

# SPIRIT LAKE TRIBE LAW AND ORDER CODE

## TITLE 18: MORTGAGE RECORDING, FORECLOSURE AND EVICTION ORDINANCE

### CHAPTER ONE DEFINITIONS

#### §18-1-101. Definitions

The following terms, when used in this Title, shall have the meaning stated herein:

- (1) “Allotted Land” or “Allotment” shall mean land held in trust by the United States government for the Mortgagor who is a member of the Tribe, or land owned by a member of the Tribe that is subject to a restriction against alienation imposed by the United States government.
- (2) “Default” shall mean a default as defined under the terms of any loan documents.
- (3) “Lease” shall mean the residential ground lease or other agreement for use of Trust Land granted to a Mortgagor on which a Mortgage has or will be given.
- (4) “Leasehold Estate” shall mean a leasehold estate established pursuant to a Lease between the Tribe, as Lessor, and a Tribal member, or any other individual, as Tenant.
- (5) “Mortgage” shall mean the first-lien mortgage for the financing of the purchase, construction or renovation of one to four-family residences or commercial buildings or improvements, secured by the improvements and the Mortgagor’s leasehold estate, the improvements and the Allotted Land, or the improvements and any other real property located within the exterior boundaries of the Spirit Lake Reservation or otherwise located within the Tribe's jurisdiction.

Any Tribal member who has an Allotment located within the Tribe’s jurisdiction shall not be required to pledge the entire acreage of the Allotment as collateral to obtain financial assistance for the purchase, construction or renovation of any residential or commercial dwelling located on the Allotment.

- (6) “Mortgagee” shall mean any mortgage lender or any successors or assigns of any Mortgage lender, and any subsequent holder, whether by assignment, succession or otherwise, of the original Mortgagee’s right, title or interest in and to the Mortgage and/or the Property.

- (7) “Mortgagor” shall mean any member(s) of the Spirit Lake Tribe, including any heir(s), successor(s), executor(s), administrator(s) or assigns of such member, or any other individual, who has executed a Mortgage on her Leasehold Estate, her Allotment, or other real property located within the exterior boundaries of the Spirit Lake Reservation or otherwise located within the Tribe’s jurisdiction.
- (8) “Property” shall mean the Mortgagor’s interest in the improvements and a Leasehold Estate, or the Mortgagor’s interest in the improvements and an Allotment, or the Mortgagor’s interest in the improvements and any other real property located within the exterior boundaries of the Spirit Lake Reservation or otherwise located within the Tribe’s jurisdiction.
- (9) “Publish” shall mean:
- (a) Posting a document, in accordance with the time lines set forth herein, at places provided for posting public notices on the Spirit Lake Reservation, including, without limitation, Tribal offices and buildings, the local Bureau of Indian Affairs (“BIA”) office, and at the District center where the Property is located.
  - (b) Recording a document with the BIA, at the BIA address specified in the Mortgage document.
  - (c) Publishing a document in the \_\_\_\_\_, or such other publication of general circulation on or near the Spirit Lake Reservation, in accordance with the time lines set forth herein.
  - (d) District buildings where they exist.
- (10) “Tribal Court” shall mean the Spirit Lake Tribal Court.
- (11) “Tribe” shall mean the Spirit Lake Tribe.
- (12) “Trust land” shall mean land held in trust by the United States government for the Tribe.

## CHAPTER TWO MORTGAGE APPROVAL

### §18-2-101. Approval of Secretary of Interior Required

All Mortgages secured by an interest in Allotted Land or Trust Land must be approved by the Secretary of Interior, Bureau of Indian Affairs, including any transfers or assignments thereof

### §18-2-102. Approval of Tribe Required

All Mortgages secured by an interest in Allotted Land or Trust Land must be approved by the Spirit Lake Tribe, including any transfers or assignments thereof.

## CHAPTER THREE RECORDING

### §18-3-101. Priority

A Mortgage recorded in accordance with the procedures set forth herein shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim (except a lien or claim arising from a Tribal tax, fee, fine, assessment or imposition assessed against Property subject to the Mortgage).

### §18-3-102. Records

The Tribal Recording Clerk shall maintain, in the Tribe Realty Office, a system for the recording of Mortgages and other documents as the Tribe may designate by law or resolution including, without limitation, any Lease.

### §18-3-103. Recording Information

The Tribal Recording Clerk shall endorse upon any document received for recording the following:

- (1) The date and time of receipt of the document;
- (2) The filing number, to be assigned by the Tribal Recording Clerk, which shall be a unique number for each document received; and
- (3) The name and signature of the Tribal Recording Clerk receiving the document.

### §18-3-104. Certified Copies

Upon completion of the above endorsements, the Tribal Recording Clerk shall make a true and correct copy of the document and shall certify the copy as follows:

SPIRIT LAKE TRIBE	}
	}ss.
SPIRIT LAKE RESERVATION	}

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

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

(SEAL)

\_\_\_\_\_  
(Signature), Tribal Recording Clerk

### §18-3-105. Originals and Copies

The Tribal Recording Clerk shall contain the copy in the records of the recording system and shall return the original of the document to the person or entity that presented the same for recording.

### §18-3-106. Records Maintenance

The Tribal Recording Clerk shall maintain a log of each document recorded and that includes the following:

- (1) The name(s) of the Lessee(s) and Lessor(s) of each Lease, identified as such;
- (2) The name(s) of the Mortgagor(s) and Mortgagee(s) of each Mortgage, identified as such;
- (3) The name(s) of the grantor(s), grantee(s), or other designation of each party named in any other documents;
- (4) The date and time of receipt of any document(s);
- (5) The filing number assigned by the Tribal Recording Clerk; and
- (6) The name of the Tribal Recording Clerk receiving the document.

### §18-3-107. Record inspection and Copying

The certified copies of the Leases, Mortgages or other documents and the log maintained by the Tribal Recording Clerk shall only be made available for inspection and copying by Tribal members and parties to the transaction including Mortgagees, or their successors and assigns. Inspection by non-members and non-parties may be granted at the discretion of the Tribal Court.

### §18-3-108. Transfer by Borrower

Any Mortgage described herein and recorded in accordance with the procedures contained herein must grant the Mortgagor the right to transfer or assign the Property to another Tribal member, provided, however, that any transfer or assignment, shall be subject to any Mortgage on the Property, the Mortgagee's approval, the Tribe's approval, and Bureau of Indian Affairs approval. If a Mortgagor transfers her interest in the Property, the Mortgagee shall not charge a fee on the transfer, except that the Department of Veterans Affairs may, in connection with the transfer of an interest in Property with respect to which the Department of Veterans Affairs is a Mortgagee, charge a fee not to exceed one-half of one percent of the loan balance as of the date of the transfer.

If a Mortgagor transfers her interest in the Property, the Mortgagee shall not increase the interest rate on the obligation secured by the Mortgage, unless the transferring Mortgagor is released from all liability. In no event shall the increase exceed one-half of one percent per annum more than the interest rate paid by the transferring Mortgagor. This provision shall be applicable only to Property that is not used for commercial purposes and that is limited to and utilized by, the Mortgagor for residential purposes.

#### §18-3-109. Other Filings

Any Mortgagee may file a notice with the appropriate County Recorder's Office stating that documents) affecting a parcel(s) of Trust Land or Allotted Land have been filed in accordance with the laws of the Spirit Lake Tribe. The Mortgagee shall be responsible for the fee in connection with this filing and shall not assess or collect, the fee from the Mortgagor. The Mortgagee may not file copies of the actual documents filed in accordance with the laws of the Spirit Lake Tribe.

#### §18-3-110. Fees

The Tribal Recording Clerk may, upon approval by the Tribe, impose or collect a fee for any document filed in accordance with this Chapter.

## CHAPTER FOUR GENERAL FORECLOSURE PROVISIONS

### §18-4-101. Mortgage Foreclosure Allowed

Upon the default of a Mortgagor(s) under a Mortgage recorded in accordance with the procedures specified herein, the Mortgagee may commence a mortgage foreclosure proceeding in the Tribal Court. The Spirit Lake Tribal Court shall have exclusive jurisdiction over all actions arising under these proceedings.

### §18-4-102. Requisites for Foreclosure

A mortgage foreclosure proceeding may only be commenced if:

- (1) A default under a written Mortgage exists;
- (2) No other action or proceeding has been instituted at law to recover the debt then remaining secured by the Mortgage, or any part thereof or if any action has been instituted, then discontinued; and
- (3) The Mortgage has been recorded with the BIA and the procedures specified herein and, if it has been assigned, that all assignments have been recorded-with the BIA and the procedures specified herein.

### §18-4-103. Attorney's Fees

A Mortgagee may only be reimbursed for attorney's fees if allowed in the Mortgage. The Tribal Court shall determine the amount of attorney's fees, if any, the Mortgagor shall be obligated to pay Mortgagee. The Mortgagee shall not be entitled to attorney's fees if at the time Mortgagee commences a mortgage foreclosure proceeding, all items of default were less than 60 days past due.

### §18-4-104. Limited Right to Enter

- (1) Upon permission granted by the Tribal Court, the Mortgagee shall have a limited right to enter the Property to protect the Property from waste, provided the Property is vacant or unoccupied. The Mortgagee shall not become a "mortgagee in possession" by taking action hereunder.
- (2) The Tribal Court shall presume that the Property is vacant or unoccupied if the Property does not contain items of personal property and the Mortgagee presents an affidavit by the Tribal Police describing the Property, stating that the Tribal Police has visually inspected the Property and that the Property does not contain any items of personal property,

- (3) The Mortgagee, pursuant to the Limited Right to Enter, may take the following actions: install or change locks on doors and windows, board windows, install an alarm system, and otherwise prevent or minimize damage to the improvements from the elements, vandalism, trespass, or other illegal activities, If the locks to any buildings or improvements are changed, a key must be delivered to the Mortgagor within five (5) days of the Mortgagor's request for a key.
- (4) The costs incurred by the Mortgagee to protect the Property from waste may be added to the principal balance of the Mortgage and may bear interest at 8 percent per annum, or the mortgage rate if it is lower, and added to the redemption price.

#### §18-4-105.Right of First Refusal to Purchase

- (1) The Tribe, or any Tribal entity designated by the Tribe, shall have a Right of First Refusal to Purchase the Mortgagor's interest in Property which is (a) in default and before the Mortgagee commences mortgage foreclosure proceedings;-(14 the subject of mortgage foreclosure proceedings; or (c) in any situation or circumstance in which the Mortgagor may be divested of title to the Property, Allotment or Leasehold Estate. The Tribe may exercise its Right of First Refusal to Purchase upon payment in full of all sums secured by the Mortgage or assumption of the loan evidenced by the Mortgage and execution of an assumption agreement acceptable in all respects to the Mortgagee.

The Mortgagee must provide written notice to the Tribe of the Mortgagor's default under the Mortgage, failure to cure the default in accordance with the Mortgage and/or of Mortgagee's intent to commence mortgage foreclosure proceedings at least ten days before Mortgagee commences a mortgage foreclosure proceeding.

- (2) The Tribe's Right of First Refusal to Purchase may be exercised at any time after receipt of written notice from the Mortgagee, shall be exercised by a notice in writing from the Tribe to the Mortgagee and shall be subject to the Mortgagor's right to reinstate the Mortgage, redeem the Property, and to bring a court action to assert the non-existence of a default or any other defense to acceleration, sale and foreclosure. The Tribe's Right of First Refusal may be exercised more than once, if any situation or circumstance identified in subparagraph 1 occurs more than once.
- (3) The Tribe's Right of First Refusal to Purchase shall expire upon Mortgagor's reinstatement of the Mortgage, Mortgagor's redemption of the Property or upon a determination by the Tribal Court that a default has not occurred or other determination prohibiting acceleration of the Mortgage or sale of the Property in accordance with this Title.
- (4) The estate acquired by the Tribe through exercise of its Right of First Refusal to Purchase shall not merge with any other estate or title held by the Tribe as long as the estate and/or any improvements on the estate, or any interest therein, are subject to a Mortgage, and the estate shall remain subject to the Mortgagee



- (5) In the event the Tribe does not exercise its Right of First Refusal to Purchase the Property; then the Mortgagee may, after a foreclosure sale conducted in accordance with the provisions herein, sell the Property subject to the foreclosure proceedings to a Tribal member or, a non-member subject to approval by the Tribe. The Mortgagee, prior to selling the Property to a Tribal member or a nonmember, shall provide written notice of the proposed sale to a Tribal member or non-member, and shall inform the Tribe that it has ten days to exercise its Right of First Refusal to Purchase the Property or it will be sold to the Tribal member or non-member subject to approval by the Tribe.

§18-4-106. Lease

- (1) If the Mortgagee purchases the Property secured by improvements and a Leasehold Estate at the foreclosure sale, the Mortgagee shall have the right to lease the Property for one year terms for an unlimited number of terms to the Tribe, another Tribal member or, upon approval from the Tribe, a non-member, for the duration of the Mortgage term as if the Mortgage was still in effect. The Mortgagee must send a copy of the Order Confirming the Sale and must publish it within ten days after the Order Confirming the Sale is issued.
- (2) The Tribe shall have a Right of First Refusal to Lease the Property subject to foreclosure proceedings at any time following the date the Order Confirming the Sale is issued and upon execution of a mutually acceptable lease agreement with the Mortgagee. The Right of First Refusal to Lease the Property may be exercised at any time after receipt of written notice from the Mortgagee, shall be exercised by a notice in writing from the Tribe to the Mortgagee and shall be subject to the Mortgagor's right to redeem the mortgage and to bring a court action to assert the non-existence of a default or any other defense to sale and foreclosure. The Tribe's Right of First Refusal to Lease the property shall expire if the Mortgagor redeems the property or upon a determination by the Tribal Court that a default has not occurred or other determination prohibiting the sale or foreclosure of the Property. The Tribe's Right of First Refusal to Lease the Property shall expire five days after written notice from Mortgagee that a written lease agreement will be executed between the Mortgagee and a Tribal member or a non-member approved by the Tribe unless the Tribe exercises its Right of First Refusal to Lease the Property. This section 4-106 shall apply only to Mortgages secured by improvements and a Leasehold Estate.
- (3) Rental proceeds from the lease of the Property shall be applied first to any costs incurred by the Mortgagee in leasing and maintaining the Property, then to, any judgment entered against the Mortgagor.
- (4) At least thirty days prior to expiration of any lease of foreclosed property with a Tribal or non-Tribal member, the Mortgagee will provide written notification to the Tribe of the expiration of the lease and will publish notice of the lease expiration to provide notice that the property is available for lease. The Tribe shall have a Right of First Refusal to Lease the Property for thirty (30) days prior to expiration of a lease described herein.

- (5) At any time while the Property is being leased by the Mortgagee to a lessee, the Mortgagee may sell the Property to the Tribe or to a Tribal member, subject to the Tribe's Right of First Refusal to Purchase the Property. Any sale of the Property during the term of a lease shall be subject to the term of the lease and the Mortgagor's right to redeem the Property or a determination by the Court that a default has not occurred or other determination prohibiting sale or foreclosure of the Property.

#### §18-4-107. Deficiency Judgments

- (1) The Mortgagee may obtain a deficiency judgment from the Tribal Court against the Mortgagor if the amount received from the foreclosure sale is less than the amount remaining unpaid on the Mortgage or the amount of the judgment entered. The Mortgagee may not obtain a deficiency judgment for more than the difference between the amount received from the foreclosure sale less expenses, fees and costs and the amount remaining unpaid on the Mortgage or the amount entered on judgment, if the property is leased to the Tribe, a Tribal member or a non-member. The deficiency judgment shall be reduced by any amounts received from leasing of the Property, after expenses, fees and costs are deducted.
- (2) The Mortgagee must file an action for a deficiency judgment with the Tribal Court within 30 days after a foreclosure sale. The deficiency judgment may be enforced by execution but the judgment may not be executed more than 3 years from the date judgment was entered. A deficiency judgment does not attach to real or personal property acquired by the Mortgagor or debtor after the judgment is entered.
- (3) A deficiency judgment shall only be allowed if the foreclosure sale of the property was conducted in a commercially reasonable manner, and the sale price received for the Property is a fair market value.

#### §18-4-108. Voluntary Foreclosure

- (1) The Mortgagor and the Mortgagee may only enter into a written agreement for voluntary foreclosure under this section during the existence of a default under the Mortgage. The agreement shall identify the Mortgage by recording data and the real estate by legal description, specify the date of the agreement and provide that:
  - (a) The Mortgagor and Mortgagee have agreed that the Mortgage shall be voluntarily foreclosed with the Mortgagor's redemption period reduced to ninety days.
  - (b) The Mortgagee waives any rights to a deficiency or other claim for personal liability against the Mortgagor arising from the Mortgage or the debt secured by the Mortgage. This does not preclude an agreement between the Mortgagor and Mortgagee to a payment to the Mortgagee as part of the voluntary foreclosure, or collection from a guarantor.

- (c) The Mortgagor waives its right to contest foreclosure, and to rents and occupancy during the period from the date of agreement through the redemption period.
  - (d) The Mortgagor consents to the appointment of a receiver for, or grants Mortgagee possession of, the Property and all rights of possession of the Property, including, but not limited to operating, maintaining, and protecting the Property, and the making of any additions or betterments to the Property.
  - (e) A default exists under the Mortgage and on the date of agreement at least one of the items constituting the default has been in existence for at least one month.
  - (f) Within seven days after the date of agreement, the Mortgagee must record or file the agreement with the Tribal Realty Office.
- (2) There is no right to reinstatement of the Mortgage after the date of the agreement.
  - (3) After the date of agreement, the Mortgagee may proceed to foreclose the Mortgage in accordance with the laws herein.
  - (4) This provision shall not apply to Mortgages for residential purposes or Mortgages secured by improvements and Allotted Lands.

## CHAPTER FIVE MORTGAGE FORECLOSURE PROCEDURES

### §18-5-101. Commencement

Upon the default of the Mortgagor(s) under a Mortgage and the expiration of any applicable cure periods set forth in a Mortgage, the Mortgagee may commence a mortgage foreclosure proceeding in the Tribal Court as follows:

- (1) Filing a verified complaint
  - (a) Naming the Mortgagor(s) and each person or entity claiming through the Mortgagor(s) subsequent to the recording of the Mortgage, including each Subordinate Lienholder (except the Tribe with respect to a claim for a Tribal leasehold tax, fee, fine, assessment or imposition) as a defendant;
  - (b) Describing the Property subject to the Mortgage;
  - (c) Stating the facts concerning the execution of the Lease, if applicable, and the Mortgage; the facts concerning the recording of the Mortgage; the facts concerning the alleged default(s) of the Mortgagor(s); and such other facts as may be necessary to constitute a cause of action;
  - (d) Having appended as exhibits true and correct copies of each promissory note, lease, mortgage, or assignment thereof relating to the Property; and
  - (e) Including an allegation that all relevant requirements and conditions have been complied with by the Mortgagee. If the Mortgagee is the Secretary of the Veterans Administration, the allegation must state that CO 38 U.S. Code § 3761 et seq., (ii) the regulations promulgated thereunder by the Secretary, and (a) the provisions of the lease, have been complied with by the Secretary.
- (2) Obtaining a summons, issued as in other cases, requiring the Mortgagor and each other defendant to appear for a trial upon the complaint on a date and time specified in the summons.

### §18-5-102. Service of Process and Procedures

The laws of the Spirit Lake Tribe governing service of process and all other matters relating to the conduct of Tribal Court civil proceedings shall apply to any mortgage foreclosure proceeding pursuant to this Ordinance.

### §18-5-103. Power of Tribal Court

If the alleged default(s) have not been cured, and if the Tribal Court should find for the Mortgagee, the Tribal Court shall enter judgment:

- (1) Foreclosing the Mortgagor's interest in any Leasehold Estate that is subject to a Mortgage and that is the subject of the foreclosure proceedings, the improvements to any Property subject of the foreclosure proceedings, or title to any allotted land that is the subject of the foreclosure proceedings and each other defendant named in the complaint upon whom proper and timely service has been made, including each such Subordinate Lienholder; and
- (2) Assigning a leasehold interest in the Property to the Mortgagee.
- (3) If applicable, allowing the Mortgagor to lease or reside on the Allotment during the remaining term of the foreclosed Mortgage.
- (4) Title 25, section 483a of the United States Code shall apply to the foreclosure or sale of any Mortgages secured by improvements and Allotted Lands.

#### §18-5-104. Reinstatement of Mortgage

In any proceeding for the foreclosure of a Mortgage, if at any time before the foreclosure sale of the Property, the Mortgagor shall pay or cause to be paid to the Mortgagee the amount actually due thereon and constituting the default actually existing in the conditions of the Mortgage at the time of the commencement of the foreclosure proceedings, including insurance, delinquent taxes, if any, upon the premises, interest to date of payment, cost of publication and services of process or notices, attorney's fees not exceeding one hundred fifty dollars, together with other lawful disbursements necessarily incurred in connection with the proceedings by the Mortgagee, then the Mortgage shall be fully reinstated and further foreclosure proceedings shall be abandoned.

## CHAPTER SIX FORECLOSURE SALE

### §18-6-101. Notice of Sale

Not less than six weeks published notice shall be given-that a Mortgage will be foreclosed by sale of the Property or some part thereof, and at least four weeks before the appointed time of sale a copy of such notice shall be served as a summons in a civil action in the Tribal Court upon the person in possession of the Property, if the same is actually occupied.

### §18-6-102. Requisites of Notice

- (1) Each notice that a Mortgage will be foreclosed by sale of the Property shall specify the name of the Mortgagor, the Mortgagee and any assignee of the Mortgage, if any, and the original principal amount, secured by said Mortgage. The notice shall also include the date, of the Mortgage and when and where recorded; a description of the Property, conforming substantially to that contained in the Mortgage and the time and place of sale and the time allowed by law for redemption by the Mortgagor or her assigns.
- (2) Any error or omission in the information required by subsection (1) of this section, other than an error in the legal description of the Property or failure to include notice of the Mortgagor's right to reinstate the Mortgage, shall not invalidate a Mortgagee's sale. Any error in the legal description of the Property shall not invalidate a Mortgagee's sale if, considered as a whole, the information provided is sufficient to identify the Property being sold.
- (3) Upon receipt of notice of reinstatement, the Mortgagee shall cancel the foreclosure proceedings, and shall record a cancellation of the notice of sale in the same places where the notice of sale was published.

### §18-6-103. Statement of Unpaid Amounts

Before any sale authorized herein, the Mortgagee shall file with the Tribal Police a verified itemized statement in writing showing the entire amount remaining unpaid on the Mortgage, including taxes and insurance premiums paid and other items which have become part of the amount secured, and the rate of interest to accrue on same. This statement shall be subject to public inspection and shall be read by the Tribal Police at the sale, immediately after reading the notice of sale.

§18-6-104. Sale, how and by whom made

The sale shall be made by the Tribal Police at the Property subject to the foreclosure proceedings to the Tribe, a Tribal member the Mortgagee, or to a non-member approved by the Tribe, who is the highest bidder on the property being foreclosed between nine o'clock am, and five o'clock pm.

§18-6-105. Limitation on Sale of Property

In no event shall the Mortgagee have the right to sell Property secured by improvements and a Leasehold Estate to a non-Tribal member, without the Tribe's consent.

§18-6-106. Purchase by Mortgagee

The Mortgagee may fairly and in good faith purchase the premises foreclosed upon at the foreclosure sale.

§18-6-107. Certificate of Conveyance

When any sale of Property is made under a power of sale contained in any Mortgage, the Tribal Police shall make and deliver to the purchaser, a certificate, executed in the same manner as a conveyance, containing:

- (1) A description of the Mortgage,
- (2) A description of the Property sold,
- (3) The price paid for each parcel sold,
- (4) The time and place of the sale, and
- (5) The time allowed by law for redemption.

The certification shall be recorded within twenty days-after the foreclosure sale, and when so recorded, upon expiration of the time for redemption, shall operate as a conveyance to the purchaser or her assignee of all the right, title and interest of the Mortgagor in and to the Property named therein, without any other conveyance.

§18-6-108. Satisfaction of Judgment

Upon confirmation of the report of sale, the Tribal Court-Shall eater satisfaction of the judgment to the extent of the sum bid for the Property, less expenses and costs, and shall issue an Order Confirming the Sale. The amount entered is full satisfaction of the judgment unless a deficiency is allowed. If a deficiency judgment is allowed, the balance of the judgment remaining unpaid may be executed and satisfied in the same manner as a personal judgment against the Mortgagor.

#### §18-6-109. Costs of Foreclosure Sale

Within ten days after the foreclosure sale, the foreclosing party shall prepare a Certificate of Sale, and file the same with the Tribal Court. The Certificate of Sale shall set forth correctly, in addition to the amount of sale, the remaining amount still unpaid on and secured by the Mortgage, subject to which the sale is made and the rate of interest to accrue on the same. If, during the time to redeem from the sale, any additional or other item, other than interest at the rate so stated in the certificate shall attach to such amount subject to which the sale was made, or any change shall occur in such amount or the rate of interest thereon, the facts with respect thereto, shall be set forth by affidavit, made and filed for record, and a copy furnished the Tribal Police, in accordance with the provisions of this Title.

#### §18-6-110. Disposition of Proceeds

The proceeds of the sale shall be applied first in payment of the costs of the foreclosure sale, and of the installment due with interest thereon, taxes and insurance premiums paid, if any, and then towards the payment of the residue of the sum secured by the Mortgage and not due and payable at the time of the sale.

#### §18-6-111. Surplus

If after the sale of the Property, made as prescribed herein, there remains any surplus money, after satisfying the Mortgage, with interest, taxes paid, and costs of sale, the surplus shall be paid to the Mortgagor within thirty days from the date of the sale.



## CHAPTER SEVEN EVICTION PROCEDURES

### §18-7-101. Forcible Entry and Unlawful Detainer

No, person shall make entry into lands or tenements except in cases where entry is allowed under law, and in such cases the person shall not enter by force, but only in a peaceable manner.

### §18-7-102. Unlawful Detention of Lands or Tenements

When any person has made unlawful or forcible entry into lands or tenements, and detains the same, or having peaceably entered, unlawfully detains the same, the person entitled to the premises may recover possession thereof in the manner hereinafter provided.

### §18-7-103. Recovery of Possession

- (1) When any person holds over lands, or tenements after a sale of those lands or tenements on an execution, a judgment, a mortgage foreclosure, or after termination of the contract to convey the same, provided that if the person holding such lands or tenements after the sale, foreclosure, or termination has received at least thirty (30) days written notice of the termination of her possession or tenancy as a result of the sale, foreclosure, or termination; then in all such cases the person entitled to the premises may recover them from the person holding them over.
- (2) If such person has entered onto or remains on another's real property without the permission of the owner and without having any substantial claim of a lease or title of the real property and if after having received at least thirty (30) days' notice, the tenant or occupier shall remain in possession of the property contrary to the terms of the notice as follows:
  - (a) When such person has received notice: (i) That she is in default in the payment of rent; (ii) Requiring her to either pay the rent or surrender possession of the occupied property; and (iii) Such person has remained in possession after receipt of such notice without either surrendering possession of the property or paying the rent; or
  - (b) When the lease of the property is for an indefinite time, with rent paid monthly or by some other period, and the lessor has given notice of termination of the tenancy at least thirty (30) days prior to the end of such month or period; or
  - (c) When such person shall continue to fail to keep or perform any condition or covenant of any lease or agreement under which the property is held after she has been given notice to surrender the property, or
  - (d) When such person continues to commit or to permit waste upon or maintain a nuisance upon the occupied property after having been given notice to either cease such waste, maintenance or nuisance or to surrender the property; or

- (e) In all cases when any person holds over lands or tenements after termination of the time for which they are leased or demised to that person, or to the persons from whom that person is subleasing, then in all such cases the person entitled to them may recover.
- (3) It shall be a defense to, an action for recovery of the premises following the alleged termination of a tenancy by notice to quit for the defendant to prove by a fair preponderance of the evidence that:
  - (a) The alleged termination was intended in whole or in part as a penalty for the defendant's good faith attempt to secure or enforce rights under a lease or contract, oral or written, or under the laws of the Spirit Lake Tribe, any of its government subdivisions, or of the United States; or
  - (b) The termination was intended in whole or in part as a penalty for the defendant's good faith report to a governmental authority of the plaintiff's violation of any health, safety, housing or building codes or ordinances.

If the notice to quit was served within 90 days of the date of the act of the tenant coming within the clause (a) or (b) the burden of proving that the notice to quit was not served in whole or in part for a retaliatory purpose shall rest with the plaintiff.

- (4) In any proceeding for the restitution of the premises upon the ground of nonpayment of rent, it shall be a defense thereto if the tenant establishes by a preponderance of the evidence that the plaintiff increased the tenant's rent or decreased the services as a penalty in whole or in part for any lawful act of the tenant as described in section 7-103(3)(b), providing that the tenant tender to the court or to the plaintiff the amount of rent due under the tenant's original obligation.
- (5) Nothing herein shall limit the right of the lessor to terminate a tenancy for a violation of a lawful, material provision of the lease or contract, whether written or oral, or to hold the tenant liable for damage to the premises caused by the tenant or a person acting under the tenant's direction or control.

#### §18-7-104. Service of Notice

Notice required or authorized in the immediately preceding section shall be given in writing by either:

- (1) Delivering a copy personally to the tenant or occupier or to any adult members of her family residing on the premises; or
- (2) Posting said notice in a conspicuous place near the entrance to said premises, and by sending an additional copy to the tenant or occupier by certified mail, return receipt requested, properly addressed, postage prepaid

#### §18-7-105. Proof of Service

Proof of service by either of the above methods may be made by affidavit of any adult person stating that she has complied fully with the requirements of either of the two methods of service.

#### §18-7-106. No Restitution if Holder or Tenant holds over for three years

If a party holds over lands or tenements after the termination of that person's lease, then no restitution shall be made under this chapter of those lands or tenements of which the party complained if that person's ancestors, or those under whom the person holds the premises, have been in quiet possession for three years after the termination of the lease before the filing of the complaint. This section shall not apply to those lands upon which a mortgage foreclosure or leasehold interest has been ordered, noticed and for which a period of redemption has expired.

#### §18-7-107. Complaint and Summons

The owner of real property, lessor or Mortgagee shall commence an action for unlawful detainer by filing with the Tribal Court, in writing, the following documents:

- (1) A complaint, signed by the owner, lessor, the Mortgagee, an agent, or attorney, that:
  - (a) states the facts on which she seeks to recover;
  - (b) describes the property so that it can be identified with reasonable certainty; and
  - (c) states any claim for damages or compensation due from the persona to be evicted.
    - (i) Citing authority for jurisdiction of the Tribal Court;
    - (ii) Naming the Mortgagor(s) and each record owner claiming through the Mortgagor(s) subsequent to the recording of the Mortgage, including each Subordinate Lienholder (except the Tribe with respect to a claim for a Tribal tax, fee, fine assessment or imposition on the property subject to the mortgage) as a defendant;
    - (iii) Describing the property subject to the Mortgage;
    - (iv) Stating the facts concerning (i) the execution of any lease and the Mortgage; (ii) the recording of the Mortgage; and (iii) the facts upon which the seeks to recover;
    - (v) Stating any claim for damages or compensation due from the persona to be evicted; and

(vi) Otherwise satisfying the requirements of the Tribal Court.

- (2) A copy of the summons, issued in accordance with the Tribal Court rules and procedures.

#### §18-7-108. Service of Notice, Summons and Complaint

A copy of the notice, summons and complaint shall be served upon the defendants in the manner provided by the Tribal Court rules for service of process in civil matters.

#### §18-7-109. Answer; Trial

After return of the summons, at the time and place appointed therein, the defendant, on appearing, may answer the complaint. In the answer all matters, whether in excuse, justification, or avoidance of the allegations shall be set forth, in accordance with the Rules of Civil Procedure. The court shall hear and determine the action, but may continue the trial pursuant to section 7-110. Such matter shall only be heard by the assigned judge. Such matters shall not be determined by a jury trial. The proceedings in such trials shall be the same as in other civil actions, except as is provided otherwise in this chapter.

#### §18-7-110. Continuance and Bond

The court, in its discretion, may continue the trial sua sponte or by motion of the parties, Except in an action upon a written lease signed by both parties thereto, if the defendant or the defendant's agent or attorney shall make oath that the defendant cannot safely proceed to trial for want of a material witness, and names the witness, and states that the defendant has made due effort to secure the presence of the witness, and believes that the continuance, if allowed, will result in the presence of the witness at trial, or will permit the deposition of the witness to be taken and introduced at trial, and shall give bond conditioned to pay to the plaintiff all rent which may accrue during the pendency of the action, together with all costs and damages consequent upon such continuance, the court shall continue the trial for such time as may appear necessary, not exceeding three months.

#### §18-7-111. Judgment; Execution

If the court finds for the plaintiff, the court shall immediately enter judgment that the plaintiff have restitution of the premises and tax the costs for the plaintiff. The court shall issue execution in favor of the plaintiff for the costs and also immediately issue a Writ of Restitution and deliver it to the Tribal Police. Upon showing by the defendant that restitution of the premises would work a substantial hardship upon the defendant or the defendant's family, the court shall stay the Writ of Restitution for a reasonable period, not exceeding seven days. If the court finds for the defendant, the court shall enter judgment for the defendant, tax costs against the plaintiff and issue execution therefore.

Upon issuance of a Writ of Restitution, the Tribal Court shall have the authority to enter against the defendants a judgment for the following: (1) back rent, unpaid utilities, and any charges due the Tribe, lessor or Mortgagee under any lease or occupancy agreement; (2) any and all amounts secured by the Mortgage that are due the Mortgagee (or its successors or assigns); and (3) damages caused by the defendants to the property other than ordinary wear and tear. The Tribal Court shall have the authority to award costs and reasonable attorney's fees in bringing suit to the prevailing party.

#### §18-7-112. Continuances in Cases Involving a Mortgagee

Except by agreement of all parties, there shall be no continuances in the cases involving a Mortgagee which will interfere with the requirement that the Writ of Restitution in a case involving the Secretary of the Veterans Administration be issued not later than sixty (60) days from the date of service of the summons and complaint.

#### §18-7-113. Writ of Restitution; Effect of Appeal

If the party against whom the judgment for restitution is rendered or the party's attorney states to the court an intent to take an appeal, a Writ of Restitution shall not issue for hours after judgment. In an action on a lease, against a tenant holding over after the expiration of the term thereof, or termination of the lease by notice to quit, such Writ may issue immediately, notwithstanding such notice of appeal only if the plaintiff gives a bond conditioned to pay all costs and damages in the event that the appellate court reverses the judgment of restitution and a new trial is ordered. The Writ shall order any action, inaction or remedy ordered by the Tribal Court, including, but not limited to, commanding the Tribal Police to enter the premises, remove the defendant, defendant's family and personal property, and grant the Tribal Police authority to take any action necessary to secure the premises.

#### §18-7-114. Appeal; Stay

A party who feels aggrieved by the judgment may appeal within 10 days, except that if the party appealing remains in possession of the premises, a bond shall be conditioned to pay all costs of such appeal and the party shall abide any order the court may make therein, and shall pay all rents and other damages justly accruing to the party excluded from possession during the pendency of the appeal. Upon the taking of such appeal all further proceedings in the case shall be stayed, except that in an action on a lease against a tenant holding over after the expiration of the term of the lease or termination by notice to quit, if the plaintiff gives bond as provided in section 7-110 a Writ of Restitution shall issue as if no appeal had been taken and the appellate court shall thereafter issue all needful writs and processes to carry out any judgment which may be rendered in such court.

#### §18-7-115. Appeal after Issuance of Writ; Stay

If a Writ of Restitution has issued before the taking of an appeal, the court shall give appellant a certificate of the allowance thereof. Upon being served with such a certificate, the officer having the Writ shall cease all further proceedings thereunder, and if the Writ has not been completely executed the defendant shall remain in possession of the premises until a determination of the appeal, but this section shall not apply to a case where the judgment of

restitution has been entered on a lease against a tenant holding over after the expiration of the lease term, or after the termination of the lease period by notice to quit.

#### §18-7-116. Dismissal of Appeals

In all cases of appeal, the appellate court shall not dismiss or quash the proceedings for want of form only, provided they have been conducted substantially in accordance with the provisions of this chapter. Amendments may be allowed at any time, upon such terms as to the court may appear just, in the same cases and manner and to the same extent as in civil actions. The court may compel the Tribal Court, by attachment, to make or amend any return which is withheld or improperly or insufficiently made.

#### §18-7-117. Execution of the Writ of Restitution

the name and badge number of the Tribal Police Officer.

The Tribal Police Officer shall retain a copy of the inventory. The plaintiff is responsible for the proper removal, storage, and care of the defendant's personal property and is liable for any damage, loss, or injury to the defendant's personal property caused by the plaintiff's failure to exercise care in regard to it as a reasonably careful person would exercise under similar circumstances.

The plaintiff shall notify the defendant of the date and the approximate time the officer is scheduled to remove the defendant, family, and personal property from the premises. The notice must be sent by certified, registered mail. In addition, the plaintiff must make a good faith effort to notify the defendant by telephone. The notice must be mailed as soon as the information regarding the date and approximate time the officer is scheduled to enforce the Writ is known to the plaintiff, except the scheduling of the Tribal Police Officer to enforce the Writ need not be delayed because of the notice requirement. The notice must inform the defendant that the defendant and the defendant's personal property will be removed from the premises in the event the defendant has not vacated the premises by the time specified in the notice.

No one, other than the Tribal Police, shall have authority to enter the premises and remove the defendant's property. Anyone who does so shall be liable for damages pursuant to Subdivision 2. The provisions of this section may not be waived or modified by any oral or written lease or other agreement.

In all cases involving the Secretary of the Veterans Administration, the Writ of Restitution shall be enforced not later than sixty (60) days after the issuance of the Writ of Restitution.

#### §18-7-118. Unlawful Removal or Exclusion; Recovery of Possession

- (1) For purposes of this section, "unlawfully removed or excluded" means actual or constructive removal or exclusion. Actual or constructive removal or exclusion may include the termination of utilities, or the removal of doors, windows, or locks. Any tenant who is unlawfully removed or excluded from lands or tenements may recover possession of the premises in the following manner:

- (a) The tenant shall present a verified petition to the Tribal Court which shall:
    - (i) describe the premises of which possession is claimed and the owner of the premises;
    - (ii) state the facts and grounds that demonstrate that the removal or exclusion was unlawful including a statement that no judgment or Writ of Restitution have been issued in favor of the owner and against the petitioner as to the premises and executed in accordance with the provisions herein; and
    - (iii) Ask for possession thereof
  - (b) If it clearly appears from the specific grounds and facts stated in the verified petition or by separate affidavit of the petitioner or petitioner's counsel or agent that removal or exclusion was unlawful, the court shall immediately order that the petitioner have possession of the premises.
  - (c) The petitioner shall furnish monetary or other security if any as the court deems appropriate under the circumstances for payment of all costs and damages the defendant may sustain if the order is subsequently found to have been wrongfully obtained. In determining the appropriateness of any security the court shall consider petitioner's ability to afford monetary security.
  - (d) The court shall direct, the order to the Tribal Police and the Tribal Police shall execute the order immediately upon the defendant, if found, or the defendant's agent or other person in charge of the premises, for possession of the premises. If the defendant fails to deliver the premises, or otherwise comply with the demand, the officer shall take whatever assistance may be necessary and immediately place the petitioner in possession of the premises. The officer shall also serve the order and verified petition or affidavit without delay upon the defendant or agent, in the same\_manner as a summons is required to be served in a civil action in the Tribal Court.
- (2) The defendant by written motion and notice served by mail or in person upon the petitioner or the petitioner's agent or attorney at least two days prior to the hearing date on the motion may obtain dissolution or notification of the order for possession, issued pursuant to subdivision 1, clause (b), unless petitioner proves the facts and grounds upon which the Writ is issued. A defendant bringing a motion pursuant to this subdivision may recover possession of the premises only in accordance with the provisions herein or as otherwise provided by law. Upon dissolution of the order, the court shall tax costs to the petitioner, and may allow damages and reasonable attorney's fees for the wrongful granting of the order for possession. If the order is affirmed the court shall tax costs against the defendant and may allow petitioner reasonable attorney's fees.

- (3) An order issued under subdivision 1, clause (b), or affirmed or dissolved under subdivision 2 is a final order for purposes of appeal and either party aggrieved by the order may appeal within 10 days after the entry of the order. If the party appealing remains in possession of the premises, bond shall be conditioned to pay all the costs of the appeal, to abide by the order the court may make and to pay all rent and other damages justly accruing to the party excluded from possession during the pendency of the appeal.
- (4) Any provisions, whether oral or written, of any lease or other agreement whereby any provision of this section is waived by a tenant is contrary to public policy and is void.

#### §18-7-119. HUD Representative Authorization

If applicable, as part of the FHA § 248 Program, representatives of the Department of Housing and Urban Development are authorized to have access to property included in the program for the purpose of serving the property in case of recovery of possession and restitution of the property.



## CHAPTER EIGHT REDEMPTION

### §18-8-101. Redemption Allowed

The Mortgagor, within one year from the date of the Order Confirming the Sale, may redeem the premises sold, or any separate portion thereof, by paying the amount bid therefor, with interest thereon from the time of sale at the rate provided to be paid on the mortgage debt, not to exceed eight percent per annum, and, if no rate is provided in the mortgage, at the rate of six percent, together with any costs and fees, as determined by the Tribal Court.

### §18-8-102. Redemption Procedures

- (1) The person desiring to redeem shall pay to the person holding the right acquired under such sale, or for her to the Tribal Police, who made the sale, or her successor in office, the amount required by law for such redemption, and shall produce to such person or officer:
  - (a) A copy of the docket of the judgment, or of the deed or mortgage, or of the record or files evidencing any other lien under which she claims a right to redeem, certified by the officer in whose custody such docket, record or files shall be, or the original deed or mortgage, with the certificate of record endorsed thereon.
  - (b) Any assignment necessary to establish her claim, verified by the affidavit of herself or a subscribing witness thereto, or some person acquainted with the signature of the assignor. If the redemption is under an assignment of a judgment, the assignment shall be filed in the court rendering the judgment, as provided by law, and the person so redeeming shall produce a certified copy thereof, and of the record of its filing and the copy of the docket shall show that the proper entry was made upon the docket.
  - (c) An affidavit of herself or her agent, showing the amount then actually due on her lien.
- (2) Within twenty-four hours after such redemption is made, the person redeeming shall cause the documents so required to be produced to be filed with the Tribal Recording Clerk, who shall endorse thereon the date and hour of filing, and shall preserve the same in her office for one year thereafter.

### §18-8-103. Certificate of Redemption

- (1) The person or officer from whom such redemption is made shall make and deliver to the person redeeming a certificate executed and acknowledged in the same manner as a conveyance, containing:

- (a) The name of the person redeeming, and the amount paid by her on such redemption;
  - (b) A description of the sale for which such redemption is made and of the property redeemed, and
  - (c) A statement of the claim upon which such redemption is made and if upon a lien, the amount claimed to be due thereon at the date of redemption.
- (2) If redemption is made by the owner of the property sold, her heirs, personal representatives, or assigns, such certificate shall be recorded within four days after the expiration of the year allowed her for redemption, and if made by a creditor holding a lien, the certificate shall be recorded within four days after such redemption. Unless so recorded, the certificate shall be void as against any person in good faith redeeming from the same person or lien.

§18-8-104. Effect of Redemption

If redemption is made by the owner of the Property sold, her heirs, personal representatives or assigns, such redemption shall annul the sale and any lease of the property. If the Mortgagor redeems the Property after the Property has been leased to the Tribe, a Tribal member or a non-Tribal member, the Mortgagor must allow the Tribe, Tribal member or non-Tribal member 60 days to vacate the Property.

## CHAPTER NINE MISCELLANEOUS PROVISIONS

### §18-9-101. Severability

If any section of any part of this Ordinance or the application thereof to any party, person, or entity or, in any circumstances, shall be held invalid for any reason whatsoever by the Tribal Court, the remainder of the part or Ordinance shall not be affected thereby and shall remain in full force and effect as though no part thereof has been declared to be

### §18-9-102. Sovereign Immunity

Nothing in this Ordinance shall be construed as a waiver of the Tribe's sovereign immunity. Any waiver of the Tribe's sovereign immunity from suit contained in a mortgage document shall be given effect only to the extent necessary for a Mortgagee to obtain specific performance of any obligations of the Tribe.

### §18-9-103. Applicability of this Ordinance

This Ordinance shall apply with respect to leases and mortgages of Property within the exterior boundaries of the Spirit Lake Reservation or within the jurisdiction of the Spirit Lake Tribe.

### §18-9-104. Use of Language From Other Laws

Inclusion of language, definitions, procedure, or other statutory or administrative provisions of other Tribal, state or federal jurisdictions in this Ordinance shall not be deemed an adoption of that law by the Spirit Lake Tribe and shall not be deemed an action deferring to any other jurisdiction by the Spirit Lake Tribe where such jurisdiction is concurrent or does not otherwise exist.

### §18-9-105. Jurisdiction

The provisions of this Ordinance shall apply to all persons and property subject to the governing authority of the Tribe, including, without limitation, all persons occupying or in possession of any premises located within the exterior boundaries of the Spirit lake Reservation. The Tribal Court shall have exclusive jurisdiction to hear and adjudicate all actions arising from this Ordinance, including, but not limited to, leases, subleases or related contracts.