

Title 13 – Real Property and Housing

Chapter 2 – Evictions

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Legislative History

Enacted:

Codifying Title 13, Ord. 196 (11/24/03), BIA (11/28/03).

Repealed and Superseded:

Establishing Damages for Unlawful Detainer, Ord. 124 (9/16/97), BIA (10/3/97)
(amending Ord. 115).

Swinomish Indian Tribal Community Evictions Procedures Ordinance, Ord. 115 (4/1/96), BIA (4/26/96) (superseding and replacing any prior evictions ordinances and any conflicting provisions of other laws and ordinances).

Amendment to Ord. No. 47, Resolving Procedural Conflicts between Ordinances 47 and 74, Ord. 84 (11/5/91), Enacting Res. 91-11-102.

Swinomish Evictions Procedures Ordinance, Ord. 47, Enacting Res. 81-11-889 (11/3/81).

Rescinded:

Swinomish Indian Tribal Community Evictions Procedures Ordinance, Ord. 111 (7/11/95), BIA (approved 8/21/95, rescinded 11/8/95).

13-02.010 Title.

This Chapter shall be known as the “Eviction Procedures Code.”

[History] Ord. 196 (11/24/03); Ord. 115 (4/1/96).

13-02.020 Authority.

This Chapter is authorized pursuant to the following provisions of the Constitution of the Swinomish Indian Tribal Community, as most recently amended:

Art. VI, Sec. 1(i), (k), (l), and (o);

Art. VI, Sec. 4; and

Art. VI, Sec. 5.

[History] Ord. 196 (11/24/03).

13-02.030 Jurisdiction.

The provisions of this Chapter shall apply to all persons and property subject to the governing authority of the Swinomish Indian Tribal Community.

[History] Ord. 196 (11/24/03); Ord. 115 (4/1/96).

13-02.040 Construction.

(A) **Gender.** Reference to persons by terms denoting one sex shall be taken as referring to either sex.

(B) **Singular or plural.** Reference to persons by a term denoting the singular shall include the plural.

[History] Ord. 196 (11/24/03); Ord. 115 (4/1/96).

13-02.050 Definitions.

- (A) For the purposes of this Chapter, the following words and phrases shall have the following meanings, unless explicitly stated otherwise.
- (1) **“Court”** means the Swinomish Tribal Court as established by the laws of this Tribe.
 - (2) **“Drug Related Criminal Activity”** means any activity that constitutes a violation of Swinomish Criminal Code, Chapter 4-10 or 4-11, or which would constitute such a violation if done by a person subject to the criminal jurisdiction of the Tribe.
 - (3) **“Lessor”** means the Tribe, the Authority or any other person or entity who shall have an interest in property which for a limited time has been leased or rented to another. The term “lessor” shall include the Swinomish Housing Authority if it has leased property under a Mutual Help and Occupancy Agreement, Rental Lease Agreement or other similar arrangement whereby the tenant may, on certain conditions, obtain ownership of the occupied property at the end of the occupancy under the agreement.
 - (4) **“Nuisance”** means the maintenance on property of a condition that:
 - (a) Unreasonably threatens the health or safety of the public or neighboring land users; or
 - (b) Unreasonably and substantially interferes with the ability of neighboring property users to enjoy the reasonable use, occupancy, and quiet enjoyment of their property.
 - (5) **“Owner”** means any person or entity having an ownership interest in property, and includes, with respect to property held in trust, any person or entity having any legal or beneficial interest in the property.
 - (6) **“Secretary”** means the Secretary of the U.S. Department of the Interior or his or her authorized representative.
 - (7) **“Tenant”** means any person who occupies property under a lease, rental agreement or other agreement with a lessor as defined in this Section.
 - (8) **“Tribe”** means the Swinomish Indian Tribal Community of the Swinomish Indian Reservation.
 - (9) **“Unlawful Detainer Action”** means a suit brought before the Court to

terminate a tenant's interest in property and/or to evict any person from occupancy of property.

- (10) **"Waste"** means the spoilation or destruction by a tenant of land, buildings, gardens, trees or other improvements resulting in substantial injury to the lessor's interest in the property. **"Waste"** includes, but is not limited to, any failure to maintain utility and/or other services that leads to the degradation of the property value.
- (11) **"Writ of Restitution"** means an order of the Court:
 - (1) Restoring an owner or lessor to possession of property; and
 - (2) Evicting a tenant or other occupant therefrom.

(B) All other words and phrases shall have their ordinary and customary meanings.

[History] Ord. 196 (11/24/03); Ord. 115 (4/1/96).

13-02.060 Leases Requiring Secretarial Approval.

Leases requiring Secretarial approval are subject to federal laws governing such leases. No such lease may be canceled except as provided by federal law. This Chapter shall apply immediately upon such cancellation becoming final for the Department of the Interior.

[History] Ord. 196 (11/24/03); Ord. 115 (4/1/96).

13-02.070 Unlawful Detainer.

A tenant or other occupier of land shall commit an unlawful detainer if such person, shall continue in occupancy of property under any of the following situations:

(A) **Without the requirement of any notice:**

- (1) After the expiration of the term of the lease or other agreement;
- (2) If such person has entered onto or remains on the property of another without the permission of the owner and without having a lease, title of the property, or a beneficial ownership interest in the property;
- (3) After the Housing Authority has terminated such person's tenancy pursuant to procedures providing such person a hearing before the Housing Authority;
- (4) After the interest of such person in a lease has been foreclosed in a leasehold mortgage foreclosure proceeding; or

- (5) After a lease requiring Secretarial approval has been canceled and the cancellation has become final for the Department of the Interior.
- (B) **After having received three (3) days notice:**
- (1) When such person has received notice to vacate the premises because the tenant or occupier has engaged in drug-related criminal activity, or other criminal activity that imminently threatens health, safety, or the right to quiet enjoyment of neighboring properties.
 - (2) When such person has received notice that there exists on the rented or leased premises a condition that constitutes an imminent and substantial threat to public health and/or safety and he or she has been given notice to either repair such condition or to surrender the property.
- (C) **After having received thirty (30) days notice:**
- (1) When such person has received notice:
 - (a) That he or she is in default in the payment of rent; or
 - (b) Requiring him to pay the rent or surrender possession of the occupied property; and
 - (c) Such person has remained in possession of the property after receipt of such notice without either surrendering possession of the property or paying the rent;
 - (2) When the lease of the property is for an indefinite time, with rent to be paid monthly or by some other period, and the lessor has given notice of termination of the tenancy at least thirty (30) days prior to the end of such month or period;
 - (3) When such person shall continue to fail to keep or perform any condition or covenant of the lease or agreement under which the property is held after he has been given notice to either perform such condition or covenant or to surrender the property; or
 - (4) When such person continues to commit or to permit waste upon or maintain a nuisance upon the occupied property after having been given notice either to cease such waste or maintenance of a nuisance or to surrender the property.

[History] Ord. 196 (11/24/03); Ord. 115 (4/1/96).

13-02.080 Service of Notice.

- (A) Notice required or authorized in Section 13-02.070 shall be given in writing by delivering a copy personally to the tenant or occupier or to any member of his or her family residing on the premises who is eighteen (18) years of age or older;
- (B) If, after reasonable effort, the party cannot achieve service under the terms of Section 13-02.080(A), then the party may achieve service as follows:
 - (1) **Posting.** Notice shall be posted in a conspicuous place near the entrance of said premises, and by sending additional copies to the tenant or occupier by regular mail and by certified mail, return receipt requested, properly addressed, postage prepaid. Service is valid even if the defendant does not pick up the copy sent by certified mail; and
 - (2) **Publication.**
 - (a) **Tribal Members.** Notice shall be served on tribal members by publication of the notice in Kee-Yoks, the tribal newspaper.
 - (b) **Non-tribal Members.** Notice shall be served on non-tribal members by publication of the notice in a local newspaper of suitable size and general circulation.
- (C) Proof of service by either of the above methods may be made by affidavit of any person eighteen (18) years of age or older stating that he or she has complied fully with the requirements of one of the two methods of service. In any case involving the Swinomish Housing Authority, service may be made by an SHA employee.

[History] Ord. 196 (11/24/03); Ord. 115 (4/1/96).

13-02.090 Parties.

An owner, a lessor, or the Tribe on behalf of a tribal member owner or lessor may commence an action for unlawful detainer. When the action is commenced by an owner of an undivided interest in the property or by the Tribe on behalf of such owner, the other owners of undivided interests shall have a right to intervene in the action if they choose, but shall not be deemed to be necessary parties to the action.

[History] Ord. 196 (11/24/03); Ord. 115 (4/1/96).

13-02.100 Summons and Complaint.

The action for unlawful detainer shall be commenced by filing with the court, in writing, the following documents:

- (A) **Complaint.** A complaint, signed by the owner, lessor, agent, or attorney, stating:
 - (1) The facts on which he or she seeks to recover;
 - (2) The type of notice, if any, that was given to the tenant or occupier, and the date and manner of service of such notice;
 - (3) A description of the property so that it can be identified with reasonable certainty; and
 - (4) Any claim for damages or compensation due from the persons to be evicted; and
- (B) **Summons.** A summons issued as in other cases requiring the defendants to appear for a trial upon the complaint on a date and time specified in the summons.
 - (1) The trial date specified shall be not less than six (6) nor more than ninety (90) days from the date of service of the summons and complaint.
 - (2) The summons must notify the defendants that a judgment will be taken against them in accordance with the terms of the complaint unless they file a timely answer with the court and appear for trial at the time, date and place specified in the summons.

[History] Ord. 196 (11/24/03); Ord. 115 (4/1/96).

13-02.110 Service of Summons and Complaint.

A copy of the summons and complaint shall be served upon the defendants as follows:

- (A) By delivering a copy personally to the tenant or occupier or to any member of his or her family residing on the premises who is eighteen (18) years of age or older.
- (B) If, after every reasonable effort is made, the person attempting service is unable to serve the defendants in the above stated manner, the summons and complaint may be served by posting copies in a conspicuous place near the entrance of the premises, and by sending additional copies to the tenant or occupier by regular mail and by certified mail, return receipt requested, properly addressed, postage prepaid. Service is valid even if the defendant does not pick up the copy sent by certified mail.
- (C) Proof of service may be made by affidavit of any person eighteen (18) years of age or older stating that he or she has complied fully with the requirements for service. In any case involving the Authority, service may be made by an Authority employee.

- (D) If service is made in the manner described in Subsection (B), the affidavit of service must describe the efforts that were made to personally serve the defendant.

[History] Ord. 196 (11/24/03); Ord. 115 (4/1/96).

13-02.120 Answer.

The defendants' answer to the summons and complaint must be received by the plaintiff and filed with the Court no later than 4:00 p.m. two (2) days prior to the date set for hearing of the matter.

[History] Ord. 196 (11/24/03); Ord. 115 (4/1/96).

Subchapter II – Writ of Restitution

13-02.130 Entry of Writ.

The Court shall enter a Writ of Restitution if:

- (A) Notice of suit and trial is given by service of summons and complaint in accordance with the procedures provided in this Chapter; and
- (B) The Court finds by a preponderance of the evidence that the occupier of the property has committed an act of unlawful detainer pursuant to Section 13-02.070.

[History] Ord. 196 (11/24/03); Ord. 115 (4/1/96).

13-02.140 Contents of Writ.

The Writ of Restitution shall provide that:

- (A) The eviction is to be carried out within twenty (20) days after the Writ has been issued;
- (B) The tenant shall be allowed three (3) days to vacate the premises voluntarily;
- (C) The officers enforcing the Writ of Restitution are authorized to use force when effectuating an eviction;
- (D) An owner or the owner's representative shall secure the property by changing the locks on any structure or building located thereon;
- (E) Any and all personal property remaining on property following an eviction shall be inventoried and stored by an owner or the owner's representative in a reasonably secure place;

- (F) Property inventoried and stored by an owner or the owner's representative shall be returned to the tenant after the tenant has paid the actual or reasonable storage costs, whichever is less, or until it is sold or disposed of by an owner or the owner's representative in accordance with Subsection (G);
- (G) In the event that personal property is not retrieved by the tenant within ten (10) days after the date the eviction is carried out, an owner or the owner's representative shall have the authority to dispose of the property, provided, that before disposing of any property, an owner or the owner's representative must determine if any of the property could reasonably be valued at \$500 or more and, if so, an owner or the owner's representative must attempt to sell such property at an auction. Notice of the auction must be posted at the Tribal Administration Building and mailed to the evicted tenant at the tenant's last known address at least five (5) days prior to said auction; and
- (H) Any moneys collected from the auction in excess of the actual cost of inventorying and/or warehousing the personal property may be applied against moneys owed an owner or the owner's representative. Any moneys remaining thereafter shall be held by an owner or the owner's representative for the benefit of the tenant for a period of one (1) year from the date of sale, and if no claim is made by the tenant for recovery thereof prior to the expiration of that time period, the balance shall become the property of an owner or the owner's representative, including any interest paid thereon.

[History] Ord. 196 (11/24/03); Ord. 115 (4/1/96).

13-02.150 Service.

The Writ of Restitution shall be served on the defendant in the manner specified in Section 13-02.110 – Service of Summons and Complaint.

[History] Ord. 196 (11/24/03); Ord. 115 (4/1/96).

13-02.160 Enforcement.

Upon the issuance of a Writ of Restitution by the court, tribal law enforcement officers or other authorized law enforcement officers shall enforce the Writ of Restitution by evicting the defendants and their property from the premises that are unlawfully occupied.

[History] Ord. 196 (11/24/03); Ord. 115 (4/1/96).

13-02.170 Return.

The tribal law enforcement officers or other authorized law enforcement officers shall return their copy of the Writ of Restitution to the court accompanied by a written affirmation that the eviction has been enforced in accordance with the Writ of Restitution. The copy of the

Writ and the affirmation shall be filed with the court no later than thirty (30) days after the Writ of Restitution was issued.

[History] Ord. 196 (11/24/03); Ord. 115 (4/1/96).

13-02.180 Requests for Reconsideration/Appeals.

- (A) If either party feels aggrieved by the judgment of the court, he or she may request reconsideration or appeal as in other civil actions; provided, that if the defendant requesting reconsideration or appealing desires a stay of proceedings, he or she must petition the court for a stay of execution of its order pending appeal. The court may grant a stay of execution only when:
- (1) An appeal has been filed;
 - (2) All money damage awards and judgments have been satisfied or a bond has been posted in an amount sufficient to cover such awards and judgments; and
 - (3) A bond has been posted by the occupier with the court clerk in an amount equal to one month's rent, or other amount ordered by the court.

(B) There shall be no appeal from the court's decision to grant or deny a stay of execution.

[History] Ord. 196 (11/24/03); Ord. 115 (4/1/96).

13-02.190 Alternative Remedies.

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

[History] Ord. 196 (11/24/03); Ord. 115 (4/1/96).

Subchapter III – Damages and Judgment

13-02.200 Damages.

- (A) Damages in an unlawful detainer action shall include, but are not limited to, the following:
- (1) Back rent;
 - (2) Unpaid utilities;

- (3) Any other unpaid obligations under defendants' lease;
 - (4) Charges due the Tribe, the Authority, any other tribal entity, and the owner under any lease or occupancy agreement other than a leasehold mortgage;
 - (5) Any other damages arising from breach of the lease;
 - (6) Two (2) times the damages caused by the defendants to the property other than damage due to ordinary wear and tear;
 - (7) Two (2) times the reasonable rental value of the property or any other measure of trespass damages, where the property was occupied without a lease, or where occupancy continued after the expiration of a lease or after a lease was canceled or forfeited; and
 - (8) Any other damages incurred by the owner as a result of the acts that constituted the unlawful detainer.
- (B) The court shall have jurisdiction to enter a judgment awarding such damages even if the property has been vacated by the defendant prior to the filing of the action but within the limitation period provided for by tribal law, or prior to the issuance of a Writ of Restitution.
- (C) A plaintiff may request that the court enter a final appealable judgment issuing a Writ of Restitution prior to entry of a final judgment awarding damages. Such request shall freely be granted whenever it appears that the determination of damages might otherwise delay issuance of the Writ of Restitution.

[History] Ord. 196 (11/24/03); Ord. 124 (9/16/97); Ord. 115 (4/1/96).

13-02.210 Costs.

The court shall award reasonable expenses incurred in bringing or defending the action to the prevailing party, including but not limited to appraisal and expert witness expenses and reasonable attorney fees.

[History] Ord. 196 (11/24/03); Ord. 124 (9/16/97); Ord. 115 (4/1/96).

13-02.220 Satisfaction of Judgment.

- (A) The court shall have the authority to order wage garnishment and other methods of satisfying the judgment in accordance with tribal law.
- (B) Whenever more than one person or entity has an undivided interest in the property, a judgment for damages shall include damages to all such undivided interests. In such a case, whenever the judgment is satisfied in full or in part, the funds received in

satisfaction of the judgment shall be deposited with the court. The court shall then distribute the funds as follows:

- (1) As to property held in trust by the United States, the funds shall be forwarded to the Superintendent, Puget Sound Agency, Bureau of Indian Affairs, for distribution to the beneficial owners; and
 - (2) As to property not held in trust by the United States, the court shall distribute such funds to the owners in proportion to their ownership interests.
- (C) The court may hold supplemental proceedings to determine the distributions required by this Section and may order that the plaintiff provide notice of the supplemental proceedings to others having undivided interests in the property.

[History] Ord. 196 (11/24/03); Ord. 115 (4/1/96).

13-02.230 Subsequent Action.

A judgment rendered pursuant to this Chapter shall not preclude an owner from bringing a subsequent action against the defendant for damages, which may include, but are not limited to lost rental income, incurred after the date of the judgment as a result of the events that constituted the unlawful detainer.

[History] Ord. 196 (11/24/03); Ord. 124 (11/16/97); Ord. 115 (4/1/96).

Subchapter IV – Repealer and Severability

13-02.240 Repealer.

This Chapter supersedes and replaces any prior evictions ordinances and any conflicting provisions of other laws of the Swinomish Indian Tribal Community.

[History] Ord. 196 (11/24/03); Ord. 115 (4/1/96).

13-02.250 Severability.

The invalidity of any section, clause, sentence, or provision of this Chapter shall not affect the validity of any part of this Chapter that can be given effect without such invalid part or parts.

[History] Ord. 196 (11/24/03); Ord. 115 (4/1/96).

Annotations

STC 13-02.120

NOTES OF DECISIONS

Default Judgment 1

1. Default Judgment

Defendant's failure to file a written answer as required by this Section or otherwise answer, respond or object to the relief requested by the Plaintiff prior to a hearing on Plaintiff's Motion for Default resulted in a finding of unlawful detainer and the issuance of a Writ of Restitution. *SITC v. Stone*, CVEV-2006-0103 (Swinomish Tribal Ct. November 2, 2006).

STC 13-02.140

NOTES OF DECISIONS

Equitable Powers 1

Fair Compensation for Improvements 2

1. Equitable Powers

Upon successful petition for unlawful detainer, the Court may exercise its inherent powers of equity to determine the proper compensation, if any, that is due to the defendant for the value of improvements that have been made to the subject real property. *SITC v. Stone*, CVEV-2006-0103 (Swinomish Tribal Ct. November 2, 2006).

Plaintiff's motion to order a mental health evaluation of tenant evicted in an unlawful detainer action and/or order structured payments of any award against the plaintiff for fair compensation for improvements was beyond the scope of tribal court authority in an eviction case. *SITC v. Stone*, CVEV-2006-0103 (Swinomish Tribal Ct. November 2, 2006).

2. Fair Compensation for Improvements

At a hearing to determine fair compensation owed to an evicted tenant in an unlawful detainer action, parties may present evidence and argument supporting their claim for fair compensation. *SITC v. Stone*, CVEV-2006-0103 (Swinomish Tribal Ct. November 2, 2006).