

**RESOLUTION OF THE GOVERNING BODY OF  
THE THREE AFFILIATED TRIBES OF THE  
FORT BERTHOLD RESERVATION**

**WHEREAS,** This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act; and

**WHEREAS,** The Constitution of the Three Affiliated Tribes generally authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and

**WHEREAS,** Article VI, Section 3 of the Constitution of the Three Affiliated Tribes specifically grants to the Tribal Business Council all necessary sovereign legislative authority for the purpose of exercising the jurisdiction granted by the people of the Three Affiliated Tribes in Article 1 of the Constitution; and

**WHEREAS,** It is the considered judgment of the Tribal Business Council that the statutory provisions governing the leasing and renting of real property, currently set forth in Chapter 2, Sections 3A and 3B of the Code of Laws of the Three Affiliated Tribes, are outdated and in need of substantial revision and supplementation; and

**WHEREAS,** The Tribal Business Council has reviewed and discussed the provisions set forth in the attached Landlord-Tenant Code and has determined that such proposed Code constitutes an appropriate and adequate amendment to and updating of the provisions currently included in the Tribes' Code of Laws;

**NOW, THEREFORE, BE IT RESOLVED,** That the Tribal Business Council of the Three Affiliated Tribes hereby formally approves and adopts the legislative provisions entitled "Landlord-Tenant Code", a true and correct copy of which Code is attached hereto.

**BE IT FURTHER RESOLVED,** That the attached Landlord-Tenant Code shall become effective immediately and shall be designated as Chapter 33 of the Code of Laws of the Three Affiliated Tribes.

**BE IT FURTHER RESOLVED,** That the attached Landlord-Tenant Code shall supersede the provisions currently included in Chapter 2, Sections 3A and 3B of the Code of Laws of the Three Affiliated Tribes and said Sections 3A and 3B of

**CHAPTER 33  
LANDLORD-TENANT CODE  
THREE AFFILIATED TRIBES**

**PREAMBLE AND FINDINGS**

1. The Three Affiliated Tribes of the Fort Berthold Reservation of North Dakota is a self governing Indian Nation, organized under the laws of the United States, and deriving its governing authority from its inherent sovereignty, applicable treaties with the United States and pertinent statutes and laws of the United States. The Three Affiliated Tribes have a government to government relationship with the Government of the United States through applicable tribal and federal laws, agreements and other pertinent arrangements.
2. The Tribe has a legitimate governmental interest in regulating the occupation of all residential housing and accommodations within its jurisdiction, and such housing is a protectable asset of the Three Affiliated Tribes.
3. It is necessary to regulate disputes between persons and entities over housing, dwellings and accommodations in order to protect the public peace, welfare and safety and to assure order and justice for all those who reside on the reservation.
4. The activities of all persons within the jurisdiction of the Three Affiliated Tribes must be regulated because of the tribal interest in dwelling accommodations and for the necessity to preserve the peace and prevent disputes which may cause community disruption, turmoil or conflict.
5. It is in the interests of justice and good government to regulate in an orderly, fair and speedy manner, the rights, obligations and remedies of landlords and tenants within the jurisdiction of the Three Affiliated Tribes.

**CHAPTER ONE      GENERAL PROVISIONS**

**33-1-1 Title** This Chapter shall be known and cited as the Three Affiliated Tribes Landlord-Tenant code.

**33-1-2 Jurisdiction**

(A) Jurisdiction under this Chapter and Chapter 34 (Foreclosure) of the Code of Laws of the Three Affiliated Tribes is extended over all buildings, lands or residences which lie within:

- (1) The jurisdiction of the Three Affiliated Tribes of the Fort Berthold Reservation shall extend to all persons and lands, including lands held in fee, within the exterior boundaries of the Fort Berthold Reservation as defined by the Act of March 3, 1891, (26 Stat. 1032), and to all lands added to the Fort Berthold Reservation by Executive Order of June 17, 1892; and to such other persons and lands as may hereafter come within the jurisdiction of the Three Affiliated Tribes, except as otherwise provided by law. (Article I of the Constitution of the Three Affiliated Tribes).

(2) Lands owned by, held in trust for, leased or used by the Tribe, 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 under this Chapter and Chapter 34 (Foreclosure) of the Code of Laws of the Three Affiliated Tribes 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 Three Affiliated Tribes, whether they are Indian or non-Indian, and whether or not they have a place of business within the Fort Berthold Reservation. Any act within the Fort Berthold Reservation dealing with the subject matter of this code shall be subject to the jurisdiction of the Three Affiliated Tribes.

(C) Jurisdiction under this Chapter and Chapter 34 (Foreclosure) of the Code of Laws of the Three Affiliated Tribes is extended over the following:

1. All buildings which may lie upon 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; and
2. All persons or entities within the jurisdiction of the Tribe who lease, mortgage, or otherwise secure an interest in a building.

(D) Jurisdiction over all matters arising within the jurisdiction of the Tribe with respect to the subjects of this code and Chapter 34 (Foreclosure) of the Code of Laws of the Three Affiliated Tribes, and jurisdiction with respect to any person or entity acting or causing actions which are within this code and Chapter 34 (Foreclosure) of the Code of Laws of the Three Affiliated Tribes shall be exercised by the Fort Berthold District Court.

### **33-1-3 Applicability**

The following title shall hereinafter be referred to as the "Landlord-Tenant 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.

### **33-1-4 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.

### **33-1-5 Relation to Other Laws**

- (A) Applicable Law. Unless affected or displaced by this Code, principles of law and equity in the common law of the Tribe and tribal customs and traditions are applicable, and the general principles of law of any other Tribe or any other state may be used as a guide to supplement and interpret this Code.
  
- (B) Other Applicable Laws. Additional tribal and federal laws may apply with regard to tribal housing such as the ordinance establishing the Indian Housing Authority and governmental housing laws and regulations.
  
- (C) Conflicts With Other Laws
  - (1) **Tribal Laws:** To the extent that this Code may conflict with tribal laws or ordinances which have been enacted to comply with statutes or 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, 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 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.

### **33-1-6 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 any person eighteen (18) years of age or older.
- (C) *Borrower/Mortgagor* is the Tribe, the Indian 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 or a Leasehold Mortgage as defined in this Code.
- (D) *Building* is a structure, and any appurtenances or additions thereto, designed for habitation, shelter, storage and the like.
- (E) *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.
- (F) *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.
- (G) *Guest* is any person, other than the tenant, in or around a dwelling unit with the permission and consent of the tenant.
- (H) *He/His*: the use of he/his means he or she, his or her, and the singular includes the plural.
- (I) *Housing Authority* is the Fort Berthold Housing Authority, established by Tribal Ordinance of the Three Affiliated Tribes for the purpose of constructing and maintaining dwellings for public use within the territorial jurisdiction of the Tribe.
- (J) *Indian* is any person who is of Indian descent or who is recognized as being an Indian or Alaska Native by any Tribe, or by the government of the United States.
- (K) *Indian Country, the territorial jurisdiction, or the jurisdiction* of the Tribe shall include all lands including lands held in fee, within the exterior boundaries of the Fort Berthold Reservation, or otherwise controlled by the Tribe, as well as any and all areas which may constitute the Indian country of the Tribe under applicable provisions of its law or the laws of the United States.
- (L) *Landlord* can be the Tribe, Indian 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.
- (M) *Lease* is an agreement, written or oral, as well as valid rules and regulations, regarding the terms

and conditions of the use and occupancy of real property, dwelling unit, building, or premises, including a lease-to-purchase agreement.

- (N) *Leasehold Mortgage* is the mortgage of a lease of property given to secure a loan, and may be created under the auspices of any federal agency homebuyer program, the Mutual Help Home Ownership administered by the Indian Housing Authority, or any other agreement entered between a Borrower/Mortgagor and a Lender/Mortgagee.
- (O) *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 under the home purchase program of any federal agency; and
  - (2) To assign where appropriate the Borrower(s)/Mortgagor(s) interest to a designated assignee.
- (P) *Lender Designated Assignee*. Any lender as defined in the Code may assign or transfer its interest in a Mortgage or Lease and/or Leasehold Mortgage to a Designated Assignee. If the Mortgage or Lease and/or Leasehold Mortgage falls under a federal agency homebuyer program or federal agency loan guarantee program, the Lender must seek written approval from the Tribe of a proposed Designated Assignee any time prior to such assignment, transfer or assumption, except where the U.S. government and federal agencies guaranteeing or insuring the Mortgage or Leasehold Mortgage acts as a Lender Designated Assignee.
- (Q) *Lender/Mortgagee* is any private lending institution established to primarily loan funds and not to invest in or purchase properties, the Tribe, an Indian Housing Authority, or a U.S. government agency which loans money, guarantees or insures loans to a Borrower for construction, acquisition, or rehabilitation of a home. It is also any lender designated assignee(s) or successor(s) of such Lender/Mortgagee.
- (R) *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.
- (S) *Lessee* is a tenant of a dwelling unit, user and/or occupier of real property, or the homebuyer under any federal mortgage program including the Mutual Help program. The *lessee* may, for purposes of federal agency home mortgage programs, be the Indian Housing Authority.
- (T) *Mortgage* is a lien as is commonly given to secure advances on, or the unpaid purchase price of a building or 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 the maintenance or allowance on real property of a condition which one has the ability to control and which unreasonably threatens the health or safety of the public or neighboring land

users or unreasonably and substantially interferes with the ability of neighboring property users to enjoy the reasonable use and occupancy of their property.

- (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 a dwelling unit under a mortgage, long-term lease, or any other security arrangement.
- (Y) *Person* includes the Tribe, Indian 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* is all periodic payments to be made to a landlord or lessor under a lease.
- (BB) *Rental agreement* - see Lease.
- (CC) *Reservation* is the Fort Berthold Reservation in the State of North Dakota.
- (DD) *Shall*, for the purposes of this Code, will be defined as, mandatory or must.
- (EE) *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.
- (FF) *Tenant* is the lessee(s), sublessee(s), or person(s) entitled under a lease or Mutual Help Occupancy Agreement to occupy a dwelling unit to the exclusion of others.
- (GG) *Fort Berthold District Court* is the Court as established by the laws of the Three Affiliated Tribes to exercise the powers and functions of a court of law.
- (HH) *Tribe* is the Three Affiliated Tribes of the Fort Berthold Reservation in the State of North Dakota.



## **CHAPTER 2 LANDLORD-TENANT RESPONSIBILITIES AND REMEDIES**

### **33-2-1 Rental Agreements**

- (A) **Effect of Rental Agreements.** The provisions of this Code, as well as the applicable laws identified in Section 33-1-5, 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 rights or remedies under this Code or any other applicable laws as identified in Section 33-1-5; (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 him without resort to court order; or (4) to pay a late charge prior to the expiration of the grace period set forth in Section 33-3-1(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.

### **33-2-2 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 him of what he shall or shall not do to comply; and (5) the tenant has notice of the rules and regulations at the time he 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 rental agreement is adopted after the tenant enters into the rental agreement, such rule or regulation is not valid unless the tenant consents to such rule or regulation in writing.

### **33-2-3 Landlord Responsibilities**

Except as otherwise provided in a rental agreement or a Mutual Help Occupancy Agreement, each landlord subject to the provisions of this Code shall:

- (A) Maintain the dwelling unit in a decent, safe, and sanitary condition.
- (B) Comply with applicable building and housing codes.
- (C) 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.
- (D) Keep common areas clean, safe, and secure. The Fort Berthold Housing Authority is exempt from this requirement in reference to their rental units.
- (E) Ensure tenant access to the dwelling unit.
- (F) 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 generated by an installation within the exclusive control of the tenant.
- (G) Provide and maintain proper and appropriate receptacles and facilities for the disposal of ashes, garbage, rubbish, and other waste.
- (H) 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.
- (I) Guarantee the right of quiet enjoyment of the dwelling unit to the tenant and insure that the conduct of other tenants, their guests, and other persons on the premises does not cause a nuisance, endangerment of public health and safety, breach of peace, or interference with the quiet enjoyment of the tenant.
- (J) 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 Section 33-2-4(k); (2) making repeated demands for entry otherwise lawful under Section 33-2-4(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.
- (K) 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.

**33-2-4 Tenant Responsibilities**

Except as otherwise 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 of any defects in the premises hazardous to life, health, or safety.
- (C) Keep the dwelling unit reasonably clean and dispose of all ashes, garbage, rubbish, junk, and abandoned vehicles in a proper, sanitary, and safe manner.
- (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, and require his 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 as agreed, and 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 §1-2-2 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.

**33-2-5 Tenant Remedies**

- (A) Conditions. Where a landlord has not complied with his responsibilities regarding dwelling unit conditions, as set forth in Section 33-2-3(a)-(k) of this Code, and where the tenant has given notice to the landlord and the landlord has failed, within a reasonable period of time, to cure his noncompliance, the tenant may:
  - (1) Withhold rent in cases where the landlord's noncompliance renders the dwelling unit uninhabitable; or

- (2) Make necessary repairs and deduct the cost of such repairs from his rent; or
  - (3) Institute an action in the Tribal Court seeking:
    - (i) an order compelling the landlord to comply with his responsibilities as set forth in Section 33-2-3(a)-(k); (ii) an award of money damages, which may include a retroactive abatement of rent; and/or (iii) such other relief in law or equity as the court may deem proper, provided that no tenant may institute such an action if a valid notice to quit based upon nonpayment of rent has been served on him prior to his institution of the action.
  - (4) Terminate the rental agreement.
- (B) Harassment and Quiet Enjoyment. Where a landlord violates his responsibilities as set forth in Section 33-2-3(i) and Section 33-2-3(j) of this Code, the tenant may:
- (1) Recover damages not less than an amount equal to one month's rent and reasonable attorney's fees.
  - (2) Institute an action in the Tribal Court seeking an order compelling the landlord to comply with his responsibilities as set forth in section 33-2-3(a)-(k), and such other relief in law or equity as the court may deem proper, provided that no tenant may institute such an action if a valid notice to quit based upon nonpayment of rent has been served on him prior to his institution of the action.
  - (3) Terminate the rental agreement.
- (C) Identification of Landlord. Where a landlord fails to identify himself to the tenant in accordance with Section 33-2-3(k) of this Code, the tenant is under no obligation to pay rent and may terminate any existing rental agreement.

### **33-2-6 Landlord Remedies**

Where a tenant has not complied with this Code or the agreement of the parties, the landlord has the right to:

- (A) Give reasonable notice to the tenant: to comply with his obligations, pay any monies due and owing under the agreement of the parties, or landlord has right to terminate the agreement under which the tenant occupies the premises, and demand that he and those with him leave the premises.
- (B) Require repairs or maintenance which are the responsibility of the tenant and compliance with reasonable rules and regulations for occupancy.
- (C) Seek a Court order or judgment for the payment of monies or costs, for compliance with the agreements and obligations of tenants, for termination of an agreement, payment of damages, eviction of tenants, or any other relief to which he may be entitled by law or the agreement of the parties.

### **33-2-7 Abandoned Dwelling Units**

A landlord may regain possession of a dwelling unit, in accordance with this section, 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 his agent of substantially all of his possessions and personal effects from the premises and either: (1) nonpayment of rent for two or more months, (2) terminated water or electrical utility service for more than one month, or (3) an express statement by the tenant that he does not intend to occupy the premises after a specified date.

- (A) The landlord may the send notice to the tenant at his last-known address both by regular mail, postage prepaid, and by certified mail, return receipt requested, stating that: (1) he has reason to believe that the occupant has abandoned the dwelling unit, (2) he intends to reenter and take possession of the dwelling unit unless the occupant contacts him within ten (10) days of receipt of the notice, (3) if the tenant does not contact him, he intends to remove any possessions and personal effects remaining in the premises and to rent the premises, and (4) if the tenant does not reclaim such possessions and personal effects within sixty (60) days after the notice, they will be disposed of in accordance with section 33-4-15 of this Code. The notice shall be in clear and simple language and shall include a telephone number and a mailing address at which the landlord can be contacted. If the notice is returned as undeliverable, or if the tenant fails to contact the landlord within ten (10) days of the receipt of the notice, the landlord may reenter and take possession of the dwelling unit, at which time any rental agreement in effect shall terminate.
- (B) 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.

**CHAPTER 3 GROUNDS FOR EVICTION/NOTICE TO QUIT/  
PRE-EVICTION OPTIONS**

**33-3-1 Grounds for Eviction**

A tenant 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 ten (10) calendar days of the agreement date of payment, or ten (10) calendar days following the first day of the month in a month-to-month tenancy.
- (B) Any arrearage in rent, 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, property damage, or destruction, injuries to the property, person, or peace of other tenants, or injuries or damage to common areas and property.
- (D) Serious or repeated violations of the rental agreement, any reasonable rules or regulations adopted in accordance with section 33-2-2, this Code, or any applicable building or housing codes.
- (E) Occupation of any premises without permission or agreement, following any reasonable demand by a person in authority over the premises to leave.
- (F) Under other terms in the rental agreement which do not conflict with the provisions of this Code.

**33-3-2 Notice to Quit Requirements**

- (A) When Notice to Quit 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 section 33-3-1, the landlord shall give notice to the adult tenants to quit possession of such dwelling unit according to the provisions of this chapter.
- (B) Purpose of Notice to Quit. The purpose of the notice to quit 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 to quit shall be addressed to the adult tenants of the dwelling unit and shall state the legally cognizable reasons(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 substantially in the following form: "I (or we) hereby give you notice that you are to quit possession or occupancy of the dwelling unit now occupied by you at (here insert the address or other reasonable description of the location of

the dwelling unit), on or before the (here insert the date) for the following reason (here insert the legally cognizable reason or reasons for the notice to quit possession using the statutory language or words of similar import). Signed, (here insert the signature, name and address of the landlord, as well as the date and place of signing)."

- (E) Time Requirements for Notice. The notice must be delivered within the following periods of time:
- (1) No less than fifteen (15) calendar days prior to the date to quit specified in the notice for any failure to pay rent or other payments required by the agreement.
  - (2) No less than five (5) calendar days prior to the date to quit specified in the notice for 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 thirty (30) calendar days in all other situations.

### **33-3-3 Serving the Notice to Quit**

Any notice to quit 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) Delivery will be effective when it is:
  - (1) Personally delivered to a tenant with a copy delivered by mail, or
  - (2) Personally delivered to an adult living in the premises with a copy delivered by mail, or
  - (3) Personally delivered to an adult agent or employee of the tenant with a copy delivered by mail.
- (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 landlord or 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 posting a copy of the notice in some public place near the premises, including a tribal office, public store, or other commonly-frequented place and by sending a copy first class mail, postage prepaid, addressed to the tenant at the premises.
- (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.

### **33-3-4 Pre-Eviction Options**

- (A) Negotiated Settlement. After a Notice to Quit is served upon a tenant, the landlord and tenant may engage in discussions to avoid a proceeding to evict and to settle the issues between the parties. The agreement to enter into discussions will not affect the rights of the parties unless the parties reach an agreement to waive any of their rights.
- (B) Stay of Proceedings. Where the parties mutually agree in good faith to proceed with such discussions, and Judicial Eviction procedures have been initiated, the Court will stay such proceedings until it is notified by one or both parties that a hearing is required or that a settlement has been reached.
- (C) Settlement Options. In reaching an agreement, the parties may consider, but are not limited to the following options:
  - (1) The parties may employ the use of attorneys;
  - (2) The parties may employ the use of a mediator or conciliator;
  - (3) The parties may agree to arbitrate the issues in binding arbitration;
  - (4) The parties may agree to options set forth in Section 33-4-8(A)(4)(8);
  - (5) The parties may agree to any other barter for services and goods, or to any other means of securing a fair exchange of value for the use of the dwelling;
  - (6) The parties may agree to dismiss the matter in exchange for any agreement reached;
  - (7) The parties may agree to stipulate to a judgment to be entered by the Court.



## **CHAPTER 4 JUDICIAL EVICTION PROCEDURES**

### **33-4-1 Summons and Complaint**

If, after the date set forth in the notice to quit for the tenant to quit possession of the dwelling unit, the tenant has not quit possession, the landlord may file a complaint in the District Court for eviction and such other relief as the Court may deem just and proper. The complaint shall state:

- (A) The names of the adult 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 to quit 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 an Indian Housing Authority, a statement that the Indian Housing Authority has complied with all required regulatory processes prior to filing the eviction action.

### **33-4-2 Action Upon Filing Complaint**

When a complaint is filed in the District Court, it shall be immediately presented to a Tribal Court Judge. This shall be on the date of filing, or, if no judge is present, on the first regular Court day after filing or when a judge may first be found. The judge shall review the complaint and shall, if it appears to be in compliance with Section 33-4-1 and served as set forth in Section 33-3-3, issue an order of the Court requiring the defendant named in the complaint to appear before the Court on a certain date to contest the complaint. The date for appearance for answering the complaint shall be no less than fifteen (15) calendar days after the date of the order in matters involving serious nuisance or thirty (30) calendar days in all other cases.

### **33-4-3 Commencement of Proceedings**

- (A) If the tenant appears before the Court in person or in writing to test the complaint, the Court shall set a hearing date. Any written response shall state any defenses or factual disputes and where any defendant appears in person, a written response shall be served upon the plaintiff within five (5) calendar days of any hearing, excluding weekends and holidays.
- (B) The Court shall set a hearing date which is no more than fifteen (15) calendar days following the date for appearance, 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) A defendant may, for good cause shown, and 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 Section 33-3-1(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.
- (D) The Court may in its discretion 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.

#### **33-4-4 Defenses**

- (A) The Court shall grant the remedies allowed in this Code, unless it appears by the evidence that:
  - (1) 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.
  - (2) The landlord has failed or refused to make repairs which are his 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.
- (B) There are monies due and owing to the tenant because he 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 fails or refuses to pay the reasonable rental value of the premises.
- (C) 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.
- (D) 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.
- (E) 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.
- (F) Any other material or relevant fact the tenant might present that may explain why his eviction is unjust and unfair.

### **33-4-5 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, and it shall be completed within five (5) calendar days of the date of hearing. Requests for discovery shall be made no later than three (3) calendar days following the setting of a hearing date. The Court may enter reasonable orders requiring discovery or protecting the rights of the parties upon reasonable notice.

### **33-4-6 Evidence**

Evidence in proceedings under this Code shall be according to the following provisions:

- (A) All evidence may be admitted which can be shown to be relevant and material to the case.
- (B) Fairness will dictate the decision of the judge on challenges to admissibility of evidence.
- (C) The Court may avail itself of any recognized and authoritative materials, books or documents as guidance in reaching a decision on the admissibility of evidence.
- (D) Evidence of customs and traditions of the Tribes shall be freely admitted.
- (E) Hearsay objections will not be permitted to procedurally deny the Court access to reasonable reliable information which would aid in reaching a just decision. Where a hearsay objection is made, the Court will make an independent determination of the competency of the evidence which is sought to be offered. Objections may be overruled where facts indicate that the evidence is relevant and material and reasonably competent under the circumstances. Hearsay evidence may be freely admitted where all parties to the out of Court statement are present before the Court and qualified to testify as to the statement made.
- (F) At the discretion of the Judge, evidence may be excluded if its value as proof is outweighed by the risk that its admission will create a substantial risk of undue prejudice; confuse the issues; or, mislead the jury, or unfairly surprise the opposing party.
- (G) Upon request of a party, the Court may take judicial notice, of specific facts which are so certain as not to be subject to reasonable dispute.

### **33-4-7 Burden of Proof**

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

**33-4-8 Judgment**

- (A) Within five (5) calendar days of the date of the hearing, the Court shall grant and enter 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;
  - (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 for the tenant;
  - (5) Order rent payments out of per capita payments 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, where allowed by law or agreement, costs and expenses of litigation;
  - (10) Order the parties into negotiations as provided in Section 1-3-4 of this Code; or
  - (11) Grant any relief provided in this code or allowed in law or equity.
- (B) If a tenant fails to appear in person or in writing on or before the date of appearance, the Court shall enter judgment on behalf of the plaintiff following a hearing to determine whether relief should be granted and the kind of relief that should be granted.

**33-4-9 Form of Judgment**

The judgment shall state the relief granted by the Court to any party, but need not state findings of fact or conclusions of law in support of the judgment. The judgment may state brief reasons for it. If a trial is held, the judge should, whenever possible, render his decision immediately after both parties have rested their case and award costs and restitution as appropriate.

**33-4-10 Execution of Judgment**

Any judgment may be immediately executed, and the judgments and orders of the Court shall be enforced by a duly-authorized law enforcement officer or officer of the Court, appointed by the

Court for such a purpose. Any law enforcement officer shall, upon receipt of an order of the Court, execute the judgment or order made by it with in 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. Any law enforcement officer to whom a judgment or order is given for enforcement who fails, in the absence of good faith, or refuses to execute it shall be subject to the payment of reasonable damages, costs, and expenses to a party for failure to execute the judgment and/or suspension from employment. This Section shall also apply to any judgment on behalf of a tenant obtained under the general tribal civil procedure code and/or tribal small claims procedure code.

### **33-4-11 Stay of Execution**

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 if within five (5) days of the judgment being rendered, the following is established:

- (A) Good and reasonable grounds affecting the well-being of the party are stated; or
- (B) There would be no substantial prejudice or injury to the prevailing party during the period of the stay; or
- (C) Execution of the judgment could result in extreme hardship for the tenant(s); or
- (D) A bond is posted or monies are paid to the Court, to satisfy the judgement or payment for the reasonable use and occupancy of the premises during the period of time following the judgment. No stay may exceed three months in the aggregate. The clerk shall distribute such arrearages to the landlord in accordance to any order of the court.

### **33-4-12 Appeals**

Appeals under this Chapter shall be made in accordance with the Rules of Appellate Procedure as set forth by the Appellate Court of the Three Affiliated Tribes. All orders from the Court will remain in effect during the pendency of an appeal under this Code unless otherwise ordered by the Court.

### **33-4-13 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.

### **33-4-14 Notice to Leave the Premises**

Any notice to leave a premises, shall be by written order of the court, and shall be delivered to the tenant in the following manner:

- (A) Delivery shall be made by:
  - (1) A law enforcement officer of the Tribe or an agency of the United States Government,

or

- (2) Any person authorized by the Tribal Court.
- (B) Delivery will be effective when it is:
- (1) Personally delivered to a tenant with a copy delivered by mail, or
  - (2) Personally delivered to an adult living in the premises with a copy delivered by mail, or
  - (3) Personally delivered to an adult agent or employee of the tenant with a copy delivered by mail.
- (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 landlord or 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 posting a copy of the notice in some public place near the premises, including a tribal office, public store, or other commonly-frequented place and by sending a copy first class mail, postage prepaid, addressed to the tenant at the premises.

**33-4-15 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 does not vacate the premises voluntarily by the effective date, he 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 Indian 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 thirty (30) days, the owner is authorized to sell the property in order to recover these costs. 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 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 in a manner

satisfactory to the owner.

### **33-4-16 No Self-Help Eviction**

Except by mutual consent of the parties, no landlord may compel a tenant to vacate any premises in a forceful fashion or way which causes a breach of the peace without giving a notice to quit, and obtaining a Court order as provided in this Code.

### **33-4-17 Security Deposits**

- (A) Security Deposit Limits. A landlord may demand a security deposit of an amount equal to one-hundred dollars (\$100) or one month's periodic rent, whichever is greater, which may be in addition to the current month's rent. Additional security deposits may be allowed for special circumstances such as animals or pets or tenant history or prior damages.
- (B) Payment of Security Deposit at Termination of Tenancy. The person who is the landlord at the time a tenancy is terminated shall pay to the tenant or former tenant the amount of the security deposit that was deposited by the tenant with the person who was landlord at the time such security deposit, was deposited less the value of any damages which any person, who was a landlord of such premises at any time during the tenancy of such tenant, has suffered as a result such tenant's failure to comply with such tenant's obligations. 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 security deposit which may be due.

Chapter 2 of the Code of Laws are hereby immediately repealed.

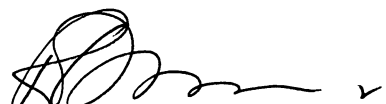
C E R T I F I C A T I O N

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 7 members of whom 5 constitute a quorum, 6 were present at a Special Meeting thereof duly called, noticed, convened, and held on the 24<sup>th</sup> day of May, 1996; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 6 members, 0 members opposed, 0 members abstained, 0 not voting, and that said Resolution has not been rescinded or amended in any way.

Dated this 24<sup>th</sup> day of May, 1996.

Daylon Spotted Bear  
Secretary, Tribal Business Council

ATTEST:

  
\_\_\_\_\_  
Chairman, Tribal Business Council