

CHAPTER 9-3 LANDLORD TENANT RELATIONS

GENERAL

9-3-1 Legislative Intent

(a) This Chapter shall govern relationships between all landlords and tenants on the lands of the Colville Indian Reservation and over all property within the Colville Reservation whether private or public real property. Provided that a tribal department or the Colville Indian Housing Authority may prescribe a different procedure in which case the more specific procedure shall govern.

(b) Any action for rent due or other breach or default of a legal or rental or purchase agreement shall be brought pursuant to this Chapter and applicable sections of the Code.

9-3-2 Definitions

(a) "Tribes" means the Confederated Tribes of Colville Reservation.

(b) "Tribal Court" means the Colville Tribal Court as established by the laws of the Tribes or other entity as may now or hereafter be authorized by the laws of the Tribes to exercise the powers and functions of a court of law.

(c) "Lessor" means the Colville Indian Housing Authority, Public Works Housing, or such other person or entity who shall have an interest in real property which for a limited time has been leased or rented to another. The term "lessor" shall include an Indian Housing Authority which has leased real property under a mutual help and occupancy agreement or rental lease agreement or other similar arrangement whereby the tenant may on certain conditions obtain ownership of the occupied house at the end of occupancy under the agreement.

(d) "Secretary" means the Secretary of the United States Department of Housing and Urban Development (HUD) or the Secretary of the Veterans Administration or their designee, attorney, agent, or the assignee of the Secretaries.

(e) "Tenant" means any person who occupies real property under a lease, rental agreement or other agreement with a lessor, as defined in this Chapter.

(f) "Unlawful detainer action" means a suit brought in the Tribal Court to terminate a tenant's interest in real property and/or to evict any person from occupancy of real property.

(g) "Writ of restitution" means an order of the Tribal Court:

(1) Restoring an owner or lessor or the Secretary to possession of real property; and

(2) Evicting a tenant or other occupant therefrom.

(h) "Nuisance" means the maintenance on real property of a condition which:

(1) Unreasonably threatens the health or safety of the public or neighboring land users; or

(2) Unreasonably and substantially interferes with the ability of neighboring property users to enjoy the reasonable use and occupancy of their property.

(i) "Waste" means spoil or destruction of land, buildings, gardens, trees or other improvements owned by a lessor and committed by a tenant which result in significant economic injury to the lessor's interest in the property.

NOTIFICATION OF SUIT—PROCEDURES

9-3-10 Notification of Suit

Commencement of suit shall be pursuant to the provisions of Chapter 2-2, Civil Actions of this Code. Provided that any employee of the Tribes or the Colville Indian Housing Authority may make personal service of the notice of suit or the Complaint or other documents required to carry out the provisions of this Chapter.

9-3-11 Defenses

In any action under this Chapter it shall not be a defense to such action that the tenant or occupant is unable to pay rent or other monthly payments when due for the right of occupying the premises, unless the lease or other agreement in force with reference to the property at issue, provides otherwise.

9-3-12 Law to be Applied

In any action under this Chapter, the Tribal Court shall apply applicable provisions of this Code and any and all leases, or agreements, or rules and regulations etc. in force with regard to the property or tenancy which is the subject matter of the action. In the absence of tribal law on any particular subject, the Tribal Court may look to provisions in federal law or the general law of the states for guidance in fashioning a remedy.

9-3-13 Eviction Procedures

The procedures set out in this Chapter shall apply to any action to terminate a landlord tenant relationship and/or to obtain possession of property after foreclosure of a mortgage or deed of trust.

9-3-14 Unlawful Detainer

A tenant or other occupier of land shall be guilty of unlawful detainer if such person shall continue to occupy real property under any of the following situations:

- (a) After the expiration of the lease or other agreement;
- (b) Upon entering onto or remaining on the real property of another without the permission of the owner and without having any substantial claim of a lease or title to the property;
- (c) After an Indian Housing Authority or other Public Housing Authority has terminated such person's tenancy or occupancy pursuant to procedures established by the Housing Authority;
- (d) After the interest of such person in a lease has been foreclosed in a leasehold mortgage foreclosure proceeding in the Tribal Court; or
- (e) After failing to pay rent.

9-3-15 to 9-3-19 Reserved

NOTICE AND HEARING

9-3-20 Notice

(a) Any party may commence an action in Tribal Court for any violation of subsection 9-3-14 without any additional notice prior to the commencement of the Tribal Court proceeding.

(b) Notwithstanding the preceding subsection (a), no action may be commenced in Tribal Court for failure to pay rent until a thirty (30) day notice to the tenant or occupier has been served, except for those situations identified in subsection (c) below. The notice to the tenant or occupier shall state:

- (1) That he or she is in default in the payment of rent; and

(2) That he or she is required to pay the rent or surrender possession of the occupied property.

(c) No additional notice will be required prior to the commencement of an action for an unlawful detainer in any of the following situations:

(1) 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 as required under this section at least thirty (30) days prior to the end of such month or period; or

(2) 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 under this section to either perform such condition or covenant or to surrender the property; or

(3) When such person continues to commit or to permit waste upon or maintain a nuisance upon the occupied property after having been given notice as required under this section in the alternative either to cease such waste or maintenance of nuisance or to surrender the property.

9-3-21 Procedures for Service of Notice

(a) Notice required under section 9-3-20 shall be given in writing by either:

(1) Delivering a copy personally to the tenant or occupier or to any adult member of his family residing on the premises; or

(2) Posting said notice in a conspicuous place near the entrance to said premises and in addition sending an additional copy to the tenant or occupier by certified mail return receipt requested, properly addressed to the last known address of the tenant or occupier, postage prepaid.

(b) Proof of service by either of the above methods may be made by affidavit of any adult person stating that he or she has complied fully with the requirements of this section.

9-3-22 Complaint and Summons Contents

The complaint and summons to commence an action for unlawful detainer shall, in addition to those procedural requirements imposed by court rule or under the general procedures for the commencement of an action in Tribal Court, comply with the following:

(a) The complaint shall be signed by the owner/lessor, or the secretary, agent, or attorney of the owner/lessor stating:

(1) The facts on which recovery is based.

(2) Describing the property so that it can be identified with reasonable certainty.

(3) Any claim for damages or compensation due from the persons to be evicted.

9-3-23 Hearing

Notwithstanding any other provision in this Code or court rule, the Tribal Court shall set an unlawful detainer action for hearing expeditiously. The hearing date shall be set no later than thirty (30) days following the date that the defendant must respond to the suit.

9-3-24 Power of the Tribal Court

(a) The Tribal Court shall enter a writ of restitution if:

(1) Notices as required by this Chapter have been given; and

(2) The Tribal Court finds that the tenant or occupier of the real property is guilty of an act of

unlawful detainer.

(b) Upon the issuance of a writ of restitution the Tribal Court shall have authority to enter against the defendants a judgment for the following: (1) back rent; (2) unpaid utilities; (3) charges due the Tribes' Indian Housing Authority, or land owner under any lease or occupancy agreement (not including under a leasehold mortgage); and (4) for damages caused by the defendants to the property other than ordinary wear and tear. The Tribal Court shall have authority to award to the prevailing party his costs and reasonable attorney's fees in bringing suit.

9-3-25 Continuance in Cases Involving the Secretary

Except by agreement of all parties there shall be no continuance in cases involving the Secretary.

9-3-26 Enforcement

Upon the issuance of a writ of restitution by the Tribal Court, tribal law enforcement officers shall enforce the writ of restitution by evicting the defendants and their property from the premises which are unlawfully occupied. In cases involving the Secretary, the Secretary may request that the writ of restitution be enforced not later than sixty (60) days after the date of service of the summons and complaint.

9-3-27 Landlord Inspections

(a) Any landlord or lessor may, at reasonable times upon reasonable notice, enter any premises in order to inspect the physical condition of the premises for protection of health and safety, maintenance, or related purposes. At least twenty-four (24) hours notice delivered to the premises or posted thereon shall constitute reasonable notice. Notwithstanding the prior sentence, any landlord or lessor may enter any premises at any time and without any prior notice for any emergency so as to protect the landlord's or lessor's property.

(b) Any tenant who unreasonably denies the landlord or lessor entry for inspection purposes after reasonable notice has been given shall be guilty of a civil infraction and be liable for payment of up to one hundred dollars for each violation. Tribal law enforcement officers shall have authority to enforce this section consistent with section 3-7-1 of this Code.

(c) Landlord inspections may include tests to determine the presence of a controlled substance (defined in section 3-1-175(b) of this Code) on or around the premises. If done as part of a routine, periodic inspection, a government landlord or lessor may administer non-intrusive tests to detect the presences of a controlled substance (defined in section 3-1-175(b) of this Code) on or around premises without the necessity of obtaining a warrant.

(1) "Non-intrusive tests" include wipe sample tests, vacuum sample tests, aerosol tests, ion scans and other minimally invasive methods, which when done as part of a routine, periodic inspection, shall not be considered an unreasonable search.

(2) It shall not be a defense for the use of a positive test result in any civil or criminal proceeding that the test was performed without a warrant. A positive test result may be used to support probable cause for law enforcement purposes.

(d) Nothing in this section is intended to limit or modify in any way any common law right or privilege of entry that a landlord or lessor might otherwise have.

(e) To the extent that provisions in this section might be deemed inconsistent with any express or implied right of privacy or procedural or substantive due process under any other provision of Colville Tribal Law, this section hereby expressly supercedes such inconsistent provision.

(Chapter 9-3 Adopted 11/20/86, Resolution 1986-596)
(Chapter 9-3 Amended 12/20/07, Resolution 2007-

747)