

CHAPTER 40 - ACTIONS AND PROCEEDINGS IN PARTICULAR CASES CONCERNING PROPERTY

GENERAL PROVISIONS

[SECTION 40.005](#) Zoning requirements to be considered by court.

ACTIONS TO DETERMINE CONFLICTING CLAIMS TO REAL PROPERTY

[SECTION 40.010](#) Actions may be brought against adverse claimants.
[SECTION 40.020](#) Plaintiff not entitled to costs on default judgment or disclaimer.
[SECTION 40.030](#) Plaintiff may recover damages for property withheld where his right terminated during pendency of action.
[SECTION 40.040](#) Value of permanent improvements to be allowed as setoff.
[SECTION 40.050](#) Mortgage not deemed conveyance.
[SECTION 40.060](#) Court may enjoin injury to property during foreclosure.
[SECTION 40.070](#) Damages may be recovered for injury to possession after sale and before delivery.
[SECTION 40.080](#) Action not to be prejudiced by alienation pending suit.
[SECTION 40.090](#) Action by person in adverse possession: Verified complaint; defendants; notice of pending litigation.
[SECTION 40.100](#) Action by person in adverse possession: Issuance, service and posting of summons; rights of unknown persons.
[SECTION 40.110](#) Court to hear case; must not enter judgment by default; effect of final judgment.
[SECTION 40.120](#) Remedy is cumulative.
[SECTION 40.130](#) Adverse action on mining claim.

ACTIONS FOR NUISANCE, WASTE AND WILLFUL TRESPASS ON REAL PROPERTY

[SECTION 40.140](#) Nuisance defined; action for abatement and damages; exceptions.
[SECTION 40.145](#) Cleanup of Toxic Contamination From Illegal Drug Manufacturing
[SECTION 40.150](#) Action for waste; judgment may be for treble damages.
[SECTION 40.160](#) Action for trespass for cutting or carrying away trees or wood; treble damages.
[SECTION 40.170](#) Damages in actions for forcible or unlawful entry may be trebled.
[SECTION 40.180](#) Manner of working mine or mining claim; assessment of damages.
[SECTION 40.190](#) Continuation of judgment lien.
[SECTION 40.200](#) Application for order of survey; notice and order; report of survey; costs of and damages caused by survey.
[SECTION 40.210](#) Order allowing party to survey and measure land in dispute; contents and service of order; liability for unnecessary injury.

SUMMARY PROCEEDINGS FOR OBTAINING POSSESSION OF REAL PROPERTY, RECREATIONAL VEHICLE OR MOBILE HOME

[SECTION 40.215](#) Definitions.
[SECTION 40.220](#) Entry to be made only when legal and in peaceable manner.
[SECTION 40.230](#) Forcible entry defined.
[SECTION 40.240](#) Forcible detainer defined.
[SECTION 40.250](#) Unlawful detainer: Possession after expiration of term.
[SECTION 40.251](#) Unlawful detainer: Possession of property leased for indefinite time after notice to quit; older or disabled person entitled to extension of period of possession upon request.
[SECTION 40.2512](#) Unlawful detainer: Possession after default in payment of rent.

SECTION 40.2514	Unlawful detainer: Assignment or subletting contrary to lease; waste; unlawful business; nuisance; violations of controlled substances laws.
SECTION 40.2516	Unlawful detainer: Possession after failure to perform conditions of lease; saving lease from forfeiture.
SECTION 40.252	Unlawful detainer: Contractual provisions void if contrary to specified periods of notice; notice to quit or surrender by colessor is valid unless showing other colessors did not authorize notice.
SECTION 40.253	Unlawful detainer: Supplemental remedy of summary eviction and exclusion of tenant for default in payment of rent.
SECTION 40.254	Unlawful detainer: Supplemental remedy of summary eviction and exclusion of tenant from certain types of property.
SECTION 40.255	Removal of person holding over after 3-day notice to quit; circumstances authorizing removal.
SECTION 40.260	Tenant of agricultural lands may hold over if not notified.
SECTION 40.270	Tenant has similar remedies against subtenant.
SECTION 40.280	Service of notices to quit; proof required before issuance of order to remove.
SECTION 40.290	Parties defendant; persons bound by judgment.
SECTION 40.300	Contents of complaint; issuance and service of summons; temporary writ of restitution; notice, hearing and bond.
SECTION 40.310	Issue of fact to be tried by jury if proper demand made.
SECTION 40.320	Proof required of plaintiff and defendant on trial.
SECTION 40.330	Amendment of complaint to conform to proof; continuance.
SECTION 40.340	Adjournments.
SECTION 40.360	Judgment; damages; execution and enforcement.
SECTION 40.370	Verification of complaint and answer.
SECTION 40.380	Provisions governing appeals.
SECTION 40.385	Stay of execution upon appeal; duty of tenant who retains possession of premises to pay rent during stay.
SECTION 40.390	Appellate court not to dismiss or quash proceedings for want of form.
SECTION 40.400	Rules of practice.
SECTION 40.420	Form of writ of restitution; execution.
SECTION 40.425	Notice of execution on writ of restitution.

ACTIONS FOR FORECLOSURE OF REAL MORTGAGES

SECTION 40.430	Action for recovery of debt secured by mortgage or other lien; “action” defined.
SECTION 40.433	“Mortgage or other lien” defined.
SECTION 40.435	Judicial proceedings in violation of SECTION 40.430 ; provisions of SECTION 40.430 as an affirmative defense.
SECTION 40.440	Disposition of surplus money.
SECTION 40.450	Proceedings when debt secured falls due at different times.

FORECLOSURE SALES AND DEFICIENCY JUDGMENTS

SECTION 40.451	“Indebtedness” defined.
SECTION 40.455	Deficiency judgment: Award to judgment creditor or beneficiary of deed of trust.
SECTION 40.457	Hearing before award of deficiency judgment; appraisal of property sold.
SECTION 40.459	Limitations on amount of money judgment.
SECTION 40.462	Distribution of proceeds of foreclosure sale.
SECTION 40.463	Agreement for assistance in recovering proceeds of foreclosure sale due to debtor or successor in interest; requirements for enforceable agreement; fee must be reasonable.

RIGHTS OF GUARANTOR, SURETY OR OBLIGOR IN REAL PROPERTY

SECTION 40.465	“Indebtedness” defined.
SECTION 40.475	Remedy against mortgagor or grantor; assignment of creditor’s rights to guarantor, surety or obligor.
SECTION 40.485	Interest in proceeds of secured indebtedness upon partial satisfaction of indebtedness.

[SECTION 40.495](#)

Waiver of rights; separate action to enforce obligation; available defenses.

ENVIRONMENTAL IMPAIRMENT OF REAL COLLATERAL OF SECURED LENDER

[SECTION 40.501](#)

Definitions.

[SECTION 40.502](#)

“Environmental provision” defined.

[SECTION 40.503](#)

“Environmentally impaired” defined.

[SECTION 40.504](#)

“Hazardous substance” defined.

[SECTION 40.505](#)

“Release” defined.

[SECTION 40.506](#)

“Secured lender” defined.

[SECTION 40.507](#)

Right of entry and inspection of real collateral.

[SECTION 40.508](#)

Action by secured lender concerning environmental provision.

[SECTION 40.509](#)

Limitation on amount of damages recoverable in action concerning environmental provision; recovery of interest.

[SECTION 40.510](#)

Exceptions to applicability of [SECTION 40.507](#) and [40.508](#).

[SECTION 40.511](#)

Environmental impairment of real collateral: Waiver of lien; notice of waiver; exception; recording of waiver.

[SECTION 40.512](#)

PROCEEDINGS TO ESTABLISH TERMINATION OF LIFE ESTATES

[SECTION 40.515](#)

Petition, notice, hearing and order.

METHODS OF TERMINATION OF INTERESTS OF DECEASED PERSONS IN PROPERTY

[SECTION 40.525](#)

Petition; notice; hearing and order; alternative method.

[SECTION 40.535](#)

Affidavit or petition may be filed in probate proceeding.

ACTIONS RESULTING FROM CONSTRUCTIONAL DEFECT

GENERAL PROVISIONS

[SECTION 40.600](#)

Definitions.

[SECTION 40.603](#)

“Amend a complaint to add a cause of action for a constructional defect” defined.

[SECTION 40.605](#)

“Appurtenance” defined.

[SECTION 40.610](#)

“Claimant” defined.

[SECTION 40.615](#)

“Constructional defect” defined.

[SECTION 40.620](#)

“Contractor” defined.

[SECTION 40.623](#)

“Design professional” defined.

[SECTION 40.625](#)

“Homeowner’s warranty” defined.

[SECTION 40.630](#)

“Residence” defined.

[SECTION 40.632](#)

“Subcontractor” defined.

[SECTION 40.634](#)

“Supplier” defined.

[SECTION 40.635](#)

Applicability; effect on other defenses.

MISCELLANEOUS PROVISIONS

[SECTION 40.689](#)

Preference given to action; action may be assigned to senior judge; assessment of additional expenses.

[SECTION 40.690](#)

Limitation on bringing claim against governmental entity during period for resolution; effect of settlement; contractor or claimant may require party to appear and participate.

[SECTION 40.692](#)

Notice not required to be given to intervener in action.

[SECTION 40.695](#)

Tolling of statutes of limitation or repose; applicability.

MISCELLANEOUS PROVISIONS

[SECTION 40.760](#)
[SECTION 40.770](#)

Summary eviction of person using facility for storage as residence.
Limitation on liability of seller, seller's agent and buyer's agent for failure to disclose certain facts concerning property.

GENERAL PROVISIONS

SECTION 40.005 Zoning requirements to be considered by court. In any proceeding involving disposition of land the court shall consider lot size and other applicable zoning requirements before ordering a physical division of the land.

ACTIONS TO DETERMINE CONFLICTING CLAIMS TO REAL PROPERTY

SECTION 40.010 Actions may be brought against adverse claimants. An action may be brought by any person against another who claims an estate or interest in real property, adverse to him, for the purpose of determining such adverse claim.

SECTION 40.020 Plaintiff not entitled to costs on default judgment or disclaimer. If the defendant in such action disclaim in his answer any interest or estate in the property, or suffer judgment to be taken against him without answer, the plaintiff shall not recover costs.

SECTION 40.030 Plaintiff may recover damages for property withheld where his right terminated during pendency of action. In an action for the recovery of real property, where the plaintiff shows a right to recover at the time the action was commenced but it appears that his right has terminated during the pendency of the action, the verdict and judgment shall be according to the fact, and the plaintiff may recover damages for withholding the property.

SECTION 40.040 Value of permanent improvements to be allowed as setoff. When damages are claimed for withholding the property recovered, upon which permanent improvements have been made by a defendant or those under whom he claims, holding under color of title adversely to the claims of the plaintiff, in good faith, the value of such improvements shall be allowed as a setoff against such damages.

SECTION 40.050 Mortgage not deemed conveyance. A mortgage of real property shall not be deemed a conveyance, whatever its terms, so as to enable the owner of the mortgage to take possession of the real property without a foreclosure and sale.

SECTION 40.060 Court may enjoin injury to property during foreclosure. The court may by injunction, on good cause shown, restrain the party in possession from doing any act to the injury of real property during the foreclosure of a mortgage thereon; or after a sale on execution, before a conveyance.

SECTION 40.070 Damages may be recovered for injury to possession after sale and before delivery. When real property shall have been sold on execution, the purchaser thereof, or any person who may have succeeded to his interest, may, after his estate becomes absolute, recover damages for injury to the property by the tenant in possession, after sale and before possession is delivered under the conveyance.

SECTION 40.080 Action not to be prejudiced by alienation pending suit. An action for the recovery of real property against a person in possession cannot be prejudiced by an alienation made by such person, either before or after the commencement of the action.

SECTION 40.090 Action by person in adverse possession: Verified complaint; defendants; notice of pending litigation.

1. An action may be brought to determine the adverse claims to and clouds upon title to real property by a person who, by himself, or by himself and his predecessors in interest, has been in the actual, exclusive and adverse possession of such property continuously for more than 15 years prior to the filing of the complaint, claiming to own the same in fee, or by any other freehold estate, against the whole world, and who has by himself or his predecessors in interest, paid all taxes of every kind levied or assessed and due against the property during the period of 5 years next preceding the filing of the complaint, except that where clouds upon title to real property have been created by such person, and the action is brought to remove such clouds, or any of them, such period of actual, exclusive and adverse possession of such property shall be for more than 10 years. The action shall be commenced by the filing of a verified complaint averring the matters above enumerated.

2. The complaint must include as defendants in such action, in addition to such persons as appear of record to have some claim, all other persons who are known, or by the exercise of reasonable diligence could be known, to plaintiff to have some claim to an estate, interest, right, title, lien or cloud in or on the land described in the complaint adverse to plaintiff's ownership; and the complaint may also include as defendants any and all other persons, unknown, claiming any estate, right, title, interest or lien in such lands, or cloud upon the title of plaintiff thereto; and the plaintiff may describe such unknown defendants in the complaint as follows: "Also all other persons unknown claiming any right, title, estate, lien or interest in the real property described in the complaint adverse to plaintiff's ownership, or any cloud upon plaintiff's title thereto."

SECTION 40.100 Action by person in adverse possession: Issuance, service and posting of summons; rights of unknown persons.

1. Within 1 year after the filing of the complaint, as required by [SECTION 40.090](#), a summons must be issued in the manner and form prescribed in the Ely Shoshone Rules of Civil Procedure. In addition to other requirements, the summons shall contain a description of the property described in the complaint. In the summons the unknown defendants shall be designated as in the complaint. Service of summons, whether personal or otherwise, shall be effected in the manner prescribed in the Ely Shoshone Rules of Civil Procedure; and the times for completion of service and appearance by the defendant shall be as prescribed therein.

2. Within 30 days after the issuance of the summons, the plaintiff shall post or cause to be posted a copy thereof in a conspicuous place, on each separate parcel of the property described in the complaint, and each parcel of the land upon which a copy of the summons is posted shall be deemed to be in the possession of the court for all the purposes of and pending the determination of the action. All such unknown persons so served shall have the same rights as are provided by law in cases of all other defendants named, upon whom service is made by publication or personally, and the action shall proceed against such unknown persons in the same manner as against the defendants who are named, upon whom service is made by publication or personally, and with like effect; and any such unknown person who has or claims to have any right, title, estate, lien or interest in the property, or cloud on the title thereto, adverse to plaintiff, at the time of the commencement of the action, who has been duly served as aforesaid, and anyone claiming title under him shall be concluded by the judgment in such action as effectually as if the action had been brought against the person by his or her name and personal service of process obtained, notwithstanding any such unknown person may be under legal disability.

SECTION 40.110 Court to hear case; must not enter judgment by default; effect of final judgment.

1. When the summons has been served as provided in [SECTION 40.100](#) and the time for answering has expired, the court shall proceed to hear the case as in other cases and shall have jurisdiction to examine into and determine the legality of plaintiff's title and of the title and claim of all the defendants and of all unknown persons, and to that end must not enter any judgment by default, but must in all cases require evidence of plaintiff's title and possession and receive such legal evidence as may be offered respecting the claims and title of any of the defendants and must thereafter direct judgment to be entered in accordance

with the evidence and the law. The court, before proceeding to hear the case, must require proof to be made that the summons has been served and posted as hereinbefore directed and that the required notice of pendency of action has been filed.

2. The judgment after it has become final shall be conclusive against all the persons named in the summons and complaint who have been served personally, or by publication, and against all unknown persons as stated in the complaint and summons who have been served by publication. The judgment shall have the effect of a judgment in rem; and the judgment shall not bind or be conclusive against any person claiming any recorded estate, title, right, possession or lien in or to the property under the plaintiff or his predecessors in interest, which claim, lien, estate, title, right or possession has arisen or been created by the plaintiff or his predecessor in interest within 10 years prior to the filing of the complaint.

SECTION 40.120 Remedy is cumulative. The remedy provided in [SECTION 40.090](#), [40.100](#) and [40.110](#) shall be construed as cumulative and not exclusive of any other remedy, form or right of action or proceeding now allowed by law.

SECTION 40.130 Adverse action on mining claim. In all actions brought to determine the right of possession of a mining claim, or metalliferous vein or lode, where an application has been made to the proper officers of the Ely Shoshone Tribe by either of the parties to such action for a patent for the mining claim, vein or lode, it shall only be necessary to confer jurisdiction on the court to try the action, and render a proper judgment therein, that it appear that an application for a patent for such mining claim, vein or lode has been made, and that the parties to the action are claiming such mining claim, vein or lode, or some part thereof, or the right of possession thereof.

ACTIONS FOR NUISANCE, WASTE AND WILLFUL TRESPASS ON REAL PROPERTY

SECTION 40.140 Nuisance defined; action for abatement and damages; exceptions.

1. Except as otherwise provided in this section:

(a) Anything which is injurious to health, or indecent and offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property;

(b) A building or place used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, using or giving away a controlled substance, immediate precursor or controlled substance analog; or

(c) A building or place which was used for the purpose of unlawfully manufacturing a controlled substance, immediate precursor or controlled substance analog and:

(1) Which has not been deemed safe for habitation by a governmental entity; or

(2) From which all materials or substances involving the controlled substance, immediate precursor or controlled substance analog have not been removed or remediated by an entity certified or licensed to do so within 180 days after the building or place is no longer used for the purpose of unlawfully manufacturing a controlled substance, immediate precursor or controlled substance analog,

is a nuisance, and the subject of an action. The action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance, and by the judgment the nuisance may be enjoined or abated, as well as damages recovered.

2. It is presumed:

(a) That an agricultural activity conducted on farmland, consistent with good agricultural practice and established before surrounding nonagricultural activities is reasonable. Such activity does not constitute a nuisance unless the activity has a substantial adverse effect on the public health or safety.

(b) That an agricultural activity which does not violate a tribal law, ordinance or regulation constitutes good agricultural practice.

3. A shooting range does not constitute a nuisance with respect to any noise attributable to the shooting range if the shooting range is in compliance with the provisions of all applicable statutes, ordinances and regulations concerning noise:

4. As used in this section:

(a) "Controlled substance analog" has the meaning ascribed to it in [SECTION 453.043](#).

(b) "Immediate precursor" has the meaning ascribed to it in [SECTION 453.086](#).

(c) "Shooting range" means an area designed and used for archery or sport shooting, including, but not limited to, sport shooting that involves the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder or other similar items.

SECTION 40.145 Cleanup of Toxic Contamination From Illegal Drug Manufacturing. Attached is a revised portion of the White Pine County Code for the cleanup of toxic contamination from illegal drug manufacturing.

SECTION 40.150 Action for waste; judgment may be for treble damages. If a guardian, tenant for life or years, joint tenant or tenant in common of real property commit waste thereon, any person aggrieved by the waste may bring an action against him therefor, in which action there may be judgment for treble damages.

SECTION 40.160 Action for trespass for cutting or carrying away trees or wood; treble damages.

1. Any person who cuts down or carries off any wood or underwood, tree or timber, or girdles or otherwise injures any tree or timber on the land of another person, or on the street or highway in front of any person's house, or cultivated grounds, or on the commons or public grounds of any city or town, or on the street or highway in front thereof, without lawful authority, is liable to the owner of such land, or to such city or town, for treble the amount of damages which may be assessed therefor, in a civil action in any court having jurisdiction.

2. Nothing in subsection 1 of this section authorizes the recovery of more than the just value of the timber taken from uncultivated woodland for the repair of a public highway or bridge upon the land, or adjoining it.

SECTION 40.170 Damages in actions for forcible or unlawful entry may be trebled. If a person recover damages for a forcible or unlawful entry in or upon, or detention of, any building or any uncultivated or cultivated real property, judgment may be entered for three times the amount at which the actual damages are assessed.

SECTION 40.180 Manner of working mine or mining claim; assessment of damages.

1. Any person being the owner of, or in possession under any lease or contract for the working of any mine or mines on the reservation, shall have the right to institute and maintain an action for the recovery of any damages that may accrue by reason of the manner in which any mine or mines have been or are being worked and managed by any person who may be the owner, or in possession of and working such mine or mines under a lease or contract, and to prevent the continuance of working and managing such mine or mines in such manner as to hinder, injure, or in anywise endanger the safety of any mine or mines adjacent or adjoining thereto.

2. Any such owner of, or person in the possession of, any mine or mining claim, who shall enter upon or into, in any manner, any mine or mining claim, the property of another, and mine, extract, excavate or carry away any valuable mineral therefrom shall be liable to the owner of any such mine or mines trespassed upon in the amount of the value of all such mineral mined, extracted, excavated or carried away, and for all other damages, and in the absence of a showing to the contrary, the value of all such mineral mined, extracted, excavated or carried away shall be presumed to be twice the amount of the gross value of the same ascertained by an average assay of the excavated material or the ledge from which it was taken. If such trespass was made in bad faith, such damages may be trebled.

SECTION 40.190 Continuation of judgment lien. Any judgment obtained for damages under the provisions of [SECTION 40.180](#) shall become a lien upon all the property of the judgment debtor not exempt from execution in the tribe, owned by him, or which may afterwards be acquired, as is now provided for by law, which lien shall continue 2 years, unless the judgment be sooner satisfied.

SECTION 40.200 Application for order of survey; notice and order; report of survey; costs of and damages caused by survey.

1. Any person named in [SECTION 40.180](#) and [40.190](#) shall have the right to apply for and obtain from the tribal court, or the judge thereof, an order of survey in the following manner: An application shall be made by filing the affidavit of the person making the application, which affidavit shall state, as near as can be described, the location of the mine or mines of the parties complained of, and as far as known, the names of such parties; also, the location of the mine or mines of the party making such application, and that he has reason to believe, and does believe, that the parties complained of, their agent, or employees, are or have been trespassing upon the mine or mines of the party complaining, or are working their mine in such manner as to damage or endanger the property of the affiant.

2. Upon the filing of the affidavit as prescribed in subsection 1, the court or judge shall cause a notice to be given to the party complained of, or the agent thereof, which notice shall state the time, place, and before whom the application will be heard, and shall cite the party to appear in not less than 5 nor more than 10 days from the date thereof, to show cause why an order of survey should not be granted; and upon good cause shown, the court or judge shall grant such order, directed to some competent surveyor or surveyors, or to some competent mechanics, or miners, or both, as the case may be, who shall proceed to make the necessary examination as directed by the court and report the result and conclusions to the court, which report shall be filed with the clerk of the court.

3. The costs of the order and survey shall be paid by the persons making the application, unless such parties shall subsequently maintain an action and recover damages, as provided for in [SECTION 40.180](#), by reason of a trespass or damage done or threatened prior to such survey or examination having been made, and in that case, such costs shall be taxed against the defendant as other costs in the suit.

4. The parties obtaining such survey shall be liable for any unnecessary injury done to the property in the making of such survey.

SECTION 40.210 Order allowing party to survey and measure land in dispute; contents and service of order; liability for unnecessary injury.

1. The court in which an action is pending for the recovery of real property or for damages for an injury thereto, or a judge thereof, may, on motion, upon notice by either party for good cause shown, grant an order allowing to such party the right to enter upon the property and make survey and measurement thereof, for the purpose of the action, even though entry for such purpose has to be made through other lands belonging to parties to the action.

2. The order shall describe the property; a copy thereof shall be served on the owner or occupant, and thereupon such party may enter upon the property with necessary surveyors and assistants, and may make such survey and measurements; but if any unnecessary injury be done to the property he shall be liable therefor.

**SUMMARY PROCEEDINGS FOR OBTAINING POSSESSION OF REAL PROPERTY,
RECREATIONAL VEHICLE OR MOBILE HOME**

SECTION 40.215 Definitions. As used in [SECTION 40.215](#) to [40.425](#), inclusive, unless the context requires otherwise:

1. "Mobile home" means every vehicle, including equipment, which is constructed, reconstructed or added to in such a way as to have an enclosed room or addition occupied by one or more persons as a dwelling or sleeping place and which has no foundation other than wheels, jacks, skirting or other temporary support.

2. "Mobile home lot" means a portion of land within a mobile home park which is rented or held out for rent to accommodate a mobile home.

3. "Mobile home park" or "park" means an area or tract of land where two or more mobile homes or mobile home lots are rented or held out for rent. "Mobile home park" or "park" does not include those areas or tracts of land, whether within or outside of a park, where the lots are held out for rent on a nightly basis.

4. "Premises" includes a mobile home.
5. "Recreational vehicle" means a vehicular structure primarily designed as temporary living quarters for travel, recreational or camping use, which may be self-propelled or mounted upon or drawn by a motor vehicle.
6. "Recreational vehicle lot" means a portion of land within a recreational vehicle park, or a portion of land so designated within a mobile home park, which is rented or held out for rent to accommodate a recreational vehicle overnight or for less than 3 months.
7. "Recreational vehicle park" means an area or tract of land where lots are rented or held out for rent to accommodate a recreational vehicle overnight or for less than 3 months.

SECTION 40.220 Entry to be made only when legal and in peaceable manner. No entry shall be made into any lands, tenements or other possessions but in cases where entry is given by law; and in such cases, only in a peaceable manner, not with strong hand nor with multitude of people.

SECTION 40.230 Forcible entry defined. Every person is guilty of a forcible entry who either:

1. By breaking open doors, windows or other parts of a house, or by fraud, intimidation or stealth, or by any kind of violence or circumstance of terror, enters upon or into any real property; or
2. Who, after entering peaceably upon real property, turns out by force, threats or menacing conduct, the party in natural possession.

SECTION 40.240 Forcible detainer defined. Every person is guilty of a forcible detainer who either:

1. By force, or by menaces or threats of violence, unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise; or
2. Who, in the nighttime, or during the absence of the occupant of any real property, unlawfully enters thereon, and who, after demand made for the surrender thereof, refuses for a period of 3 days to surrender the same to such former occupant. The occupant of real property within the meaning of this subsection is one who, within 5 days preceding such unlawful entry, was in the peaceable and undisturbed possession of such lands.

SECTION 40.250 Unlawful detainer: Possession after expiration of term. A tenant of real property or a mobile home for a term less than life is guilty of an unlawful detainer when he continues in possession, in person or by subtenant, of the property or mobile home or any part thereof, after the expiration of the term for which it is let to him. In all cases where real property is leased for a specified term or period, or by express or implied contract, whether written or parol, the tenancy terminates without notice at the expiration of the specified term or period.

SECTION 40.251 Unlawful detainer: Possession of property leased for indefinite time after notice to quit; older or disabled person entitled to extension of period of possession upon request.

1. A tenant of real property, a recreational vehicle or a mobile home for a term less than life is guilty of an unlawful detainer when having leased:

(a) Real property, except as otherwise provided in this section, or a mobile home for an indefinite time, with monthly or other periodic rent reserved, he continues in possession thereof, in person or by subtenant, without the landlord's consent after the expiration of a notice of:

- (1) For tenancies from week to week, at least 7 days;
- (2) Except as otherwise provided in subsection 2, for all other periodic tenancies, at least 30 days;

or

(3) For tenancies at will, at least 5 days.

(b) A dwelling unit subject to the provisions of [chapter 118A](#), he continues in possession, in person or by subtenant, without the landlord's consent after expiration of:

(1) The term of the rental agreement or its termination and, except as otherwise provided in subparagraph (2), the expiration of a notice of:

(I) At least 7 days for tenancies from week to week; and
(II) Except as otherwise provided in subsection 2, at least 30 days for all other periodic tenancies; or

(2) A notice of at least 5 days where the tenant has failed to perform his basic or contractual obligations under [chapter 118A](#).

(c) A mobile home lot subject to the provisions of [chapter 118B](#), or a lot for a recreational vehicle in an area of a mobile home park other than an area designated as a recreational vehicle lot pursuant to the provisions of subsection 6 of [SECTION 40.215](#), he continues in possession, in person or by subtenant, without the landlord's consent:

(1) After notice has been given pursuant to [SECTION 118B.115](#), [118B.170](#) or [118B.190](#) and the period of the notice has expired; or

(2) If the person is not a natural person and has received three notices for nonpayment of rent within a 12-month period, immediately upon failure to pay timely rent.

(d) A recreational vehicle lot, he continues in possession, in person or by subtenant, without the landlord's consent, after the expiration of a notice of at least 5 days.

2. Except as otherwise provided in this section, if a tenant with a periodic tenancy pursuant to paragraph (a) or (b) of subsection 1, other than a tenancy from week to week, is 60 years of age or older or has a physical or mental disability, the tenant may request to be allowed to continue in possession for an additional 30 days beyond the time specified in subsection 1 by submitting a written request for an extended period and providing proof of his age or disability. A landlord may not be required to allow a tenant to continue in possession if a shorter notice is provided pursuant to subparagraph (2) of paragraph (b) of subsection 1.

3. Any notice provided pursuant to paragraph (a) or (b) of subsection 1 must include a statement advising the tenant of the provisions of subsection 2.

4. If a landlord rejects a request to allow a tenant to continue in possession for an additional 30 days pursuant to subsection 2, the tenant may petition the court for an order to continue in possession for the additional 30 days. If the tenant submits proof to the court that he is entitled to request such an extension, the court may grant the petition and enter an order allowing the tenant to continue in possession for the additional 30 days. If the court denies the petition, the tenant must be allowed to continue in possession for 5 calendar days following the date of entry of the order denying the petition.

SECTION 40.2512 Unlawful detainer: Possession after default in payment of rent. A tenant of real property or a mobile home for a term less than life is guilty of an unlawful detainer when he continues in possession, in person or by subtenant, after default in the payment of any rent and after a notice in writing, requiring in the alternative the payment of the rent or the surrender of the detained premises, remains uncomplied with for a period of 5 days, or in the case of a mobile home lot, 10 days after service thereof. The notice may be served at any time after the rent becomes due.

SECTION 40.2514 Unlawful detainer: Assignment or subletting contrary to lease; waste; unlawful business; nuisance; violations of controlled substances laws. A tenant of real property or a mobile home for a term less than life is guilty of an unlawful detainer when he:

1. Assigns or sublets the leased premises contrary to the covenants of the lease;
2. Commits or permits waste thereon;
3. Sets up or carries on therein or thereon any unlawful business;
4. Suffers, permits or maintains on or about the premises any nuisance that consists of conduct or an ongoing condition which constitutes an unreasonable obstruction to the free use of property and causes injury and damage to other tenants or occupants of that property or adjacent buildings or structures; or
5. Violates any of the provisions of [SECTION 453.011](#) to [453.552](#), inclusive, except [SECTION 453.336](#), therein or thereon,
➤ and remains in possession after service upon him of 3 days' notice to quit.

SECTION 40.2516 Unlawful detainer: Possession after failure to perform conditions of lease; saving lease from forfeiture. A tenant of real property or a mobile home for a term less than life is guilty of an unlawful detainer when he continues in possession, in person or by subtenant, after a neglect or failure to

Ely Shoshone Tribe – General Housing Provisions
Housing Ordinance No. 2008-EST-06
Adopted 9/29/2008

ESTC-40
Page 10

perform any condition or covenant of the lease or agreement under which the property or mobile home is held, other than those mentioned in [SECTION 40.250](#) to [40.252](#), inclusive, and [SECTION 40.254](#), and after notice in writing, requiring in the alternative the performance of the condition or covenant or the surrender of the property, served upon him, and, if there is a subtenant in actual occupation of the premises, also upon the subtenant, remains uncomplished with for 5 days after the service thereof. Within 3 days after the service, the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person, interested in its continuance, may perform the condition or covenant and thereby save the lease from forfeiture; but if the covenants and conditions of the lease, violated by the lessee, cannot afterwards be performed, then no notice need be given.

SECTION 40.252 Unlawful detainer: Contractual provisions void if contrary to specified periods of notice; notice to quit or surrender by colessor is valid unless showing other colessors did not authorize notice. For the purposes of [SECTION 40.250](#) to [40.252](#), inclusive, and [SECTION 40.254](#):

1. It is unlawful for a landlord to attempt by contract or other agreement to shorten the specified periods of notice and any such contract or agreement is void.

2. Notice to quit or surrender the premises which was given by one colessor of real property or a mobile home is valid unless it is affirmatively shown that one or more of the other colessors did not authorize the giving of the notice.

SECTION 40.253 Unlawful detainer: Supplemental remedy of summary eviction and exclusion of tenant for default in payment of rent.

1. Except as otherwise provided in subsection 10, in addition to the remedy provided in [SECTION 40.2512](#) and [40.290](#) to [40.420](#), inclusive, when the tenant of any dwelling, apartment, mobile home, recreational vehicle or commercial premises with periodic rent reserved by the month or any shorter period is in default in payment of the rent, the landlord or his agent, unless otherwise agreed in writing, may serve or have served a notice in writing, requiring in the alternative the payment of the rent or the surrender of the premises:

(a) At or before noon of the fifth full day following the day of service; or

(b) If the landlord chooses not to proceed in the manner set forth in paragraph (a) and the rent is reserved by a period of 1 week or less and the tenancy has not continued for more than 45 days, at or before noon of the fourth full day following the day of service.

↳ As used in this subsection, "day of service" means the day the landlord or his agent personally delivers the notice to the tenant. If personal service was not so delivered, the "day of service" means the day the notice is delivered, after posting and mailing pursuant to subsection 2, to the tribal police for service if the request for service is made before noon. If the request for service by the tribal police is made after noon, the "day of service" shall be deemed to be the day next following the day that the request is made for service by the tribal police.

2. A landlord or his agent who serves a notice to a tenant pursuant to paragraph (b) of subsection 1 shall attempt to deliver the notice in person in the manner set forth in paragraph (a) of subsection 1 of [SECTION 40.280](#). If the notice cannot be delivered in person, the landlord or his agent:

(a) Shall post a copy of the notice in a conspicuous place on the premises and mail the notice by overnight mail; and

(b) After the notice has been posted and mailed, may deliver the notice to the tribal police for service in the manner set forth in subsection 1 of [SECTION 40.280](#). The tribal police shall not accept the notice for service unless it is accompanied by written evidence, signed by the tenant when he took possession of the premises, that the landlord or his agent informed the tenant of the provisions of this section which set forth the lawful procedures for eviction from a short-term tenancy. Upon acceptance, the tribal police shall serve the notice within 48 hours after the request for service was made by the landlord or his agent.

3. A notice served pursuant to subsection 1 or 2 must:

(a) Identify the court that has jurisdiction over the matter; and

(b) Advise the tenant of his right to contest the matter by filing, within the time specified in subsection 1 for the payment of the rent or surrender of the premises, an affidavit with the court that has jurisdiction over the matter stating that he has tendered payment or is not in default in the payment of the rent.

4. If the tenant files such an affidavit at or before the time stated in the notice, the landlord or his agent, after receipt of a file-stamped copy of the affidavit which was filed, shall not provide for the nonadmittance of the tenant to the premises by locking or otherwise.

5. Upon noncompliance with the notice:

(a) The landlord or his agent may apply by affidavit of complaint for eviction to the Tribal Court in which the dwelling, apartment, mobile home or commercial premises are located on tribal lands in which the dwelling, apartment, mobile home or commercial premises are located, whichever has jurisdiction over the matter. The court may thereupon issue an order directing the tribal police to remove the tenant within 24 hours after receipt of the order. The affidavit must state or contain:

(1) The date the tenancy commenced.

(2) The amount of periodic rent reserved.

(3) The amounts of any cleaning, security or rent deposits paid in advance, in excess of the first month's rent, by the tenant.

(4) The date the rental payments became delinquent.

(5) The length of time the tenant has remained in possession without paying rent.

(6) The amount of rent claimed due and delinquent.

(7) A statement that the written notice was served on the tenant in accordance with [SECTION 40.280](#).

(8) A copy of the written notice served on the tenant.

(9) A copy of the signed written rental agreement, if any.

(b) Except when the tenant has timely filed the affidavit described in subsection 3 and a file-stamped copy of it has been received by the landlord or his agent, and except when the landlord is prohibited pursuant to [SECTION 118A.480](#), the landlord or his agent may, in a peaceable manner, provide for the nonadmittance of the tenant to the premises by locking or otherwise.

6. Upon the filing by the tenant of the affidavit permitted in subsection 3, regardless of the information contained in the affidavit, and the filing by the landlord of the affidavit permitted by subsection 5, the Tribal Court shall hold a hearing, after service of notice of the hearing upon the parties, to determine the truthfulness and sufficiency of any affidavit or notice provided for in this section. If the court determines that there is no legal defense as to the alleged unlawful detainer and the tenant is guilty of an unlawful detainer, the court may issue a summary order for removal of the tenant or an order providing for the nonadmittance of the tenant. If the court determines that there is a legal defense as to the alleged unlawful detainer, the court shall refuse to grant either party any relief, and, except as otherwise provided in this subsection, shall require that any further proceedings be conducted pursuant to [SECTION 40.290 to 40.420](#), inclusive. The issuance of a summary order for removal of the tenant does not preclude an action by the tenant for any damages or other relief to which he may be entitled. If the alleged unlawful detainer was based upon subsection 5 of [SECTION 40.2514](#), the refusal by the court to grant relief does not preclude the landlord thereafter from pursuing an action for unlawful detainer in accordance with [SECTION 40.251](#).

7. The tenant may, upon payment of the appropriate fees relating to the filing and service of a motion, file a motion with the court, on a form provided by the clerk of the court, to dispute the amount of the costs, if any, claimed by the landlord pursuant to [SECTION 118A.460](#) for the inventory, moving and storage of personal property left on the premises. The motion must be filed within 20 days after the summary order for removal of the tenant or the abandonment of the premises by the tenant, or within 20 days after:

(a) The tenant has vacated or been removed from the premises; and

(b) A copy of those charges has been requested by or provided to the tenant,

↳ whichever is later.

8. Upon the filing of a motion pursuant to subsection 7, the court shall schedule a hearing on the motion. The hearing must be held within 10 days after the filing of the motion. The court shall affix the date of the hearing to the motion and order a copy served upon the landlord by the sheriff, constable or other process server. At the hearing, the court may:

(a) Determine the costs, if any, claimed by the landlord pursuant to [SECTION 118A.460](#), and any accumulating daily costs; and

(b) Order the release of the tenant's property upon the payment of the charges determined to be due or if no charges are determined to be due.

9. A landlord shall not refuse to accept rent from a tenant that is submitted after the landlord or his agent has served or had served a notice pursuant to subsection 1 if the refusal is based on the fact that the tenant has not paid collection fees, attorney's fees or other costs other than rent, a reasonable charge for late payments of rent or dishonored checks, or a security. As used in this subsection, "security" has the meaning ascribed to it in [SECTION 118A.240](#).

10. This section does not apply to the tenant of a mobile home lot in a mobile home park or to the tenant of a recreational vehicle lot in an area of a mobile home park on the reservation other than an area designated as a recreational vehicle lot pursuant to the provisions of subsection 6 of [SECTION 40.215](#).

SECTION 40.254 Unlawful detainer: Supplemental remedy of summary eviction and exclusion of tenant from certain types of property. Except as otherwise provided by specific statute, in addition to the remedy provided in [SECTION 40.251](#) and in [SECTION 40.290](#) to [40.420](#), inclusive, when the tenant of a dwelling unit which is subject to the provisions of [chapter 118A](#) of SECTION, part of a low-rent housing program operated by a public housing authority, a mobile home or a recreational vehicle is guilty of an unlawful detainer, the landlord is entitled to the summary procedures provided in [SECTION 40.253](#) except that:

1. Written notice to surrender the premises must:
 - (a) Be given to the tenant in accordance with the provisions of [SECTION 40.280](#);
 - (b) Advise the tenant of the court that has jurisdiction over the matter; and
 - (c) Advise the tenant of his right to contest the notice by filing within 5 days an affidavit with the court that has jurisdiction over the matter that he is not guilty of an unlawful detainer.
2. The affidavit of the landlord or his agent submitted to the Tribal Court must contain:
 - (a) The date when the tenancy commenced, the term of the tenancy, and, if any, a copy of the rental agreement.
 - (b) The date when the tenancy or rental agreement allegedly terminated.
 - (c) The date when the tenant became subject to the provisions of [SECTION 40.251](#) to [40.2516](#), inclusive, together with any supporting facts.
 - (d) The date when the written notice was given, a copy of the notice and a statement that notice was served in accordance with [SECTION 40.280](#).
 - (e) A statement that the claim for relief was authorized by law.
3. If the tenant is found guilty of unlawful detainer as a result of his violation of any of the provisions of [SECTION 453.011](#) to [453.552](#), inclusive, except [SECTION 453.336](#), the landlord is entitled to be awarded any reasonable attorney's fees incurred by the landlord or his agent as a result of a hearing, if any, held pursuant to subsection 6 of [SECTION 40.253](#) wherein the tenant contested the eviction.

SECTION 40.255 Removal of person holding over after 3-day notice to quit; circumstances authorizing removal.

1. Except as provided in subsection 2, in any of the following cases, a person who holds over and continues in possession of real property or a mobile home after a 3-day written notice to quit has been served upon him, and also upon any subtenant in actual occupation of the premises, pursuant to [SECTION 40.280](#), may be removed as prescribed in [SECTION 40.290](#) to [40.420](#), inclusive:
 - (a) Where the property or mobile home has been sold under an execution against him or a person under whom he claims, and the title under the sale has been perfected;
 - (b) Where the property or mobile home has been sold upon the foreclosure of a mortgage, or under an express power of sale contained therein, executed by him or a person under whom he claims, and the title under the sale has been perfected;
 - (c) Where the property or mobile home has been sold under a power of sale granted by [SECTION 107.080](#) to the trustee of a deed of trust executed by such person or a person under whom he claims, and the title under such sale has been perfected; or
 - (d) Where the property or mobile home has been sold by him or a person under whom he claims, and the title under the sale has been perfected.
2. This section does not apply to the tenant of a mobile home lot in a mobile home park.

SECTION 40.260 Tenant of agricultural lands may hold over if not notified. In all cases of tenancy upon agricultural land where the tenant has held over and retained possession for more than 60 days after the expiration of his term, without any demand of possession or notice to quit by the landlord, or the successor in estate of his landlord, if any there be, he shall be deemed to be holding by permission of the landlord, or the successor in the estate of his landlord, if any there be, and shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of an unlawful detainer during the year, and such holding over for the period aforesaid shall be taken and construed as a consent on the part of the tenant to hold for another year.

SECTION 40.270 Tenant has similar remedies against subtenant. A tenant may take proceedings similar to those prescribed in this chapter, to obtain possession of the premises let to any under tenant, in case of his unlawful detention of the premises underlet to him.

SECTION 40.280 Service of notices to quit; proof required before issuance of order to remove.

1. Except as otherwise provided in [SECTION 40.253](#), the notices required by [SECTION 40.251](#) to [40.260](#), inclusive, may be served:

- (a) By delivering a copy to the tenant personally, in the presence of a witness;
- (b) If he is absent from his place of residence or from his usual place of business, by leaving a copy with a person of suitable age and discretion at either place and mailing a copy to the tenant at his place of residence or place of business; or
- (c) If the place of residence or business cannot be ascertained, or a person of suitable age or discretion cannot be found there, by posting a copy in a conspicuous place on the leased property, delivering a copy to a person there residing, if the person can be found, and mailing a copy to the tenant at the place where the leased property is situated.

2. Service upon a subtenant may be made in the same manner as provided in subsection 1.

3. Before an order to remove a tenant is issued pursuant to subsection 5 of [SECTION 40.253](#), a landlord shall file with the court a proof of service of any notice required by that section. Except as otherwise provided in subsection 4, this proof must consist of:

(a) A statement, signed by the tenant and a witness, acknowledging that the tenant received the notice on a specified date;

(b) A certificate of mailing issued by the United States Postal Service; or

(c) The endorsement of tribal police or other process server stating the time and manner of service.

4. If service of the notice was not delivered in person to a tenant whose rent is reserved by a period of 1 week or less and the tenancy has not continued for more than 45 days, proof of service must include:

(a) A certificate of mailing issued by the United States Postal Service or by a private postal service to the landlord or his agent; or

(b) The endorsement of tribal police stating the:

(1) Time and date the request for service was made by the landlord or his agent;

(2) Time, date and manner of the service; and

(3) Fees paid for the service.

SECTION 40.290 Parties defendant; persons bound by judgment. No person other than the tenant of the premises and the subtenant, if there be one, in actual occupation of the premises when the action is commenced, need be made parties defendant in the proceeding, nor shall any proceeding abate nor the plaintiff be nonsuited for the nonjoinder of any person who might have been made a party defendant; but when it appears that any of the parties served with process or appearing in the proceeding is guilty of the offense charged, judgment must be rendered against him. In case a person has become subtenant of the premises in controversy after the service of any notice in this chapter provided for, the fact that such notice was not served on such subtenant shall constitute no defense to the action. All persons who enter under the tenant, after the commencement of the action hereunder, shall be bound by the judgment the same as if they had been made parties to the action.

SECTION 40.300 Contents of complaint; issuance and service of summons; temporary writ of restitution; notice, hearing and bond.

1. The plaintiff in his complaint, which shall be in writing, must set forth the facts on which he seeks to recover, and describe the premises with reasonable certainty and may set forth therein any circumstances of fraud, force or violence which may have accompanied the alleged forcible entry, or forcible or unlawful detainer, and claim damages therefor, or compensation for the occupation of the premises or both. In case the unlawful detainer charged be after default in the payment of rent, the complaint must state the amount of such rent.

2. The summons shall be issued and served as in other cases, but the judge may shorten the time within which the defendant shall be required to appear and defend the action, in which case the officer or person serving the summons shall change the prescribed form thereof to conform to the time of service as ordered; but where publication is necessary the court shall direct publication for a period of not less than 1 week.

3. At any time after the filing of the complaint and issuance of summons, the court, upon application therefor, may issue a temporary writ of restitution; provided:

(a) That the temporary writ of restitution shall not issue ex parte but only after the issuance and service of an order to show cause why a temporary writ of restitution shall not be issued and after the defendant has been given an opportunity to oppose the issuance of the temporary writ of restitution.

(b) That the temporary writ of restitution shall not issue until the court has had an opportunity to ascertain the facts sufficiently to enable it to estimate the probable loss to the defendant and fix the amount of a bond to indemnify the party or parties against whom the temporary writ may be issued.

(c) That the temporary writ of restitution shall not issue until there has been filed with the approval of the court a good and sufficient bond of indemnification in the amount fixed by the court.

SECTION 40.310 Issue of fact to be tried by jury if proper demand made. Whenever an issue of fact is presented by the pleadings, it shall be tried by a jury, if proper demand is made pursuant to the Ely Shoshone Rules of Civil Procedure.

SECTION 40.320 Proof required of plaintiff and defendant on trial.

1. On the trial of any proceeding for any forcible entry or forcible detainer, the plaintiff shall only be required to show, in addition to the forcible entry or forcible detainer complained of, that he was peaceably in the actual possession at the time of the forcible entry, or was entitled to possession at the time of the forcible detainer.

2. The defendant may show in his defense that he or his ancestors, or those whose interest in such premises he claims, have been in the quiet possession thereof for the space of 1 whole year together next before the commencement of the proceedings, and that his interest therein is not then ended or determined, and such showing is a bar to the proceedings.

SECTION 40.330 Amendment of complaint to conform to proof; continuance. When, upon the trial of any proceeding under [SECTION 40.220](#) to [40.420](#), inclusive, it appears from the evidence that the defendant has been guilty of either a forcible entry or forcible or unlawful detainer, and other than the offense charged in the complaint, the judge must order that such complaint be forthwith amended to conform to such proofs. Such amendment must be without any imposition of terms. No continuance must be permitted upon account of such amendment, unless the defendant, by affidavit filed, shows to the satisfaction of the court good cause therefor.

SECTION 40.340 Adjournments. The court may for good cause shown adjourn the trial of any cause under [SECTION 40.220](#) to [40.420](#), inclusive, not exceeding 5 days; and when the defendant, his agent or attorney, shall make oath that he cannot safely proceed to trial for want of some material witness, naming him, stating the evidence that he expects to obtain, showing that he has used due diligence to obtain such witness and believes that if an adjournment be allowed he will be able to procure the attendance of such witness, or his deposition, in time to produce the same upon the trial, in which case, if such person or persons will give bond, with one or more sufficient sureties, conditioned to pay the complainant for all rent

that may accrue during the pending of such suit, and all costs and damages consequent upon such adjournment, the court shall adjourn the cause for such reasonable time as may appear necessary, not exceeding 30 days.

SECTION 40.360 Judgment; damages; execution and enforcement.

1. Judgment. If, upon the trial, finding of the court, be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and, if the proceeding be for unlawful detainer after neglect or failure to perform any condition or covenant of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of such lease or agreement.

2. Damages. The court shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, and any amount found due the plaintiff by reason of waste of the premises by the defendant during the tenancy, alleged in the complaint and proved on the trial, and find the amount of any rent due, if the alleged unlawful detainer be after default in the payment of rent; and the judgment shall be rendered against the defendant guilty of the forcible entry, or forcible or unlawful detainer, for the rent and for three times the amount of the damages thus assessed.

3. Execution and enforcement. When the proceeding is for an unlawful detainer after default in the payment of the rent, and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not be issued until the expiration of 5 days after the entry of the judgment, within which time the tenant, or any subtenant, or any mortgagee of the term, or other party interested in its continuance, may pay into court for the landlord the amount of the judgment and costs, and thereupon the judgment shall be satisfied and the tenant be restored to his estate; but, if payment, as herein provided, be not made within the 5 days, the judgment may be enforced for its full amount and for the possession of the premises. In all other cases the judgment may be enforced immediately.

SECTION 40.370 Verification of complaint and answer. The complaint and answer must be verified.

SECTION 40.380 Provisions governing appeals. Either party may, within 10 days, appeal from the judgment rendered. But an appeal by the defendant shall not stay the execution of the judgment, unless, within the 10 days, he shall execute and file with the court his undertaking to the plaintiff, with two or more sureties, in an amount to be fixed by the court, but which shall not be less than twice the amount of the judgment and costs, to the effect that, if the judgment appealed from be affirmed or the appeal be dismissed, the appellant will pay the judgment and the cost of appeal, the value of the use and occupation of the property, and damages justly accruing to the plaintiff during the pendency of the appeal. Upon taking the appeal and filing the undertaking, all further proceedings in the case shall be stayed.

SECTION 40.385 Stay of execution upon appeal; duty of tenant who retains possession of premises to pay rent during stay. Upon an appeal from an order entered pursuant to [SECTION 40.253](#):

1. Except as otherwise provided in this subsection, a stay of execution may be obtained by filing with the trial court a bond in the amount of \$250 to cover the expected costs on appeal. In an action concerning a lease of commercial property or any other property for which the monthly rent exceeds \$1,000, the court may, upon its own motion or that of a party, and upon a showing of good cause, order an additional bond to be posted to cover the expected costs on appeal. A surety upon the bond submits to the jurisdiction of the appellate court and irrevocably appoints the clerk of that court as his agent upon whom papers affecting his liability upon the bond may be served. Liability of a surety may be enforced, or the bond may be released, on motion in the appellate court without independent action.

2. A tenant who retains possession of the premises that are the subject of the appeal during the pendency of the appeal shall pay to the landlord rent in the amount provided in the underlying contract between the tenant and the landlord as it becomes due. If the tenant fails to pay such rent, the landlord may initiate new proceedings for a summary eviction by serving the tenant with a new notice pursuant to [SECTION 40.253](#).

SECTION 40.390 Appellate court not to dismiss or quash proceedings for want of form. In all cases of appeal under [SECTION 40.220](#) to [40.420](#), inclusive, the appellate court shall not dismiss or quash the proceedings for want of form, provided the proceedings have been conducted substantially according to the provisions of [SECTION 40.220](#) to [40.420](#), inclusive; and amendments to the complaint, answer or summons, in matters of form only, may be allowed by the court at any time before final judgment upon such terms as may be just; and all matters of excuse, justification or avoidance of the allegations in the complaint may be given in evidence under the answer.

SECTION 40.400 Rules of practice. The provisions of SECTION, Ely Shoshone Rules of Civil Procedure and Ely Shoshone Rules of Appellate Procedure relative to civil actions, appeals and new trials, so far as they are not inconsistent with the provisions of [SECTION 40.220](#) to [40.420](#), inclusive, apply to the proceedings mentioned in those sections.

SECTION 40.420 Form of writ of restitution; execution.

1. The writ of restitution issued by a tribal judge must be substantially in the following form:

The Ely Shoshone Tribe to the tribal police, greeting: Whereas, A.B., of the Ely Shoshone Reservation, at a court of inquiry of an unlawful holding over of (lands) (tenements) (a mobile home), and other possessions, held at my office (stating the place), on the reservation aforesaid, on the day of, A.D., before me, tribal judge, by the consideration of the court, has recovered judgment against C.D., to have restitution of (here describe the premises as in the complaint). You are therefore commanded, that taking with you the force of the tribe, if necessary, you cause C.D. to be immediately removed from the premises, and A.B. to have peaceable restitution of the premises. You are also commanded that of the goods and chattels of C.D., within said reservation, which are not exempt from execution, you cause to be made the sum of dollars for the plaintiff, together with the costs of suit endorsed hereon, and make return of this writ within 30 days after this date. Given under my hand, this day of, A.D. E.F., tribal judge.

2. The tribal police shall execute the writ in the same manner as required by the provisions of [chapter 21](#) of the Nevada Revised Statutes for writs of execution.

SECTION 40.425 Notice of execution on writ of restitution.

1. Execution on the writ of restitution may occur only if the tribal police serves the judgment debtor with notice of the execution and a copy of the writ in the manner described in [SECTION 21.076](#) of the Nevada Revised Statutes. The notice must describe the types of property exempt from execution and explain the procedure for claiming those exemptions. The clerk of the court shall attach the notice to the writ at the time the writ is issued.

2. The notice required pursuant to subsection 1 must be in the form and served in the manner provided for execution on judgments pursuant to [SECTION 21.075](#) and [21.076](#) of the Nevada Revised Statutes.

ACTIONS FOR FORECLOSURE OF REAL MORTGAGES

SECTION 40.430 Action for recovery of debt secured by mortgage or other lien; “action” defined.

1. Except in cases where a person proceeds under subsection 2 of [SECTION 40.495](#) or subsection 1 of [SECTION 40.512](#), there may be but one action for the recovery of any debt, or for the enforcement of any right secured by a mortgage or other lien upon real estate. That action must be in accordance with the provisions of [SECTION 40.430](#) to [40.459](#), inclusive. In that action, the judgment must be rendered for the amount found due the plaintiff, and the court, by its decree or judgment, may direct a sale of the encumbered property, or such part thereof as is necessary, and apply the proceeds of the sale as provided in [SECTION 40.462](#).

2. This section must be construed to permit a secured creditor to realize upon the collateral for a debt or other obligation agreed upon by the debtor and creditor when the debt or other obligation was incurred.

3. A sale directed by the court pursuant to subsection 1 must be conducted in the same manner as the sale of real property upon execution, by the tribal police.

4. As used in this section, an “action” does not include any act or proceeding:

(a) To appoint a receiver for, or obtain possession of, any real or personal collateral for the debt or as provided in [SECTION 32.015](#) of the Nevada Revised Statutes.

(b) To enforce a security interest in, or the assignment of, any rents, issues, profits or other income of any real or personal property.

(c) To enforce a mortgage or other lien upon any real or personal collateral located outside of the tribe which does not, except as required under the laws of that jurisdiction, result in a personal judgment against the debtor.

(d) For the recovery of damages arising from the commission of a tort, including a recovery under [SECTION 40.750](#), or the recovery of any declaratory or equitable relief.

(e) For the exercise of a power of sale pursuant to [SECTION 107.080](#) of the Nevada Revised Statutes.

(f) For the exercise of any right to set off, or to enforce a pledge in, a deposit account pursuant to a written agreement or pledge.

(g) To draw under a letter of credit.

(h) To enforce an agreement with a surety or guarantor if enforcement of the mortgage or other lien has been automatically stayed pursuant to 11 U.S.C. § 362 or pursuant to an order of a federal bankruptcy court under any other provision of the United States Bankruptcy Code for not less than 120 days following the mailing of notice to the surety or guarantor pursuant to subsection 1 of [SECTION 107.095](#) of the Nevada Revised Statutes.

(i) To collect any debt, or enforce any right, secured by a mortgage or other lien on real property if the property has been sold to a person other than the creditor to satisfy, in whole or in part, a debt or other right secured by a senior mortgage or other senior lien on the property.

(j) Relating to any proceeding in bankruptcy, including the filing of a proof of claim, seeking relief from an automatic stay and any other action to determine the amount or validity of a debt.

(k) For filing a claim pursuant to [chapter 147](#) of the Nevada Revised Statutes or to enforce such a claim which has been disallowed.

(l) Which does not include the collection of the debt or realization of the collateral securing the debt.

(m) Pursuant to [SECTION 40.507](#) or [40.508](#).

(n) Which is exempted from the provisions of this section by specific statute.

(o) To recover costs of suit, costs and expenses of sale, attorneys’ fees and other incidental relief in connection with any action authorized by this subsection.

SECTION 40.433 “Mortgage or other lien” defined. As used in [SECTION 40.430](#) to [40.459](#), inclusive, unless the context otherwise requires, a “mortgage or other lien” includes a deed of trust, but does not include a lien which arises pursuant to [chapter 108](#) of the Nevada Revised Statutes, pursuant to an assessment under [chapter 116](#), [117](#), [119A](#) or [278A](#) of the Nevada Revised Statutes or pursuant to a judgment or decree of any court of competent jurisdiction.

SECTION 40.435 Judicial proceedings in violation of [SECTION 40.430](#); provisions of [SECTION 40.430](#) as an affirmative defense.

1. The commencement of or participation in a judicial proceeding in violation of [SECTION 40.430](#) does not forfeit any of the rights of a secured creditor in any real or personal collateral, or impair the ability of the creditor to realize upon any real or personal collateral, if the judicial proceeding is:

(a) Stayed or dismissed before entry of a final judgment; or

(b) Converted into an action which does not violate [SECTION 40.430](#).

2. If the provisions of [SECTION 40.430](#) are timely interposed as an affirmative defense in such a judicial proceeding, upon the motion of any party to the proceeding the court shall:

(a) Dismiss the proceeding without prejudice; or

(b) Grant a continuance and order the amendment of the pleadings to convert the proceeding into an action which does not violate [SECTION 40.430](#).

3. The failure to interpose, before the entry of a final judgment, the provisions of [SECTION 40.430](#) as an affirmative defense in such a proceeding waives the defense in that proceeding. Such a failure does not

affect the validity of the final judgment, but entry of the final judgment releases and discharges the mortgage or other lien.

4. As used in this section, “final judgment” means a judgment which imposes personal liability on the debtor for the payment of money and which may be appealed under the Ely Shoshone Rules of Appellate Procedure.

SECTION 40.440 Disposition of surplus money. If there is surplus money remaining after payment of the amount due on the mortgage or other lien, with costs, the court may cause the same to be paid to the person entitled to it pursuant to [SECTION 40.462](#), and in the meantime may direct it to be deposited in court.

SECTION 40.450 Proceedings when debt secured falls due at different times. If the debt for which the mortgage or other lien on real property is held is not all due, as soon as a sufficient amount of the property has been sold to pay the amount due, with costs, the sale shall cease. Afterwards, as often as more becomes due for principal or interest, the court may, on motion, order more to be sold. However, if the property cannot be sold in portions without injury to the parties, the whole may be ordered to be sold in the first instance, and the entire debt and costs paid, with a rebate of interest where such a rebate is proper.

FORECLOSURE SALES AND DEFICIENCY JUDGMENTS

SECTION 40.451 “Indebtedness” defined. As used in [SECTION 40.451](#) to [40.463](#), inclusive, “indebtedness” means the principal balance of the obligation secured by a mortgage or other lien on real property, together with all interest accrued and unpaid prior to the time of foreclosure sale, all costs and fees of such a sale, all advances made with respect to the property by the beneficiary, and all other amounts secured by the mortgage or other lien on the real property in favor of the person seeking the deficiency judgment. Such amount constituting a lien is limited to the amount of the consideration paid by the lienholder.

SECTION 40.455 Deficiency judgment: Award to judgment creditor or beneficiary of deed of trust.

1. Upon application of the judgment creditor or the beneficiary of the deed of trust within 6 months after the date of the foreclosure sale or the trustee’s sale held pursuant to [SECTION 107.080](#) of the Nevada Revised Statutes, respectively, and after the required hearing, the court shall award a deficiency judgment to the judgment creditor or the beneficiary of the deed of trust if it appears from the officer’s return or the recital of consideration in the trustee’s deed that there is a deficiency of the proceeds of the sale and a balance remaining due to the judgment creditor or the beneficiary of the deed of trust, respectively.

2. If the indebtedness is secured by more than one parcel of real property, more than one interest in the real property or more than one mortgage or deed of trust, the 6-month period begins to run after the date of the foreclosure sale or trustee’s sale of the last parcel or other interest in the real property securing the indebtedness, but in no event may the application be filed more than 2 years after the initial foreclosure sale or trustee’s sale.

SECTION 40.457 Hearing before award of deficiency judgment; appraisal of property sold.

1. Before awarding a deficiency judgment under [SECTION 40.455](#), the court shall hold a hearing and shall take evidence presented by either party concerning the fair market value of the property sold as of the date of foreclosure sale or trustee’s sale. Notice of such hearing shall be served upon all defendants who have appeared in the action and against whom a deficiency judgment is sought, or upon their attorneys of record, at least 15 days before the date set for hearing.

2. Upon application of any party made at least 10 days before the date set for the hearing the court shall, or upon its own motion the court may, appoint an appraiser to appraise the property sold as of the date of foreclosure sale or trustee’s sale. Such appraiser shall file with the clerk his appraisal, which is admissible in evidence. The appraiser shall take an oath that he has truly, honestly and impartially

appraised the property to the best of his knowledge and ability. Any appraiser so appointed may be called and examined as a witness by any party or by the court.

SECTION 40.459 Limitations on amount of money judgment. After the hearing, the court shall award a money judgment against the debtor, guarantor or surety who is personally liable for the debt. The court shall not render judgment for more than:

1. The amount by which the amount of the indebtedness which was secured exceeds the fair market value of the property sold at the time of the sale, with interest from the date of the sale; or
2. The amount which is the difference between the amount for which the property was actually sold and the amount of the indebtedness which was secured, with interest from the date of sale,
↳ whichever is the lesser amount.

SECTION 40.462 Distribution of proceeds of foreclosure sale.

1. Except as otherwise provided by specific statute, this section governs the distribution of the proceeds of a foreclosure sale. The provisions of [SECTION 40.455](#), [40.457](#) and [40.459](#) do not affect the right to receive those proceeds, which vests at the time of the foreclosure sale. The purchase of any interest in the property at the foreclosure sale, and the subsequent disposition of the property, does not affect the right of the purchaser to the distribution of proceeds pursuant to paragraph (c) of subsection 2 of this section, or to obtain a deficiency judgment pursuant to [SECTION 40.455](#), [40.457](#) and [40.459](#).

2. The proceeds of a foreclosure sale must be distributed in the following order of priority:

(a) Payment of the reasonable expenses of taking possession, maintaining, protecting and leasing the property, the costs and fees of the foreclosure sale, including reasonable trustee's fees, applicable taxes and the cost of title insurance and, to the extent provided in the legally enforceable terms of the mortgage or lien, any advances, reasonable attorney's fees and other legal expenses incurred by the foreclosing creditor and the person conducting the foreclosure sale.

(b) Satisfaction of the obligation being enforced by the foreclosure sale.

(c) Satisfaction of obligations secured by any junior mortgages or liens on the property, in their order of priority.

(d) Payment of the balance of the proceeds, if any, to the debtor or his successor in interest.

↳ If there are conflicting claims to any portion of the proceeds, the person conducting the foreclosure sale is not required to distribute that portion of the proceeds until the validity of the conflicting claims is determined through interpleader or otherwise to his satisfaction.

3. A person who claims a right to receive the proceeds of a foreclosure sale pursuant to paragraph (c) of subsection 2 must, upon the written demand of the person conducting the foreclosure sale, provide:

(a) Proof of the obligation upon which he claims his right to the proceeds; and

(b) Proof of his interest in the mortgage or lien, unless that proof appears in the official records of a county in which the property is located.

↳ Such a demand is effective upon personal delivery or upon mailing by registered or certified mail, return receipt requested, to the last known address of the claimant. Failure of a claimant to provide the required proof within 15 days after the effective date of the demand waives his right to receive those proceeds.

4. As used in this section, "foreclosure sale" means the sale of real property to enforce an obligation secured by a mortgage or lien on the property, including the exercise of a trustee's power of sale pursuant to [SECTION 107.080](#) of the Nevada Revised Statutes.

SECTION 40.463 Agreement for assistance in recovering proceeds of foreclosure sale due to debtor or successor in interest; requirements for enforceable agreement; fee must be reasonable.

1. Except as otherwise provided in this section, a debtor or his successor in interest may enter into an agreement with a third party that provides for the third party to assist in the recovery of any balance of the proceeds of a foreclosure sale due to the debtor or his successor in interest pursuant to paragraph (d) of subsection 2 of [SECTION 40.462](#).

2. An agreement pursuant to subsection 1:

(a) Must:

(1) Be in writing;

- (2) Be signed by the debtor or his successor in interest; and
 - (3) Contain an acknowledgment of the signature of the debtor or his successor in interest by a notary public; and
- (b) May not be entered into less than 30 days after the date on which the foreclosure sale was conducted.
3. Any agreement entered into pursuant to this section that does not comply with subsection 2 is void and unenforceable.
 4. Any fee charged by a third party for services provided pursuant to an agreement entered into pursuant to this section must be reasonable. A fee that exceeds \$2,500, excluding attorney's fees and costs, is presumed to be unreasonable. A court shall not enforce an obligation to pay any unreasonable fee, but may require a debtor to pay a reasonable fee that is less than the amount set forth in the agreement.
 5. A third party may apply to the court for permission to charge a fee that exceeds \$2,500. Any third party applying to the court pursuant to this subsection has the burden of establishing to the court that the fee is reasonable.
 6. This section does not preclude a debtor or his successor in interest from contesting the reasonableness of any fee set forth in an agreement entered into pursuant to this section.
 7. As used in this section:
 - (a) "Creditor" means a person due an obligation being enforced by a foreclosure sale conducted pursuant to [SECTION 40.451](#) to [40.463](#), inclusive.
 - (b) "Debtor" means a person, or the successor in interest of a person, who owes an obligation being enforced by a foreclosure sale conducted pursuant to [SECTION 40.451](#) to [40.463](#), inclusive.
 - (c) "Third party" means a person who is neither the debtor nor the creditor of a particular obligation being enforced by a foreclosure sale conducted pursuant to [SECTION 40.451](#) to [40.463](#), inclusive.

RIGHTS OF GUARANTOR, SURETY OR OBLIGOR IN REAL PROPERTY

SECTION 40.465 "Indebtedness" defined. As used in [SECTION 40.475](#), [40.485](#) and [40.495](#), "indebtedness" means the principal balance of the obligation, together with all accrued and unpaid interest, and those costs, fees, advances and other amounts secured by the mortgage or lien upon real property.

SECTION 40.475 Remedy against mortgagor or grantor; assignment of creditor's rights to guarantor, surety or obligor. Upon full satisfaction by a guarantor, surety or other obligor, other than the mortgagor or grantor of a deed of trust, of the indebtedness secured by a mortgage or lien upon real property, the paying guarantor, surety or other obligor is entitled to enforce every remedy which the creditor then has against the mortgagor or grantor of the mortgage or lien upon real property, and is entitled to an assignment from the creditor of all of the rights which the creditor then has by way of security for the performance of the indebtedness.

SECTION 40.485 Interest in proceeds of secured indebtedness upon partial satisfaction of indebtedness. Immediately upon partial satisfaction by a guarantor, surety or other obligor, other than the mortgagor or grantor of a deed of trust, of the indebtedness secured by a mortgage or lien upon real property, the paying guarantor, surety or other obligor automatically, by operation of law and without further action, receives an interest in the proceeds of the indebtedness secured by the mortgage or lien to the extent of the partial satisfaction, subject only to the creditor's prior right to recover the balance of the indebtedness owed by the mortgagor or grantor.

SECTION 40.495 Waiver of rights; separate action to enforce obligation; available defenses.

1. The provisions of [SECTION 40.475](#) and [40.485](#) may be waived by the guarantor, surety or other obligor only after default.
2. Except as otherwise provided in subsection 4, a guarantor, surety or other obligor, other than the mortgagor or grantor of a deed of trust, may waive the provisions of [SECTION 40.430](#). If a guarantor, surety or other obligor waives the provisions of [SECTION 40.430](#), an action for the enforcement of that

person's obligation to pay, satisfy or purchase all or part of an indebtedness or obligation secured by a mortgage or lien upon real property may be maintained separately and independently from:

- (a) An action on the debt;
- (b) The exercise of any power of sale;
- (c) Any action to foreclose or otherwise enforce a mortgage or lien and the indebtedness or obligations secured thereby; and
- (d) Any other proceeding against a mortgagor or grantor of a deed of trust.

3. If the obligee maintains an action to foreclose or otherwise enforce a mortgage or lien and the indebtedness or obligations secured thereby, the guarantor, surety or other obligor may assert any legal or equitable defenses provided pursuant to the provisions of [SECTION 40.451](#) to [40.463](#), inclusive.

4. The provisions of [SECTION 40.430](#) may not be waived by a guarantor, surety or other obligor if the mortgage or lien:

- (a) Secures an indebtedness for which the principal balance of the obligation was never greater than \$500,000;
- (b) Secures an indebtedness to a seller of real property for which the obligation was originally extended to the seller for any portion of the purchase price;
- (c) Is secured by real property which is used primarily for the production of farm products as of the date the mortgage or lien upon the real property is created; or
- (d) Is secured by real property upon which:
 - (1) The owner maintains his principal residence;
 - (2) There is not more than one residential structure; and
 - (3) Not more than four families reside.

ENVIRONMENTAL IMPAIRMENT OF REAL COLLATERAL OF SECURED LENDER

SECTION 40.501 Definitions. As used in [SECTION 40.501](#) to [40.512](#), inclusive, the words and terms defined in [SECTION 40.502](#) to [40.506](#), inclusive, have the meanings ascribed to them in those sections.

SECTION 40.502 “Environmental provision” defined. “Environmental provision” means any written representation, warranty, indemnity, promise or covenant relating to the existence, location, nature, use, generation, manufacture, storage, disposal, handling, or past, present, future or threatened release of any hazardous substance from, in, into or onto real collateral, or to past, present or future compliance with any law relating thereto, made by a debtor in conjunction with the making, renewal or modification of a loan, extension of credit, guaranty or other obligation involving the debtor, whether or not the representation, warranty, indemnity, promise or covenant is or was contained in or secured by the mortgage and whether or not the mortgage has been discharged, reconveyed or foreclosed upon.

SECTION 40.503 “Environmentally impaired” defined. Real collateral is “environmentally impaired” if the estimated costs to clean up and remedy a past, present or threatened release of any hazardous substance from, in, into or onto it exceeds 10 percent of the total indebtedness owed to the secured lender secured by the collateral.

SECTION 40.504 “Hazardous substance” defined. “Hazardous substance” means:

1. An element, compound, mixture, solution, material or substance whose use, possession, transportation, storage, release, discharge or disposal is regulated pursuant to [chapter 444](#), [445A](#), [445B](#), [459](#), [477](#), [590](#) or [618](#) of the Nevada Revised Statutes or the Uniform Fire Code (1988 edition);
2. An element, compound, mixture, solution, material or substance designated as a hazardous substance pursuant to 42 U.S.C. § 9602 and an element, compound, mixture, solution, material or substance described in 42 U.S.C. § 9601(14);
3. An element, compound, mixture, solution, material or substance listed as a hazardous waste in, or having the characteristics identified in, 42 U.S.C. § 6921, except any waste for which regulation under the

Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§ 6901 et seq.) has been suspended by an act of Congress; and

4. Petroleum, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, synthetic oil, synthetic gas usable for fuel or any mixture thereof.

SECTION 40.505 “Release” defined. “Release” means a spilling, leaking, pumping, pouring, emitting, emptying, discharging, ejecting, escaping, leaching, dumping or disposing of a hazardous substance into the environment, including continuing migration into or through the soil, surface water or groundwater.

SECTION 40.506 “Secured lender” defined. “Secured lender” means the holder of an obligation secured by a mortgage.

SECTION 40.507 Right of entry and inspection of real collateral.

1. A secured lender may enter and inspect real collateral for the purpose of determining the existence, location, nature and magnitude of any past, present or threatened release or presence of a hazardous substance from, in, into or onto it:

(a) Upon reasonable belief of the existence of a past, present or threatened release or the presence of any hazardous substance from, in, into or onto it not previously disclosed in writing to him in conjunction with the making, renewal or modification of a loan, extension of credit, guaranty or other obligation involving the debtor; or

(b) After the commencement of a trustee’s sale or judicial foreclosure proceedings against the real collateral.

2. A secured lender shall not abuse the right of entry and inspection or use it to harass the debtor or tenant of the property. Except in case of an emergency, when the debtor or tenant of the property has abandoned the premises, or if it is impracticable to do so, a secured lender shall give the debtor or tenant of the property reasonable notice of intent to enter, and enter only during the debtor’s or tenant’s normal business hours. Twenty-four hours’ notice is presumed to be reasonable in the absence of evidence to the contrary.

3. If a secured lender is refused the right of entry and inspection by the debtor or tenant of the property, or is otherwise unable to enter and inspect the property without a breach of the peace, he may, upon petition, obtain an order from a court of competent jurisdiction to exercise his rights under subsection 1.

SECTION 40.508 Action by secured lender concerning environmental provision. A secured lender may bring a separate action for a breach of an environmental provision, to recover damages for the breach or for the enforcement of an environmental provision.

SECTION 40.509 Limitation on amount of damages recoverable in action concerning environmental provision; recovery of interest.

1. Unless the environmental provision expressly permits a different or greater recovery or subsection 2 permits the addition of interest, the damages recoverable by a secured lender in an action pursuant to [SECTION 40.508](#) are limited to the sum of reimbursement or indemnification for:

(a) If he acted pursuant to an order of any federal, state or tribal agency relating to the cleaning up, remedying or other responsive action required by applicable law which is anticipated by the environmental provision, all amounts reasonably advanced in good faith by him in connection therewith;

(b) If he did not act pursuant to such an order, those costs relating to a reasonable cleaning up, remedying or other responsive action concerning hazardous substances, performed in good faith, which is anticipated by the environmental provision;

(c) All liabilities of the secured lender to any third party relating to the breach, unless the secured lender had actual knowledge of the environmental condition which is the basis of the claim for indemnification before entering into the transaction in which the environmental provision was given; and

(d) Costs, attorney’s fees and other incidental relief.

2. If the parties have so agreed, the lender may recover interest on the amount advanced by him to cure or mitigate the breach.

SECTION 40.511 Exceptions to applicability of [SECTION 40.507](#) and [40.508](#). [SECTION 40.507](#) and [40.508](#) do not apply if the real collateral is a unit put to residential use in a common-interest community or is real property upon which:

1. The owner maintains his principal residence;
2. There is not more than one residential structure; and
3. Not more than four families reside.

SECTION 40.512 Environmental impairment of real collateral: Waiver of lien; notice of waiver; exception; recording of waiver.

1. If real collateral is environmentally impaired and the debtor's obligation is in default, a secured lender may:

(a) Waive his lien as to all of the real collateral and proceed as an unsecured creditor, including reduction of his claim against the debtor to judgment and any other rights and remedies permitted by law; or

(b) Waive his lien in accordance with paragraph (a) as to that part of the real collateral which is environmentally impaired and proceed against the unimpaired real collateral.

2. To waive his lien against all or part of the environmentally impaired real collateral, the secured lender must, before commencement of any action, record with the tribal court where the real collateral is located a notice of intent to waive the lien and mail a copy thereof, by registered or certified mail, return receipt requested, with postage prepaid, to the debtor, to the person who holds the title of record on the date of the notice, and to those persons with an interest, as defined in [SECTION 107.090](#) of the Nevada Revised Statutes, whose interest or claimed interest is subordinate to the secured lender's lien, at their respective addresses, if known, otherwise to the address of the real collateral. In the case of a partial waiver the notice of intent to waive may be contained in a notice of default and election to sell. The notice of intent to waive must contain:

(a) A legal description of the environmentally impaired real collateral;

(b) A statement that the secured lender intends to proceed against the debtor under the applicable paragraph of subsection 1; and

(c) If the secured lender is proceeding under paragraph (b) of subsection 1, a statement that he will proceed against the unimpaired property, which may result in a judgment for deficiency against the debtor as a result of diminution in value of the collateral because of the exclusion of the environmentally impaired portion.

3. A secured lender may not waive his lien as a result of any environmental impairment if he had actual knowledge of the environmental impairment at the time the lien was created. In determining whether a secured lender had such knowledge, the report of any person legally entitled to prepare the report with respect to the existence or absence of any environmental impairment is prima facie evidence of the existence or absence, as the case may be, of any environmental impairment.

4. A waiver made by a secured lender pursuant to this section is not final or conclusive until a final judgment, as defined in subsection 4 of [SECTION 40.435](#), has been obtained. If the waiver covers the full extent of the collateral, the lender shall immediately thereafter cause his lien to be released by recording the waiver in the same manner as the lien was recorded.

PROCEEDINGS TO ESTABLISH TERMINATION OF LIFE ESTATES

SECTION 40.515 Petition, notice, hearing and order. If any person has died, or shall hereafter die, who at the time of his death was the owner of a life estate which terminates by reason of his death, any person interested in the property, or in the title thereto, in which such life estate was held, may file in the tribal court in which the property is situated, his verified petition, setting forth such facts, and thereupon and after such notice by publication or otherwise, as the court or judge may order, the court or judge shall hear such petition and the evidence offered in support thereof, and if upon such hearing it shall appear that

such life estate of such deceased person absolutely terminated by reason of his death, the court or judge shall make an order to that effect, and thereupon a certified copy of such order may be recorded in the office of the White Pine County Recorder.

METHODS OF TERMINATION OF INTERESTS OF DECEASED PERSONS IN PROPERTY

SECTION 40.525 Petition; notice; hearing and order; alternative method.

1. If title or an interest in real or personal property is affected by the death of any person, any other person who claims any interest in the real or personal property, if his interest is affected by the death of that person may file in the tribal court a verified petition setting forth those facts and particularly describing the real or personal property, the interest of the petitioner and the interest of the deceased therein.

2. The clerk shall set the petition for hearing by the court. Notice of hearing of the petition must be mailed, by certified mail, return receipt requested, postage prepaid, to the heirs at law of the deceased person at their places of business or residences, if known, and if not, by publication for at least 3 successive weeks in such newspaper as the court orders. The clerk shall send a copy of the notice of hearing or of the affidavit to the Department of Health and Human Services by certified mail, return receipt requested, postage prepaid, if the tribe is not the petitioner, at the time notice is mailed to the heirs at law or the notice is published. Failure on the part of any such heir at law to contest the petition precludes any such heir at law from thereafter contesting the validity of the joint interest or its creation or termination.

3. The court shall take evidence for or against the petition, and may render judgment thereon establishing the fact of the death and the termination of the interest of the deceased in the real or personal property described in the petition.

4. A certified copy of the decree may be recorded in the office of the recorder of each county in which any part of the real or personal property is situated.

5. As an alternative method of terminating the interest of the deceased person, if title or an interest in real or personal property held in joint tenancy or as community property with right of survivorship is affected by the death of a joint tenant or spouse, any person who has knowledge of the facts may record in the office of the county recorder in the county where the property is situated an affidavit meeting the requirements of [SECTION 111.365](#) of the Nevada Revised Statutes accompanied by a certified copy of the death certificate of the deceased person.

SECTION 40.535 Affidavit or petition may be filed in probate proceeding. Any affidavit or petition, such as described in [SECTION 40.525](#), may be filed as a part of any probate proceeding.

ACTIONS RESULTING FROM CONSTRUCTIONAL DEFECT

General Provisions

SECTION 40.600 Definitions. As used in [SECTION 40.600](#) to [40.695](#), inclusive, unless the context otherwise requires, the words and terms defined in [SECTION 40.603](#) to [40.634](#), inclusive, have the meanings ascribed to them in those sections.

SECTION 40.603 “Amend a complaint to add a cause of action for a constructional defect” defined. “Amend a complaint to add a cause of action for a constructional defect” means any act by which a claimant seeks to:

1. Add to the pleadings a defective component that is not otherwise included in the pleadings and for which a notice was not previously given; or

2. Amend the pleadings in such a manner that the practical effect is the addition of a constructional defect that is not otherwise included in the pleadings.

↳ The term does not include amending a complaint to plead a different cause for a constructional defect which is included in the same action.

SECTION 40.605 “Appurtenance” defined.

1. “Appurtenance” means a structure, installation, facility, amenity or other improvement that is appurtenant to or benefits one or more residences, but is not a part of the dwelling unit. The term includes, without limitation, the parcel of real property, recreational facilities, golf courses, walls, sidewalks, driveways, landscaping, common elements and limited common elements other than those described in [SECTION 116.2102](#) of the Nevada Revised Statutes, and other structures, installations, facilities and amenities associated with or benefiting one or more residences.

2. As used in this section:

(a) “Common elements” has the meaning ascribed to it in [SECTION 116.017](#) of the Nevada Revised Statutes.

(b) “Limited common element” has the meaning ascribed to it in [SECTION 116.059](#) of the Nevada Revised Statutes.

SECTION 40.610 “Claimant” defined. “Claimant” means:

1. An owner of a residence or appurtenance;

2. A representative of a homeowner’s association that is responsible for a residence or appurtenance and is acting within the scope of his duties pursuant to [chapter 116](#) or [117](#) of the Nevada Revised Statutes;

or

3. Each owner of a residence or appurtenance to whom a notice applies pursuant to subsection 4 of [SECTION 40.645](#).

SECTION 40.615 “Constructional defect” defined. “Constructional defect” means a defect in the design, construction, manufacture, repair or landscaping of a new residence, of an alteration of or addition to an existing residence, or of an appurtenance and includes, without limitation, the design, construction, manufacture, repair or landscaping of a new residence, of an alteration of or addition to an existing residence, or of an appurtenance:

1. Which is done in violation of law, including, without limitation, in violation of local codes or ordinances;

2. Which proximately causes physical damage to the residence, an appurtenance or the real property to which the residence or appurtenance is affixed;

3. Which is not completed in a good and workmanlike manner in accordance with the generally accepted standard of care in the industry for that type of design, construction, manufacture, repair or landscaping; or

4. Which presents an unreasonable risk of injury to a person or property.

SECTION 40.620 “Contractor” defined. “Contractor” means a person who, with or without a license issued in the State of Nevada or neighboring states, by himself or through his agents, employees or subcontractors:

1. Develops, constructs, alters, repairs, improves or landscapes a residence, appurtenance or any part thereof;

2. Develops a site for a residence, appurtenance or any part thereof; or

3. Sells a residence or appurtenance, any part of which the person, by himself or through his agents, employees or subcontractors, has developed, constructed, altered, repaired, improved or landscaped.

SECTION 40.623 “Design professional” defined. “Design professional” means a person who holds a professional license or certificate issued pursuant to [chapter 623](#), [623A](#) or [625](#) of the Nevada Revised Statutes.

SECTION 40.625 “Homeowner’s warranty” defined. “Homeowner’s warranty” means a warranty or policy of insurance:

1. Issued or purchased by or on behalf of a contractor for the protection of a claimant; or

2. Purchased by or on behalf of a claimant pursuant to [SECTION 690B.100](#) to [690B.180](#) of the Nevada Revised Statutes, inclusive.

↳ The term includes a warranty contract issued by a risk retention group that operates in compliance with [chapter 695E](#) of the Nevada Revised Statutes and insures all or any part of the liability of a contractor for the cost to repair a constructional defect in a residence.

SECTION 40.630 “Residence” defined. “Residence” means any dwelling in which title to the individual units is transferred to the owners.

SECTION 40.632 “Subcontractor” defined. “Subcontractor” means a contractor who performs work on behalf of another contractor in the construction of a residence or appurtenance.

SECTION 40.634 “Supplier” defined. “Supplier” means a person who provides materials, equipment or other supplies for the construction of a residence or appurtenance.

SECTION 40.635 Applicability; effect on other defenses. [SECTION 40.600](#) to [40.695](#), inclusive:

1. Apply to any claim as the result of a constructional defect, except a claim for personal injury or wrongful death.
2. Prevail over any conflicting law otherwise applicable to the claim or cause of action.
3. Do not bar or limit any defense otherwise available, except as otherwise provided in those sections.
4. Do not create a new theory upon which liability may be based, except as otherwise provided in those sections.

Miscellaneous Provisions

SECTION 40.689 Preference given to action; action may be assigned to tribal judge; assessment of additional expenses.

1. Upon petition by a party:
 - (a) The court shall give preference in setting a date for the trial of an action commenced pursuant to [SECTION 40.600](#) to [40.695](#), inclusive; and
 - (b) The court may assign an action commenced pursuant to [SECTION 40.600](#) to [40.695](#), inclusive, to a senior judge.
2. If the action is assigned to a judge upon petition by a party:
 - (a) Any additional expenses caused by the assignment must be borne equally by each party involved; or
 - (b) The judge may distribute any additional expenses among the parties as he deems appropriate.

SECTION 40.690 Limitation on bringing claim against tribal entity during period for resolution; effect of settlement; contractor or claimant may require party to appear and participate.

1. A claim governed by [SECTION 40.600](#) to [40.695](#), inclusive, may not be brought by a claimant or contractor against a tribal government, during the period in which a claim for a constructional defect is being settled, mediated or otherwise resolved pursuant to [SECTION 40.600](#) to [40.695](#), inclusive. The settlement of such a claim does not affect the rights or obligations of the claimant or contractor in any action brought by the claimant or contractor against a third party.
2. A contractor or claimant may require a party against whom the contractor or claimant asserts a claim governed by [SECTION 40.600](#) to [40.695](#), inclusive, to appear and participate in proceedings held pursuant to those sections as if the party were a contractor and the party requiring him to appear were a claimant. The party must receive notice of the proceedings from the contractor or claimant.

SECTION 40.692 Notice not required to be given to intervener in action. A claimant who commences an action for a constructional defect is not required to give written notice of a defect pursuant to [SECTION](#)

[40.645](#) to any person who intervenes in the action as a party after it is commenced. If such a person becomes a party to the action:

1. For the purposes of [SECTION 40.645](#), the person shall be deemed to have been given notice of the defect by the claimant on the date on which the person becomes a party to the action; and
2. The provisions of [SECTION 40.600](#) to [40.695](#), inclusive, apply to the person after that date.

SECTION 40.695 Tolling of statutes of limitation or repose; applicability.

1. Except as otherwise provided in subsection 2, statutes of limitation or repose applicable to a claim based on a constructional defect governed by [SECTION 40.600](#) to [40.695](#), inclusive, are tolled from the time notice of the claim is given, until 30 days after mediation is concluded or waived in writing pursuant to [SECTION 40.680](#).

2. Tolling under this section applies to a third party regardless of whether the party is required to appear in the proceeding.

MISCELLANEOUS PROVISIONS

SECTION 40.760 Summary eviction of person using facility for storage as residence.

1. When a person is using a facility for storage as a residence, the owner or his agent shall serve or have served a notice in writing which directs the person to cease using the facility as a residence no later than 24 hours after receiving the notice. The notice must advise the person that:

(a) [SECTION 108.475](#) of the Nevada Revised Statutes requires the owner to ask the court to have the person evicted if he has not ceased using the facility as a residence within 24 hours; and

(b) He may continue to use the facility to store his personal property in accordance with the rental agreement.

2. If the person does not cease using the facility as a residence within 24 hours after receiving the notice to do so, the owner of the facility or his agent shall apply by affidavit for summary eviction to the tribal court. The affidavit must contain:

(a) The date the rental agreement became effective.

(b) A statement that the person is using the facility as a residence.

(c) The date and time the person was served with written notice to cease using the facility as a residence.

(d) A statement that the person has not ceased using the facility as a residence within 24 hours after receiving the notice.

3. Upon receipt of such an affidavit the tribal judge shall issue an order directing the tribal police to remove the person within 24 hours after receipt of the order. The tribal police shall not remove the person's personal property from the facility.

4. For the purposes of this section, "facility for storage" means real property divided into individual spaces which are rented or leased for storing personal property. The term does not include a garage or storage area in a private residence.

SECTION 40.770 Limitation on liability of seller, seller's agent and buyer's agent for failure to disclose certain facts concerning property.

1. Except as otherwise provided in subsection 6, in any sale, lease or rental of real property, the fact that the property is or has been:

(a) The site of a homicide, suicide or death by any other cause, except a death that results from a condition of the property;

(b) The site of any crime punishable as a **Category A offense** other than a crime that involves the manufacturing of any material, compound, mixture or preparation which contains any quantity of methamphetamine; or

(c) Occupied by a person exposed to the human immunodeficiency virus or suffering from acquired immune deficiency syndrome or any other disease that is not known to be transmitted through occupancy of the property,

↪ is not material to the transaction.

2. In any sale, lease or rental of real property, the fact that a sex offender, as defined in [SECTION 179D.095](#) of the Nevada Revised Statutes, resides or is expected to reside in the community is not material to the transaction, and the seller, lessor or landlord or any agent of the seller, lessor or landlord does not have a duty to disclose such a fact to a buyer, lessee or tenant or any agent of a buyer, lessee or tenant.

3. In any sale, lease or rental of real property, the fact that a facility for transitional living for released offenders that is licensed pursuant to [chapter 449](#) of the Nevada Revised Statutes is located near the property being sold, leased or rented is not material to the transaction.

4. A seller, lessor or landlord or any agent of the seller, lessor or landlord is not liable to the buyer, lessee or tenant in any action at law or in equity because of the failure to disclose any fact described in subsection 1, 2 or 3 that is not material to the transaction or of which the seller, lessor or landlord or agent of the seller, lessor or landlord had no actual knowledge.

5. Except as otherwise provided in an agreement between a buyer, lessee or tenant and his agent, an agent of the buyer, lessee or tenant is not liable to the buyer, lessee or tenant in any action at law or in equity because of the failure to disclose any fact described in subsection 1, 2 or 3 that is not material to the transaction or of which the agent of the buyer, lessee or tenant had no actual knowledge.

6. For purposes of this section, the fact that the property is or has been the site of a crime that involves the manufacturing of any material, compound, mixture or preparation which contains any quantity of methamphetamine is not material to the transaction if:

(a) All materials and substances involving methamphetamine have been removed from or remediated on the property by an entity certified or licensed to do so; or

(b) The property has been deemed safe for habitation by a governmental entity.

7. As used in this section, “facility for transitional living for released offenders” has the meaning ascribed to it in [SECTION 449.0055](#) of the Nevada Revised Statutes.