

HANNAHVILLE INDIAN COMMUNITY
TITLE IV, CHAPTER 7
EVICTION, ISSUANCE AND FORECLOSURE OF MORTGAGES CODE

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**HANNAHVILLE INDIAN COMMUNITY
GENERAL CIVIL CODE – REAL ESTATE/LANDLORD/TENANT
TITLE 4, CHAPTER 7
EVICTION, ISSUANCE AND FORECLOSURE OF MORTGAGES CODE**

4.7.101 Title

This Code shall be known as the “Hannahville Indian Community Eviction, Issuance and Foreclosure of Mortgages Code.

4.7.102 Authorization and Purpose.

- (1) Authorization. Subject to federal law and regulation and the tribal Constitution, the Hannahville Indian Community Tribal Council or its designate, may issue easements, permits, leases, licenses with or without profits, for commercial, educational, residential, recreational, cultural, religious or other private or public purposes upon the tribal trust, restricted, or fee-owned lands of the Hannahville Indian Community. The Tribal Council will issue these easements, permits leases and licenses according to priorities established by the Tribal Council giving due consideration to its land use and economic development plans and the general welfare of the tribal community. Subject to applicable law, the Tribal Council may, by future resolution, regulation or legislative enactment, issue specific guidelines governing the application and approval process in respect to the issuance of such easements, permits, leases and licenses.
- (2) Purpose. The purpose of this Code is to define the roles and responsibilities of persons and entities who enter into agreements, including mortgage, security, and rental agreements of every kind, including, without limitation, leasehold and other possessory interests in fee, tribal trust or restricted lands, for, without limitation, the purchase, use and occupancy of premises, including buildings and other structures used primarily for commercial, educational, residential, recreational, cultural, religious, or other private or public purposes. The purpose of this Code is also to facilitate the delivery of services and aid in the smooth operation, uniform interpretation, and enforcement of these agreements.

4.7.103 Applicability

- (1) Scope of Application. This Code shall apply to any and all arrangements, formal or informal, written, oral, or by practice of the parties, in relation to renting, leasing, purchasing, occupying, or using any and all premises, including, without limitation, housing, dwellings, or other accommodations for human occupation and/or residence as well as for educational, recreational, religious, cultural, commercial, or other public or private use, except as otherwise provided by applicable law.
- (2) Hannahville Indian Community Perpetual Right of First Refusal. Except as otherwise provided by applicable law, and subject to all valid interests, liens and encumbrances of third parties, the Hannahville Indian Community retains a perpetual right of first refusal,

in regard to any possessory interest in tribal trust or restricted lands, including structures of every kind which are built upon tribal trust or restricted lands. The Tribe may exercise this right of first refusal in the sole discretion of the Hannahville Indian Community Tribal Council, or its designated agent, upon the occurrence of any event involving transfer or conveyance of such interests, including, without limitation, the assignment, sale, mortgage, default, foreclosure, eviction, deed, deed of trust, deed in lieu of foreclosure, ejectment, will, devise, intestate succession, easement, leasehold, permit, or other recordable interest. Provided, however, that a waiver of, or declination to exercise, the perpetual right of first refusal upon the occurrence of any single event giving rise to the Tribe's right of first refusal shall constitute a waiver of the right only as to that event and shall not constitute a waiver as to any other event. Provided further, that upon final judgment of eviction or foreclosure, including any appeals, in the exercise of such right of first refusal the Tribe shall pay all sums then in arrears and shall either assume the mortgage or pay the balance of the loan, unless otherwise required by prior agreement or by applicable law.

- (a) Exception. When a transfer or conveyance giving rise to the Tribe's right of first refusal is being made to a tribal member, the Tribal Council, or its designated agent, shall exercise its right of first refusal only for good cause and in the best interest of the tribal community.
- (b) Notice by lender, transferor, conveyor. Every lender, assignor, grantor, transferor, or conveyor of any interest subject to this right of first refusal shall give reasonable advance notice of no less than 30 calendar days to the Tribal Council, or its designated agent, of the pending transfer, to enable the Tribe to make an informed decision in regard to any transfer. Notice to the Tribal Council in the absence of a specific designation, shall be given in writing to the Hannahville Indian Community Tribal Secretary by personal delivery or by certified mail addressed to the official then elected to the office of Tribal Secretary at the administration office assigned to that individual, with a copy to the tribal attorney.

[1] Subject to applicable law, including, without limitation 25 U.S.C.A. § 2205 et seq, and attendant regulations, any event giving rise to the Tribe's right of first refusal shall be null and void if the Tribe has not received notice of its right of first refusal as provided in this section.

- (3) The following arrangements are not governed by this Code:
 - (a) Any residence that derives from medical care, religious ceremonies, educational activities, counseling, detention, or similar services.
 - (b) Occupancy in a hotel, motel, or other commercial lodging for which a formal lease is not in effect.

4.7.104 Civil Nature of Code

This Code is civil in nature and does not affect any applicable provisions of the Hannahville Indian Community Criminal Code unless specifically addressed and modified in this Code.

4.7.105 Jurisdiction and Scope

- (1) Geographic and Subject Matter Jurisdiction. The Hannahville Indian Community Tribal Court shall have exclusive jurisdiction over all matters, causes of action, agreements, and relationships as indicated within the applicability and other sections of this Code which relate to matters within the geographic jurisdiction of the Tribe as defined by the tribal Constitution, Codes and federal law and which involve tribal housing authorities, the Tribe, or private landlord-tenant relations, including, without limitation, leasehold mortgages, brought under this Code and which occur on tribal fee-owned lands as allowed by applicable law, and upon restricted lands, and tribal trust lands wherever situated, unless specifically excepted by this Code or other applicable provisions of law.
 - (a) The Hannahville Indian Community Tribal Court shall have concurrent jurisdiction to the extent that a federal cause of action may be brought in the federal courts in relation to federally guaranteed, insured or funded projects governed by federal statute and regulation and which occur on tribal fee-owned, trust or restricted lands unless otherwise provided by applicable law. Unless required by federal law in respect to a federally funded, insured or guaranteed project, a claimant is not required to exhaust his or her administrative remedies prior to filing suit.
- (2) Personal Jurisdiction. Jurisdiction is extended over all persons or entities regardless of their status as tribal members or non-members, Indian or non-Indian, who reside upon tribal trust or restricted lands or who have entered into agreements, oral or written, and who have entered into arrangements, formal or informal, which are written, oral, or exist by practice of the parties, in relation to lands and/or the construction of and the renting, leasing, purchasing, occupying, or the use of any and all housing, dwellings, or other accommodations for human occupation and/or residence or commercial use upon tribal trust lands, wherever situated, unless excepted by applicable law.

4.7.106 Law to Be Applied

The Hannahville Indian Community Tribal Court shall apply the provisions of this Code, any other applicable tribal law and the terms encompassed within the agreements. In addition, the court shall apply federal law and regulations when a case arising under the law relating to the U. S. Department of Housing and Urban Development or other federal agency, requires federal law and regulations to be applied. In the absence of tribal or federal law, the court may look to the law of other jurisdictions for guidance in fashioning a remedy.

4.7.107 Definitions

- (1) Adult: a person who is 18 years of age or older or a person less than 18 years of age who has become an adult by judicial order and who is thus an emancipated person.

- (2) Assignment: a transfer of an entire interest in premises by a person or entity (the “assignor”), holding the right to make an assignment to another, (an “assignee”).
- (3) Borrower/ Buyer/Mortgagor/ Owner/Purchaser: any person or entity including without limitation, the Tribe, any Indian Housing Authority, an individual tribal member, or his or her legal heir(s), assign(s), successor(s) or executor(s), administrator(s) of the Tribe, or any individual who buys, leases to own, purchases, and/ or executes a mortgage, including a leasehold mortgage, in favor of a lender or mortgagee, in regard to a building or other structure which is located upon tribal fee-owned, trust or restricted lands. A buyer who buys a structure for cash may be known as a purchaser for cash.
- (4) Default: any substantial failure on the part of an obligated person or entity to perform any covenant, condition, obligation, term of any agreement, and/or to make his or her payment for the use and/or occupancy of premises when due, as defined by agreement of the parties and by applicable law.
- (5) Dwelling Unit: a house, building, or other structure, or portion of such a building or structure, not including public transient accommodation, which is rented, purchased, leased or used primarily as a dwelling or residence by a person or entity.
- (6) Eviction; Action for Recovery and/or Surrender of Premises; Summary Proceedings: a civil action to recover possession of premises, including, without limitation, other equitable or statutory relief as provided by this Code and other applicable law.
- (7) Foreclosure: the legal procedures by which a mortgagor, and each person or entity claiming through the mortgagor, is divested of his or her interest in real or personal property, including leasehold interests in tribal trust lands which have been made subject to a mortgage agreement.
- (8) Holdover tenant: a tenant whose written lease agreement has expired. A holdover tenant is a tenant at will.
- (9) Homebuyer/Purchaser: a tribal member or entity who or which is primarily liable for payment of a monthly payment in a privately owned, tribal, state, or federally guaranteed or funded program, including, without limitation, a home ownership program, and in whose name either a lease/option or a mortgage agreement exists.
- (10) Housing Authority: all Tribal Council authorized organizations and entities charged with oversight of landlord-tenant and/or buyer/lender relations on behalf of the Tribe whether or not the authority is incorporated under tribal, federal or state law.
- (11) Indian: any person recognized as being an Indian or Alaska Native by a tribe or by the government of the United States.

- (12) Landlord: the person or entity who or which has the primary right of possession, occupancy, or ownership and who may legally enter into an agreement of occupancy with a lessee. “Landlord” includes, without limitation, a lender, the Tribe, an Indian Housing Authority, a person or entity, or a federal agency, which is a lender, lienor, the owner, agent, lessor, or sublessor, of premises intended for the use and/or occupancy of tenants, lessees, buyers, mortgagors or purchasers as defined in this Code.
- (13) Landlord-Tenant Action: a civil suit or lawsuit, claim, complaint or defense, in relation to a dispute between persons or entities concerning the sale, purchase, rental, lease, sublease, assignment, use or occupancy of premises, including claims for the payment of monies for such use and damages to property related to the use and/or occupancy, as well as all other disputes arising from the landlord-tenant relationship.
- (14) Lease: an agreement, written or oral, formal or informal, or by practice of the parties, in relation to renting, leasing, purchasing, occupying, or using premises, including without limitation, any and all buildings, structures, houses, trailers, dwellings, or other accommodations for human occupation and residence and further, including structures and buildings of every kind for commercial, educational, recreational, cultural, religious, or other private or public use, upon tribal fee-owned, restricted, or tribal trust lands wherever situated, unless excepted by applicable law. A lease includes all valid rules and regulations applicable to the terms and conditions of the use and occupancy of the premises, including terms imposed or implied by law. A lease may also mean, as appropriate, the lease of tribal trust real or personal property for which a leasehold mortgage, as defined in this Code, has or will be given. The terms “lease” and “rental agreement” may be used synonymously.
- (15) Leasehold Mortgage: the documents evidencing a security and/or possessory interest in tribal trust or restricted lands, as required to be approved under federal law and regulation, and which are required to be given to secure a lender’s advance of monies for any purpose, including the construction and financing of structures to be used for residential and/or commercial purposes.
- (16) Lender/Mortgagee: the person or entity, including federal agencies, who or which advances monies and/or insures or guarantees a loan to a borrower to enable the borrower to purchase, build, or remodel a building or other structure and secures an interest in the premises as collateral for the loan. “Mortgagee” includes all successors in interest to the interest of a mortgagee.
- (17) Lessee: the person(s) who by agreement, occupies or has the right to occupy or otherwise use the premises for residential or other purposes. “Lessee” may be used synonymously with the word “tenant,” and, as appropriate, “homebuyer.”
- (18) Lessor: the owner or person or entity who or which has the primary right of possession, occupancy or ownership of the premises, which are the subject of a lease agreement. “Lessor” and “Landlord” may be used synonymously.

- (19) License: a privilege, revocable at the will of the Tribe to enter onto tribal fee-owned, trust or restricted lands for a specified purpose. A licensee who has been directed to leave by the owner or other authority having the right to possess, use, occupy or control the premises, and who fails to leave as legally requested, becomes a trespasser subject to the Hannahville Indian Community Criminal Code section 1.2049 and its successor statutes relating to Trespassers, or other applicable law.
- (20) Nuisance: the maintenance on real or personal property of a condition which:
- (a) Unreasonably threatens the health, safety or welfare of the public and/or neighboring land users; or
 - (b) Unreasonably or substantially interferes with the ability of neighboring property users to enjoy the reasonable use and occupancy of their property.
- (21) Occupant: is any person, excepting a trespasser, but including a guest, who occupies and/or, uses premises for any period of time, with the permission of a person or entity having a legal right to possession, use or occupation of the premises. "Occupant" may include, as applicable, a "tenant," a "homebuyer" who leases to own premises, a "mortgagor," or other "purchaser" and/or the household members of a tenant, mortgagor, purchaser or homebuyer.
- (22) Owner: any person or entity, jointly or individually, having legal title to all or part of land or a building or other structure and who may legally convey that title by sale or gift.
- (23) Permit: a privilege, non-assignable, non-transferable, revocable at will in the discretion of Tribe and the Secretary of the Interior, to enter on and use a specified tract of land for a specified purpose. A permit does not include the right to take profits unless specified by written agreement or tribal resolution. The terms "lease," "lessor" and "lessee," when used in this Code include, when applicable, "permit," "permitter," and "permittee," respectively. A permittee who has been directed to leave by the owner or other authority having the right to possess, use, occupy or control of the premises, and who fails to leave as legally requested, becomes a trespasser subject to the Hannahville Indian Community Criminal Code section 1.2049 and its successor statutes relating to trespassers, or other applicable law.
- (24) Premises: includes lands, tenements, condominium property, cooperative apartments, air and water rights and all manner of real and personal property. It includes structures fixed or mobile, temporary or permanent, vessels, mobile trailer homes and vehicles which are used or intended for use primarily as a dwelling or as a place for commercial or industrial operations or storage.
- (25) Profits: the privilege, without limitation, of the holder of the privilege to take or remove some product of the soil, such as the privilege to remove turf or timber for use as fuel or sale; to have animals graze; to fish or hunt for food or sale. Sale of profits are

subject to express authorization of the Tribal Council and applicable law. The sale of profits without express authorization of the Tribal Council and according to applicable law may subject the taker to the penalties of tribal, state and federal law.

- (26) Rent: all periodic payments to be made to a landlord or lender under a lease or purchase agreement subject to this Code.
- (27) Subordinate Lienholder: the holder of any security instrument properly filed pursuant to applicable law, including a lien filed subsequent to the recording of a leasehold mortgage. This definition does not include the Tribe with respect to a claim for payment of a tribal leasehold tax.
- (28) Tenant: a person or entity who or which, by agreement, occupies or has the right to use or occupy premises, including land, a building, or other structure for residential, commercial, or other purposes. The word “tenant,” as applicable, shall, unless otherwise indicated, include “homebuyers” who lease to own and other “purchasers” as further defined by this Code, or applicable law. The word “tenant” may, as appropriate, also include the word “occupant.”
- (29) Tenant at will: a person or entity who possesses or occupies premises and who does not otherwise have a written lease agreement. A tenant at will includes a holdover tenant. A tenant at will acquires no right of occupancy by virtue of remaining on the premises. A tenant at will who has been directed to leave by the owner or other authority having the right to possess, use, occupy or control of the premises, and who fails to leave as legally requested, becomes a trespasser subject to the Hannahville Indian Community Criminal Code section 1.2049 and its successor statutes relating to trespassers.
- (30) Tribal Court: the Hannahville Indian Community Tribal Court.
- (31) Tribal Recording Clerk: the Magistrate or other authorized tribal court official required to receive and record leasehold and other documents evidencing a security interest in real or personal property, including trust or restricted properties of the tribe or an individual.
- (32) Tribe: the Hannahville Indian Community.
- (33) Trust Land: land, or any interest in land, the title to which is held by the United States of America for the use and benefit of the Hannahville Indian Community or individual tribal member(s).
- (34) Restricted Land: land, or any interest in land, the title to which is held in the name of an Indian owner subject to the condition that the land cannot be alienated or encumbered without the consent of the Secretary of the Interior, either by a limitation contained in the conveyance instrument pursuant to federal law or because a federal law directly imposes such limitations.

- (35) Waste: the destruction, either in whole or in part, of buildings or land which results in injury to the lessor's interest in property and does not include normal wear and tear.

4.7.108 Landlord-Tenant Responsibilities.

- (1) Lease/Rental Agreements; effect; prohibited terms; implied terms.

- (a) Minimum rights. The provisions of this Code and any other applicable laws shall establish the minimum rights and responsibilities of landlords and tenants. Unless inconsistent with this Code, tribal law, or any applicable federal law, rental agreements may supplement these minimum rights and responsibilities.

- [1] Security Deposits; limits.

[a] A landlord may require a security deposit in an amount equal to \$100.00 or one month's periodic rent, whichever is greater. Additional amounts may be required as nonrefundable cleaning fees for special circumstances like pets or prior tenant history, which may include, without limitation, prior damages.

[b] The rental agreement shall clearly state whether sums deposited with the landlord are in the nature of a refundable security deposit or in the nature of a nonrefundable fee attributable to a service provided by the landlord. If the rental agreement does not so state, there is a rebuttable presumption that the monies so deposited with the landlord are in the nature of a refundable security deposit. The person or entity who is the landlord at the time a tenancy is terminated shall pay the tenant or former tenant the amount of the security deposit that was deposited with the landlord, less any damages to the premises which are due to the fault of the tenant and less any amounts of rent owed to the landlord. Damages shall not include normal wear and tear.

[c] Action to reclaim security deposit. Thirty days after termination of the tenancy, a tenant may bring a civil action in tribal court to reclaim any part of his or her security deposit that may be due.

- (b) Prohibited terms. No rental, purchase or other agreement shall:

[1] Agree to waive or forfeit rights or remedies provided for specifically by this Code or any other law applicable to the agreement.

[2] Waive, limit, restrict, limit the liability of, or indemnify, a landlord for any liabilities or obligations imposed upon the landlord by applicable law.

[3] Agree to permit the landlord to dispossess the tenant without a court order, which may be ex parte, for good cause.

- [4] Agree to require the tenant to pay a late charge prior to the expiration of the grace period set forth in the eviction proceedings.
- [5] Contain a provision which could be construed to, or which limits, impairs, diminishes, or extinguishes the perpetual right of right refusal in the tribe to reacquire the premises upon default, conveyance or, without limitation, any transfer, including a transfer by will, devise or trust, by the occupant(s) as elsewhere provided in this Code or other applicable law.

Any provision prohibited by the preceding subsection shall be void and unenforceable.

(c) Implied Terms:

- [1] Term of tenancy. In the absence of a statement of a definite term in a written rental agreement, a tenancy shall be month-to-month. Any rental agreement that exceeds a term of one year shall not be valid unless it is in writing. If by oral agreement or practice of the parties, the rental period has exceeded 1 year, then the term is month to month unless the landlord requests the tenant to sooner vacate the premises, or until a written agreement shall require a different period.
- [2] Lease/rental amount; where payable. The amount of rent shall be that amount stipulated to between the parties. In the absence of a definite amount stated in the rental agreement, rent shall be the fair market value of the premises. Rent is payable at the landlord's office or as provided by agreement.
- [3] Leaseholds of trust or restricted premises. While premises are in trust or restricted status, all of the Lessee's obligations under the lease, and the obligation of his, her, (their) sureties, are to the United States as well as to the owner of the land.
- [4] Right of Entry on Premises. As applicable, the Secretary of an appropriate federal agency which is a lender, insurer or guarantor of a loan and the lessor, mortgagee, or other controlling agent and their authorized representative(s) shall have the right, at any reasonable times during the term of a lease, and with reasonable notice, to enter upon the leased premises, or any part thereof, to inspect, service and value all buildings and other improvements erected and placed upon the premises.

4.7.109 Landlord authority to make rules and regulations.

- (1) The landlord may make reasonable rules and regulations regarding the use and occupancy of the premises. The tenant shall be given notice of the rules when entering into the rental agreement or when they are adopted. Any rule or regulation that

substantially modifies the terms of the original agreement is not valid unless the tenant consents in writing. Such rules and regulations are enforceable against the tenant if:

- (a) Their purpose is to promote the health, safety, or welfare of the tenants and/or preserve the landlord's property from abusive use; and
 - [1] The rules are reasonably related to the purpose for which they are adopted; and
 - [2] The rules apply to all tenants in the premises in a fair manner; and
 - [3] The rules are clear in explanation and direction.

4.7.110 Landlord Responsibilities

Except as otherwise provided in the rental agreement or pursuant to a federally funded Mutual Help and Occupancy Agreement, federal agency direct, insured or guaranteed loan, or as otherwise provided by applicable law, each landlord subject to the provisions of this Code shall:

- (1) Maintain the premises 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 guest, in which case such duty shall be the responsibility of the tenant.
- (4) Keep common areas safe, clean, and secure.
- (5) Ensure tenant access to the premises.
- (6) Maintain in good condition and safe working order all electrical, plumbing, sanitary, heating, ventilating and other facilities and appliances, where such things are not the responsibility of the tenant or are generated by an installation within the exclusive control of the tenant.
- (7) Provide and maintain proper and appropriate receptacles and facilities for the disposal of ashes, garbage, rubbish and other waste.
- (8) Provide potable water, 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 utilities for himself.
- (9) Provide the right of quiet enjoyment of the premises to the tenant and make every effort to prevent the conduct of other tenants, occupants or guests from creating a nuisance, endangerment to public health or safety, or a breach of the peace.

- (10) Disclose, in writing, the name, address, and telephone number of the person responsible for receiving rent, notices and demands under this Code. Disclose, in writing, the person authorized to manage the premises, the owner of the premises or his or her agent and the person responsible for making repairs.
- (11) Give sole possession of the premises to the tenant in accordance with the rental agreement and shall not:
 - (a) Enter the premises, except where permitted under this Code or another applicable law.
 - (b) Make demands to lawfully enter the premises, which results in unreasonable harassment of the tenant.
 - (c) Sexually harass or physically assault the tenant.
 - (d) Lock the tenant out of the premises without court order unless the premises have been abandoned by the tenant, or as otherwise defined by law.

4.7.111 Tenant Responsibilities

Except as otherwise provided in the rental agreement, each tenant subject to this Code shall:

- (1) Pay rent without demand or notice at the time and place agreed upon by the parties, or as provided by this Code.
- (2) Immediately notify the landlord of any defects in the premises hazardous to life, health or safety for which the landlord is responsible.
- (3) Keep the premises reasonably clean and dispose of all ashes, garbage, rubbish, junk and abandoned vehicles in a proper, sanitary and safe manner.
- (4) Use all electrical, plumbing, sanitary, heating, ventilating and other facilities and appliances, which are part of the premises and the property of the landlord or which are the subject of a mortgage or other security agreement in a proper, safe, sanitary, and reasonable manner.
- (5) Refrain from destroying, defacing, damaging, or removing any part of the premises or common areas and require guests to act in a similar manner. Any such waste is the sole responsibility of the tenant.
- (6) Pay reasonable charges for the repair of damages, other than normal wear and tear, to the premises and/or common areas, caused by the tenant or guests, or repair such damages as required by the rental or other agreement, within 30 days of such damage.

- (7) Conduct themselves and their guests in a manner that does not disturb the quiet enjoyment of others, cause a breach of the peace, or create a nuisance.
 - (a) Animals must be kept in accordance with tribal law and as provided by agreement.
- (8) Not give up the premises to others, by assignment, sublease, or possession, without the written permission of the landlord or as provided by written agreement or other applicable law.
- (9) Use the property only for the purposes agreed to and not for any other purpose, including, without limitation, illegal activities or conduct that may harm the premises or areas around the premises.
- (10) Abide by all rules and regulations under this Code or which are later legally promulgated according to this Code.
- (11) Provide access by the landlord or other controlling agent to the property in order to perform maintenance and repairs, inspect the premises, and supply necessary services. Provided that, such access shall be at reasonable times with written or oral notice and when tenant is present, unless tenant waives the right to be present or unless otherwise provided by applicable law and/or the written agreement. In the case of an emergency situation where the health, safety, or welfare of the tenant or tenant's neighbors is in danger, the landlord may enter the premises to address the emergency. The landlord may enter at any time the tenant consents. No tenant who unreasonably denies access to a lender, landlord, other controlling agent for these purposes may pursue an action or grievance on the grounds that any services or repairs were not provided.

4.7.112 Tenant Remedies

Where a landlord has not complied with this Code or where the agreement of the parties is breached by the landlord, the tenant has the following rights:

- (1) To give reasonable notice, which shall be in writing, to the landlord to comply with his or her obligations under the agreement. Tenant may terminate the rental agreement for a continual breach of the agreement provided the landlord does not comply within a reasonable time.
 - (a) The notice may be served by delivering it personally to the landlord; if a Tribal Housing Authority, by delivering it to an employee of the housing office of suitable age and discretion, with a request that it be delivered to the housing director; by certified mail; or by sending it by first-class mail addressed to the landlord. If the notice is mailed, the date of receipt is the next regular day for delivery of mail after the day when it was mailed. If the notice is sent by mail, it shall not be a defense that the mail was refused, was accepted by a person other than the addressee, or that it was returned unclaimed to the tenant.

[1] The form and contents of notices required to be given shall be as stated in the legal documents or as otherwise prescribed in this code.

(2) To require repairs and maintenance which are the responsibility of the landlord. Should the landlord fail to make necessary repairs within a reasonable time after the tenant gives written notice, tenant may make necessary repairs, not to exceed the amount of \$500.00, unless agreed to in writing by the landlord, and deduct the cost from rental payments. Notice shall be given as set forth in the immediately preceding subsection (a).

(a) Where the tenant makes necessary repairs, he or she shall obtain at least two written estimates from persons or businesses which regularly provide and, if applicable, are licensed to perform, the kinds of repairs necessary to be made and shall make such repairs within the scope of the estimates received, providing evidence to the landlord of the estimates and the repairs having been done with tenant's deduction from rent.

[1] Tenant shall not perform necessary repairs if tenant does not have the experience, qualifications, training and/or required licenses, to do so. Tenant may not charge the landlord for his or her time spent in effecting repairs unless the landlord has formally hired the tenant at a stated rate of pay, which shall not exceed the [lowest/highest] estimate obtained, to perform the repairs. There is no presumption of hire to be inferred by landlord's failure to make repairs in a timely manner.

[a] Landlord shall have the right to inspect all repairs which tenant has caused to have been done and shall have the right to challenge the efficacy and sufficiency of such repairs.

(3) To seek a Court order or judgment for, without limitation:

(a) The payment of monies or costs for repairs lawfully undertaken by tenant;

(b) To seek compliance with the agreement;

(c) To terminate the agreement; or

(d) To obtain any other relief to which tenant may be entitled by law, equity, or by agreement of the parties.

4.7.113 Landlord Remedies.

Where a tenant has not complied with this Code and/or where the tenant has breached the agreement between the parties, the landlord has the right to:

- (1) Give reasonable notice, which shall be in writing, to the tenant to: comply with his or her obligations; to pay any monies due and owing under the agreement; and/or, to terminate any agreement in which a continuing breach occurs and demand that tenant and all occupants vacate the premises.
 - (a) The notice may be served by delivering it personally to the person in possession; by delivering it on the premises to a guest or occupant of the premises, or an employee of the lessee, of suitable age and discretion, with a request that it be delivered to the person in possession; by certified mail; or by sending it by first-class mail addressed to the person in possession. If the notice is mailed, the date of receipt is the next regular day for delivery of mail after the day when it was mailed. If the notice is sent by mail, it shall not be a defense that the mail was refused, was accepted by a person other than the addressee, or that it was returned unclaimed to landlord.
 - [1] The form and contents of notices required to be given shall be as stated in the legal documents or as otherwise prescribed in this code.
- (2) Require, in writing, that repairs or maintenance be done which are the responsibility of the tenant and require compliance with reasonable rules and regulations for occupancy. Notices required to be given under this subsection shall be given in accord with immediately preceding subsection (a).
- (3) Seek a court order or judgment for: monies owed; compliance with the agreement or with any applicable laws; termination of the agreement; payment of damages; eviction of tenants and other occupants; or any other relief which landlord may be entitled to under law or the rental agreement.

4.7.114 Abandoned Premises.

- (1) Where the premises have been vacated by the tenant(s) without notice and it is reasonable to assume that the tenant does not intend to return, as is evidenced by, without limitation, the removal of possessions, nonpayment of rent, disconnected utilities, or an expression to the landlord or others that the tenant has abandoned the premises, a landlord may retake possession. The landlord shall, without further notice to the tenant, post a notice on the door or other prominently visible part of the premises for 10 calendar days giving notice that that the landlord intends to retake possession of the premises and all contents will be removed and inventoried if not claimed and removed by the tenant by the end of 30 calendar days from the first posting of the notice. If the tenant does not reclaim possessions within 30 calendar days of posting notice, the premises shall be deemed abandoned and the landlord may dispose of the possessions without penalty and without compliance with formal eviction proceedings.

4.7.115 Grounds for Eviction from the premises.

An occupant may be evicted for:

- (1) A failure on the part of an obligated person or entity to substantially perform any covenant, condition, obligation or term of any agreement, and/or to make his or her payment(s) for the use and/or occupancy of premises when due, as defined by agreement of the parties and by applicable law.
- (2) Nuisance, intentional or reckless damage, destruction or injury to the premises of the landlord or the property of other tenants, disturbing another tenant's right to quiet enjoyment of the premises, and/or damage to common property areas.
- (3) Serious or repeated violations of the rental or purchase agreement or of any other applicable statutes or regulations which may govern the use or occupancy of the premises.
- (4) Occupation of any premises without permission or agreement following a reasonable demand by a person in authority over the premises requesting the occupant to leave.
- (5) Under other valid terms in the rental or other agreements which do not conflict with the provisions of this Code or which, as a matter of federal law, preempt this Code.

4.7.116 Notice to Quit; when required; contents and form of notice; time and method of service.

- (1) When notice to quit is required:
 - (a) When a lender, landlord or owner, as appropriate, desires to obtain possession of premises and there exists one or more legal reasons to evict the occupant(s) using or occupying the premises the lender, landlord, owner, or controlling agent, as appropriate, shall give notice to the adult occupant(s) to quit the premises according to the provisions of this chapter.
 - (b) When the landlord is an Indian housing authority, administering a federal direct, insured or guaranteed loan project, the housing authority termination notice as mandated by the loan documents shall qualify as the notice to quit under this Code, so long as the time limits of the housing authority termination notice are at least as long as the time requirements set forth in this Code. It is the duty of the landlord to establish that he or she is in compliance with any counseling attempts which he or she is required to make in regard to the occupants as prescribed by applicable law and/or the rental or purchase agreement.
 - (c) Exception. The notice provisions of this Code shall not apply to trespassers.
- (2) Purpose of Notice to Quit: The purpose of the notice to quit is:

- (a) To provide adequate notice to the occupant(s) of a specific problem, which needs to be addressed and to induce the occupant(s) to enter into discussions with the landlord or owner to resolve the problem; or
 - (b) To notify the occupant(s) to vacate the premises and that no further discussion of the existing problems except vacating will be had.
- (3) Contents of Notice to Quit: The Notice to Quit shall:
- (a) Be addressed to the adult occupant(s) using or occupying the premises; and
 - (b) Shall state the legal reasons for eviction; and
 - (c) Shall state the date the occupant(s) is required to quit the premises.
 - (d) If the occupant owes money pursuant to a lease or other agreement, the amount due at the time of the demand shall be stated, excluding any amounts claimed to be due by reason of any acceleration clause contained in the agreement.
- (4) Form of notice. The notice shall be in writing in substantially the following form:

NOTICE TO COMPLY OR QUIT

“ I (or we) hereby give you notice that you are either to (insert specific terms with which the occupant(s) must comply to avoid quitting the premises, if applicable) or, to quit use, possession, and/or occupancy of the premises occupied by you at (give address or other reasonable description of the location of the premises), on or before the (date to quit) for the following reason(s) (insert legal reasons, including amounts due, for the notice to quit using the statutory language and/or words of the agreement). Signed, (use signature and title of landlord or owner, address, and date of signing).”

- (5) Time Requirements for Delivery of Notice; minimums. In respect to individually or tribally owned or administered premises and unless otherwise required by applicable law, the notice must be delivered to the tenant(s) within the following periods of times:
- (a) No less than 7 calendar days prior to the date specified in the notice for the occupant(s) to quit the premises for any failure to pay rent or other payments required by the rental agreement, or in the case of nuisance, serious injury to property, or injury to persons. In any situation in which there is an emergency, notice may be made in a time period, which is reasonable given the situation.
 - (b) No less than 3 calendar days prior to the date specified in the notice for the occupant(s) to quit in the case of a sub-lessee occupying the primary dwelling of a lessor, lessee, or homebuyer.

- (c) No less than 30 calendar days in any other situations.
- (6) Method of Service of Notice to Quit; when effective; exception.
- (a) Method.
 - [1] Delivery. Delivery shall be made by an adult; and
 - [2] Personal service. The notice shall be personally served to a tenant or purchaser or to any occupant of the premises of suitable age and discretion with a request that it be delivered to the person in possession; with a copy delivered by mail; or
 - [3] Alternative Service. If the notice cannot be given by means of personal delivery, or if the tenant or purchaser cannot be found after diligent inquiry, the notice may be delivered by means of:
 - [a] Certified mail, return receipt requested, at the last known address of the tenant; and/or by
 - [b] Securing a copy of the notice to the door of the premises or other prominent location on the premises and/or by posting a copy in a public place and/or advertising in the Community newsletter or other publication reasonably calculated to give actual notice and a copy sent by first class mail to the occupant(s) at the premises and at the last known address of the occupant(s).
 - [4] Date of Service. If the notice is mailed, for purposes of this section the date of service is the next regular day for delivery of mail after the day when it was mailed.
 - [a] It shall not be a defense to the efficacy of service for the occupant to claim that he or she failed or refused to pick up the mail or that the notice was returned to sender unclaimed.
 - [5] Proof of Service. The person responsible for giving the notice must keep a copy of the notice and shall record a proof of service giving the date, time, to whom delivered and method of service, in accordance with this section. The proof of service may be by affidavit or other manner recognized by law. If an action is brought in the tribal court, the proof of service together with a copy of the notice to quit shall be alleged in the complaint and a copy of both shall be attached to the complaint.
 - [6] Method of Service in Other Pleadings. The method of service provided in this subsection for service of the Notice to Quit shall apply for other initial pleadings under this Code. Where a party responds or otherwise appears in

person or by counsel, service of subsequent pleadings or documents may be made by first class mail addressed to any defendant or party who appears on his or her own behalf or is represented by counsel.

4.7.117 Pre-Eviction Options.

- (1) Negotiated Settlement. After a notice to quit is served upon an occupant, the landlord and tenant may engage in discussions to avoid an eviction. The agreement to enter into discussions will not affect the rights of the parties to obtain enforcement of the rental agreement, or for eviction, nor delay or stay the proceedings if an action has been filed in the tribal court, unless the parties reach an agreement, which shall be in writing, to delay or stay the proceedings.
- (2) Stay of Proceedings. If an action for enforcement of the rental agreement or for eviction has been filed, the tribal judge, the magistrate, or other authorized court officer, may issue an order to stay the proceedings if both parties agree in writing to negotiate in good faith. The stay shall continue until a settlement is reached or one party informs the court that negotiations have failed. A stay shall not operate as a dismissal.
- (3) Settlement Options. In reaching an agreement, the parties may consider, but are not limited to the following options:
 - (a) The parties may employ the assistance of counsel or lay advocates.
 - (b) If authorized by tribal or other applicable law, the parties may employ the use of a mediator or arbitrator and submit themselves to binding mediation or arbitration.
 - (c) If authorized by tribal or other applicable law, the parties may barter for goods, services, or may select any other means of securing a fair exchange of value for the use and/or occupancy of the premises.
 - (d) The parties may agree to dismiss the matter in exchange for any agreement reached, which shall be in writing; or
 - (e) The parties may agree to stipulate to a consent judgment to be entered by the court.

4.7.118 Judicial Eviction Procedures; Summons and Complaint; Preliminary Hearing; Formal Hearing.

- (1) Summons and Complaint. At the time of service of the Notice to Comply or to Quit the premises or at any time subsequent to delivery of the notice to quit, the landlord may file a complaint in the tribal court requesting eviction or any other relief which the court may deem just and proper. The complaint shall state:
 - (a) The names of the adult occupant(s) against whom the suit is brought.

- (b) As applicable, a description of the rental agreement, and, if written, a copy of the rental agreement, mortgage, promissory note, and/or, leasehold agreement.
 - (c) The address or location and legal description of the premises.
 - (d) The grounds for eviction.
 - (e) A statement that notice to quit the premises has been given in accordance with this Code, including proof of service and the date by which all occupant(s) are to comply and/or to quit possession.
 - (f) A statement of the relief requested, including claims for possession of the premises, damages, fees, costs or any other special relief.
 - (g) If the landlord is an Indian Housing Authority administering a federally guaranteed or funded housing project, a statement that all federal regulations have been complied with prior to filing the eviction action.
 - (h) The complaint shall be signed, as appropriate, by the owner, landlord, or his or her agent on information and belief.
- (2) Court Action upon Filing of Complaint. When a complaint is filed in the tribal court it shall be reviewed by the judge, magistrate or other authorized court official to determine whether the complaint complies with Hannahville Indian Community Code requirements. If compliant, the authorized court official shall issue and cause service of a summons, together with a true copy of the complaint upon the defendant(s) requiring the defendant(s) named in the complaint to appear before the court to enter a preliminary plea to the complaint at the next available court date unless an earlier date is ordered by the court. A summons shall also be provided to the plaintiff giving notice of the date and time of the preliminary exam. Service upon each defendant shall be made according to the provisions of § 4.7.116(6) of this Code. If the plaintiff is not the Tribe, the Tribe shall be given actual notice as provided by § 4.7.103(2)(b), with a copy to the tribal attorney. The Tribe and tribal attorney shall be given notice at every stage of the proceedings.
- (3) Preliminary Hearing.
- (a) Plea and Answer. If the defendant appears before the court at the preliminary hearing in person or in writing to contest the complaint, the court shall set a hearing date. The defendant's response shall, orally or in writing, state any defenses or factual disputes. If the defendant contests the allegations of the complaint at the preliminary hearing he or she shall serve a written response upon all parties, including the Tribe and/or its designated agent, within 7 days after the preliminary hearing. If the defendant does not appear or file a written answer at the preliminary hearing contesting the allegations the court shall deem the allegations as admitted and shall enter an appropriate judgment in favor of plaintiff.

(b) Hearing Date. Unless an emergency exists, the court shall set a hearing date at the first available regular court day following the preliminary hearing.

[1] Time Extensions. Upon request, which may be by oral or written motion by either party, the court may, for good cause and/or upon payment of the stipulated monies due and owing on the premises, allow an extension of time. The court may refuse a request made by the defendant in the case of nuisance or destruction of property unless stipulated to by the plaintiff. The court shall not extend the date of the hearing if the complaint is based upon an act reasonably alleged to constitute a serious danger to the public safety, health, or peace.

(c) Payment of Monies during Eviction Process. The Court may, in its discretion and upon motion of the landlord, order the tenant to pay into the court the monies for the use and occupancy of the premises during the process of the eviction case.

(d) Discovery. The court shall enter reasonable orders for the completion of discovery. Discovery shall be informal and shall be completed 7 calendar days before the date set for formal hearing unless otherwise ordered by the court. The court may also modify the scope of any discovery request upon reasonable notice to the petitioner if a need to protect the rights of parties arises.

(4) Formal Hearing.

(a) Evidence. Evidence in proceedings under this Code shall be according to the following provisions:

[1] All evidence may be admitted which is shown to be relevant, reliable and material to the case.

[2] The Judge shall take fairness into consideration in relation to challenges regarding the admissibility of evidence.

[3] In regard to objections to evidence on the basis of hearsay, witness competency, or similar evidentiary disputes, the court may consider the laws and decisions of other jurisdictions in determining the admissibility of evidence.

[4] In the discretion of the court, evidence may be excluded if its prejudicial effect substantially outweighs its probative value.

[5] Upon its own motion or at the request of a party, the court may take judicial notice of specific facts that are so certain as not to be subject to a reasonable dispute.

- [6] Where Federal Housing and Urban Development policies or similar federal programs are in effect, the parties will employ the Federal Rules of Evidence where mandated by federal regulations.
- (b) Standard of Proof. The standard of proof in a formal hearing shall be a preponderance of the evidence. The standard of proof for preliminary hearings at which the court receives evidence shall be that of reasonable cause.
- (c) Trial before court. All hearings filed pursuant to this Code shall be tried to the court.
- (d) Judgment; time for making after formal hearing; scope of relief.
- [1] Time for entry of judgment. The Court shall enter a judgment as soon as reasonably possible but not later than 7 calendar days after the formal hearing, denying or granting relief to the parties.
- [2] Scope of relief. The judgment may include, without limitation, any of the following:
- [a] Order the immediate eviction of an occupant(s) and delivery of the premises to the landlord.
 - [b] Grant the payment of actual damages as provided in the agreement or this Code.
 - [c] Establish a payment plan for the tenant, which includes garnishment of wages.
 - [d] Order the parties to carry out any other obligation(s) required by law.
 - [e] Recalculate rent or damages to reflect the actual rent or damages due.
 - [f] May order the tenant(s) to pay court costs to the tribal court in addition to other monies owed to the landlord.
 - [g] Order the parties to attempt to negotiate and may ratify any agreement as the decision of the Court, if fair and just.
 - [h] May provide any other relief provided by law or equity.
- (e) Default Judgment. If a party fails to appear in court for the formal hearing the court shall enter an appropriate default judgment according to the evidence which has been submitted.

- (f) Form of Judgment. The court shall state with specificity the relief which is granted but need not state findings of fact or conclusions of law in support of the judgment unless not otherwise stated in the court record.
- (g) Execution of Judgment. Any judgment shall be immediately executed unless otherwise indicated in the order. Upon delivery, a law enforcement officer of the Hannahville Indian Community or an officer of the court appointed by the court for such a purpose shall enforce the judgments and orders of the court. A report shall be filed with the court confirming the execution. Any officer or person appointed to execute the judgment or order who refuses, or in absence of good cause fails to execute such judgment or order, may be liable for reasonable damages, costs, and/or a suspension from employment.
- (h) Stay of Execution of Judgment. If a judgment for possession of premises is entered in favor of the landlord and the judgment has not been executed, the tenant may apply for a stay of execution of the judgment or order if within 5 calendar days of the judgment being executed, the following is established to the satisfaction of the court:
 - [1] Good and reasonable grounds affecting the well-being of the occupant(s) are stated; and
 - [2] There would be no substantial prejudice or injury to the prevailing party during the period of stay; or
 - [3] Execution of the judgment would result in extreme hardship for the occupant(s); or
 - [4] Following entry of judgment and order, monies are deposited into the court in such amount as the Court deems reasonable and necessary to protect the landlord or owner under the stay, which shall include, at a minimum, those amounts due and owing under the judgment.
- (i) Appeals. Appeals under this chapter shall be according to the general tribal appellate procedures.

4.7.119 Defenses to Eviction.

In granting relief and fashioning an appropriate remedy to an action for eviction, the court shall consider the following defenses:

- (1) The premises are untenable, uninhabitable, or the premises are in such a condition, due to the fault of the landlord, that they present a serious hazard to human health and safety and are not a mere inconvenience;

- (2) The landlord has failed or refused to make necessary repairs, which are the landlord's responsibility, after a reasonable demand by the tenant to do so, and the repairs are substantially necessary for the enjoyment of the premises.
- (3) There are monies due and owing to the tenant because the tenant has made repairs that are the responsibility of the landlord and the landlord has failed to make the repairs after reasonable notice. It is a complete or partial defense only to the extent that the monies owed to the tenant offset the monies owed for occupancy. A tenant may be evicted after such a period if he or she refuses to pay the agreed to rental value for the premises.
- (4) Due to the conduct of the landlord, there is injury to the occupant(s) in a way that equity requires that relief to the landlord be denied or modified.
- (5) Serious breaches of the Hannahville Indian Community Housing Codes on the part of the landlord exist so that it would be unjust to grant the landlord a remedy.
- (6) The landlord is evicting the occupant because of his or her race, gender, sexual orientation, religion, age, marital status, or disability.
- (7) Any other material or relevant fact the tenant might present that may explain why his or her eviction is unjust or unfair.

4.7.120 Judgment/Order of Eviction/Order to Vacate and Surrender Premises

A judgment to vacate the premises shall be by written order of the court, effective when signed, and shall be delivered to the tenant(s) in the following manner:

- (1) Personally delivered to a legally competent occupant of suitable age and discretion by a tribal law enforcement officer or other adult authorized by the court; or
- (2) Personally delivered by an authorized adult to a person of suitable age and discretion at the premises with a copy delivered by mail; or
- (3) If the notice cannot be given by means of personal delivery, or an occupant cannot be found, the order may be delivered by means of:
 - (a) Certified Mail, return receipt requested, at the last known address of the tenant; or
 - (b) Securing by tape or similar means to the door of the premises in such a manner as to make it obvious to anyone entering the premises or by posting notice in a public place near the premises, and sending a copy by first class mail to the tenant at the premises.
 - (c) If the order is mailed, for purposes of this section, the date of service is the next regular day for delivery of mail after the day when it was mailed.

[1] It shall not be a defense to the efficacy of service for the tenant to claim that he or she failed or refused to pick up the mail or that the order was returned to sender unclaimed.

- (4) Proof of Service. The person responsible for serving the order must keep a copy of the order and shall record a proof of service giving the date, time, to whom delivered and method of service, in accordance with this section. The proof of service may be by affidavit or other manner recognized by law.

4.7.121 Forcible Eviction

- (1) Where the court orders an eviction and the defendant or other occupants refuse to vacate voluntarily by the effective date of that order, the defendant and other occupants may be forcibly removed from the premises by a tribal law enforcement officer. At the hearing where eviction is ordered, the court shall inform the defendant that if he or she does not vacate the premises within the time given to vacate, the defendant and his or her property may be subject to a forcible eviction.
- (2) Following an eviction order, the court shall allow the Secretary of the appropriate federal agency, lender, mortgagee, owner, or lessor or other controlling agent the right, at reasonable times and hours, and with reasonable notice, to enter the premises for purposes of inspection, services and valuation.
- (3) Following forcible eviction of the defendant and/or occupants, the former occupants' personal property shall be stored by the owner of the premises for at least 10 calendar days, either on the premises or at another suitable location. In order to reclaim the property, the former occupants shall pay reasonable costs of removal, storage, and any outstanding judgments against the occupants. If the occupants do not claim the property and pay the costs of storage within the 10 day period the owner is authorized to sell or otherwise dispose of the property in order to recover these costs. Upon request by the former occupants, the landlord shall provide them with information concerning the sale or disposition. Any proceeds from a sale in excess of the removal, storage, and judgment amount and costs shall be remitted to the former occupants. If there is no further debt due and owing to the landlord the former occupants may reclaim property remaining after the sale. Repossession shall be done in a manner satisfactory to the landlord.

4.6.122 No Self-Help Eviction

Except by the mutual consent of the parties, and except where tenant has abandoned the premises, a landlord may not compel a tenant to vacate premises without first giving a notice to quit and obtaining a court order as provided in this Code. In the discretion of the court and in appropriate circumstances, punitive damages may be awarded to the tenant where landlord has caused a forcible eviction resulting in a breach of the peace and has acted without authority of the court.

(seal)

Date

Signature

- (d) Copy of Recorded Document. The authorized recording official shall maintain a copy of the recorded documents in the tribal court recording system and shall return the original leasehold mortgage or other recorded documents to the person or entity which presented them for recording.
- (e) Log of Recorded Documents. The Magistrate or other authorized court recording official shall also maintain a log of each leasehold mortgage or other document recorded in which there shall be entered:
- [1] The name(s) of the mortgagor(s) of each leasehold mortgage, identified as such; and
 - [2] The name(s) of the mortgagee(s) of each leasehold mortgage, identified as such; and
 - [3] The name(s) of the grantor(s), grantee(s), or other designation of each party named in any other documents presented for recording; and
 - [4] The date and time of receipt; and
 - [5] The filing number assigned by the recording official; and
 - [6] The name of the authorized recording official receiving the leasehold mortgage or document for recording.
- (f) Public Inspection of Records. The certified copies of leasehold mortgages and other recorded documents and the log maintained by the tribal recording official(s) shall be made available for public inspection and copying pursuant to rules which will be established to ensure the safekeeping of the documents.
- (3) Default. Unless otherwise provided by applicable law and/or, the mortgage documents, and if required in the case of federal direct, insured, or guaranteed loan programs, a borrower/mortgagor shall be considered to be in default when he or she is at least 30 days past due on his or her mortgage payments or is in substantial violation of any covenant under the mortgage for more than 30 days to the lender/mortgagee (i.e. 31st day from the payment due date; or, on a pro rata basis, is, without permission of the lender, more than 30 days late due to partial payments of the monthly payment). An event of default as defined herein or pursuant to the mortgage documents, gives rise to the Tribe's right of first refusal as previously defined in this Code.

(4) Counseling. When a borrower/mortgagor is 30 days past due on his or her mortgage and before any foreclosure action or activity is initiated, the lender/mortgagee shall complete the following:

(a) Make a reasonable effort, which shall be documented, to arrange a face-to-face interview with the borrower/mortgagor, which shall include at least 1 trip and 1 telephone call.

[1] Lender/mortgagee may appoint an agent to perform the services of arranging and conducting the face-to-face interview specified in this action.

(5) Notice of Default, Counseling, 3 Installment Delinquency, and Foreclosure.

(a) Time and Contents of Notice. Before a borrower/mortgagor, becomes, either consecutively or in the aggregate 3 installment payments delinquent on his or her mortgage payments and at least 10 days before any foreclosure action is filed in the tribal court, the lender, insurer, or guarantor, as appropriate, shall advise the borrower/mortgagor in writing, (with a copy, if the Tribe is not the lender, to the Tribe as provided by § 4.7.103(2)(b)), as follows:

[1] Advise the borrower/mortgagor that information regarding the loan and default/delinquency will be given to credit bureaus.

[2] Advise the borrower/mortgagor of homeownership counseling opportunities/programs available through the lender or other entities.

[3] Advise the borrower/mortgagor of the amounts then owing and of other available assistance regarding the mortgage/default.

[4] In addition to the foregoing requirements, if the lender is not the Tribe, the lender/mortgagee shall complete the following additional requirements, with a copy to the Tribe:

[a] Notify the borrower/mortgagor that if the leasehold mortgage remains past due on three installment payments, the lender/mortgagee may ask the applicable governmental agency to accept assignment of the leasehold mortgage if this is an option of the governmental program;

[b] Notify the borrower/mortgagor of the qualifications for forbearance relief from the lender/mortgagor, if any, and that forbearance relief may be available from the government; and

[c] Provide the borrower/mortgagor with names and addresses of governmental officials to whom further communications may be addressed, if any.

- (b) Method of Service of Notice. The method of service of the notices required by this subsection shall comply with § 4.7.116(6) and of this Code.
- (6) Foreclosure Procedures; Summons and Complaint; Preliminary Hearing; Formal Hearing.
- (a) Contents of complaint. If a borrower/mortgagor is past due consecutively or in the aggregate 3 installment payments and the lender/mortgagee has complied with the notices as required in §§ (3)-(5) of this section, the lender/mortgagee may commence a foreclosure proceeding in the tribal court by filing a verified complaint, with notice to the Tribe as provided in § 4.7.103(2)(b), which 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 loan, including each subordinate lienholder (except the Tribe with respect to a claim for a tribal leasehold), as a defendant; and
 - [2] A legal description of the property subject to the mortgage loan as evidenced in the mortgage documents; and
 - [3] A concise statement of the facts concerning the execution of the mortgage loan and in the case of a leasehold mortgage the lease of the land; the facts concerning the recording of the mortgage loan or the leasehold mortgage; the facts concerning the alleged default(s) of the borrower/mortgagor; and such other facts as may be necessary to constitute a cause of action; and
 - [4] True and correct copies of each promissory note, mortgage, deed of trust or other recorded real property security instrument (each a “security instrument”) and any other documents relating to the property and if a leasehold mortgage, a copy of the lease and any assignment of any of these documents; and
 - [5] Any applicable allegations concerning relevant requirements and conditions prescribed in:
 - [a] Federal statutes and regulations; and
 - [b] Tribal codes, ordinances and regulations; and/or
 - [c] Provisions of the promissory note, security instrument and if a leasehold mortgage, the lease.
- (b) Court Action upon Filing of Complaint; Method of Service. Court action upon filing of the complaint and method of service upon all defendants shall be as prescribed by §§ 4.7.118(2) and 4.7.116(6) of this Code. Actual notice shall be

served upon the Tribal Council or its designate and the tribal attorney at every stage of the proceedings.

(c) Preliminary Hearing.

[1] Plea and Answer. If the defendant appears before the court at the preliminary hearing in person or in writing to contest the complaint, the court shall set a hearing date. The defendant's response shall, orally or in writing, state any defenses or factual disputes. If the defendant contests the allegations of the complaint at the preliminary hearing he or she shall serve a written response upon all parties within 7 days after the preliminary hearing. If the defendant does not appear or file a written answer at the preliminary hearing contesting the allegations the court shall deem the allegations as admitted and shall enter an appropriate judgment in favor of plaintiff.

[2] Formal Hearing Date; continuances. Unless an emergency exists, for other good cause, the court shall set a hearing date at the first available regular court day following the preliminary hearing, but shall not, without the agreement of all parties, except for the borrower/mortgagor, grant a continuance for more than 60 days from the date of service of the summons and complaint.

[3] Discovery; Formal Hearing; Evidence; Standard of Proof; Trial to Court. The court shall apply the procedures set forth in §§ 4.7.118(3)(d) and (4)(a), (b), and (c) to foreclosure actions.

[a] Cure of Default. Prior to the entry of a judgment of foreclosure, any borrower/mortgagor, the Tribe, or a subordinate lienholder, may cure the default(s) under the mortgage by making a full payment of the delinquency to the lender/mortgagee and all reasonable legal and court costs incurred in foreclosing on the property. 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. Unless otherwise provided by applicable law and subject to the Tribe's right of first refusal, there shall be no right of redemption in any leasehold mortgage foreclosure proceeding.

[4] Judgment; Scope of Relief. If the alleged default has not been cured at the time of formal hearing and the tribal court finds for the lender/mortgagee, the tribal court shall enter judgment as follows:

[a] Foreclosing the interest of the borrower/mortgagor and each other defendant, including subordinate lienholders, in the mortgaged property; and

- [b] Subject to the Tribe's right of first refusal, granting title to the lender/mortgagee or the lender's designated assignee. In the case of a leasehold mortgage, the lease and the leasehold estate will be assigned to the lender /mortgagee or the lender's designated assignee, subject to the following provisions:
- (i) The lender shall give the Tribe the right of first refusal on any acceptable offer to purchase the lease and the lessee's leasehold interest in the property described in the lease, which is subsequently obtained by the lender or lender's designated assignee.
 - (ii) The lender or lender's designated assignee may only transfer, sell or assign the lease and lessee's leasehold interest in the property described in the lease to a tribal member, the Tribe, or the tribal housing authority.
 - (iii) The mortgagee shall have the right to convey the leasehold interest to the Secretary of a governmental agency without providing the right of first refusal to the Tribe only if required to do so as provided by federal law.
- [c] Ordering repossession of the premises by the eviction of all occupants, if the occupants have not surrendered the premises, and such other remedies as are appropriate according to law and equity, which may include, without limitation, the following:
- (i) Back payments, unpaid utilities, and any charges due the Tribe, the tribal housing authority, other public housing authority; and
 - (ii) Any and all amounts secured by the Leasehold Mortgage that are due the lender or federal agency; and
 - (iii) Damages to the premises caused by the defendants, other than ordinary wear and tear.
 - (iv) The tribal court shall have the authority, except as against the Tribe, to award to the prevailing party its costs and reasonable attorney's fees.
- [d] 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, except as such merger may arise upon satisfaction of the Leasehold Mortgage.

- [e] Enforcement. Upon issuance of an Order of Repossession and/or Eviction, tribal law enforcement officers shall help the parties Entitled to repossession by evicting the occupants from the unlawfully occupied premises. In all cases involving an outside lender, who is not the Tribe or a tribal housing authority, or a federal agency which has loaned, insured or guaranteed a loan, the order of repossession and/or eviction shall be enforced no later than 45 days after a preliminary or formal hearing in which the court finds against the borrower/mortgagor.

- [f] Appeals. Appeals under this section shall be handled in accordance with the general tribal appellate procedures.

4.7.124 Sovereign Immunity of Tribe.

Neither the filing of a petition for intervention by the Tribe, nor the granting of a petition of intervention by the court shall operate as a waiver of the sovereign immunity of the Tribe, except as may be expressly authorized by the Tribe.

CERTIFICATION

The foregoing Hannahville Indian Community Eviction, Issuance and Foreclosure of Mortgages Code, including procedures for the foreclosure of leasehold mortgages was enacted by the Tribal Council of the Hannahville Indian Community in regular session on the 2nd day of July 2001, by vote of 9 for, 0 opposed, and 0 abstaining, at a duly called meeting at which a quorum was present.

Kenneth Meshigaud, Chairperson
Elaine Meshigaud, Vice-Chairperson

Donna Boda, Secretary