

# **TITLE 6**

## **WILLS, TRUSTS, AND ESTATES**

## **TITLE 6 WILLS, TRUSTS, AND ESTATES**

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# **CHAPTER 6.1**

## **WILLS: EXECUTION AND CONSTRUCTION**

## CHAPTER 6.1 WILLS: EXECUTION AND CONSTRUCTION

### 6.1.10 Who May Make a Will

Any person of sound mind, eighteen years of age or older or an emancipated minor, may execute a will.

### 6.1.11 Making and Execution of Wills; Wills Executed Outside Tribal Lands

For a will or codicil to be valid to pass any property, it must be in writing, subscribed by the testator and attested by two witnesses, each of them subscribing in the testator's presence. However, any will executed according to the laws of the state, Native American Tribes, or country where it was executed may be admitted to Probate in the Tribal Court and shall be effective to pass any property of the testator situated on the tribal lands.

### 6.1.12 Implied and Express Revocation of Will

(1) If, after the making of a will, the testator marries or is divorced or his marriage is annulled, and no provision has been made in his will for such contingency, such marriage, divorce or annulment shall revoke his will.

(2) A will or codicil shall not be revoked in any other manner except by burning, canceling, tearing or obliterating it by the testator or by some person in his presence by his direction, or by a later executed will or codicil.

### 6.1.13 Devise or Bequest to Subscribing Witness

Every devise or bequest given in any will or codicil to a subscribing witness, or to the husband or wife of such subscribing witness, shall be void unless such devisee or legatee is an heir to the testator. The competency of such witness shall not be affected by any such devise or bequest. The interest of any witness in any community, church, society, association or corporation, beneficially interested in any devise or bequest, shall not affect such devise or bequest or the competency of such witness.

### 6.1.14 Reference to Document Creating Trust

The reference in a will or codicil to a trust document by which a devise or bequest is made to such trust shall not thereby cause such trust or such part of the assets thereof distributed to it by such devise or bequest to be subject to the jurisdiction of the Probate Court in which such will or codicil is admitted to Probate.

### 6.1.15 Uniform Testamentary Additions to Trusts Act

(1) A will may validly devise or bequeath property to the trustee or trustees of a trust established or to be established:

(a) during the testator's lifetime by the testator, by the testator and some other person or persons, or by some other person or persons including a funded or

non-funded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts; or

(b) at the testator's death by the testator's devise to the trustee or trustees if the trust is identified in the testator's will or codicil and its terms are set forth in a written instrument, other than a will or codicil, executed before, concurrently with, or after the execution of the testator's will or in another individual's will if that other individual has predeceased the testator, regardless of the existence, size, or character of the corpus of the trust. The devise or bequest shall not be invalid because the trust is amendable or revocable, or because the trust was amended after the execution of the will or after the testator's death.

(2) Unless the testator's will provides otherwise, property devised or bequeathed to a trust described in subsection a. is not held under a testamentary trust of the testator but it becomes a part of the trust to which it is devised or bequeathed, and shall be administered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust, including any amendments thereto made before or after the testator's death.

(3) Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death shall cause the devise or bequest to lapse.

(4) This Section may be cited as the "Uniform Testamentary Additions to Trusts Act".

#### 6.1.16 Effect of Devise of All Real Property

Every devise purporting to convey all the real property of the testator shall be construed to convey all the real property belonging the testator at the time of his death, unless it clearly appears by his will that he intended otherwise.

#### 6.1.17 Reference to Internal Revenue Code

A devise or bequest, outright or in trust, given in any will or codicil or republication thereof in any codicil shall not be deemed invalid by reason of any reference therein to the Federal Internal Revenue Code or any treasury regulation issued thereunder.

#### 6.1.18 Gift to Spouse; Reference to Federal Provisions re Estate Tax and Marital Deduction

When any will, offered for Probate in Tribal Court makes provision for a gift, whether outright or in trust, to or for the benefit of the spouse of the testator or testatrix, such gift shall not be held to be invalid on any of the following grounds:

(1) That the amount of any such gift is required to be computed or ascertained by reference to the federal statutes, or any treasury regulation issued thereunder, authorizing the allowance of a marital deduction in the computation of the federal estate tax or by reference to determinations or settlements of any kind

whatsoever, whether by agreement, litigation or otherwise, in the proceedings for the assessment of said federal estate tax in the estate of such testator or testatrix;

(2) That any such gift is required to be satisfied only by property which qualifies under said federal statutes, or such regulation, for such marital deduction; or

(3) That any property allotted to the satisfaction of any such gift is required to be allotted at the values determined for such property, whether by agreement, litigation or otherwise, in such proceedings for the assessment of said federal estate tax or at values to be determined in any other reasonable manner.

6.1.19 Encumbrances on Property of Decedent or on Proceeds of Insurance Policy on Life of Decedent Not Chargeable Against Assets of Decedent's Estate

(1) Where any property, subject to any lien, security interest or other charge at the time of the decedent's death, is specifically disposed of by will, passes to a distributee, or passes to a joint tenant under a right of survivorship, or where the proceeds of any policy of insurance on the life of the decedent are payable to a named beneficiary and such policy is subject to any lien, security interest or other charge, the fiduciary is not responsible for the satisfaction of such encumbrance out of the assets of the decedent's estate, unless, in the case of a will, the testator has expressly or by necessary implication indicated otherwise. A general provision in the will for the payment of debts is not such an indication.

(2) Any such encumbrance is chargeable against the property of the decedent or the proceeds of a policy of insurance on the life of the decedent, subject thereto. Nothing in this Section imposes upon a testamentary beneficiary, distributee, joint tenant or named insurance beneficiary any personal liability for the payment of the debt secured by such encumbrance.

(3) Where any lien, security interest or other charge encumbers:

(a) Property passing to two or more persons, the interest of each such person shall, only as between such persons, bear its proportionate share of the total encumbrance;

(b) Two or more properties, each such property shall, only as between the recipients thereof, bear its proportionate share of the total encumbrance.

6.1.20 Bequest of perishable property for life or years

When a testator, by his will, bequeaths the use, for life or for a term of years, of any livestock, provisions, wearing apparel or other personal property which will necessarily be consumed by using, such bequest shall give to the legatee an absolute estate in the property so bequeathed.

# **CHAPTER 6.2**

## **PROBATE**

## CHAPTER 6.2 PROBATE

### GENERAL

#### 6.2.10 Title

This code is known as the Burns Paiute Tribal Probate Code.

#### 6.2.11 Definitions

As used in this Chapter, except where the context otherwise requires:

- (1) "Administrator" means the person appointed by the Court to administer the estate of a decedent according to this Code and may include either an administrator nominated by the decedent's Will, appointed at the request of an interested party, or the public administrator.
- (2) "Decedent" means a person who has died leaving property that is subject to administration.
- (3) "Heir" means any person, including the surviving spouse, who is entitled under intestate succession to the property of a decedent who died wholly or partially intestate.
- (4) "Indian" means a member of the Burns Paiute Tribe of Oregon, or any other person of Indian blood who is a member of a federally recognized Indian tribe or any other person on the Reservation who is recognized by the community as an Indian, including a Canadian Indian and Alaska native.
- (5) "Intestate" means one who dies without leaving a valid will, or the circumstance of dying without leaving a valid will effectively disposing of all of his estate.
- (6) "Intestate succession" means succession to property of a decedent who dies intestate or partially intestate.
- (7) "Issue", when used to refer to persons who take by intestate succession, includes all lineal descendants, except those who are the lineal descendants of living descendants. The term does include adopted children and their issue.
- (8) "Personal property" means all property other than real property.
- (9) "Public Administrator" shall mean the official of the Burns Paiute Tribe charged with the responsibility of acting as administrator for all estates where an interested party does not seek appointment of some other administrator.
- (10) "Real property" means all interest in land or in buildings or improvements permanently attached to land.

(11) "Siblings" means brothers and or sisters.

(12) "Take by representation" means the principle upon which the issue of a decedent takes or inherits the share of an estate which their immediate ancestor would have taken or inherited, if living.

(13) "Testator" means a decedent who dies leaving a valid will.

(14) "Tribal Court" means the Tribal Court of the Burns Paiute Reservation.

(15) "Tribe" means the Burns Paiute Tribe.

## JURISDICTION OF TRIBAL COURT

### 6.2.20 Jurisdiction of Tribal Court

The Tribal Court shall have jurisdiction to administer in probate the estate of a decedent who, at the time of his or her death, was domiciled or owned real or personal property situated within the Burns Paiute Indian Reservation to the extent that such estate consists of property which does not come within the exclusive jurisdiction of the Secretary of the Interior of the United States.

### 6.2.21 Control of Funeral Arrangements

Control of funeral arrangements and disposition of the remains of the decedent shall be based on a decision of the family and the Indian customs of the tribe, and the Tribal Court shall have no jurisdiction over disputes involving funeral arrangements.

## INTESTATE SUCCESSION AND WILLS

### 6.2.30 Distribution Pursuant to Will

The Tribal Court shall distribute the estate according to the terms of the Will of the decedent which has been admitted to probate.

### 6.2.31 Who May Make a Will

Any person who is eighteen years of age or older or who has been lawfully married and who is of sound mind may make a Will.

### 6.2.32 Validity of a Will

A Will which is valid under the laws of the state or country within which it was executed shall be valid for the purposes of this Code. In addition, a Will which is handwritten by the testator and signed by the testator shall be considered to be valid, and attested to by two witnesses 18 years of age or older.

### 6.2.33 Intestate Succession

If a decedent died leaving no Will, or having left a Will which has been rejected by the Court as invalid, the estate shall be distributed as follows:

(1) Surviving Spouse and Issue. If the decedent leaves a surviving spouse and issue, the surviving spouse shall have a one—half interest in the net intestate estate and the issue shall have a one—half interest in the net intestate estate.

(2) Surviving Spouse and No Issue. If the decedent leaves a surviving spouse and no issue, the surviving spouse shall have all the net intestate estate.

(3) Share of Other Than Surviving Spouse. The part of the net intestate estate not passing to the surviving spouse shall pass:

(a) To the issue of the decedent. If the issue are of the same degree of kinship to the decedent, they shall take equally, but if of unequal degree, then those of more remote degrees take by representation.

(b) If there is no surviving issue, to the surviving parents of the decedent.

(c) If there is no surviving issue or parent, to the brothers and sisters of the decedent and the issue of any deceased brother or sister of the decedent by representation. If there is no surviving brother or sister, the issue of brothers and sisters take equally if they are of the same degree of kinship to the decedent, but if of unequal degree, then those of more remote degrees take by representation.

(d) If there is no surviving issue, parent or issue of a parent, to the grandparents of the decedent and the issue of any deceased grandparent of the decedent by representation. If there is no surviving grandparent, the issue of grandparents take equally if they are of the same degree of kinship to the decedent, but if of unequal degree, then those of more remote degrees take by representation.

(4) Indian Custom and Tradition Distribution of Indian Finery and Artifacts. Notwithstanding the provisions of this Code relating to descent and distribution, Indian artifacts and finery belonging to the decedent shall be distributed in accordance with the customs and traditions of the Burns Paiute Tribe. Such distribution shall be in accordance with directions left by the decedent, if any, or, if the decedent left no directions, shall be as directed by the surviving spouse of the decedent; if the decedent leaves no surviving spouse, then by direction of the decedent's eldest surviving adult sibling; if decedent leaves neither a surviving spouse nor surviving adult sibling, then by direction of the decedent's parents; if the decedent leaves neither surviving spouse, surviving adult sibling nor surviving parents, then by direction of the eldest surviving adult child of the decedent.

(5) Effect of Abandonment on Standing to Inherit. A person otherwise entitled to inherit pursuant to the provisions of Chapter 6.1 and 6.2 shall forfeit the ability to inherit from his or her spouse or child if he or she abandoned the spouse or child

for a period of at least one year prior to the decedent's death and if he or she had an obligation to support decedent at the time of death or abandonment.

#### 6.2.34 Escheat

If no person takes under the foregoing section, the net intestate estate shall escheat to the Burns Paiute Tribe. If the court determines that the decedent had a special known interest in a particular activity of the Burns Paiute Tribe, the court may direct that the escheated estate be dedicated to such activity.

#### 6.2.35 Effect of Adoption

For the purposes of intestate succession, the relationship between an adopted person and his adoptive parents, their descendants and kindreds shall be the same to all legal intents and purposes as if the adopted person had been born in lawful wedlock to his adoptive parents and his relationship with his natural parents, their descendants and kindred shall be the same to all legal intents and purposes as if he had not been born to his natural parents.

#### 6.2.36 Effect of Feloniously Taking Life of Another

No person who, with felonious intent, takes or procures the taking of the life of a decedent may inherit any property or receive any benefit, including life insurance proceeds, from the estate of a decedent.

### INITIATION OF PROBATE

#### 6.2.40 Duty to Present Will for Probate

Every custodian of a Will shall deliver the same to the Tribal Court within 30 days after receipt of information that the maker thereof is deceased. Any such custodian who fails or neglects to do so shall be liable for damages sustained by any person injured thereby.

#### 6.2.41 Proving and Admitting Will

(1) Upon initiating the probate of an estate, the Will of the decedent shall be filed with the Court. Such Will may be proven and admitted to probate by filing the affidavit of an attesting witness which identifies such Will as being the Will which the decedent executed and declared to be his or her last Will.

(2) If the evidence of none of the attesting witnesses is available, the Court may allow proof of the Will by testimony or other evidence that the signature of the testator or at least one of the witnesses is genuine.

#### 6.2.42 Contest of Will

At any time within 90 days after a Will has been admitted to probate, or within such time as the Court shall establish in the case of an exempt estate having an appraised value which does not exceed \$3,500, any person having an interest in the decedent's estate may contest the validity of such Will. In the event of such contest, the Court shall take no further action with respect to the probate of the estate, but shall set a day and hour for a hearing to determine the validity of such Will. All relevant evidence shall be presented at such hearing concerning the decedent's capacity to execute a valid Will and the circumstances surrounding its execution. Every reasonable effort shall be made to procure the testimony of the attesting witnesses to the Will, or if their testimony is not reasonably available, an effort shall be made to identify signatures to the Will through other evidence.

#### 6.2.43 Admission of Contested Will to Probate

Upon considering all relevant evidence concerning the Will, the Tribal Court shall enter an order affirming the admission of such Will to probate or rejecting such Will and ordering that the probate of the decedent's estate proceed as if the decedent had died without executing such Will.

#### 6.2.44 Initiating Administration of Estate

(1) Petition to Probate Estate. Any person having an interest in the administration of an estate which is subject to the jurisdiction of the Tribal Court may file a written petition with the Tribal Court requesting that such estate be administered in probate. Such petition shall set forth:

(a) The name, date of death and residence address of the decedent at the time of his or her death;

(b) The decedent was an Indian who, at the time of his death, was domiciled or owned real or personal property situated within the Burns Paiute Indian Reservation and which does not come within the jurisdiction of the Secretary of the Interior;

(c) The nature of the estate and any other facts that may be necessary to give the Tribal Court jurisdiction to probate such estate;

(d) The decedent did not leave a Will so far as is known to the petitioner, or that the decedent left a Will which has been presented to the Court for admission to probate;

(e) The name, age, and residence address of the person nominated in the decedent's Will, if any, to administer the decedent's estate and, if such person desires to be appointed as Administrator, a sworn statement by such person that he is willing to serve as Administrator of the decedent's estate;

(f) The names, ages, relationship to the decedent, and residence addresses of all of the decedent's heirs, devisees and legatees, so far as known to the petitioner;

(g) The name and address of a disinterested and competent person to appraise the value of the decedent's estate; and

(h) The nature of any special circumstances surrounding the estate requiring the court to take immediate action to protect the property of the estate.

(2) Order to Probate Estate. Upon finding that the decedent at the time of his or her death, was domiciled or owned real or personal property situated within the Burns Paiute Indian Reservation which does not come within the exclusive jurisdiction of the Secretary of the Interior; that the decedent left an estate subject to the jurisdiction of the Court; and that it is necessary to probate such estate, the Court shall enter an order directing that the estate be probated. The order shall state whether or not a Will of the decedent has been admitted to probate and, if so, the order shall state that any person desiring to contest the validity of such Will must do so within 90 days following the date of the order to probate the estate or within such time as the court may thereafter establish, should it appear that the probate involves an exempt estate having an appraised value which does not exceed \$3,500. The order shall also appoint an Administrator to administer the decedent's estate and appoint an appraiser to appraise the value of the decedent's estate.

(3) Notice of Probate. Immediately following the entry of the order to probate the estate, the Administrator shall send by certified mail true copies of the order to probate the estate and the Will of the decedent admitted to probate by such order, if any, to the Credit Department of the Tribe and to each heir, devisee and legatee of the decedent, at their last known address, so far as is known to the Administrator. The Administrator shall, not less than 30 days following the entry of such order, file his affidavit with the court showing compliance with this requirement of giving notice of the probate proceeding.

#### 6.2.45 Appointment, Qualifications and Duties of Administrator

(1) Appointment of Administrator. Upon ordering an estate to be probated, the Court shall appoint an Administrator to administer the estate according to this Code. The person nominated by the decedent's Will to administer the estate shall be appointed as the Administrator, provided such person is qualified and willing to serve in such capacity; otherwise, the Tribal Public Administrator shall be appointed as the Administrator unless he shall be disqualified.

(2) Qualifications of the Nominated Administrator. Any person nominated in the decedent's Will to administer the decedent's estate shall be qualified for appointment as Administrator if he is an enrolled member of the Tribe or resides upon the Burns Paiute Indian Reservation, is 21 years of age or older and is otherwise competent to perform the duties required of an Administrator. However, as a condition to his qualification and appointment, the Court shall require such person to post a bond in such amount and form as may be required by the Court, except that no bond shall be required where the decedent's Will

directs that the Administrator shall serve without bond. At the request of the nominated administrator, the probate clerk of the Tribe may assist the nominated administrator provided that the normal procedures of the probate department are followed.

(3) Compensation to Appointed Administrator. The appointed Administrator shall receive no compensation from the estate unless an Administrator nominated by decedent's Will is appointed and the decedent's Will directs that the Administrator receive compensation for performing those duties. In such event, the compensation of the nominated Administrator shall be according to the following fee schedule:

(a) The sum of \$250 for all property of the estate up to \$20,000.

(b) One—third of one percent (1/3%) of the value of all property of the estate in excess of \$20,000.

(4) Qualifications of Public Administrator. The person who is the duly appointed and acting Public Administrator for the Tribe shall be presumed to be qualified for appointment as the Administrator in all estates without posting bond, in the absence of a showing that he should be disqualified because of a conflict of interest with respect to his duties of the particular estate.

(5) Duties and Powers of Administrator.

(a) The Administrator appointed by the Court shall have the following duties and powers during the administration of the estate and until discharged by the Court:

(i) To preserve and protect the decedent's property within the estate for the benefit of the estate and the heirs, so far as possible;

(ii) To promptly investigate all claims against the decedent's estate and determine whether such claims are just and proper;

(iii) To promptly determine the names, ages, and residence addresses of all the decedent's heirs, devisees and legatees;

(iv) To promptly cause a written inventory of all the decedent's property within the estate to be prepared with each article or item being separately set forth and cause such property to be exhibited to and appraised by an appraiser, and the inventory and appraisal thereof to be filed with the Tribal Court;

(v) To promptly give all persons entitled thereto such notice as is required by this Code;

(vi) To account for all property within the estate which may come into his possession or control, and to maintain accurate records of all income received and disbursements made during the course of the administration.

(vii) In the discretion of the administrator, to deposit monies received for the estate in interest bearing accounts with the Tribe. Interest earned shall become an asset of the estate. Tribal management shall be responsible for rendering to the administrator a periodic accounting of interest earned on estate accounts.

(6) Removal of Administrator. The Court may order the Administrator to appear and show cause why he should not be discharged. After opportunity for hearing, if it appears that the administrator should be discharged, the court may discharge the administrator for failure, neglect or improper performance of his duties.

#### 6.2.46 Appointment and Duties of Appraiser

(1) Appointment of Appraiser. Unless the Court finds that an appraisal is not required for a given estate, upon ordering an estate to be probated, the Court shall appoint a disinterested and competent person as an appraiser to appraise all of decedent's real and personal property within the estate.

(2) Oath of Appraiser. Before making his appraisal, the appraiser shall file a verified oath of office with the Court to the effect that he has no interest in the estate and that he will honestly, impartially and to the best of his ability appraise all of the property within the estate which shall be exhibited to him.

(3) Duties of Appraiser. It shall be the duty of the appraiser to separately appraise the true cash value of each article or item of property within the estate, including debts due the decedent, and to indicate the appraised value of each such article or item of property set forth in the inventory of the estate and to certify such appraisal by subscribing his name to the inventory and appraisal.

#### 6.2.47 Summary Probate of Exempt Estates

(1) Exempt Estates. An estate having an appraised value not exceeding \$3,500 and which is to be inherited by a surviving spouse and/or minor children of the deceased shall be exempt from the claims of all general creditors and the probate thereof may be summarily concluded as provided in this section.

(2) Notice of Hearing to Determine Whether the Estate is an Exempt Estate. Upon petition of the Administrator, the Court shall enter an order stating that it appears, from the inventory and appraisal filed with the Court, that the appraised value of the whole estate does not exceed \$3,500 and that such estate is to be inherited by the surviving spouse and/or minor children of the decedent and shall set a date and hour for hearing objections of any interested persons, if any there be, why the whole estate should not be declared to be exempt from the claims of all general creditors and distributed to the surviving spouse and/or minor children of the decedent. Notice of such hearing shall be given by posting a true copy of such order in three public places within the Burns Paiute Indian Reservation and by sending a true copy of such order by certified mail to all persons known to the Administrator to be an heir, devisee or legatee of the decedent. Such notice shall be posted or mailed not less than ten days before the time set for such hearing.

On or before the time set for such hearing, the Administrator shall file his affidavit with the Court indicating compliance with this requirement of giving notice.

(3) Hearing to Determine Whether the Estate is an Exempt Estate. If, upon such hearing, the Court finds that such estate is an exempt estate, the Court shall enter an order directing the Administrator to distribute such estate to the surviving spouse and/or the minor children of the deceased as set forth in the order and provide that no further proceedings are necessary and that, upon distributing the distributive share or shares of such estate to those entitled thereto and filing receipts therefore, the estate shall be closed.

#### 6.2.48 Homestead Exemption

Upon the appraisal of an estate and it appearing that a dwelling is personal property in which other heirs and/or creditors have an interest, and the dwelling is occupied by the surviving spouse and/or children of the deceased, and it further appearing that said dwelling is necessary for the welfare and protection of such surviving spouse and/or children, the Court may, by order, set aside such dwelling for the benefit of said surviving spouse and/or children as a homestead for a period of not to exceed ten years, provided that in case of special hardship, or emergency, the Court may extend such term from year to year thereafter, provided that any heir or heirs or creditors of the deceased shall have the opportunity to appear before the Court and protest the extension of the original terms setting aside said homestead. The Court may also set aside such sums from the estate as the Court may deem necessary for maintenance and upkeep of the home. The Court shall hear evidence on any contest before making any order of extension.

#### 6.2.49 Claims Against the Estate

(1) Notice to Creditors. The Administrator shall promptly give notice to the creditors of the decedent and to the Tribal Credit Department for the Tribe to present their claims against the decedent's estate, unless it shall be determined by the Court that the estate is exempt from the claims of all general creditors. Such notice shall state the name, date of death, and residence address of the decedent at the time of his death; the date upon which the notice was first posted; that all persons having claims against the estate are required to present such claims in writing, with proper vouchers, to the Administrator, at a stated address, within 90 days after the date upon which such notice was first posted. Such notice shall be given by posting the same in three public places within the Burns Paiute Indian Reservation for a period of not less than 30 days. Before the expiration of said 90—day period, the Administrator shall file with the Court his verified affidavit showing that he has fully complied with this requirement of giving this notice.

(2) Allowance or Rejection of Claims.

(a) A claim not presented to the Administrator within 90 days after the notice to creditors was first posted is not barred, but such claim cannot be paid until the claims presented in that period have been satisfied. Until the final account is filed, a claim against the estate is not barred and may be presented or allowed and paid out of any assets then in the hands of the Administrator not otherwise appropriated.

(b) All claims presented to the Administrator shall be examined, dated and endorsed with the words "examined and allowed" if the Administrator is satisfied that the claim is just, or endorsed with the words "examined and rejected" if the Administrator is not so satisfied.

(c) If a claim is allowed, it shall be paid in due course of administration. If a claim is rejected, the Administrator shall file notice that the claim has been rejected with the Tribal Court and serve a copy of such notice of rejection by certified mail upon the claimant.

(d) If the Administrator neither allows nor rejects the claim within 60 days after receipt thereof by him, it shall be deemed rejected.

(3) Hearing on Rejected Claim. Any claimant whose claim has been rejected may request a hearing before the Tribal Court concerning the rejection of his claim by filing a petition requesting such hearing within 30 days following the date the Administrator filed notice of rejection concerning such claim with the Tribal Court or within 30 days after the claim has been deemed rejected under subsection (2b) above. The Tribal Court shall, if the matter comes within the civil jurisdiction of the Tribal Court, set the matter for hearing as in other civil proceedings and determine whether the claim should be allowed or rejected. If no such petition is filed within the said 30—day period, the claim shall thereafter be of no validity and shall be barred.

#### 6.2.50 Payment of Claims

The claims and charges against the estate which have been presented and allowed during the first 90 days following the date upon which the notice to creditors was first posted, shall be paid in the following order, and those presented and allowed or established in like manner within each succeeding period of 90 days during the continuance of the administration, shall be paid in the same manner:

- (1) Taxes or debts of whatsoever nature due the United States;
- (2) Any amount due the Burns Paiute Tribe;
- (3) Debts which, at the death of the decedent, are liens upon his property or any right or interest therein, according to the priority of their several liens;
- (4) Expenses of administration;

(5) All expenses of last illness and burial expenses;

(6) All other claims against the estate.

#### 6.2.60 Sale of Property

(1) Court Approval Required. No sale of property of an estate is valid unless made pursuant to an order of the Court.

(2) Sale of Personal Property. After filing the inventory and appraisal, the Administrator may petition the Court for authority to sell personal property of the estate for purposes of paying the expenses of last illness and burial expenses, expenses of administration, claims, if any, against the estate, and for the purpose of distribution. If, in the Court's judgment, such sale is in the best interest of the estate, the Court shall order such sale and prescribe the terms upon which the property shall be sold.

(3) Sale of Real Property. When the proceeds of the sale of personal property and other funds of the estate have been exhausted, and the charges, expenses and claims against the estate have not all been satisfied, or when it appears to the satisfaction of the Court that it would be in the best interest of the heirs, devisees or legatees that all or a part of the real property of the estate be sold for purposes of distribution, the Administrator shall petition the Court for authority to sell real property of the estate, or so much thereof as may be necessary for that purpose. If, in the Court's judgment, such sale is in the best interest of the estate, the Court shall order such sale and shall prescribe the terms upon which the real property shall be sold. If any such real property has been specifically devised, it shall be exempt from the operation of the Order of Sale.

#### 6.2.70 Annual Accounting

Annually, within 30 days of the anniversary date of the order appointing Administrator, the Administrator shall file an account with the Tribal Court, verified by his oath, showing the amount of money that was received and expended by him, from whom received and to whom paid, with proper vouchers for such payment, the name and amount of each claim against the estate which has been presented, and whether such claim has been rejected, the property sold, if any, and any other matter necessary to fully show the condition and affairs of the estate.

#### 6.2.71 Settlement of Final Account, Determination of Heirship

(1) Final Account. When the affairs of an estate have been fully administered, the Administrator shall file a final account with the Court, verified by his oath. Such final account shall affirmatively set forth:

(a) That all claims against the estate have been paid; or that all such claims have been paid, except as shown; and that the estate has adequate unexpended and unappropriated funds to fully pay all such remaining claims;

(b) The amount of money received and expended by him, from whom received and to whom paid, referring to the vouchers for each of such payments;

(c) That there is nothing further to be done in the administration of the estate except as shown in the final account;

(d) The remaining assets of the estate, including unexpended and unappropriated money, at the time of filing of the final account;

(e) The proposed determination of heirs and indicate the names, ages, address and relationship to the decedent of each distributee and the proposed distributive share and value thereof of each heir, devisee is to receive;

(f) A request that the Court set a time for the filing of objection to the final account, or to the proposed determination of the heirs or devisees, or to the proposed distributive share each distributee is to receive;

(g) A request that the Court set a day and hour for conducting a hearing on any objections filed;

(h) A request that the Court determine the heirs and devisees of the decedent, the distributive share each distributee is to receive and approve the final account.

(2) Order Setting Time for Filing of Objections and Hearing on Objections and to Approve Final Account and to Determine Distribution of the Estate. Upon filing of the final account, the Court shall enter an order setting a time for filing of objections, which shall be not less than twenty (20) days after such order, setting a day and hour for hearing objections, if any there be, to the approval of the Administrator's final account on file with the Court, or to the proposed determination of heirs and devisees and the distributive share each distributee is to receive, as set forth in said final account, which hearing shall be not less than ten (10) days after the deadline for filing objections.

(3) Notice of Order. The Administrator shall post a copy of such order in three public places within the Burns Paiute Indian Reservation for a period of not less than 20 days before the time set for filing such objections, and shall send by certified mail a true copy of such order and the final account, certified to as such by the Administrator, to the Tribal Credit Department and to each heir and devisee of the decedent at their last known addresses, so far as are known to the Administrator. On or before the time set for such hearing, the Administrator shall file his affidavit with the Court, indicating compliance with this requirement of giving this notice.

(4) Approving the Final Account and Determining the Distribution of Estate. On or before the time set for filing objections, any heir Or devisee, or other person having an interest in the distribution of the estate, may file an objection to the final account, or to the proposed determination of the heirs, devisees or legatees, or to the proposed distributive share each distributee is to receive, specifying the particulars of such objections with reasonable certainty. The Court shall consider all evidence relevant to the objection and shall determine the controversy with reference thereto.

(5) Procedure When No Objections Filed. If no objections are filed within the time set by the Court, and if the final account appears to the Court to be in proper order, the Court may dispense with the hearing and enter an order pursuant to the following subsection (6).

(6) Order Allowing Final Account and Order of Distribution. Upon concluding the hearing upon the objections, or without hearing if the hearing is dispensed with pursuant to the foregoing subsection (5), the court shall enter an order:

(a) Allowing the final account, either in whole or in part, as may be just and proper; and directing the Administrator to appropriate and expend funds to pay those unpaid claims, charges and allowances against the estate as shown in the final account which have been approved;

(b) Determining the decedent's heirs, devisees and legatees, indicating the names, ages and addresses of each, and the distributive share of the remaining estate which each distributee is to receive;

(c) Directing the Administrator to distribute such distributive share or shares to the distributees entitled thereto.

#### 6.2.80 Closing Estate

(1) Petition to Close Estate. At such time as the estate is ready to be closed, the Administrator shall petition the Court for an order closing the estate, discharging the Administrator, and his bondsman, if any. Such petition shall be accompanied by vouchers for any sums paid since the order approving the final account and by a signed receipt for distributive share from each of the distributees named in the order of distribution.

(2) Order Closing Estate. Upon finding that the estate has been fully administered and is in a condition to be closed, the Court shall enter an order closing the estate and discharging the Administrator and his bondsman, if any.

(3) Report by Administrator. If an order closing the estate has not been entered by the end of nine months following the month in which the Administrator was appointed, the Administrator shall file a written report with the Court stating the reasons, if any there be, why the estate has not been closed.

#### 6.2.81 Reopening Closed Estate

After the closing of an estate, if additional property is discovered which should have been distributed in the estate, upon the petition of any interested person the Court, on not less than thirty (30) days notice to those entitled to notice of a hearing on a final account, may order the additional property to be distributed in accordance with the original order of distribution of the estate. If any necessary act remains unperformed or for any other proper cause appearing to the Court it is necessary to reopen the closed estate, the Court upon the petition of any interested person on not less than thirty (30) days notice to those entitled to notice of a hearing on a final account may order the estate of the decedent reopened. The Court may reappoint the former Administrator or may appoint another Administrator who would have been eligible for appointment during the administration of the estate to perform such other acts as are considered necessary. The provisions of this Code as to original administration apply, insofar as applicable, to accomplish the purpose for which the estate is reopened. A claim that has previously been adjudicated or barred in the estate may not be asserted in the reopened administration.

#### 6.2.82 Notice of Action

When the Administrator has knowledge of administration of the estate of the decedent in the state courts or pursuant to Bureau of Indian Affairs probate, the Administrator shall send to the appropriate state probate court or the appropriate Bureau of Indian Affairs Administrative Law Judge a Notice of Action in the tribal court on any final account or order of distribution.

# **CHAPTER 6.3**

## **TRUSTS**

## CHAPTER 6.3 TRUSTS

### 6.3.30 Trustee to Receive Proceeds of Pension, Retirement, Death Benefit and Profit-Sharing Plans

(1) As used in this Section, "proceeds" means the proceeds paid upon the death of any insured, employee or participant under any thrift plan or trust, savings plan or trust, pension plan or trust, death benefit plan or trust, stock bonus plan or trust including any employee's stock ownership plan or trust; any retirement plan or trust, which includes self-employed retirement plans and individual retirement accounts, annuities and bonds; and the proceeds of any individual, group or industrial life insurance policy, or accident and health insurance policy and any annuity contract, endowment insurance contract or supplemental insurance contract.

(2) Proceeds may be made payable to a trustee under a trust agreement or declaration of trust in existence on the date of such designation, and identified in such designation. Such proceeds shall be paid to such trustee and held and disposed of in accordance with the terms of such trust agreement or declaration of trust, including any written amendments thereto in existence on the date of the death of the insured, employee or participant. It shall not be necessary to the validity of any such trust agreement or declaration of trust that it have a trust corpus other than the right of the trustee as beneficiary to receive such proceeds.

(3) Proceeds may be made payable to a trustee of a trust to be established by will. Upon issuance of a decree qualifying a trustee so named, such proceeds shall be payable to the trustee to be held and disposed of in accordance with the terms of such will as a testamentary trust. A designation which in substance names as such beneficiary the trustee under the will of the insured, employee or participant, shall be taken to refer to the will of such person actually admitted to Probate, whether executed before or after the making of such designation.

(4) Such proceeds may be payable in more than one installment. If no qualified trustee claims such proceeds from the insurer or other payor within eighteen months after the death of the insured, employee or participant, or if satisfactory evidence is furnished to the insurer or other payor within such period showing that there is or will be no trustee to receive such proceeds, such proceeds shall be paid by the insurer or other payor to the personal representative or assigns of the insured, employee or participant, unless otherwise provided by agreement with the insurer or other payor during the lifetime of the insured, employee or participant.

(5) Except to the extent otherwise provided by the trust agreement, declaration of trust or will, proceeds received by the trustee shall not be subject to the debts of the insured, employee or participant, to any greater extent than if such proceeds were payable to the beneficiaries named in the trust; and for all purposes, including the succession and transfer tax, they shall not be deemed payable to or for the benefit of the estate of the insured, employee or participant.

(6) Proceeds so held in trust may be commingled with any other assets which may properly become part of such trust.

#### 6.3.31 Bonds of Testamentary Trustees

When a testator has appointed a trustee to execute a trust created by his will, the Probate Court shall, unless otherwise provided in the will, require of such trustee a Probate bond. If any trustee refuses to give such bond, the refusal shall be deemed a refusal to accept or perform the duties of such trust; but the bond without surety of any public or charitable corporation or cemetery association to which any bequest or devise is made in trust shall be deemed sufficient.

Whenever by any will it is provided that the trustee or trustees thereunder shall not be required to give a Probate bond, or shall be required to give a bond which in the judgment of the Court of Probate having jurisdiction is insecure or inadequate, the Court may, upon the application of any person interested, require such trustee or trustees at any time to furnish a Probate bond.

#### 6.3.32 Vacancies in Office of Trustee

When any person has been appointed trustee of any estate, or holds as trustee the proceeds of any estate sold, and no provision is made by law or by the instrument under which his appointment is derived for the contingency of his death or incapacity or for his refusal to accept such trust or for his resignation of such trust, or when a trust has been created by will and no trustee has been appointed in the will or when more than one trustee has been appointed and thereafter a trustee so appointed dies, becomes incapable, refuses to accept or resigns such trust, the Probate Court may, on the happening of any such contingency, appoint some suitable person to fill such vacancy, taking from him a Probate bond, unless in the case of a will it is otherwise provided therein, in which case the provisions of Section 6.3.31 of this Chapter shall apply.

#### 6.3.33 Legal Title Vests in Trustee Appointed to Fill Vacancy

When the legal title to any property has vested in a trustee and the trusteeship has become vacant, such legal title shall vest in his successor immediately upon his appointment and qualification.

#### 6.3.34 Foreign Trustee's Custody of Trust Estate. Jurisdiction of Probate Court Over Trusts Created by Nondomiciliaries

(1) When any person not a resident of tribal lands is the owner of a life estate or income during life in any personal property on tribal lands that may thereafter be converted into money, and the child or children of such life tenant or person entitled to such life use or income, residing in the same state as such life tenant or person entitled to such life use or income, are entitled to the remainder upon the termination of such life estate, life use or income, such life tenant having procured the appointment of a trustee or other legal custodian of the property in which he has such interest under the laws of the place of his residence, such custodian may apply in writing to the Probate Court for the possession and

removal of such property. In such application the trustee or custodian shall allege that he has been legally appointed such custodian in the jurisdiction in which such life tenant resides, and that he has therein given a Probate bond valid according to the requirements of such jurisdiction, and security thereon, or an increase in an existing bond and security, in an amount equal to the value of all such estate of such person to be removed from this state. Such bond and the decree of the Court appointing such custodian shall provide that if the child or children of such life tenant are for any reason unable to take or receive the property upon the termination of the life estate or estate aforesaid, it is to be held and paid over by such custodian to such persons as the Court of Probate in this state ordering such removal directs. Upon such custodian filing for record in the Probate Court an exemplified copy of the record of the Court by which he was appointed, it shall, after a hearing upon such notice as the Court orders to the person having such estate in custody and after proof that all known debts against it on the reservation have been paid or satisfied, appoint the applicant to be guardian, conservator or trustee without further bonds, and authorize the person having such estate in his custody to deliver it to the applicant, who may demand, sue for and recover it and remove it from the reservation.

(2) Any one or more of the vested beneficial owners of interests established by a testamentary transfer of personal property wherever situated, in trust or under custodianship established and administered outside of the reservation, who are residents of the reservation may petition the Probate Court if any of such beneficial owners reside on the reservation to assume jurisdiction of such trust or custodianship. In the petition, such beneficial owner or owners shall allege that it would be in the best interest of some or all of such beneficial owners and not adverse to any of such owners for the trust or custodianship to be administered in the Probate Court or that all such beneficial owners consent to the administration of the trust or custodianship in the Probate Court. The Probate Court, after hearing with notice as it directs, including notice to any Court having jurisdiction over the trust or custodianship, upon written consent of all such beneficial owners or satisfaction that the allegations in the petition are true and upon proof that such transfer is not prohibited by law, may assume jurisdiction. If a Probate bond is required under the laws of the state in which the transferring Court is located on the reservation, such bond shall be given to the Probate Court prior to the assumption of jurisdiction by such Court. Upon transfer and assumption of jurisdiction and administration of such trust or custodianship to the reservation, the record shall be established in the Probate Court as if the estate were being originally established for administration on tribal lands and the provisions of the tribal laws shall govern the trust or custodianship and its administration.

#### 6.3.35 Appointment of Trustee When Person has Disappeared. Trustee's Rights and Duties. Procedure if Person Reappears

(1) When any Burns Paiute Tribal Member, domiciled on tribal lands and having property has disappeared so that after diligent search his whereabouts cannot be

ascertained, the Probate Court, upon the application of the spouse, or a relative, creditor or other person interested in the property of such person, shall, after public notice and a hearing thereon, appoint a trustee of the property of such person.

(2) Diligent search shall be deemed to have been made for any person who has disappeared while serving with the armed forces when such person has been reported or listed as missing, missing in action, interned in a neutral country or beleaguered, besieged or captured by an enemy.

(3) Such trustee, upon giving a Probate bond, shall have charge of such property, and he shall have the same powers, duties and obligations as a conservator of the estate of an incapable person. With the approval of the Probate Court, such trustee may use any portion of the income or principal of such property for the support of the spouse and minor children of such person.

(4) Upon its own motion or upon the application of any interested person, the Probate Court may, after public notice and a hearing thereon, remove, discharge, require an accounting from, or appoint a successor to, such trustee.

(5) The Probate Court may continue such trustee in office until satisfactory proof of the death of such person is furnished, until proceedings are taken to settle his estate on the presumption of his death, or for a period of seven years from the time of the disappearance of such person if he remains unheard of.

(6) In case of the reappearance of such person, the Court of Probate shall, on his application, after hearing and public notice thereof, order the restoration of such property to the person entitled thereto and the discharge of such trustee, after acceptance of the trustee's account.

#### 6.3.36 Suspension of Fiduciary Powers During Armed Forces Service

(1) When any fiduciary of any trust other than a testamentary trust is engaged in service in the armed forces, which prevents his giving the necessary attention to his duties as the fiduciary, the Probate Court, upon petition of the fiduciary or any person interested in such estate, may, upon such notice as the Court deems suitable and after hearing, order the suspension of the powers and duties of the fiduciary for the period of such service and until the further order of the Court.

(2) The Probate Court may appoint a substitute fiduciary to serve for the period of suspension whether or not there remains any fiduciary to exercise the powers and duties of the fiduciary who is in such service. Said Court may decree that the ownership and title to the trustees shall vest in the substitute fiduciary or co-fiduciary or both and that the duties and such of the powers and discretions as are not personal to the fiduciary may be exercised by the co-fiduciary or substitute fiduciary and may make such further orders as said Court deems advisable for the proper protection of such fund or estate.

(3) The rules of Court with respect to judgments under the Selective Service Act shall not apply to actions under this Section.

(4) Upon a petition therefore, the Court may order the reinstatement of the fiduciary when his service in the armed forces has terminated.

6.3.37 Income from Property Acquired by Trustee by Conveyance or Foreclosure when Mortgage Formerly Held by Trustee

In any case in which a trustee holds a mortgage upon property for the benefit of one or more tenants for life or limited term, with remainder over to another or others, and such trustee acquires title to such property by conveyance or foreclosure, such acquired property shall be a principal asset in lieu of such mortgage, and such tenant or tenants for life or limited term shall be entitled to the net income from such acquired property from the date of its acquisition.

6.3.38 Distribution by Testamentary Trustee upon Completion of Trust

The trustee of any testamentary trust which has terminated may, unless the will creating the trust otherwise directs, after settling his final account, deliver the property remaining in his hands to the remainderman upon the order of the Probate Court, without returning the same to the estate of the decedent.

6.3.39 Distribution of Assets of Inoperative Trust

When the facts at the time of distribution from an estate to a trust or from a testamentary trust to a successive trust are such that no trust would be operative under the terms of the instrument creating such trust or successive trust because of the death of the life tenant, or because the beneficiary has reached a stipulated age, or for any other reason, the fiduciary of such estate or prior trust may distribute, with the approval of the Probate Court having jurisdiction, directly from the estate or prior trust to the remaindermen of such trust, the corpus of such trust and any income earned during the period of estate administration or administration of the prior trust and distributable to such remaindermen, without the interposition of the establishment of such trust or successive trust.

6.3.40 Settlement of Trust Estate when Beneficiary has been Absent Seven Years

The trustee of any trust for the benefit of any person who has been absent from his home and unheard of for seven years or more may settle his account as such trustee in the Probate Court. Upon the order of the Court, the trustee shall distribute such trust estate to the persons entitled to the remainder thereof as determined by the Court, and the trustee shall not thereafter be liable to any such absent beneficiary, his heirs, executors, administrators or assigns in any action for such trust estate or any interest therein or income thereof. A person shall not be entitled to receive any portion of such estate from the trustee until such person has filed in the Probate Court a bond with surety to the acceptance of the Court, payable to the Burns Paiute Tribe, conditioned to return such trust estate

to the trustee or his successor on the reappearance of the person presumed to be dead within thirteen years from the date of such order authorizing distribution. After the expiration of such thirteen-year period, such person entitled to the remainder shall not be liable to any such absent beneficiary, his heirs, executors, administrators or assigns in any action for such trust estate or any interest therein or income thereof.

#### 6.3.41 Termination of Small Trusts

(1) Except as otherwise provided by the trust or Sections 6.3.51 to 6.3.65 with respect to charitable trusts, the Probate Court under this Section may terminate a trust, in whole or in part, on application therefore by the trustee, by any beneficiary entitled to income from the trust, or by such beneficiary's legal representative, after reasonable notice to all beneficiaries who are known and in being and who have vested or contingent interests in the trust, and after holding a hearing, if the Court determines that all of the following apply:

(a) The continuation of the trust is:

(i) Uneconomic when the costs of operating the trust, probable income and other relevant factors are considered; or

(ii) Not in the best interest of the beneficiaries;

(b) The termination of the trust is equitable and practical; and

(c) The current market value of the trust does not exceed the sum of forty thousand dollars.

(2) If the Probate Court orders termination of the trust, in whole or in part, it shall direct that the principal and undistributed income be distributed to the beneficiaries in such manner as the Probate Court determines is equitable. The Probate Court may also make such other order as it deems necessary or appropriate to protect the interests of the beneficiaries.

(3) No trust may be terminated over the objection of its trustor or where the interest of the beneficiaries cannot be ascertained. The provisions of this Section shall not apply to spendthrift trusts.

(4) The Probate Court may terminate a testamentary trust pursuant to this Section if the Probate Court has jurisdiction over the accounts of the testamentary trustee. The Probate Court may terminate an inter vivos trust pursuant to this Section if the trustee or trustor is a Burns Paiute Tribal member and is domiciled on tribal lands.

#### 6.3.42 Tribal Court Jurisdiction to Reform Instrument to Ensure Allowance of Marital Deduction. Qualified Domestic Trust

(1) If any marital deduction would not be allowed by reason of Section 2056(d)(1) of the Internal Revenue Code of 1986 with respect to any interest in property

passing under any will, trust agreement or other governing instrument because such interest fails to comply with the requirements of Sections 2056(d)(2)(A) and 2056A(a) of said Code, the Tribal Court shall have jurisdiction over any action brought to reform such will, trust agreement or other governing instrument of comply with those requirements so as to allow a marital deduction under Section 2056(a) of said Code. All references contained in this Section to any Section of the Internal Revenue Code of 1986 shall mean that Section of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended.

(2) The Tribal Court shall be empowered to reform any such will, trust agreement or other governing instrument to the extent necessary to ensure the allowance of the marital deduction described in subsection a. of this Section.

(3) Any reformation of any will, trust agreement or other governing instrument in accordance with the provisions of this Section shall be effective whether or not a disclaimer has been filed.

#### 6.3.43 Statutory Rule Against Perpetuities

(1) A non-vested property interest is invalid unless:

(a) When the interest is created, it is certain to vest or terminate no later than twenty-one years after the death of an individual then alive; or

(b) The interest either vests or terminates within ninety years after its creation.

(2) A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

(a) When the power is created, the condition precedent is certain to be satisfied or become impossible to satisfy no later than twenty-one years after the death of an individual then alive; or

(b) The condition precedent either is satisfied or becomes impossible to satisfy within ninety years after its creation.

(3) A non-general power of appointment or a general testamentary power of appointment is invalid unless:

(a) When the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than twenty-one years after the death of an individual then alive; or

(b) The power is irrevocably exercised or otherwise terminates within ninety years after its creation.

(4) In determining whether a non-vested property interest or a power of appointment is valid under paragraphs 1, 2, or 3 of this Section, the possibility that a child will be born to an individual after the individual's death is disregarded.

(5) If, in measuring a period from the creation of a trust or other property arrangement, language in a governing instrument:

- (a) Seeks to disallow the vesting or termination of any interest or trust beyond;
- (b) Seeks to postpone the vesting or termination of any interest or trust until; or
- (c) Seeks to operate in effect in any similar fashion upon, the later of
  - (i) The expiration of a period of time not exceeding twenty-one years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement; or
  - (ii) The expiration of a period of time that exceeds or might exceed twenty-one years after the death of the survivor of lives in being at the creation of the trust or other property arrangement, that language is inoperative to the extent it produces a period of time that exceeds twenty-one years after the death of the survivor described in subparagraph (1) of this subsection. Nothing in this subsection shall affect the validity of the other provisions of the trust or other property arrangement or of the governing instrument.

#### 6.3.44 When Non-Vested Property Interest or Power of Appointment Created

(1) Except as provided in subsections (2) and (3) of this Section and in subsection (1) of 6.3.46 of this Chapter, the time of creation of a non-vested property interest or a power of appointment is determined under general principles of property law.

(2) For purposes of Sections 6.3.43 to 6.3.46 of this Chapter, inclusive, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of:

- (a) A non-vested property interest; or
- (b) A property interest subject to a power of appointment described in subsection (2) or (3) of Section 6.3.43 of this Chapter, the non-vested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates; or
- (c) For purposes of Sections 6.3.43 to 6.3.46 of this Chapter, inclusive, a non-vested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the non-vested property interest or power of appointment in the original contribution was created.

#### 6.3.45 Reformation

Upon the petition of an interested person, the Court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the ninety years allowed by subdivision (b) of subsection

1, 2 or 3 of Section 6.3.43 of this Chapter if a non-vested property interest or a power of appointment becomes invalid under Section 6.3.43 of this Chapter:

(1) A class gift is not but might become invalid under Section 6.3.43 of this Chapter and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or

(2) A non-vested property interest that is not validated by subdivision (a) of subsection (1) of Section 6.3.43 of this Chapter can vest but not within ninety years after its creation.

#### 6.3.46 Exclusions from statutory rule against perpetuities

The provisions of Section 6.3.43 of this Chapter do not apply to:

(1) A non-vested property interest of a power of appointment arising out of a non-donative transfer, except a non-vested property interest or a power of appointment arising out of

(a) Premarital or post-marital agreement;

(b) Separation or divorce settlement;

(c) Spouse's election;

(d) Similar arrangement arising out of a prospective, existing or previous marital relationship between the parties;

(e) Contract to make or not to revoke a will or trust;

(f) Contract to exercise or not to exercise a power of appointment;

(g) Transfer in satisfaction of a duty of support; or

(h) Reciprocal transfer.

(2) A fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease or mortgage property, and the power of a fiduciary to determine principal and income;

(3) A power to appoint a fiduciary;

(4) A discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasible vested interest in the income and principal;

(5) A non-vested property interest held by a charity, government or governmental agency or subdivision, if the non-vested property interest is preceded by an interest held by another charity; government or governmental agency or subdivision;

(6) A non-vested property interest in a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral or other current or deferred benefit plan for one or more employees, independent contractors or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income or principal in the trust or other property arrangement, except a non-vested property interest or a power of appointment that is created by an election or a participant or a beneficiary or spouse; or

(7) A property interest, power of appointment or arrangement that was not subject to the common-law rule against perpetuities or is excluded by another statute of this State.

#### 6.3.47 "Majority" Defined for Trusts Executed Prior to October 1, 1972

Whenever the word "majority" is used in a will or trust instrument executed prior to October 1, 1972, it shall be construed to mean a person who has attained the age of twenty-one.

#### 6.3.48 Rule Against Perpetuities

(1) "Second look" doctrine. In applying the rule against perpetuities to an interest in property created before October 1, 1989, limited to take effect at or after the termination of one or more life estates in, or lives of, persons in being when the period of said rule commences to run, the validity of the interest shall be determined on the basis of facts existing at the termination of such one or more life estates or lives.

(2) For the purpose of this Section, an interest which must terminate not later than the death of one or more persons is a life estate although it may terminate at an earlier time.

#### 6.3.49 Reduction of Age Contingency to Preserve Interest

If an interest in property created before October 1, 1989, would violate the rule against perpetuities as modified by Section 6.3.48 of this Chapter because such interest is contingent upon any person attaining or failing to attain an age in excess of twenty-one, the age contingency shall be reduced to twenty-one as to all persons subject to the same age contingency.

#### 6.3.50 Exemption of Certain Employees' Trust Funds from the Rule Against Perpetuities

A trust created by an employer as part of a stock bonus, pension, disability, death benefit or profit-sharing plan for the benefit of some or all employees, to which contributions are made by the employer or employees or both, for the purpose of distributing to the employees the earnings or the principal, or both earnings and principal, of the fund held in trust, shall not be deemed to be invalid

as violating any existing law or rule of law against perpetuities or suspension of the power of alienation of the title to property. A trust created for such purpose may continue for such time as may be necessary to accomplish the purposes for which it has been created. The income arising from any property held in any such trust may be permitted to accumulate in accordance with the terms of such trust and the plan of which such trust forms a part for such time as may be necessary to accomplish the purposes for which such trust has been created. Any rule of law against perpetuities or suspension of the power of alienation of the title to property shall not invalidate any such trust.

#### 6.3.51 Charitable Trusts

Any charitable trust or use created in writing, or any public and charitable trust or use for aiding and assisting any person or persons to be selected by the trustees of such trust or use to acquire education, shall forever remain to the uses and purposes to which it has been granted according to the true intent and meaning of the grantor and to no other use.

#### 6.3.52 Charitable Uses Determined by Trustee, When

Any person may, by will, deed or other instrument, give, devise or bequeath property, real or personal or both, to any trustee or trustees, and may provide in such instrument that the property so given, devised or bequeathed shall be held in trust and the income or principal applied in whole or in part for any charitable purpose. A donor or testator shall not be required to designate in such will, deed or other instrument the particular charitable purpose or class of purposes for which the property shall be used or the income applied. Any such gift, devise or bequest shall be valid and operative, provided the donor or testator shall give to the trustee or trustees thereof or to any other person or persons, the power to select, from time to time and in such manner as such donor or testator may direct, the charitable purpose or purposes to which such property or the income thereof shall be applied; and such gift, devise or bequest, accompanied by such power of selection, shall not be void by reason of uncertainty.

#### 6.3.53 Gifts to Charitable Community Trust

Any person may incorporate by reference in any will, deed or other instrument, the terms, conditions, trusts, uses or purposes of any existing written or printed resolution, declaration or deed of trust passed by any corporation or executed by any person whereby there is established or is attempted to be established any charitable community trust. Any gift, devise or bequest so given to any person or corporation, in trust for any use or purpose of such charitable community trust, shall be valid and effectual notwithstanding that the terms, conditions, uses and purposes thereof are not otherwise recited in such deed, will or other instrument than by such reference; and the property so given to such person or corporation shall be used for the purposes and upon the terms, conditions and trusts contained in such resolution, declaration or deed of trust establishing such community trust, so far as the same do not conflict with the intent of the donor or

testator as expressed in such will, deed or other instrument. Any gift, devise or bequest so made shall not be void for uncertainty or invalid because such resolution, declaration or deed of trust establishing such community trust was not executed by the testator or donor in accordance with statutory provisions, provided such will, deed or other instrument is executed in accordance with such provisions.

#### 6.3.54 Community Trustees to Render Annual Accounts. Hearing on Adjustment and Allowance

(1) The trustee or trustees of any charitable community trust shall annually render an account under oath to the Probate Court. The account shall include an inventory of the estate held by such trustee or trustees and shall state the manner in which the principal of such fund is invested and the items of income and expenditure.

(2) The Probate Court shall direct the notice, if any, which shall be given of the hearing upon the adjustment and allowance of any such account. The Court may adjust and allow the account and make any order necessary to secure the execution of the duties of such trustee or trustees, subject to appeal as provided for appeals from orders of the Probate Court.

#### 6.3.55 Probate Court Jurisdiction to Reform Instruments to Federal Tax Requirements

(1) If any deduction under Section 170, Section 2055 or Section 2522 of the Internal Revenue Code of 1986 is not allowable with respect to any interest in property passing under any will, trust agreement or other governing instrument to a person, or for a use, described in Section 170(c), Section 2055(a) or Section 2522(a) and (b) of said code because such interest shall fail to comply with the requirements of Section 170(f)(2), Section 2055(e)(2) or Section 2522(c)(2) of said code, the Probate Court shall have jurisdiction over any action brought to reform such will, trust agreement or other governing instrument in accordance with the provisions of Section 170(f)(7), Section 2055(e)(3) or Section 2522(c)(4) of said code so that such deduction may be allowed under the applicable provisions of said code. All references contained in this Section to any Section of the Internal Revenue Code of 1986 shall mean that Section of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended.

(2) The Probate Court shall be empowered to reform any such will, trust agreement or other governing instrument only to the extent necessary in order to ensure the allowance of any deduction described in subsection a. of this Section, and only to the extent the Court finds that such reformation is consistent with the original intent of the testator or donor.

(3) This Section shall not be construed to effect a change in any dispositive provisions of the governing instrument as provided in Section 6.3.51 of this Chapter.

(4) Any reformation of any will, trust agreement or other governing instrument in accordance with the provisions of this Section shall be effective whether or not a disclaimer has been filed.

#### 6.3.56 Termination of Charitable Trusts

(1) As used in this Section:

(a) "Charitable beneficiary" and "charitable entity" shall include, without limitation, towns, ecclesiastical society and cemetery associations owning or controlling the operation of a cemetery or burial ground;

(b) "Charitable trust" shall mean a trust for the benefit of one or more charitable beneficiaries.

(2) In any case where the current market value of the assets of a testamentary or intervivos charitable trust is less than sixty-five thousand dollars, any trustee thereof, any charitable beneficiary specifically designated in the governing instrument may petition the Probate Court for an order terminating the trust. If such a trust has not been under the jurisdiction of the Probate Court prior to any such petition, the petition shall only be brought if the grantor, if living, or any trustee is a member of the Tribe and resides on tribal lands. Upon receipt of such a petition, the Court shall order a hearing and cause notice thereof to be given to the trustees, the grantor of the trust, if living, and any charitable beneficiary of the trust specifically designated in the governing instrument. If at such a hearing the Court determines that continuation of the trust is uneconomic when the costs of operating the trust, probable income and other relevant factors are considered or not in the best interest of the beneficiaries, the Court may order termination of the trust and distribution of the trust assets to any charitable beneficiary specifically designated in the governing instrument or, in the event no such beneficiary exists, to such other charitable trusts or charitable entities, including any community trust or foundation, as the Court may determine will fulfill the charitable purposes of the trust being so terminated.

#### 6.3.57 Definitions

As used in Sections 6.3.57 to 6.3.65 of this Chapter, inclusive:

(1) "Institution" means an incorporated or unincorporated organization organized and operated exclusively for educational, religious, charitable purposes, a governmental organization to the extent that it holds funds exclusively for any of these purposes, or a charitable community trust as described in Section 24 of this Chapter;

(2) "Institutional fund" means a fund held by an institution for its exclusive use, benefit or purposes, but does not include:

(a) A fund held for an institution by a trustee that is not an institution, other than a fund which is held for a charitable community trust; or

(b) A fund in which a beneficiary that is not an institution has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund;

(3) "Endowment fund" means an institutional fund, or any part thereof, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument;

(4) "Governing board" means the body responsible for the management of an institution or of an institutional fund;

(5) "Historic dollar value" means the aggregate fair value in dollars of:

(a) An endowment fund at the time it became an endowment fund;

(b) Each subsequent donation to the fund at the time it is made; and

(c) Each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund. The determination of historic dollar value made in good faith by the institution is conclusive;

(6) "Gift instrument" means a will, deed, grant, conveyance, agreement, memorandum, writing or other governing document, including the terms of any institutional solicitations from which an institutional fund resulted, under which property is transferred to or held by an institution as an institutional fund.

#### 6.3.58 Expenditure of Net Appreciation, Standards

The governing board may appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the net appreciation, realized and unrealized, in the fair value of the assets of an endowment fund over the historic dollar value of the fund as is prudent under the standard established by Section 35 of this Chapter. This Section does not limit the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument or the charter of the institution.

#### 6.3.59 Exception and Restriction on Expenditure of Net Appreciation. Construction

Section 6.3.58 of this Chapter does not apply if the applicable gift instrument indicates the donor's intention that net appreciation shall not be expended. A restriction upon the expenditure of net appreciation may not be implied from a designation of a gift as an endowment, or from a direction or authorization in the applicable gift instrument to use only "income", "interest", "dividends" or "rents,

issues or profits", or "to preserve the principal intact", or a direction which contains other words of similar import.

#### 6.3.60 Accumulation of Annual Net Income, Standards

The governing board may accumulate so much of the annual net income of an endowment fund as is prudent under the care established by Section 6.3.64 of this Chapter and may hold any or all of such accumulated income in an income reserve for subsequent expenditure for the uses and purposes for which such endowment fund is established or may add any or all of such accumulated income to the principal of such endowment fund as is prudent under said standard. This Section does not limit the authority of the governing board to accumulate income or to add the same to principal of an endowment fund as permitted under other law, the terms of the applicable gift instrument or the charter of the institution.

#### 6.3.61 Exception and Restriction of Accumulation of Annual Net Income. Construction.

Section 6.3.60 of this Chapter does not apply if and to the extent that the applicable gift instrument indicates the donor's intention that income of an endowment fund shall not be accumulated or shall not be added to the principal of the fund. A restriction against accumulation or addition to principal may not be implied from a designation of a gift as an endowment, or from a direction or authorization in the applicable gift instrument to apply to the uses and purposes of the fund the "income", "interest", "dividends", "currently expendable income" or "rent, issues or profits", or a direction which contains other words of similar import.

#### 6.3.62 Investment of Institutional Funds

In addition to an investment otherwise authorized by law or by the applicable gift instrument, and without restriction to investments a fiduciary may make, the governing board, subject to any specific limitations set forth in the applicable gift instrument or in the applicable law other than law relating to investments by a fiduciary, may: (1) Invest and reinvest an institutional fund in any real or personal property deemed advisable by the governing board, whether or not it produces a current return, including mortgages, stocks, bonds, debentures and other securities of profit or nonprofit corporations, shares in or obligations of associations, partnerships or individuals, and obligations of any government or subdivision or instrumentality thereof; (2) retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable; (3) include all or any part of an institutional fund in any pooled or common fund maintained by the institution; and (4) invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts, or similar organizations in

which funds are commingled and investment determinations are made by persons other than the governing board.

#### 6.3.63 Delegation of Powers of Investment

Except as otherwise provided by the applicable gift instrument or by applicable law relating to governmental institutions or funds, the governing board may:

- (1) Delegate to its committees, officers or employees of the institution or the fund, or agents, including investment counsel, the authority to act in place of the board in investment and reinvestment of institutional funds;
- (2) Contract with independent investment advisers, investment counsel or managers, banks or trust companies so to act; and
- (3) Authorize the payment of compensation for investment advisory or management services.

#### 6.3.64 Standards Applicable to Actions of Governing Board

In the administration of the powers to appropriate appreciation, to make and retain investments and to delegate investment management of institutional funds, member of a governing board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. In so doing they shall consider long and short term needs of the institution in carrying out its educational, religious, charitable or other eleemosynary purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends and general economic conditions.

#### 6.3.65 Release of Restriction in Gift Instrument: Written Consent, Court Order. Limitations. Doctrine of Cy-pres Applicable.

- (1) With the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund;
- (2) If written consent of the donor cannot be obtained by reason of his death, disability, unavailability or impossibility of identification, the governing board may apply, in the name of the institution, to the Probate Court for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. The Tribal Counsel of the Tribe shall be notified of the application and shall be given an opportunity to be heard. If the Court finds that the restriction is obsolete, inappropriate or impracticable, it may by order release the restriction in whole or in part. A release under this subsection may not change an endowment fund to a fund that is not an endowment fund;

(3) A release under this Section may not allow a fund to be used for purposes other than the educational, religious, charitable purposes of the institution affected;

(4) This Section does not limit the application of the doctrine of cy-pres or approximation.

# **CHAPTER 6.4**

## **GUARDIANSHIP AND CONSERVATORSHIP**

## CHAPTER 6.4 CONSERVATOR AND GUARDIANSHIP

### 6.4.1 Legislative History and Explanatory Notes

The purpose of this chapter is to establish a formal procedure enabling the Tribal Court to provide for the protection of the property and welfare of persons closely tied to the Reservation.

### 6.4.2 Explanation

A person's property, which is referred to as his or her "estate" is protected by the appointment of a conservator. A common example of such situation is the case of an elderly person who is mentally competent and able to care for himself or herself physically, but does not have the ability to manage his or her assets. In that case, appointment of a conservator to manage the property and protect the assets is appropriate. A guardian is appointed to care for the minor or incapacitated person, rather than that person's property. Thus, the guardian arranges and provides for such things as food, shelter, clothing, obtaining medical care, and other things of a personal nature. In some cases, it might be appropriate to appoint both a conservator and a guardian for a particular person. The same person might act as both conservator and guardian, or different individuals may be appointed to fill each position.

### 6.4.3 Intent

(1) It is the intent and desire of the Tribe that unless prohibited by Federal statute or regulation, personnel employed by the Bureau of Indian Affairs conduct their dealings to the affairs of wards for whom guardians or conservators have been appointed in accordance with the provision of this chapter.

(2) This chapter is intended to implement provisions of the Tribal Constitution empowering the Tribe to "protect the health, security and general welfare of the members of the Burns Paiute Tribe."

### 6.4.4 Definitions

(1) "Conservator" means a person appointed as caretaker and protector to look after the property of a minor or incapacitated person.

(2) "Guardian" means a person appointed as custodian of a minor or incapacitated person.

(3) "Incapacitated person" means a person, other than a minor, who is unable, without assistance, to properly manage or take care of himself or herself or his/her personal affairs.

(4) "Minor" means an unmarried person who is younger than 18 years of age.

(5) "Ward" means a person for whom a guardian or conservator has been appointed.

(6) "Indian" means, unless otherwise specified, a member of the Burns Paiute Indian Tribe, or any other person of Indian blood who is a member of a federally recognized Indian tribe, or any other person on the Reservation who is recognized by the community as an Indian, including a Canadian Indian or an Alaska native.

#### 6.4.5 Jurisdiction

The Burns Paiute Tribal Court shall have jurisdiction to appoint conservators and/or guardians for members of the Burns Paiute Indian Tribe, children of enrolled members, and Indians married to Tribal members.

#### 6.4.6 Commencement of Proceedings

Proceedings for the appointment of a conservator and/or guardian shall be commenced in the Burns Paiute Tribal Court by the filing of a petition in the form prescribed by the court.

#### 6.4.7 Persons Entitled to File Petitions

The following persons are entitled to file a petition for the appointment of a conservator and/or guardian:

- (1) A family member of the ward;
- (2) Burns Paiute Tribal Social Services.

#### 6.4.8 Contents of Petition

A petition for the appointment of a conservator and/or guardian shall contain the following information:

- (1) The name and address of the petitioner;
- (2) The name, age and address of the proposed ward;
- (3) The reason the appointment of a conservator and/or guardian is necessary;
- (4) The name, age, and address of the proposed guardian or conservator and the relationship of the proposed guardian or conservator to the ward. If an alternate

proposed guardian or conservator is proposed, include the same information for the alternate.

#### 6.4.9 Notice of Proceedings

(1) Within 10 days after the filing of a petition for the appointment of a conservator and/or guardian, the petitioner shall give notice of the proceedings to the following persons:

(a) The children, parents, adult siblings, and spouse of the proposed ward;

(b) If the petition is for the appointment of a conservator, to the creditors of the proposed ward;

(2) Notice shall be given either personally or by written notice sent by first class mail.

#### 6.4.10 Preference in Appointing Conservator and/or Guardian

The parents of a minor or incapacitated person, or either of them, if qualified and suitable, shall be preferred over all others for appointment as conservator and/or guardian for the proposed ward. A second preference shall be made for the adult children of the proposed ward. Subject to these preferences, the Court shall appoint as conservator and/or guardian for a proposed ward the qualified person most suitable who is willing to serve, having due regard, among other factors, to:

(1) Any request for the appointment as conservator and/or guardian for a proposed ward contained in a written instrument executed by the proposed ward while competent.

(2) Any request for the appointment as conservator and/or guardian for a proposed ward contained in a will or other written instrument executed by the parent of the proposed ward.

(3) Any request for the appointment as a conservator and/or guardian for a minor 14 years of age or older made by the minor.

(4) The relationship by blood or marriage of the proposed conservator and/or guardian to the proposed ward.

#### 6.4.11 Hearings; Notice

(1) The Court shall schedule and conduct a hearing to consider the appointment of a conservator and/or guardian pursuant to the petition filed with the Court. At the hearing interested persons shall be entitled to present evidence. Notices of

the hearing shall be to the same persons entitled to receive notice pursuant to Section 6.4.9 and in the same manner.

(2) The petitioner or his spokesperson shall be entitled to present comments or evidence to the Court regarding the appointment of a conservator and/or guardian and the Court shall take into consideration such evidence or comments.

#### 6.4.12 Emergency Orders

When necessary for the protection of the ward or the ward's property, the Court may issue an emergency order appointing a conservator and/or guardian pending a formal hearing provided for in Section 6.4.11. The emergency order shall be effective for no longer than 60 days.

#### 6.4.13 Appointment of Spokesperson for Proposed Ward

Upon request or upon its own motion, the Court may appoint a spokesperson to represent the proposed ward in proceedings governed by this chapter. However, this section does not provide for funds to pay the spokesperson from Tribal funds.

#### 6.4.14 Examination and Home Study

Upon request or upon its own motion, the Court may order the proposed ward to be examined by a physician, psychologist or other person who shall submit a report in writing to the Court and may order a home study of the home of the proposed conservator/guardian.

#### 6.4.15 Findings and Appointment

(1) The Court may appoint a conservator and/or guardian as requested if the Court is satisfied that:

- (a) The proposed ward is either a minor or an incapacitated person;
- (b) The appointment is necessary or desirable as a means of providing continuing care and supervision of the proposed ward and/or the property of the proposed ward; and
- (c) The proposed conservator and or guardian is both qualified and suitable, and is willing to serve.

(2) Based on the information provided to the Court, the Court shall make a guardianship appointment that is no more restrictive upon the liberty of the ward than is reasonably necessary to protect the ward.

#### 6.4.16 Court Orders

Upon entry by the Court of orders pursuant to this chapter, copies of such orders shall be forwarded to the Burns Paiute Tribal Social Services.

#### 6.4.17 Effect of Accepting Appointment as Conservator and/or Guardian

By accepting appointment, a conservator and/or guardian whether a resident or non-resident of the Reservation, submits personally to the jurisdiction of the Tribal Court in any proceedings related to the conservatorship/guardianship .

#### 6.4.18 Termination or Removal of Conservatorship and/or Guardianship

A conservatorship and/or guardianship may be terminated by order of the Court upon notice to interested persons and a hearing in the Tribal Court on the removal or termination. The Tribal Court may in conjunction with issuing an order accept the resignation, require the conservator and/or guardian to provide full account of the financial affairs of the ward and may also direct that an audit be conducted of the ward's financial affairs.

#### 6.4.19 Resignation of Conservator or Guardian

Persons desiring to resign as a conservator or guardian shall submit their resignation to the Tribal Court. The Court shall issue an order accepting the resignation after a showing that no other actions in the interim are necessary to protect the ward or the estate of the ward.

#### 6.4.20 General Powers of Guardians

A guardian is not liable to third persons for acts of the ward solely by reason of the guardian and ward relationship. In the general performance of powers and duties respecting the ward, a guardian of a minor or incapacitated person:

(1) May to the extent that is consistent with the terms of the Court order relating to detention or commitment of the ward, have custody of the person of the ward and establish the ward's place of abode on or off of the Reservation.

(2) If entitled to custody of the ward, shall provide for the care, comfort and maintenance of the ward, and whenever appropriate, arrange for the training and education of the ward. Without regard to custodial rights of the ward's person, that guardian shall take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects and begin protective proceedings if other property of the ward is in need of protection.

(3) May consent to or approve any necessary medical or other professional care, counsel, treatment or service for the ward.

(4) May do all other things necessary for the protection of the ward.

#### 6.4.21 General Powers of Conservators

A conservator, acting reasonably in efforts to accomplish the purpose for which he was appointed, may act without Tribal Court authorization or confirmation, to:

(1) Collect, hold and retain assets of the estate including land wherever situated excluding trust lands, until, in his judgment, disposition of the assets should be made, and the assets may be retained even though they include an asset in which he is personally interested;

(2) Receive additions to the estate;

(3) Continue or participate in the operation of any business or other enterprise;

(4) Deposit estate funds in a bank including a bank operated by the conservator;

(5) Insure the assets of the estate against damage or loss and the conservator against liability with respect to third persons;

(6) Pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration and protection of the estate;

(7) Pay any sum distributable to a ward or dependent of the ward by paying the sum to the distributee or by paying the sum for the use of the distributee either to his guardian or if none, to a relative or other person with custody of his person, subject to any programming requirements that may be established by the Court; and

(8) Execute and deliver all instruments which will accomplish or facilitate and exercise of the powers vested in the conservator.

#### 6.4.22 Powers of Conservator Pursuant to Tribal Court Order

Upon authorization by the Tribal Court a conservator may exercise the following powers:

(1) Acquire an undivided interest in any estate asset in which the conservator in any fiduciary capacity holds an undivided interest;

(2) Invest and reinvest estate assets and funds as would a trustee;

(3) Acquire or dispose of an estate asset including non-trust land wherever situated for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset in connection with the exercise of any power vested in the conservator;

(4) Make ordinary or extraordinary repairs or alterations to buildings or other structures, to demolish any improvements, to raise existing or erect new party walls or buildings;

(5) Vote a security, in person or by general or limited protection;

(6) Employ persons, including attorneys, auditors, investment advisors, or agents, even though they are associated with the conservator to advise or assist him in the performance of his administrative duties, to act upon their recommendation without independent investigation, and instead of acting personally to employ one or more agents to perform any act or administration, whether or not discretionary;

(7) Prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties;

(8) Prosecute claims of the prosecuted person including those for his personal injury.

#### 6.4.23 Reports to the Tribal Court

Tribal Court may require the conservator and/or guardian to submit periodic reports to the Tribal Court in the form prescribed by the Court on not less than an annual basis.

#### 6.4.24 Bonds

The Tribal Court may in its discretion require the posting of a bond by a conservator in an amount to be determined by the Tribal Court.

#### 6.4.25 Penalties

(1) Any Indian conservator or guardian who steals, diverts, or grossly abuses the funds or property of a ward shall be deemed guilty of a crime and may be punished by a jail sentence not to exceed one year or a fine not to exceed \$5000.00, or both, and is subject to an order of restitution by the Court.

(2) In addition to the criminal penalties provided for in sub-section (1) above, any conservator or guardian who steals, diverts, or grossly abuses the funds or

property of a ward shall additionally be subject to civil sanctions including a penalty not to exceed \$5000 and an order of restitution by the Court.

# **TITLE 7 CORPORATIONS**

## **TITLE 7 CORPORATIONS**

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(Provided for outside of the Burns Paiute Tribal Code by Tribal Ordinance)

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(Provided for outside of Burns Paiute Tribal Code by Tribal Ordinance)

# **CHAPTER 8.3 EMERGENCY MANAGEMENT**

## CHAPTER 8.3 EMERGENCY MANAGEMENT

### GENERAL

#### 8.3.1 Intent and Purpose

(a) It is the intent and purpose of this chapter to establish an office to ensure the efficient utilization of all Tribal resources to combat disasters as defined by this chapter

(b) The Tribal Department of Emergency Management shall be the coordinating Department for all planning, organizing, resources, outreach, training, budgeting, funding, in connection with Emergency Management; it shall be the instrument through which the Tribal Council and Tribal Administration may exercise the authority and discharge the responsibilities vested in them during disaster emergencies.

(c) This chapter will not relieve any Tribal Department of responsibilities or authority granted by the Tribal Charter or by Tribal Ordinances, nor will it adversely affect the work of any volunteer agency organized for relief in disaster emergencies.

#### 8.3.2 Definitions

The following definitions shall apply in the interpretation of this chapter:

(a) "Attack" shall mean direct or indirect assault against Burns Paiute Tribal lands, the Tribal government and its surrounding area, or of the United States by the forces of a hostile nation or the agents thereof, including assault by bombing; conventional, nuclear, chemical or biological warfare; terrorism or sabotage.

(b) "Coordinator" shall mean the Coordinator of the Tribe's Emergency Management Department, appointed as prescribed in this chapter.

(c) "Disaster" includes, but is not limited to, actual or threatened enemy attack, sabotage, extraordinary fire, flood, storm, epidemic, accident, chemical spills or other impending or actual calamity endangering or threatening to endanger health, life or property of constituted government.

(d) "Emergency Management" is the basic government function of maintaining the public peace, health and safety during an emergency. This term shall include plans and preparation for protection and relief, recovery and rehabilitation from effects of an attack by the forces of an enemy nation or the agents thereof, or a disaster as defined herein. It shall not, however, include any activity that is the primary responsibility of the military forces of the United States.

(e) "Emergency Management Resources" shall mean the employees, equipment and facilities of all Tribal Departments, boards, councils, committees; and, in

addition, it shall include all volunteer personnel, equipment and facilities contributed by, or obtained from, volunteer persons or agencies.

(f) "Emergency Management volunteer" shall mean any person duly registered, identified and appointed by the Coordinator of the Tribe's Department of Emergency Management and assigned to participate in Emergency Management activities.

(g) "Regulations" shall include plans, programs, and other emergency procedures deemed essential to emergency management.

(h) "Volunteer" shall mean contributing a service, equipment or facilities to the Department of Emergency Management without reimbursement.

(i) "Tribal Lands" shall mean all lands held in trust for the Burns Paiute Tribe and lands owned by the Burns Paiute Tribe.

#### 8.3.3 Organization and Appointment

(a) The organization shall consist of the following:

(1) A Department of Emergency Management within the Tribal Administration of the Tribal Government under the direction of the Tribal Council. The Department head of the Tribal Emergency Management Department shall be known as the Coordinator, and such assistants and other employees as are deemed necessary for the proper functioning of the Department will be appointed.

(2) The employees and resources of all Tribal departments, boards, committees, and councils shall participate in the Emergency Management activities. Duties assigned to Tribal departments shall be the same as or similar to the normal duties of the department, where possible.

(3) Volunteer personnel and agencies offering services to and accepted by the Tribe.

(b) The Coordinator shall designate and appoint Deputy Coordinators to assume the emergency duties of the Coordinator in the event of his or her absence or inability to act.

#### 8.3.4 Day-to-Day Duties and Responsibilities of the Coordinator

The Coordinator shall be responsible for the planning, coordination, and operation of the Emergency Management activities within all Burns Paiute tribal lands. The Coordinator shall maintain liaison with state and federal authorities and the authorities of nearby political subdivisions so as to ensure the most effective operations of the Emergency Management Plans. The Coordinator's duties shall include, but not be limited to, the following:

- (a) Coordinating the recruitment of volunteer personnel and agencies to augment the personnel and facilities of the Tribe for Emergency Management purposes.
- (b) Development and coordination of plans for the immediate use of all facilities, equipment, manpower and other resources of the Tribe for the purpose of minimizing or preventing damage to persons and property; and protecting and restoring governmental services and public utilities for the public health, safety and welfare.
- (c) Negotiating and concluding agreements with owners or persons in control of buildings or other property for use of such buildings or other property for the Emergency Management purposes and designating suitable buildings as public shelters.
- (d) Through public informational programs, educating the populace as to actions necessary and required for the protection of their persons and property in case of enemy attack or disaster as defined herein, either impending or present.
- (e) Conducting public practice alerts to insure the efficient operation of the Emergency Management Forces and to familiarize residents with emergency Management regulations, procedures and operations.
- (f) Coordinating the activity of all other public and private agencies engaged in any Emergency Management activities.

#### 8.3.5 Emergency Management Plans

- (a) Comprehensive Emergency Management Plans shall be adopted and maintained by resolution of the Tribal Council. In the preparation of these plans as it pertains to Tribal organizations, it is intended that the services, equipment and facilities, and personnel of all existing departments and agencies shall be utilized to the fullest extent. When approved, it shall be the duty of all departments and agencies to perform the functions assigned by these plans and to maintain their portions of the plans in a current state of readiness at all times. These plans shall have the effect of law whenever a disaster, as defined in this chapter, has been proclaimed.
- (b) The Coordinator shall prescribe in the emergency plans those positions within the disaster organization, in addition to his own, for which lines of succession are necessary. In each instance, the responsible person will designate and keep on file with the Coordinator a current list of three persons as successors to his position. The list will be in order of succession and will nearly as possible designate persons best capable of carrying out all assigned duties and functions.
- (c) Each department head or their successor assigned responsibility in the Plans shall be responsible for carrying out all duties and functions assigned therein.

Duties will include the organization and training of assigned employees and volunteers where needed. Each department head shall formulate the Standing Operating Procedure to implement the plans for his department.

(d) Amendments to these Plans shall be submitted to the Coordinator. If approved, the Coordinator will then submit the amendments to the Tribal Council with his recommendation for their approval. Such amendments shall take effect immediately from date of approval.

(e) When a required competency or skill for a disaster function is not available within government, the Coordinator is authorized to seek assistance from persons outside of Tribal Government. Such services from these persons may be accepted on a volunteer basis. Such citizens shall be enrolled as Emergency Management volunteers.

#### 8.3.6 No Municipal or Private Liability

(a) This chapter is an exercise by the Tribe of its governmental functions for the protection of the public peace, health and safety, and neither the Tribe nor agents and representatives of same, or any individual, receiver, firm, partnership, corporation, association or trustee, or any of the agents thereof in good faith carrying out, complying with or attempting to comply with any order, rule or regulation promulgated pursuant to the provisions of this chapter, shall be liable for any damage sustained to persons or property as the result of said activity.

(b) Any person owning or controlling real estate or other premises who voluntarily and without compensation grants the Tribe the right to inspect, designate, and use the whole or any part or parts of such real estate or premises for the purpose of sheltering persons during an actual, impending or practice disaster situation shall not be civilly liable for the death of, or injury to, any person or about such real estate or premises under such license, privilege or other permission; or for loss of, or damage to, the property of such person.

#### 8.3.7 Violations

(a) It shall be a criminal offense for any person to violate any of the provisions of this chapter or plans issued pursuant to the authority contained herein, or to willfully obstruct, hinder or delay any member of the Emergency Management organization as herein defined in the enforcement of the provisions of this chapter or any plan issued thereunder.

(b) Violators subject to the criminal jurisdiction of the Burns Paiute Tribal Court shall be punished by imprisonment of up to 1 year and a fine of up to \$5,000. Violators not subject to jurisdiction in the Burns Paiute Tribal Court shall be prosecuted in the Oregon courts under applicable law.

#### 8.3.8 Conflicting Ordinances, Orders, Rules and Regulations Suspended

At all times when the orders, rules and regulations made and promulgated pursuant to this chapter shall be in effect, they shall supersede all existing ordinances, orders, rules and regulations insofar as the latter may be inconsistent therewith.

## STATES OF EMERGENCY

### 8.3.20 State of Emergency; Restrictions Authorized

(a) A State of Emergency shall be deemed to exist whenever during times of public crises, disaster, rioting, catastrophe, or similar public emergency, for any reason, public safety authorities are unable to maintain public order or afford adequate protection for lives, safety or property, or whenever the occurrence of any such condition is imminent.

(b) In the event of an existing or threatened State of Emergency endangering the lives, safety, health and welfare of the people within the Burns Paiute tribal lands or any part thereof, or threatening damages to or destruction of property, the Tribal Chairman or designee is hereby authorized and empowered to issue a public proclamation declaring to all persons the existence of such a state of emergency, and, in order to more effectively protect the lives and property of people within the Burns Paiute tribal lands, to place in effect any or all of the restrictions hereinafter authorized.

(c) The Tribal Chairman or designee is hereby authorized and empowered to limit by proclamation the application of all or any part of such restrictions to any area specifically designated or described within the Burns Paiute tribal lands and to specific hours of the day or night; and to exempt from all or any part of such restrictions, while acting in the line of and within the scope of their respective duties, law enforcement officers, firemen, and other public employees, rescue squad members, doctors, nurses, employees of hospitals and other medical facilities; on-duty military personnel, whether state or federal; on-duty employees of public utilities, public transportation companies, and newspaper, magazine, radio broadcasting and television broadcasting corporations operated for profit; and such other classes of persons as may be essential to the preservation of public order and immediately necessary to serve the safety, health and welfare needs of people within the Burns Paiute tribal lands.

### 8.3.21 Proclamation Imposing Prohibitions and Restrictions

(a) The Tribal Chairman or designee by proclamation may impose prohibitions and restrictions specified in BPTC 8.4.20 in the manner describe in these sections. The Tribal Chairman or designee may impose as many of these specified prohibitions and restrictions as he finds are necessary, because of an emergency, to maintain an acceptable level of public order and services, and to protect lives, safety and property. The Tribal Chairman or designee shall recite his findings in the proclamation.

(b) The proclamation shall be in writing. The Tribal Chairman or designee shall take reasonable steps to give notice of the terms of the proclamation to those affected by it and shall post a copy of it in the Tribal Council Office and the Tribal Community Center. The Tribal Chairman or designee shall send reports of the substance of the proclamation to the mass communications media which serves the affected area. The Tribal Chairperson or designee shall retain a text of the proclamation and furnish upon request certified copies of it.

#### 8.3.22 Evacuation

The Tribal Chairman or designee may direct and compel the evacuation of all or part of the population of Burns Paiute tribal lands, to prescribe routes, modes of transportation, and destination in connection with the evacuation; and to control ingress and egress of a disaster area, the movement of persons within the area, and the occupancy of premises therein. Details of the evacuation may be set forth or amended in a subsequent proclamation which shall be well publicized.

#### 8.3.23 Curfew

(a) The proclamation may impose a curfew prohibiting in certain areas and during certain periods the appearance in public of anyone who is not a member of the exempted class. The proclamation shall specify the geographical area or areas and the period during each 24-hour day to which the curfew applies. The Tribal Chairman or designee may exempt from some or all of the curfew restriction from which each is exempted.

(b) Unless otherwise specified in the proclamation, the curfew shall apply during the specified period each day until the Tribal Chairman or designee by proclamation removes the curfew.

#### 8.3.24 Restrictions on Possession, Transportation, and Transfer of Dangerous Weapons and Substances

(a) The proclamation may prohibit the transportation or possession one's own premises, or the sale or purchase of any weapon or substance. The Tribal Chairman or designee may exempt from some or all of the restrictions classes of people whose possession, transfer or transportation of certain dangerous weapons or substances is necessary to the preservation of the public's health, safety or welfare. The proclamation shall state the exempted classes and the restrictions which each is exempted.

(b) "Dangerous weapon or substance" means:

(1) Any deadly weapon, ammunition, explosive, incendiary device, radioactive material or device as defined in BPTC 1.3.58, gasoline or other instrument or substance designed for use that carries a threat of serious bodily injury or destruction of property.

(2) Any other instrument, or substance that is capable of being used to inflict serious bodily injury or destruction of property, when the circumstances indicate that there is some probability that such instrument or substance will be so used.

(3) Any part or ingredient in any instrument or substance included above when the circumstances indicate a probability that such part or ingredient will be so used.

(c) If imposed, the restrictions shall apply throughout the Burns Paiute tribal lands or such part thereof as designated in the proclamation.

(d) A violation of this section shall be punishable by imprisonment of up to 1 year and a fine of up to \$5,000 for those persons subject to the criminal penalties of the Burns Paiute Tribal Court. Persons not subject to Burns Paiute criminal jurisdiction shall be referred to Oregon courts under applicable laws.

#### 8.3.25 Restrictions on Access to Areas

(a) The proclamation may prohibit obtaining access or attempting to obtain access to any area, designated in the manner described in this section, in violation of any order, clearly posted notice or barricaded indicating that access is denied or restricted.

(b) Areas to which access is denied or restricted shall be designated by the Chief of Tribal Police and his subordinates or other law enforcement officers when directed in the proclamation to do so by the Tribal Chairman. When acting under this authority, the Chief of Tribal Police and his subordinates may restrict or deny access to any area, street, highway or location within Burns Paiute tribal lands if that restriction or denial of access or use is reasonably necessary to promote efforts being made to overcome the emergency or to prevent further aggravation of the emergency.

#### 8.3.26 Application of Proclamation

The proclamation may prohibit or restrict:

(a) Movement of people in public places;

(b) The operation of offices, business establishments, and other places to or from which people may travel or at which they may congregate; and

(c) Other activities or conditions the control of which may be reasonably necessary to maintain order and protect lives or property during the State of Emergency, within the area designated in the proclamation.

#### 8.3.27 Removal of Prohibitions and Restrictions

The Tribal Chairman shall by proclamation terminate the entire declaration of emergency or remove any of the prohibitions and restrictions when the emergency no longer requires them, or when directed to do so by the Tribal Council.

#### 8.3.28 Superseding and Amendatory Proclamations

The Tribal Chairman in his discretion may invoke the restrictions authorized by this article in separate proclamations, and may amend the proclamation by means of a superseding proclamation in accordance with the procedures set forth in BPTC 8.4.27.

#### 8.3.29 Termination and Proclamation

Any proclamation issued under this article shall expire five days after its last imposition unless sooner terminated in writing under the same procedures set forth in BPTC 8.4.27.

#### 8.3.30 Absence or Disability of Tribal Chairman

In case of absence or disability of the Tribal Chairman, the Vice-Chairperson, or such other person as may be designated by the Tribal Council, shall have and exercise all of the powers herein given to the Tribal Chairman.

#### 8.3.31 Penalty for Violation

Except as provided in BPTC 8.4.26, any person violating any prohibition or restriction imposed by a proclamation authorized by Chapter 8.4 shall be guilty of a crime, punishable, upon conviction, by a fine not exceeding \$5,000 or imprisonment not exceeding 1 year.

#### 8.3.32 Repeal of Conflicting Ordinances

All ordinances or resolutions in conflict with the provisions of this article are hereby repealed.

#### 8.3.33 Territorial Applicability

This article shall apply within and throughout the Burns Paiute tribal lands and to the extent allowable by federal law and regulation.

#### 8.3.34 Hazardous Materials

All incidents involving hazardous materials must be reported to State hazardous materials agency.

# **CHAPTER 8.4 ENROLLMENT**

(Provided for outside of Burns Paiute Tribal Code by Tribal Ordinance)

# **TITLE 9 PROPERTY**

## **TITLE 9**

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# **CHAPTER 9.1 BURNS PAIUTE TRIBAL HOUSING CODE**

## **CHAPTER 9.1 BURNS PAIUTE TRIBAL HOUSING CODE**

### **GENERAL PROVISIONS**

#### **9.1.1 Short Title**

This Chapter may be referred to as the Tribal Housing Code.

#### **9.1.2 Purpose and Interpretation**

This Chapter must be interpreted and construed to fulfill the following purposes:

- (1) To preserve the peace, harmony, safety, health and general welfare of Tribal members and of those permitted to enter or reside on the Burns Paiute Reservation.
- (2) To maintain and improve dwelling units on the Reservation in order to improve the quality of the housing stock available to tribal members.
- (3) To protect the rights of buyers, sellers, lenders, landlords and tenants.
- (4) To simplify and establish laws governing the rights, obligations, and remedies of the owners, sellers, buyers, lessors, and lessees of buildings or land located within the Burns Paiute Reservation.
- (5) To facilitate the Tribe, tribal entities, and tribal member's access to financing for the construction, renovation or purchase of family residences on trust land within the Tribe's jurisdiction by prescribing procedures for the recording, prioritizing and foreclosing mortgages given to secure loans.
- (6) To establish laws and procedures necessary to obtain governmental funding for tribal housing programs, and governmental guarantees for private or tribal housing loans for construction, renovation or purchase.

#### **9.1.3 Applicability**

- (1) The Burns Paiute Tribal Housing Code applies to any and all arrangements for developing, selling, buying, renting, leasing, occupying, or using any and all houses, dwelling units, buildings or accommodations intended or used for human occupation and residence within the Burns Paiute Reservation. It applies to all arrangements or agreements whether formal or informal, written, agreed to orally or agreed to by the parties' practice.
- (2) The following arrangements or agreements are not covered by this Code:
  - (a) Residency at a public or private institution for the purpose of detention or the

provision of medical, geriatric, mental health or counseling, educational, religious, or similar service; or

(b) Transient occupancy in a hotel or motel.

#### 9.1.4 Tribal Court Jurisdiction

(1) Jurisdiction is extended over all buildings and lands intended or used for human dwelling, occupation, or residence which:

(a) Lie within the Burns Paiute Indian Reservation's exterior boundaries; or

(b) Are owned by, held in trust for, leased, or used by the Burns Paiute Tribe, its members, its Housing Authority or TDHE, or any other tribal entity; or

(c) Are within the Burns Paiute Tribe's Indian Country, as may be defined from time to time by the laws of the Tribe or of the United States.

(2) Jurisdiction is extended over all persons or entities who:

(a) Sell, rent, lease or allow persons to occupy such buildings or lands; or

(b) Buy, rent, lease or occupy such buildings or lands; or

(c) Mortgage, lease, or otherwise secure an interest in such buildings or lands.

(3) Personal jurisdiction is extended over all persons or entities, whether or not they are members of the Burns Paiute Tribe, whether or not they are Indian or non-Indian, and whether or not they have a place of business within the Reservation. Any person dealing with buildings or lands subject to this Chapter is subject to the Tribe's jurisdiction.

(4) The Burns Paiute Tribal Court will exercise jurisdiction under this Chapter.

(5) Unless in conflict with the Tribal Court's jurisdiction as stated in the Burns Paiute Constitution and Chapter I - The Tribal Court System - this section will be interpreted to expand the Tribal Court's jurisdiction to include all residential property as stated in subsection (1) and all parties to any related transactions as stated in subsection (2) & (3).

#### 9.1.5 Relation to Other Laws

(1) Unless affected or displaced by this Chapter, the Tribal Code, principles of law and equity in the Tribe's common law, and tribal customs and traditions are applicable to matters arising under this Chapter. In the absence of controlling tribal law or custom, the Tribal Court will look first to federal law, then to another

Indian tribe's law, then to Oregon State law for guidance in interpreting this Chapter. When the language used in this Chapter was taken from a specific jurisdiction's statutes, the Tribal Court will look to that jurisdiction's law for guidance.

(2) If this Chapter or any provision found therein clearly conflicts with tribal laws enacted to comply with federal housing programs or with regulations passed by any agency of the United States related to federal housing programs, such tribal or federal law will govern over this Chapter's provisions in cases involving that federal housing program.

(3) Using a Choice of Law or Choice of Forum provision in leases, loans, or any housing related contracts is disfavored. Such clauses or provisions will have no force and effect. To the extent that any state's law may be applicable to this Chapter's subject matter by the parties' agreement or otherwise, such laws will be read as advisory only, and will not govern the parties' relations.

#### 9.1.6 Mobile Homes

(1) Title to manufactured homes as a motor vehicle under state law must be eliminated in accordance with the laws of the state titling the manufactured home. Once the state motor vehicle title is eliminated, title will be exclusively determined by this Chapter.

(2) 9.1.86 to 9.1.124 will govern when foreclosing any lien on a manufactured home.

#### 9.1.7 Definitions

(1) Abandonment means that a person no longer intends to assert an interest in the real property as evidenced by the person's objective actions.

(2) Action means any court proceeding including repossession, recoupment, counter claim, set off suit in equity and any other proceeding to determine a party's right.

(3) Borrower/mortgagor - see Mortgagor/borrower.

(4) Building means any structure - including appurtenances or additions - designed for human habitation, including a manufactured home, prefabricated home or modular home.

(5) Building or housing code means any laws, ordinances or regulations of the Tribe or any United States agency that deals with fitness for habitation, health conditions, or the safety, construction, maintenance, operation, use or appearance of any dwelling unit.

- (6) Dwelling unit means all or part of a building sold, rented, or leased as a home or residence by any person or entity.
- (7) First Class mail means regular mail, not certified or registered.
- (8) Housing Authority or BPIHA means the Burns Paiute Indian Housing Authority, established by Tribal Ordinance ~~85-06~~ for the purpose of constructing and maintaining dwellings for public use within the Tribe's territorial jurisdiction.
- (9) Indian means any person recognized as being an Indian, Alaskan Native or Native Hawaiian by any Indian Tribe, the United States government, or any State.
- (10) Indian Country or territorial jurisdiction means all lands owned by, held in trust for, leased, occupied or otherwise controlled by the Tribe or any tribal instrumentality including any and all areas that may constitute the Tribe's Indian Country under applicable tribal or federal law.
- (11) Indian Tribe means any Indian tribe or Alaska native tribe, band, nation, or other organized group or community of Indians or Alaska natives recognized as eligible for the services provided by the United States government because of its status as an Indian or Alaska native entity including any Alaska Native Village as defined in section 1602(c) of Title 43, or recognized by a state as an Indian tribe.
- (12) Landlord means the Tribe, Housing Authority or TDHE, person, entity or federal agency that is the owner, lessor or sublessor of a dwelling unit intended for a tenant's use.
- (13) Lease means an agreement - written or oral - regarding the terms and conditions for the use and occupancy of real property, a dwelling unit or a building, including a lease-to-purchase agreement or similar purchase scheme, and a lease to Tribal Trust Property.
- (14) Lender/mortgagee - see Mortgagee/lender.
- (15) Lessee means a tenant under a lease to a dwelling unit, or a person using or occupying real property with the owner's consent.
- (16) Lessor means the legal, beneficial or equitable owner of property under a lease, or the lessor's heirs, successor, executor, administrator or assign.
- (17) Leasehold Mortgage is the mortgaging of a lease to property given to secure a loan, and may be created under the auspices of any federal agency homebuyer program, a Mutual Help Home Ownership program administered by the Housing Authority, or any other agreement entered into between a Mortgager/Borrower

and a Mortgagee/Lender.

(18) Mortgage means a lien as is commonly given to secure advances on or the unpaid purchase price of a building or land. This term may refer both to a security interest creating a lien, whether called a mortgage, leasehold mortgage, deed of trust, security deed or other term, as well as the credit instrument or note secured thereby.

(19) Mortgagee/Lender means:

(a) Any entity established primarily for lending funds to purchase real property and not for the purpose of investing in or directly purchasing real property; or

(b) The Tribe; or

(c) The Housing Authority or TDHE; or

(d) A United States government agency which loans money, or guarantees or insures loans to a mortgagor/borrower for the construction, acquisition or rehabilitation of a building or land; or

(e) Any assignee or successor to the mortgagee/lender.

(20) Mortgagee/lender designated assignee means any person or entity that is assigned or receives a transfer of the mortgagee/lenders interest in a mortgage or leasehold mortgage.

(21) Mortgagor/Borrower means:

(a) The Tribe or its instrumentality; and

(b) The Burns Paiute Housing Authority or TDHE; and

(c) Or any person; and

(d) Or any heir, successor, executor, administrator, or assign of the Tribe or individual that has executed a mortgage or leasehold mortgage.

(22) Mortgage Foreclosure Proceeding means a judicial or non-judicial proceeding:

(a) To foreclose a mortgagor/borrower's, and each person or entity claiming through the mortgagor/borrower - interest in a building or land, including a lease under a leasehold mortgage; and

(b) To assign, where appropriate the mortgagor/borrower's interest to a

designated assignee.

(23) Manufactured Home means a structure designed for movement on the public highways that has sleeping, cooking and plumbing facilities; is intended for human occupancy; is being used for residential purposes; and was constructed in accordance with federal manufactured housing construction and safety standards and regulations in effect at the time of construction. Recreational vehicles and commercial coaches are excluded.

(24) Nuisance means to maintain or allow a condition on real property that one has the ability to control, and that:

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

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

(25) Owner means a mortgagee in possession and means one or more persons, jointly or severally, in whom is vested:

(a) All or part of the legal title to property; or

(b) All or part of the beneficial ownership and a right to present use and enjoyment of the premises.

(26) Person means any person eighteen years or older, or otherwise considered an adult and capable of entering into contracts, and suing or being sued. Person also includes the Housing Authority or TDHE, an organization, a public agency, a corporation, a partnership, or any other entity engaging in activities subject to this Chapter.

(27) Premises means a dwelling unit, any structure of which it is a part, and all facilities and areas connected with it, including grounds and common areas intended or promised for a tenant's use.

(28) Rent means all regular payments made to a landlord or lessor under a lease.

(29) Reservation means the exterior boundaries of the Burns Paiute Reservation in the State of Oregon, as that reservation is now or hereafter defined by the United States.

(30) Secretary means the Secretaries of the United States Department of Housing and Urban Development, United States Department of Agriculture or United States Veterans Administration, or any secretarial representative or

deputy.

(31) Subordinate lien holder means any lien holder, including a later mortgagee, who perfected their lien after a mortgage is recorded under this Chapter, except the Tribe is not be considered a subordinate lien holder with respect to any claim regarding a tribal tax on real property.

(32) Tenant means the lessee, sublessee or other person entitled under a lease to occupy a dwelling unit to the exclusion of others.

(33) Transient Occupancy means occupancy in a room or suite of rooms, that has all the following characteristics:

- (a) Occupancy is charged on a daily or weekly basis; and
- (b) The occupancy period does not exceed 30 days; and
- (c) The lodging operator provides maid or linen service daily or every two days as part of the regularly charged occupancy cost.

(34) Tribe means the Burns Paiute Tribe of Indians, Burns, Oregon as defined by the Tribal Constitution.

(35) Tribal Court means the Burns Paiute Tribal Court or such body as may now or hereafter is authorized by the Tribe to exercise the powers and functions of a court of law under this Chapter.

(36) Tribally Designated Housing Entity or TDHE means one or more entities chosen by the Tribe to administer its HUD block grant under the Native American Housing Assistance and Self-Determination Act, 25 U.S.C. § 4101 *et seq.*

(37) Tribal member means a member of the Burns Paiute Tribe of Indians.

(38) Trust Land means any land, title to which is held in trust by the United States for the benefit of the Tribe or an individual Indian person who resides within the reservation, or title to which is held by an Indian tribe subject to a restriction against alienation imposed by the United States.

(39) Writ of restitution means a Tribal Court order:

- (a) Restoring an owner, lessor or the Secretary to possession of real property; and
- (b) Evicting a tenant or other occupant therefrom.

(40) Waste means the spoiling or destruction by a tenant of land, buildings,

gardens, trees, or other improvements, causing substantial injury to the owner's interest in the property.

#### 9.1.8 Construction

Unless otherwise specified or apparent from a section's context, the plural includes the singular and the singular includes the plural, and the feminine includes the masculine and the masculine includes the feminine.

#### 9.1.9 Mortgage Assignment

Any mortgagee/lender may assign its interest under the mortgage to another person or entity. If the mortgage falls under a federal agency homebuyer program or loan guarantee program, the mortgagee/lender must seek prior written approval from the Tribe, except where the United States government or the federal agency guaranteeing or insuring the mortgagee is the designated assignee.

#### 9.1.10 Access to the Reservation

The Secretary, an off reservation mortgagee/lender or off reservation owner has the right to enter the reservation to inspect the property that the person has an interest in, to serve any notice and to take possession.

#### 9.1.11 Permissible Interest Rate

- (1) Until such time as the Tribe enacts a usury statute, this section governs transactions covered by this Chapter.
- (2) If the parties have not otherwise agreed to an interest rate, the rate is 9% percent per annum and is payable on the following transactions:
  - (a) All moneys after they become due; or
  - (b) Money received for another's use but retained beyond a reasonable period; or
  - (c) Money due under a contract that specifies interest but not the interest rate; or
  - (d) Interest on a money judgment or an attorney fee award.
- (3) Any person who violates subsection (2) of this section forfeits the right to collect or receive any interest.
- (4) The following are exempt from this section:

- (a) Any lender approved by the Secretary for participation in any mortgage insurance or loan guarantee program; or
  - (b) Any loan secured by a first lien on real property, or made to finance the acquisition of real property and secured by any lien on that property; or
  - (c) Any loan secured by real property that is scheduled under the loan agreement to be repaid in substantially equal payments and made by a lender.
- (5) The Council must review and adjust accordingly the permissible interest rate every two years.

#### LEASE OF TRIBAL TRUST PROPERTY

- 9.1.12 RESERVED FOR FUTURE ACTION
- 9.1.13 RESERVED FOR FUTURE ACTION
- 9.1.14 RESERVED FOR FUTURE ACTION
- 9.1.15 RESERVED FOR FUTURE ACTION
- 9.1.16 RESERVED FOR FUTURE ACTION
- 9.1.17 RESERVED FOR FUTURE ACTION
- 9.1.18 RESERVED FOR FUTURE ACTION
- 9.1.19 RESERVED FOR FUTURE ACTION

#### LANDLORD/TENANT RESPONSIBILITIES AND REMEDIES

##### 9.1.20 Applicability

- (1) This section applies to the creation of a tenancy under a written or oral lease, or similar agreement.
- (2) This section does not apply to:
  - (a) Occupancy under a sales contract or leasehold mortgage, if the occupant:
    - (i) Is the purchaser or a person who succeeds to the interests of a purchaser; and
    - (ii) Has made a down payment, option payment or similar equity payment equal to at least 5 percent of the purchase price; or
    - (iii) Has lived in the home for more than five years; or
    - (iv) Has made lease payments equal to at least 5 percent of the purchase price.

(b) Transient occupancy.

#### 9.1.21 Tenancies Classified

Tenancies are classified as follows:

- (1) Tenancy at Sufferance exists when a person lawfully possesses another's dwelling unit or premises, but wrongfully maintains possession after the tenancy has terminated. No notice is required to terminate a tenancy at sufferance.
- (2) Tenancy at Will exists when a person possesses a dwelling unit or premises with the owner's consent, but under circumstances not showing an intention to create a tenancy. The notice to terminate a tenancy at will is sufficient if given for the same time period as the payment of rent.
- (3) Tenancy from week-to-week exists when a person possesses another's dwelling unit or premises, but no certain time period has been mentioned in the lease, and rent is due weekly. Except as otherwise agreed, notice to terminate a week-to-week tenancy may be given not less than 14 days prior to the time designated for termination of the tenancy. This notice must be in writing.
- (4) Tenancy from month-to-month exists when a person possesses another's dwelling unit or premises, but no certain time period has been mentioned in the lease, and rent is due monthly. Except as otherwise agreed, notice to terminate a month-to-month tenancy may be given not less than 30 days prior to the time designated for termination of the tenancy. This notice must be in writing.
- (5) Tenancy from year-to-year exists when a person possesses another's dwelling unit or premises, but no certain time is mentioned and rent is due annually. The notice to terminate a tenancy from year-to-year is sufficient if given not less than 60 days prior to the time designated for termination of the tenancy. This notice must be in writing.
- (6) The lease can specify the type of tenancy being created. The lease can specify when the tenancy terminates, and when so specified, no notice is required to terminate the tenancy.

#### 9.1.22 Notices

- (1) When the provisions of this Code requires actual notice, this notice may be served by:
  - (a) Verbal notice given personally to the landlord or tenant; or
  - (b) Written notice personally delivered to the landlord or tenant, or left at the landlord's business or tenant's residence; or

- (c) Written notice is sent first class mail; or
- (d) By other means as stated in the lease's terms that are reasonably calculated to achieve actual receipt.

(2) When the provisions of this Code require actual written notice, this notice must be served on the tenant or landlord personally or by securely affixing the notice to the entrance of the leased premises and also mailing the notice to the tenant by first class mail at the tenant's last known address.

(3) Notice by first class mail is complete upon mailing. When notice is sent by mail and left at the tenant's residence or the landlord's business, the notice is considered served on the day it is left at the residence or business.

#### 9.1.23 Calculation of Notice Periods

Unless otherwise specified in this Code:

(1) When a notice refers to a specific number of days within which to act, those days are calculated by consecutive calendar days until midnight on the last day. If the last day falls on a Saturday, Sunday or legal holiday, the act must be performed on the next judicial day. The calculation does not include the day notice is served.

(2) When a notice refers to a specified number of hours within which to act, those hours are calculated in consecutive clock hours, beginning immediately upon the hour of service.

(3) When a notice is sent by mail only, the tenant or landlord has an additional three days to act on the notice.

#### 9.1.24 Administration of Remedies; Attorney Fees and Costs

(1) The landlord/tenant remedies set forth in this Code must be administered so that an aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate the damages.

(2) Any right or obligation declared by sections this Code is enforceable by an action in Tribal Court unless the provision creating the right or obligation specifies otherwise.

(3) In any landlord/tenant action arising under this Code - including a tenant's action to recover property - reasonable attorney fees and costs at trial and on appeal may be awarded to the prevailing party.

#### 9.1.25 Good Faith and Unconscionability

- (1) Every duty under this Code and every act that must be performed prior to exercising a right or remedy imposes an obligation of good faith on the responsible person. Good faith in this context means honesty in fact in the person's conduct.
- (2) If the Tribal Court, as a matter of law, finds:
  - (a) A lease or any lease provision was unconscionable when made, the Tribal Court may refuse to enforce the lease, enforce the remainder of the lease without the unconscionable provision, or limit the application of the lease or provision to avoid an unconscionable result; or
  - (b) A settlement agreement or any settlement provision waiving a claim or right under the landlord/tenant provisions of this Code or under the lease was unconscionable when made, the Tribal Court may refuse to enforce the settlement agreement, enforce the remainder of the settlement agreement without the unconscionable provision, or limit the application of the agreement or provision to avoid an unconscionable result.
- (3) If unconscionability is an issue, the Tribal Court will allow the parties a reasonable opportunity to present evidence as to the setting, purpose, and effect of the lease or settlement agreement to aid the Tribal Court in reaching its determination.
- (4) In this context, unconscionability means that at the time the lease or settlement agreement was made one party was unable to exercise a meaningful choice as to the terms and the lease or settlement agreement is unreasonably favorable to the other party. Meaningful choice does not include the choice of agreeing to the lease or settlement as a whole when not agreeing results in continued homelessness, continued residence in substandard housing or a loss of housing.

#### 9.1.26 Discrimination Prohibited

No landlord may discriminate against a tenant due to a person's race, national origin, religion, age, sex, sexual orientation, disability, or marital or familial status.

#### 9.1.27 Tenant Who Conducts Repairs Not Employee

- (1) A tenant or applicant for tenancy who agrees to conduct repairs, routine maintenance, or cleaning services on their dwelling unit in exchange for a reduction in rent is not considered a landlord's employee.
- (2) Nothing in this section diminishes the landlord's obligations to maintain the

premises in a habitable condition under 9.1.39.

(3) Any repairs conducted by a tenant must comply with any applicable building, health or safety codes.

#### 9.1.28 Delivery of Possession

For the purposes of the landlord/tenant sections of this Code, delivery of possession occurs:

(1) From the landlord to the tenant, when the landlord gives actual notice to the tenant that the tenant has the right to occupy the dwelling unit or premises to the exclusion of all others. This notice includes delivering the keys to the dwelling unit or premises; or

(2) From the tenant to the landlord at the termination of the tenancy, when:

(a) The tenant gives actual notice to the landlord that the tenant has surrendered any right to occupy the dwelling unit to the exclusion of others. This notice includes returning the keys to the dwelling unit or premises; or

(b) Based on available objective information, a reasonable landlord believes that the tenant left the dwelling unit or premises with no intention of asserting further claim to the premises or its contents; or

(c) The landlord reasonably knows that the tenant has abandoned the dwelling unit.

### CONTENT OF AGREEMENT

#### 9.1.29 Terms and Conditions

(1) Unless prohibited by the landlord/tenant sections of this Code or other rule of law, a landlord and tenant may agree on any lease terms or conditions including the rent amount, the lease's term, informal dispute resolution, or other provisions governing the parties' rights and obligations.

(2) In the absence of a term as to the rent amount, the tenant will pay the fair market rental value for using and occupying the dwelling unit or premises.

(3) Rent is due and payable without demand or notice at the time and place agreed upon by the parties. If not otherwise agreed, the tenant must pay or tender all rent at the dwelling unit on the first day of each rental period. Rent may not be increased without actual written notice 30 days before the increase for a month-to-month tenancy or seven days before the increase for a week-to-week tenancy.

#### 9.1.30 Prohibited Terms; Remedy

(1) A landlord may not require a tenant:

(a) To waive or forgo a right or remedy under the landlord/tenant sections of this Code; or

(b) Authorize any person to confess judgment in an action under the lease agreement; or

(c) Agree to eliminate or limit the landlord's liability for negligent or willful misconduct, or to compensate the landlord for that liability; or

(d) Agree to waive the requirement that the dwelling unit or premises be in a habitable condition under 9.1.39.

(2) A provision prohibited by subsection (1) of this section is unenforceable. A tenant may recover - in addition to actual damages - an amount up to three months' periodic rent if a landlord:

(a) Deliberately uses a lease containing a provision the landlord knows is prohibited; and

(b) Attempts to enforce this provision.

#### 9.1.31 Late Rent Payment Charge or Fee

(1) A landlord may only impose a late charge or fee if:

(a) The tenant fails to pay the rent by the 15th day after it is due for a month-to-month tenancy or by the 5th day after it is due for a week-to-week tenancy; and

(b) A written lease specifies the tenant's obligation to pay this fee, the fee amount, and the date on which rent is due or the day on which late fees become due.

(2) The landlord may impose a \$1.00 per day charge not to exceed \$15.00 or a single \$15.00 late charge.

(3) A landlord may not deduct an outstanding late charge from a rent payment thereby making the rent delinquent. The landlord may note the late charge on a nonpayment of rent notice stating that the tenant can cure the nonpayment of rent by paying only the actual rent due and not the late charge.

(4) Non-payment of a late charge alone is not grounds to evict the tenant.

#### 9.1.32 Use and Occupancy Rules

(1) A landlord may adopt a rule or regulation, however described, concerning the tenant's use and occupancy of the dwelling unit or premises. Such rule is enforceable if:

(a) It promotes the convenience, safety or welfare of the tenants in the dwelling unit or premises, preserves the landlord's property from abusive use, or makes a fair distribution of services and facilities held out for all tenants generally; and

(b) It reasonably relates to the purpose for which it is adopted, and is applied to all tenants in fair manner; and

(c) It clearly describes the prohibition, direction or limitation on the tenant's conduct so as to fairly inform the tenant of what the tenant must or must not do to comply; and

(d) It is not for the purpose of evading the landlord's legal obligations; and

(e) The tenant has actual notice of the rule at the time the lease is entered into, or when the rule is adopted.

(2) If a rule or regulation adopted after the tenant enters into the lease substantially changes the terms of the lease, it is not valid until the tenant consents in writing.

(3) Except as may be consistent with tribal law or regulation, a landlord may not limit a tenant or a tenant's guest from engaging in traditional or cultural activities.

#### 9.1.33 Prohibition on Deposits and Fees to Enter Lease Agreement; Exceptions

(1) A landlord may not charge a deposit or fee, however designated, to an applicant for a dwelling unit or premises unless:

(a) The landlord approves the applicant, and the deposit or fee secures the lease's execution after approval but prior to signing the lease; and

(b) The landlord provides the applicant with a written statement describing the fee's purpose, the lease execution terms, and the conditions for refunding or retaining the deposit.

(2) If the lease is executed, the landlord must immediately return the tenant's deposit or fee, or apply the deposit or fee to the rent.

- (3) If the lease is not executed due to the fault of:
  - (a) The applicant, the landlord may retain the deposit, waiving all other remedies, or immediately return the deposit and pursue any other remedy; or
  - (b) The landlord, the landlord must return the deposit or fee within four days.
- (4) If the landlord fails to comply with subsection (1) of this section, the applicant or tenant may recover from the landlord the amount of any deposit or fee.

#### 9.1.34 Security Deposits and Prepaid Rent

- (1) For the purposes of this section, "security deposit" means any payment or deposit of money, however designated, to secure the performance of any and all lease provisions. But it does not mean a nonrefundable fee or other payment or deposit, including an advance payment of rent to ensure execution of the lease under 9.1.33.
- (2) A landlord may require the payment of a security deposit. A landlord must hold a security deposit for the tenant. A tenant's claim to the security deposit is prior to any other creditor's claim, including a trustee in bankruptcy.
- (3) The landlord may only claim all or part of the security deposit in a reasonable amount to:
  - (a) Remedy the tenant's defaults of the lease terms including, but not limited to, unpaid rents; or
  - (b) Repair damages - not including ordinary wear and tear to the dwelling unit or premises caused by the tenant.
- (4) A landlord may also require a prepaid rent deposit. For the purposes of this section, "prepaid rent," means any payment to the landlord for monthly or weekly rent not yet due, including, but not limited to, a last month's rent deposit. The landlord may claim from the prepaid rent deposit only the amount reasonable to pay the tenant's unpaid rent.
- (5) The landlord may not retain a security or prepaid rent deposit if the tenant fails to maintain the tenancy for a minimum number of months in a month-to-month tenancy or of weeks in a week-to-week tenancy.
- (6) In order to claim all or part of a security or prepaid rent deposit, the landlord must provide the tenant a written accounting specifically stating the reason for the claim and the amount taken to satisfy the claim. The landlord must provide actual notice of the accounting within 31 days from the claim or the termination of

the tenancy, whichever is sooner.

(7) All deposit amounts not claimed by the landlord must be returned to the tenant by personal delivery or first class mail within 31 days after the tenancy terminates.

(8) If the landlord fails to comply with subsection (6) or (7) of this section, the tenant may recover two times the amount due the tenant.

(9) This section does not preclude the landlord or tenant from pursuing any other remedy.

#### 9.1.35 Prohibition on Nonrefundable Fees; Exception

(1) A landlord may not charge a nonrefundable fee unless:

(a) The fee is for a specific purpose such as, but not limited to, cleaning or pet damage, and is reasonable for that purpose; and

(b) The lease agreement clearly states that the fee is nonrefundable.

(2) A landlord does not have to account for or return a nonrefundable fee.

#### 9.1.36 Changes to the Lease

(1) Unless otherwise specified in the landlord/tenant sections of this Code, a landlord may change any lease term by providing the tenant actual notice of the change 30 days before the new terms becomes effective.

(2) A tenant may choose to terminate the lease if a new term is unacceptable to the tenant.

### LANDLORD RIGHTS AND OBLIGATIONS

#### 9.1.37 Disclosure of Certain Information

(1) At or before the tenancy commences, the landlord must disclose in writing:

(a) The name and address of the person authorized to manage the dwelling unit or premises; and

(b) The name and address of the owner of the dwelling unit or premises, or the name and address of the person authorized to receive service of notices, demands or legal process; and

(c) Any outstanding default notice under a mortgage or other contract for sale,

or any pending foreclosure actions; and

(d) Any outstanding vendor's lien or pending action to foreclose a tax lien; and

(e) Any pending declaration of forfeiture or action for specific performance of a sales contract.

(2) The landlord must inform the tenant of any changes to this required information. A landlord must maintain a copy of each lease at the address required by subsection (1)(a). A tenant may request to inspect or copy the lease, and the landlord must make the lease available within a reasonable time. This section does not relieve the landlord's obligation to provide a copy of the lease to the tenant when the lease is signed.

(3) This section extends to and is enforceable against any successor landlord, owner or manager. A manager who has complied with subsection (1) is not liable for damages under this section if the manager had no knowledge of the required information.

(4) Any person who fails to comply with subsection (1)(a) + (b):

(a) Becomes the owner's agent for service of notices, demands and legal process; and

(b) Becomes responsible for performing the landlord's obligations under the landlord /tenant sections of this Code and the lease agreement, and must make all rent available for this purpose.

(5) If a tenant leaves the dwelling unit or premises due to a circumstance not disclosed as required by subsection (1), the tenant may recover the actual damages or one month's rent, whichever is greater, and all security and prepaid rent deposits, in addition to any other remedy that the law may provide.

#### 9.1.38 Utilities

(1) As used in this section, "utilities" includes electricity, natural gas, oil, water, hot water, heat, air conditioning, sewer service, and garbage collection and disposal.

(2) At or before the tenancy commences, the landlord must disclose:

(a) Any utility that the tenant is responsible to pay and if the utility payment is made to the landlord or to the utility provider; and

(b) Any utility that the tenant pays that benefits other tenants or the landlord. A tenant's payment for a given utility benefits other tenants or the landlord if the

utility is delivered to an area other than the leased dwelling unit.

(3) If a landlord fails to disclose the required information, the tenant may recover actual damages.

(4) If a tenant is responsible for a utility and is unable to obtain that service prior to moving into the dwelling unit due to an outstanding balance owed by a previous tenant or the owner, the tenant may:

- (a) Pay the outstanding amount and deduct that amount from the rent; or
- (b) Enter a mutual agreement with the landlord to resolve the lack of service; or
- (c) Immediately terminate the lease by giving the landlord actual notice and the reasons for the termination. Within 5 days of receiving the termination notice, the landlord must return to the tenant all fees, despots and rents paid.

(5) If a tenant is responsible for a utility and is unable to obtain that service after moving into the dwelling unit or premises due to the nonpayment of an outstanding amount owed by a previous tenant or the owner, the tenant may:

- (a) Pay the outstanding amount and deduct that amount from the rent; or
- (b) Terminate the lease by giving the landlord 72 hours actual notice of the termination and the reasons for termination. The lease will not terminate if the landlord provides or restores the service during the 72 hours. If the tenancy terminates, the landlord is liable for the tenant's actual damages, and must return the tenant's fees, despots and rents 5 days after the notice.

(6) If a landlord is responsible for a utility and the utility is shut off during the tenancy due to nonpayment of current charges, the tenant may:

- (a) Pay the outstanding amount and deduct that amount from the rent; or
- (b) Enter a Mutual agreement with the landlord to resolve the lack of service; or
- (c) Terminate the lease by giving the landlord 72 hours actual notice of the termination and the reasons for termination. The lease will not terminate if the landlord provides or restores the service during the 72 hours. Within 5 days of receiving the notice, the landlord must return all fees, deposits, and rents paid for the month in which the termination occurs, prorated from the date the tenant vacates the premises.

(7) If a landlord fails to return any fees, deposits or rents under subsection (4), (5), and (6), the tenant is entitled to bring an action for the amount wrongfully withheld. This section does not preclude the tenant from any other remedy that

the law may provide.

9.1.39 Landlord to Maintain Dwelling Unit and Premises in a Habitable Condition

(1) At all times during the tenancy, a landlord must maintain the dwelling unit and premises in a habitable condition. For this section, a dwelling unit or premises is considered uninhabitable if it substantially lacks:

- (a) Effective waterproofing and weather protection of roof, exterior walls, windows and doors; and
- (b) Plumbing facilities that conform to applicable law in effect at the time of installation, and maintained in good working order; and
- (c) A legal water supply that is:
  - (i) Under the control of the landlord or tenant; and
  - (ii) Capable of producing hot and cold running water to appropriate fixtures; and
  - (iii) Connected to a legal sewage disposal system; and
  - (iv) Maintained in good working order so as to provide safe drinking water to the extent that the landlord can control the system; and
- (d) Adequate heating facilities that conform to applicable law in effect at the time of installation, and maintained in good working order; and
- (e) Electrical lighting with wiring and electrical equipment that conforms to applicable law in effect at the time of installation, and maintained in good working order; and
- (f) Floors, walls, ceilings, stairways and railings maintained in good repair; and
- (g) Working locks with keys for all entrance doors and, latches for all windows that conform to applicable law in effect at the time of installation; and
- (h) Safe from fire hazards. The landlord must install the legally required number of working smoke detectors in the premises. The landlord must inspect and test the smoke detectors every year. This section does not effect a tenant's duty under 9.1.41(5).
- (i) At the tenancy's start, the buildings, grounds and appurtenances in every part:

- (i) Safe for normal and reasonably foreseeable uses; and
- (ii) Clean and sanitary; and
- (iii) Free of all accumulations of debris, filth, rubbish, garbage, rodents and vermin; and
- (iv) All areas under the landlord's control kept safe, clean, sanitary and free of debris, filth, rubbish, garbage, rodents and vermin; and
- (j) Unless otherwise agreed, an adequate number of garbage bins clean and maintained in a serviceable condition. Unless otherwise agreed, the landlord will arrange for removal of the garbage bins.
- (k) Ventilating, air conditioning and other facilities and appliances, including elevators, maintained in good repair if supplied or required to be supplied by the landlord.
- (2) The landlord and tenant may agree in writing that the tenant will perform specified repairs, maintenance tasks, and minor remodeling only if:
  - (a) The agreement is entered into in good faith and not to evade the landlord's obligations; and
  - (b) The agreement does not diminish the landlord's obligations to other tenants under subsection (1); and
  - (c) The agreement's terms and conditions are clearly disclosed with adequate consideration is specifically stated.

#### 9.1.40 Landlord's Access to Dwelling Unit or Premises

- (1) A landlord may only enter into the tenant's dwelling unit to:
  - (a) Inspect the unit; or
  - (b) Make necessary or agreed repairs; or
  - (c) Supply necessary or agreed services; or
  - (d) Exhibit the unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.
- (2) The landlord's right of entry is limited as follows:
  - (a) A landlord may enter upon the premises, but not the dwelling unit, without

the tenant's consent, for the purpose of serving notices required or permitted by the landlord/tenant sections of this Code or the lease; or

(b) In the case of an emergency, a landlord may enter the dwelling unit or premises without notice and at any time. "Emergency" includes, but is not limited to, a repair that must be made to avoid serious damage to the premises. If a landlord makes an emergency entry in the tenant's absence, the landlord must give 24 hours notice that the entry has occurred. The notice must include the date and time of the entry, the nature of the emergency and the names of any persons who entered; or

(c) When a tenant requests a repair, the landlord or a person acting on the landlord's behalf may enter without further notice for the purpose of making the repair. Entry may be by demand or without the tenant's consent in the tenant's absence. The tenant's request for a repair may specify allowable times; otherwise entry must be at reasonable times; or

(d) In all other cases, unless there is an agreement between the landlord and tenant, the landlord must give the tenant at least 24 hours actual notice of the landlord's intention to enter. The landlord must enter at a reasonable time. The landlord may not enter if the tenant - after receiving the landlord's notice - denies consent to enter. This denial must be provided by actual notice to the landlord or left in writing securely attached to the dwelling unit's entrance.

(3) A landlord has no other right of entry except;

(a) Pursuant to Tribal Court order; or

(b) When a tenant has abandoned or surrendered the dwelling unit.

(4) A tenant may not unreasonable deny the landlord access to the dwelling unit. If the tenant refuses to allow lawful access, the landlord may obtain a Tribal Court order to compel access or may terminate the tenancy. In addition, the landlord may recover actual damages.

(5) A landlord may not abuse the right of access or use it to harass the tenant. If the landlord makes an unlawful entry, a lawful entry in an unreasonable manner or repeated request for lawful entry so as to abuse or harass the tenant, the tenant may obtain a Tribal Court order to prevent the conduct occurring or may terminate the lease agreement. In addition, the tenant may recover actual damages or one month's rent whichever is greater.

## TENANTS RIGHTS AND OBLIGATIONS

### 9.1.41 Tenant Duties

The tenant must:

- (1) Use the dwelling unit and premises, including the living room, bedroom, kitchen, dining room and bathroom, in a reasonable manner considering the purpose for which they were designed and intended; and
- (2) Keep all areas of the premises under the tenants control clean, sanitary and free from all accumulations of debris, filth, rubbish, garbage and other waste, and must dispose of the same in a clean, safe and legal manner; and
- (3) Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits; and
- (4) Use all electrical, plumbing, sanitary, heating, ventilation, air conditioning and other facilities and appliances in a reasonable manner; and
- (5) Replace smoke detector batteries, as needed, and provide actual notice to the landlord of any operating deficiencies; and
- (6) Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or knowingly permit any person under the tenant's control to do so; and
- (7) Act and require other persons on the premises with the tenant's consent to act in a manner that will not disturb the neighbors' peaceful enjoyment of their premises; and
- (8) Not use or permit other persons on the premises with the tenant's consent to use drugs or alcohol as prohibited by the Tribal Code.

#### 9.1.42 Occupancy of Premises

- (1) Unless otherwise agreed, the tenant may only occupy the dwelling unit as a residence. The tenant is expected to continuously occupy the dwelling unit. The lease may require that the tenant give actual notice to the landlord of any anticipated extended absences in excess of seven days.
- (2) If a tenant leaves the premises for more than seven days without notifying the landlord, the landlord may enter the premises to determine if the tenant has abandoned the property.

#### 9.1.43 Effect of Landlord's Noncompliance with Lease or Legal Obligations

- (1) Except as provided in the landlord/tenant sections of this Code, if the landlord significantly violates the lease or 9.1.39, the tenant may deliver actual written notice specifying the violations and that the lease will terminate unless the

landlord corrects the violation within seven days for an essential service or 30 days in all other cases.

(2) If the landlord adequately remedies the violation by repair, payment of damages or other means before the termination date, the lease will not terminate due to the violation.

(3) The tenant may not terminate the lease for a condition caused by the deliberate or negligent act or omission of the tenant, a tenant's family member, or a person on the premises with the tenant's permission.

(4) In addition to terminating the tenancy, the tenant may recover damages or obtain Tribal Court order correcting a violation of the lease or 9.1.39. If the lease is terminated, the landlord must return all security or prepaid rent deposits under 9.1.34.

#### 9.1.44 Effect of Landlord's Failure to Provide Essential Services

(1) If the landlord deliberately refuses to or is grossly negligent in supplying essential utilities or services as required by the lease or 9.1.39, the tenant may give written notice to the landlord specifying the violation and may:

(a) Obtain reasonable replacement utilities or services during the landlord's violation and deduct the actual and reasonable costs from the rent; or

(b) Recover damages for the premise's decrease in fair market value due to the absence of the utility or service; or

(c) Obtain reasonable substitute housing during the landlord's violation. The tenant is excused from paying rent to the landlord during this time. If the reasonable cost of replacement housing exceeds the amount of excused rent, the tenant may recover damages in an amount equal to the difference between excused rent and the replacement housing's cost.

(2) If the landlord negligently fails to make necessary repairs, the tenant may give actual written notice to the landlord of the violation and that the tenant will proceed with the repairs within five days after the landlord is served with the notice. After the five-day waiting period, the tenant may:

(a) Have the repairs made in a workmanlike manner, and after submitting receipts or other itemized statements to the landlord, deduct up to \$500.00 from the rent; or

(b) Agree with the landlord, at any time, to exceed the \$500.00 limit when making repairs. The landlord may choose who will make the repairs so long as the repair is not unreasonably delayed by the landlord's choice; or

(c) In case of emergency repairs, have the repairs made in a workmanlike manner, and after submitting receipts or other itemized statements to the landlord, deduct up to \$1000.00 from the rent. But the tenant must have provided written notice as required by this subsection or have given oral notice followed by written notice as promptly as conditions permit; or

(3) Failure of a cooking appliance or refrigerator - supplied by the landlord or required by the lease - may constitute an emergency depending on the degree to which the tenant is deprived of cooking or refrigeration facilities.

(4) The tenant's rights under this section do not arise if:

(a) The tenant elects to pursue a remedy under 9.1.43; or

(b) The tenant does not give the appropriate notice; or

(c) The condition was caused by the deliberate or negligent act or omission of the tenant, the tenant's family, or another person on the premises with the tenant's consent.

#### 9.1.45 Tenant Counterclaims in Action for Possession or Rent

(1) In any action for possession based on non-payment of rent or in an action only for unpaid rent, the tenant may counterclaim for any amount that the tenant may recover under the lease or the landlord/tenant sections of this Code, provided that the tenant has complied with any applicable notice provision.

(2) If a tenant counterclaims in an action for rent only and remains in possession of the dwelling unit, the Tribal Court - at the request of the landlord or tenant - may order the tenant to pay into Tribal Court all or part of the rent accrued and thereafter accruing. The Tribal Court must determine the amount due to each party. The party to whom a net amount is owed will be paid first from the money paid into Tribal Court, and the other party will pay any remaining balance. If the parties agree or the Tribal Court finds a party entitled to the sum to be released, the Tribal Court may at any time release money paid into Tribal Court to either party.

(3) In an action for possession based on nonpayment of rent, the tenant may counter claim as provided in section (1), but is not required to pay rent into the Tribal Court.

(4) When a tenant is granted a continuance for more than 7 days and has not yet been ordered to pay rent into the Tribal Court, the Tribal Court must order the tenant to pay rent into the Tribal Court.

#### 9.1.46 Effect of Unlawful Ouster

No landlord may unlawfully exclude a tenant from the premises or interrupt the tenant's utility services, including but not limited to, heat, hot and cold running water, or electrical service. If a landlord takes this action, the tenant may enjoin the action, regain possession, or terminate the lease. The tenant may also recover actual damages or an amount equal to two months rent whichever is greater. The landlord must return all security or rent deposits under 9.1.34.

#### 9.1.47 Effect of Renting Premises in Violation of Building or Health Codes

- (1) If a tribal agency has posted a premise as unlawful to occupy due to a condition that violates tribal laws, a landlord may not enter into a lease agreement for the premises until the condition is corrected.
- (2) If a landlord knowingly violates subsection (1), the tenant may recover twice the actual damages or two months rent, whichever is greater. The tenant need not terminate the tenancy to recover damages under this section.
- (3) If a tribal agency posts a notice that a dwelling is unlawful to occupy after a landlord and tenant enter into a lease and the conditions that the posting is based on:
  - (a) Were not caused by the tenant, tenant's family or an individual on the premises with the tenant's permission, the tenant may terminate the tenancy by giving the landlord 24 actual notice of the reason for termination; or
  - (b) Were not caused by the landlord or the landlord's failure to maintain the premises, the landlord may terminate the tenancy by giving the tenant 24 hours notice of the reason for termination. The landlord may take possession in accordance with the landlord/tenant sections of this Code.
- (4) If a tenancy is terminated under subsection (3)(a) of this section, within 14 days of the termination notice the landlord must return:
  - (a) All security or prepaid rent deposits under 9.1.34; and
  - (b) All rent prepaid for the month in which the termination occurs, prorated to the date of termination or the date the tenant surrenders the premises.

#### 9.1.48 Retaliatory Conduct by Landlord Prohibited

- (1) Except as provided in this section, a landlord may not retaliate by increasing rent, decreasing services, serving a notice to terminate the tenancy, or bringing or threatening to bring an action for possession after:

- (a) The tenant has complained to, or expressed to the landlord in writing an intention to complain to, a tribal or federal agency responsible for enforcing:
    - (i) A building, health or safety, or housing code; or
    - (ii) Laws or regulations concerning the delivery of mail; or
    - (iii) Laws or regulations prohibiting discrimination in rental housing; or
  - (b) The tenant has complained to the landlord of a violation of:
    - (i) 9.1.37, 9.1.38, 9.1.39, 9.1.40, or 9.1.46; or
    - (ii) A written or oral lease agreement; or
  - (c) The tenant has organized or joined a tenant's union or similar organization;  
or
  - (d) The tenant has complained about the landlord's failure to comply with the notice requirements of 9.1.29(3); or
  - (e) The tenant has testified against the landlord in any judicial, administrative or legislative proceeding; or
  - (f) The tenant successfully defended an action for possession brought by the landlord within the previous six months.
- (2) If a landlord violates this section, the tenant has the remedies available under 9.1.46, and has a complete defense against any retaliatory action for possession.
- (3) Notwithstanding subsection (1) and (2) of this section, a landlord may bring an action for possession if:
- (a) The violation of the applicable building, health or safety, or housing code was caused primarily by the tenant, the tenant's family or anyone on the premises with the tenant's permission; or
  - (b) The tenant is already in default on rent; or
  - (c) Compliance with the applicable building, health or safety, or housing code requires alteration, remodeling, or demolition that effectively deprives the tenant from using the premises.
- (4) An action under subsection (3) of this section does not release the landlord from liability under 9.1.39.

## LANDLORD REMEDIES

### 9.1.49 Effect of Tenant Noncompliance with Rental Agreement

(1) Except as otherwise provided in the landlord/tenant sections of this Code, the landlord may terminate the tenancy for cause if:

- (a) The tenant materially violates the lease agreement; or
- (b) The tenant violates 9.1.41 so as to materially affect the health and safety of others; or
- (c) Consistently fails to pay late charges under 9.1.31.

(2) The landlord must give 30 days written notice of the termination specifying the acts or omissions that constitute the violation. If repairs, payment of damages, fees or late rent, or a change in conduct can remedy the violation, the notice must state that the tenant can avoid termination by remedying the violation within 15 days:

(a) If the tenant does not remedy the breach within the breach in 15 days, the lease will terminate as provided in the notice. But, if the tenant adequately remedies the violation before the date specified in the notice, the lease does not terminate; or

(b) In the case of a week-to-week tenancy, the notice periods are 14 days termination notice and four days time to remedy the violation.

(3) The landlord may terminate the lease for nonpayment of rent and take possession of the dwelling unit in the manner provided in 9.1.56 to 9.1.74 after written notice as follows:

(a) In the case of a week-to-week tenancy, the landlord must provide 72 hours written termination notice for nonpayment of rent. The tenant may stop the termination by paying the rent due within the 72 hours. The landlord may not give the termination notice until 5 days after the rent is due; or

(b) In the case of all other tenancies;

(i) The landlord must provide at least 72 hours written termination notice for nonpayment of rent. The tenant may stop the termination by paying the rent due within 72 hours. The landlord may not give the termination notice until 15 days after the rent is due; or

(ii) If the lease so provides, the landlord may give 144 hours written termination notice for nonpayment of rent. The tenant may stop the

termination by paying the rent due within the 144 hours. The landlord may not give the termination notice until 15 days after the rent is due.

(c) Notices pursuant to this subsection must state the date and time the rent is due to avoid termination.

(3) The landlord may terminate the lease and take possession of the dwelling unit in the manner provided in the landlord/tenant sections of this Code after 24 hours written notice if:

(a) The tenant, someone under the tenant's control, or the tenant's pet seriously threatens to inflict personal injury, or inflicts any serious personal injury upon the landlord or another tenant; or

(b) The tenant, someone under the tenant's control, or the tenant's pet inflicts any serious personal injury upon a neighbor living in the immediate vicinity of the premises or upon a person on the premises with permission of the landlord or another tenant; or

(c) The tenant or someone under the tenant's control, intentionally causes any substantial damage to the premises; or

(d) The tenant or someone under the tenant's control commits any act which is outrageous in the extreme. Such acts include, but are not limited to, prostitution or promoting prostitution, manufacturing or delivering a controlled substance, intimidation or harassment, or burglary. Such acts are not limited to criminal offenses; or

(e) The tenant repeatedly violates or allows someone under the tenant's control to violate the drug and alcohol laws.

(4) As used in subsection (3), the term "under the tenant's control" means the person is on the premises with the tenant's permission and the person has committed a substantially similar act at least two times in the past 12 months. Control includes the tenant's right to enforce a request for the person to leave the premises by seeking tribal police assistance.

(5) The standard of proof for such acts is the civil standard applicable at trial even when the act is of a criminal nature.

(6) Except as provided in the landlord/tenant sections of this Code, a landlord may simultaneously or sequentially pursue one or more remedies.

(7) Except as provided in the landlord/tenant sections of this Code, the landlord may recover damages and obtain injunctive relief for any lease violation by the tenant.

#### 9.1.50 Effect of Tenant Keeping Unpermitted Pet

Unless agreed to in the lease, if the tenant keeps a pet on the premises capable of causing damage to person or property, the landlord may deliver at least 10 days written termination notice. The tenant may stop the termination by removing the pet from the premises prior to the termination date. If the pet is not removed, the tenancy terminates and the landlord may take possession as provided by the landlord/tenant sections of this Code.

#### 9.1.51 Effect of Tenant's Abandonment

If the tenant abandons the dwelling unit, the landlord must make reasonable efforts to rent it at a fair market value. If the landlord rents the dwelling before the lease expires, the lease terminates on the date of the new tenancy. If the landlord fails to make reasonable efforts to rent the dwelling unit or if the landlord accepts the abandonment as a surrender by acting inconsistent with the tenancy, the lease is deemed to be terminated by the landlord on the date the landlord knows or should have known of the abandonment. The landlord may recover actual damages for the tenant's abandonment.

#### 9.1.52 Exceptions to Right of Landlord to Terminate Tenancy

(1) Except as otherwise provided in this section, a landlord waives the right to terminate a tenancy if the landlord:

- (a) Accepts rent with knowledge of a particular lease violation by the tenant; or
- (b) Accepts performance by a tenant that varies from the lease terms.

(2) A landlord's acceptance of partial rent for a rent period is not a waiver if:

- (a) The landlord accepts the tenant's offer to pay the balance at a time certain; and
- (b) The agreement was made before the landlord gave a termination notice for unpaid rent; and
- (c) The tenant does not pay the balance as agreed.

(3) A landlord who accepts partial payment under subsection (2) may proceed to serve a termination notice for the unpaid balance pursuant to 9.1.49.

(4) Unless the landlord and tenant otherwise agree in writing, a landlord waives the right to terminate a lease for nonpayment during a rent period by accepting partial payment after the landlord has given notice under 9.1.49 (2).

(5) A landlord who has given a termination notice for cause does not waive the right to terminate the tenancy by accepting rent prorated to the termination date.

#### 9.1.53 Termination of Periodic Tenancy without Cause

(1) At any time during the tenancy, the landlord or tenant may terminate a week-to-week tenancy by actual written notice given to the other at least 14 days before the termination date specified in the notice.

(2) At any time during the tenancy, the landlord or tenant may terminate a month-to-month tenancy by actual written notice given to the other at least 30 days before the termination date specified in the notice.

(3) At any time during the tenancy, the landlord or tenant may terminate a year-to-year tenancy by actual written notice given to the other at least 60 days before the expiration date specified in the lease.

(4) The tenancy will terminate on the date stated in the notice without regard to the period for which rents are paid. Unless otherwise agreed, the final rent is uniformly apportioned from day to day.

#### 9.1.54 Disposal of Personal Property of Tenant

(1) The landlord may only dispose of a tenant's personal property that was left on the premises when:

(a) A tenancy terminates by expiration of the lease, abandonment or surrender, and the landlord reasonably believes under all circumstances that the tenant has left the personal property with no intention to assert a further claim to the premises or the personal property; or

(b) The landlord elects to remove the personal property while executing a Tribal Court order returning the premises to the landlord's possession; or

(c) The tenant has been continuously absent from the premises for a least seven days after termination of a tenancy by a Tribal Court order that has not yet been executed.

(2) To dispose of the property, the landlord must give written notice to the tenant. The landlord must mail the notice to:

(a) The premises with the words "Please Forward" endorsed on the envelope; and

(b) The tenant at any post office box held by the tenant; and

(c) The tenant at the most recent forwarding address, if known.

(3) The notice must state that the property must be removed from the premises or place of storage by a specified date not less than 15 days after sending the notice to the tenant, or the property will be considered abandoned, and sold or otherwise disposed of by the landlord. In addition, the notice must state that the property will be:

(a) Sold at a public or private sale; or

(b) Destroyed or otherwise disposed of when the landlord believes the value to be less than \$500.00, or so low that the storage costs or sale costs will exceed the property's value; or

(c) Certain items will be destroyed and others sold.

(4) For the purposes of this section, "dispose," means throwing away the property or giving it away without consideration to an unrelated person or non-profit organization. The landlord may not retain the property for personal use or benefit.

(5) After proper notice, the landlord must:

(a) Leave the property on the premises as left by the tenant until the date specified for disposal of the property; or

(b) Store all the tenant's personal property in a place of safekeeping and must take reasonable care of the property, except the landlord may:

(i) Promptly dispose of rotting food; and

(ii) Allow an animal control agency to remove any pets or livestock. If an animal control agency will not remove the animals, the landlord may arrange for an organization - such as the humane society - to remove the animals. The landlord must exercise reasonable care for the animals if they are not removed.

(6) If the tenant, upon receiving the notice required by this section, responds in writing to the landlord that the tenant intends to remove the property on or before the date specified in the notice, the landlord must allow the tenant an additional 15 days from the date of the response to remove the property. If the tenant fails to remove the property by the date specified or within 15 days after responding to the landlord, the property is conclusively presumed to be abandoned

(7) The landlord is entitled to compensation for the reasonable storage or

disposal costs. If the property is sold, the proceeds must be applied in the following order:

- (a) The reasonable notice, storage, sale, and disposal costs; then to
  - (b) Unpaid rent; then to
  - (c) Any unpaid damage charges; then to
  - (d) The tenant.
- (8) The landlord may not require payment of compensation as a condition to release the property. But the landlord may:
- (a) Add the notice, removal, storage and other reasonable and necessary costs to any existing judgment; or
  - (b) Recover these costs from the deposit; or
  - (c) File an action to recover these costs.
- (9) The landlord is not responsible for any loss to the tenant's property unless caused by the landlord's deliberate or negligent act. When a loss is caused by the landlord's deliberate act, the tenant may recover twice the actual damages. Good faith compliance with this section is a complete defense against any action by the tenant for loss or damage to the personal property.

#### 9.1.55 Disposition of Tenant's Personal Property after Death of Tenant

- (1) When a lease terminates due to the tenant's death, the landlord may only dispose of the property in the manner provided by this section. The landlord must send notice for removal of the personal property to the tenant's nearest known relative. The landlord must also give the Tribal Court notice of the need to remove the property and this notice must be entitled "In the Matter of the Estate of [tenant]". The landlord must allow the family at least 15 days to remove the property in accordance with the Tribe's traditions and customs. At this time period's end, the landlord may proceed to dispose of any remaining property under 9.1.54 without further notice. After deducting the amounts allowed under 9.1.54, the landlord must pay all remaining proceeds from the disposition into the Tribal Court for probate. The landlord must also file an accounting that details what property was sold, how much it sold for, and what costs were deducted from the proceeds.
- (2) When the landlord cannot identify a relative, the landlord must notify the Tribal Court and publish notice of the need to remove the tenant's property. When no relative is available to remove the property, the landlord must allow a

tribal representative to remove the property in accordance with the Tribe's traditions and customs.

## ACTIONS FOR RECOVERY OF REAL PROPERTY

### 9.1.56 Right of Action

By an action at law, any person having a legal interest in real property and a right to possess that property may recover possession of the property.

### 9.1.57 Grounds for Eviction of a Tenant for Unlawful Holding

A tenant holds possession to a dwelling unit or premises unlawfully when:

- (1) The tenant fails to vacate the premises after the lease term has expired, or after the date stated in a notice terminating the tenancy under 9.1.53; or
- (2) The tenant fails or refuses to pay rent within 15 days of the date the rent is due, or refuses to vacate the premises at the expiration of a notice to quit under 9.1.49 (2); or
- (3) The tenant remains in possession after the tenancy has been terminated under the landlord/tenant sections of this Code generally; or
- (4) A person continues occupying any dwelling unit without permission following a reasonable demand to leave by a person in authority over the premises; or
- (5) The tenant holds possession in violation of other terms in the lease that do not conflict with the landlord/tenant sections of this Code.

### 9.1.58 Notice Necessary to Maintain Action

- (1) In the following circumstances, no notice is needed prior to initiating an action to recover real property if:
  - (a) A tenant fails to vacate the dwelling unit or premises after expiration of a specific lease term; or
  - (b) A person has entered onto or remains on another's the real property without the owner's permission and without having any substantial claim of a lease to or title to the property; or
  - (c) After the BPIHA, TDHE or Housing Committee has terminated such person's tenancy pursuant to procedures providing such person a hearing before that agency; or

(d) A tenant gives a termination notice to a landlord and then remains in possession of the premises after the stated termination date.

(2) In all other cases, a plaintiff can only maintain an action for recovery of possession if the plaintiff complied with any applicable notice provision of this Chapter before the action was commenced.

#### 9.1.59 No Self-Help Evictions

(1) It is the Tribe's policy that real property recovery must be authorized by the Tribal Court, and - if needed - must be with the Tribal Police's assistance. It is against the Tribe's peace and quiet for a person to evict another by self-help methods. Self-help - as used in this Chapter - includes, but is not limited to, lock outs, utility service disconnections or any other use of nonjudicial methods intending to or having the effect of forcing a tenant to move. If during a recovery action the Tribal Court finds that a landlord has violated 9.1.46, the Tribal Court must grant the tenant the remedies stated in 9.1.46.

(2) When a tenant dies, the landlord or owner may take immediate possession of the property subject to the provisions for disposal of personal belongings found in 9.1.55.

#### 9.1.60 BPIHA, TDHE or Housing Committee Procedures to Terminate Tenancy

(1) The BPIHA, TDHE or Housing Committee may terminate a tenancy for the causes stated in the landlord/tenant sections of this Code.

(2) The BPIHA, TDHE or Housing Committee must give the tenant notice of its decision to terminate the tenancy under the landlord/tenant sections of this Code.

(3) The BPIHA, TDHE or Housing Committee must setup an informal meeting to discuss the termination decision within 15 days after notifying the tenant of its decision. The notice must include the following information regarding the tenant's rights:

(a) The basis for the decision to terminate the tenancy and the date to surrender the premises; and

(b) The tenant has a right to a private conference to resolve the dispute; the date, time and location of the conference; and that if the tenant fails to appear at the conference, the tenant waives the right to the conference; and

(c) The tenant has the right to request a formal grievance hearing within 30 days after the notice's delivery. The tenant will be allowed to present evidence, call witnesses and challenge the termination decision.

#### 9.1.61 Termination Hearing of the BPIHA, TDHE or Housing Committee

- (1) After the BPIHA, TDHE or Housing Committee makes a decision to terminate a tenancy, the tenant has the right to speak informally with the BPIHA, TDHE or Housing Committee about the decision and to request a formal hearing. The tenant must request the formal hearing within 30 days after the termination notice's delivery or within 7 days after the concluding the informal hearing, whichever is later.
- (2) If a formal hearing is requested, the BPIHA, TDHE or Housing Committee has 15 days to conduct the hearing and must notify the tenant of the date, time and location 7 days before the hearing.
- (3) The hearing will be public. The tenant has the right to be present, to offer evidence, to call witnesses and to challenge the BPIHA, TDHE or Housing Committee's decision. An audio recording of the hearing must be made.
- (4) The BPIHA, TDHE or Housing Committee must provide the tenant with a written decision within 5 days after the hearing.
- (5) If the decision to terminate is upheld by the BPIHA, TDHE or Housing Committee after a hearing, the tenant has 7-10 days from the date of the written decision to quit the premises.
- (6) The tenant has 10 days from the date the written decision is issued to request that the Tribal Court review the decision. The review will be conducted as if the BPIHA, TDHE or Housing Committee filed an eviction action under this Chapter.
- (7) The BPIHA or TDHE must file an eviction action and obtain a writ of restitution in order to have a tenant forcibly removed by the Tribal Police.

#### 9.1.62 Pre-Eviction Options

- (1) It is the Tribe's policy to encourage landlords to resolve circumstances warranting eviction by non-judicial procedures.
- (2) When the parties mutually agree to proceed with a negotiated settlement in good faith, and a judicial eviction procedure has been initiated, the Tribal Court must stay the actions until it is notified by a party that a hearing is needed or that the matter has been settled.
- (3) In reaching a settlement, the parties may use, but are not limited to, the following options:
  - (a) Use of advocates, attorneys, mediators or conciliators; or

- (b) Submit the claim to binding arbitration; or
  - (c) Agree on a payment schedule; or
  - (d) Agree to a barter of services or goods, or other means for securing a fair exchange of value for using the dwelling unit; or
  - (e) Agree to a stipulated judgment.
- (4) If one party refuses an offer to settle the matter made by another party, and the Tribal Court orders a substantially similar resolution as the settlement offer, then the party rejecting the settlement may be assessed reasonable fees and costs for litigating the claim even if they are the prevailing party.

## JUDICIAL EVICTIONS PROCEDURES

### 9.1.63 Petition

- (1) The petition must state:
  - (a) The person's name against whom the action is brought; and
  - (b) A description of the lease, attached as an exhibit; and
  - (c) The address or a reasonable description of the dwelling unit or premise's location; and
  - (d) That any required notices to cure or quit, or a termination notice has been served in accordance with this Chapter; and
  - (e) The facts supporting recovery of the premises; and
  - (f) The relief demanded, including the nature of the plaintiff's title to the property; and
  - (g) If the landlord is the BPIHA, TDHE or Housing Committee, that it has complied with 9.1.60 and 9.1.61.
- (2) Except when the BPIHA, TDHE or Housing Committee files a petition, the petition must be accompanied by a fee as set by the Tribal Court.
- (3) The petition must be in substantially the following form:

---

In the Tribal Court for  
The Burns Paiute Tribe of Oregon

|              |   |                           |
|--------------|---|---------------------------|
| [Petitioner] | ) | Case No.                  |
|              | ) |                           |
| v.           | ) | Petition for Eviction and |
|              | ) | Writ of Restitution       |
| [Defendant]  | ) |                           |

1.

The \_\_\_\_\_, as petitioner, seeks eviction of \_\_\_\_\_, as defendants, and a writ of restitution for the property located at [address or description].

2.

The defendant possesses the property based on a lease entered into on [date] between [parties to lease], which is attached as Exhibit \_\_\_\_.

3.

The following required notices were delivered to the defendant on the date stated: [type of notice and date delivered]

4.

The defendant has lost the right of possession to the property by failing to pay when due: [amount of rent due and dates due]

The defendant has lost the right of possession to the property by violating the following lease provisions or legal requirements: [offending act, when committed and what lease term or legal requirement was violated]

5.

The petitioner demands restitution of the property to [his/her] possession. The petitioner is entitled to the property as [nature of petitioner's ownership interest in property]. The petitioner also requests the following relief: [detailed accounting of fees, costs or damages; injunction of further acts while vacating; other relief].

Dated this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

---

Signature of attorney or petitioner

---

9.1.64 Answer

- (1) A defendant must file a written answer asserting any defenses including a defense of a right to possess the property, or asserting any counterclaims. Answers must be served on the plaintiff 5 days prior to the first hearing or at the first hearing if such hearing is set within seven days of filing the petition.
- (2) The Tribal Court must permit an unrepresented defendant to proceed to trial by directing the defendant to file a written answer on a form provided by the Tribal Court and served on the plaintiff by Tribal Police.
- (3) The answer must be in substantially the following form:

---

In the Tribal Court for  
The Burns Paiute Tribe of Oregon

|                           |   |                     |
|---------------------------|---|---------------------|
| [Petitioner]              | ) | Case No.            |
|                           | ) | Answer to           |
| v.                        | ) |                     |
| Petition for Eviction and | ) |                     |
| [Defendant]               | ) | Writ of Restitution |

1.

☐ Defendant \_\_\_\_\_ denies the allegations in the petition and requests a trial on the petition.

☐ Defendant \_\_\_\_\_ admits the allegations in the petition and can vacate the premises in 30 days or in \_\_\_\_ days because [state reason].

2.

Defendant asserts the following counterclaims:

- ☐ Defendant is owed [amount] because [state reason such as conducted repair at defendant's expense]. The landlord was provided the following notice on the date stated: [notice justifying counterclaim and date served].
- ☐ Defendant is owed [amount] for the following improvements made by defendant under the belief that defendant owned or was purchasing the premises from the landlord: [detailed accounting of improvements].

3.

Defendant asserts the following defenses:

- ☐ The landlord failed to maintain the dwelling unit or premises in a habitable condition. [describe condition].
- ☐ The landlord has done the following acts and justice requires that the eviction be denied. [describe acts such as fraud, misrepresentation, breach of tribal health and safety code, or false inducement to remain in the premises.]
- ☐ The landlord seeks eviction because the tenant has exercised a legal right. [describe situation such as retaliatory conduct for report to building inspector or objection to landlord's unreasonable entry on the premises].
- ☐ The landlord seeks eviction based on impermissible discrimination. [describe discrimination such as racial, religious or gender discrimination].

Dated this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

---

Signature of defendant or attorney

---

#### 9.1.65 Counterclaims and Defenses

(1) In an action for recovery of possession, the defendant can counterclaim for any amount that the defendant may recover under the lease or the landlord/tenant sections of this Code, provided that the defendant complied with any applicable notice provision.

(2) When permanent improvements have been made on the property by a defendant, who holds the property under color of title and in good faith, the value

of any improvements at the time of trial must be allowed as a setoff against any damage claim.

(3) The Tribal Court - in deciding whether to evict a tenant or mortgagee / borrower for non-payment of rent - must consider the defenses listed in this subsection and must either deny recovery of the property and order corrective action, or consider the defense a counterclaim and award appropriate damages. Such defenses include:

(a) The premises are untenable, uninhabitable, or there is a constructive eviction of the tenant, and such a condition is not due to the tenant's fault. Such condition must constitute a real and serious hazard to human health and safety, and not a mere inconvenience; or

(b) Without good cause and after a reasonable demand by a tenant, the landlord has failed or refused to make repairs that are the landlord's responsibility. When the tenant has made the necessary repairs pursuant to 9.1.44 and is owed money by the landlord, these sums will be considered a counterclaim; or

(c) The landlord has injured the tenant in such a way, that justice requires that the requested relief be modified or denied. This must include the equitable defenses of estoppel and laches, fraud, misrepresentation, or breach of serious and material obligations for public health and safety; or

(d) The landlord has committed serious and material breaches of applicable housing laws that make it unjust to grant the remedy requested; or

(e) Any other material or relevant fact the tenant might present that may explain why the action is unjust or unfair.

(4) Unless the tenant is in default on rent, the tenant has a complete defense to any action for possession brought by the landlord when:

(a) The tenant proves that the landlord has discriminated against the tenant in violation of 9.1.26, other tribal law or federal law; or

(b) The landlord has retaliated in violation of 9.1.48; or

#### 9.1.66 Summons

(1) Upon the petition filing the petition and paying any fees, the Tribal Court must issue summons in accordance with the Burns Paiute Tribal Court Rules of Civil Procedure. The Tribal Police must serve the summons along with the petition on the defendant.

(2) The Clerk must endorse on the summons the first appearance date. This

date must be no less than 7 days and no more than 30 days from the date the petition is filed. But in no case may the hearing be held less than five judicial days after the date the defendant is actually served.

(3) In all cases involving the Secretary, the matter must be set for trial no more than 30 days after the petition is filed. The Tribal Court Clerk must endorse the trial date - together with any appearance dates - on the summons.

#### 9.1.67 Conduct of the Action

(1) A party may either:

(a) Allow the matter to proceed to trial as set forth in the summons; or

(b) Request a preliminary hearing to determine if there is a need for trial. If after a preliminary hearing, the Tribal Court determines that a trial is needed, it must schedule one within 15 days.

(2) The Tribal Court may summarily decide the matter when:

(a) The defendant admits or stipulates to the eviction; or

(b) The defendant has requested a trial on the ultimate issue but has admitted to or is unable to deny the factual allegations that support the petition.

(3) At a preliminary hearing, a party may request a temporary restraining order when compelling circumstances require immediate Tribal Court intervention.

(4) In cases involving the Secretary, the Tribal Court may not continue a matter more than 15 days beyond the time set in 9.1.66 (3).

(5) The BPIHA, TDHE or Housing Committee may appear through an officer or employee.

#### 9.1.68 Required Disclosures

(1) Each party must disclose to the other party:

(a) Those documents that a party intends to admit into evidence; and

(b) All documents arising from, related to or mentioning the tenancy; and

(c) The name, address and telephone number of any intended witnesses.

(2) All parties must provide their required disclosures as soon as practicable but no later than 5 days before a trial. All parties are required to update their disclosure before or during trial should new information become available.

(3) Upon motion of a party, the Tribal Court may enter orders requiring disclosure, excluding evidence or witnesses, protecting the parties' rights, or granting a set over to allow proper disclosure to occur.

(4) The Tribal Court Clerk must provide a written statement to the petitioner explaining the required disclosures. The Tribal Court Clerk must also attach this statement to the summons for service on the defendant. The disclosure statement must be in substantially the following form:

---

#### Disclosure Statement

All parties involved in an eviction action or action seeking a writ of restitution are required to disclose to the other party the following information:

- ☐ The name, address and telephone number of any intended witness.
- ☐ Any document that a party intends to admit into evidence. These documents include, but are not limited to, letters between the parties, repair invoices, inspection reports, utility bills, medical bills, police reports, papers from other court cases, or bank statements.
- ☐ Any document related to the tenancy. These documents include, but are not limited to, the lease, rental agreement, leasehold mortgage, other rental contract, official notices, or additional agreement between the parties.

The parties must exchange this information as soon as possible after the petition is filed. At the latest, a party must make their disclosure five (5) days before any trial starts. If after making the required disclosure a party gains new information that must be disclosed, the party must supplement their disclosure.

If a party does not receive the required disclosure, the party may motion the Tribal Court for an order compelling the disclosure, or excluding any evidence or witness that was not disclosed. If a disclosure is made late, a party may request that the matter be set over. If a party believes that a disclosure violates their rights, including their right to privacy, the party may ask the Tribal Court for a protective order.

#### 9.1.69 Conduct of the Trial

- (1) The Tribal Court must conduct a trial on the matter unless:
  - (a) A preliminary hearing was held at which hearing the Tribal Court determined that the matter should not proceed to a trial; or
  - (b) The defendant fails to answer or otherwise appear for any scheduled hearing or trial, in which case the Tribal Court must enter judgment against the defendant; or
  - (c) The petitioner fails to appear at a scheduled hearing or trial, in which case the Tribal Court must dismiss the petition.
- (2) The hearing must be open to the public and the Tribal Court must make a record of the trial.
- (3) The plaintiff is required to prove the allegations in the petition by a preponderance of the evidence.
- (4) If the defendant does not contest the action for recovery, the Tribal Court may only award the plaintiff reasonable costs, but not attorney fees.

#### 9.1.70 Judgment

- (1) Within five judicial days after trial or resolution of the case, the Tribal Court must issue a written opinion. The judge may make findings and conclusion or briefly state the reasons for the decision. If possible, the judge should orally inform the parties of the decision at the trial's end. The Tribal Court may, but is not limited to, one or more of the following:
  - (a) Restoring the property to the owner by issuing a writ of restitution and ordering the tenant to vacate the premises within 30 days; or
  - (b) Dismissing the petition; or
  - (c) Shortening or extending the time to vacate the premises upon a showing of unique or compelling circumstances. In cases involving the Secretary, the Tribal Court may not extend the time for an eviction beyond 60 days from the date the petition was filed; or
  - (d) Granting any damages to a party, including interest, for a violation of their agreement or the landlord/tenant sections of this Code; or
  - (e) Ordering a party to carry out any obligation required by their agreement or the law; or

- (f) Establishing a payment plan for the defendant; or
- (g) Reforming the agreement; or
- (h) Approving a work exchange in lieu of cash payments for rent or damages; or
- (i) Ordering the payment of reasonable attorney fees and costs to the prevailing party; or
- (j) Granting any other relief provided in this code or allowed in law, equity, or tradition.

(2) Unless otherwise agreed to by the parties or unless a defense justifies modifying or denying the demand for recovery of the property, the Tribal Court must issue a writ of restitution returning full interest in the property back to the owner. This writ must clearly state:

- (a) The tenant's name; and
  - (b) The dwelling unit address; and
  - (c) That the tenant is hereby order to vacate the premises within 7 days; and
  - (d) That failure to vacate the premises will result in forcible removal, storage of the tenant's personal belongs and liability for the storage costs.
- (3) In appropriate cases, the Tribal Court may order the parties to mediate their dispute.

#### 9.1.71 Enforcement of Judgments

- (1) A writ of restitution must be served by:
  - (a) The Tribal Court Clerk mailing a true copy of the writ of restitution by first class mail to the defendant at the premises and at the most recent forwarding address; and
  - (b) The Tribal Police serving a true copy of the writ of restitution on the defendant by personal service or by attaching the writ in a secure and conspicuous manner at the main entrance to the defendant's dwelling unit or premises. The officer serving the defendant must file an affidavit attesting to the manner, date and time of service.
- (2) If the defendant fails to appear for a hearing or trial and is found in default, the Tribal Court must order that the writ be personally served on the defendant

by the Tribal Police, an agent of the Secretary or any person authorized by the Tribal Court within 24 hours of the default

(3) If the tenant does not vacate the premises within the time ordered by the Tribal Court, the tribal police must remove the tenant and all others occupying the dwelling unit or premises. But the plaintiff may request that the police delay enforcement of the writ subject to subsection (5) of this section. When the Secretary is involved and after an order is issued, the Tribal Police must insure that the physical removal occurs within 60 days from the date the petition was filed. The Tribal Police must file with the Tribal Court a statement of the action taken including the date, time, location and names of those removed.

(4) The Tribal Police or landlord may also remove the tenant's personal belongings to a secure storage place in accordance with 9.1.54.

(5) Any writ not enforced within 60 days following issuance is unenforceable. A judgment may not be enforced if the parties have entered into a new lease or if the plaintiff has accepted, rent or payment after the judgment was entered.

(6) Monetary judgments may be satisfied by an action to enforce the judgment under the Tribal Court Rules of Civil Procedure.

#### 9.1.72 Conclusiveness of Judgment; Stay of Execution

(1) Except as provided in subsection (2), a judgment in an action to recover possession of real property is conclusive as to the right of possession of the property upon the party against whom the judgment was given, and all persons claiming from or through such party.

(2) Unless agreed to by the Secretary, no stay is allowed in a case involving the Secretary.

(3) In all other cases, the Tribal Court may stay the writ of restitution if:

(a) Good and reasonable grounds affecting the well-being of the tenant or a tenant's dependent exists; and

(b) There would be no substantial prejudice or injury to the plaintiff during the stay; or

(c) Execution of the writ could result in extreme hardship for the tenant; or

(d) A bond is posted or monies paid to the Tribal Court, to satisfy the judgment - if any - and for the costs of continued occupancy.

(4) No stay may exceed 3 months.

(5) The stay must be denied when the basis for the writ of restitution is waste or nuisance.

#### 9.1.73 Appeal

A writ of restitution or judgment is final for appeal purposes. An appeal from a writ of restitution or a judgment will be handled according to the general tribal appellate provisions. All orders of the Tribal Court remain in force during the appeal's pendency of the appeal unless stayed by the Tribal Court under 9.1.73 or stayed by the appellate court.

#### 9.1.74 Miscellaneous Complaints and Claims

(1) Any other complaint or claim by a tenant or landlord may be brought under the general Tribal Court Rules of Civil Procedure or Small Claims Procedure.

(2) A tenant may bring an action for the recovery of personal property separate from all other claims and counterclaims. The issue at trial is limited to whether the tenant is entitled to possess the personal property. If the Tribal Court determines that the tenant is entitled to possess the personal property, the Tribal Court must enter an order directing the sheriff to seize the personal property and deliver it to the tenant's possession. If the tenant chooses to combine an action to recover personal property with another claim or counterclaim it will be governed by subsection (1) of this section or 9.1.65. The Tribal Court must award a prevailing tenant reasonable attorney's fees for the action to recover the personal property.

### MORTGAGES

#### 9.1.75 Nature of a Mortgagee's Interest

(1) A mortgage on real property is not a conveyance to enable the mortgage holder to recover possession of the real property without a foreclosure and sale under this Chapter.

(2) No mortgage may be construed to imply an agreement to pay the sum secured by the mortgage. When there is no express covenant for payment contained in the mortgage and no separate instrument to secure payment, the mortgagee's remedies are limited to recovering the real property mentioned in the mortgage.

#### 9.1.76 Improvements on Mortgaged Property

(1) No person may sell, dispose of, remove, or damage any building or other improvements upon the mortgaged property. The mortgaged property includes all improvements. When a person violates this section by removing an

improvement, the mortgagee may follow and regain possession of the improvement wherever found, or may recover the improvement's reasonable value from the person removing it.

(2) When a mortgage secures a building that is placed on leased tribal trust lands, the mortgage lien applies to the improvements to or on the leased land as provided under 9.1.9. Any improvements to the mortgaged building are subject to subsection (1) of this section.

(3) Any person who violates subsection (1) of this section or 9.1.9 is punishable by a fine not to exceed \$250.

#### 9.1.77 Payment of Taxes and Other Charges by Mortgagee

Whenever a mortgagor fails to pay - when due - any taxes, assessments, interest on prior mortgages, insurance premiums or other charges necessary to be paid for the lien's protection, the mortgagee may pay these charges. These payments may be added to the mortgage debt at the interest rate specified in the mortgage and secured by the mortgage lien. The parties may agree upon a different method to ensure these charges are paid.

#### 9.1.78 Late Charges

(1) No lender may impose a late charge:

(a) On any periodic installment payment received by it within 30 days after the due date. If the 30<sup>th</sup> day is a Saturday, Sunday or legal holiday, the period is extended to the next business day; or

(b) In a dollar amount that exceeds 5% percent of the total periodic installment payment; or

(c) More than once on any single periodic installment payment; or

(d) If the mortgage or payment agreement does not specify that, a late charge will be imposed as provided by this section.

(2) Any provision in a mortgage or payment agreement for a late charge is unenforceable if not in conformity with this section.

(3) When a federal agency insures or guarantees a loan, that agency's regulations establishing mandatory late charge limitations applies instead of subsection (1). This agency's late charge limitations will apply.

#### 9.1.79 Assignments

Mortgages may be assigned or transferred by an agreement in writing and executed as is required for deeds and mortgages. Any mortgage assignment or transfer to a third party must be recorded in accordance with this Chapter. Recording an assignment is not notice to the mortgagor of the assignment to invalidate a payment made to the original mortgagee.

#### 9.1.80 Prepayment Penalty

Any person or entity making a loan for more than three years secured by a mortgage may not charge a prepayment penalty against a mortgagor/borrower who pays all or a portion of the principle before the mortgage's term expires. A violation of this section renders any prepayment penalty provision unenforceable.

#### 9.1.81 Priority

(1) All mortgages recorded in accordance with the recording procedures set forth in this Chapter, including leasehold mortgages and loans guaranteed or held by any federal agency, will have priority over any lien not perfected at the time of recording. Once recorded, a mortgage will have priority over any subsequent lien or claim except a lien or claim arising from a tribal leasehold tax or property tax assessed after the recording.

(2) A tribally recorded mortgage is conclusive proof as to the lien's priority. Nothing in this Chapter prevents any person or entity from recording a mortgage or security interest in accordance with state law.

(3) To have priority under this Chapter, a manufactured home must first have its title as a motor vehicle eliminated under the applicable state law. Proof of title elimination must be filed with the recorded mortgage.

#### 9.1.82 Acts not Affecting Priority

(1) Acts that do not affect the priority granted to a mortgage lien at the time it is first recorded include, but are not limited to:

(a) Renegotiating or adjusting the initial interest rate provided in the mortgage or payment agreement, including a corresponding increase or decrease in the periodic payment amount, or corresponding extension or reduction to the note's term, or both; or

(b) Increasing the underlying obligation secured by the mortgage as a result of deferring all or a portion of the interest payments that are then added to the outstanding balance; or

(c) Executing a new payment agreement that reflects changes made pursuant to paragraphs (a) and (b); or

(d) If the mortgage permits, adding a name due to marriage or removing a name due to divorce or annulment, so long as one original mortgagee/borrower's name remains; or

(e) Extending the mortgage's term; or

(f) Modifying the periodic payments when there is no change in the principle amount or the interest rate to be paid under the note; or

(g) Increasing the underlying obligation secured by the mortgage because of a payment made under 9.1.77.

(2) As used in this section, adding accrued interest to the principle amount of the underlying obligation is not an increase in the principle amount.

#### 9.1.83 Recording

(1) All mortgages and related documents must be recorded by filing the lien with the real estate office of the Bureau of Indian Affairs Agency serving the Tribe and by copy to the Area Office for that Agency.

(2) Any person desiring to record a mortgage or related document must endorse upon any mortgage or other document the date and time filed, and must file an accompanying statement that contains:

(a) The mortgagor/borrower's name for each mortgage; and

(b) The mortgagee/lender's name for each mortgage; and

(c) The names of the grantor, grantee, or other designation of each party named in any mortgage or document, and;

(d) The name of the lessor and lessee of an trust property accompanying the mortgage, and the recording number or other appropriate cross reference to the leased parcel; and

(e) The date and time that such statement is filed.

(3) Any lien on a mobile home must be recorded following this Chapter's requirements.

#### 9.1.84 Use of Recorded Mortgage

(1) In any action involving a lien's priority, the original mortgage, or other document must be presented to the Tribal Court.

(2) In lieu of presenting an original mortgage or other document, any person may present a copy of the same with an original certification, signed and sealed by a Tribal Court Judge, Tribal Court Clerk, or by a notary public authorized under state or tribal law, in substantially the following form:

---

|                                    |   |     |
|------------------------------------|---|-----|
| _____                              | ) |     |
| (Authority such as tribe or state) | ) | ss. |
|                                    | ) |     |
| _____                              | ) |     |
| (location)                         |   |     |

I certify that this is a true and correct copy of a document in the possession of \_\_\_\_\_.

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

(SEAL)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date of expiration of Commission (if applicable)

---

(3) A properly recorded and presented document evidencing a mortgage, interest or lien in real property is conclusive proof as to the mortgage, interest, or lien's priority.

#### 9.1.85 Discharge of Mortgage Record on Deed

(1) Any mortgage must be discharged whenever there is presented to the

recording officer a certificate executed by the mortgagee of record, or it assigns, acknowledging that the mortgage has been paid or otherwise discharged. The person seeking to discharge the mortgage must record this certificate. A discharge operates to free the real property described in the mortgage from the lien as against all subsequent purchasers.

(2) Before or after a default, a mortgagor may make a written request that the mortgagee discharges the mortgage after fully performing the mortgage's conditions. The mortgagee has 30 days after receiving the request to discharge the mortgage or to execute a discharge certificate or release. Any mortgagee or assign of the mortgage, who fails to discharge the mortgage, is liable to the mortgagor for any actual damages, attorney fees and costs, and a penalty of \$350.

(3) The Mortgage Lien Discharge Notice must be in substantially the following form:

---

#### Mortgage Lien Discharge Notice

The lien holder of record hereby certifies that the lien on the deed dated \_\_\_\_\_, 19/20\_\_, recorded on \_\_\_\_\_, 19/20\_\_, under BIA recording file No. \_\_\_\_\_, at the \_\_\_\_\_ agency office, from \_\_\_\_ [mortgagor] \_\_\_\_, to \_\_\_\_ [mortgagee] \_\_\_\_, and effecting the following described property:

(legal description)

has been discharged. Any and all recording officers are directed to remove the lien from the above described property.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 19/20\_\_.

---

Mortgagee/Lender

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#### MORTGAGE AND LEASEHOLD MORTGAGE FORCLOSURE

##### 9.1.86 Applicability

The Mortgage and Leasehold Mortgage Foreclosure sections of this Code apply to any security interest or lien on real property no matter how it is classified, including, but not limited to, mortgages, leasehold mortgages, chattel mortgages, or note and trust deeds.

#### 9.1.87 Pre-Foreclosure Procedures

(1) Borrower/mortgagors may be considered in default when they are 30 days past due on their mortgage payments to the mortgagee/lender.

(2) Before a mortgagor/borrower becomes 90 days past due on the mortgage payments and before any foreclosure action is initiated, the mortgagee/lender must:

(a) Make a reasonable effort to arrange a face-to-face interview with a mortgagor/borrower, including at least one phone call to the mortgagor/borrower and at least one trip to meet with the mortgagor/borrower at the mortgaged property; and

(b) Notify the lessor of any associated trust property that the mortgagee/lender may initiate a foreclosure action.

(3) The mortgagee/lender must document its efforts to make face-to-face contact with the mortgagor/borrower. The mortgagee/lender may appoint an agent to initiate the face-to-face contact.

(4) Before a mortgagor/borrower has been delinquent for 120 days - and at least 10 days before beginning a foreclosure action - the mortgagee/lender must notify the mortgagor/borrower by first class mail as follows:

(a) That information regarding the loan and the default will be given to credit bureaus; and

(b) That home ownership counseling opportunities or programs are available through the mortgagee/lender or otherwise; and

(c) What - if any - other assistance regarding the mortgage or the default is available; and

(d) The number of days remaining within which the mortgagor/borrower may stop the default before a petition is likely to be filed and the costs that will be assessed against the mortgagor/borrower if a petition is filed; and

(e) The number of days remaining within which the mortgagee/borrower may stop the default before acceleration occurs, and the amounts due before and after acceleration.

(5) When a tribal, state or federal agency guaranteeing the loan or any aspect of the loan including, but not limited to, mortgage insurance, is involved, the mortgagee/lender must include - in addition to the notice requirements in subsection (3) - the following:

(a) That if the mortgage remains in default for more than 120 days, the mortgagee/lender may ask the applicable governmental agency to accept a mortgage assignment; and

(b) What the mortgagee/lender's qualifications for forbearance relief are - if any - and that forbearance relief may be available from the governmental agency if the mortgage is assigned; and

(c) Provide the name, address, and telephone number of the federal official to whom further communications may be directed.

(6) If the mortgagor/borrower has been in default for more than 120 days and the mortgagee/lender has complied with the procedures set forth in this subpart, the mortgagee/lender may commence a non-judicial or judicial foreclosure action.

(7) When a tribal, state or federal agency lending to the mortgagor/borrower, or guaranteeing the loan or any aspect of the loan is a party to the action, the Tribal Court may waive this subpart's requirements if the agency has substantially similar procedures that have been followed.

#### 9.1.88 Election of Remedies

(1) The remedies provided under this Chapter are exclusive of all other remedies. The mortgagee/lender may elect a remedy to pursue. The mortgagee/lender's election excludes all other remedies.

(2) The remedies available are:

(a) Sue on the loan agreement - under applicable Tribal law - for the mortgagor's default on the loan; or

(b) Proceed with a non-judicial foreclosure exclusive of a right to a deficiency judgment for any mortgage that meets the criteria set forth in 9.1.94; or

(c) Proceed with a judicial foreclosure under this Chapter for any mortgage; or

(d) Proceed with a strict foreclosure under either a non-judicial or a judicial procedure where the mortgagee/lender agrees to accept the deed in exchange for fully discharging the loan.

#### 9.1.89 Duration of Real Property Mortgage Lien

(1) Except as provided in subsection (2), no mortgage lien upon real property is effective after expiration of 10 years from the later of the mortgage debt's maturity date, the expiration of the mortgage debt's term or the date final payment has been extended to by written and recorded agreement. After this 10-year period, the mortgage is conclusively presumed paid and discharged, and any action for its foreclosure is barred. If neither the maturity date nor the mortgage term is disclosed by the recorded mortgage or memorandum, then the date the mortgage or memorandum is recorded will be deemed the maturity date and expiration of the mortgage debt's term for this section's purposes.

(2) This section does not bar foreclosure if the Tribe holds the mortgage of record or when all the following facts exist at the time, the foreclosure action is commenced:

(a) Any portion of the mortgage debt or interest thereon has been voluntarily paid within 10 years immediately action the start of the action; and

(b) The original mortgagee still owns the mortgaged property; and

(c) No third party lien or right attached to the property after the 10-year period expired.

#### NON-JUDICIAL FORCLOSURE

#### 9.1.90 Definitions

(1) Beneficiary means the person named or otherwise designated in a trust deed as the person for whose benefit a trust deed is given, and is essentially the mortgagee/lender.

(2) Grantor means the person conveying an interest in real property by a trust deed as security for performing an obligation or debt, and is essentially the mortgagor/borrower.

(3) Trustee means a qualified person or entity to whom an interest in real property is conveyed by a trust deed.

#### 9.1.91 Use of Trust Deeds; Trustee Qualifications

(1) The mortgagor/borrower and mortgagee/lender may agree to use a note and trust deed, trust deed or other mortgage instrument that conveys the real property to a trustee in trust to secure the mortgagor/borrower's performance on the loan agreement. This deed or instrument must be recorded in accordance with the Mortgages and Recording sections of this Code and will be considered a

mortgage subject to all laws relating to mortgages except as may be provided for in 9.1.90 to 9.1.103. The trustee's name and address must be included in the materials recorded under 9.1.83.

(2) A trustee under this Chapter must be:

(a) Any domestic corporation incorporated under Tribal law or Oregon state law; or

(b) Any title insurance company authorized to insure title to real property under Tribal law or Oregon state law; or

(c) Any attorney who is an active member of the Tribal Court Bar or Oregon State Bar Association; or

(d) Any professional corporation incorporated under Tribal law or Oregon state law, a majority of whose shareholders are licensed attorneys; or

(e) Any agency or instrumentality of the Tribe or the United States government; or

(f) Any national bank, savings bank, savings and loan association, or credit union established under the laws of the United States.

(3) Before any state or federally licensed or chartered entity can act as a trustee under this Chapter, the entity must certify in writing to the Tribal Council that it will dutifully follow the Tribe's laws.

(4) Except for a tribal or United States governmental agency, no person, corporation or association may be both trustee and beneficiary under the same Trust Deed.

(5) The trustee must resign at the beneficiary's request, and may resign at its own election. Upon the trustee's resignation, incapacity, disability, or death, the beneficiary will nominate in writing a successor trustee. Upon recording the successor trustee's appointment under 9.1.83, the successor trustee is vested with all the original trustee's powers.

#### 9.1.92 Re-conveyance by Trustee

The trustee must reconvey - within 30 days - all or any part of the property covered by the Trust Deed to the person entitled to possession upon the beneficiary's written request, or upon proof of the debt's satisfaction and a written request for reconveyance made by the person entitled to possession. The trustee must comply with 9.1.85. In the event the debt is satisfied and the beneficiary refuses to provide a written request for reconveyance or the trustee

refuses to reconvey the property, the beneficiary and the trustee are liable under 9.1.85. The trustee may charge a reasonable fee plus costs for the reconveyance.

#### 9.1.93 Criteria for Using Non-Judicial Foreclosure Procedures

To foreclose under the non-judicial foreclosure procedures, the following criteria must be met:

- (1) The Trust Deed contains a power of sale; and
- (2) The grantor has defaulted on the debt or violated a deed or note term that makes operative the power of sale; and
- (3) The beneficiary has not commenced any action in any court to seek the debt's satisfaction; and
- (4) The Trust Deed has been properly recorded under 9.1.75 to 9.1.85; and
- (5) Under 9.1.87, prior to initiating a non-judicial foreclosure, the beneficiary or trustee must serve the default notice on the grantor at the last known address by first class mail and by securely posting the notice to the main entrance to the premises. The notice must also:
  - (a) Describe the property to be foreclosed including the book and page number wherein the Trust Deed is recorded; and
  - (b) Concisely state the facts alleged that constitute the default; and
  - (c) Account for any moneys owed; and
  - (d) Contain an itemized account of all charges, costs and fees that the grantor may be obligated to pay to cure the default; and
  - (e) State the total for subsections (c) and (d), clearly stated as the total amount that the grantor must pay to cure the default and reinstate the mortgage; and
  - (f) State that failure to cure the default within 30 days will result in publication of a sale notice and that the property may be sold at a public auction no later than 120 days in the future; and
  - (g) State that the grantor may cure the default after the 30 days but that the costs and fees will increase; and
  - (h) State that the grantor may contest the allege default under 9.1.104.

#### 9.1.94 Foreclosure and Sale Procedures

(1) At least 60 days before a sale, the trustee must:

(a) Record a Trustee's Sale Notice in the form prescribed by subsection (d) of this section in the BIA office where the Trust Deed is recorded;

(b) If their addresses are stated in a recorded instrument evidencing their interest in the property or they are otherwise known to the trustee, serve the notice required by subsection (a) of this section by first class mail on the following people:

(i) The grantor, any successor in interest of record or the grantor's estate; and

(ii) The Trust Deed's beneficiary; and

(iii) Any subsequent lien holder of record including, but not limited to, mortgage liens, judgment liens, tax liens and contractor's liens; and

(iv) Any lessee of the mortgagor/borrower; and

(v) The Tribe; and

(vi) Any person who has recorded a request for notice under 9.1.96.

(c) Securely attach the notice to the main entrance to the property and personally serve the notice on any occupant of the property.

(2) The notice must be in substantially the follow form:

---

#### TRUSTEE'S SALE NOTICE

I.

NOTICE IS HEREBY GIVEN that the undersigned Trustee will, on the \_\_\_\_ day of \_\_\_\_, 19/20\_\_, at the hour of \_\_\_\_ o'clock \_\_.m. at [street address and location if within a building] on the Burns Paiute Reservation, State of Oregon, sell at public auction to the highest bidder, payable at the time of sale, the following described real property, situated on the Burns Paiute Reservation, State of Oregon, to wit: [describe property].

This property is subject to a Trust Deed dated \_\_\_\_, 19/20 \_\_, recorded \_\_\_\_, 19/20\_\_, under BIA recording file No. \_\_\_\_, at the \_\_\_\_ agency office, from

\_\_\_\_ [mortgagor] \_\_\_\_ as grantor, to \_\_\_\_\_, as trustee, to secure a debt in favor of \_\_\_\_ [mortgagee] \_\_\_\_, as beneficiary.

II.

The Trust Deed beneficiary or the beneficiary's successor in interest has not commenced any action in any court to seek satisfaction of the debt due to the grantor's default.

III.

The default(s) for which foreclosure is sought is/are as follows:

Failure to pay when due the following amounts now in arrears: [set forth the particular facts of a default for reasons other than nonpayment on the debt].

IV.

The sum owing on the debt secured by the Trust Deed is: Principle \$\_\_\_\_\_, together with interest as provided in the note or other instrument securing the debt from the \_\_\_\_ day of \_\_\_\_\_, 19/20\_\_\_\_, and such other costs and fees as are due under the note or other instrument securing the debt and as are provided by statute. The trustee, whose name and address are set forth below, will provide in writing, to anyone requesting it, a statement of all costs and fees due at any time prior to the sale.

V.

The above-described property will be sold to satisfy the sale's expense and the debt secured by the Trust Deed as provided by statute. The sale will be made without warranty, express or implied, regarding title, possession, or encumbrances on the \_\_\_\_ day of \_\_\_\_\_, 19/20 \_\_\_\_\_. The default(s) referred to in paragraph III must be cured by the \_\_\_\_ day of \_\_\_\_\_, 19/20\_\_\_\_ to discontinue the sale. The sale will be discontinued and terminated if at any time on or before the \_\_\_\_ day of \_\_\_\_\_, 19/20\_\_\_\_ the default(s) set forth in paragraph III is/are cured and the trustee's fees and costs are paid. The sale may be terminated any time after the \_\_\_\_ day of \_\_\_\_\_, 19/20\_\_\_\_ and before the sale by the grantor or any subordinate lien holder of record paying the entire principle and interest secured by the Trust Deed, plus the trustee's fees and costs.

VI.

The sale's effect will be to deprive the grantor and all those who hold by, through or under the grantor of all their interest in the above-described property.

VII.

A written notice of default was served on the grantor by the beneficiary or trustee at the following address:

by both first class mail on the \_\_\_\_ day of \_\_\_\_\_, 19/20\_\_ and by securely posting the notice to the property's main entrance.

VIII.

Anyone having an objection to this sale on any grounds whatsoever will be afforded an opportunity to be heard as to those objections if they bring an action to restrain the sale pursuant to 9.1.104. Failure to bring an action may result in a waiver of any proper grounds for invalidating the trustee's sale.

IX.

If you have any questions about this notice, you are advised to seek the assistance of an attorney.

\_\_\_\_\_  
,Trustee

\_\_\_\_\_  
[address]

\_\_\_\_\_  
[telephone]

\_\_\_\_\_  
  
(2) In addition to providing the grantor with the notice required in subsection (1) of this section, the trustee must serve the grantor with a Foreclosure Notice in substantially the following form:

\_\_\_\_\_  
  
FORECLOSURE NOTICE

The attached Trustee's Sale Notice is a consequence of default(s) on the debt owed to \_\_\_\_\_ [mortgagee] \_\_\_\_\_, the Trust Deed beneficiary. Unless the default(s) is/are cured, your property will be sold at public auction on the \_\_\_\_ day of \_\_\_\_\_, 19/20\_\_. To cure the default(s), you must bring the payments current, cure any other defaults, and pay late charges, costs,

advances and attorney's fees as set forth below by the \_\_\_\_ day of \_\_\_\_\_, 19/20\_\_, 10 days before the sale date. To date the amounts are as follows:

1. Current due Estimated due on \_\_\_\_

Delinquent payments  
from \_\_\_\_\_, in the amount  
of \$\_\_\_\_\_ per month:

\$\_\_\_\_\_

\$\_\_\_\_\_

Total late charges:

\$\_\_\_\_\_

\$\_\_\_\_\_

Attorney's fees:

\$\_\_\_\_\_

\$\_\_\_\_\_

Trustee's fees:

\$\_\_\_\_\_

\$\_\_\_\_\_

Trustee's expenses:  
(itemized)

\$\_\_\_\_\_

\$\_\_\_\_\_

Title report:

\$\_\_\_\_\_

\$\_\_\_\_\_

Recording fees:

\$\_\_\_\_\_

\$\_\_\_\_\_

Service fees:

\$\_\_\_\_\_

\$\_\_\_\_\_

Publication:

\$\_\_\_\_\_

\$\_\_\_\_\_

Inspection fees:

\$\_\_\_\_\_

\$\_\_\_\_\_

\_\_\_\_\_  
(other)

\$\_\_\_\_\_

\$\_\_\_\_\_

TOTAL:

\$\_\_\_\_\_

\$\_\_\_\_\_

You must also cure any defaults that do not involve money payments. Listed below are the non-monetary defaults and a brief description of the action necessary to cure the default including the documentation necessary to show that the default was cured:

You may reinstate your Trust Deed and the debt secured thereby at any time up to and including the \_\_\_\_ day of \_\_\_\_\_, 19/20\_\_, 10 days before the sale date, by paying the amounts set forth or estimated above, and by curing any other defaults. As time passes, the amount that must be paid to reinstate the Trust Deed may increase as additional costs and fees are incurred in the foreclosure process. The amount listed above for reinstatement may be an estimate. Please contact the trustee for the exact current amount owed at the time payment is

tendered for reinstatement. The payment must be tendered to the trustee at the address listed below.

AFTER THE \_\_\_\_ DAY OF \_\_\_\_\_, 19/20\_\_, YOU MAY NOT REINSTATE YOUR DEED BY PAYING THE BACK PAYMENTS, COSTS AND FEES, AND CURING THE OTHER DEFAULTS AS OUTLINED ABOVE. After the stated date, you will only be allowed to stop the sale by paying, before the sale, the total principle balance of \$\_\_\_\_\_ plus accrued interests, costs, advances and fees.

You may contest this default by bringing an action in the Tribal Court. In this action, you may raise any legitimate defense to the default. A copy of your Trust Deed and documents evidencing the debt secured by the Deed are enclosed. YOU MAY WISH TO CONSULT AN ATTORNEY. If you do not cure the default or succeed in a court action, your property will be sold. The sale will deprive you, and all those who hold by, through or under you, of all interest in the above-described property.

\_\_\_\_\_  
, Trustee

\_\_\_\_\_  
[address]

\_\_\_\_\_  
[telephone]

\_\_\_\_\_  
  
(3) The trustee must cause the Sale Notice to be published in a newspaper in each county where all or a portion of the property is located and in any tribal newspaper, once on or between the 32<sup>nd</sup> and 28<sup>th</sup> day before the sale and once on or between the 11<sup>th</sup> day and 7<sup>th</sup> day before the sale.

(4) The trustee is authorized to sell the property at public auction to the highest bidder at the date and time designated for the sale in the Sale Notice. The trustee may sell the property in whole or in parcels as the trustee deems most advantageous.

(5) The sale's location must be at any designated public place within the exterior boundaries of the Burns Paiute Reservation. The sale may be held between 9:00 a.m. and 4:00 p.m. Monday through Friday excluding tribal, federal or state holidays.

(6) The trustee may - for any cause deemed advantageous by the trustee - continue the sale for a period or periods not exceeding 60 days total. The trustee must provide notice of the continuance by public proclamation at the time and place designated for the sale in the Sale Notice. This proclamation must include the new sale's date, time, and location. In the alternative, the trustee may re-notice the sale in accordance with 9.1.92(1), except that the trustee is only required to publish the notice once in the appropriate newspaper(s) on or before the 7<sup>th</sup> day before the sale.

(7) The purchaser at auction must immediately pay the purchase price bid. Upon payment, the trustee must transfer the property's deed to the purchaser. The deed must recite the facts showing that the sale was conducted in compliance with all the requirements of this Chapter and the Trust Deed, which is conclusive evidence of compliance in favor of a bona fide purchaser for value. If the trustee fails to provide the required notice to any person entitled to Sale Notice pursuant to 9.1.92(1), this recital does not effect a lien or interest of that person.

(8) The sale must occur no later than 240 days from the date the default occurred.

#### 9.1.95 Failure to Give Sale Notice

(1) If the trustee fails to give notice to a party required to be notified under 9.1.92, and this person does not have actual notice at least 30 days prior to the trustee's sale, this omitted person has the rights of a junior lien holder who was omitted as a party-defendant in a judicial foreclosure.

(2) The omitted person may also commence an action against the trustee in the Tribal Court for damages. The omitted person is entitled to damages upon proof that:

(a) The trustee failed to give notice as required by 9.1.92; and

(b) A records search under the grantor's name would have revealed the omitted person's interest, or the trustee had actual notice of the person's interest; and

(c) The omitted person could have and would have cured the default.

(3) The prevailing party is entitled to costs and reasonable attorney fees. An action for damages against a trust must be brought within 5 years after the trustee's sale.

#### 9.1.96 Request for Sale Notice

(1) Any person desiring to receive the Sale Notice, other than a person entitled to such notice under 9.1.92(1), must record a request for such notice with the BIA

office in which the Trust Deed is recorded. The person requesting notice must sign the request form stating their name, address, and telephone number of the person to be notified. The request must identify the Trust Deed by stating the names of the parties to the deed, the date the deed was recorded, the property's legal description, and the BIA recording number. Notice requests must be substantial in the following form:

---

### Request for Sale Notice

Request is hereby made that a copy of any Trustee's Sale Notice described in Burns Paiute Tribal Code 9.1.92(1) under the Trust Deed dated \_\_\_\_\_, 19/20\_\_, recorded on \_\_\_\_\_, 19/20\_\_, under BIA recording file No. \_\_\_\_\_, at the \_\_\_\_\_ agency office, from \_\_\_\_ [mortgagor] \_\_\_\_ as grantor, to \_\_\_\_\_, as trustee, to secure a debt in favor of \_\_\_\_ [mortgagee] \_\_\_\_, as beneficiary, and effecting the following described property:

(legal description)

be sent by first class mail to \_\_\_\_ (name) \_\_\_\_\_ at \_\_\_\_\_ (address and telephone) \_\_\_\_\_.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 19/20\_\_.

\_\_\_\_\_  
(signature)

---

(2) A request for notice under this section does not effect title to the property. A request for notice will not be deemed notice to any person that the requesting party has any right, title, interest, lien, or charge upon the property.

#### 9.1.97 Who may bid at Trustee's Sale

The trustee may not bid at the sale or otherwise acquire any interest in the property. Any other person, including the grantor and beneficiary under the Trust Deed may bid at the trustee's sale.

#### 9.1.98 Interest Conveyed by Trustee's Deed; Right of Redemption Precluded

The deed executed by the trustee to the purchaser conveys all the interest in the property that the grantor has or had the power to convey at the time the Trust

Deed was executed to the trustee, and all such interest as the grantor may have later acquired. After the trustee's sale, no person has the right by statute or otherwise to redeem the Trust Deed or the property.

#### 9.1.99 Purchaser's Right to Possession:

The purchaser at the trustee's sale is entitled to possess the property on the 30<sup>th</sup> day following the sale, as against the grantor under the Trust Deed or anyone claiming possession through the grantor. The purchaser is entitled to enforce this right of possession by following the procedure set forth in 9.1.112.

#### 9.1.100 Disposition of Trustee's Sale Proceeds

The trustee must apply the sale proceeds in the following order:

- (1) To the sale's expenses, including a reasonable charge by the trustee and the trustee's attorney for their services in the sale. The aggregate charges may not exceed an amount which that Tribal Court would award as a reasonable fee in an uncontested judicial foreclosure; then
- (2) To the debt secured by the Trust Deed; then
- (3) Any surplus - less the Tribal Court's filing fee - must be deposited, together with the recorded Sale Notice, with the Tribal Court Clerk. The Clerk must index the funds under the grantor's name as set out in the recorded notice. Upon depositing these funds, the trustee's duties are discharged in full. Interests in, liens or claims of liens against the property sold at the trustee's sale attach to the surplus in the order of priority that it attached to the real property. The Tribal Court must disperse all funds within 90 days after being deposited with the Clerk.

#### 9.1.101 Curing of Defaults

(1) At any time prior to the 10<sup>th</sup> day before the sale as set forth in the recorded Sale Notice or before the actual sale if the trustee has continued the sale, the grantor, the grantor's successor in interest, any beneficiary under a recorded subordinate Trust Deed, any person having a recorded subordinate lien or encumbrance on the property, or the Tribe, is entitled to a discontinuance of the sale by curing the default(s) set forth in the notice required by 9.1.94(5). In the case of a default for nonpayment, the person curing must pay to the trustee:

- (a) The entire amount currently due under the deed, other than portions of the principle that would not then be due had no default occurred; and
- (b) The expenses actually incurred by the trustee in enforcing the Trust Deed's terms, including a reasonable charge by the trustee and trustee's attorney, together with the costs for recording a notice discontinuing the trustee's sale.

(2) Upon receipt of this payment, the trustee must discontinue the sale, record a Sale Discontinuance Notice with the BIA recording clerk, and reinstate the Trust Deed. Upon reinstatement, the Trust Deed continues as though no default acceleration took place.

(3) Between the sale date and 10 days before that date, any person seeking to cure a default for nonpayment must pay:

(a) The entire amount currently due under the deed, other than portions of the principle that would not then be due had no default occurred; and

(b) The expenses actually incurred by the trustee in enforcing the Trust Deed's terms, including a reasonable charge by the trustee and trustee's attorney, together with the costs for recording a notice discontinuing the trustee's sale; and

(c) All remaining principle owed under the mortgage.

(4) Any subordinate lien holder of record who has cured a default under this section may have included its lien all payments made to cure the default, including interest at the rate specified in this Code.

(5) The Sale Discontinuance Notice is sufficient if it identifies the Trust Deed by stating the parties' names, the date the deed was recorded, the property's legal description, the trust deed's BIA recording number, the date of the Sale Notice, and the Sale Notice's BIA recording number. The Sale Discontinuance Notice must be in substantially the following form:

---

#### SALE DISCONTINUANCE NOTICE

Notice is hereby made that the sale, notice of which was recorded on \_\_\_\_\_, 19/20\_\_, under BIA recording file No. \_\_\_\_\_, at the \_\_\_\_\_ agency office, under the Trust Deed dated \_\_\_\_\_, 19/20\_\_, recorded on \_\_\_\_\_, 19/20\_\_, under BIA recording file No. \_\_\_\_\_, at the \_\_\_\_\_ agency office, from \_\_\_\_ [mortgagor] \_\_\_\_ as grantor, to \_\_\_\_\_, as trustee, to secure a debt in favor of \_\_\_\_\_ [mortgagee] \_\_\_\_, as beneficiary, and effecting the following described property:

(legal description)

is hereby discontinued and the Trust Deed is hereby reinstated.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 19/20\_\_.

\_\_\_\_\_  
(trustee)

---

(6) Any person entitled to cure a default and discontinue a sale has the right, before or after reinstatement, to request that the Tribal Court determine the reasonableness of any trustee fee, attorney fee or costs demanded for reinstatement. The Tribal Court must make this determination and render a judgment as it deems appropriate, which may include costs and attorney fees to the prevailing party in an action to determine reasonable costs and fees. An action to determine fees and costs may not forestall any sale or affect its validity, nor may the action be considered moot by the fact that a sale has occurred.

#### 9.1.102      Deficiency Judgment Prohibited

Non-judicial foreclosure satisfies the debt secured by the Trust Deed regardless of the sale price or fair value. No deficiency judgment or decree may thereafter be obtained on this debt. Any judgment or decree, if granted, shall be of no force and affect.

#### 9.1.103      Restraint of Sale

(1) The grantor, the grantor's successor in interest, any person who has an interest in, lien or claim of lien against the property, or the Tribe has the right to restrain the trustee's sale for any proper grounds. As a condition to hearing a request for a restraining order or injunction, the Tribal Court must require the party requesting a restraint or injunction to pay to the Clerk the sums that would be due on the Trust Deed if the deed were not being foreclosed, as follows:

(a) For a default on a periodic payment of principle, interest and reserves, the sum is the periodic payment, paid to the Clerk every 30 days; or

(b) For a default in making a payment on a debt then fully payable by its terms, the sum is the amount of interest accruing monthly on the debt at the non-default rate, paid to the Clerk every 30 days; or

(c) For a default of any non-monetary obligation secured by the Trust Deed, the Tribal Court must impose such conditions as it deems just.

(2) In addition, the Tribal Court may condition the restraint or injunction upon the petitioner giving security in a form and amount as the Tribal Court deems just. This security may be determined in light of the costs, fees, and damages incurred by the beneficiary due to the restraint or injunction and the grantor's equity in the property.

(3) No restraining order or injunction may be granted unless the petitioner proves that the complaint for restraint or injunction was served on the trustee and the beneficiary at least five days before the hearing. This complaint must be served in accordance with the Tribal Court Rules of Civil Procedure.

(4) If the restraining order or injunction is dissolved after the sale date set forth in the Trustee's Sale Notice, the Tribal Court may set a new date, time and location for the sale. The sale must occur not be less than 45 days from the date the order or injunction is dissolved. At least 30 days before the sale, the trustee must re-notice the sale under 9.1.92.

## JUDICIAL FORECLOSURE

### 9.1.104 Complaint and Summons

(1) Pursuant to the Tribal Court Rules of Civil Procedure, any party seeking to foreclose a mortgage must file a complaint with the Tribal Court, along with any fee as set by the Tribal Court. The complaint must contain the following information:

(a) The name of the mortgagor/borrower and each person or entity claiming through the mortgagor/borrower after recording the mortgage, including each subordinate lien holder. But, the Tribe with respect to a tribal lease or tribal property tax lien need not be named; and

(b) A description of the property subject to the mortgage; and

(c) A concise factual statement concerning:

(i) The mortgage's execution, and - in the case of a leasehold mortgage - the lease;

(ii) Concerning the mortgage's recording;

(iii) Concerning the mortgagor/borrower's alleged default(s);

(iv) The steps taken to provide any notices required by this Chapter; and

(v) Any other facts as may be necessary to constitute a cause of action; and

(d) True and correct copies of each promissory note, lease for a leasehold mortgage, or mortgagee, or assignment thereof, appended as exhibits; and

(e) Any facts or allegations concerning relevant requirements and conditions in federal statutes and regulations, tribal codes and regulations, and/or provisions of the mortgage, lease or security instrument that the mortgagee/lender or Secretary are required to follow.

(2) Upon filing the complaint and paying any fees, the Tribal Court Clerk must issue a certified copy of the complaint together with a summons specifying a date

and time for the mortgagor/borrower to appear and answer the complaint. The mortgagor/borrower's first appearance must occur not less than 20 nor more than 45 days from the date the complaint and summons are served.

(3) If the mortgagor/borrower has rented all or a portion of the premises, the tenant(s) must be served with notice of the foreclosure action.

9.1.105      Answer

The defendant must answer the complaint within 20 days of being served. A general answer is sufficient. When a mortgagor/borrower appears without representation, the Tribal Court must instruct the mortgagor/borrower to answer the complaint 10 days after this initial hearing. An answer submitted by an underrepresented person should be in substantially the following form:

---

In the Tribal Court for  
The Burns Paiute Tribe of Oregon

|              |   |                    |
|--------------|---|--------------------|
| [Petitioner] | ) |                    |
|              | ) | Case No.           |
| v.           | ) |                    |
|              | ) | Answer to          |
| [Defendant]  | ) | Foreclosure Action |

COMES NOW the defendant, \_\_\_\_\_, pro se, and answers the complaint as follows.

1.

[ ] Defendant denies all allegations in the Petition for Foreclosure.

[ ] Defendant denies the following allegations in the petition:

(state what factual allegations you deny).

Defendant admits all other allegations in the petition.

2.

Defendant made the following payments to the following entities at the following address:

(state the amount of payment and when it was due, how it was made such as by check or money order, who it was made to, and what address was used)

Defendant attaches the following documents as proof of payment:

(attached, for example, cancelled checks, money order receipts, payment receipts, or postal receipts)

3.

Defendant was excused from the following payments:

(state the amount of the payment and when it was due together with an explanation of why it was excused such as a bank approved forbearance agreement. Attach any supporting documentation)

4.

Defendant would like the Tribal Court to consider the following acts by the mortgagee /lender in reaching its decision:

(state the fact(s) or situation in detail. For example, the bank has breached the mortgage contract by doing the following...)

DATED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Pro Se

#### 9.1.106 Service

The Tribal Police must serve the complaint and summons on the mortgagor/borrower, any prior lien holder, and any person in possession of the property.

#### 9.1.107 Alternative Service

If it appears by affidavit filed with the Tribal Court that any party to a foreclosure action cannot be located, then service may be made upon this party by:

(1) Posting a copy of the summons and complaint by the main entrance to the dwelling in a secure and conspicuous manner at least 10 days prior to the time set for the initial hearing or 20 days prior to the time set for trial; and

(2) Mailing a copy of the summons and complaint to the party by first class mail addressed to the party at the premises and to the most recent forwarding address - if known - at least 10 days prior to the time set for the initial hearing or 20 days prior to the time set for trial.

9.1.108      Notice to Tribe and Lessor

In any foreclosure action where the Tribe or the Lessor is not named as a defendant, the complainant must mail a copy of the complaint and summons to the Lease Compliance Officer and to the lessor, if different. The complaint and summons must be sent certified mail, return receipt requested, within 5 days after the summons's issuance.

9.1.109      Intervention; Joiner

(1) The Tribe or any lessor may petition the Tribal Court to intervene in any foreclosure action under this Chapter involving leased trust property. Neither the filing of a petition for intervention by the Tribe, nor the granting of a petition by the Tribal Court operates as a waiver of the sovereign immunity.

(2) The mortgagee/lender or Tribal Court may join any subordinate lien holder in the action.

9.1.110      Cure of Default

(1) Within 20 days after being served with a complaint and summons for foreclosure, any mortgagor/borrower or any subordinate lien holder may cure the default by making a full payment of the amount owed to the mortgagee/lender and paying all reasonable legal and court costs already incurred foreclosing on the property. Curing a default operates to reinstate the loan.

(2) 21 days after serving the complaint and summons, a mortgagee/lender may accelerate the loan amount due to cure the default to include all remaining principle owed on the note. The mortgagee/lender may either state that the accelerated amount is requested if no cure has occurred within the time allowed or may amend its complaint to include the accelerated amount.

(3) Any subordinate lien holder who has cured a default may include in its lien the amount of all payments made by it to cure the default, plus interest at the rate stated in the note for the subordinate lien.

9.1.111      Judgment and Remedy

(1) A foreclosure action must be heard and decided by the Tribal Court pursuant to the Tribal Court Rules of Civil Procedure within 180 days from the date the

complaint was served on the mortgagor/borrower. If the alleged default has not been cured at the time of trial and the Tribal Court finds for the mortgagee/lender, the Tribal Court must enter judgment:

(a) Foreclosing the interest in the property of the mortgagor/borrower and each defendant named in the complaint upon whom proper service was made, including each such subordinate lien holder, and ordering a sale of all or as much of the property as is needed to satisfy the lien; and

(b) Assigning the mortgage to the mortgagee/lender or its designated assignee; and

(c) Setting a minimum or an up-set price below which the property cannot be sold if the Tribal Court finds that economic conditions justify setting this price; and

(d) Ordering the mortgagor/borrower to vacate the premises within 30 days unless the parties agree otherwise.

(2) When the foreclosure action involves tribal trust property dedicated to a mortgage, leasehold mortgage, loan or security interest, the Tribal Court must include in the judgment that:

(a) The mortgage can only be assigned to a designated assignee upon the Tribe's approval; and

(b) The mortgagee/lender must give the Tribe the right of first refusal on any acceptable offer to purchase the mortgagee/lender's interest in the mortgage; and

(c) The mortgagee/lender or designated assignee may only transfer, sell or assign its interest to the Tribe, the BPIHA or TDHE, or a tribal member, unless the Tribe agrees to the transfer, sale or assignment to a non-member or non-Tribal entity; and

(d) Any future transfer, sale, or assignment may only be made to the Tribe, the BPIHA or TDHE, or a tribal member, unless the Tribe agrees to the transfer, sale, or assignment.

(3) The prevailing party in a foreclosure action is entitled to reasonable attorney fees and court costs, except the Tribe, or BPIHA or TDHE is not required to pay these fees and costs unless the Tribe has given prior written consent to an award.

(4) The foreclosure judgment must be served on the mortgagor/borrower:

(a) By the Tribal Court Clerk mailing a true copy of the judgment - first class mail - to the mortgagor/borrower at the premises and at any current forwarding address; and

(b) By the Tribal Police serving a true copy of the judgment on the mortgagor/borrower by personal service or by attaching the summons and petition in a secure and conspicuous manner to the main entrance to the mortgagor/borrower's dwelling unit or premises. The officer serving the mortgagor/borrower must file an affidavit attesting to the manner, date and time of service.

#### 9.1.112      Foreclosure Evictions

A foreclosure judgment ordering a mortgagor/borrower to vacate the premises may be enforced as a writ of restitution under 9.1.71.

#### 9.1.113      Execution and Sale

(1) Unless the mortgagee/lender has elected for strict foreclosure, the Tribal Police will execute the judgment by selling the property pursuant to this section.

(a) All sales must be by public auction with closed or open bidding between the hours of 9 a.m. and 4 p.m. Neither the mortgagee/lender nor its agent for the sale, if any, may purchase the property or otherwise acquire an interest in the property at the sale. The Tribal Police must conduct the sale so as to bring the highest price, including, but not limited to, sell the property as lots or parcels, or continuing the sale pursuant to subsection (3). The Tribal Police may collect the actual and reasonable sale costs from the proceeds.

(b) The Tribal Police must provide public notice of the date, time, and location for the sale, and if the bidding will be closed or open. This notice must be sent to the mortgagor/borrower by first class mail, at the property's address and any current forwarding address. The Tribal Police must post this notice for four consecutive weeks at the tribal headquarters and must publish it for four consecutive weeks - making four publishings in all - with the last publication at least one week prior to the day of sale. Published notice must be in a newspaper of the county where the property is located or if there is none, in a newspaper published nearest to the place of sale, and in any tribal newspaper.

(c) If at the time appointed for the sale, the Tribal Police deem it for the advantage of all concerned to continue the sale for lack of purchasers, or other sufficient reason, it may continue the sale for not more than one week after the date appointed for the sale. The Tribal Police must announce the sale's continuance by public proclamation at the time appointed for the sale. The Tribal Police may further continue the sale for like cause, except a continuance 30 days beyond the initial day appointed for the sale requires the Tribal Court's consent.

- (d) All sales must be paid for in cash.
- (e) At the time of purchase, the Tribal Police must give the purchaser and the mortgagee/lender a sale certificate that contains:
  - (i) A description of the property; and
  - (ii) The name of the purchaser; and
  - (iii) The price paid for each distinct lot or parcel; and
  - (iv) The whole price paid and the date paid; and
  - (v) A statement that the sale is subject to redemption.

(2) The sale certificate must be in substantially the following form:

---

Sale Certificate

The property found at \_\_ [address] \_\_ and more fully described as [legal description]

has been sold to \_\_\_\_\_, as purchaser. The purchaser paid the sum of \_\_\_\_\_ for the following lots: \_\_\_\_ [describe lots] \_\_\_\_\_. The purchaser paid the total price of \_\_\_\_\_ on \_\_\_\_ [date] \_\_\_\_\_.

This property is subject to redemption rights as described in the Tribal Housing Code, 9.1.118. The purchaser may not obtain title to the property until all redemption rights have expired.

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9.1.114      Use of the Property

The parties to a foreclosure may agree to allow the mortgagor/borrower to continue using the premises beyond the time set forth in 9.1.111(1)(d). The mortgagee/lender may charge the mortgagor/borrower a reasonable amount to use and occupy the premises, and may request this amount be paid in full or in periodic payments. This agreement does not create any ownership interest in the mortgagor/borrower. Should the mortgagor/borrower fail to deliver the property to the mortgagee/lender as agreed or fail to make payments as agreed, the mortgagee/lender may immediately initiate an action for recover under 9.1.112.

9.1.115      Procedures after Sale of Property

(1) The mortgagee/lender must give notice that the property was sold no later than 30 days after the purchaser is given a sale certificate to:

(a) The Tribal Court by filing a copy of the certificate.

(b) To the mortgagor/borrower by sending the notice first class mail to the current forwarding address, the last known address and by securely and conspicuously attaching the notice to the property's main entrance.

(2) The notice required by subsection (1) must be in substantially the following form:

---

YOUR PROPERTY HAS BEEN SOLD

Your property located at \_\_\_\_\_ has been sold. The property was sold on \_\_\_\_\_, to satisfy a Tribal Court judgment against you foreclosing your interest in the property. The purchaser's name and address are \_\_\_\_\_. The purchaser paid \_\_\_\_\_ for your property. Burns Paiute Tribal Law gives you the right to buy back the property from the purchaser by paying the purchaser the amount paid at the sale plus taxes, expenses and interest. YOU WILL LOSE THE RIGHT TO BUY BACK YOUR PROPERTY ON \_\_\_\_\_. If you do not do so, the Tribal Court will deed your property over to the purchaser on that date. The law that gives you the right to buy back your property is found at Burns Paiute Tribal Code 9.1.118 to 9.1.120. You must follow exactly the instructions provided there.

IF YOU HAVE ANY QUESTIONS, YOU SHOULD CONSULT A LAWYER.

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(3) The mortgagee/lender's failure to give this notice does not void the sale. The mortgagor/borrower's rights to redemption under 9.1.118 to 9.1.120 are not time limited when the notice is not provided.

9.1.116      Objection to the Sale

(1) Within 20 days after the mortgagee/lender files the sale certificate with the Tribal Court, a mortgagor/borrower or subordinate lien holder may object to the conduct of the sale. The party objecting to the sale must give notice of the objection to all other parties including the purchaser as required by the Tribal Court Rules of Civil Procedures for serving complaints and summons.

(2) Unless the Tribal Court finds that there were substantial irregularities in the sale process causing a probable loss or injury to the party objecting, the Tribal Court must confirm the sale. An order confirming the sale conclusively determines the sale's regularity as to all persons in any other action, suit, or proceeding. If the Tribal Court finds that the sale was substantially irregular, it must order the property resold.

(3) A purchaser who loses their interest in the property under subsection (2) may recover the price paid, with interest, and the costs of defending the sale from the mortgagee/lender.

#### 9.1.117 Proceeds of the Sale; Deficiency

(1) The Tribal Police must deposit the sale's proceeds with the Tribal Court Clerk within 5 days after the purchaser has paid the full purchase price. The Clerk must apply the proceeds to the judgment within 20 days after the mortgagor/lender files the sale certificate. If there are any proceeds remaining, the Clerk must use them to satisfy any subordinate lien holder's judgment. If after all judgments are satisfied there remains any sale proceeds, the Clerk must give the proceeds to the mortgagor/borrower.

(2) If a resale is ordered under 9.1.116, the Clerk will retain the proceeds until after the resale. If the property sells for a greater amount to a person other than the initial purchaser, the Clerk must first repay the initial purchaser. Upon a resale, the initial purchaser's bid must be renewed and no bid may be taken except for a greater amount.

(3) If the proceeds of the sale are not sufficient to satisfy the mortgagee/lender's judgment and the mortgagee/lender has a separate loan agreement, then the mortgagee/lender may recover the deficiency by an action to enforce a monetary judgment as provided for by the Tribal Code.

#### 9.1.118 Right of Redemption

(1) Within the first two years or less of the mortgage's term, a property's sale upon a foreclosure judgment is absolute. In all other cases, the property is subject to redemption under this Chapter.

(2) The following persons may redeem all or part of any redeemable property:

(a) The mortgagor/borrower or judgment debtor whose title to the property was sold, or their heir, devisee or grantee. However, any person acquiring title after judgment has no greater or better right to the property than does the holder of legal title at the time of judgment.

(b) The Burns Paiute Tribe, a subordinate lien holder or other creditor whose has

a judgment lien on any portion of the property later in time than the mortgagee / lender. These people are called redemptioners.

(3) A redemptioner other than a mortgagor/borrower may redeem the property within 60-days after the mortgagee/lender filed the sale certificate. A redemptioner may redeem the property by paying the purchaser price with interest at the rate set in 9.1.11 from the date of sale. The redemptioner must also pay any taxes that the purchaser has paid. If there is a deficiency on the judgment, the redemptioner must pay the lien's remaining balance. A redemptioner may redeem the property from the previous redemptioner in a like manner within 30 days from the previous redemption.

(4) A mortgagor/borrower whose title was sold, or their heir, devisee or grantee may - within 180 days of the mortgagee/lender filing the sale certificate - redeem the property by paying the purchase price with interest at the rate set in 9.1.11 from the date of sale. The mortgagor/borrower must also pay any taxes that the purchaser has paid. If there is a deficiency on the judgment, the mortgagor/borrower must pay the lien's remaining balance. If funds were expended to prevent waste, the mortgagor/borrower must pay that amount also.

(5) The mortgagor/borrower whose title was sold, or their heir, devisee or grantee, is entitled to a set-off against the amount necessary to redeem any property subject to redemption in an amount equal to all rents and profits that a purchaser has earned from the property's use since the date of purchase. If the property is farmland, the purchaser has a lien on the sale of the first crops sown or grown after purchase and for all sums reasonable expended in cultivating the premises in a usual husband like manner. This lien is superior to all other liens except that of a laborer's lien for working to cultivate the premises.

#### 9.1.119 Tribal Court May Restrain Waste

Until the time allowed for redemption has expired, the Tribal Court may restrain any activity that causes waste of the property. A mortgagor/borrower or redemptioner may apply for a restraining order with or without notice to the parties. Waste does not include the person in possession maintaining or repairing the property, using the property for the same purpose as it has been used, or using wood from the property for fence repair or fuel for personal residential heating.

#### 9.1.120 Mode of Redeeming

(1) The person seeking to redeem must give the purchaser not less than 5 days and no more than 30 days notice of intent to file a motion to redeem the property. If after reasonable diligence, the purchaser cannot be personally served, an affidavit stating the efforts made must be provided instead of proof of service.

(2) The person seeking to redeem must file a motion to redeem with the Tribal Court. The Tribal Court will set the matter for hearing 5 days after the filing. The motion must state the total sum to be paid for redemption, and include a copy of any assignment or transfer of the redemption right and a certified copy of any judgment lien.

(3) At the hearing, the person must pay into the Tribal Court the sum required or provide proof of paying the required amount and to whom paid. At such time, the purchaser may present evidence that the amount required for redemption should be higher. The Tribal Court must issue a certificate stating the amount paid for redemption, to whom it was paid and the date paid.

(4) The mortgagor/borrower must give the purchaser 10 days notice of intent to claim a set-off under 9.1.118(5) to allow the purchaser to account for the rents and profits and to file this accounting with the Tribal Court within 10 days after being served with notice. At this hearing, the mortgagor/borrower or redemptioner may present evidence that the set-off should be higher.

(5) The mortgagor/borrower has a superior right to redeem the property over a judgment lien holder. When two judgment lien holders seek to redeem the same property, the Tribal Court must grant redemption rights based on the lien's priority as determined by the Tribal Court.

#### 9.1.121 Conveyance after Purchase or Redemption

The Tribal Court must order the recording officer to turn over the property's title to the purchaser or redemptioner any time after the period for redemption under 9.1.118 has expired.

#### 9.1.122 Cure of Default by Tribe; Right of First Refusal

(1) When a mortgaged property is on tribal trust land, the mortgagee/lender is encouraged to work with the Tribe to attempt to cure the default. The mortgagee/lender should consider an assignment directly to the Tribe at an early stage in the process and should consider discounting the note to the Tribe at the going market rate for such assignments.

(2) In any situation where the mortgagee/lender places a foreclosed property for sale, the Tribe retains a right of first refusal to purchase the property. The Tribe may assign its right to the BPIHA or TDHE, or a qualified tribal member. If the Tribe decides to exercise its right of first refusal, the price must be negotiated in good faith.

#### 9.1.123 Mobile Homes

If a court of concurrent jurisdiction has entered an order authorizing the repossession of a mobile home as personal property, the party seeking to enforce that order on the Reservation must:

- (1) Obtain the purchaser's written consent at the time the repossession is sought: or
- (2) Obtain a Tribal Court order giving full faith and credit to the state court orders and authorizing the order's enforcement on the reservation. The Tribal Court may require that the mortgagee/lender initiate a foreclosure action in Tribal Court.

#### 9.1.124      Appeal

A judgment foreclosing the mortgage, lease or security interest is final for the purposes of appeal. A foreclosure appeal must be handled according to the general tribal appellate provisions.

|         |                            |
|---------|----------------------------|
| 9.1.125 | RESERVED FOR FUTURE ACTION |
| 9.1.126 | RESERVED FOR FUTURE ACTION |
| 9.1.127 | RESERVED FOR FUTURE ACTION |
| 9.1.128 | RESERVED FOR FUTURE ACTION |
| 9.1.129 | RESERVED FOR FUTURE ACTION |
| 9.1.130 | RESERVED FOR FUTURE ACTION |
| 9.1.131 | RESERVED FOR FUTURE ACTION |
| 9.1.132 | RESERVED FOR FUTURE ACTION |
| 9.1.133 | RESERVED FOR FUTURE ACTION |
| 9.1.134 | RESERVED FOR FUTURE ACTION |
| 9.1.135 | RESERVED FOR FUTURE ACTION |
| 9.1.136 | RESERVED FOR FUTURE ACTION |
| 9.1.137 | RESERVED FOR FUTURE ACTION |
| 9.1.138 | RESERVED FOR FUTURE ACTION |
| 9.1.139 | RESERVED FOR FUTURE USE    |

### ZONING, SAFETY & ENVIRONMENTAL REGULATION

#### ZONING

#### 9.1.140      Policy

The Tribe seeks to ensure that new construction on the reservation follows an orderly pattern designed to facilitate housing stock and infrastructure development.

#### 9.1.141      Zoning Authority

(1) The Tribal Council has authority to establish short and long term zoning goals and reservation site plans. Such goals and plans comprise the master-zoning plan. The master-zoning plan must be updated at least every 5 years. The master-zoning plan must be incorporated into any short or long-term housing plan of the BPIHA, TDHE or any other agency of the Tribe responsible for developing a housing plan. The Tribal Council may delegate this responsibility to a tribal agency as it sees fit.

(2) All new construction must comply with the master-zoning plan.

(3) If this authority is delegated, the master zoning plan and any subsequent updates to the plan must be submitted to the Tribal Council. The Tribal Council may either adopt the master zoning plan or update, or reject the plan or update. If a plan or update is rejected, the basis for the rejection must be made know to the tribal agent so that a new master plan can be developed consistent with the Tribal Council's direction.

#### 9.1.142      Surveys

(1) Any new or renewed lease to tribal trust property must describe the leased property consistent with standard surveying techniques. The lessee is responsible for survey costs. A lease may be granted contingent on the survey being conducted by or at the mortgagee/lenders expense.

(2) The Lease Compliance Office may waive this requirement upon application of a lessee demonstrating a hardship due to the survey's expense.

#### 9.1.143      Enforcement

Any structure or other building activity that does not comply with the master-zoning plan is subject to condemnation unless such violation is corrected.

### SAFETY

#### 9.1.144      Policy

The Tribe seeks to ensure its member's health and safety in the construction, prefabrication, alteration, repair, use, occupancy and maintenance of detached one-and two-family dwelling units and their accessory structures by establishing uniform tribal building standards for all construction on the reservation.

#### 9.1.145      Building Code

All one- and two-family dwellings on the reservation must comply with the Council of American Building Officials (CABO) building code. The designated Building Inspector is responsible for developing a plan to bring existing structures

up to code standards within two years after this Chapter's passage or after the Building Inspector's office is created, whichever is longer.

9.1.146      Enforcement

Any structure or other building activity that does not comply with the building code is subject to condemnation unless such violation is corrected under the supervision of Tribal Building Inspector.

ENVIRONMENT

9.1.147      Compliance with Federal Law

Any new construction activity must comply with any federal environmental law already applicable to the activity on the reservation. Any person engaging in new construction activity under the Department of Housing and Urban Development or other Federal program's regulations must follow any regulations requiring compliance with federal environmental laws.

9.1.148      Compliance with Tribal Law

Any new construction activity must comply with any tribal environmental laws or regulations applicable to such activity on the reservation. The tribal EPA is responsible for compliance with tribal or federal environmental laws.

ASSIGNMENT OF TRIBAL HOUSING AND HOMESITES

9.1.149      Purpose

The Burns Paiute Tribe owns both tribal housing and homesites. Housing is available on the reservation as tribally owned rentals or for purchase under the Tribe's right of first refusal pursuant to 9.1.122. Homesites are available on the reservation for the construction of individually owned homes. The Tribe assigns housing and home-sites to tribal members according to the procedures described below. The Community Development Committee, hereinafter referred to as the Housing Committee, is responsible to make assignments of housing or homesites.

9.1.150      Functions of the Housing Committee

(1) The function of the Housing Committee is to manage the assignable tribal housing and homesites to best advantage, and:

- (a) Meet the housing needs of the Tribe;
- (b) Protect tribal rental housing by seeing that it is kept in proper condition and

repair; and

(c) Meet the housing needs of the individual members.

(2) Whenever tribal housing or home-sites become vacant and available for assignment, the Housing Committee shall issue a Housing Availability Notice. This notice shall include a description of the housing available, location of the application forms, and the length of time that the application period shall remain open. This notice must be given to tribal members by being printed in the weekly tribal newsletter.

(3) Tribal housing shall not be assigned until the application period closes.

(4) The Housing Committee shall make application forms readily available to all tribal members.

(5) All Applicants for tribal housing shall fill out the Housing Application Form and file the completed form with the Housing Committee within the application period.

#### 9.1.151 Eligibility for Tribal Housing

(1) Only tribal members are eligible for tribal housing. However, if the applicant is currently living in tribal housing and is the former spouse of a tribal member who was the Tenant, then the nonmember may be permitted to remain in tribal housing. However, the nonmember shall be considered for such housing along with the other applicants according to the priorities set forth in 9.1.152(4) and (5).

(2) Applicants must meet a six-month residency requirement before they can be considered for housing or a homesite assignment. Senior Citizens, 55 and over, are exempt from the residency requirement. Senior Citizens must still meet the other requirements for housing assignment.

#### 9.1.152 Assignment of Tribal Housing

(1) After the application period has closed, the Housing Committee shall review the applications and select the applicant who will be the best tenant.

(2) No application filed after the close of the application period needs to be considered by the Housing Committee. However, in special circumstances the Housing Committee may consider a late application if no unfairness would result. If the Housing Committee feels it would be unfair to consider the late application, it can be either refused from consideration, or the application period reopened.

(3) The Housing Committee shall consider all timely filed applications. Any application form not completely filled out may be returned to the applicant for additional information, but the Housing Committee is not required to consider any

incomplete or improperly filed applications. However, minor errors or omissions on the application form shall not be grounds to deny housing to an otherwise qualified applicant.

(4) The Housing Committee's priorities for selecting an applicant for housing is based on the following factors, listed in order of priority from highest to lowest:

- (a) Senior Citizen, 55 and over;
- (b) Applicants transferring from Old Camp;
- (c) Need for housing, including but not limited to, the overcrowding of the present housing and the health and sanitation conditions of the present housing;
- (d) Number of minor children, 18 and under, in applicant's family;
- (e) Ability to pay utility bills and repair costs as evidenced by a steady source of income and/or past record of paying bills and making repairs;
- (f) Record for violating Tribal Laws;
- (g) Record for attending General Council meetings, and;
- (h) Marital status, in order of highest to lowest priority, married, single, or unmarried and living together.

(5) A nonmember applicant has priority when such applicant's on the reservation is essential to the well being of other tribal members and families because:

- (a) The nonmember currently lives in the housing; and
- (b) The nonmember is the former spouse of a member.

(6) In addition to the above factors, the following factors listed in order of priority from highest to the lowest-must be considered in the priority determination:

- (a) Number of applicant's minor children in school;
- (b) Number of applicant's minor children;
- (c) Applicant's status as a member of another Tribe or as an Indian.

(7) The Housing Committee shall notify all applicants in writing of its decision. This decision shall be final and no appeal shall be permitted.

(8) After the successful applicant has been selected, there shall be a

reassignment inspection. The successful applicant, a member of the Housing Committee, and Tribal Maintenance shall visit the tribal housing and note all repairs on the preassignment form. The needed repairs shall be made before the housing is assigned.

(9) After the tribal housing has been inspected and all repairs have been made, the Housing Committee shall assign the housing to the successful applicant. The successful applicant shall sign the Housing Assignment Permit. After signing the Permit, the tenant may take possession of the assigned housing immediately.

#### 9.1.153 Repairs to Tribal Rental Housing while Assigned

(1) If the Housing Committee knows or believes that tribal rental housing is in need of repair and the Tenant does not appear to be making the repairs, then the Housing Committee may send a Repair Notice to the Tenant.

(2) If the Tenant fails to make the necessary repairs within 30 days of the date of the Repair Notice, then the Housing Committee may evict Tenant after giving the 30 days Eviction Notice.

(3) The Housing Committee shall arrange to have all tribal rental housing under its authority inspected every six months. This inspection shall be by the Tenant, a member of the Housing Committee and Tribal Maintenance. They shall complete an inspection Form and note all needed repairs. Tenant shall be given at least 10 days notice prior to this inspection.

(4) The Housing Committee is to protect tribal rental housing and keeping it in proper condition. Therefore, the Housing Committee will make a sincere effort to cooperate with Tenants in making the repairs. This may include notifying Tribal Maintenance of the needed repairs, arranging for plumbers, electricians, or others to make the repairs, or giving Tenants other types of notice of the need for repairs in addition to the Repair Notice. The eviction of a Tenant shall be a last resort in protecting the condition of tribal housing.

#### 9.1.154 Unauthorized Use of Tribal Rental Housing

(1) If the Housing Committee knows or believes that unauthorized residents are living in the assigned housing, then the Housing Committee may evict these residents after giving them a 30 day Eviction Notice. This provision is not intended to apply to guests, visitors, or new additions to the immediate family such as a new baby or a new spouse.

(2) The Housing Committee may at any time notify Tenant of Tenant's failure to abide by the Assigned Housing Permit and request compliance. These requests shall be made only in the furtherance of the Housing Committee's functions and the protection of tribal housing.

9.1.155      Termination of Housing Assignment

(1) All terminations of assigned rental housing shall comply with 9.1.60 to 9.1.61.

(2) If the Housing Committee knows or believes that tribal housing is vacant for 14 days or more, then the Housing Committee may send a Vacancy Notice to the Tenant. If the Tenant fails to respond in writing within 21 days of the date of the Vacancy Notice, then the tribal housing may be considered vacant and the Housing Committee shall make a sincere effort to notify the Tenant that the housing is considered vacant and will be reassigned unless the Tenant responds. This effort may include notifying Tenant at additional addresses, by telephone, or through family members.

(3) The Housing Assignment terminates when any of the conditions for termination given in the Housing Assignment Permit occurs. These include the following:

(a) Tenant fails to make the necessary repairs within 30 days of the date of a Repair Notice and Tenant is evicted;

(b) Tenant notifies the Housing Committee that Tenant plans to be away from the assigned housing for 30 days or more without reasonable cause;

(c) Tenant fails to respond to the Vacancy Notice within 21 days of the date of such Notice, or;

(d) Tenant dies.

(4) If a Tenant has vacated the assigned housing or failed to respond to the Vacancy Notice, the Housing Committee may take possession of the Assigned Housing. A Housing Committee Member, accompanied by a Tribal Officer, may enter the Assigned Housing and inventory all personal property and belongings found in the housing and store them pursuant to 9.1.54. They shall also note damages and necessary repairs on an Inspection Form.

(5) The Housing Committee shall determine all money owed to the Tribe by the Tenant under the Housing Assignment Permit, including repair costs, utility bills, or monthly payments.

(6) The Housing Committee shall notify Tenant in writing of the amount owed for such repair costs or other payments. If Tenant disputes this amount, Tenant may file an appeal with the Tribal Court within 10 days of the date of the amount owed notice or at the conclusion of an administrative hearing under 9.1.60 to 9.1.61, whichever is later. If no appeal is filed within 10 days then the determination of the Housing Committee shall be final.

9.1.156      Authority to File Eviction Proceedings

If the Tenant fails to vacate within 30 days of the date of the Eviction Notice, or at the end of the administrative hearing setout in 9.1.60 to 9.1.61, whichever is later, then the Housing Committee may file a petition with the Tribal Court requesting an order for eviction.

9.1.157      Collection of Rents

(1) The Tribal Housing Committee shall be responsible for collecting rents for all tribal dwellings and residential real property as prescribed by the Tribal Council. Staff of the Administrations fiscal department will perform bookkeeping and fiscal responsibilities of the Housing Committee, and all records therein and thereby maintained and located. The Tribal Housing Committee shall account fully to the Tribal Council for all such rents and shall transmit all collected funds to the Tribal Council.

(2) The Tribal Housing Committee may commence an action in Tribal Court for due and unpaid rent. The action shall be commenced by filing a complaint in the Tribal Court alleging the facts showing that the rent is due and establishing the amount of overdue rent. The Tribal Police shall serve the tenant with the notice of the action and the date of the Tribal Court hearing. The issues to be decided at the hearing by the Tribal Court shall be whether or not rent is due, and if it is due the amount that is due. The Tribal Court shall enter a judgment for any amount due. The judgment shall be collectible as other judgments of the Tribal Court.

BURNS PAIUTE INDIAN HOUSING AUTHORITY

9.1.158      Purpose and Authority

(1) Pursuant to the authority vested in the Burns Paiute Tribe by its Constitution, and particularly by Article VII, Sections F thereof, and its authority to provide for the health, safety, morals and welfare of the Tribe, the General Council of the Burns Paiute Tribe may establish a public body known as the Tu-Kwa-Hone Housing Authority (hereinafter referred to as the Authority), and enacts the HUD HOUSING AUTHORITY ordinance, which follows, to establish the purposes, powers and duties of the Authority, if created. Until the Housing Authority is created, the Burns Paiute Tribe's Housing Department, or other designee of the Tribal Council, may carry out the powers of the Housing Authority described in this Code.

(2) The Housing Authority is authorized to provide housing for the tribal membership or other Indians, and that the General Council pledges its cooperation and assistance.

(3) In any suit, action or proceeding involving the validity or enforcement of or relating to any of its contracts, the Authority shall be conclusively deemed to have become, established and authorized to transact business and exercise its powers upon proof of the adoption of this ordinance. A copy of the ordinance duly certified by the Secretary of the Council shall be admissible in evidence in any suit, action, or proceeding.

## HUD HOUSING AUTHORITY ORDINANCE

### 9.1.159 Article I - Declaration of Need

The Burns Paiute Tribe finds:

(1) That there exist on the Burns Paiute Indian Reservation unsanitary, unsafe, and overcrowded dwelling accommodations; that there is a shortage of decent, safe and sanitary dwelling accommodation available at rent prices which persons of low income can afford; and that such shortage forces such persons to occupy unsanitary, unsafe and overcrowded dwelling accommodations;

(2) That these conditions cause an increase in and spread of disease and crime and constitute a menace to health, safety, morals and welfare; and that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident prevention, and other public services and facilities;

(3) That the shortage of decent, safe and sanitary dwellings for persons of low income cannot be relieved through the operation of private enterprises;

(4) That the providing of decent, safe and sanitary dwelling accommodations for persons of low income are public uses and purposes, for which money may be spent and private property acquired, and are governmental functions of Tribal concern;

(5) That residential construction activity and a supply of acceptable housing are important factors of general economic activity, and that the undertakings authorized by this ordinance to aid the production of better housing and more desirable neighborhood and community development at lower costs will make possible a more stable and larger volume of residential construction and housing supply which will assist materially in achieving full employment; and

(6) That the necessity in the public interest for the provisions hereinafter enacted is hereby declared as a matter of legislative determination.

### 9.1.160 Article II – Purposes

The Authority shall be organized and operated for the purposes of:

(1) Remedying unsafe and unsanitary housing conditions that are injurious to the public health, safety and morals;

(2) Alleviating the acute shortage of decent, safe and sanitary dwellings for persons of low income; and

(3) Providing employment opportunities through the construction, reconstruction, improvement, extension, alteration, repair, or operation of low-income dwellings.

#### 9.1.161 Article III - Definitions

The following terms wherever used or referred to in this ordinance, shall have the following meanings, unless a different meaning clearly appears from the context:

(1) "Area of Operation" means all areas within the jurisdiction of the Burns Paiute Tribe.

(2) "Council" means the General Council of the Burns Paiute Tribe.

(3) "Federal government" includes the United States of America, the Department of Housing and Urban Development, or any other agency or instrumentality, corporate or otherwise, of the United States of America.

(4) "Homebuyer" means a person(s) who has executed a lease purchase agreement with the Authority, and who has not yet achieved homeownership.

(5) "Housing project" or "project" means any work or undertaking to provide or assist in providing (by any suitable method, including but not limited to: rental; sale of individual units in single or multifamily structures under conventional condominium, cooperative sales contracts or lease-purchase agreements; loans; or subsidizing of rentals or charges) decent, safe and sanitary dwellings, apartments, or other living accommodations for persons of low income. Such work or undertaking may include; buildings, land, leaseholds, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances; streets, sewers, water service, utilities, parks, site preparation or landscaping; and for administrative, community, health, recreational, welfare, or other purposes. The term "housing project" also may be applied to the planning of the buildings and improvements, the acquisition of property or any interest therein, the demolition of existing structures, the construction, reconstruction, rehabilitation, alteration or repair of the improvements or other property, and all other work in connection therewith. The term shall also include all other real and personal property and all tangible or intangible assets held or used in connection with the housing project.

(6) "Obligations" means any notes, bonds, interim certificates, debentures, or

other forms of obligation issued by the Authority pursuant to this ordinance.

(7) "Obligee" includes any holder of an obligation, or lessor demising to the Authority property used in connection with a project, or any assignee or assignees of such lessor's interest or any part thereof, and the Federal government when it is a party to any contract with the Authority in respect to a housing project.

(8) "Persons of low income" means persons or families who cannot afford to pay enough to cause private enterprise in their locality to build an adequate supply of decent, safe, and sanitary dwellings for their use.

#### 9.1.162      Article IV - Board of Commissioners

(1) A Board of Commissioners composed of five persons shall manage the affairs of the Authority.

(a) The Board members shall be appointed, and may be reappointed, by the General Council. A certificate of the Secretary of the Council as to the appointment or reappointment of any commissioner shall be conclusive evidence of the due and proper appointment of the commissioner.

(b) A commissioner may be a member or non-member of the Tribe, and may be a member or non-member of the General Council.

(c) No person shall be barred from serving on the Board because he is a tenant or homebuyer in a housing project of the Authority; and such commissioner shall be entitled to fully participate in all meetings concerning matters that affect all of the tenants or homebuyers, even though such matters affect him/her as well. However, no such commissioner shall be entitled or permitted to participate in or be present at any meeting, or to be counted or treated as a member of the Board, concerning any matter involving his individual rights, obligations, or status as a tenant or homebuyer, except in his capacity as a tenant or homebuyer.

(d) The term of office shall be four years and staggered. When the Board is first established, one member's term shall be designated to expire in one year, another to expire in two years, a third to expire in three years, and the last two in four years. Thereafter, all appointments shall be for four years, except that in the case of a prior vacancy, an appointment shall be only for the length of the unexpired term. Each member of the Board shall hold office until his successor has been appointed and has qualified.

(2) The Council shall name one of the Commissioners as Chairman of the Board. The Board shall elect from among its members a Vice-Chairman, a Secretary, and a Treasurer; and any member may hold two of these positions. In the

absence of the Chairman, the Vice-Chairman shall preside; and in the absence of both the Chairman and Vice-Chairman, the Secretary shall preside.

(3) A member of the Board may be removed by the appointing power for serious inefficiency or neglect of duty, or for misconduct in office. Such member shall be granted a hearing before the appointing power after the member has been given a written notice of the specific charges against him at least 10 days prior to the hearing. The member shall have the opportunity to be heard in person or by counsel and to present witnesses in his behalf. In the event of removal of any Board member, a record of the proceedings, together with the charges and findings thereon, shall be filed with the appointing power and a copy thereof sent to the appropriate office of the Department of Housing and Urban Development.

(4) The Commissioners shall not receive compensation for their services but shall be entitled to compensation for expenses, including travel expenses, incurred in the discharge of their duties.

(5) A majority of the full Board, notwithstanding the existence of any vacancies, shall constitute a quorum for the transaction of business, but no Board action shall be taken by a vote of less than a majority of such full Board.

(6) The Secretary shall keep complete and accurate records of all meetings and actions taken by the Board.

(7) The Treasurer shall keep full and accurate financial records, make periodic reports to the Board, and submit a complete annual report, in written form, to the General Council as required by Article VII, Section 1, of his ordinance.

(8) Meetings of the Board shall be held at regular intervals as provided in the bylaws. Emergency meetings may be held upon 24 hours actual notice and business transacted, provided that not less than a majority of the full Board concurs in the proposed action.

#### 9.1.163      Article V - Powers

(1) The Authority shall have perpetual secession in its corporate name.

(2) The General Council hereby gives its irrevocable consent to allowing the Authority to agree by contract to waive any immunity from suit which it might otherwise have; but the Tribe shall not be liable for the debts or obligations of the Authority.

(3) The Authority shall have the following powers, which it may exercise consistent with the purposes for which it is established;

(a) To adopt and use a corporate seal;

(b) To enter into agreements, contracts and understandings with any governmental agency, tribal, Federal, state or local, or with any person, partnership, corporation or Indian tribe; and to agree to any conditions attached to Federal financial assistance;

(c) To agree, notwithstanding anything to the contrary contained in this ordinance or in any other provision of law, to any conditions attached to Federal financial assistance relating to the determination of prevailing salaries or wages or payment of not less than prevailing salaries or wages or compliance with labor standards, in the development or operation of projects. The Authority may include in any contract let in connection with a project, a stipulation requiring that the contractor and any subcontractors comply with requirements as to maximum hours of labor, and comply with any conditions which the Federal government may have attached to its financial aid to the project;

(d) To obligate itself, in any contract with the Federal government for annual contributions to the Authority, to convey to the Federal government for annual contributions to the Authority, to convey to the Federal government possession of or title to the project to which such contract relates, upon the occurrence of a substantial default (as defined in such contract) with respect to the covenants or conditions to which the Authority is subject. Such contract may further provide that in case of such conveyance, the Federal government may complete, operate, manage, lease, convey or otherwise deal with the project and funds in accordance with the terms of such contract; Provided, that the contract requires that, as soon as practicable after the Federal government is satisfied that all defaults with respect to the project have been cured and that the project will thereafter be operated in accordance with the terms of the contract, the Federal government shall convey to the Authority the project as then constituted;

(e) To lease property from the Tribe and others for such periods as are authorized by law and to hold and manage or to sublease the same;

(f) To borrow or lend money, to issue temporary or long term evidence of indebtedness, and to repay the same. Obligations shall be issued and repaid in accordance with the provisions of Article VI or this ordinance;

(g) To pledge the assets and receipts of the Authority as security for debts; and to acquire, sell, and lease exchange, transfer, or assign personal property or interests therein;

(h) To purchase land or interest in land or take the same by gift, and to lease land or interests in land to the extent provided by law;

(i) To undertake and carry out studies and analyses of housing needs, to prepare housing needs, to execute the same, to operate projects, and to provide

for the construction, reconstruction, improvement, extension, alteration or repair of any project or any part thereof;

(j) With respect to any dwellings, accommodations, lands, buildings or facilities embraced within any project (including individual cooperative or condominium units); to lease or rent, sell, enter into lease-purchase agreements or leases with option to purchase; to establish and revise rents or required monthly payments; to make rules and regulations concerning the selection of tenants or homebuyers, including the establishment of priorities, and concerning the occupancy, rental, care and management of housing units; and to make sure further rules and regulations as the Board may deem necessary and desirable to effectuate the powers granted by this ordinance;

(k) To finance purchase of a home by an eligible homebuyer in accordance with regulations and requirements of the Department of Housing and Urban Development;

(l) To terminate any lease or rental agreement or lease purchase agreement when the tenant or homebuyer has violated the terms of such agreement, or failed to meet any of its obligations thereunder, or when such termination is otherwise authorized under the provisions of such agreement; and to bring action for eviction against such tenant or homebuyer;

(m) To establish income limits for admission that insure that dwelling accommodations in a housing project shall be made available only to persons of low income;

(n) To purchase insurance from any stock or mutual company for any property or against any risk or hazards;

(o) To invest such funds as are not required for immediate disbursement;

(p) To establish and maintain such bank accounts as may be necessary or convenient;

(q) To employ an executive director, technical and maintenance personnel and such other officers and employees, permanent or temporary, as the Authority may require; and to delegate to such officers and employees such powers or duties as the Board shall deem proper;

(r) To take such further actions as are commonly engaged in by public bodies of this character as the Board may deem necessary and desirable to effect the purposes of the Authority.

(s) To join or cooperate with any other public housing agency or agencies operating under the laws or ordinances of a State or another tribe in the exercise,

either jointly or otherwise, of any or all of the powers of the Authority and such other public housing agency or agencies for the purposes of financing (including but not limited to the issuance of notes or other obligations and giving security therefor), planning undertakings, owning, constructing, operating or contracting with respect to a housing project or projects of the Authority or such other public housing agency or agencies, so joining or cooperating with the Authority, to act on the Authority's behalf with respect to any or all powers, as the Authority's agent or otherwise, in the name of the Authority or in the name of such agency or agencies;

(t) To adopt such bylaws as the Board deems necessary and appropriate.

(4) It is the purpose and intent of this ordinance to authorize the Authority to do any and all things necessary or desirable to secure the financial aid or cooperation of the Federal government in the undertaking, construction, maintenance or operation of any project by the Authority.

#### 9.1.164      Article VI - Obligations

(1) The Authority may issue obligations from time to time in its discretion for any of its purposes and may also issue refunding obligations for the purpose of paying or retiring obligations previously issued by it. The Authority may issue such types of obligations as it may determine, including obligations on which the principal and interest are payable:

(a) Exclusively from the income and revenues of the project financed with the proceeds of such obligations, or with such income and revenue together with a grant from the Federal government in aid of such project;

(b) Exclusively from the income and revenues of certain designated projects whether or not they were financed in whole or in part with the proceeds of such obligations; or

(c) From its revenues generally. Any of such obligations may be additionally secured by a pledge of any revenues of any project or other property of the Authority.

(2) Neither the commissioners of the Authority nor any person executing the obligations shall be liable personally on the obligations due to issuance thereof.

(3) The notes and other obligations of the Authority shall not be a debt of the Tribe and the obligations shall so state on their face.

(4) Obligations of the Authority are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together, with interest thereon and income therefrom, shall be exempt from taxes imposed by

the Tribe. The tax exemption provisions of the ordinance shall be considered part of the security for the repayment of obligations and shall constitute, by virtue of this ordinance and without necessity of being restated in the obligations, a contract between (a) the Authority and the Tribe, and (b) the holders of obligations and each of them, including all transferees of the obligations from time to time.

(5) Obligations shall be issued and sold in the following manner:

(a) Obligations of the Authority shall be authorized by a resolution adopted by the vote of a majority of the full Board and may be issued in one or more series;

(b) The obligations shall bear such dates, mature at such times, bear interest at such rates, be in such denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment and at such places, and be subject to such terms of redemption, with or without premium, as such resolution may provide;

(c) The obligations may be sold at public or private sale at not less than par;

(d) In case any of the commissioners of the Authority whose signatures appear on any obligations cease to be commissioners before the delivery of such obligations, the signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the commissioners had remained in office until delivery.

(6) Obligations of the Authority shall be fully negotiable. In any suit, action or proceeding involving the validity or enforceability of any obligation of the Authority or the security therefor, any such obligation reciting in substance that it has been issued by the Authority to aid in financing a project pursuant to this ordinance shall be conclusively deemed to have been issued for such purpose, and the project for which such obligation was issued shall be conclusively deemed to have been planned, located and carried out in accordance with the purposes and provisions of this ordinance.

(7) In connection with the issuance of obligations or the incurring of obligations under leases and to secure the payment of such obligations, the Authority, subject to the limitations in this ordinance, may:

(a) Pledge all or any part of its gross or net rents, fees or revenues to which its right then exist or may thereafter come into existence;

(b) Provide for the powers and duties of obligees and limit their liabilities; and provide the terms and conditions on which such obligees may enforce any covenant or rights securing or relating to the obligations;

- (c) Covenant against pledging all or any part of its rents, fees and revenues or personal property to which its title or right exists, or permitting or suffering any lien on such revenues or property;
- (d) Covenant with respect to limitations on its right to sell, lease or otherwise dispose of any project or any part thereof;
- (e) Covenant as to the obligations to be issued and as to the issuance of such obligations in escrow or otherwise, and as to the use and disposition of the proceeds thereof;
- (f) Covenant as to the obligations to be issued and as to the issuance of such obligations in escrow or otherwise, and as to the use and disposition of the proceeds thereof;
- (g) Provide for the replacement of lost, destroyed or mutilated obligations;
- (h) Covenant against extending the time for the payment of its obligations or interest thereon;
- (i) Redeem the obligations and covenant for their redemption and provide the terms and conditions thereof;
- (j) Covenant concerning the rents and fees to be charged in the operation of a project or projects, the amount to be raised each year or other period of time by rents, fees and other revenues, and as to the use and disposition to be made thereof;
- (k) Create or authorize the creation of special funds for monies held for construction or operating costs, debt service, reserves, or other purposes, and convenient as to the use and disposition of the monies held in such funds;
- (l) Prescribe the procedure, if any, by which the terms of any contract with holders of obligations may be amended or abrogated, the proportion of outstanding obligations on which the holders must consent thereto, and the manner in which such consent may be given;
- (m) Covenant as to the use, maintenance and replacement of its real or personal property, the insurance to be carried there on and the use and disposition of insurance monies;
- (n) Covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition or obligation;
- (o) Covenant and prescribe as to the events of default and terms and conditions upon which any or all of its obligations become due, or terms and conditions

upon which such declarations and its consequences may be waived;

(p) Vest in any obligees or any proportion of them the right to enforce the payment of the obligations or any covenants, securing or relating to the obligations;

(q) Exercise all or any part or combination of the powers granted in the section;

(r) Make covenants other than and in addition to the covenants expressly authorized in this section, of like or different character;

(s) Make any covenants and do any acts and things necessary or convenient or desirable in order to secure its obligations, or, in the absolute discretion of the Authority, marketable although the covenants, acts or things are not enumerated in this section.

#### 9.1.165      Article VII - Miscellaneous

(1) The Authority shall submit an annual report, signed by the Chairman of the Board, to the General Council showing (a) a summary of the year's activities, (b) the financial condition of the Authority, (c) The condition of the properties, (d) the number of units and vacancies, (e) any significant problems and accomplishments, (f) plans for the future, and (g) such other information as the Authority or the General Council shall deem pertinent.

(2) During his/her tenure and for one year thereafter, no commissioner, officer or employee of the Authority, or any member of any governing body of the Tribe, or any other public official who exercises any responsibilities or functions with regard to the project, shall voluntarily acquire any interest, direct or indirect, in any project or in any property included or planned to be included in any project, or in any contract or proposed contract relating to any project, unless prior to such acquisition, he/she discloses his interest in writing to the Authority. Such disclosure shall be entered upon the minutes of the Authority. Said commissioner, officer or employee shall not participate in any action by the Authority relating to the property or contract in which he/she has any such interest. Any commissioner, officer or employee of the Authority who involuntarily acquires any such interest, or who voluntarily or involuntarily acquired any such interest prior to appointment or employment as a commissioner, officer or employees, shall immediately disclose his/her interest in writing to the Authority. Such disclosure shall be entered upon the minutes of the Authority. Said commissioner, officer or employee shall not participate in any action by the Authority relating to the property or contract in which he has any such interest. Any violation of the foregoing provisions of this section shall constitute misconduct in office. This section shall not be applicable to the acquisition of any interest in obligations of the Authority issued in connection with any project, or to the execution on agreements by banking institutions for the

depositor handling of funds in connection with a project or to act as trustee under any trust indenture, or to utility services the rates for which are fixed or controlled by a governmental agency, or to membership on the Board as provided in Article VI, Section I (a)(4).

(3) Each project developed or operated under a contract providing for Federal financial assistance shall be developed and operated in compliance with all requirements of such contract and applicable Federal legislation, and with all regulations and requirements prescribed from time to time by the Federal government in connection with such assistance.

(4) The Authority shall obtain or provide for the obtaining of adequate fidelity bond handling cash, or authorized to sign checks or certify vouchers.

(5) The Authority shall not construct or operate any project for profit.

(6) The property of the Authority is declared to be public property used for essential public and governmental purposes and such property and the Authority are exempt from all taxes and special assessments of the Tribe.

(7) All property, including funds acquired or held by the Authority pursuant to this ordinance, shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against the Authority Board or officers be a charge or lien upon such property. However, the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by the Authority on its rents, fees or revenues or the right of the Federal government to pursue on any remedies conferred upon it pursuant to, the provisions of this ordinance or the right of the Authority to bring eviction actions in accordance with Article V, Section 3(l).

#### 9.1.166 Article VIII - Cooperation in Connection With Projects

(1) For the purpose of aiding and cooperating in the planning, undertaking, construction, or operation of projects, the Tribe hereby agrees that:

(a) It will not levy or impose any real or personal property taxes or special assessments upon the Authority or any project of the Authority;

(b) It will furnish or cause to be furnished to the Authority and the occupants of projects all services and facilities of the same character and to the same extent as the Tribe furnishes from time to time without cost or charge to other dwellings and inhabitants;

(c) Insofar as it may lawfully do so, it will grant such deviations from any present or future building or housing codes of the Tribe as are reasonable and necessary

to promote economy and efficiency in the development and operation of any project, and at the same time safeguard health and safety, and make such changes in any zoning of the site and surrounding territory of any project as are reasonable and necessary for the development of such project, and the surrounding territory;

(d) It will do any and all things, within its lawful powers, necessary or convenient to aid and cooperate in the planning, undertaking, construction or operation of projects;

(e) The Tribal Government hereby declares that its powers shall be vigorously utilized to enforce eviction of a tenant or homebuyer for nonpayment or other contract violations including action through the appropriate courts;

(f) The Tribal Courts shall have jurisdiction to hear and determine an action for eviction of a tenant or Homebuyer. The Tribal Government hereby declares that the powers of the Tribal Courts shall be vigorously utilized to enforce eviction of a tenant or homebuyer for nonpayment or other contract violations;

(2) The provisions of this Article shall remain in effect with respect to any project, and said provisions shall not be abrogated, changed or modified without the consent of the Department of Housing and Urban Development, so long as: (a) the project is owned by a public body or governmental agency, and is used for low income housing purposes; (b) any contract between the Authority and the Department of Housing and Urban Development for loans or annual contributions, or both, in connection with such project shall remain in force and effect; or (c) any obligations issued in connection with such project or any monies due to the Department of Housing and Urban Development in connection with such project remain unpaid, whichever period ends the latest. If at any time title to, or possession of, any project is held by any public body or governmental agency authorized by law to engage in the development or operation of low income housing including the Federal government, the provisions of this section shall inure to the benefit of and be enforced by such public body or governmental agency.

#### 9.1.167      Article IX - Approval by Secretary of the Interior

With respect to any financial assistance contract between the Authority and the Federal Government, the Authority shall obtain the approval of the Secretary of the Interior or his designee.

9.1.168      RESERVED FOR FUTURE ACTION  
9.1.169      RESERVED FOR FUTURE ACTION  
9.1.170      RESERVED FOR FUTURE ACTION  
9.1.171      RESERVED FOR FUTURE ACTION  
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9.1.178 RESERVED FOR FUTURE ACTION  
9.1.179 RESERVED FOR FUTURE ACTION

#### MISCELLANEOUS PROVISIONS

9.1.180 Effective Date

This Chapter takes effect upon passage by the Tribal Council.

9.1.181 Retroactive Effect

This Chapter applies to all covered transactions no matter when the parties entered into the transaction.

9.1.182 Severability

This Chapter's provisions are severable. If any provision or its application to any person or proceeding is declared invalid for any reason, such declaration does not effect the validity of this Chapter's remaining portions.

# **CHAPTER 9.2 INTERFERENCE WITH TRIBAL PROPERTY**

## **CHAPTER 9.2 INTERFERENCE WITH TRIBAL PROPERTY**

### **9.2.10 Definitions**

- (1) "Owner" means the person having title to any property.
- (2) "Property" or "Tribal Property" includes any real or personal property owned by the Tribe or members thereof and any property under the care, custody and control of a tribal member which is owned by the Tribe.
- (3) "Tribal Lands" means any land owned in fee by the Burns Paiute Indian Tribe and land held in trust for the Tribe or individual members of the Tribe by the United States Government.
- (4) "Operator" means an enrolled member of the Burns Paiute Tribe or employee thereof authorized to operate a tobacco outlet or other mercantile establishment by the Tribe whether or not such a person possesses a Trader's license.
- (5) "Interfere" means to take, possess, seize, impound or otherwise take actual or constructive control of tribal property, without a tribal court order or permission of the owner.
- (6) "Custodian" means any person having care, custody and control of property as defined herein.

### **9.2.11 Interference Prohibited**

- (1) Any person who interferes with tribal property located on tribal lands without a tribal court order shall be guilty of an offense and such interference is hereby prohibited.
- (2) A violation of this Chapter shall be punishable by a \$500 fine or six months in jail or both, or by exclusion from tribal property as provided herein.
- (3) In addition to the above remedies, duly authorized tribal law enforcement officers may take immediate possession of any property taken, seized, possessed or impounded by any person without proper tribal court order and return same immediately to the owner or custodian thereof.
- (4) In addition to any other remedies provided herein or in the procedures for exclusion under this Code, any tribal law enforcement officer may immediately exclude and remove from tribal lands any person attempting to possess tribal property without a valid order of the Tribal Court as provided in this Chapter, upon such attempted possession having taken place in the presence of such tribal law enforcement official or such official having reasonable cause to believe that such attempt at possession has taken place. Before any such exclusion shall

become final, however, compliance with the exclusion provisions of this Code must be met. Emergency procedures provided for herein may be complied with, anything in the exclusion provisions of this Code notwithstanding.

#### 9.2.12 Procedure for Possession of Property

(1) Any person who wishes to take, possess, seize or impound any tribal property may do so only pursuant to duly issued order of the Tribal Court upon application made as provided herein.

(2) Any person wishing to possess tribal property shall apply for an order to the Tribal Court stating the reasons and authority for such possession in writing, identifying the property, its location and owner or custodian of the property to the best of applicant's knowledge. Such application may be ex parte and the Tribal Court may grant or deny the application or set the matter for hearing as provided by this Chapter.

#### 9.2.13 Summary Issuance of Order

(1) The tribal court may summarily grant the application and issue an order allowing possession of the property only when the nature of the claim, the amount thereof, the grounds relied upon for issuance of the order, and the need for immediate possession clearly appear from specific facts shown by verified petition or separate affidavit of the petitioner, his counsel or agent. The court in its discretion may require security for the payment of damages to the owner if the order has been wrongfully obtained.

(2) In the event that an order is issued, notice thereof shall be given by the petitioner to the owner and custodian of the property within two days from the issuance of such order and the owner and custodian shall have five (5) days exclusive of the day of service to petition the court for dissolution of the order. Upon such a contradictory petition being filed the court shall set the matter for hearing in not less than three (3) days nor more than six (6) days.

#### 9.2.14 Issuance Upon Hearing

If it appears to the court that an immediate order is not necessary without an opportunity for the owner and custodian of the property to be heard, the court shall order a hearing on the matter and the petitioner shall give at least two (2) days notice thereof to the owner and custodian of the property, such hearing to be held not less than three (3) days nor more than six (6) days after the presentation of the application.

#### 9.2.15 Summary Denial of Order

If the application is summarily denied, the applicant may request a hearing at which the facts and reasons for the requested possession may more fully be set forth. Upon such request the tribal court shall set such a hearing for a time not less than three (3) days nor more than six (6) days after such request. The petitioner shall give at least two (2) days notice of such hearing to the owner or custodian of the property in question.

#### 9.2.16 Production of Court Order

Any person attempting to possess any tribal property as provided herein shall show the owner or custodian of such property, or any tribal law enforcement officer, the order of the tribal court allowing such action before attempting such possession.

#### 9.2.17 Court Decisions Final

The decision of the Tribal Court as to the issuance of the order permitting taking or possession shall be final, except that further appeal to the appellate court may be had.

#### 9.2.18 Miscellaneous

In any hearing set by the tribal court in a matter covered by this Chapter, any party may be represented by a spokesman provided such person comply with the applicable provisions of this Code.

# **TITLE 10 TOBACCO; ANIMAL CONTROL**

## **TITLE 10 TOBACCO; ANIMAL CONTROL**

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###### **Jurisdiction**

# **CHAPTER 10.1 TOBACCO**

## **CHAPTER 10.1 TOBACCO**

### **10.1.10 Sale**

It shall be unlawful for any person or entity to sell tobacco on the Burns Paiute Reservation.

# **CHAPTER 10.2 ANIMAL CONTROL AND PROTECTION**

## CHAPTER 10.2 ANIMAL CONTROL AND PROTECTION

### DOG CONTROL

#### 10.2.30 Definitions

(1) "Running At Large." A dog running at large means any dog found within the boundaries of the Burns Paiute Indian Reservation without an I.D. tag identifying ownership, on public property or on the property of persons other than the person owning or keeping the dog unless the dog is accompanied by some person exercising control thereof.

(2) "Animal Control Authority." Animal Control Authority means any Tribal Police Officer or any other person or organization so designated by the Burns Paiute Tribal Council or by the Chief of the Tribal Police to perform the functions of this Subchapter. It shall also include any Fish and Game officer.

(3) "Stray Dogs." A stray dog is a dog with no owner's identification upon it and whose owner cannot be ascertained upon reasonable inquiry.

(4) "Vicious Dog." Vicious dog means any dog that when unprovoked:

(a) Inflicts bites on a human or a domestic animal either on public or private property; or

(b) Chases or approaches a person upon the street, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, or any dog with a known reputation, to attack unprovoked, and/or to cause serious injury to humans or domestic animals.

(5) "Proper Enclosure." Proper enclosure of a vicious dog means, while on the owners property, a vicious dog shall be securely confined indoors or in a securely enclosed and locked pen or structure, suitable to prevent the entry of people and designed to prevent the animal from escaping. Such pen or structure shall have secure sides and a secure top, and shall also provide protection from the elements for the dog.

(6) "Owner." Owner means any person, firm, corporation, organization, or department possessing, harboring, keeping, having an interest in, or having control or custody of an animal.

(7) "Cruelty to Animals." A person commits a misdemeanor if he or she purposely or recklessly:

(a) Subjects any animal in his or her custody to cruel neglect; or

- (b) Subjects any animal to cruel mistreatment; or
- (c) Kills or injures any animal belonging to another without legal privilege or consent of the owner;
- (d) Causes one animal to fight with another.
- (e) Causes an animal through training and/or command to attack people.
- (8) "Provoke." Provoke means to incite anger, fear, and/or action.

#### 10.2.31 Running At Large

No person owning or having control or custody of any dog shall knowingly allow a vicious dog to run at large within the boundaries of the Burns Paiute Indian Reservation.

#### 10.2.32 Disturbances

No person shall own, keep or harbor any dog within the boundaries of the Burns Paiute Indian Reservation, which by loud, continued or frequent howling, yelping, or barking shall unreasonably annoy, disturb or endanger the health, welfare, or repose of any person or neighbor. The owners or keeper of a female dog in heat kept or found within the boundaries of the Burns Paiute Indian Reservation shall cause such animal to be penned or enclosed in such a manner as to preclude other animals from attacking such female animal or being attracted to it.

#### 10.2.33 Vicious Dogs; Attacks on Livestock; Right to Destroy

No person shall keep, own or possess within the boundaries of the Burns Paiute Indian Reservation any vicious dog unless muzzled and restrained by a substantial chain or leash and under the physical restraint of a responsible person or confined in a proper enclosure as defined in Section 10.2.30(5) in such a way as to prevent it from biting any human being; nor permit such dog to run at large at any time. Any person shall have the right to destroy immediately any dog engaged in the process of injuring or chasing and causing serious injury to livestock or other domestic or game animals or inflicting serious injury to any person, or inflicting serious damage to personal or tribal property.

#### 10.2.34 Duty of Owner of Dog Found Harassing Stock

It shall be the duty of the owner or keeper of any dog or dogs found chasing, biting, or injuring any livestock or other domestic animal or game animal, upon being notified of that fact by the owner of such livestock or domestic animal, to keep such dog or dogs leashed or confined upon the premises of the owner or keeper thereof. If such owner or keeper of such dog or dogs shall fail to comply

with the provisions of this section, it shall be lawful for the owner of such domestic animals to at his/her discretion, kill such dog or dogs not so confined.

#### 10.2.35 Duty of Owner to Kill Marauding Dog

It shall be the duty of any person owning or keeping any dog or dogs which shall be found killing any livestock or other domestic animal or game animal to kill such dog or dogs within forty-eight hours after being notified of that fact by the owner of such livestock or domestic animal or by an Animal Control Authority. If such owner or keeper of a dog or dogs shall fail or neglect to comply with the provision of this section, it shall be lawful for an Animal Control Authority to kill such dog or dogs or for the owner of such livestock or domestic animal to kill such dog or dogs if found running at large.

#### 10.2.36 Liability of Owners

(1) Every person owning or keeping a dog shall be liable in damages for any injury committed by such dog, including but not limited to medical treatment for rabies and any other disease caused by such dog. It shall not be necessary in any action brought therefore to allege or prove that such dog was of a vicious or mischievous disposition or was diseased or that the owner or keeper thereof knew that it was vicious or mischievous or diseased. However, proof of provocation of an attack by any injured person shall be a complete defense to any action for damages.

(2) The person owning or keeping the dog shall be liable for rabies and any other medical treatment incurred by any person bitten by such dog and the owner of any other animal bitten by such dog that requires veterinary treatment as a result.

#### 10.2.37 Abandonment

It shall be unlawful for any person to abandon any dog within the boundaries of the Burns Paiute Indian Reservation or for any owner or keeper of a dog to neglect to furnish adequate food or care for said dog.

#### 10.2.38 Identification and Registration

(1) Any dog found or kept within the boundaries of the Burns Paiute Indian Reservation must be registered and have an identification tag issued by the Animal Control Authority attached to the dog's collar.

(2) It is unlawful for an owner to have a vicious dog on the Reservation without a certificate of registration issued under this section.

(3) The Animal Control Authority shall issue a certificate of registration to the owner of such animal if the owner presents to the authority sufficient evidence of:

(a) A proper enclosure to confine a vicious dog and the posting of the premises with a clearly visible warning sign that there is a vicious dog on the property. In addition the owner shall conspicuously display a sign with a warning symbol that warns people of the presence of a vicious dog.

#### 10.2.40 Seizure of Dogs . Penalties for Running at Large

Any vicious dog found running at large in violation of this Subchapter shall be subject to seizure by the Animal Control Authority. A citation will be issued and the owner or keeper charged with an offense. The second violation shall upon conviction of the owner or keeper result in banishment of the dog from the Burns Paiute Indian Reservation. If any dog of fierce, dangerous or vicious propensities cannot be safely seized with standard animal control equipment, such dog may be destroyed by the Animal Control Authority.

#### 10.2.41 Confiscation

Any vicious dog shall be immediately confiscated by the Animal Control Authority if:

- (1) The dog is not validly registered under Section 10.2.38(2); or
- (2) The dog is not maintained in the proper enclosure; or
- (3) The dog is outside of the dwelling of the owner or outside of the proper enclosure and not under the physical restraint of a responsible person.

#### 10.2.42 Registration of Dogs and Tags Required

All Dog owners residing within the boundaries of the Burns Paiute Indian Reservation shall be required to do the following:

- (1) Have record (s) proving each dog under their ownership has up to date rabies vaccination.
- (2) Register all dogs with the Burns Paiute Tribal Police Department. Fees for such registration shall be \$6.00 per animal.

#### 10.2.43 Impoundment

No dog will be released from impoundment without payment of existing veterinary fees and impound fees. Any person wishing to adopt any unclaimed dog can do so by paying a \$5.00 tribal service charge and obtaining a rabies tag

for the dog. Service fees collected shall be deposited with the Tribe and used to defray the expenses connected with the administration of this statute and impounding of animals.

#### 10.2.44 Quarantine

If a dog has bitten a person or another animal, the person owning or keeping the dog shall provide written proof of the dog's good health to the animal control authority through a licensed veterinarian. If the person is unable to do so, the dog shall be quarantined at the person's expense. The person owning or keeping the dog shall be liable for rabies and any other medical treatment incurred by any person bitten by such dog and veterinary treatment to the owner of any other animal bitten by such dog.

### OFFENSE AND PENALTY

#### 10.2.50 Offense

It shall be unlawful for any person to violate Chapter 10.2 of the Animal Control & Protection Code.

#### 10.2.51 Enforcement Against Persons Subject to Tribal Criminal Jurisdiction

(1) All offenses within this chapter shall be Civil infractions, except 10.2.30 (7), and 10.2.37, and are subject to the procedures and penalties set forth in Chapter 3.2 of the Burns Paiute Tribal Code in addition to any other penalties which may be set forth specifically in the sections referred to herein.

The procedures established for criminal offenses under this code shall be utilized for violations of this Chapter committed by persons subject to Tribal criminal jurisdiction. In the event a defendant pleads guilty or is found guilty of committing an offense the Court may impose all or any of the following penalties:

- (a) A fine of not less than \$10.00 nor more than \$500.00;
- (b) A jail term of not less than one day nor more than six months;
- (c) Forfeiture of any article or animals seized pursuant to any authorities set forth in Chapter 10.2 of the Burns Paiute Tribal Code (Animal Control and Protection). Any such forfeited animal or animals shall be disposed of through the Harney County, Oregon Humane Society or an equivalent facility.

(2) Notwithstanding the criminal penalties in subsection 1 herein above, the owner of any dog when unprovoked, aggressively attacks and inflicts serious harm to any person, whether the dog has previously been declared a vicious dog, shall be guilty of a Civil Infraction punishable in accordance with the Civil

Infraction Code. In addition, the dog shall be immediately confiscated by the Animal Control Authority, placed in quarantine for the proper length of time in order to determine what diseases the dog is infected with, if any, and thereafter banned from the Burns Paiute Reservation.

(3) Violations of sections 10.2.30(1), 10.2.32 and 10.2.40 shall be treated as civil infractions subject to the procedures and penalties set forth in Chapter 3.2 of the Burns Paiute Tribal Code in addition to any other penalties which may be set forth specifically in the sections referred to herein.

#### 10.2.52 Enforcement Against Persons Not Subject to Tribal Criminal Jurisdiction

(1) The Burns Paiute Tribe may bring an action for a civil penalty against any person and who is not subject to Tribal criminal jurisdiction.

(2) Any dog when unprovoked, aggressively attacks and inflicts serious harm to any person, whether or not previously declared a vicious dog, shall be immediately confiscated by the Animal Control Authority and placed in quarantine for the proper length of time in order to determine what diseases the dog is infected with, if any, and thereafter banned from the Burns Paiute Reservation.

# **TITLE 11 EMPLOYMENTS AND CONTRACTING**

[RESERVED FOR EXPANSION]

# **SELECTED FEDERAL STATUTES**

## **SELECTED FEDERAL STATUTES**

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Indian Civil Rights Act of 1968 as amended TITLE 25 USC Sec. 1301 et seq.  
Indian Child Welfare Act Title 25 USC Sec. 1901 et seq.  
Major Crimes Act 18 USC § 1153 Offenses committed within Indian country  
General Crimes Act 18 USC § 1152 Laws governing  
Indian Country Defined 18 USC § 1151

**INDIAN CIVIL RIGHTS ACT OF 1968  
AS AMENDED TITLE 25 USC SEC. 1301 ET SEQ.**

**25 USC § 1301. Definitions**

SUBCHAPTER I - GENERALLY

For purposes of this subchapter, the term -

- (1) "Indian tribe" means any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government;
- (2) "powers of self-government" means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and means the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians;
- (3) "Indian court" means any Indian tribal court or court of Indian offense; and
- (4) "Indian" means any person who would be subject to the jurisdiction of the United States as an Indian under section 1153, title 18, if that person were to commit an offense listed in that section in Indian country to which that section applies.

(Pub. L. 90-284, title II, Sec. 201, Apr. 11, 1968, 82 Stat. 77; Pub. L. 101-511, title VIII, Sec. 8077(b), (c), Nov. 5, 1990, 104 Stat. 1892.)

**25 USC § 1302. Constitutional rights**

SUBCHAPTER I - GENERALLY

No Indian tribe in exercising powers of self-government shall -

- (1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;
- (2) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
- (3) subject any person for the same offense to be twice put in jeopardy;
- (4) compel any person in any criminal case to be a witness against himself;
- (5) take any private property for a public use without just compensation;
- (6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted

with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;

(7) require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year and a fine of \$5,000, or both;

(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

(9) pass any bill of attainder or ex post facto law; or

(10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

(Pub. L. 90-284, title II, Sec. 202, Apr. 11, 1968, 82 Stat. 77; Pub. L. 99-570, title IV, Sec. 4217, Oct. 27, 1986, 100 Stat. 3207-146.)

**MAJOR CRIMES ACT**  
**18 USC § 1153**  
**OFFENSES COMMITTED WITHIN INDIAN COUNTRY**

**18 USC § 1153. Offenses committed within Indian country**

(a) Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury (as defined in section 1365 of this title), an assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, robbery, and a felony under section 661 of this title within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

(b) Any offense referred to in subsection (a) of this section that is not defined and punished by Federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense.

(June 25, 1948, ch. 645, 62 Stat. 758; May 24, 1949, ch. 139, Sec. 26, 63 Stat. 94; Pub. L. 89-707, Sec. 1, Nov. 2, 1966, 80 Stat. 1100; Pub. L. 90-284, title V, Sec. 501, Apr. 11, 1968, 82 Stat. 80; Pub. L. 94-297, Sec. 2, May 29, 1976, 90 Stat. 585; Pub. L. 98-473, title II, Sec. 1009, Oct. 12, 1984, 98 Stat. 2141; Pub. L. 99-303, May 15, 1986, 100 Stat. 438; Pub. L. 99-646, Sec. 87(c)(5), Nov. 10, 1986, 100 Stat. 3623; Pub. L. 99-654, Sec. 3(a)(5), Nov. 14, 1986, 100 Stat. 3663; Pub. L. 100-690, title VII, Sec. 7027, Nov. 18, 1988, 102 Stat. 4397; Pub. L. 103-322, title XVII, Sec. 170201(e), title XXXIII, Sec. 330021(1), Sept. 13, 1994, 108 Stat. 2043, 2150; Pub. L. 109-248, title II, Sec. 215, July 27, 2006, 120 Stat. 617.)

## **INDIAN COUNTRY DEFINED 18 USC § 1151**

### **18 USC § 1151. Indian country defined**

#### **PART I - CRIMES**

Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian country", as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

(June 25, 1948, ch. 645, 62 Stat. 757; May 24, 1949, ch. 139, Sec. 25, 63 Stat. 94.)