

The Lac Vieux Desert Band of Lake Superior Chippewa Indians
Landlord & Tenant Housing Code

CHAPTER 1 GENERAL PROVISION

Section 1-1. Title. This Code shall be known as the Lac Vieux Desert Landlord & Tenant Housing Code and may be abbreviated as the LVD L&T Code.

Section 1-2. Jurisdiction.

- A. For purposes of this Code, jurisdiction is extended over all buildings and lands intended for human dwelling, occupation or residence which may lie within:
 - 1. The exterior boundaries of the tribal reservation; or
 - 2. Lands owned by, held in trust for, leased or used by the Tribe, its members, its Housing Department, or any other entity of the Tribe; or
 - 3. The Indian Country of the Tribe, as may be defined from time to time by the laws of the Tribe or of the United States.
- B. For purposes of this Code, jurisdiction is extended over all persons or entities within the jurisdiction of the Tribe who sell, rent, lease, or allow persons to occupy housing, dwellings, or accommodations for the purpose of human dwelling, occupation, or residence, and all persons who buy, rent, lease, or occupy such structures. Such personal jurisdiction is extended over all persons and entities, whether they are Indian or non-Indian.
- C. For purposes of this Code, jurisdiction is extended over:
 - 1. All buildings which may lie upon lands owned by, held in trust for, leased or used by the Tribe, its members, the Lac Vieux Desert Tribe, or any other entity of the Tribe; and
 - 2. All persons or entities within the jurisdiction of the Tribe who lease, mortgage, or otherwise secure an interest in a building.
- D. For purposes of this Code, jurisdiction over all matters arising within the jurisdiction of the Tribe with respect to the subjects of this Code, and jurisdiction with respect to any person or entity acting or causing actions which arise under this Code shall be exercised by the Tribal Court.

Section 1.3 Housing Committee. The Tribe may establish a Lac Vieux Desert Band of Lake Superior Chippewa Band of Lake Superior Chippewa Indians Housing Committee ("Housing Committee") to provide a means of community access and input for all tribal housing programs and services as provided by the rules or regulations related to housing assistance programs and services. If established:

- A. The Housing Committee shall consist of five (5) Tribal Members appointed by the Tribal Chairperson subject to the approval of the Tribal Council.

- B. The members of the Housing Committee shall serve for a term of three (3) years which shall be staggered and may be extended or renewed at the discretion of the Tribal Chairperson subject to the approval of the Tribal Council.
- C. The Housing Committee shall conduct regular meetings, at least quarterly but no more than once per month, unless emergent needs of the Department otherwise require meeting on a more frequent basis, in order to ensure that eligible Tribal Citizens are properly afforded housing assistance opportunities through the Department while promoting a healthy living environment, creating a sense of community, and building economic self-sufficiency.
- D. The members of the Housing Committee shall be entitled to a meeting stipend in accordance with Tribal policy.
- E. Notwithstanding all rights, powers, privileges expressly reserved to and held by the Tribal Council under the Constitution, the Housing Committee shall have the authority to:
 - 1. Recommend amendments of the Housing Committee By-Laws to the Tribal Council to govern its actions;
 - 2. To develop and recommend policies, rules and/or regulations, or amendments thereto, to the Tribal Council necessary for the effective administration and overall operation of the Tribe's housing program.
 - 3. To recommend, on an annual basis, a monthly minimum Rent amount for approval of the Tribal Council related to housing and Dwelling Units owned by the Tribe and administered by the Department;
 - 4. To participate in self-monitoring activities of the Department in relation to housing assistance programs and services; and
 - 5. To hear appeals related to grievances filed against the Landlord, with the exception of decisions made to initiate eviction of a Tenant in accordance with the terms of the Lease Agreement or otherwise provided by Tribal Law, in accordance with a grievance policy recommended by the Housing Committee and approved by the Tribal Council.

Section 1-4. Purposes. This Code shall be liberally interpreted and construed to fulfill the following purposes:

- A. To simplify the law governing the occupation of dwelling units, and to protect the rights of Landlords and Tenants.
- B. To preserve the peace, harmony, safety, health and general welfare of the people of the Tribe.
- C. To provide eviction procedures and to require Landlords to follow such procedures when evicting Tenants.
- D. To encourage Landlords and Tenants to maintain and improve dwellings in order to improve the quality of housing as a tribal resource.

- E. To provide the law governing the rights, obligations, and remedies of the Owners, sellers, buyers, Lessor, and Lessees, of buildings.
- F. To establish laws and procedures which are necessary in order to obtain governmental funding for tribal housing programs or loan guarantees for private or tribal housing construction, purchase, or renovation.

Section 1-5. Definitions. For the purpose of this Code, certain terms are defined in this Section. When not inconsistent with the context, words used in the present tense include the future, words in the singular include the plural, and vice versa, and words in the masculine gender include the feminine gender. The following terms have, in the context of this Code, the following definitions:

- A. "Action", suit or lawsuit, " includes any dispute between persons or entities which relates to the sale, rental, use or occupancy of any housing, dwelling, or accommodation for human occupancy, including claims for the payment of monies for such housing, dwellings, or accommodations, damages to such units, condition of such units or the relationships between Owners and occupiers of such units, including the right to occupy them.
- B. "Borrower/ Mortgagor" means the Tribe, Housing Department, or any individual Indian(s), or any heir(s), successor(s), executor(s), administrator(s), or assign(s) of the tribe or such Indian(s) who has executed a mortgage as defined in this Code or a Leasehold mortgage as defined in this Code.
- C. "Building and Housing Codes" includes any law, ordinance or Lac Vieux Desert governmental regulation concerning the fitness for habitation or the construction, maintenance, operation, occupancy, use or appearance of any Premises or dwelling unit, that is erected on any property over which the Lac Vieux Desert Tribe maintains and exerts jurisdiction.
- D. "CFR" means the Code of Federal Regulations is the annual edition of the codification of the general and permanent rules published by departments and agencies of the federal government.
- E. "Claim" includes any dispute between persons or entities which relates to the sale, rental, use or occupancy of any housing, dwelling, or accommodation for human occupancy, including claims for the payment of monies for such housing, dwellings, or accommodations, damages to such units, condition of such units or the relationships between Owners and occupiers of such units, including the right to occupy them.
- F. "Complaint" includes any dispute between persons or entities which relates to the sale, rental, use or occupancy of any housing, dwelling, or accommodation for human occupancy, including claims for the payment of monies for such housing, dwellings, or accommodations, damages to such units, condition of such units or the relationships between Owners and occupiers of such units, including the right to occupy them.

- G. "Defense" includes any dispute between persons or entities which relates to the sale, rental, use or occupancy of any housing, dwelling, or accommodation for human occupancy, including claims for the payment of monies for such housing, dwellings, or accommodations, damages to such units,

condition of such units or the relationships between Owners and occupiers of such units, including the right to occupy them.

- H. "Deposit" includes any money or other property required by a Landlord from a Tenant as and for security and which is to be returned to the Tenant upon termination of the Rental Agreement.
- I. "Drug Related Criminal Activity" means the illegal manufacture, possession, sale, distribution, use or possession with intent to manufacture, sell, distribute or use of a controlled substance as defined in State of Michigan Criminal Code or the Lac Vieux Desert Criminal Code.
- J. "Dwelling Unit" means a structure, or that part of a structure, which is used as a home, residence or sleeping place by one or more persons who maintains a household; and is not for purposes of this Code any public transient accommodation, such as a hotel room.
- K. "Good Faith" means honesty in fact in the conduct of the transaction concerned.
- L. "Lawsuit" includes any dispute between persons or entities which relates to the sale, rental, use or occupancy of any housing, dwelling, or accommodation for human occupancy, including claims for the payment of monies for such housing, dwellings, or accommodations, damages to such units, condition of such units or the relationships between Owners and occupiers of such units, including the right to occupy them.
- M. "Landlord" means any person, entity or agency of government that is the Owner, Lessor or Sub-lessor of the dwelling unit or the building of which it is a part, and also means a manager of the Premises , including the Lac Vieux Desert Housing Department.
- N. "Lender/Mortgagee" means any person or entity having a security interest in real property as evidenced by mortgage loan documents or similar agreements evidencing a security interest in the real or personal property of the Borrower/Mortgagor.
- O. "Indian" shall include any person that is an enrolled member of any federally recognized Tribe.
- P. "Indian Country" and "Territorial Jurisdiction or Jurisdiction" means all lands owned by, held in trust for, leased, occupied or otherwise controlled by the Tribe, as well as any such ownership or use by an entity of the Tribe; and those terms shall include any and all areas which may constitute the Indian Country of the Tribe under applicable provisions of laws or the laws of the United States.
- Q. "Lac Vieux Desert Housing Department" or "LVD HD" means the Housing Department operated and maintained by the Lac Vieux Desert Band of Lake Superior Chippewa Indians, or the Tribally Designated Housing Authority (TDHE), whichever is applicable.
- R. "Lease" means an agreement, written or oral, regarding the Tenants and conditions of the use and occupancy of real property, dwelling unit, building, or Premises, including a lease-to-purchase agreement.

- S. "Lessee" means a Tenant of a dwelling unit, user and/or occupier of real property, or the homebuyer under any federal mortgage program. Lessee does not include any person in a living accommodation provided under an emergency shelter or transitional housing program
- T. "Lessor" means the legal, beneficial, or equitable Owner of property under a Lease. Lessor may also include the heir(s), successor(s), executor(s), administrator(s), or assign(s) of the Lessor.
- U. "Organization" includes a corporation or any governmental subdivision, any agency, business trust, estate, trust, common interest and any other legal or commercial entity.
- V. "Owner" means one or more persons, jointly or severally, in whom is vested:
1. All or any part of the legal title to the property, or
 2. All or part of the beneficial ownership and a right to present use and enjoyment of the property, and such term includes a mortgagee in possession.
- S. "Person" includes both individuals and organizations.
- T. "Premises" means a dwelling unit and the structure of which it is a part, the facilities and appurtenances therein, and the grounds, areas and facilities held out for the use of the Tenant generally or use of which is promised to the Tenant.
- U. "Rent" means all payments, except deposits and damages, to be made to the Landlord under the Rental Agreements.
- V. "Rental Agreement" means shall have the same meaning as a "Lease." under this Code.
- W. "Roomer" or "Boarder" is a Tenant occupying a dwelling unit which lacks at least one major bedroom or kitchen facility, such as a toilet, refrigerator or stove, in a building:
1. Where one (1) or more of such major facilities are supplied to be used in common by the occupants of the roomer or boarder's dwelling unit and one (1) or more other dwelling units; and
 2. In which the Landlord resides.
- X. "Single-family residence" means a structure used and maintained as a single dwelling unit. A dwelling unit, including those with common walls, shall be deemed a single-family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with any other dwelling unit.

Y. "Tenant" means any person who occupies real property under a Lease, Rental Agreement or other agreement with a Lessor, as defined in this Code. Tenant does not include any person in a living accommodation provided under an emergency shelter or transitional housing program.

Z. "Tribe" means the Lac Vieux Desert Band of Lake Superior Chippewa Indians.

AA. "Tribal Court" means the Lac Vieux Desert Tribal Court.

Section 1-6. Application.

A. The rights, obligations and remedies of Landlords and Tenants, as defined in this Code, are contained in:

1. the laws of the Tribe;
2. applicable statutes, regulations and agreements with agencies of the United States;
3. agreements with occupiers of dwellings;
4. building or housing codes; or
5. other laws which are made applicable through the provisions of this Code.

B. Any agreement, whether written or oral, shall be unenforceable insofar as that agreement, or any provision thereof, conflicts with any provision of this Code.

C.

Section 1-7. Mitigation of Damages. An aggrieved party under the provision of this Code has a duty to mitigate damages.

Section 1-8. Settlement of Claim. A claim or right arising under this Code or Rental Agreement, if disputed in Good Faith, may be settled by agreement and requires no further consideration.

Section 1-9. Good Faith Performance or Enforcement. Every duty under this Code and every act which must be performed as a condition precedent to the exercise of a right or remedy under this Code imposes an obligation of Good Faith in its performance or enforcement.

Section 1-10. Beneficial Owner to Maintain Premises. Any agreement, assignment, conveyance, trust deed or security instrument which authorizes a person other than the beneficial Owner to act as a Landlord of a dwelling unit shall not relieve the beneficial Owner of the duty to conform with this Code and any other law, code, ordinance or regulation concerning the maintenance and operation of the Premises.

Section 1-11. Relation to Other Laws.

- A. **Applicable Law.** Unless affected or displaced by this Code, principles of law and equity in the common law of the Tribe and tribal customs and traditions are applicable, and the general principles of law of any other Tribe or any other jurisdiction, although non-binding, may be used as a guide to supplement and interpret this Code.
- B. **Other Applicable Laws.** Additional Tribal and federal laws may apply with regard to Tribal housing such as the ordinance establishing the Lac Vieux Desert Housing Department, any Lac Vieux Desert Housing Department regulations or policies, and governmental housing laws and regulations.
- C. **Conflicts With Other Laws:**
 - 1. **Tribal Laws:** To the extent that this Code may conflict with Tribal laws or ordinances which have been enacted to comply with statutes or regulations of any agency of the United States, such Tribal laws or ordinances shall govern over the provisions of this Code if it has specific applicability and it is clearly in conflict with the provisions of this Code.
 - 2. **Federal Laws:** Where a conflict may appear between this Code and any statute, regulation, or agreement of the United States, the federal law shall govern if it has specific applicability and if it is clearly in conflict with the provisions of this Code.
- A.

CHAPTER 2 TENANCY, RENTS, TERMINATION AND DEPOSITS

Section 2-1. Rent.

- A. In the absence of a Lease, the occupants of a Dwelling Unit shall pay to the Landlord as Rent the fair Rental value for the use and occupancy of the dwelling unit.
- B. Rent shall be payable at the time and place agreed to by the parties to the Lease. Unless otherwise agreed, the entire Rent shall be payable at the beginning of any term of one (1) month or less, while one (1) month's Rent shall be payable at the beginning of each month of a longer term.

Section 2-2. Term of Tenancy. Unless the Rental Agreement fixes a definite term in writing, the tenancy is week-to-week in the case of a roomer or boarder who pays weekly Rent, and in all other cases month-to-month.

Section 2-3. Termination of Tenancy.

- A. Except as otherwise provided, when the tenancy is month-to-month or a tenancy at-will, the Landlord or Tenant may terminate the tenancy provided the Landlord or Tenant gives a written notice to the other at least thirty (30) days before the date upon which the termination is to become effective. The thirty (30) day period to terminate shall begin to run from the date notice to terminate is served as provided in this Section 2-3.
- B. Except as otherwise provided, when the tenancy is less than month-to-month, the Landlord or Tenant may terminate the tenancy provided the Landlord or Tenant gives to the other a written notice served

as provided in this section at least seven (7) days before the date upon which the termination is to become effective.

- C. Unless earlier terminated pursuant to the provisions of this Code, or unless otherwise agreed upon, a tenancy for a definite term expires on the ending date thereof without notice.
- D. If the Tenant remains in possession without the Landlord's consent after the expiration of the term of the Rental Agreement or its termination under the provisions of this Code, the Landlord may immediately bring an action for possession and damages. If the Tenant's hold over is willful and not in Good Faith, the Landlord may also compute and pro rate the Rent on a daily basis, for each month or portion thereof that said Tenant remains in possession. If the Landlord consents to the Tenant's continued occupancy, a month-to-month tenancy is thus created, unless the parties otherwise agree.
- E. The written notice, required by this Code, to terminate any tenancy shall be served on the Tenant or Landlord personally unless otherwise specified by law. If the Tenant cannot be located, service shall be made by delivering the notice in accordance with Chapter 5, Section 5-3 (C) of this Code.

Section 2-4. Duties of Parties Upon Termination of Tenancy. Except as otherwise provided in this Code, whenever either party to a Rental Agreement rightfully elects to terminate, the duties of each party under the Rental Agreement shall cease and be determined upon the effective date of said termination, and the parties shall thereupon discharge any remaining obligations under this Code as soon as practicable.

Section 2-5. Denial or Termination of Tenancy Because of Guide, Signal or Service Dog. A Landlord shall not deny or terminate a tenancy to a blind, deaf, or physically handicapped person because of the guide, signal or service dog of such person, unless such dog is found to be vicious or willfully destroy the property.

Section 2-6. Rental Agreements.

- A. A Rental Agreement may not provide that either party thereto:
 - 1. Agrees to waive or forego rights or remedies under this Code;
 - 2. Authorize any person to confess judgment on a claim arising out of the Rental Agreement;
 - 3. Agree to pay the other party's attorney's fees;
 - 4. Agree to the exculpation, limitation or indemnification of any liability arising under law for damages or injuries to persons or property caused by or resulting from the acts or omissions of either party, their agents, servants or employees in the operation or maintenance of the dwelling unit or the Premises of which it is a part; or
 - 5. Agrees to the establishment of a lien except as allowed by this Code in and to the property of the other party.

- B. A provision prohibited by this Section and included in a Rental Agreement is unenforceable.

Section 2-7. Damage or Security Deposits.

- A. Any damage or security deposit required by a Landlord of a Tenant must be kept in an escrow account for the Tenant or a bank account dedicated to such purpose.
- B. Upon termination of the tenancy, any security deposit held by the Landlord may be applied to the payment of accrued Rent and the amount of damages which the Landlord has suffered by reason of the Tenant's noncompliance with this Code and the Rental Agreement.
- C. Any and all amounts owed by the Tenant which the security deposit is applied to shall be itemized by the Landlord in a written statement to be delivered by mail with a return receipt requested and to be signed for by any person of statutory service age at such address or in person to the Tenant if he can reasonably be found.
- D. If the Landlord proposes to retain any portion of the security deposit for Rent, damages or other legally allowable charges under the provisions of this Code or the Rental Agreement, the Landlord shall return the balance of the security deposit without interest to the Tenant within thirty (30) days after the termination of tenancy, delivery of possession, and written demand by the Tenant. If the Tenant does not make such written demand of such deposit within six (6) months after termination of the tenancy, the deposit reverts to the Landlord in consideration of the costs and burdens of maintaining the escrow account or bank account, and the interest of the Tenant in that deposit terminates at that time.
- E. Upon cessation of a Landlord's interest in the dwelling unit including, but not limited to, termination of interest by sale, assignment, death, bankruptcy, appointment of receiver or otherwise, the person in possession of the Tenant's damage or security deposits at his option or pursuant to court order shall, within a reasonable time:
1. Transfer said deposits to the Landlord's successor in interest and notify the Tenants in writing of such transfer and of the transferee's name and address; or
 2. Return the deposits to the Tenant.
- F. Upon receipt of the transferred deposits under subsection E above, the transferee, in relation to such deposits, shall have all the rights and obligations of a Landlord holding such deposits under this Code.
- G. If a Landlord or manager fails to comply with this Section 2-7 or fails to return any prepaid Rent required to be paid to a Tenant under this Code, the Tenant may recover the damage and security deposit and prepaid Rent, if any.

- H. Except as otherwise provided by the Rental Agreement, a Tenant shall not apply or deduct any portion of the security deposit from the last month's Rent or use or apply such Tenant's security deposit at any time in lieu of payment of Rent.
- I. This Section does not preclude the Landlord or Tenant from recovering other damages to which he may be entitled under this Code.

Section 2-8. Person to Accept Service or Notice, Identity of Owner and Manager, Failure to Comply With Section.

- A. As a part of any Rental Agreement, the Lessor shall promptly and in writing identify what person at what address is entitled to accept service or notice under this Code. To accept service the individual must be a legally competent adult or an individual authorized by the Tribal Court. The Landlord or any person authorized to enter into a Rental Agreement on his or her behalf shall disclose to the Tenant in writing at or before the commencement of the tenancy the name and address of:
 - 1. The person or person authorized to manage the Premises;
 - 2. The Owner or Owners of the Premises; or
 - 3. The name and address of a person authorized to act for and on behalf of the Owner for the purpose of receipt of service of process and receiving and receipting for notices. The information required to be furnished by this Section shall be kept current and this Section extends to and is enforceable against any successor Owner, Landlord or manager.
- B. A person who fails to comply with this Section becomes a Landlord for the purposes of this Code and an agent of each person who is otherwise a Landlord for receipt of service of process, and receiving and receipting for notices all Rents collected from the Premises.

Section 2-9. Commencement of Tenancy, Delivery of Possession, Wrongful Possession. At the commencement of the term of the Rental Agreement, a Landlord shall deliver full possession of the Premises to the Tenant in compliance with the Rental Agreement. Except as otherwise provided in this Code, the Landlord may bring an action for possession against any other person wrongfully in possession and may recover damages.

CHAPTER 3 DUTIES OF THE LANDLORD/TENANT

Section 3-1.

- A. A Landlord shall at all times during the tenancy:
 - 1. Except in the case of a single-family residence, keep all common areas of his building, grounds facilities and appurtenances in a clean, safe and sanitary condition;
 - 2. Make necessary repairs to put or maintain the Premises in safe and habitable condition;

3. Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators, supplied or required to be supplied by him or her;
 4. Except in the case of one (1) or two (2) -family residences or where provided by the Tribe , provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish and other waste incidental to the occupancy of the dwelling unit and arrange for the frequent removal of such wastes;
 5. Except in the case of a single-family residence or where the service is supplied by direct and independently metered utility connections to the dwelling unit, supply running water and reasonable amounts of hot water at all times and reasonable heat;
 6. Guarantee the right of quiet enjoyment of the dwelling to the Tenant and insure that the conduct of other Tenants and those with them does not cause a nuisance, endangerment of public health and safety, breach of peace or interference with the quiet enjoyment of others; and,
 7. Comply with applicable tribal law and/or building or housing codes.
- B. The Landlord and Tenant of a dwelling unit may agree by a conspicuous writing independent of the Rental Agreement, that the Tenant is to perform specified repairs, maintenance tasks, alterations or remodeling.

C.

Section 3-2. Conveyance of Property; Attornment of Tenant.

- A. A conveyance of real estate or of any interest therein, by a Landlord shall be valid without the attornment (i.e. acknowledgment) of the Tenant, but the payment of Rent by the Tenant to the grantor at any time before written notice of the conveyance is given to the Tenant shall be good against the grantee.
- B. The attornment of a Tenant to a stranger shall be void and shall not affect the possession of the Landlord unless it is made with the consent of the Landlord, or pursuant to a judgment at law, or the order or decree of a court.
- C. Unless otherwise agreed, and except as otherwise provided in this Code, upon termination of the Owner's interest in the dwelling unit including, but not limited to, terminations of interest by sale, assignment, death, bankruptcy, appointment of a receiver or otherwise, the Owner is relieved of all liability under the Rental Agreement and of all obligations under this Code as to events occurring subsequent to written notice to the resident of the termination of the Owner's interest. The successor in interest to the Owner shall be liable for all obligations under the Rental Agreement or under this Code. Upon receipt by a resident of written notice of the termination of the Owner's interest in the dwelling unit, a resident shall pay all future Rental payments, when due, to the successor in interest to the Owner.

- D. Unless otherwise agreed, and except as otherwise provided in this Code, a manager of Premises that includes a dwelling unit is relieved of liability under a Rental Agreement and this Code, as to events occurring after written notice to the Tenant of the termination of his management.

Section 3-3. Failure of Landlord to Deliver Possession of Dwelling Unit to Tenant.

- A. If the Landlord fails to deliver possession of the dwelling unit to the Tenant, Rent abates until possession is delivered and the Tenant may terminate the Rental Agreement by giving a written notice of such termination to the Landlord, whereupon the Landlord shall return all prepaid Rent and deposit, or the Tenant may, at his option, demand performance of the Rental Agreement by the Landlord and maintain an action for possession of the dwelling unit against any person wrongfully in possession and recover the actual damages sustained by him.
- B. If a person's failure to deliver possession is willful and not in Good Faith, an aggrieved person may recover from that person an amount not more than twice the monthly Rental as specified in the Rental Agreement, computed and prorated on a daily basis for each month, or portion thereof, that said person wrongfully remains in possession.

Section 3-4. Landlord's Breach of Rental Agreement, Deductions From Rent for Repairs, Failure to Supply Heat, Water or Other Essential Services, Habitability of Dwelling.

- A. Except as otherwise provided in this Code, if there is a material non-compliance by the Landlord of the terms of the Rental Agreement or a non-compliance with any of the provisions of Section 3-1(A) of this Code, which noncompliance materially affects health or safety, the Tenant may deliver to the Landlord a written notice specifying the acts and omissions constituting the breach and that the Rental Agreement will terminate upon a date not less than thirty (30) days after receipt of the notice if the breach is not remedied within fourteen (14) days, and thereafter the Rental Agreement shall so terminate as provided in the notice unless the Landlord adequately remedies the breach within the time specified.
- B. Except as otherwise provided in this Code, if there is a material non-compliance by the Landlord with any of the terms of the Rental Agreement which non-compliance materially affects health and the non-compliance is remediable by repairs, the reasonable cost of which is less than one hundred dollars (\$100.00), the Tenant may notify the Landlord in writing of his intention to correct the condition at the Landlord's expense after the expiration of fourteen (14) days. If the Landlord fails to comply within said fourteen (14) days, or as promptly as conditions require in the case of an emergency, the Tenant may thereafter cause the work to be done in a workmanlike manner and, after submitting to the Landlord an itemized statement, deduct from his Rent the actual and reasonable cost or the fair and reasonable value of the work not exceeding the amount specified in this subsection B, in which event the Rental Agreement shall not terminate by reason of that breach.
- C. Except as otherwise provided in this Code, if, contrary to the Rental Agreement, the Landlord willfully or negligently fails to supply heat, running water, hot water, electric, gas or other essential service, the Tenant may give written notice to the Landlord specifying the breach and thereafter may:

1. Upon written notice, immediately terminate the Rental Agreement; or
 2. Procure reasonable amounts of heat, water, running water, electric gas, or other essential service during the period of the Landlord's non-compliance and deduct their actual and reasonable cost from the Rent; or
 3. Recover damages based on the diminution of the fair Rental value of the dwelling unit; or
 4. Upon written notice, procure reasonable substitute housing during the period of the Landlord's non-compliance, in which case the Tenant is excused from paying Rent for the period of the Landlord's non-compliance.
- D. Except as otherwise provided in this Code, if there is a non-compliance by the Landlord with the terms of the Rental Agreement, which non-compliance renders the dwelling unit uninhabitable or poses an imminent threat to the health and safety of any occupant of the dwelling unit and which non-compliance is not remedied as promptly as conditions require, the Tenant may immediately terminate the Rental Agreement upon written notice to the Landlord which notice specifies the non-compliance.
- E. All rights of the Tenant under this Section do not arise until he or she has given written notice to the Landlord or if the condition complained of was caused by the deliberate or negligent act or omission of the Tenant, a member of his family, his animal or pet or other person or animal on the Premises with his consent.

Section 3-5. Damage To or Destruction of Dwelling Unit; Rights and Duties of Tenant.

- A. If the dwelling unit or Premises are damaged or destroyed by fire or other casualty to an extent that enjoyment of the dwelling unit is substantially impaired, unless the impairment is caused by the deliberate or negligent act or omission of the Tenant, a member of his family, his animal or pet or other person or animal on the Premises with his consent, the Tenant may:
1. Immediately vacate the Premises and notify the Landlord in writing within one (1) week thereafter of his intention to terminate the Rental Agreement, in which case the Rental Agreement terminates as of the date of vacating; or
 2. If continued occupancy is possible, vacate part of the dwelling unit rendered unusable by the fire or casualty, in which case the Tenant's liability for Rent is reduced in proportion to the diminution in the fair value of the Dwelling Unit.

Section 3-6. Wrongful Removal or Exclusion From Dwelling Unit. If a Landlord wrongfully removes or excludes a Tenant from possession of a Dwelling Unit, the Tenant may recover possession by a proceeding brought in the Lac Vieux Desert Tribal Court, or terminate the Rental Agreement after giving notice of such intention to the Landlord, and in either case recover an amount not more than twice the average monthly Rental, or twice his actual damages, whichever is greater. If the Rental Agreement is

terminated, the Landlord shall return all deposits recoverable under Section 2-7 of this Code and all prepaid and unearned Rent.

Section 3-7. Unlawful Entry or Lawful Entry in Unreasonable Manner; Harassment of Tenant; Damages. If the Landlord makes an unlawful entry or a lawful entry in an unreasonable manner or harasses the Tenant by making repeated unreasonable demands for entry, the Tenant may obtain injunctive relief to prevent the recurrence of the conduct or, upon written notice, terminate the Rental Agreement. In either case, the Tenant may recover actual damages.

Section 3-8. Defective Condition of Premises; Report to Landlord. Any defective condition of the Premises which comes to the Tenant's attention, and which the Tenant has reason to believe is unknown to the Landlord, shall be reported by the Tenant to the Landlord as soon as possible.

Section 3-9. Tenant's Use and Occupancy of Premises; Rules and Regulations. A Landlord, from time to time, may adopt a rule or regulation, however described, concerning the Tenant's use and occupancy of the Premises. Such a rule or regulation is enforceable against the Tenant only if:

- A. Its purpose is to promote the convenience, peace, and safety or welfare of the Tenants in the Premises, preserve the Landlord's property from abusive use, or make a fair distribution of services and facilities held out for the Tenants generally;
- B. It is reasonably related to the purpose of which it is adopted;
- C. It applies to all Tenants in the Premises in a fair manner;
- D. It is sufficiently explicit in its prohibition, direction or limitation of the Tenant's conduct or fairly informs the Tenant what such Tenant must or must not do to comply;
- E. It is not for the purpose of evading the obligations of the Landlord;
- F. The Tenant has notice of the obligations of the Landlord; and
- G. If the rule or regulation is adopted after the Tenant enters into the Rental Agreement and that rule or regulation works a substantial modification of such Tenant's bargain, the rule or regulation so adopted is not valid and enforceable against the Tenant unless the Tenant consents to it in writing.

CHAPTER 4 RIGHTS AND DUTIES OF TENANTS

Section 4-1. Duties of the Tenant. The Tenant shall, at all times during the tenancy, comply with the following in such a manner as to protect the property interest of the Landlord and any person who resides within three hundred (300) feet of the boundary of the Tenant's dwelling unit:

- A. Keep that part of the Premises which such Tenant occupies and uses as safe, clean and sanitary as the condition of the Premises permits,

- B. Dispose from such Tenant's dwelling unit all ashes, garbage, rubbish and other waste in a safe, clean and sanitary manner,
- C. Keep all plumbing fixtures in the dwelling unit or used by the Tenant as clean and sanitary as their condition permits,
- D. Use in a safe and non-destructive manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances including elevators in the Premises,
- E. Not deliberately or negligently destroy, deface, damage, impair or remove any part of the Premises or permit any person, animal or pet to do so,
- F. Not engage in conduct or allow any person or animal or pet on the Premises with the express or implied permission or consent of the Tenant, to engage in conduct that will disturb the quiet and peaceful enjoyment of the Premises by other Tenants, and
- G. Not commit any crimes under federal, state or tribal law. The Tribe or persons who reside within three hundred (300) feet of the offending Tenant's dwelling unit and whose peaceful enjoyment or property is damaged by violation of Subsection A may bring against the Tenant or any third party a cause of action for abatement of the violation and/or damages.

Section 4-2. Consent of Tenant for Landlord to Enter Dwelling Unit; Emergency Entry; Abuse of Right of Entry; Notice; Abandoned Premises; Refusal of Consent.

- A. A Tenant shall not unreasonably withhold consent to the Landlord, his agents and employees, to enter into the dwelling unit in order to inspect the Premises, make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services or exhibit the dwelling unit to prospective or actual purchasers, mortgages, Tenants, workmen or contractors.
- B. A Landlord, his agents and employees may enter the dwelling unit without consent of the Tenant in case of emergency. A Landlord shall not abuse the right of access or use it to harass the Tenant. Except in case of emergency or unless it is impracticable to do so, the Landlord shall give the Tenant at least one (1) day's notice of his intent to enter and may enter only at reasonable times. Unless the Tenant has abandoned or surrendered the Premises, a Landlord has no other right of access during a tenancy except as is provided in this Code or pursuant to a court order.
- C. If the Tenant refuses to allow lawful access, the Landlord may obtain injunctive relief to compel access or he may terminate the Rental Agreement.

Section 4-3. Tenant's Use of Dwelling in Violation of Agreement. Unless otherwise agreed, use by the Tenant of the dwelling unit for any purpose other than his or her place of abode shall constitute a breach of the Rental Agreement and shall be grounds for terminating the Rental Agreement.

Section 4-4 Breach of Rental Agreement; Wrongful Abandonment.

- A. Where a dwelling has been abandoned, as defined by this Code, a Landlord, without further notice to the Tenant may post a notice on the dwelling stating that the Landlord intends to take possession and that the Tenant's possessions will be inventoried and removed within ten (10) days from the posting. If the Tenant's possessions are not claimed within sixty (60) days from their removal from the abandoned dwelling, the Landlord may dispose of the possessions, If the abandoned property is of cultural, religious, or ceremonial significance, the Landlord shall have an affirmative duty to locate next of kin and/or contact the Tribe in order to return the items.
- B. If the Tenant wrongfully quits and abandons the dwelling unit during the term of the tenancy, the Landlord shall make reasonable efforts to make the dwelling unit available for Rental. If the Landlord Rents the dwelling unit for a term beginning before the expiration of the Rental Agreement, said new Tenant shall sign a Rental Agreement notwithstanding the prior Rental Agreement. If the Landlord fails to use reasonable efforts to make the dwelling unit available for Rental or if the Landlord accepts the abandonment as a surrender, the Rental Agreement is deemed to be terminated by the Landlord as of the date the Landlord has notice of the abandonment.

Section 4-5. Abandoning, Surrendering or Eviction From Possession of Dwelling Unit, Disposition of Personal Property.

- A. If the Tenant abandons or surrenders possession of the dwelling unit or has been lawfully removed from the Premises through eviction proceedings and leaves household goods, furnishings, fixtures, or any other personal property in the dwelling unit, the Landlord may take possession of the property and if, in the judgment of the Landlord, the property has no ascertainable or apparent value, the Landlord may dispose of the property without any duty of accounting or any liability to any party.
- B. Any property left with the Landlord for a period of sixty (60) days or longer shall be conclusively determined to be abandoned and, as such, the Landlord may dispose of said property in any manner which he deems reasonable and proper without liability to the Tenant or any other interested party.

Section 4-6. Delinquent Rent.

- A. If Rent is unpaid when due, the Landlord may bring an action for recovery of the Rent at any time thereafter.
- B. A Landlord may terminate a Rental Agreement for failure to pay Rent when due, if the Tenant fails to pay the Rent after ten (10) calendar days of the agreement date of payment, or ten (10) calendar days following the first day of the month in a month-to-month tenancy.

CHAPTER 5 GROUNDS FOR EVICTION AND NOTICE TO PRE-EVICTION OPTIONS

Section 5-1. Grounds for Eviction. A person may be evicted for:

- A. Nonpayment of Rent under a written agreement for the Lease, purchase, or occupation of a dwelling when such payments are not made after one (1) business day when due under the agreement, or after the first day of the next succeeding month when such payment is due under an Oral Agreement or Month-to-Month Tenancy.
- B. Any agreement in Rent, costs, or damages which have been due and owing for thirty (30) calendar days or more prior to the Landlord's delivery of the Termination Notice. The receipt by a Landlord of partial payments under an agreement shall not excuse the payment of any balance due upon demand.
- C. Use of controlled substances in violation of applicable law, nuisance, intentional or reckless damage, destruction, or injury to the property of the Landlord or other Tenants, injury or damage to common areas, or disturbing another Tenant's right to quiet enjoyment of a dwelling unit.
- D. Repeated violations of the Rental Agreement, any reasonable rules or regulations adopted in accordance with this Code, or any applicable building or housing codes.
- E. Occupation of any Premises without permission or agreement, following any reasonable demand by a person in authority over the Premises to leave.
- F. Under other terms in the Rental Agreement which do not conflict with the provisions of this Code.

Section 5-2. Termination Notice Requirements.

- A. When Termination Notice is Required. When a Landlord desires to obtain possession of a dwelling unit, and when there exists one (1) or more legally cognizable reasons to evict the Tenant(s) - occupying the unit, the Landlord shall give notice to the adult Tenants via a Termination Notice according to the provisions of this Code.
- B. Purpose of the Termination Notice. The purpose of the Termination Notice is to provide advance notice to the Tenant of a specific problem which needs to be addressed. It is also intended to induce the Tenant to enter into discussions with the Landlord in order to resolve the problem.
- C. Statement of Grounds for Eviction Required. The Termination Notice shall be addressed to the known adult Tenants of the dwelling unit and shall state the legally cognizable reason(s) for termination of the tenancy, that the past due amount must be paid within ten (10) days of the receipt of the Termination Notice and/or cure of any default is due within ten (10) days of the receipt of the Termination Notice, and the date by which the Tenant is required to quit possession of the dwelling unit (which is ten (10) days from receipt of the Termination Notice).
- D. Form of Notice. The Termination Notice shall be in writing substantially in the following form: "I (or we) hereby give you notice that you are to quit possession or occupancy of the dwelling unit now occupied by you at (here insert the address or other reasonable description of the location of the dwelling unit), on or before the (here insert the date) for the following reason (here insert the legally cognizable reason or reasons for the notice to quit possession using the statutory language or words of similar import). You are required to [pay the past due amount or cure the default, whichever is

applicable] within ten (10) days of receipt of this Termination Notice. Signed, (here insert the signature, name and address of the Landlord, as well as the date and place of signing.)."

- E. Time Requirements for Notice. The Termination Notice must be delivered - no less than ten (10) calendar days prior to the date to quit specified in the Notice for any and all violations of this Code, the Rental Agreement, or applicable policies and procedures of the Housing Department.

Section 5-3. Serving the Termination Notice.

- A. Any Termination Notice must be in writing, and must be delivered to the Tenant in the following manner:
1. Delivery must be made by an adult person, or
 2. Law enforcement officer of the Tribe or the United States Government.
- B. Delivery will be effective when it is:
1. Personally delivered to a Tenant with a copy delivered by mail, or
 2. Personally delivered to an adult agent or employee of the Tenant with a copy delivered by mail, or
 3. Any other mode, manner or method as provided for under the applicable Rule(s) of the Lac Vieux Desert Court Rules.
- C. Substitute Delivery. If the notice cannot be given by means of personal delivery, or Tenant cannot be found, the notice may be delivered by means of:
1. Certified mail, return receipt requested, at the last known address of the Tenant, or
 2. Securely taping a copy of the notice to the main entry door of the Premises in such a manner that it is not likely to blow away, and by posting a copy of the notice in some public place near the Premises, including a tribal office, public store, or other commonly frequented place **and** by sending a copy by first class mail, postage prepaid, addressed to the Tenant at the Premises.
- D. Copy of Notice/Proof of Service. The person giving notice must keep a copy of the notice and proof of service in accordance with this Section, by affidavit or other manner recognized by law.

Section 5-4. Pre-Eviction Options

- A. Negotiated Settlement. After a Termination Notice is served upon a Tenant, the Landlord and Tenant, with the exception of any Termination Notice served for Drug-Related or other criminal activity, may

engage in discussions to avoid a proceeding to evict and to settle the issues between the parties. Any agreement reached to resolve the Landlord/Tenant issue will not affect the rights of the parties otherwise afforded by this Code unless such agreement contains a waiver of such rights as consideration for entry into the agreement.

- B. Stay of Proceedings. Where the parties mutually agree in Good Faith to enter into an agreement to resolve the Landlord/Tenant dispute, such Agreement shall, where Judicial Eviction procedures have been initiated, be filed with the Court and stay such proceedings unless either party defaults on the agreement and one (1) or both parties motion to set aside the stay.
- C. Settlement Options. In reaching an agreement, the parties may consider, but are not limited to the following options:
 - 1. The parties may agree to any other barter for lawful services and goods, or to any other means of securing a fair exchange of value for the use of the dwelling;
 - 2. The parties may agree to dismiss the matter in exchange for any agreement reached; or
 - 3. The parties may agree to stipulate to a judgment to be entered by the Court.
- D. Agreements for Payment, Non-Revocable. Any agreement entered into for the payment of Rental payment arrearages or damages owed by the Tenant in which a payment agreement is entered into and filed with the LVD Accounting Department and the LVD Housing Department shall be non-revocable by the Tenant until payments due and owing the Landlord have been paid in full. Attempted revocation or modification of such a payment agreement without the consent of the Landlord shall be void and prima facie evidence of a breach of any agreement entered into between the Tenant and the Landlord pursuant to this Section.
- E. Availability of Grievance. Failure to reach an agreement under this section in which the Tenant wishes to grieve the decision of the Landlord not to enter into an agreement may be grieved to the Housing Committee in accordance with the policies of the Housing Department.

CHAPTER 6 JUDICIAL EVICTION PROCEDURES

Section 6-1. Summons and Complaint. If, after the date set forth in the Termination Notice for the Tenant to quit possession of the dwelling unit, the Tenant has not quit possession, the Landlord may file a complaint in the Tribal Court for eviction and such other relief as the Court may deem just and proper. The complaint shall:

- A. Comply with the general pleading requirements contained within the Lac Vieux Desert Tribal Court Rules;
- B. State the names of the adult Tenant(s) against whom the suit is brought;

- C. Contain a description of the Rental Agreement, if oral, or a copy of the written agreement;
- D. State the address or reasonable description of the location of the Premises;
- E. Contain a description of the grounds for eviction;
 - 1. if Rent or other money is due and unpaid, the complaint must state:
 - a. the Rental period and rate;
 - b. the amount due and unpaid when the complaint was filed; and
 - c. the date or dates the payments became due.
 - 2. If possession is claimed for a serious and continuing health hazard or for extensive and continuing physical injury to the Premises, the complaint must:
 - a. describe the nature and seriousness or extent of the condition upon which the complaint is based; and
 - b. State the period of time for which the property Owner has been aware of the condition.
- F. Contain a description of the Landlord's right to possession.
- G. Contain a statement showing that the Termination Notice and any required termination notices have been served in accordance with this Code or other applicable law, including copies of any and all such notices; and
- H. Contain a statement of the relief demanded, including any claim(s) for possession of the dwelling unit, damages, fees, costs, or other special relief.
- I. If the Landlord is the Tribal Housing Department or Tribe, a statement that the Tribal Housing Department or Tribe has complied with all required regulatory processes, including the Housing Department's own policies and procedures, prior to filing the eviction action.

Section 6-2. Action Upon Filing Complaint.

- A. **Summons.** Upon the filing of a proper complaint under this Code, the Court shall issue a Summons directing all parties to the cause of action as to the time and place of a preliminary hearing within thirty (30) days of the filing of the complaint.
- B. **Service of Process.** A copy of the Summons and Complaint and all attachments must be served upon the Tenant/defendant pursuant to the Lac Vieux Desert Tribal Court Rules.

6-3. Commencement of Proceedings.

- A. Appearance and Answer. The Tenant/defendant must appear at the scheduled date and time set pursuant to Section 6-2(A) of this Code.
- B. Default. If the Tenant/defendant fails to appear, the Court, on the Landlord/plaintiff's motion, or on its own initiative, may enter a default pursuant to - the Lac Vieux Desert Tribal Court Rules.
- C. If the Landlord/plaintiff fails to appear, and barring any counterclaims by the Tenant/defendant, the Court may dismiss with prejudice the Landlord/plaintiff's cause of action.
- D. When both parties appear, the Court may proceed to a trial on the merits, or upon a determination that there must be pretrial motions, adjourn the matter to a later date.
- E. A Tenant/defendant may, for good cause shown, and upon the payment of a reasonable sum to the Tribal Court to be held in escrow for the fair Rental value of the Premises between the date on which the complaint was filed and the date of hearing, obtain an extension of time, beyond the thirty (30) day period. The Court may refuse to extend the date of hearing where the complaint is based upon a nuisance but shall not extend the date of hearing where the complaint is based upon conduct which is alleged to constitute a serious danger to public health, safety, or peace.
- F. The Court may in its discretion on motion from the Landlord/plaintiff order the Tenant/defendant to pay into the Court Rents for the use and occupancy during the pendency of the eviction case.

Section 6-4. Defenses. The Court shall grant the remedies allowed in this Code, unless it appears by the evidence that:

- A. The Premises are untenable, uninhabitable, or constitute a situation where there is a constructive eviction of the Tenant, in that the Premises are in such a condition, due to the fault of the Landlord, that they constitute a real and serious hazard to human health and safety and not a mere inconvenience.
- B. The Landlord has failed or refused to make repairs which are his responsibility after a reasonable demand by a Tenant to do so, without good cause, and the repairs are necessary for the reasonable enjoyment of the Premises.
- C. There are monies due and owing to the Tenant because he has been required to make repairs which are the obligation of the Landlord and the Landlord has failed or refused to make them after a reasonable notice. Such sums may be a complete or partial defense to a complaint for eviction, but only to the extent that such sums set off monies owed for occupancy. A Tenant may be evicted after such a period if he fails or refuses to pay the reasonable Rental value of the Premises.
- D. That there are such serious and material breaches of applicable housing law on the part of the Landlord that it would be unjust to grant him a remedy.

- E. The Landlord is evicting the Tenant because of his/her race, sex, sexual orientation, religion, age, marital status, family status, or because the Tenant is disabled.
- F. The Landlord terminated the tenancy in retaliation for the Tenant's attempt to secure his rights under this Code or to force the Landlord to comply with his duties under this Code.
- G. Any other material or relevant fact the Tenant might present that may explain why his eviction is unjust and unfair.

Section 6-5. Discovery and Prehearing Proceedings. Extensive, prolonged, or time consuming discovery and prehearing proceedings will not be permitted, except in the interests of justice and for good cause shown by the moving party. Discovery shall be informal, and reasonably provided on demand of a party, and it shall be completed within five (5) calendar days of the date of the initial hearing. Requests for discovery shall be made no later than three (3) calendar days following the setting of a hearing date. The Court may enter reasonable orders requiring discovery or protecting the rights of the parties upon reasonable notice.

Section 6-6. Evidence. Evidence in proceedings under this Code shall be governed by Lac Vieux Desert Rules of Evidence.

Section 6-7. Burden of Proof. The burden of proof in all proceedings under this Code shall be preponderance of the evidence.

Section 6-8. Judgment.

- A. Within five (5) calendar days of the date of the hearing, the Court shall grant and enter judgment and the judgment shall grant all relief that the parties are entitled to as of the date of the judgment. The judgment may:
 - 1. Order the immediate eviction of a Tenant and delivery of the Premises to the Landlord;
 - 2. Grant actual damages as provided in the agreement of the parties or this Code, including interest;
 - 3. Order the parties to carry out an obligation required by law;
 - 4. Establish a payment plan for the Tenant;
 - 5. Order Rent payments - through garnishment;
 - 6. Establish a Power of Attorney in another person/agency to fulfill rights or obligations of either Landlord or Tenant;
 - 7. Remediate the action in part or in whole through appropriate recalculation of Rent;

8. Order the payment of attorneys' fees and, where allowed by law or agreement, costs and expenses of litigation; or

9. Grant any relief provided in this Code or allowed in law or equity.

Section 6-9. Form of Judgment. The judgment shall state the relief granted by the Court to any party, and shall state findings of fact and conclusions of law in support of the judgment. If a trial is held, the judge should, whenever possible, render his decision immediately after both parties have rested their case and award costs and restitution as appropriate.

Section 6-10. Execution of Judgment. An eviction order may be executed by a duly authorized law enforcement officer or officer of the Court, appointed by the Court for such a purpose. To execute the order, the officer shall;

- A. remove all the evicted persons from the dwelling and verbally order them not to re-enter;
- B. provide a copy of the order of eviction to all adult Tenants;
- C. post copies of the order of eviction on the doors of the Premises if there is not any adult Tenant present at the time of execution; and
- D. supervise the removal of the possessions of the evicted persons.
- E. Any law enforcement officer shall, upon receipt of an order of the Court, execute the judgment or order made by it within five (5) calendar days of the date of the judgment or order and make a report to the Court on what was done to enforce it. Any law enforcement officer to whom a judgment or order is given for enforcement who fails, in the absence of Good Faith, or refuses to execute it shall be subject to the payment of reasonable damages, costs, and expenses to a party for failure to execute the judgment and/or suspension from employment.

Section 6-11. Stay of Execution. If judgment for possession of the dwelling unit enters in favor of the Landlord, the Tenant may apply for a stay of execution of the judgment or order if within five (5) days of the judgment being rendered, the following is established:

- A. Good and reasonable grounds affecting the wellbeing of the party are stated; or
- B. Execution of the judgment could result in extreme hardship for the Tenant(s); and
- C. There would be no substantial prejudice or injury to the prevailing party during the period of the stay; and
- D. A bond is posted or monies are paid to the Court, to satisfy the judgment or payment for the reasonable use and occupancy of the Premises during the period of time following the judgment. No

stay may exceed three (3) months in the aggregate. The clerk shall distribute such arrearages to the Landlord in accordance to any order of the court.

Section 6-12. Appeals. Appeals under this Chapter shall be according to the Tribe's appellate provisions.

Section 6-13. Notice to Leave the Premises. Any notice to leave Premises, shall be by written order of the Court, this shall include any Judgment for Eviction, and shall be delivered to the Tenant in the following manner:

A. Delivery shall be made by:

1. A law enforcement officer of the Tribe or an agency of the United States Government, or
2. Any person authorized by the Tribal Court.

B. Delivery will be effective when it is:

1. Personally delivered to a Tenant with a copy delivered by mail, or
2. Personally delivered to an adult living in the Premises with a copy delivered by mail, or
3. Personally delivered to an adult agent or employee of the Tenant with a copy delivered by mail.

C. If the notice cannot be given by means of personal delivery, or the Tenant cannot be found, the notice may be delivered by means of:

1. Certified mail, return receipt requested, at the last known address of the Tenant, or
2. Securely taping a copy of the notice to the main entry door of the Premises in such a manner that it is not likely to blow away, and by posting a copy of the notice in some public place near the Premises, including a tribal office, public store, or other commonly frequented place and by sending a copy first class mail, postage prepaid, addressed to the Tenant at the Premises.

Section 6-14. Forcible Eviction.

A. Where the Court orders an eviction, and the defendant or any other occupant of the Premises refuses to vacate voluntarily by the effective date of that Order, the defendant or other occupants may be forcibly removed from the Premises by a tribal law enforcement officer or law enforcement officer authorized by the Court. At the hearing where the eviction is ordered, the Court shall inform the defendant that if he does not vacate the Premises voluntarily by the effective date, he and the other occupants will be subject to forcible eviction, and their property will be subject to storage, sale and disposal as set forth in subsection (C) below.

B. Following eviction, the Court may allow the Landlord, the Lac Vieux Desert Housing Department, or the Tribe access to any property Leased by them for purposes of preserving and securing it.

- C. Following forcible eviction of the defendant and/or other occupants, the former occupant's personal property shall be stored by the Owner of the Premises for at least thirty (30) days, either on the Premises or at another suitable location. In order to reclaim their property, the former occupants shall pay the reasonable costs of its removal and storage. If they do not pay such costs within thirty (30) days, the Owner is authorized to sell the property in order to recover these costs. The Landlord shall not condition return of the former occupant's personal property on the payment of any costs or fees other than those of removal and storage of those personal possessions. Should the Landlord attempt to condition return of personal possessions on payment of any other cost or fee, the Landlord shall forfeit his right to the costs of removal and storage. Upon request by the former occupants, the Landlord shall provide them with pertinent information concerning the sale, including the time, date and location. Any proceeds from the sale in excess of the storage and removal costs shall be remitted to the former occupants. Nothing in this Section shall be construed to prevent the former occupants from reclaiming property remaining after the sale if they can arrange to do in a manner satisfactory to the Owner. If the abandoned property is of legal, cultural, religious, or ceremonial significance, the Landlord shall have an affirmative duty to locate next of kin and/or contact the Tribe in order to return these items.

Section 6-15. No Self-Help Eviction. No Landlord may compel a Tenant to vacate any Premises in a forceful fashion or way which causes a breach of the peace. All Landlords shall give a termination notice - and obtain a court order as provided in this Code.

CHAPTER 7 MORTGAGES AND FORECLOSURES

Section 7-1 Priority. All mortgages, including leasehold mortgages recorded in accordance with the recording procedures set forth in this Chapter and including loans guaranteed or held by the U.S. Government, shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim excepting a lien or claim arising from a tribal leasehold tax assessed after the recording of the mortgage. Nothing in this document shall prevent any person or entity from recording a leasehold mortgage in accordance with state law or from filing a leasehold mortgage with the Bureau of Indian Affairs.

Section 7-2 Recording. All mortgages, including leasehold mortgages, on lands not otherwise held in Trust by the Tribe, shall be recorded in the appropriate county Register of Deeds.

Section 7-3 Leasehold Mortgage Foreclosure Procedures.

- A. A Borrower/Mortgagor shall be considered to be in default when they are thirty (30) days past due on their mortgage payment(s) to the lender/mortgagee.
- B. Before a Borrower/Mortgagor becomes ninety (90) days delinquent on their mortgage payments, and before any foreclosure action or activity is initiated, the Lender/Mortgagee must complete the following:
1. Make a reasonable effort to arrange a face-to-face interview with the Borrower/Mortgagor.
 2. Lender/mortgagee shall document that it has made at least one (1) phone call to the Borrower/Mortgagor (or the nearest phone as designated by the Borrower/Mortgagor, able to

receive and relay messages to the Borrower/Mortgagor) for the purpose of trying to arrange a face-to-face interview.

- C. Lender/Mortgagee may appoint an agent to perform the services or arranging and conducting the face-to-face interview specified in this action.
- D. Before the Borrower/Mortgagor has been delinquent for ninety (90) days and at least ten (10) days before initiating a foreclosure action in Tribal Court, the lender must advise the Borrower/Mortgagor in writing by mail or by posting prominently on the unit, with a copy provided to the Tribe, as follows:
 - 1. Advise the Borrower/Mortgagor that information regarding the loan and default will be given to credit bureaus.
 - 2. Advise the Borrower/Mortgagor of homeownership counseling opportunities/programs available through the lender or otherwise.
 - 3. Advise the Borrower/Mortgagor of other available assistance regarding the mortgage/default.
 - 4. Notify the Borrower/Mortgagor that if the Leasehold mortgage remains in default for more than ninety (90) days, the lender/mortgagee may ask the applicable U.S. Government agency to accept assignment of the Leasehold mortgage if this is a requirement of the U.S. Government program.
 - 5. Notify the Borrower/Mortgagor of the qualifications for forbearance relief from the Lender/Mortgagee, if any, and that forbearance relief may be available from the U.S. Government if the mortgage is assigned.
 - 6. Provide the Borrower/Mortgagor with names and addresses of government officials to whom further communications may be addressed, if any.
- E. If a Borrower/Mortgagor has been in default under a leasehold mortgage for ninety (90) days or more and the lender/mortgagee has complied with the procedures set forth in the first part of this section, the Lender/Mortgagee may commence a foreclosure proceeding in the Tribal Court by filing a verified complaint as set forth in section 7-4 of this Code, below.

7-4 Leasehold Mortgage Foreclosure Complaint and Summons.

- A. The verified complaint in a leasehold mortgage foreclosure proceeding shall contain the following:
 - 1. the name of the Borrower/Mortgagor and each person or entity claiming through the Borrower/Mortgagor subsequent to the recording of the mortgage, including each subordinate lienholder (except the Tribe with respect to a claim for a tribal leasehold), as a defendant;
 - 2. a description of the property subject to the Leasehold mortgage;
 - 3. a concise statement of the facts concerning the execution of the Lease and the

leasehold mortgage; the facts concerning the recording of the leasehold mortgage; the facts concerning the alleged default(s) of the Borrower/Mortgagor; and such other facts as may be necessary to constitute a cause of action;

4. true and correct copies of each promissory note, if a leasehold mortgage then a copy of the Lease, the mortgage, or assignment thereof relating to the property (attached as exhibits); and
 5. any applicable allegations concerning relevant requirements and conditions
 6. any information prescribed in (a) federal statutes and regulations (b) Tribal codes, ordinances and regulations; and/or (c) provisions of the Lease or leasehold mortgage.
- B. The complaint shall be verified by the Tribal Court Clerk along with a summons specifying a date and time of appearance for the Defendant(s).

Section 7-5 Cure of Default by Subordinate Lienholder

- A. Mortgagor-defendant's Right to Cure. After the filing of a complaint for foreclosure, the mortgagor-defendant may bring into Court the principle and interest due, with costs and the complaint shall then be dismissed pursuant to the provisions of Section 7-6(B) of this Section, below.
- B. Dismissal of Action after Cure of Default. A mortgagor-defendant in a foreclosure proceeding whose default has been cured prior to the entry of a Judgment, is entitled to a dismissal of the cause of action. Unless otherwise stated, a dismissal of an action under this rule is without prejudice. An action may be dismissed with an ex-parte order of the Court by:
1. The Plaintiff filing a notice of dismissal before service by the adverse party of an answer or motion; or,
 2. By filing a Stipulation of Dismissal signed by all parties to the particular cause of action.
- C. "Bringing into Court" includes both paying the amount into court, and tendering of the amount in open court.

Section 7-6 Judgment and Remedy.

- A. This matter shall be heard and decided by the Tribal Court in a prompt and reasonable time period not to exceed ninety (90) days from the date of service of the complaint on the Borrower/Mortgagor. If the alleged default has not been cured at the time of trial and the Tribal Court finds for the lender/mortgagee, the Tribal Court shall enter judgment, subject to the entry of a final order of foreclosure and the Mortgagor-Defendant's right of redemption in accordance with Section 7-8, below.

Section 7-8 Post Judgment Redemption; Final Orders of Foreclosure

- A. Post Judgment Redemption. If, within sixty (60) days after a Judgment has been entered, the Mortgagor-Defendant brings into Court the principal and interest due with costs, the proceedings in action shall be stayed; but the judgment of foreclosure shall remain enforceable by further order of

the Court in the event of a subsequent default in the payment of any portion of installment of the principal, or of any interest thereafter to become due.

- B. **Final Orders of Foreclosure.** If after sixty (60) days from the date the initial judgment has been entered, all sums due under the cause of action has not been satisfied in full by the Mortgagor-Defendant, and there remains before the Court no further pending post-judgment motions, the Court shall enter a Final Order of Foreclosure. At a minimum, the Final Order of Foreclosure shall:
1. foreclose the interest of the Borrower/Mortgagor and each other defendant, including subordinate lienholders, in the Lease and leasehold mortgage; and
 2. include any and all information required under - the Lac Vieux Desert Tribal Court Rules.
 3. assign the Lease to the lender/mortgagee.

Section 7-9 Foreclosure Evictions Subsequent to Final Order of Foreclosure. If after the issuance of a Final Order of Foreclosure and subsequent to the date included within the Final Order for eviction, the Mortgagor-Defendant or any other occupant of the Premises refuses to physically vacate, upon an ex-parte order, the Mortgagor-Defendant and any other occupant of the Premises may be removed from the Premises by a Tribal Law Enforcement Officer.

Section 7-10 Prohibition Merger of Estates. There shall be no merger of estates by reason of the execution of a Lease or a Leasehold mortgage or the assignment or assumption of the same, including an assignment adjudged by the Tribal Court, or by operation of law, except as such merger may arise upon satisfaction of the Leasehold mortgage.

Section 7-11 Certified Mailing to Tribe and Lessor. Any foreclosure proceedings on a Lease or Leasehold mortgage where the Tribe or the Lessor(s) is not named as a defendant, a copy of the summons and complaint shall be mailed to the Tribe and to the Lessor(s) by certified mail, return receipt requested, within ten (10) days after the issuance of the summons. If the location of the Lessor(s) cannot be ascertained after reasonable inquiry, a copy of the summons and complaint shall be mailed to the Lessor(s) in care of the Chairman of the Tribe.

Section 7-12 Intervention. The Tribe or any Lessor may petition the Tribal Court to intervene in any Lease or Leasehold mortgage foreclosure proceeding under this Code. Neither the filing of a petition for intervention by the Tribe, nor the granting of such a petition by the Tribal Court shall operate as a waiver of sovereign immunity of the Tribe, except as may be expressly authorized by the Tribe.

Legislative History

Approved by Tribal Council 1/10/2012

Amended by Resolution T2014-012 on 02/04/2014

Amended by Resolution T2019-056 on 8/6/2019

