

EVICTION PROCEDURES ORDINANCE

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General Provisions

2.06.001 Title

This ordinance shall be known as the Eviction Procedures Ordinance for the Skokomish Indian Tribe.

2.06.002 Liberal Construction

This Ordinance shall be liberally construed to give full effect to the objectives and purposes for which it was enacted.

2.06.003 Severability

If any provision of this Ordinance, or its application to any person, legal entity or circumstance, is held invalid, the remainder of the Ordinance, or the application of the provision to other persons, legal entities, or circumstances, shall not be affected.

2.06.004 Jurisdiction

The provisions of this ordinance shall apply to all persons and property subject to the governing authority of the Skokomish Indian Tribe as established by the Tribal Constitution and by the laws of the United States.

2.06.005 Definitions

- (a) "Tribe" shall refer to the Skokomish Indian Tribe as defined in the Tribal Constitution.
- (b) "Department" shall mean the Skokomish Housing Department.
- (c) "Tribal Court" shall mean the tribal court as established by the laws of this Tribe or such body as may now or hereafter be authorized by the laws of this Tribe to exercise the powers and functions of a court of law.
- (d) "Lessor" shall refer to the Tribe and to any other person or entity who shall have an interest in real property which for a limited time has been leased or rented to another.
- (e) "Rental Agreement" shall refer to (1) any agreement with the Skokomish Housing Department for rental of a home; (2) an agreement pursuant to the Tribe's Mutual Help Home Ownership Program; or (3) a lease agreement with a private lessor.
- (f) "Tenant" shall mean any person who occupies real property under a lease, rental agreement, or other agreement with a lessor as defined in this ordinance.
- (g) "Unlawful Detainer Action" shall be a suit brought before the Tribal Court to terminate a tenant's interest in real property and/or to evict any person from occupancy of real property.
- (h) "Writ of Restitution" is an order of the Tribal Court (1) restoring an owner or lessor to possession of real property and (2) evicting a tenant or other occupant therefrom.
- (i) "Nuisance" is the maintenance on real property of a condition which: (1) unreasonably threatens the health or safety of the public or neighboring land users; or (2) unreasonably and substantially interferes with the ability of neighboring property users to enjoy the reasonable use and occupancy of their property.

(j) "Waste" is spoil or destruction by a tenant of lands, buildings, gardens, trees or other improvements which results in substantial injury to the lessor's interest in the property.

(k) Gender; singular and plural. Reference to persons by terms denoting one sex shall be taken as referring to either sex. Reference to persons by a term denoting the singular shall include the plural.

2.06.006 Application

This Eviction Procedures Ordinance applies to evictions from rental housing and from Mutual Help Home Ownership Program housing. Evictions pursuant to a judgment of foreclosure are governed by the Skokomish Mortgage Lending, Foreclosure, and Eviction Ordinance (S.T.C. 4.09).

Grounds for Eviction

2.06.010 Grounds for Eviction

A person may be evicted for:

(a) Nonpayment of rent under a rental agreement, or ten (10) calendar days following the first day of the month in a month-to-month tenancy.

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

(c) Nuisance, intentional or reckless damage, destruction, or injury to the property of the lessor or other tenants, or disturbing another tenant's right to quiet enjoyment of a dwelling unit.

(d) Serious or repeated violations of the rental agreement, any reasonable rules or regulations adopted in accordance with this Ordinance, or any applicable building or housing codes.

(e) Criminal activity.

(f) Drug Activity, including but not limited to manufacture, sales, or use of any drug, including the misuse of prescription drugs not prescribed by a doctor to the person using the drugs. This includes all visitors, over night guest, any family member, residing in the unit or not.

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

(h) Under other terms in the rental agreement which do not conflict with the provisions of this Ordinance.

2.06.011 Notice of Default and Termination Requirements

(a) *When Notice of Default and Termination is Required.* When a lessor desires to obtain possession of a dwelling unit, and when there exists one or more legally cognizable reasons to evict the tenant or tenants occupying the unit as set forth in § 2.06.010, the lessor shall give notice to the adult tenants to terminate possession of such dwelling unit according to the provisions of this Ordinance.

(b) *Purpose of Notice of Default and Termination.* The purpose of the notice of default and termination is to provide advance notice to the tenant of a specific problem which needs to be addressed. It is also intended to induce the tenant to enter into discussions with the Department or the lessor in order to resolve the problem.

(c) *Statement of Grounds for Eviction Required.* The notice of default and termination shall be addressed to the contracted tenant(s) of the dwelling unit and shall state the legally cognizable reasons(s) for default and termination of the tenancy and the date by which the tenant is required to terminate possession of the dwelling unit.

(d) *Time Requirements for Notice.* The tenant shall have thirty (30) days from the date the notice of default and termination is served either to cure the default or vacate the premises.

2.06.012 Procedure for Service of Notice

Any notice of default and termination must be in writing, and must be delivered to the tenant in the following manner:

- (a) Delivery must be made by an adult person, who may be a staff member of the Department or Tribe.
- (b) Delivery will be effective when it is:
 - (1) Personally delivered to a tenant with a copy delivered by mail, or
 - (2) Personally delivered to an adult living in the premises with a copy delivered by mail.
- (c) If the notice cannot be given by means of personal delivery, the notice may be delivered by means of:
 - (1) Certified mail, return receipt requested, at the last known address of the tenant, or
 - (2) Securely taping a copy of the notice to the main entry door of the premises in such a manner that it is not likely to blow away, and by sending a copy first class mail, postage prepaid, addressed to the tenant at the premises.
 - (3) The notice is deemed to have been served on the third day after both the first class mail and the certified mail have been deposited in the U.S. mail, unless the third day falls on a Sunday or a federal holiday, then on the first day other than a Sunday or a federal holiday following the third day.
- (d) If the tenant cannot be found within the Skokomish Reservation, or within the State of Washington, service may be made by publication upon a showing by the lessor to the Court that diligent efforts were made to serve the Notice and Complaint on the tenant and that for sufficient reasons service could not be made. Diligent efforts shall include attempts of service pursuant to §§ 2.06.012 (b) and (c).
- (e) Service by publication shall be made in a newspaper of general circulation, in the county where the tenant is believed to reside, at least one (1) time a week for each of three (3) consecutive weeks, or if the tenant is believed to reside within the boundaries of the Skokomish Reservation, service by publication may be made in the tribal newsletter, and publication in its monthly edition shall be sufficient. In either case, service shall be deemed complete thirty (30) days after the first publication.

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

2.06.013 Pre-Eviction Options

(a) *Section Not Applicable to Skokomish Housing Programs.* Pre-eviction options for rental housing provided by the Skokomish Housing Department or housing governed by the Mutual Help Home Ownership Programs are outlined in the Department's Policies and Procedures for these programs.

(b) *Negotiated Settlement.* After a Notice of Default and Termination is served upon a tenant, the lessor and tenant may engage in discussions to avoid a proceeding to evict and to settle the issues between the parties. The agreement to enter into discussions will not affect the rights of the parties unless the parties reach an agreement to waive any of their rights.

(c) *Stay of Proceedings.* Where the parties mutually agree in good faith to proceed with such discussions, and judicial eviction procedures have been initiated, the Court will stay such proceedings until it is notified by one or both parties that a hearing is required or that a settlement has been reached.

(d) *Settlement Options.* In reaching an agreement, the parties may consider, but are not limited to the following options:

- (1) The parties may employ the use of advocates or attorneys;
- (2) The parties may employ the use of a mediator or conciliator;
- (3) The parties may agree to arbitrate the issues in binding arbitration;
- (4) The parties may agree to establish a payment plan for the tenant;
- (5) The parties may agree to order rent payments out of per capita payment or through garnishment;
- (6) The parties may agree to establish a Power of Attorney in another person/agency to fulfill rights or obligations of either lessor or tenant;
- (7) The parties may agree to remediate the action in part or in whole through appropriate recalculation of rent;
- (8) The parties may agree to order the tenant to perform work for the lessor or the owner to pay off back rent due and/or damages;
- (9) The parties may agree to any other barter for services and goods, or to any other means of securing a fair exchange of value for the use of the dwelling;
- (10) The parties may agree to dismiss the matter in exchange for any agreement reached;
- (11) The parties may agree to stipulate to a judgment to be entered by the Court.

2.06.014 Notice to Vacate

- (a) If on the 31st day after the notice of default and termination was served the tenant has neither cured the default nor vacated the premises, a notice to vacate shall be served immediately.
- (b) The notice to vacate shall be served in the manner described in §2.06.012.
- (c) The tenant shall have seven (7) days to vacate the premises. If the tenant continues to occupy the premises after seven days, the lessor may commence a legal action for judicial eviction.

Judicial Eviction Procedure

2.06.020 Complaint and Summons

(a) If, after the date set forth in the notice of default and termination, the tenant has not terminated possession, the owner of real property or lessor shall commence an action for unlawful detainer by filing with the Tribal Court in writing a complaint, signed by the owner, lessor, an agent or attorney, stating:

- (1) the names of the adult tenant(s) against whom the suit is brought;
- (2) a description of the rental agreement, if any;
- (3) the address or reasonable description of the location of the premises;
- (4) the grounds for eviction;
- (5) a statement showing that the notice of default and termination and any required termination notices have been served in accordance with this ordinance or other applicable law; and
- (6) a statement of the relief demanded, including any claim(s) for possession of the dwelling unit, damages, fees, costs, or other special relief.

(b) When the complaint is filed in the Tribal Court, the Tribal Court Clerk shall set a date for the tenant to appear before the Court to contest the complaint. The date for appearance for answering the complaint shall be no later than the next scheduled court date, unless the next scheduled court date is less than two (2) days after the complaint has been filed. If this is the case, then the date for appearance will be the regular Court day following the next regular Court day. Upon setting of the date for appearance, the lessor shall have tenant(s) served with the complaint and a summons to appear for the court date.

2.06.021 Service of Summons and Complaint

A copy of the summons and complaint shall be served upon the defendant(s) by one of the methods authorized in §2.06.012 above.

2.06.022 Commencement of Proceedings

(a) If the tenant appears before the Court in person or in writing to contest the complaint, the Court shall set a hearing date. Any written response shall state any defenses or factual disputes and where any defendant appears in person, a written response shall be served upon the plaintiff within five (5) calendar days of any hearing, excluding weekends and holidays.

(b) The Court shall set a hearing date which is no more than fifteen (15) calendar days following the date for appearance, except when the hearing date would fall on a weekend or holiday, and in such a situation on the first regular Court day following that date.

(c) If the defendant is renting from a private landlord, the defendant may, for good cause shown, and upon the payment of a reasonable sum for the fair rental value of the premises between the date on which the complaint was filed and the date of hearing, obtain an extension of time, beyond the fifteen (15) day period. The Court may refuse to extend the date of hearing where the complaint is based upon nuisance or injuries, and shall not extend the date of hearing where the complaint is based upon conduct which is alleged to constitute a serious danger to public health, safety, or peace. This section does not apply to Skokomish Housing Programs.

2.06.023 Defenses

The Court shall grant the remedies allowed in this Ordinance, unless it appears by the evidence that:

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

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

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

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

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

(f) The lessor is evicting the tenant because of his/her race, sex, sexual orientation, religion, age, marital status, family status, or because the tenant is disabled.

(g) The lessor terminated the tenancy in retaliation for the tenant's attempt to secure his rights under this Ordinance or to force the lessor to comply with his duties under this Ordinance.

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

2.06.024 Discovery and Prehearing Proceedings

Extensive, prolonged, or time consuming discovery and prehearing proceedings will not be permitted, except in the interests of justice and for good cause shown by the moving party. Discovery shall be informal, and reasonably provided on demand of a party, and it shall be completed within five (5) calendar days of the date of hearing.

Requests for discovery shall be made no later than three (3) calendar days following the setting of a hearing date. The Court may enter reasonable orders requiring discovery or protecting the rights of the parties upon reasonable notice.

2.06.025 Evidence

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

- (a) All evidence may be admitted which can be shown to be relevant and material to the case.
- (b) Fairness will dictate the decision of the judge on challenges to admissibility of evidence.
- (c) The Court may avail itself of any recognized and authoritative materials, books or documents as guidance in reaching a decision on the admissibility of evidence.
- (d) Evidence of customs and traditions of the Tribe shall be freely admitted.
- (e) Hearsay objections will not be permitted to procedurally deny the Court access to reasonable reliable information which would aid in reaching a just decision. Where a hearsay objection is made, the Court will make an independent determination of the competency of the evidence which is sought to be offered. Objections may be overruled where facts indicate that the evidence is relevant and material and reasonably competent under the circumstances. Hearsay evidence may be freely admitted where all parties to the out of Court statement are present before the Court and qualified to testify as to the statement made.
- (f) At the discretion of the judge, evidence may be excluded if its value as proof is outweighed by the risk that its admission will create a substantial risk of undue prejudice; confuse the issues; or unfairly surprise the opposing party.
- (g) Upon request of a party, the Court may take judicial notice of specific facts which are so certain as not to be subject to reasonable dispute.

2.06.026 Burden of Proof

The burden of proof in all proceedings under this Ordinance shall be preponderance of the evidence.

2.06.027 No Right to Jury Trial

Court proceedings pursuant to this ordinance shall be heard by a judge. No party has a right to a jury trial.

Judgment and Appeals

2.06.030 Judgment

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

- (1) Enter a Writ of Restitution and order the immediate eviction of a tenant and delivery of the premises to the lessor;

- (2) Grant actual damages as provided in the agreement of the parties or this Ordinance, including interest;
- (3) Order the payment of attorneys' fees and, where allowed by law or agreement, costs and expenses of litigation;
- (4) Grant any relief provided in this Ordinance or as prayed for in the complaint.

(b) If a tenant fails to appear in person or in writing on or before the date of appearance or for the hearing, the Court shall enter a default judgment on behalf of the lessor following a hearing to determine whether relief should be granted and the kind of relief that should be granted.

2.06.031 Form of Judgment

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

2.06.032 Execution of Judgment

An eviction order may be executed by a duly authorized tribal law enforcement officer or officer of the Court, appointed by the Court for such a purpose. To execute the order, the officer shall (A) remove all the evicted persons from the dwelling and verbally order them not to re-enter; (B) provide a copy of the order of eviction to all adult tenants; (C) post copies of the order of eviction on the doors of the premises if there is not any adult tenant present at the time of execution; and (D) supervise the removal of the possessions of the evicted persons. Any law enforcement officer shall, upon receipt of an order of the Court, execute the judgment or order made by it within five (5) calendar days of the date of the judgment or order and make a report to the Court on what was done to enforce it. Any law enforcement officer to whom a judgment or order is given for enforcement who fails, in the absence of good faith, or refuses to execute it shall be subject to the payment of reasonable damages, costs, and expenses to a party for failure to execute the judgment and/or suspension from employment. This Section shall also apply to any judgment on behalf of a tenant obtained under the general tribal civil procedure code and/or tribal small claims procedure code. All other portions of the judgment shall be subject to execution in the manner otherwise provided under tribal law.

2.06.033 Appeals

Appeals under this Chapter shall be according to the general tribal appellate provisions.

Eviction

2.06.040 Notice to Leave the Premises

Any notice to leave a premises shall be by written order of the court, and shall be delivered to the tenant in the following manner:

- (a) Delivery shall be made by:
 - (1) A law enforcement officer of the Tribe or an agency of the United States Government, or

- (2) Any person authorized by the Tribal Court.
- (b) Delivery will be effective when it is:
 - (1) Personally delivered to a tenant with a copy delivered by mail, or
 - (2) Personally delivered to an adult living in the premises with a copy delivered by mail, or
- (c) If the notice cannot be given by means of personal delivery, the notice may be delivered by means of:
 - (1) Certified mail, return receipt requested, at the last known address of the tenant, or
 - (2) Securely taping a copy of the notice to the main entry door of the premises in such a manner that it is not likely to blow away, and by sending a copy first class mail, postage prepaid, addressed to the tenant at the premises.
 - (3) The notice is deemed to have been served on the third day after both the first class mail and the certified mail have been deposited in the U.S. mail, unless the third day falls on a Sunday or a federal holiday, then on the first day other than a Sunday or a federal holiday following the third day.
- (d) If the tenant cannot be found within the Skokomish Reservation, or within the State of Washington, service may be made by publication upon a showing by the lessor to the Court that diligent efforts were made to serve the Notice and Complaint on the tenant and that for sufficient reasons service could not be made. Diligent efforts shall include attempts of service pursuant to §§2.06.012 (b) and (c).
- (e) Service by publication shall be made in a newspaper of general circulation, in the county where the tenant is believed to reside, at least one (1) time a week for each of three (3) consecutive weeks, or if the tenant is believed to reside within the boundaries of the Skokomish Reservation, service by publication may be made in the tribal newsletter, and publication in its monthly edition shall be sufficient. In either case, service shall be deemed complete thirty (30) days after the first publication.

2.06.041 Forcible Eviction

- (a) Where the Court orders an eviction, and the tenant or any other occupant of the premises refuses to vacate voluntarily by the effective date of that Order, the tenant or other occupants may be forcibly removed from the premises by a tribal law enforcement officer. At the hearing where the eviction is ordered, the Court shall inform the tenant that if he does not vacate the premises voluntarily by the effective date, he and the other occupants will be subject to forcible eviction, and their property will be subject to storage, sale and disposal as set forth in subsection (c) below.
- (b) Following eviction, the Court may allow the lessor or the United States Government access to any property leased by either of them for purposes of preserving and securing it.
- (c) Following forcible eviction of the tenant and/or other occupants, the former occupant's personal property shall be stored by the owner of the premises for at least thirty (30), but no more than sixty (60), days, either on the premises or at another suitable location. In order to reclaim their property, the former occupants shall pay the reasonable costs of its removal and storage. If they do not pay such costs within sixty (60) days, the owner is authorized to sell or dispose of the property in order to recover these costs. The lessor shall not condition return of the former occupant's personal property on the payment of any costs or fees other than those of removal and

storage of those personal possessions. Should the lessor attempt to condition return of personal possessions on payment of any other cost or fee, the lessor shall forfeit his right to the costs of removal and storage. Upon request by the former occupants, the lessor shall provide them with pertinent information concerning the sale, including the time, date and location. Any proceeds from the sale in excess of the storage and removal costs shall be remitted to the former occupants. Nothing in this section shall be construed to prevent the former occupants from reclaiming property remaining after the sale if they can arrange to do so in a manner satisfactory to the owner. If the abandoned property is of cultural, religious, or ceremonial significance, the lessor shall have an affirmative duty to give it to the Tribe's cultural department.

2.06.042 No Self-Help Eviction

No lessor may compel a tenant to vacate any premises in a forceful fashion or way which causes a breach of the peace. All lessors shall give a notice of default and termination and obtain a court order as provided in this Ordinance.

Miscellaneous Provisions

2.06.050 Miscellaneous Complaints and Claims

Any miscellaneous complaint or claim including a complaint or claim by a tenant which does not fall within the procedures of this Ordinance may be made under the general tribal civil procedure code and/or tribal small claims procedure code.

2.06.051 Security Deposits

(a) *Section Not Applicable to Skokomish Housing Programs.* This section is inapplicable to rental housing provided by the Skokomish Housing Department and to housing governed by the Mutual Help Home Ownership Program. Security deposits for Skokomish Housing Programs are covered by the Department's policies.

(b) *Security Deposit Limits.* A lessor may demand a security deposit of an amount equal to one-hundred dollars (\$100) or one month's periodic rent, whichever is greater, which may be in addition to the current month's rent. Additional security deposits may be allowed for special circumstances such as animals or pets or tenant history or prior damages.

(c) *Payment of Security Deposit at Termination of Tenancy.* The person who is the lessor at the time a tenancy is terminated shall have thirty (30) days to pay to the tenant or former tenant the amount of the security deposit that was deposited by the tenant with the person who was lessor at the time such security deposit was deposited, less the value of any damages which any person, who was a lessor of such premises at any time during the tenancy of such tenant, has suffered as a result of such tenant's failure to comply with such tenant's obligations. Damages shall not include normal wear and tear.

(d) *Action to Reclaim Security Deposit.* Any tenant may bring a civil action in Tribal Court to reclaim any part of his security deposit which may be due.

2.06.052 Alternate Remedies

In those cases in which the persons or property are subject to the jurisdiction of the courts of the State of Washington or the United States, the remedies and procedures provided by this Ordinance are in the alternative to the remedies and procedures provided by the laws of the State of Washington or the United States.