

*Washoe Tribe of Nevada and California*

**Law & Order Code**

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**TITLE 23 – TRIBAL HOUSING CODE**

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**23-1-1      Applicability**

The following title shall hereinafter be referred to as the “Tribal Housing Code.” It shall apply to any and all arrangements, formal or informal, written or agreed to orally or by the practice of the parties, in selling, buying, renting, leasing, occupying, or using any and all housing, dwellings, or accommodations for human occupation and residence. It shall also apply to any and all mortgages, leasehold mortgages and agreements to secure an interest in a building.

The following arrangements are not governed by this Code:

- (a)      Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service; or
- (b)      Occupancy in a hotel, motel, or other commercial lodging.

**23-1-2      Jurisdiction**

- (a)      Jurisdiction is extended over all buildings and lands intended for human dwelling, occupation or residence, consistent with Article I, Section 1 of the Constitution of the Washoe Tribe of Nevada and California, which may lie within:
  - (1)      The exterior boundaries of the Tribal Reservation;
  - (2)      Lands owned by, held in trust for, leased or used by the Tribe, its members, its housing authority, 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)      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 or not they are members of the Tribe, whether they are Indian or non-Indian, and whether they have a place of business within the Tribal Reservation. Any act within the

Reservation dealing with the subject matter of the Code shall be subject to the jurisdiction of the Tribe.

- (c) The Tribal Council shall exercise jurisdiction over all matters arising within the jurisdiction of the Tribe with respect to this Code.

### **23-1-3 Purposes and Interpretation**

This Code shall be 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 and those permitted to enter or reside on the Reservation.
- (c) To provide eviction procedures and to require landlords to use those procedures when evicting tenants.
- (d) To encourage landlords and tenants to maintain and improve dwellings on the Reservation in order to improve the quality of housing as a tribal resource.
- (e) To simplify the law governing the rights, obligations, and remedies of the owners, sellers, buyers, lessors, and lessees, of buildings.
- (f) To avail the Tribe, tribal entities, and tribal members of financing for the construction and/or purchase of family residences on trust land within the jurisdiction of the Tribe by prescribing procedures for the recording, priority and foreclosure of mortgages given to secure loans made by or through any government agency or lending institution.
- (g) 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.

### **23-1-4 Relation to Other Laws**

- (a) Applicable Law: This Tribal Housing Code is an addition to the Law and Order Code of the Washoe Tribe of Nevada and California. This Code should be interpreted, if possible, to be consistent with other titles of the Law and Order Code.
- (b) Conflicts with Other Laws
  - (1) Tribal Laws: To the extent that this Code may conflict with tribal constitution, 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 which Congress specifically intended to apply in Indian Country, the federal law shall govern if it has specific applicability and if it is clearly in conflict with the provisions of this Code.
- (3) State Laws: To the extent that the laws of any state or tribe may be applicable to the subject matter of this Code, such laws shall be read to be advisory and not directly binding and shall not govern the relations of the parties. Tribal law or federal law will always be the controlling law. Laws of states or other tribes, where applicable, may be used in an advisory manner only.

### 23-1-5 Definitions

As used in this Code, the following words will have the meanings given them in this Section unless the context plainly requires otherwise:

- (a) **Action, suit or lawsuit, claim, complaint or defense** shall include 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) **Adult Person** is defined in the Constitution of the Washoe Tribe of Nevada and California as any person twenty-one (21) years of age or older. This Code references that Constitution as currently stated or as is later amended.
- (c) **Answer** when a tenant has received a summons and complaint for eviction, to avoid default judgment, tenant must file a written response and pay the filing fee. A short plain statement of the defenses or factual disputes as set forth in §2-40-010 of this Law and Order Code will be adequate. The court must serve a copy by first class mail upon the Plaintiff at the same time the answer is filed.
- (d) **Assignee** is the person or entity to whom an assignment is made; a grantee.
- (e) **Borrower/Mortgagor** is the Tribe, the Washoe Housing Authority, 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) or non-Indian(s) who has executed a Mortgage as defined in this Code.

- (f) **Building** is a structure, and any appurtenances or additions thereto, designed for habitation, shelter, storage and the like. Buildings include mobile homes such as pre-fab, modular and manufactured homes.
- (g) **Building or housing codes** are any law, ordinance, or governmental regulation of the Tribe or an agency of the United States which deals with fitness for habitation, health conditions, or the safety, construction, maintenance, operation, occupancy, use, or appearance of any dwelling unit.
- (h) **Dwelling unit** is a house or building or portion thereof which is rented or leased as a home or residence by any person, not including public transient accommodation, such as hotel rooms.
- (i) **Guest** is any person, other than the tenant, in or around a dwelling unit with the permission and consent of the tenant.
- (j) **Housing Authority** is the Washoe Housing Authority which is the Tribally Designated Housing Entity, authorized or established to carry out the activities of the Native American Housing Assistance and Self-Determination Act of 1996 (Public Law 104-330).
- (k) **Landlord** can be the Tribe, the Washoe Housing Authority, a person, entity or federal government agency which is the owner, lessor, or sublessor of a dwelling unit intended for the use of tenants.
- (l) **Lease** is an agreement, written or oral, as well as valid rules and regulations, regarding the tenants and conditions of the use and occupancy of real property, dwelling unit, building, or premises, including a lease agreement under the Mutual Homeownership Program. A lease is a conveyance, grant or devise of property for a limited term with conditions attached, always for a less time than lessor has in the premises. Contracts for the sale of a mobile home are specifically excluded from the definition of a lease under this code.
- (m) **Leasehold Mortgage** is the mortgage of a lease of property given to secure a loan, and may be created in an agreement entered between a Borrower/Mortgagor and a Lender/Mortgagee.
- (n) **Mortgage Foreclosure Proceeding** is a proceeding:
  - (1) To foreclose the interest of the Borrower(s)/Mortgagor(s), and each person or entity claiming through the Borrower(s)/Mortgagor(s), in real property, a building, or in the case of a Leasehold Mortgage, a Lease for which a Mortgage has been given; and
  - (2) To assign where appropriate the Borrower(s)/Mortgagor(s) interest to a designated assignee.

- (o) **Lender Designated Assignee.** The Lender Designated Assignee is the person or entity to whom any lender as defined in this Code assigns or transfers its interest in a Mortgage or Lease and/or Leasehold Mortgage.
- (p) **Lender/Mortgagee** is any private lending institution established to primarily loan funds and not to invest in or purchase properties, the Tribe, the Washoe Housing Authority, or a U.S. government agency or private individual which loans money, guarantees or insures loans to a Borrower for construction, acquisition, or rehabilitation of a home including a mobile home. It is also any lender designated assignee(s) or successor(s) of such Lender/Mortgagee.
- (q) **Lessor** is 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.
- (r) **Lessee** is a tenant of a dwelling unit, legally authorized user and/or occupier of real property, or the homebuyer under any federal mortgage program. The lessee may, for purposes of federal agency home mortgage programs, be the Washoe Housing Authority.
- (s) **Mobile home** is a structure designed for human habitation and for being moved on a street or highway. Mobile home includes pre-fab, modular and manufactured homes.
- (t) **Mortgage** is a lien as is commonly given to secure advances on, or the unpaid purchase price of a building, mobile home or leasehold interest in land, and may refer both to a security instrument creating a lien, whether called a mortgage, deed of trust, security deed, or other term, as well as the credit instrument, or note, secured thereby.
- (u) **Mortgagor/Borrower** – see Borrower/Mortgagor.
- (v) **Mortgagee/Lender** – see Lender/Mortgagee.
- (w) **Nuisance** is defined and addressed in Title 17 of the Law and Order Code of the Washoe Tribe of Nevada and California.
- (x) **Owner** is any person or entity jointly or individually having legal title to all or part of land or a dwelling, including the legal right to own, manage, use, or control land or a dwelling unit under a mortgage, long-term lease, or any other security arrangement. Lessees under the Mutual Home Ownership Program are not considered owners until they receive title.
- (y) **Person** includes the Tribe, Washoe Housing Authority, an individual or organization, and where the meaning of a portion of this Code requires, it means a public agency, corporation, partnership, or any other entity.

- (z) **Premises** is a dwelling unit and the structure of which it is a part, and all facilities and areas connected with it, including grounds, common areas, and facilities intended for the use of tenants or the use of which is promised for tenants.
- (aa) **Rent** includes all periodic payments to be made to a landlord or lessor under a lease.
- (bb) **Rental Agreement** - This term is used interchangeably herein with the term “Lease”.
- (cc) **Shall**, for the purposes of this Code, will be defined as, mandatory or must.
- (dd) **Subordinate Lienholder** is the holder of any lien, including a subsequent mortgage, perfected subsequent to the recording of a Mortgage under this Code, except the Tribe shall not be considered a subordinate lienholder with respect to any claim regarding a tribal tax on real property.
- (ee) **Tenant** is the lessee(s), sublessee(s), or person(s) entitled under a lease or Mutual Help Occupancy Agreement to occupy a dwelling unit, a building or land to the exclusion of others. Tenant excludes resident managers and other whose residence is conditional upon employment.
- (ff) **Territorial Jurisdiction of the Washoe Tribe of Nevada and California** is defined in the Constitution of the Washoe Tribe of Nevada and California and §1-20-010 of the Law and Order Code of the Washoe Tribe of Nevada and California.
- (gg) **Tribal Court** is the Court as established by Article VI, Section I of the Constitution of the Washoe Tribe of Nevada and California and §1-10-010 of the Washoe Tribe of Nevada and California Law and Order Code.
- (hh) **Tribal Recording Clerk** is the director of the Washoe Housing Authority or such other person designated by the Washoe Housing Authority to perform the recording functions required by this document or any deputy or designee of such person.
- (ii) **Tribe** is the Washoe Tribe of Nevada and California as defined in §1-10-020(m) of this Code.

**23-20 LANDLORD/TENANT RESPONSIBILITIES AND REMEDIES**

**23-2-1 Rental Agreements**

- (a) Effect of Rental Agreements. The provisions of this Code, as well as the applicable laws identified in §23-1-4, establish the minimum rights and responsibilities of landlords and tenants. Unless inconsistent therewith, rental agreements may supplement these minimum rights and responsibilities.

- (b) Terms Prohibited in Rental Agreements. No rental agreement shall provide that the tenant agrees: (1) to waive or forfeit his or her rights or remedies under this Code or any other applicable laws as identified in §23-1-4; (2) to exculpate or limit the liability of the landlord or to indemnify the landlord for that liability or the costs connected therewith; (3) to permit the landlord to dispossess tenant without resort to court order; or (4) to pay a late charge prior to the expiration of the grace period set forth in §23-3-1(a). A provision prohibited by this subsection shall be unenforceable.
- (c) Term of Tenancy. In the absence of a definite term in the rental agreement, the tenancy shall be month-to-month.
- (d) Payment of Rent. In the absence of definite terms in the rental agreement, rent is payable at the landlord's office (if known) or at the dwelling unit. In the absence of definite terms, the amount of rent shall be the fair market value of the rental unit.

## **23-2-2 Rules and Regulations**

- (a) The landlord may promulgate reasonable rules and regulations regarding the use and occupancy of the dwelling unit.
- (b) Such rules and regulations are enforceable against the tenant only if:
  - (1) their purpose is to promote the convenience, 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 all the tenants generally;
  - (2) the rules and regulations are reasonably related to the purpose for which they are adopted;
  - (3) the rules and regulations apply to all tenants in the premises in a fair manner;
  - (4) the rules and regulations are sufficiently explicit in their prohibition, direction or limitation of the tenant's conduct to fairly inform tenant of what he or she shall or shall not do to comply; and
  - (5) the tenant has notice of the rules and regulations at the time he or she enters into the rental agreement or when they are adopted.
- (c) If a rule or regulation that would result in a substantial modification of the terms of the lease adopted after the tenant enters into the lease and during the initial term of the lease, such rule or regulation is not valid unless the tenant consents to such rule or regulation in writing. If tenant in a month-to-month tenancy fails to sign such new rule or regulation after notice, landlord may enforce such rule

or regulation thirty days after notice in writing to the month-to-month tenant at his or her last-known address.

### **3-2-3 Landlord Responsibilities**

- (a) Except as otherwise provided in a rental agreement or a Mutual Help Occupancy Agreement, each landlord subject to the provisions of this Code shall:
- (1) Maintain the dwelling unit in a decent, safe, and sanitary condition;
  - (2) Comply with applicable building and housing codes;
  - (3) Make all necessary repairs to put and maintain the premises in a fit and habitable condition, except where the premises are intentionally rendered unfit or uninhabitable by the tenant or his guest, in which case such duty shall be the responsibility of the tenant;
  - (4) Maintain in good condition and safe working order all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, where such things are not the responsibility of the tenant or *are not* generated by an installation within the exclusive control of the tenant;
  - (5) Provide running water, hot water, and heat in accordance with applicable building and housing codes, except to the extent the tenant is required to provide such for himself or herself;
  - (6) Give sole possession of the dwelling unit to the tenant in accordance with the rental agreement and refrain from:
    - (1) entering the unit, except as authorized in §23-2-4(k);
    - (2) making repeated demands for entry otherwise lawful under §23-2-4(k) but which have the effect of unreasonably harassing the tenant;
    - (3) sexually harassing or physically assaulting the tenant in or around his dwelling unit; or
    - (4) locking the tenant out of his dwelling unit without the tenant's consent or absent a court order; and
  - (7) Disclose, in writing, the name, address, and telephone number of the person responsible for receiving rent, notices and demands under this code, the person authorized to manage the dwelling unit, the owner of the premises or his agent, and the person responsible for making repairs, where they are required.



- (b) In multi-unit dwellings, except as otherwise provided in a rental agreement or a Mutual Help Occupancy Agreement, each landlord subject to the provisions of this Code shall in addition to §23-2-3(a)(g) above:
  - (1) Keep common areas clean, safe, and secure;
  - (2) Ensure tenant access to the dwelling unit; and
  - (3) Provide and maintain proper and appropriate receptacles and facilities for the disposal of ashes, garbage, rubbish, and other wastes.

**23-2-4 Tenant Responsibilities**

Except as otherwise fairly and reasonably provided in a rental agreement or mutual help occupancy agreement, each tenant subject to the provisions of this Code shall;

- (a) Pay rent without demand or notice at the time and place agreed upon by the parties.
- (b) Immediately notify the landlord in writing of any defects in the premises hazardous to life, health, or safety.
- (c) Keep the dwelling unit clean and dispose of all ashes, garbage, rubbish, junk, and abandoned vehicles in a proper, sanitary, and safe manner as further required by Title 16 of this Law & Order Code.
- (d) Use all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances which are part of the dwelling unit or premises, and the property of the landlord, in a proper, safe, sanitary, and reasonable manner.
- (e) Refrain from destroying, defacing, damaging, or removing any part of the dwelling unit, premises, or common areas, and to require guests to act in like manner.
- (f) Pay reasonable charges for the repair of damages, other than normal wear and tear, to the dwelling unit, premises, or common areas caused by the tenant or his guests, or to repair such damages as required under the rental agreement, within thirty (30) calendar days of such damage.
- (g) Conduct himself or herself, and require his or her guests to conduct themselves, in a manner which does not disturb the quiet enjoyment of others or cause a breach of the peace.
- (h) Not give up the dwelling unit to others, assign a lease arrangement, or sublease the dwelling unit without the written or oral permission of the landlord.

- (i) Use the dwelling unit only for residential purposes, if this is stated in the rental contract. Not to use the unit or permit its use for any other purpose, including illegal conduct or any other activity which may harm the physical or social environment of the premises or the area around it.
- (j) Abide by all rules and regulations promulgated by the landlord in accordance with §23-2-2 of this Code.
- (k) Provide the landlord access to the dwelling unit to perform maintenance and repairs, inspect the premises, supply necessary or agreed services, or show the dwelling unit to prospective buyers or tenants, provided that such access shall be at reasonable times when the tenant is present, and upon reasonable written or oral notice from the landlord, except in emergency situations where the health, safety or welfare of the tenant or the tenant’s neighbors is in immediate danger or where the tenant consents. No tenant who unreasonably denies access to a landlord for these purposes may pursue an action or grievance on the grounds that any services or repairs were not provided.

**23-2-5 Tenant Remedies**

- (a) Conditions. Where a landlord has not complied with his responsibilities regarding dwelling unit conditions, as set forth in §23-2-3(a) or (b) of this Code, and where the tenant has delivered written notice to the landlord at the landlord’s home or office, and the landlord has failed, within fourteen (14) days, or other reasonable period of time for a basic service such as heat, hot water and sewer, to cure his noncompliance, the tenant may:
  - (1) Make necessary repairs and deduct the cost of such repairs from tenant’s rent if the cost of compliance or repair is less than \$300 or an amount equal to one month’s periodic rent, whichever is greater; or
  - (2) Institute an action in the Tribal Court seeking”
    - (i) an order compelling the landlord to comply with his or her responsibilities as set for the in §23-2-3(a)(1)-(7) of this Code;
    - (ii) an award of money damages, which may include a retroactive abatement of rent; or
    - (iii) such other relief in law or equity as the court may deem proper, including attorney fees if the tenant prevails.

No tenant may institute such an action if a valid Notice of Termination based upon nonpayment of rent has been served on tenant prior to his notice to the landlord of such conditions requiring repairs; or

- (3) Terminate the rental agreement by delivery of written notice to landlord.

- (b) Identification of Landlord. Where a landlord fails to identify himself, herself or itself to the tenant in accordance with §23-2-3(a)(7) of this Code, the tenant is under no obligation to pay rent and may terminate any existing rental agreement.

### **23-2-6 Landlord Remedies**

Where a tenant has committed a material breach of the lease agreement or repeated violations of tenant responsibilities as set for the in §23-2-4 of this Code, the landlord may institute an action in the Tribal Court seeking an order either terminating the tenancy and evicting the tenant, compelling the tenant to comply with tenant responsibilities as set forth in §23-2-4, an award of money damages, and/or such other relief in law or equity as the court may deem just and proper, including attorney fees and costs if the landlord prevails.

### **23-2-7 Abandoned Dwelling Units**

- (a) A landlord may regain possession of a dwelling unit, in accordance with this section, without further notice to the tenant where the tenant has vacated the unit without notice to the landlord and does not intend to return, which is evidenced by the removal by the tenant or tenant's authorized agent of substantially all of his or her possessions and personal effects from the premises and the following:
  - (1) nonpayment of rent and absence of the tenant for fourteen days or more; and
  - (2) terminated water, gas or electrical utility service for more than one month, or a propane tank less than 30% full, or
  - (3) a written statement by the tenant that he or she does not intend to occupy the premises after a specified date.
- (b) Possessions will be disposed of in accordance with §23-4-15 of this Code.
- (c) The landlord need not comply with the procedures set forth in Chapter 3 of this Code to obtain possession of a dwelling unit which has been abandoned.
- (d) If the abandoned property is of cultural, religious, or ceremonial significance, the landlord shall have an affirmative duty to restore these items to the Tribe. The Tribe may choose to return the items to appropriate family members, or if no family members can be identified within a reasonable period of time, the Tribe may place the items in its cultural center.

## **23-30 GROUNDS FOR EVICTION/NOTICE TO PRE-EVICTION OPTIONS**

### **23-3-1 Grounds for Eviction**

A person may be evicted for:

- (a) Nonpayment of rent under an agreement for the lease, purchase or occupation of a dwelling when such payments are not made after five (5) calendar days of the agreement date of payment, or five (5) calendar days following the first day of the month in a month-to-month tenancy.
- (b) Any costs or damages which have been due and owing for thirty (30) calendar days or more. The receipt by a landlord of partial payments under an agreement shall not excuse the payment of any balance due upon demand.
- (c) Nuisance, intentional or reckless damage, destruction, or injury to the property of the landlord or other tenants, or disturbing another tenant's right to quiet enjoyment of a dwelling unit.
- (d) Serious or repeated violations of the rental agreement, any reasonable rules or regulations adopted in accordance with §23-2-2, this Code, or any applicable building or housing codes.
- (e) Occupation of the premises without permission or agreement, following any reasonable demand by a person in authority over the premises to leave.
- (f) For tenants of the Washoe Housing Authority, grounds for eviction include violations of the Policy for Substance Abuse and Drug Free Housing as approved on March 11, 1993, in Resolution No. WHA-93-14, as amended by Resolution No. WHA-96-11, November 9, 1995, as well as the terms of any subsequent resolutions the WHA may pass.
- (g) Completed foreclosure sale, or other transfer of beneficial interest after Order of Foreclosure.

### **23-3-2 Notice of Termination Requirements**

- (a) When Notice of Termination is Required. When a landlord desires to obtain possession of a dwelling unit, and when there exists one or more legally cognizable reasons to evict the tenant or tenants occupying the unit as set forth in §23-3-1, the landlord shall give notice to the tenant of termination of the tenancy of such dwelling unit according to the provisions of this chapter. When a tenant's actions indicate abandonment, no notice is required, and the landlord may proceed according to §23-2-7. In cases of eviction after foreclosure, the procedure is set forth in Chapter 5 of this Title 23.
- (b) Purpose of Notice of Termination. The purpose of the Notice of Termination 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 Notice of Termination shall be addressed to the tenant of the dwelling unit and shall state the legally cognizable reason(s) for termination of the tenancy and the date by which the tenant is required to quit possession of the dwelling unit.
- (d) Form of Notice. The notice shall be in writing and shall contain the reason(s) for the termination, if any, and the date of termination. The tenant must vacate the unit by the termination date or be subject to eviction proceedings in court. The Notice of Termination shall state the time requirement relative to the grounds for the eviction, and that the tenant has the opportunity to cure during the time period set forth in the notice. If the covenants or conditions of the lease cannot be performed or cured, after the term of the notice the landlord may proceed with the eviction.
- (e) Time Requirements for Notice. The notice must be delivered within the following periods of time:
  - (1) No less than fourteen (14) calendar days prior to the date of termination specified in the notice for any failure to pay rent or other payments required by the agreement.
  - (2) No less than three (3) calendar days prior to the date of termination specified in the notice for illegal activity, nuisance, serious injury to property, or injury to persons. In situations in which there is an emergency, such as a fire or condition making the dwelling unsafe or uninhabitable, or in situations involving an imminent or serious threat to public health or safety, the notice may be made in a period of time which is reasonable, given the situation.
  - (3) No less than fourteen (14) calendar days in all other situations.
- (f) Indian Housing, Authority Termination Notice. When the landlord is the Washoe Housing Authority, the housing authority termination notice shall qualify as the Notice of Termination required under this section so long as the time requirements of the housing authority termination notice are at least as long as the time requirements set forth in §23-3-2(e) of this Code.

**23-3-3 Serving the Notice of Termination**

Any Notice of Termination must be in writing, and must be delivered to the tenant in the following manner:

- (a) Delivery must be made by an adult person.
- (b) Deliver will be effective when it is:
  - (1) Personally delivered to a tenant, or
  - (2) Personally delivered to an adult living in the premises.

- (c) 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 sending a copy first class mail, postage prepaid, addressed to the tenant at the premises or the tenant's last-known address.
- (d) 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.

## **23-4 JUDICIAL EVICTION PROCEDURES**

### **23-4-1 Complaint**

If, after the date set forth in the Notice of Termination for the tenant to vacate the dwelling unit, the tenant has not vacated, negotiated a settlement or cured the reasons for termination, 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 state:

- (a) The name(s) of the tenant(s) against whom the suit is brought;
- (b) A description of the rental agreement, if any;
- (c) The address or reasonable description of the location of the premises;
- (d) The grounds for eviction;
- (e) A statement showing that the Notice of Termination and any required termination notices have been served in accordance with this code or other applicable law; and
- (f) A statement of the relief demanded, including any claim(s) for possession of the dwelling unit, damages, fees, costs, or other special relief.
- (g) If the landlord is the Washoe Housing Authority, a statement that the Washoe Housing Authority has complied with all required regulatory processes prior to filing the eviction action.

### **23-4-2 Summons**

When the plaintiff files the Complaint, the Summons shall be prepared in accordance with §2-30-020 of this Law and Order Code. The court clerk may act on behalf of the Washoe Housing Authority and direct the tribal police department to serve the summons and complaint issued against Washoe Housing Authority tenants.

### **23-4-3 Action Upon Filing Summons and Complaint**

- (a) **Default Judgment.** When a summons and complaint have been filed in the Tribal Court and the Court receives the Affidavit of Service, the tenant must file an answer within twenty (20) days.
- (b) If a tenant fails to file a written answer on or before the date in the summons, the Court shall enter judgment on behalf of the plaintiff following an offer of proof by plaintiff to determine whether relief should be granted and the kind of relief that should be granted.

#### **23-4-4 Commencement of Proceedings**

- (a) If the tenant appears before the Court by filing a written answer to contest the complaint, the Court shall set a hearing date. Any written response shall state any defenses or factual disputes as set forth in §2-40-010. The Court must serve a copy by first class mail upon the plaintiff at the same time the answer is filed. The answer must be signed by the defendant or a duly authorized representative and include defendant's mailing address.
- (b) The Court shall set a hearing date on the first regular Court day following the answer date, preferably a date which is no more than fifteen (15) calendar days following the date for answer, except when the hearing date would fall on a weekend or holiday, and in such a situation on the first regular Court day following that date.
- (c) Upon setting of the date for the hearing, the Court Clerk shall have the Notice of Hearing delivered to tenant at least ten (10) days prior to hearing.
- (d) A defendant may, for good cause shown, and only upon the payment of a reasonable sum 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 fifteen (15) day period. The Court may refuse to extend the date of hearing where the complaint is based upon nuisance or injuries provided in §23-3-1(c), and 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.
- (e) The Court shall on motion from the landlord order the tenant to pay into the Court rents for the use and occupancy during the pendency of the eviction case.

#### **23-4-5 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 landlord's 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 or she 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 or she fails or refuses to pay the reasonable rental value of the premises.
- (d) That due to the conduct of the landlord, there is injury to the tenant in such a way that justice requires that relief be modified or denied. This shall include the equitable defenses of estoppel, laches, fraud, misrepresentation, and breaches of serious and material obligations for public health, safety, and peace standards.
- (e) 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.
- (f) 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. The Washoe Housing Authority regulations that require reporting of household composition and income and that limit tenancy to tribal members are permissible and not per se violations of this provision.
- (g) 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.

**23-4-6 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. Requests for discovery shall be made no later than three (3) calendar days following the receipt of notice of a hearing date. Discovery shall be completed within five (5) calendar days prior to the date of hearing. The court may enter reasonable orders requiring discovery or protecting the rights of the parties upon reasonable notice.

**23-4-7 Evidence**

In conducting these proceedings, the Court shall refer to Title 6 of the Law and Order Code of the Washoe Tribe of Nevada and California. In situations not covered by that



Title, the Court may reference the Federal Rules of Evidence as long as not in conflict with any other provisions of this Code.

**23-4-8 Burden of Proof**

The burden of proof in all proceedings under this Code shall be clear and convincing evidence.

**23-4-9 Judgment**

- (a) Within ten (10) calendar days of the date of the hearing, the Court shall grant and enter written 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 including a specific date and time;
  - (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 to the tenant;
  - (5) Order rent payments out of per capita payment or 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 tenant to perform work for the landlord or the owner to pay off back rent due and/or damages;
  - (9) Order the payment of attorneys' fees and costs and expenses of litigation;
  - (10) Grant any relief provided in this code or allowed in law or equity.

**23-41-10 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) provide a copy of the order of eviction to tenant;

- (b) post copies of the order of eviction on the door of the premises if there is not any tenant present at the time of execution;
- (c) remove all the evicted persons from the dwelling and verbally order them not to re-enter; and
- (d) supervise the removal of the possessions of the evicted persons.

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.

**23-4-11 Stay of Execution**

- (a) 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. No stay may exceed one month in the aggregate or may exceed the time the appeal is pending. No stay shall be issued unless the tenant establishes within five (5) days of the judgment being rendered, or before filing the appeal, the following:
  - (1) There would be no substantial prejudice or injury to the prevailing party during the period of the stay; and
  - (2) Execution of the judgment could result in extreme hardship for the tenant(s); and
  - (3) Tenant has posted a bond or monies with the landlord to satisfy the judgment or payment for the fair market rent of the premises during the period of time of the stay. The clerk shall distribute such arrearages to the landlord in accordance to any order of the court.
- (b) If tenant fails to pay required bond or monies for fair market rent, upon issuance of an order to show cause, delivery of same, and failure of the tenant to pay within the following three (3) days, Court shall enter a written order of eviction immediately.

**23-4-12 Appeals**

Appeals under this Code shall be handled according to the general tribal appellate provisions, with the exception that the party taking the appeal shall have only five (5) days from the entry of the order of judgment to file an appeal. All orders from the Court will remain in effect during the pendency of an appeal under this Code unless otherwise ordered by this Court, which shall retain limited jurisdiction to make the determinations set forth in §23-4-11.

**23-4-13 Miscellaneous Complaints and Claims**

Any miscellaneous complaint or claim including a complaint or claim by a tenant which does not fall within the procedures of this code may be made under the general tribal civil procedure code and/or tribal small claims procedure code.

#### **23-4-14 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. At the hearing where the eviction is ordered, the Court shall inform the defendant that if he or she does not vacate the premises voluntarily by the effective date, he or she 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 Washoe Housing Authority or the United States Government access to any property leased by either of 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 the thirty (30) days following the forcible eviction, 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. 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 first be applied to monies owed to landlord, and then any remaining proceeds may 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 so in a manner satisfactory to the owner.
- (d) If the abandoned property is of cultural, religious, or ceremonial significance, the landlord shall have an affirmative duty to restore these items to the Tribe. The Tribe may choose to return the items to appropriate family members, or if no family members can be identified within a reasonable period of time, the Tribe may place the items in its cultural center as provided in §23-2-7.

#### **23-4-15 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 Notice of Termination and obtain a court order of eviction as provided in this Code.

**23-4-16 Security Deposits**

- (a) Payment of Security Deposit at Termination of Tenancy. Within thirty days of termination, the landlord shall pay to the former tenant the amount of the security deposit less the cost of any outstanding rent, damages and costs. Damages shall not include normal wear and tear.
- (c) Action to Reclaim Security Deposit. Any tenant may bring a civil action in Tribal Court to reclaim any part of his or her security deposit which may be due. Tenant must show that he or she provided forwarding address to landlord prior to commencement of any suit to reclaim any part of a security deposit.

**23-5 MORTGAGE AND FORECLOSURE**

**23-5-1 Priority**

All mortgages recorded in accordance with the recording procedures set forth in this Chapter, including loans guaranteed or held by a governmental agency, 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.

**23-5-2 Recording**

- (a) The Washoe Housing Authority shall maintain in their office at 1588 Watasheamu Drive, Gardnerville, Nevada 89410, a system for recording of mortgages and such other documents as the Tribe may designate by laws or resolution.
- (b) The Washoe Housing Authority’s designated agent shall endorse upon any mortgage or other document received for recording:
  - (1) The date and time of receipt of the mortgage or other document;
  - (2) The filing number, to be assigned by the Washoe Housing Authority, which shall be a unique number for each mortgage or other document received; and
  - (3) The name of the Washoe Housing Authority designee receiving the mortgage or document.

Upon completion of the above cited endorsements, the Washoe Housing Authority shall make a true and correct copy of the mortgage or other document and shall certify the copy as follows:

Washoe Tribe of Nevada And California	)	SS.	Washoe Housing Authority 1588 Watasheamu Gardnerville
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State of Nevada 89410

I certify that his is a true and correct copy of a document received for recording this date.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_.

(SEAL) \_\_\_\_\_

(Signature)

\_\_\_\_\_  
(Date)

The Washoe Housing Authority shall maintain the copy in the records of the recording system and shall return the original of the mortgage or other document to the person or entity that presented the same for recording.

- (c) The Washoe Housing Authority shall also maintain a log of each mortgage or other document recorded in which there shall be entered:
  - (1) The name(s) of the Borrower/Mortgagor of each mortgage, identified as such;
  - (2) The name(s) of the Lender/Mortgagee of each Mortgage, identified as such;
  - (3) The name(s) of the grantor(s), grantee(s), or other designation of each party named in any other documents filed or recorded;
  - (4) The date and time of the receipt;
  - (5) The filing number assigned by the Washoe Housing Authority; and
  - (6) The name of the Washoe Housing Authority designee receiving the mortgage or document.
- (d) The certified copies of the mortgages and other documents and the log maintained by the Washoe Housing Authority shall be made available for public inspection and copying. Rules for copying shall be established and designated by the Washoe Housing Authority.

**23-5-3 Foreclosure Procedures**

- (a) A Borrower/Mortgagor shall be considered to be in default when he or she is thirty (30) days past due on his or her mortgage payment(s) to the Lender/Mortgagee or when he or she has been in breach of any other material mortgage provision for at least thirty (30) days.

- (b) Before a Borrower/Mortgagor becomes ninety (90) days delinquent on his or her mortgage payments and before any foreclosure action or activity is initiated, the Lender/Mortgagee shall complete the following:
  - (1) Make a reasonable effort to arrange a face-to-face interview with the Borrower/Mortgagor. This shall include at least one trip to meet with the Borrower/Mortgagor at the mortgaged property.
  - (2) Lender/Mortgagee shall document that it has made at least one 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) **Notice of Default.** 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 shall advise the Borrower/Mortgagor in writing by mail or by posting prominently on the unit, with copies provided to the following by certified mail:
  - (1) Washoe Housing Authority  
1588 Watasheamu Drive  
Gardnerville, NV 89410
  - (2) Chairman  
Washoe Tribe of Nevada and California  
919 Highway 395 S.  
Gardnerville, NV 89410
- (e) The **Notice of Default** required by §23-5-3(d) above, shall contain the following information:
  - (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.
- (f) If a Borrower/Mortgagor has been delinquent 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 §23-5-4 of this Code.

#### **23-5-4 Foreclosure Complaint and Summons**

- (a) The verified complaint in a 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 Mortgage;
  - (3) A concise statement of the facts concerning the execution of the Mortgage or in the case of a Leasehold Mortgage, the lease; the facts concerning the recording of the Mortgage or 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 notice, if a Leasehold Mortgage, the Mortgage, or assignment thereof relating to the property should be attached;
  - (5) Any applicable allegations concerning relevant requirements and conditions prescribed in (1) federal statutes and regulations (2) tribal codes, ordinances and regulations; and/or (3) provisions of the Lease or Leasehold Mortgage or security instrument; and
  - (6) A statement that plaintiff is seeking the additional remedy of an eviction which will follow the foreclosure sale, if plaintiff is successful in this foreclosure action.
- (b) The complaint shall be filed with the Tribal Court Clerk who shall issue the summons specifying a date and time of appearance for the Defendant(s) in accordance with §2-30-020 of this Law and Order Code. The court clerk may direct the tribal police department to serve the summons and complaint issued by Lender/Mortgagee.

#### **23-5-5 Service of Process and Procedures**

- (a) Service of process shall be performed according to the procedures set forth for service of a Notice of Termination in §23-3-3 of this Code.
- (b) Parties to the matter shall include the creditor, debtor, and all subordinate lienholders.

- (c) Defendants shall have twenty (20) days to file a written answer, counterclaim, and/or affirmative defenses.
- (d) After receiving the filed Summons and Complaint for foreclosure, the Court Clerk shall set a hearing date on the first regular Court day following the answer date, preferably a date which is no more than fifteen (15) calendar days following the date for answer, except when the hearing date would fall on a weekend or holiday, and in such a situation on the first regular Court day following that date.
- (e) Upon setting of the date for the hearing, the Court Clerk shall have the Notice of Hearing delivered to tenant at least ten (10) days prior to hearing.
- (f) **No Continuances.** Recognizing the importance to all tribal members of continued lending for homes, and the Department of Housing and Urban development concern that foreclosures and subsequent evictions be handled expeditiously, there shall be no continuances of the hearing in foreclosure matters.
- (g) Evidence shall be admitted according to §23-4-7 of this Code.
- (h) The Burden of Proof shall be in accordance with §23-4-8 of this Code.
- (i) Other procedural issues shall be determined under the generally applicable civil procedures of the Tribe.

#### **23-5-6 Cure of Default by Subordinate Lienholder**

Prior to the entry of a judgment of foreclosure, any Borrower/Mortgagor or a Subordinate Lienholder may cure the default(s) under the Mortgage by making a full payment of (1) the principal and interest on the loan to the Lender/Mortgagee other than principal amounts due only because of acceleration; (2) any other lender advances, including without limitation insurance premiums and late charges; and (3) all enforcement costs actually incurred. Any Subordinate Lienholder who has cured a default shall thereafter have included in its lien the amount of all payments made by such Subordinate Lienholder to cure the default(s), plus interest on such amounts at the rate stated in the note for the mortgage.

#### **23-5-7 No Right of Redemption**

There shall be no right of redemption following the entry of written judgment of foreclosure in any Mortgage Foreclosure proceeding.

#### **23-5-8 Judgment and Remedy**

- (a) The Tribal Court shall hear the foreclosure proceedings and enter written judgment within sixth (60) days from the date of service of the Complaint on the Borrower/Mortgagor. The Tribal Court shall enter written judgment within ten



(10) days of hearing on a foreclosure proceeding. 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 foreclosing the interest of the Borrower/Mortgagor and each other defendant, including Subordinate Lienholder, in the Mortgage and ordering the sale of the foreclosed property and subsequent eviction of the tenant. The Tribal Court Clerk shall give all parties notice of entry of judgment.

- (b) **Writ of Execution and Notice of Sale.** The Tribal Court Order of Foreclosure shall state the total amount due at sale and the date of the sale. The Lender/Mortgagee may subsequently prepare a Writ of Execution and Notice of Sale with the date and time of sale, the place of sale, the minimum bid including reasonable fee for sale and acceptable payment options in the format set forth in APP-23-5-8. The sale shall take place not less than thirty (30) and not more than forty-five (45) days after the Court Order of Foreclosure. Foreclosure sales shall be held at the Washoe Housing Authority office, 1588 Watasheamu Dr., Gardnerville, NV 89410. The Lender/Mortgagee may contract with the Washoe Housing Authority or other entity to conduct the sale. The Tribal Law Enforcement shall post the Writ of Execution and Notice of Sale at a public location in all four tribal communities within three (3) days of receipt. The Lender/Mortgagee shall provide a copy of the Writ of Execution and Notice of Sale by certified mail to the parties set out in §23-5-3(d) as well as the Borrower/Mortgagor within three (3) days of receipt and at least fifteen (15) days prior to sale.
- (c) In the case of a Leasehold Mortgage, the Lease will be assigned to the Lender/Mortgagee or the Lender's Designated Assignee, subject to the following provisions:
- (1) The lender shall give the Washoe Tribe of Nevada and California, or its designee, the right of first refusal on any acceptable offer to purchase the Lease or Leasehold Mortgage which is subsequently obtained by the Lender or Lender's Designated Assignee.
  - (2) The Lender or Lender's Designated Assignee may only transfer, sell or assign the Lease and/or Leasehold Mortgage to a Tribal member of the Washoe Tribe, the Washoe Tribe of Nevada and California, or the Washoe Housing Authority.
  - (3) Any other transfer, sale or assignment of the Lease or Leasehold Mortgage shall only be made to a Tribal member of the Washoe Tribe, the Washoe Tribe of Nevada and California, or the Washoe Housing Authority during the remaining period of the leasehold.

### **23-5-9 Foreclosure Evictions**

- (a) **Notice to Quit.** As soon as foreclosure sale, assignment, deed in lieu of foreclosure or other transfer of the mortgage has been completed and the

documentation is recorded as set for the in §23-5-2, the holder of the deed or other document of assignment or sale may serve a Notice to Quit upon the resident that is substantially in the following form:

**NOTICE TO QUIT**

Please take notice that you are hereby requested to surrender the premises at

\_\_\_\_\_ (property address) within five (5) business days from receipt of this notice. Please vacate these premises by (Date)\_\_\_\_\_.

IF YOU FAIL TO VACATE THESE PREMISES, the undersigned will apply to the Court for a Writ of Eviction Pursuant to Foreclosure, which will be summarily issued and executed.

IF YOU WISH TO CONTEST THIS NOTICE YOU MUST FILE WITHIN FIVE (5) BUSINESS DAYS AFTER SERVICE OF THIS NOTICE AN AFFIDAVIT (SWORN STATEMENT) WITH THE COURT STATING YOUR DEFENSE TO EVICTION PURSUANT TO FORECLOSURE AND REQUESTING AN EMERGENCY HEARING. IF SUCH STATEMENT IS NOT FILE, THE TENANT IS SUBJECT TO IMMEDIATE EVICTION ON THE SIXTH DAY.

- (b) Manner of Service of Notice to Quit. The Notice to Quit shall be served as set forth in §23-3-3 herein.
- (c) The party pursuing this eviction after foreclosure will file an application for Writ of Eviction with the court along with a sworn affidavit stating:
  - (1) the identification of the document that terminated the resident’s right to possession of the property, with file-stamped and dated copy attached;
  - (2) that a Notice to Quit has been served, the manner and date of service, and a copy of the document attached.
- (d) Upon proper proof that above procedures have been followed, the Tribal Court shall without delay issue the Writ of Eviction Pursuant to Foreclosure, in substantially the form as set out in APP-23-5-9.
- (e) If the resident files the Affidavit stating a defense and requesting an emergency hearing, the Tribal Court shall offer the opportunity of an emergency hearing within three (3) days. If the court determines there is no legal defense to the eviction, the court will issue a Writ of Eviction at that time. If the resident’s defense is that an appeal has been taken to the Tribal Court’s Order of Foreclosure, resident may obtain a stay of eviction only with payment as provided in §23-5-13. The resident has the option of appealing the denial of a stay as provided in the Law and Order Code of the Washoe Tribe of Nevada and California. If the Court determines that there is any other defense to the application for eviction, the Court will enter written instructions concerning actions required to complete the foreclosure eviction.

**23-5-10 No 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.

**23-5-11 Certified Mailing to Tribe and Lessor**

In any foreclosure proceedings where the Tribe or the Lessor(s) is not named as a defendant, the plaintiff shall mail a copy of the summons and complaint to the Chairman of the Washoe Tribe of Nevada and California and the Washoe Housing Authority at the locations set forth in §23-5-3, and to the Lessor(s) by certified mail, return receipt requested, within five (5) 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 superintendent of the applicable agency of the Bureau of Indian Affairs.

**23-5-12 Intervention**

The Washoe Tribe of Nevada and California, its designee or any Lessor may intervene by petitioning the Tribal Court 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 the sovereign immunity of the Tribe, except as may be expressly authorized by the Tribe.

**23-5-13 Appeals**

Appeals under this Chapter shall be handled in accordance with the general tribal appellate provisions, except that appeals of foreclosures and evictions pursuant to foreclosure must be filed within five (5) days from the entry of the Order of Judgment of Foreclosure. The Tribal Court shall not provide for any stay of execution pursuant to the provisions of §23-4-11 in foreclosure cases, regardless of pending appeal, unless full payment of all principal, interest, any other lender advances, including without limitation insurance premiums and late charges and all enforcement costs actually incurred is made or a bond in that amount is posted with the Court.

**23-5-14 One Action Rule**

There may be but one action for the recovery of any debt, or for the enforcement of any right secured by a mortgage or other lien upon real estate.

# WRIT OF EXECUTION AND NOTICE OF SALE

DATED: \_\_\_\_\_

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Lender/Mortgagee

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Address

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Please take notice that you have been found delinquent in the amount of \$\_\_\_\_\_ on your mortgage/deed of trust/loan made to the above lender. The Tribal Court has entered an Order of Foreclosure date \_\_\_\_\_. Pursuant to that Order, the property at

\_\_\_\_\_ (subject property address) will be sold on\_\_\_\_\_ (date) at \_\_\_\_\_(time) at the Washoe Housing Authority office, 1588 Watasheaumu Dr., Gardnerville, NV 89410.

Minimum bid is \_\_\_\_\_. Acceptable manner of payment is \_\_\_\_\_.

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App-23-5-9

## WRIT OF EXECUTION AND NOTICE OF SALE

DATED:\_\_\_\_\_

\_\_\_\_\_  
Lender/Mortgagee/Tribe/WHA

\_\_\_\_\_  
Address

---

Please take notice that you have been notified that the above party now holds right to possession of the property at \_\_\_\_\_  
\_\_\_\_\_ (subject property address).

The Tribal Court has entered an Order of Foreclosure dated \_\_\_\_\_. Pursuant to that Order, the property was transferred and the transfer or sale was recorded on \_\_\_\_\_ (date). Service of a Notice to Quit upon you occurred on \_\_\_\_\_ (date) and the above made application to the Tribal Court for this Writ of Eviction Pursuant to Foreclosure, which has not been issued.

The law enforcement officers of the Washoe Tribe of Nevada and California are hereby instructed to remove any remaining persons or possessions from the above premises at the time of posting of this Writ on that property. A representative of the above holder of interest in the property should be present to take possession of the property.

Date: \_\_\_\_\_

\_\_\_\_\_  
Judge, Washoe Tribal Court

**23-6 MISCELLANEOUS PROVISIONS**

**23-6-1 Effective Date**

This Code shall take effect on the date of approval, January 12<sup>th</sup>, 2001.

**23-6-2 Retroactive Effect**

This Code shall apply to all rental agreements subject to the provisions of the Code, no matter when entered.

**23-6-3 No Waiver of Sovereign Immunity**

By enactment of this Eviction and Foreclosure Title 23 in the Law and Order Code of the Washoe Tribe of Nevada and California, the Washoe Tribe of Nevada and California does not intend an explicit or implied waiver of its sovereign immunity. The Washoe Housing Authority does not intend an explicit or implied waiver of its sovereign immunity, with the exception of its liability on the contractual obligations as set forth in this Code and under federal law.