

Title XV - Landlord and Tenant - Forcible Detainer and Eviction

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Chapter 1. Jurisdiction

Sec. 101. Landlord and Tenant Proceedings.

The Tribal Court is hereby vested with jurisdiction in all proceedings where forcible detainer or eviction is an appropriate remedy.

Chapter 2. Grounds and procedure for forcible detainer or eviction

Sec. 201. Forcible detainer or eviction.

(a) A person may be evicted:

(1) Who, as lessee, or tenant, in person or by subtenant (i) fails to pay the rent for seven (7) days after the same shall be due, or (ii) holds over after the termination of the lease or expiration of the term, or (iii) fails to pay costs or damages that have been due and payable for thirty (30) days or more. Partial payment of rent, costs or damages shall not excuse the payment of any balance due upon demand;

(2) For serious or repeated violations of a rental agreement, or other contract, or of any reasonable rules or regulations of the Fort Peck Housing Authority, the Tribes, HUD, or of any applicable building or housing codes;

(3) For nuisance, damage, destruction, or injury to property or to the person, property or peace of tenants or persons on premises administered by the Housing Authority, or

damage to common areas, or to property or common areas;

(4) Who occupies any premises without permission or agreement, following reasonable written demand to leave by a person in authority over the premises;

(5) Who by force, intimidation, fraud, or stealth, enters upon the prior actual possession of real property of another and detains the same;

(6) Who after entering peaceably upon real property, turns out the party in possession by force, threats, or menacing conduct;

(7) Who by force or by threat of violence, unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise;

(8) Who continues in unauthorized possession (i) after a sale of the real property, or (ii) after a foreclosure sale of real property covered by a HUD mortgage as defined in Title XXV, Section 102, or (iii) after expiration of the period of redemption following a sale in foreclosure of any non HUD mortgage, or (iv) after a sale in partition under an order or decree of a court of competent jurisdiction;

(9) For any valid reason not otherwise covered in this Section 201 (a).

Sec. 202. Notice to quit.

(a) When notice to quit is required. Except as provided in Subsection 202 (b), when a person entitled to possession desires to obtain possession of a dwelling or dwelling unit or other real property and there exists one or more of the valid grounds to evict listed in Section 201 of this Title, the person entitled to possession shall give notice to quit possession of such property to the party in possession in accordance with the provisions of this Section 202.

(b) Exception when the Fort Peck Housing Authority is the landlord. When the landlord is the Fort Peck Housing Authority, the Housing Authority's notice to quit or termination notice shall qualify as the notice to quit required by this Title XV so long as the Housing Authority's time requirements are at least as long as those fixed in Subsection 202(e).

(c) Contents of notice to quit. The notice to quit shall be in writing, shall state the grounds for eviction and the date by which the tenant or persons in possession must quit possession and vacate the property. The notice may be in the following form:

"You are hereby given notice to quit possession or occupancy of the dwelling unit [or other real property] now occupied by you at [here insert address or other reasonable description of the location of the dwelling unit or other real property], on or before the [here insert the date] for the following reason [here insert the reason or reasons for the notice to quit possession using the language of Section 201, Title XV]. Signed, [here insert the signature, name and address of the person seeking possession, as well as the date and place of signing]."

(d) Time periods for service of notice to quit. The notice must be served within the following periods of time:

(1) No less than seven (7) calendar days prior to the date to quit specified in the notice to quit for violation of this Section 201(a)(1) and(9).

(2) No less than three (3) calendar days prior to the date to quit specified in the notice to quit for violation of this Section 201(a)(2) through (a)(7).

(3) No less than thirty (30) calendar days prior to the date to quit specified in the notice to quit for violation of this Section 201 (a)(8).

(e) Service of notice to quit.

(1) Notice to quit shall be served in the manner provided in Title VIII, Section 102 of this Code. If the notice cannot be served on an adult, or other person of suitable age residing on the premises, service may be made by securing a copy of the notice to the main entry door of the unit or residence or, if there is no unit or residence and it is feasible to do so, by securely posting a copy at the entrance to the property, in such a manner that it is not likely to blow away, and by mailing a copy of the notice, certified mail return receipt requested, to the last known address of the person(s) to whom the notice is directed. If suit is instituted, the notice to quit, the return of service duly verified, and the proof of certified mailing shall be attached to the complaint.

(2) A copy of the notice to quit served under the preceding subsection (1) with proof of service shall be delivered to the respective offices of the Chairman of the Tribes and the Superintendent, Fort Peck Indian Agency

(3) Where an emergency exists, such as a fire or conditions making a dwelling unsafe or uninhabitable, or in situations involving an imminent or serious threat to public health or safety, the notice may be served and be returnable in a period of time that is reasonable, under the circumstances.

Chapter 3. Judicial eviction procedures.

Sec. 301. Complaint for eviction: order to respond.

(a) Complaint. In landlord-tenant matters, the notice to quit where required under Section 202(a) is a prerequisite to filing suit unless waived by the Court for good cause shown. In landlord and tenant matters, if possession of the property has not been surrendered by the date set forth in the notice to quit, and in all other situations where eviction or forcible detainer is sought, suit may be commenced by filing a complaint in the Tribal Court for eviction or forcible detainer and for such other relief as the Court may deem just and proper. The complaint shall include the following:

(1) The names of the party(ies) plaintiff and party(ies) defendant;

(2) The address or other identification of the location of the premises;

(3) In landlord-tenant matters, a description of the pertinent rental or other agreement, if any, and a statement that all required notices to quit and all other required termination notices have been served in accordance with this code or other applicable tribal laws;

(4) If the party bringing suit (plaintiff) is the Fort Peck Housing Authority, a statement that the Housing Authority has complied with all required regulatory processes prior to filing the eviction action;

(5) The grounds for eviction or forcible detainer; and

(6) A statement of the relief demanded, including where applicable, a request that the Court order the defendant(s) and persons in possession to vacate the premises in not less than five days after service of the summons and complaint, and for damages, costs of litigation, attorneys' and other fees, and such other relief as may be appropriate.

(b) Order for appearance or to respond in landlord-tenant suits. Promptly on the date that the complaint in the landlord-tenant suit is filed, the Court, if it determines that the complaint appears to be in compliance with the provisions of Section 301 of this Chapter, shall issue an order requiring the named defendant(s) to appear in person before the Court or to respond in writing to the complaint by a date no more than three (3) calendar days following service of the summons, complaint and order for appearance or to respond. The order for appearance shall provide; (1) that

unless the named defendant(s) timely appear(s) in response to the order and presents defenses satisfactory to the Court, the defendant and all occupants of the premises will be forcibly evicted together with their personal property; and (2) that a hearing on any judgement for money shall be held not more than fifteen (15) days after the complaint is filed, unless the defendant(s) consent(s) that such matters be heard at the earlier hearing set on the demand for eviction.

(c) Service of process. Except as otherwise provided in this subsection service of process shall be in accordance with Title VIII, Section 102 of this Code. When the suit involves a matter where notice to quit has been given pursuant to Section 202(a) of this Title, a copy of the notice and the order to appear shall be annexed to the complaint and shall be served without delay within twenty-four (24) hours after the complaint is filed.

(d) Delivery of the complaint and order to the Tribal Chairman and Superintendent. In any action for eviction arising under this Chapter 3, if the tenant in possession depends on social security, or public assistance for funds to pay the rent, the Chairman of the Tribe and the Superintendent of the Fort Peck Indian Agency shall be notified of the proceeding by delivering a copy of the complaint and the Court's order to the respective offices of the Chairman and Superintendent.

Sec. 302. Judgment.

(a) Contents. In landlord and tenant cases, the Court, within five (5) calendar days after the date of the hearing shall grant the relief supported by the record. The judgement may:

(1) Order the immediate eviction of a tenant and delivery of the premises to the plaintiff;

(2) Grant damages, costs, attorneys' fees and other fees as required by the law and evidence, plus interest;

(3) Where appropriate, establish a payment plan for the tenant;

(4) Where appropriate, order that the tenant grant a power of attorney to a bonded officer of the Court authorizing the Superintendent of the Fort Peck Indian Agency, under a plan approved by the Superintendent to pay to the bonded officer the judgement and where applicable, prospective rent out of the Judgement debtor's per capita payments or the tenant's IIM account.

(5) Order the parties to carry out the obligations imposed by law;

(6) Grant such further relief as may be permitted by law.

(b) Order of eviction. The order of eviction shall inform the defendant and those claiming under the defendant that unless the premises are voluntarily vacated by the effective date fixed by the Court, the defendant and occupants of the premises will be forcibly evicted by tribal law enforcement officers. That the defendant is free to remove from the premises all personal property on the premises will be subject to storage, sale, and disposal as set forth in Section 304 of this Title, and judgement for the net costs and expenses of removal, storage and sale will be entered against the defendants.

Sec. 303. Stay of execution of the judgement.

The Court may not stay eviction except in landlord-tenant suits for nonpayment of rent, where the reason for nonpayment is delay in the receipt of social security or public assistance funds, provided that the defendant agrees in writing and on penalty of contempt, that when the defendant receives the check for social security or for public assistance funds, the defendant will deliver the check or checks to the Court for payment of the rent, and where there is information, or reason to

believe that the defendant will receive a per capita, or has funds in an IIM account and the defendant provide a valid power of attorney as prescribed in Section 302(a)(4).

Sec. 304. Removal, storage and sale of personal property following forcible eviction.

Following forcible eviction, the personal property on the premises shall be stored by the plaintiff for at least thirty(30) days, either on the premises, or at another suitable location. The former occupants may reclaim their personal upon payment of the reasonable costs of removal and storage. If such costs are not paid within the thirty(30) day storage period, the plaintiff is authorized to sell the personal property under the direction of the Court, and to remit the proceeds to the Clerk of Court together with a report of the sale receipts and an itemized statement of the cost of removal, storage and sales. Any proceeds in excess of the cost of removal, storage and sales shall be credited against any judgement for money, or if there is no indebtedness, remitted to the former occupants. With the consent of the landlord or owner of the premises, the former occupant may reclaim the personal property on such terms as may be agreed upon by the landlord or owner and the former tenant or occupant.

(AMENDED AS PER RESOLUTION NO. 3185-97-8, DATED 08/11/97.)