owing under the Lease.

CHAPTER 6

Unlawful Possession; Notice to Comply or Quit; Service of Notice to Comply or Quit; No Self-Help Eviction; and Federal Remedies for Lease Violations

Section 6.01 Unlawful Possession

Any Lessee or any other person or entity residing on Band Land, including in any Housing Unit, upon the occurrence of any of the following, may be evicted through an Unlawful Possession Action in Tribal Court:

- (a) failure to pay all Rent owed under a Lease within ten (10) calendar days of the date of payment stated in the Lease;
- (b) failure to pay all utilities, damages, and other amounts due and owing to the Landlord under the Lease other than Rent, for at least thirty (30) calendar days after the date due;
- (c) failure to comply with the policies and procedures of the Landlord, or any obligation imposed under this Act; or any condition or covenant of the Lease, except where such provision is contrary to this Act;
- (d) the person or entity has entered or remains on Band Land without an approved Lease or other permission of the Lessor, Landlord, or Lessee;
- (e) after expiration or termination of the Lease; or
- (f) occupancy is contrary to Band Law or any applicable federal statutes or regulations.

Section 6.02 Notice to Comply or Quit

(a) The Band or any Lessor seeking to bring an Unlawful Possession Action against any Lessee or any other person or entity based on any of the grounds set forth in Section 6.01 of this Act shall first give written notice to Lessee or such other person or entity to comply or quit possession of the Premises according to the provisions of this Chapter 6, provided there shall be no opportunity to cure any violation of subsection 6.01(c) of this Act involving any violation of subsection 2.05(m) or (n) of this Act.

(b) The purpose of the notice to comply or quit is to provide the Lessee or such other person or entity with advance notice of, and to induce cure of noncompliance, except as any opportunity to cure is barred pursuant to subsection 6.02(a) above.

(c) The notice to comply or quit shall be addressed to the Lessee or such other person or entity, and at a minimum shall identify the specific ground or grounds for an Unlawful Possession Action set forth in Section 6.01 of this Act; describe the facts supporting unlawful possession; and state the date by which any curable non-compliance must be cured or by which the Lessee or such other person or entity must quit possession of the Premises, as applicable.

(d) If the Unlawful Possession Action is based on subsection 6.01(a) or (b), or both, then it shall expressly identify the amount that the Tenant must pay to cure the noncompliance, which may include Rent owed to the Landlord under a Lease along with any utilities, damages, and other amounts due and owing to the Landlord under the Lease other than Rent.

(e) The notice to comply or quit shall state that the Band or Lessor, as applicable, may proceed to evict the Lessee or any other person or entity from occupation of the Band Land by action in the Tribal Court if the notice to comply or quit, as applicable, is not complied with in the time specified.

(f) The notice to comply or quit shall inform the Tenant that upon written request to the Department, the Tenant shall have an opportunity to: (1) examine at the Department's offices, at a mutually agreed upon date and time prior to the hearing on the Complaint, any relevant documents and records which are directly related to the Unlawful Possession Action; and (2) obtain a copy of this Act and any relevant policies and procedures of the Band. Upon reasonable request, the Department shall provide the Tenant with copies of the materials identified above at no charge to the Tenant.

(g) A notice to comply or quit shall not be invalidated solely because the Band or Lessor accepts less than the full payment owed within the time specified, or accepts the full payment owed after the time specified. The notice to comply or quit shall inform the Lessee of such.

Section 6.03 Service of Notice to Comply or Quit

(a) Any notice to comply or quit shall be served by:

- (1) delivering a copy personally to the Lessee or the other person or entity who is the subject of the notice to comply or quit; or
- (2) delivering a copy personally to any Adult living at the Housing Unit, and mailing a copy to the Lessee by first class United States mail to Lessee's last known address; or
- (3) if the notice cannot be given by means of personal delivery, securely posting a copy of the notice to the main entry door of the Housing Unit, and mailing a copy to the Lessee or the other person or entity by first class United States mail to Lessee's last known address.

(b) The notice to comply or quit shall be delivered within the following minimum periods of time, notwithstanding anything to the contrary stated in the Lease:

- (1) at least twenty-four (24) hours prior to the date to quit specified in the notice for a violation of Tenant's obligations under subsection 2.05(n) involving Drug-related Criminal Activity or Criminal Sexual Conduct; and
- (2) except as provided above, at least three (3) calendar days prior to the date to quit specified in the notice for a violation of the Tenant's obligation under subsections 2.05(1), (m) or (n) of this Act; provided that if there is an emergency, such as a fire or condition which renders the Premises unsafe or uninhabitable, or any situation involving an imminent or serious threat to public health or safety, the notice may be given as soon as the emergency or threat is known, and may specify any period of time to quit possession which is reasonable under the circumstances then known;
- (3) at least seven (7) calendar days prior to the date to comply or quit specified in the notice for any failure to pay Rent, damages or other amounts required to be paid by Tenant under the Lease;
- (4) at least fourteen (14) calendar days prior to the date to comply or quit specified in the notice in all other situations.

(c) Proof of service may be made by affidavit of any Adult stating the means of service made by such person as provided in this Section 6.03, or in such other manner permitted by Band Law.

Section 6.04 No Self-Help Eviction

Except as otherwise provided under this Act, no Lessee or any other person or entity shall be compelled to vacate a Housing Unit in a forceful fashion or way which causes a breach of the peace; rather every Landlord shall give a notice to comply or quit and obtain an order of eviction from the Tribal Court pursuant to this Act.

Section 6.05 Federal Remedies for Lease Violations

In addition to the foregoing remedies, any violation of the terms or conditions of a Lease is subject to legal action by or on behalf of the Bureau of Indian Affairs in accordance with 25 C.F.R. 162.365 through 162.374, as amended from time to time, which may include cancellation of the Lease.

CHAPTER 7

Complaint; Issuance of Summons; Service of Complaint and Summons; Answer to Complaint; Scheduling of Hearing; and Civil Rules and Procedures

Section 7.01 Complaint

(a) If the Lessee or any other person or entity occupying the Band Land, including a Tenant in a Housing Unit, has not complied or quit possession of the Premises, as applicable, by the date stated in the notice to comply or quit, the Band or other Lessor may file a complaint in the Tribal Court, which at a minimum, shall:

- (1) include a citation to the authority for jurisdiction of the Tribal Court;
- (2) be signed by the plaintiff (or the attorney for plaintiff);
- (3) name as defendant, all Lessees and all other persons or entities occupying the Band Land against whom the action is brought;
- (4) describe with reasonable certainty the location of the Housing Unit or Band Land;
- (5) state that the notice to comply or quit was served pursuant to the Act;
- (6) cite the provision of this Act establishing the basis for Unlawful Possession Action;
- (7) state the facts upon which recovery of the Premises is sought;
- (8) if Rent or other money is due and unpaid, state the rental period and rate, the amount due and unpaid on the date the complaint is filed, and the date or dates the payments became due; and
- (9) state the requested relief, which may include termination of the Lease, order of eviction, and judgment for damages, equitable relief, and such other relief to which the Landlord may be entitled under the Lease or Band Law.

(b) A copy of any Lease, the notice to comply or quit, and the proof of service thereof, shall be attached to the complaint.

(c) The complaint shall be accompanied by a filing fee for a civil action as may be

specified by the rules of the Tribal Court.

Section 7.02 Issuance of Summons

(a) When a complaint is filed in the Tribal Court pursuant to Section 7.01 above, the Tribal Court shall issue a summons, signed by the judge, which shall direct the defendant named in the complaint to appear before the Tribal Court for a hearing on a certain date.

(b) The Tribal Court shall endeavor to schedule the hearing on the complaint not less than three (3) calendar days after the date of the summons for matters involving subsection 2.05(l), (m) or (n) of this Act or ten (10) calendar days in all other cases.

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

Section 7.03 Service of Complaint and Summons

(a) After the Tribal Court issues the summons, the plaintiff or plaintiff's attorney shall cause the defendant to be served with a copy of the complaint and summons pursuant to subsection 6.03(a) of this Act.

(b) Proof of service shall be made pursuant to subsection 6.03(c) of this Act and shall be immediately filed with the Tribal Court and a copy shall be mailed to the defendant by first class United States mail.

Section 7.04 Answer to Complaint

(a) The defendant or defendant's attorney shall appear at the hearing on the date and time stated in the summons and shall:

- (1) orally answer each allegation in the complaint, with such answers being recorded or noted on the complaint; or
- (2) file with the Tribal Court a written answer to the complaint, and:
 - (A) serve a copy of the written answer on plaintiff or plaintiff's attorney in a manner consistent with subsection 6.03(a) of this Act; and
 - (B) attest to service on the record, or immediately file with the Tribal Court proof of service made pursuant to subsection 6.03(c) of this Act and mail a copy to the plaintiff or plaintiff's attorney by first class United States mail.

(b) If the defendant appears at the hearing on the date and time stated in the summons without an attorney, the Tribal Court shall inform the defendant of the right to be represented by an attorney, at the defendant's expense.

Section 7.05 Scheduling of Hearing

(a) If the defendant or defendant's attorney appears at the hearing on the date and time of appearance stated in the summons, the Tribal Court may try the action; provided if plaintiff and defendant agree or good cause is shown, the Tribal Court shall adjourn the trial for a period of no more than thirty (30) calendar days unless the complaint is based upon conduct involving subsection 2.05(m) or (n) of this Act.

(b) If the Tribal Court adjourns the trial for more than seven (7) calendar days an escrow order may be entered requiring the defendant to pay a reasonable sum for the fair rental value of the Housing Unit from the date the escrow order was entered, including a pro rata amount per day from the date of the order and the next date Rent ordinarily would be due.

(c) If a defendant duly served with a complaint and summons fails to appear at the hearing, or fails to timely answer the complaint in accordance with Section 7.04 of this Act, the Tribal Court shall enter a default judgment against the defendant, issue an order of eviction and grant of such other relief sought in the complaint as may be warranted, and enter judgment accordingly.

(d) If the Tribal Court determines at the hearing that there is no issue for trial, then the Tribal Court shall issue the order of eviction and enter judgment as a matter of law.

(e) The Tribal Court clerk shall serve the notice of the default judgment in a manner consistent with subsection 6.03(a) of this Act on the defendant and all other parties who appeared.

Section 7.06 Civil Rules and Procedures

All actions commenced under this Chapter 7 shall proceed pursuant to the civil rules and procedures of the Tribal Court and the Court of Appeals, except as otherwise provided in this Act.

CHAPTER 8

Burden of Proof; Order of Eviction; Entry of Judgment; Enforcement; and Forcible Eviction

Section 8.01 Burden of Proof

The burden of proof shall be upon the plaintiff to establish by a preponderance of the evidence the existence of one or more of the grounds for unlawful possession stated in Section 6.01 of this Act.

Section 8.02 Order of Eviction

(a) The Tribal Court shall enter an order of eviction within five (5) calendar days of the hearing, if:

(1) The summons and complaint were served on the defendant in accordance with the requirements provided in subsection 7.03(a) of this Act; and

(2) The plaintiff met its burden pursuant to subsection 8.01 above.

(b) The order of eviction:

(1) shall state the date and time for the defendant to vacate the Premises, including removal of all personal property;

(2) shall terminate the Lease and award possession of the Premises to the plaintiff; and

(3) may award injunctive relief necessary to prevent the defendant from damaging the Premises.

(c) If the Tribal Court finds that the plaintiff failed to meet its burden pursuant to Section 8.01 above, or that the summons and complaint were not served in accordance with the requirements provided in subsection 7.03(a) of this Act, the Tribal Court shall dismiss the action, provided that if the reason for dismissal is solely because of a failure to serve the summons and complaint as required, the Tribal Court shall dismiss the action without prejudice.

Section 8.03 Entry of Judgment

(a) In entering an order of eviction, the Tribal Court shall have the authority to enter a judgment against the defendant:

(1) for unpaid Rent, utilities, damages, and other amounts due and owing under the Lease or this Act; and

(2) for such other relief as permitted under Band Law.

(b) In no event shall either full or partial payment of any amount due under the judgment modify, vacate, or invalidate an order of eviction.

Section 8.04 Enforcement

(a) All orders of eviction shall be executed by an Officer as follows within five (5) calendar days of such Officer's receipt of the order.

(b) The Officer shall:

(1) remove the Tenant and all other evicted persons from the Premises and verbally order them not to re-enter;

(2) provide a copy of the order of eviction to the Tenant;

(3) post a copy of the order of eviction on all exterior doors of the Housing Unit, as applicable, if the Tenant is not present at the time of execution; and

(4) supervise the removal of the possessions of the evicted persons.

Section 8.05 Forcible Eviction

(a) If the defendant or any other person does not voluntarily vacate the Premises by the date stated in the order of eviction, the defendant and all Household Members, Guests, and all other persons may be forcibly removed from the Premises by an Officer.

(b) In the event of forcible eviction, the Landlord shall inventory and then store personal property of the former Tenant for at least twenty (20) days either at the Premises or another suitable location. At any time during the twenty (20) days, the former Tenant may reclaim the personal property by paying the Landlord the reasonable costs of removal and storage.

(c) If Tenant does not reclaim the personal property within such time, the Landlord shall have no duty to store and protect such personal property; provided however, if the Landlord elects to sell any such personal property, the Landlord shall remit to the former Tenant any proceeds in excess of the costs of removal and storage.

(d) Notwithstanding any other provision of this Section 8.05, if any personal property of the former Tenant appears, in any way, to be of cultural, religious, or ceremonial significance, then before disturbing any such personal property, the Landlord shall contact the Band's Department of Language and Culture, which shall coordinate collection or delivery of such personal property. All such personal property shall be collected by, or delivered to, the Band as directed, and the Band shall make reasonable attempts to arrange for its return to the former Tenant. If the former Tenant does not retrieve such personal property from the Band within six (6) months from the date of eviction, such personal property shall revert to the ownership of the Band.

CHAPTER 9 Appeal; and Stay Pending Appeal

Section 9.01 Appeal

Any party to an Unlawful Possession Action arising under this Act may appeal any final order of eviction or judgment of the Tribal Court, or both, to the Court of Appeals by filing a notice of appeal no later than twenty-eight (28) calendar days after entry of such Tribal Court order or judgment.

Section 9.02 Stay Pending Appeal

(a) A defendant subject to an order of eviction under Section 8.02 of this Act or a judgment under Section 8.03 of this Act may file a motion in the Tribal Court for a stay of such order, or judgment, or both, pending appeal, upon an assertion that the defendant intends to file an appeal

thereof, and a showing of good cause for issuance of the stay.

(b) For an appeal of an order of eviction, the Tribal Court shall not grant a stay unless the motion is accompanied by an escrow deposit of one (1) month's rent.

(c) If the plaintiff was awarded a judgment, the Tribal Court shall also enter an escrow order under subsection 7.05(b) and require the defendant to make payments while the appeal is pending.

(d) Failure by the defendant to file a timely appeal in the Court of Appeals shall vacate any stay pending appeal issued by the Tribal Court and, upon confirmation that no appeal was timely filed, the Tribal Court shall enter an order vacating the stay and releasing to the plaintiff the amount escrowed.

CHAPTER 10

Approval of Leasehold Mortgage; Notice of Leasehold Mortgage; and Priority of Leasehold Mortgages

Section 10.01 Approval of Leasehold Mortgage

(a) All Leasehold Mortgages under a Lease must be authorized by the Tribal Council, unless the Lease authorizes a Leasehold Mortgage.

(b) All Leasehold Mortgages shall be approved by the Bureau of Indian Affairs to the extent required under the Residential Leasing Act.

(c) A Leasehold Mortgage shall not be granted under any Lease which expressly prohibits the same.

(d) Pursuant to Article IV, Subsection 3(c) of the Constitution, with regard to any Leasehold Mortgage or other encumbrances in Band Land, "other than for a public utility services, no tribal land [including Band Land] shall be encumbered in favor of any non-member of the Band, or for any other purpose, for a period in excess of twenty-five (25) years without prior approval of a two-thirds (2/3) majority in a referendum in which at least one-sixth (1/6) of the Band's members eighteen (18) years of age and older cast their ballots."

(e) All Leasehold Mortgages shall be recorded as set forth in the Residential Leasing Act.

Section 10.02 Notice of Leasehold Mortgage

(a) Any Mortgagor who grants a Leasehold Mortgage with respect to a Band Land or a Housing Unit, shall notify the Band of the name and address of the Mortgagee, and shall consent to the Band contacting the Mortgagee and obtaining information from the Mortgagee with respect to such Leasehold Mortgage.

(b) If the Band provides notice to the Mortgagee in connection with a Leasehold Mortgage,

the Band shall also endeavor to give such notice to any Surety; provided the Band has notice of such participation.

Section 10.03 Priority of Leasehold Mortgages

All Leasehold Mortgages recorded with respect to Band Land pursuant to Section 10.01(d) of this Act, including loans involving any Surety, shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim (except a lien or claim arising from any Band leasehold tax assessed after the recording of the Mortgage).

CHAPTER 11

Foreclosure Complaint and Summons; Service of Complaint and Summons; Civil Rules and Procedures; Cure of Default; Judgment and Remedy; Foreclosure Evictions; Intervention; and No Merger of Estates

Section 11.01 Foreclosure Complaint and Summons

(a) Upon the default of the Mortgagor, and upon the expiration of any applicable cure period under the Leasehold Mortgage, the Mortgagee, or the Designated Assignee, may commence a Leasehold Mortgage Foreclosure Proceeding in the Tribal Court by filing a verified complaint which shall include the following:

- (1) a citation to the authority for jurisdiction of the Tribal Court;
- (2) naming as defendants the Mortgagor and each person or entity claiming through the Mortgagor subsequent to the recording of the Leasehold Mortgage, including each Subordinate Lienholder (except the Band with respect to a claim for any Band leasehold tax);
- (3) a description of the Band Land subject to the Leasehold Mortgage;
- (4) a statement of the facts concerning the execution of the Lease and Leasehold Mortgage; the recording of the Leasehold Mortgage; the alleged default of the Mortgagor; and such other facts as may be necessary to constitute a cause of action; and
- (5) an allegation that all relevant requirements and conditions prescribed in applicable federal statutes and regulations, Band Law, the Lease and the Leasehold Mortgage, have been complied with by the Mortgagee, or any Designated Assignee.

(b) copies of relevant documents, including the Lease and Leasehold Mortgage, and any assignment thereof, shall be attached to the complaint as exhibits.

(c) When a complaint is filed in the Tribal Court, the Tribal Court shall issue a summons, signed by the judge, which shall specify the date and time of appearance for

the defendant and the hearing.

Section 11.02 Service of Complaint and Summons

(a) After the Tribal Court issues the summons, the Mortgagee or its attorney shall cause the defendant to be served with a copy of the complaint and summons in the same manner as a notice to comply or quit under subsection 6.03(a) of this Act.

(b) In all Leasehold Mortgage Foreclosure Proceedings, a copy of the summons and complaint shall be served upon the Band or the Lessor in the same manner as a notice to comply or quit under subsection 6.03(a)(1) of this Act, within five (5) days after the issuance of the summons. If the location of the Lessor cannot be ascertained after reasonable inquiry, a copy of the summons and complaint shall be sent by first class United States mail to the Lessor in care of the superintendent of the applicable agency of the Bureau of Indian Affairs.

(c) Proof of service shall be made in accordance with subsection 6.03(c) of this Act and shall be immediately filed with the Tribal Court with a copy mailed to the defendant by first class United States mail.

Section 11.03 Civil Rules and Procedures

Except as otherwise provided in this Act, all Leasehold Mortgage Foreclosure Proceedings in Tribal Court shall proceed pursuant to the civil rules and procedures of the Tribal Court and Court of Appeals, including but not limited to, those governing the filing of responsive pleadings.

Section 11.04 Cure of Default

(a) Prior to the entry of a judgment of foreclosure, any Mortgagor or a Subordinate Lienholder may cure any default under the Leasehold Mortgage by tendering the Amount of Delinquency to the Mortgagee, or the Designated Assignee, as applicable, along with reasonable fees and costs incurred by the Mortgagee or the Designated Assignee in connection with the Leasehold Mortgage Foreclosure Proceeding.

(b) Under no circumstances shall the amount required to be tendered pursuant to subsection 11.04(a) above include any amount imposed pursuant to an acceleration clause, provided this provision shall not prohibit the Mortgagee or the Designated Assignee from charging reasonable late fees.

(c) After tendering the required payment to the Mortgagee, or the Designated Assignee, the Mortgagor shall file with the Tribal Court a notice of tender, stating that the Mortgagor tendered the required amount and, may at that time, also file a petition with the Tribal Court for a determination regarding the amount required to be tendered if the Mortgagor disputes such amount.

(d) The Tribal Court shall endeavor to hold a hearing on the petition for determination of the amount required to be tendered within twenty (20) calendar days of filing. After the hearing, the Tribal Court may enter an order reducing the amount required to be tendered if it was calculated in error or included unreasonable fees or costs and, in such event, the Mortgagee, or the Designated Mortgagee, shall refund the Mortgagor within ten (10) calendar days of entry of the order.

(e) Any Subordinate Lienholder who has cured a default shall have included in its lien the amount of all payments made by such Subordinate Lienholder to cure the default, plus interest on such amount at the rate stated in the note for the Leasehold Mortgage.

Section 11.05 Judgment and Remedy

(a) The Tribal Court shall hear and decide all Leasehold Mortgage Foreclosure Proceedings in a prompt and reasonable manner no sooner than thirty (30) calendar days, but no later than sixty (60) days, from the date of service of the complaint and summons on the Mortgagor.

(b) If the alleged default has not been cured at the time of the hearing in accordance with Section 11.04 above, and the Tribal Court finds for the Mortgagee, the Tribal Court shall enter judgment, which shall:

- (1) foreclose the Leasehold Estate of the Mortgagor and each defendant, including each Subordinate Lienholder;
- (2) assign the Leasehold Estate to the Mortgagee, or the Designated Assignee; and
- (3) order the sale of Leasehold Estate; subject however, to all limitations contained in this Act and the Constitution.

(c) Notwithstanding subsections 11.05(b)(2) and (3) above, all assignments, or sales, or both, of a Lease or Leasehold Mortgage to the Mortgagee, or the Designated Assignee, shall be subject to the following:

- (1) the Band shall have right of first refusal on any acceptable offer of purchase which is subsequently obtained by the Mortgagee or the Designated Assignee;
- (2) the Mortgagee, a Designated Assignee or HUD holding the Leasehold Estate by foreclosure may only assign or sell the Leasehold Estate to the Band or a Citizen, and to no other person or entity;
- (3) any assignment or sale, pursuant to subsection 11.05(b)(2) or (3) of this Act, of a Lease or Leasehold Estate used as collateral for a HUD-guaranteed loan under the Section 184 Program shall be subject to the approval of the Tribal Council

in a manner consistent with Band Law and the Constitution, except when the Leasehold Estate is obtained by HUD through foreclosure of a guaranteed mortgage or by deed in lieu of foreclosure;

(4) any assignment or sale, pursuant to subsection 11.05(b)(2) or (3) of this Act, of a Lease or Leasehold Estate used as collateral for a HUD-guaranteed loan under the Section 184 Program shall be subject to the condition that the proceeds be applied first to satisfy the loan guaranteed by HUD (other than for payment of any Band leasehold taxes against the property assessed after the mortgage being foreclosed);

(5) any subsequent transfer of the Lease or Leasehold Estate assigned or sold pursuant to subsection 11.05(b)(2) or (3) of this Act, including by HUD, shall be subject to the approval of the Tribal Council in a manner consistent with Band Law and the Constitution if the Lease or Leasehold Estate is held as collateral for a HUD-guaranteed loan under the Section 184 Program at the time of the transfer;

(6) the Improvements shall not be severed or removed the Premises; and

(7) documentation of any assignment or sale shall be recorded as set forth in the Residential Leasing Act.

Section 11.06 Foreclosure Evictions

(a) All foreclosure evictions shall proceed according to the procedures for an Unlawful Possession Action stated in Chapter 6 of this Act.

(b) All foreclosure evictions shall occur as soon as possible after the date of service of notice upon the Mortgagor of the judgment of foreclosure, and generally not more than sixty (60) days thereafter.

Section 11.07 Intervention

(a) The Band may intervene as a matter of right in all Leasehold Mortgage Foreclosure Proceedings filed in Tribal Court.

(b) Any Lessor, other than the Band, may petition the Tribal Court to intervene in any Leasehold Mortgage Foreclosure Proceeding filed in Tribal Court.

Section 11.08 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.

CHAPTER 12

Prohibited Transfers; Right of First Refusal; Election Not to Exercise; and Election to Exercise

Section 12.01 Prohibited Transfers

(a) A Resident Owner shall not sell, give, devise or transfer any Housing Unit, or any Improvement appurtenant thereto, or any interest therein, except in strict compliance with this Act, including but not limited to, Section 12.02 below.

(b) Any transfer of a Housing Unit, or any Improvement appurtenant thereto, or interest therein, which is contrary to the provisions of this Act, including but not limited to, failure to provide any notice required under Section 12.02 below, shall be null, void, and unenforceable.

Section 12.02 Right of First Refusal

The Band shall have a right of first refusal for any sale, gift, inheritance or transfer of any Housing Unit or Improvement appurtenant thereto, or any interest therein, as set forth below.

(a) If a Resident Owner proposes to sell any Housing Unit, or any Improvement appurtenant thereto, or any interest therein, the Resident Owner shall give the Department of Housing written notice which summarizes all material terms of the sale, along with a copy of the signed offer of purchase. For a period of thirty (30) days following the date of receipt by the Department of Housing of such notice and offer of purchase, the Band shall have the right of first refusal to purchase the Housing Unit, and any Improvement appurtenant thereto, or interest therein, upon the terms described in the notice.

(b) If a Resident Owner proposes to gift a Housing Unit, or any Improvement appurtenant thereto, or interest therein, the Resident Owner shall give written notice thereof to the Department of Housing. For a period of thirty (30) days following the date of receipt by Department of Housing of such notice, the Band shall have the right of first refusal to purchase the Housing Unit, and any Improvement appurtenant thereto, or interest therein. The price to be paid by the Band shall be agreed upon by the Resident Owner and the Band and, if not promptly agreed upon, shall be determined in accordance with the procedure set forth in subsection 12.02(d) below.

(c) If a Resident Owner dies, then the heir or devisee of the Housing Unit, or any Improvement appurtenant thereto, or interest therein, of the deceased Resident Owner, as determined pursuant to Section 13.01 of this Act, shall give written notice thereof to the Department of Housing. For a period of thirty (30) days following the date of receipt by the Department of Housing of such notice, the Band shall have the right of first refusal to purchase the Housing Unit, and any Improvement appurtenant thereto, or interest therein. The price to be paid by the Band shall be agreed upon by the Band and the transferring party and, if not promptly agreed upon, shall be determined in accordance with the procedure set forth in

subsection 12.02(d) below.

(d) If the price to be paid by the Band for a Housing Unit, and any Improvement appurtenant thereto, or interest therein, pursuant to subsection 12.02(b) or (c) above is not promptly agreed upon, the price shall be equal to the fair market value as determined by a single MAI appraiser mutually agreed upon by the transferring party and the Band. In the event of no prompt agreement regarding selection of such a single MAI appraiser, such fair market value shall be the average of the values determined by three MAI appraisers, with one (1) chosen by the transferring party, one (1) chosen by the Band and one (1) chosen by the two (2) selected appraisers. The cost of an appraiser or appraisers shall be paid one-half (1/2) by the transferring party and one-half (1/2) by the Band.

Section 12.03 Election Not to Exercise

(a) The Band may elect not to exercise the right of first refusal by providing written notice of such election to the transferring party.

(b) A certificate executed by the Director, or other duly authorized representative of the Band, certifying that the Band has elected not to exercise the right of first refusal shall be conclusive evidence of that election. A certificate shall be furnished to the transferring party provided that the transferring party requests such a certificate from the Band in writing.

(c) If the Band does not exercise the right of first refusal granted in accordance with subsections 12.02(a) through 12.02(c) above or any extension thereof as provided in subsection 12.04 below, then the Band shall be deemed to have elected not to exercise such right, and the transferring party may proceed to close the proposed transfer at any time after expiration of the refusal period.

Section 12.04 Election to Exercise

The Band shall elect to exercise the right of first refusal by providing written notice of such election to the transferring party within the refusal period, or any extension thereof agreed to in writing by the transferring party. Upon exercise of the right of first refusal, the Band shall be obligated to tender payment to the transferring party of the value agreed upon, or in the absence of agreement, of the fair market value determined pursuant to subsection 12.02(d) of this Act at the time agreed upon for payment, or within ten (10) business days of notice to the parties of the fair market value, whichever is later.

CHAPTER 13

Transfer upon Death; Surviving Citizen Child Priority; Determination of Ineligibility; Reversion to Band; No Separate Transfer or Lease; and Recording

Section 13.01 Transfer upon Death

Subject to the provisions of this Act, including but not limited to, the Band's right of first refusal under Chapter 12, and notwithstanding any Lease term or any provision of law, any right of

succession to any residential Leasehold Estate and Improvements of any Citizen or Resident Owner who dies, whether testate or intestate, shall exist only as provided in this Act. The death of a Citizen or Resident Owner holding a residential Lease shall reopen the Lease, solely to enable the Department of Housing to transfer or terminate the Lease, which actions shall be governed exclusively by the order of priority set forth below.

(a) If a Citizen Lessee dies and leaves a Surviving Citizen Spouse, then the deceased Citizen's rights in Leasehold Estate shall be transferred to the Surviving Citizen Spouse for the remaining term of the Lease, along with any renewal term thereof; provided:

(1) the Band may terminate the Leasehold Estate with at least ninety (90) days prior written notice, if at any time after the date of the Citizen's death, the Surviving Citizen Spouse does not reside at the leased Premises; and

(2) any Mortgagee or Surety must consent to the transfer, if required by the Mortgage or Surety agreement.

(b) If a Citizen Lessee dies and leaves at least one (1) Surviving Citizen Child in the custody of a Surviving Non-Citizen Spouse, then the deceased Citizen's rights in the Leasehold Estate shall be transferred to the Surviving Non-Citizen Spouse for the remaining term of the Lease, along with any renewal term thereof; provided:

(1) the term of the Lease, including any renewal, shall not exceed twenty-five (25) years commencing on the date of the Citizen's death;

(2) the Band may terminate the Leasehold Estate with at least ninety (90) days prior written notice, if:

(A) the Surviving Non-Citizen Spouse does not reside at the leased Premises at any time after the date of the Citizen Spouse's death; or

(B) the Surviving Non-Citizen Spouse marries a Non-Citizen at any time, and no Surviving Citizen Child resides at the leased Premises; and

(3) any Mortgagee or Surety must consent to the transfer, if required by the Mortgage or Surety agreement.

(c) If a Citizen Lessee dies and leaves at least one (1) Surviving Citizen Child who is or will be placed in the custody of any person other than a Surviving Citizen Spouse or Surviving Non-Citizen Spouse, and such custodian elects to reside at the leased Premises, then the deceased Citizen's rights in the Leasehold Estate shall be transferred to the custodian for the benefit of the Surviving Citizen Child during the period of minority; provided:

(1) the Band may terminate the Leasehold Estate with at least ninety (90) days prior written notice, if:

(A) the custodian no longer resides at the leased Premises at any time after

occupancy;

(B) no Surviving Citizen Child remains in the custody of the custodian because of death of the Surviving Citizen Child or through action of a court of competent jurisdiction granting guardianship or terminating parental rights; or

(C) the youngest Surviving Citizen Child in the custody of the custodian becomes an Adult; and

(2) any Mortgagee or Surety must consent to the transfer, if required by the Mortgage or Surety agreement.

(d) If a Citizen Lessee dies and leaves a Surviving Non-Citizen Spouse who resided at the leased Premises on the date of the Citizen's death, and there is no Surviving Citizen Child, then the deceased Citizen's rights in the Leasehold Estate shall be transferred to the Surviving Non-Citizen Spouse for the remaining term of the Lease, along with renewal thereof; provided:

(1) the term of the Lease, including any renewal, shall not exceed twenty-five (25) years commencing on the date of the Citizen's death;

(2) the Band may terminate Leasehold Estate with at least ninety (90) days prior written notice, if the Surviving Non-Citizen Spouse:

(A) does not reside at the leased Premises at any time after the date of the Citizen's death; or

(B) marries any Non-Citizen; and

(3) any Mortgagee or Surety must consent to the transfer, if required by the Mortgage or Surety agreement.

(e) If a Citizen Lessee dies and leaves the Leasehold Estate by will to a devisee who is an Adult Citizen and none of subsections 13.01(a) through 13.01(d) above are applicable, the following shall govern transfer of the deceased Citizen's rights in Leasehold Estate:

(1) if the devisee desires to reside at the leased Premises, the devisee shall have one hundred twenty (120) days from the date of the grantor Citizen Lessee's death to notify the Department of Housing of such desire and to make application for transfer of the Leasehold Estate;

(2) if the devisee does not desire to reside at the leased Premises, the devisee may file a written request with the Department of Housing to transfer the Leasehold Estate to an eligible Adult Citizen for the remaining term, including any renewal term thereof; provided the Leasehold Estate shall terminate unless the transfer is completed prior to expiration or termination of the Lease, including any renewal term thereof, or within two

(2) years of the grantor Citizen Lessee's death, whichever is sooner, and any Mortgagee or Surety must consent to the transfer, if required by the Mortgage or Surety agreement; and

(3) the devisee, subject to the provisions of this Act, including but not limited to Section 3.02, may file a written request with the Department of Housing to Sublease the Leasehold Estate to an eligible Adult Citizen, provided: (A) the deceased Citizen Lessee was a Resident Owner; (B) the Sublease shall terminate upon expiration or termination of the Lease or any renewal term thereof, or within two (2) years of the grantor Citizen Lessee's death, whichever is sooner; and (C) any Mortgagee or Surety must consent to the Sublease, if required by the Mortgage or Surety agreement.

(f) If a Citizen Lessee dies and leaves the Leasehold Estate by will to a devisee who is a Non-Citizen, and none of subsection 13.01(a) through (e) are applicable, the following shall govern transfer of the deceased Citizen's rights in Leasehold Estate:

(1) the devisee shall not be permitted to reside at the leased Premises, and as applicable, shall vacate the leased Premises within ninety (90) days of the date of the Citizen's death;

(2) the devisee may file a written request with the Department of Housing to transfer the Leasehold Estate to an eligible Adult Citizen for the remaining term, including any renewal term thereof; provided the Leasehold Estate shall terminate unless the transfer is completed prior to expiration or termination of the Lease, including any renewal term thereof, or within two (2) years of the grantor Citizen Lessee's death, whichever is sooner; and any Mortgagee or Surety must consent to the transfer, if required by the Mortgage or Surety agreement; and

(3) the devisee, subject to the provisions of this Act, including but not limited to Section 3.02, may file a written request with the Department of Housing to Sublease the Leasehold Estate to an eligible Adult Citizen, provided: (A) the deceased Citizen Lessee was a Resident Owner; (B) the Sublease shall terminate upon expiration or termination of the Lease, including any renewal term thereof, or within two (2) years of the grantor Citizen Lessee's death, whichever is sooner; and (C) any Mortgagee or Surety must consent to the Sublease, if required by the Mortgage or Surety agreement.

Section 13.02 Surviving Citizen Child Priority

Notwithstanding Section 13.01 of this Act:

(a) within ninety (90) days prior to termination of any Leasehold Estate pursuant to subsection 13.01(a)(1), 13.01(b)(2), or 13.01(c)(1), any Surviving Citizen Child who has become an Adult may make written application, with the written consent of the Lessee, to have the Department of Housing issue a new Lease of the Leasehold Estate and Improvements to that Adult Citizen, originally a Surviving Citizen Child. If required by the Mortgage or Surety Agreement, the issuance of a new Lease is subject to the consent of a Mortgagee or Surety.

(b) if more than one (1) person qualifies for transfer of the Leasehold Estate pursuant to subsection 13.01(c) of this Act, then the Department of Housing, in consultation with the Band's Department of Social Services, shall determine such transfer based upon the best interests of each Surviving Citizen Child. Any such determination shall be subject to review under the grievance procedures of the Department of Housing.

Section 13.03 Determination of Ineligibility

(a) If any person to whom a Leasehold Estate has been transferred or Subleased pursuant to subsections 13.01(a) through (e) of this Act, as applicable, subsequently becomes ineligible to reside at the leased Premises for any reason whatsoever, then such person shall promptly notify the Department of Housing of such ineligibility.

(b) If, prior to transfer or Sublease of a Leasehold Estate under Section 13.01 or 13.02 of this Act, the Department of Housing deems any person to whom a transfer or Sublease of a Leasehold Estate is to be made pursuant to those Sections to be ineligible to reside at the leased Premises, then the next highest order of priority, if any, shall apply.

Section 13.04 Reversion to Band

(a) While the Department of Housing processes a completed application and seeks all required approvals for any Lease which may be issued under subsection 13.02(b) above, Section 4.03 of this Act and subsection 13.04(b) below shall be tolled for such Lease.

(b) The Leasehold Estate and all Improvements which are located upon the Leasehold Estate shall be deemed abandoned and shall revert to the Band if: (1) transfer of the Lease does not occur pursuant to subsection 13.01(a) through (f) or a new Lease is not issued pursuant to subsection 13.02(b) of this Act, as applicable; or (2) the Leasehold Estate expires or is terminated, including but not limited to, pursuant to subsection 13.01(a) through (f) of this Act.

Section 13.05 No Separate Transfer or Lease

In any transfer or Sublease of a Leasehold Estate under Section 13.01, or issuance of a new Lease under Section 13.02(b) this Act:

(a) the Leasehold Estate and the Improvements shall not be transferred, Subleased or otherwise conveyed separately; and

(b) in regard to a transfer, the Improvements may be removed and sold, subject to the provisions of this Act, including but not limited to, Chapters 4 and 12 of this Act; provided however, the Improvements may not be removed and sold in any transfer pursuant to subsection 13.01(c) or any Sublease pursuant to subsection 13.01(e)(3) or 13.01(f)(3) of this Act.

Section 13.06 Recording

Documentation of each transfer or Sublease of a Leasehold Estate under Section 13.01 of this

Act, and of any new Lease issued under Section 13.02(b) of this Act, and of any reversion of a Leasehold Estate to the Band under Section 13.04(b) of this Act shall be recorded with the Bureau of Indian Affairs Land Titles and Records Office with jurisdiction over the Band Land.

CHAPTER 14

No Bar to Other Actions; and Limited Waiver of Sovereign Immunity

Section 14.01 No Bar to Other Actions

The prosecution of an action under this Act, including the entry of an order of eviction or judgment, shall not bar or prevent the Band from pursuing any other action pursuant to Band Law.

Section 14.02 Limited Waiver of Sovereign Immunity

(a) Section 5.02 of this Act grants the Tenant specific remedies in the event the Landlord does not comply with the Lease or this Act.

(b) Notwithstanding any other provision of this Act, including but not limited to Section 5.02, in the event the Tribal Court finds that the Band, as the Landlord or Lessor, failed to comply with the Lease or this Act, the Tribal Court shall have jurisdiction to award only declaratory and injunctive relief; provided however, the Tribal Court may award reasonable attorney fees and court costs to the claimant.

(c) The Tribal Court may tax attorney fees and costs to a Lessee if the Tribal Court determines that a claim was frivolous or was brought to harass any agency, department, officer, employee, or representative of the Band.

(d) The Band hereby waives the sovereign immunity of the Band, its officers, employees, and representatives for the limited purposes of enforcing in Tribal Court the obligations of the Band arising under Section 12.04 of this Act, or awarding relief stated in subsection 14.02(b) of this Act.

LEGISLATIVE HISTORY

Housing Act, enacted May 21, 2012 by Res. No. 12-05-21-03; Amended April 3, 2013 by Res. No. 13-04-03-05; Amended November 24, 2014 by Res. No. 14-11-24-06; Amended November 29, 2017 by Res. No. 17-11-29-01; Amended September 2, 2020 by Res. No. 20-09-02-02.