

TITLE 8 - PROPERTY

CHAPTER 8-3 EVICTION

8-3-1 Jurisdiction and Scope

(a) This chapter shall govern relationships between all landlords and tenants and over all property whether private or public real property within the lands of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians (Tribes).

(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 this Code.

8-3-2 Definitions

(a) "Tribes" - The Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians.

(b) "Tribal Court" - The Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians Tribal Court as established by the laws of the Tribes.

(c) "Lessor" - refer to the Tribes or to any 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 also include an Indian Housing Authority that has leased real property under a Mutual Help and Occupancy Agreement, Rental Lease Agreement, or other similar arrangement where the tenant may, on certain conditions, obtain ownership of the occupied property at the end of occupancy under the agreement.

(d) "Secretary" - the Secretary of the United States Department of Housing and Urban Development (HUD) or his or her designee, attorney or agent, or the assignee of the Secretary.

(f) "Tenant" - any person who occupies real property under a lease rental agreement with a lessor as defined in this section.

(f) "Unlawful Detainer Action" - 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" - an order of the Tribal Court:

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

- (2) Evicting a tenant or other occupant.
- (h) "Nuisance" - the maintenance of 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 reasonable use and occupancy of their property.
- (i) "Waste" - spoil or destruction by a tenant of land, buildings, gardens, trees or other improvements that result in injury to the lessor's interest in the property.
- (j) "Gender" (Singular or Plural) - Reference to persons by terms denoting one sex shall be taken as referring to either sex. Reference to persons by a term denoting the singular shall include the plural.
- (k) "First Class Mail" - does not include certified or registered mail, or any other form of mail that may delay or hinder actual delivery of mail to the recipient.
- (l) "Informal Dispute Resolution" - means, but is not limited to, consultation between the lessor and the tenant, or mediation utilizing the services of a third party.
- (m) "Squatter" - a person occupying a dwelling unit who is not so entitled under a rental agreement or who is not authorized by the tenant to occupy that dwelling unit.

### 8-3-3 Exclusions from Application of this Chapter

Unless created to avoid the application of this chapter, the following arrangement is not governed by this chapter: Occupancy by a squatter.

### 8-3-4 Notification of Suit

Commencement of suit shall be pursuant to the provisions of 1-1-90 (Rules of Practice in Actions and Proceedings Before the Tribal Court) of this Code provided that any employee of the Tribes may make personal service of the documents required to carry out the provisions of this Chapter.

### 8-3-5 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.

### 8-3-6 Law To Be Applied

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

### 8-3-7 Eviction Procedures

The procedures set out in this Chapter shall apply to any action to terminate a landlord tenant relationship under Chapter 8-3.

### 8-3-8 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 term of the lease or other agreement; or
- (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; or
- (c) Upon a substantial and material breach of a condition of a rental agreement. No substantial and material breach of a condition of a rental agreement may result in a termination of the rental agreement unless the rental agreement so provides; or
- (d) After failing to pay rent for a minimum of seven (7) days beyond the due date set forth in the lease or rental agreement.

### 8-3-9 Notice

- (a) A party may commence an action in Tribal Court for any violation of section 8-3-8 (a), (b), (c) when the following notice provisions have been provided for:
  - (1) When the lease of the property is for an indefinite time with the rent to be paid monthly or by some other period and the lessor had given notice of termination of the tenancy at least thirty (30) days prior to the end of such month or period;
  - (2) When the lease of the property is for a definite time with rent to be paid monthly or by some other period and the lessor had given notice of termination of the tenancy at least thirty (30) days prior to the expiration of the term of the lease or other agreement;

(3) When such a 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.

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

(b) No action may be commenced in Tribal Court for failure to pay rent under section 8-3-8 (d) when due until after having received a seventy-two (72) hour notice, the tenant or occupier remains in possession of the property contrary to the terms of the notice as follows:

(1) When such person has received notice:

(A) that he is in default in the payment of rent; and

(B) requiring him, in the alternative, to pay the rent or surrender possession of the occupied property, shall fail to pay the rent or surrender possession.

#### 8-3-10 Service or Delivery of Written Notice

Where this Chapter requires written notice, service or delivery of that written notice shall be executed by one or more of the following methods:

(a) Personal delivery to the lessor or tenant; or

(b) First-class mail to the lessor or tenant. If a notice is served by mail, the minimum period for compliance or termination of a tenancy, as appropriate, shall be extended by three (3) days, and the notice shall include the extension in the period provided.

(c) A lessor or tenant may utilize alternative methods of notifying the other so long as the alternative method is in addition to one of the service methods described in subsection (a) and (b) of this section.

#### 8-3-11 Calculation of Notice Periods

Where there are references in this chapter to periods and notices based on a number of days, those days shall be calculated by consecutive calendar days, not including the initial day of service by including the last day until midnight of that last day. Where there are references in this chapter to periods or notices based on a number of hours, those hours shall be calculated in consecutive clock hours, beginning immediately upon service.

8-3-12 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, shall comply with the following;

(a) The complaint signed by the owner, lessor, the Secretary, agent or attorney stating:

- (1) The facts on which recovery is based; and
- (2) Describing the property so that it can be identified with reasonable certainty; and
- (3) Any Claim for damages or compensation due from the person(s) to be evicted.

8-3-13 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.

8-3-14 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 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 defendant(s) a judgment for the following: back rent, unpaid utilities, charges due the Tribes Indian Housing Authority or land owner under any lease or occupancy agreement (not including under a leasehold mortgage) and for damages caused by the defendant(s) 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 under this Chapter.

8-3-15 Continuance in Cases Involving the Secretary

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

8-3-16 Enforcement

Upon the issuance of a Writ of Restitution by the Tribal Court, tribal law enforcement officers, or if there are no tribal law enforcement officers, state law enforcement officers if there exists an intergovernmental agreement allowing for the enforcement of Tribal Court Orders, shall enforce the Writ of Restitution by evicting the defendant(s) 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.

8-3-17 Alternate Remedies

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

8-3-20 DISPOSITION OF PERSONAL PROPERTY ABANDONED BY TENANT,  
NOTICE, SALE, LIMITATION ON LANDLORD LIABILITY, STORAGE  
AGREEMENTS, HAZARDOUS PROPERTY

8-3-21 Definitions as Used in this Section

(a) "Current Market Value" - the amount in cash, as determined by the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians (Tribes) that could reasonably be expected to be paid for property and goods by an informed buyer to an informed seller, each acting without compulsion in an arm's-length transaction.

(b) "Dispose of the Personal Property" - that, if reasonably appropriate, the Tribes may throw away the property or may give it without consideration to a nonprofit organization or may give it away to individuals. Tribal members are to be given a preference in the disposal. The Tribes may retain the property for Tribal use or benefit if the property has cultural, historical or financial significance.

(c) "Goods" - includes those goods left inside a house, apartment, recreational vehicle, manufactured dwelling or any structure utilized as a home or left upon the rental space outside but within the property boundaries.

(d) "Lienholder"- any lienholder of an abandoned recreational vehicle or manufactured dwelling, if the lien is of record or the lienholder is actually known to the Tribes.

(e) "Of Record" -

(1) For a recreational vehicle that is not a manufactured structure as defined in

ORS 446.561, that a security interest has been properly recorded with the Department of Transportation.

(2) For a manufactured dwelling or recreational vehicle that is a manufactured structure as defined in ORS 446.561, that a security interest has been properly recorded for the manufactured dwelling or recreational vehicle in the records of the Department of Consumer and Business Services.

(f) "Owner" - any owner of an abandoned recreational vehicle, or manufactured dwelling if different from the tenant and either of record or actually known to the Tribes.

(g) "Personal property" - goods, vehicles or recreational vehicles and includes manufactured dwellings.

8-3-22 The Tribes may not store, sell or dispose of abandoned personal property except as provided by this section. This section governs the rights and obligations of the Tribes, tenants and any lienholders or owners in any personal property abandoned or left upon the premises by the tenant or any lienholder or owner in the following circumstances:

(a) The tenancy has ended by termination or expiration of a rental agreement or by relinquishment or abandonment of the premises and the Tribes reasonably believes under all the circumstances that the tenant has left the personal property upon the premises with no intention of asserting any further claim to the premises or to the personal property;

(b) The tenant has been absent from the premises continuously for seven (7) days after termination of a tenancy by a court order that has not been executed; or

(c) The Tribes receive possession of the premises from Tribal Police following restitution pursuant to Section 8-3-16, Enforcement.

8-3-23 Prior to selling or disposing of the tenant's personal property under this section, the Tribes must give a written notice to the tenant that must be:

(a) Personally delivered to the tenant; or

(b) Sent by first class mail addressed and mailed to the tenant at:

(1) The premises;

(2) Any post-office box held by the tenant and actually known by the Tribes and

(3) The most recent forwarding address if provided by the tenant or actually known to the Tribes.

8-3-24 (a) In addition to the notice required by 8-3-23, in the case of an abandoned recreational vehicle or manufactured dwelling, the Tribes shall also give a copy of the notice described in 8-3-23 to:

- (1) Any lienholder of the recreational vehicle or manufactured dwelling
- (2) Any owner of the recreational vehicle or manufactured dwelling
- (3) The tax collector of the county where the manufactured dwelling is located and

(b) The Tribes shall give the notice copy required by this subsection by personal delivery or first class mail, except that for any lienholder, mail service must be both by first class mail and by certified mail with return receipt requested.

(c) A notice to lienholders under (a)(1) of this subsection must be sent to each lienholder at each address:

- (1) Actually known to the Tribes,
- (2) Of record; and
- (3) Provided to the Tribes by the lienholder in a written notice that identifies the personal property subject to the lien and that was sent to the Tribes by certified mail with return receipt requested within the preceding five (5) years. The notice must identify the personal property by describing the physical address of the property.

8-3-25 The notice required under 8-3-23 must state that:

- (a) The personal property left upon the premises is considered abandoned;
- (b) The tenant or any lienholder or owner must contact the Tribes by a specified date, as provided in 8-3-26, to arrange for the removal of the abandoned personal property;
- (c) The personal property is stored at a place of safekeeping, except that if the property includes a manufactured dwelling, the dwelling or home must be stored on the rented space;
- (d) The tenant or any lienholder or owner may arrange for removal of the personal property by contacting the Tribes at a described telephone number or address on or before the specified date;
- (e) The Tribes shall make the personal property available for removal by the tenant or any lienholder or owner:

(f) If the personal property is considered to be abandoned pursuant to 8-3-22(a) or (b), the Tribes may require payment of removal and storage charges, as provided by 8-3-27(d), prior to releasing the personal property to the tenant or any lienholder or owner;

(g) If the tenant or any lienholder or owner fails to contact the Tribes by the specified date, or after that contact, fails to remove the personal property within thirty (30) days for recreational vehicles and/or manufactured dwellings or fifteen (15) days for all other personal property, the landlord may sell or dispose of the personal property. If the Tribes reasonably believes that the personal property will be eligible for disposal pursuant to 8-3-30(b) and the Tribes intend to dispose of the property if the property is not claimed, the notice shall state that belief and intent; and

(h) If the personal property includes a recreational vehicle or a manufactured dwelling and if applicable, there is a lienholder or owner that has a right to claim the recreational vehicle, dwelling or home,

8-3-26 For purposes of 8-3-25, the specified date by which a tenant, lienholder or owner must contact the Tribes to arrange for the disposition of abandoned personal property is:

(a) For abandoned recreational vehicles, or manufactured dwellings, not less than forty-five (45) days after personal delivery or mailing of the notice; or

(b) For all other abandoned personal property, not less than thirty (30) days after personal delivery or mailing of the notice.

8-3-27 After notifying the tenant as required by 8-3-23, the Tribes:

(a) Shall store any abandoned manufactured dwelling on the rented space and shall exercise reasonable care for the dwelling or home;

(b) Shall store all other abandoned personal property of the tenant, including goods left inside a recreational vehicle, manufactured dwelling or left upon the rented space outside a recreational vehicle, dwelling or home, in a place of safekeeping and shall exercise reasonable care for the personal property, except that the Tribes may:

(1) Promptly dispose of rotting food; and

(2) Allow an animal control agency to remove any abandoned pets or livestock. If an animal control agency will not remove the abandoned pets or livestock, the Tribes shall exercise reasonable care for the animals given all the circumstances, including the type and condition of the animals, and may give the animals to an agency that is willing and able to care for the animals, such as a humane society or similar organization;

(c) Except for manufactured dwellings, may store the abandoned personal property at the dwelling unit, move and store it elsewhere on the premises or move and store it at a commercial storage company or other place of safekeeping; and

(d) Is entitled to reasonable or actual storage charges and costs incidental to storage or disposal, including any cost of removal to a place of storage. In the case of an abandoned manufactured dwelling, the storage charge may be no greater than the monthly space rent last payable by the tenant.

8-3-28 If a tenant, lienholder or owner, upon the receipt of the notice provided by 8-3-23 or 8-3-24 or otherwise, responds by actual notice to the Tribes on or before the specified date in the Tribes' notice that the tenant, lienholder or owner intends to remove the personal property from the premises or from the place of safekeeping, the landlord must make that personal property available for removal by the tenant, lienholder or owner by appointment at reasonable times during the thirty (30) days or, in the case of a recreational vehicle, manufactured dwelling, forty-five (45) days following the date of the response. If the personal property is considered to be abandoned pursuant to 8-3-22(a) or (b), the Tribes may require payment of removal and storage charges, as provided in subsection 8-3-27(d), prior to allowing the tenant, lienholder or owner to remove the personal property. Acceptance by the Tribes of such payment does not operate to create or reinstate a tenancy or create a waiver.

8-3-29 If the tenant, lienholder or owner of a recreational vehicle or manufactured dwelling does not respond within the time provided by the landlord's notice, or the tenant, lienholder or owner does not remove the personal property within the time required by 8-3-28 or by any date agreed to with the Tribes, whichever is later, the tenant's, lienholder's or owner's personal property is conclusively presumed to be abandoned. The tenant and any lienholder or owner that have been given notice pursuant to 8-3-23 or 8-3-24 shall, have no further right, title or interest to the personal property and may not claim or sell the property.

8-3-30 If the personal property is presumed to be abandoned under 8-3-29, the Tribes then may:

(a) Sell the personal property at a public or private sale where Tribal members receive a preference for purchasing or any type of disposal, provided that prior to the sale of a recreational vehicle or manufactured dwelling:

(1) The Tribes may seek to transfer ownership of record of the personal property by complying with the requirements of the appropriate state agency; and

(2) The Tribes shall:

(A) Place a notice in a newspaper of general circulation in the county in which the recreational vehicle or manufactured dwelling is located. The notice shall state:

- (i) That the recreational vehicle, manufactured dwelling is abandoned;
- (ii) The tenant's and owner's name, if of record or actually known to the Tribes,
- (iii) The address and any space number where the recreational vehicle, manufactured dwelling is located, and any plate, registration or other identification number for a recreational vehicle noted on the certificate of title, if actually known to the Tribes;
- (iv) Whether the sale is by private bidding or public auction;
- (v) Whether the Tribes are accepting sealed bids and, if so, the last date on which bids will be accepted; and
- (vi) The name and telephone number of the person to contact to inspect the recreational vehicle or manufactured dwelling;

(B) At a reasonable time prior to the sale, give a copy of the notice required by sub-subparagraph (A) of this subparagraph to the tenant and to any lienholder and owner, by personal delivery or first class mail, except that for any lienholder, mail service must be by first class mail with certificate of mailing;

(C) Obtain an affidavit of publication from the newspaper to show that the notice required under (A) of this subparagraph ran in the newspaper at least one (1) day in each of two (2) consecutive weeks prior to the date scheduled for the sale or the last date bids will be accepted; and

(D) Obtain written proof from the county that all property taxes and assessments on the manufactured dwelling have been paid or, if not paid, that the county has authorized the sale, with the sale proceeds to be distributed pursuant to 8-3-33;

(b) Destroy or otherwise dispose of the personal property if the landlord determines that:

- (1) For a manufactured dwelling, the current market value of the property is eight thousand dollars (\$8,000) or less as determined by the county assessor; or
- (2) For all other personal property, the reasonable current fair market value is five hundred dollars (\$500) or less or so low that the cost of storage and conducting a public sale probably exceeds the amount that would be realized from the sale; or

(c) Consistent with paragraphs (a) and (b) of this subsection, sell certain items and destroy or otherwise dispose of the remaining personal property. Tribal members have a preference for any disposal.

8-3-31 A public or private sale authorized by this section must:

(a) For a recreational vehicle or manufactured dwelling, be conducted consistent with the terms listed in subsection 8-3-30(a)(2)(A). Every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable; or

(b) If there is no buyer at a sale of a manufactured dwelling, the personal property is considered to be worth eight thousand dollars (\$8,000) or less, regardless of current market value, and the Tribes may destroy or otherwise dispose of the personal property. Tribal members have preference for disposal of property or goods,

8-3-32 The Tribes are not liable for the condition of the dwelling or goods to:

(a) A buyer of the dwelling or goods at a sale pursuant to 8-3-30(a), with or without consideration; or

(b) A person or nonprofit organization to whom the Tribes give the dwelling or home pursuant to 8-3-21(b), 8-3-30(b) or 8-3-31(b).

8-3-33 (a) the Tribes may deduct from the proceeds of the sale:

(1) The reasonable or actual cost of notice, storage and sale; and

(2) Unpaid rent, late fees and damages.

(b) If the sale was of a manufactured dwelling, after deducting the amounts listed in paragraph (a) of this subsection, the Tribes shall remit the remaining proceeds, if any, to the county tax collector to the extent of any unpaid property taxes and assessments owed on the dwelling or home.

(c) If the sale was of a recreational vehicle or manufactured dwelling, after deducting the amounts listed in paragraphs (a) and (b) of this subsection, if applicable, the Tribes shall remit the remaining proceeds, if any, to any lienholder to the extent of any unpaid balance owed on the lien on the recreational vehicle, dwelling or home.

(d) After deducting the amounts listed in paragraphs (a), (b) and (c) of this subsection, if applicable, the Tribes shall remit to the tenant or owner the remaining proceeds, if any, together with an itemized accounting.

(e) If the tenant or owner cannot after due diligence be found, the Tribes' proceeds revert to the the Tribes' general fund for general purposes.

8-3-34 The Tribes are not responsible for any loss to the tenant, lienholder or owner resulting from storage of personal property in compliance with this section unless the loss was caused by the Tribes' deliberate or negligent act.

8-3-35 Complete compliance in good faith with this section shall constitute a complete defense in any action brought by a tenant, lienholder or owner against the Tribes for loss or damage to such personal property disposed of pursuant to this section.

APPENDIX A  
LEGISLATIVE HISTORY AND EDITORIAL CHANGES  
EVICTION CODE

## **LEGISLATIVE HISTORY AND EDITORIAL CHANGES**

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians enacted the amended Eviction Code in Resolution 07-020, Ordinance No. 047A, on March 11, 2007. Vote was 7 (for), 0 (against) and 0 (abstaining).

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians approved the amended Eviction Code in Resolution 07-002, Ordinance No. 047A, on January 14, 2007. Vote was 6 (for), 0 (against) and 0 (abstaining). This Ordinance was posted for an additional 30-days.

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians approved the first reading of the amended Eviction Code in Resolution 06-101 Ordinance No. 047A, on August 13, 2006. Vote was 6 (for), 0 (against), and 0 (abstaining).

The Tribal Council of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians enacted the Eviction Code in Resolution 02-046, Ordinance No. 47, on June 9, 2002. Vote was 6 (for) and 0 (against) and 0 (abstaining).

The Eviction Code replaced the Hearings and Arbitration Policy enacted by the Coos, Lower Umpqua and Siuslaw Housing authority on June 28, 1999, by Resolution 99-025. Tribal Council amended the Hearings and Arbitration Policy on October 30, 2000, by Resolution 00-085.

During the preparation of this compilation, the following editorial changes were made to the Eviction Code:

1. The title was changed from "Hearing and Arbitration Policy" to "Eviction Code".
2. Substantive changes were made to the eviction procedure resulting from the establishment of the Tribal Court.