

TITLE 21

NISQUALLY INDIAN TRIBE
EVICTON PROCEDURES

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TITLE 21
NISQUALLY INDIAN TRIBE
EVICCTIONS PROCEDURES

21.01 GENERAL PROVISIONS

21.01.010 Title

This Title shall be known as the Eviction Procedures Code of the Nisqually Indian Tribe.

HISTORICAL AND STATUTORY NOTES

This Title adopted by Tribal Council Resolution 19-2011, dated February 17, 2011. It replaces and supercedes the prior Title 21 in its entirety.

21.01.020 Purpose

The purpose of this title is as follows:

- (a) To ensure that people receive due process before being removed from their homes;
- (b) To protect the rights of property owners; and
- (c) To promote the welfare of all community members by allowing them to live peacefully in safe neighborhoods.

21.01.030 Jurisdiction

The provision of the Title shall apply to all persons and property subject to the governing authority of the Nisqually Indian Tribe.

21.01.040 Leases Requiring Secretarial Approval

Leases requiring approval by the Secretary of the Interior are subject to federal law governing such leases. No such lease may be cancelled except as provided by federal law. This chapter shall apply immediately upon such cancellation becoming final for the Department of Interior.

21.01.050 Definitions

- (a) Court shall mean the Nisqually Tribal Court as established by the laws of this Tribe or such body as may now or hereafter be authorized by the laws of the Tribe to exercise the powers and functions of a court of law.

- (b) Criminal Activity means any activity which constitutes a violation of the Nisqually Criminal Code, or which would constitute such a violation if done by a person subject to the criminal jurisdiction of the Tribe. ‘
- (c) Emergency Housing means housing provided by Nisqually Indian Tribal Housing in accordance with the Tribe’s Emergency Housing Policy.
- (d) Gender (singular or plural). Reference to persons by terms denoting one sex shall be taken as referring to either sex. Reference to persons by a term denoting the singular shall include the plural.
- (e) Lessor shall refer to the Tribe, the Nisqually Housing Authority, or to any other person or entity who shall have an interest in real property which for a limited time has been leased or rented to another; and the term lessor shall also include the Tribe, an Indian Housing Authority, or any other person or entity that has leased real property under a Mutual Help and Occupancy Agreement, Rental Lease Agreement or other similar arrangement whereby the tenant may, on certain conditions, obtain ownership of the occupied property at the end of the occupancy under the agreement.
- (f) Nuisance is the maintenance on real property of a condition which:
 - (i) Unreasonably threatens the health or safety of the public or neighboring land users; or,
 - (ii) Unreasonably and substantially interferes with the ability of neighboring property users to enjoy the reasonable use and occupancy of their property.
- (g) Owner shall mean any person or entity having an ownership interest in real property, and includes, with respect to property held in trust, any person or entity having any legal or beneficial interest in the property.
- (h) Real Property refers to lands and all appurtenances thereto which are not the personal property of the tenant, including buildings, crops and mineral rights.
- (i) Secretary means the Secretary of the Interior or his or her authorized representative.
- (j) Tenant shall mean any person who occupies real property under a lease, rental agreement or other agreement with a lessor as defined in this section.
- (k) Tribe shall refer to the Nisqually Indian Tribe.
- (l) Unlawful Detainer Action shall be a suit brought before the Court to terminate a tenant's interest in real property and/or to evict any person from occupancy of real property.
- (m) Waste is the spoilation or destruction by a tenant of land, buildings, gardens, trees or other improvements which result in substantial injury to the lessor's interest in the property. "Waste" includes, but is not limited to, any failure to maintain utility and/or other services which leads to the degradation of the property value.

- (n) Writ of Restitution is an order of the Court:
 - (i) Restoring an owner or lessor to possession of real property and,
 - (ii) Evicting a tenant or other occupant therefrom.

HISTORICAL AND STATUTORY NOTES

Subsection 21.01.050(c) was added to this section by Tribal Council Resolution 58-2011 dated May 24, 2011.

21.01.060 Repealer

This Title is to be interpreted to supersede and replace any prior evictions codes or ordinances and any conflicting provisions of any other laws of the Nisqually Tribe.

21.01.070 Severability

The invalidity of any section, clause, sentence, or provision of this Title shall not affect the validity of any part of this Title that can be given effect without such invalid part or parts.

21.02 UNLAWFUL DETAINER ACTION

21.02.010 Unlawful Detainer

A tenant or other occupier of land shall be guilty of unlawful detainer if such person shall continue in occupancy of real property under any of the following situations:

- (a) Without the requirement of any notice:
 - (i) After the expiration of the term of the lease or other agreement; or
 - (ii) If such person has entered onto or remains on the real property of another without the permission of the owner and without having a lease, title of the property, or a beneficial ownership interest in the property; or
 - (iii) After the Tribe's Housing Authority has terminated such person's tenancy pursuant to procedures providing such person a hearing before the Housing Authority involved; or
 - (iv) After the interest of such person in a lease has been foreclosed in a leasehold mortgage foreclosure proceeding in the Court; or
 - (v) After a lease requiring Secretarial approval has been canceled and the cancellation has become final for the Department of the Interior.
 - (vi) When the Tribe has determined that a tenant has violated the terms of the Tribe's Emergency Housing Policy or any agreement entered into thereunder.

- (b) After having received three (3) days' notice, the tenant or occupier shall remain in possession of the property contrary to the terms of the notice, as follows:
 - (i) When such person has received notice to vacate the premises because the tenant or occupier, or any guest of the tenant or occupier has engaged in drug related criminal

activity, gang related criminal activity, or other criminal activity which imminently threatens health, safety, or the right to peaceable enjoyment of neighboring properties.

(ii) When such person has received notice that there exists on the rented or leased premises a condition which constitutes an imminent and substantial threat to public health and/or safety and he has been given notice, in the alternative to either repair such condition or to surrender the property.

(iii) When such person has received notice to vacate the property because the tenant had committed or permitted substantial waste upon the premises, or has erected, permitted or maintained any unreasonable or substantial nuisance on or about the premises.

(c) After having received thirty (30) days' notice, the tenant or occupier shall remain in possession of the property contrary to the terms of the notice as follows:

(i) When such person has received notice:

(A) That he is in default in the payment of rent; and

(B) requiring him, in the alternative, to pay the rent or surrender possession of the occupied property; and such person has remained in possession after receipt of such notice without either surrendering the possession of the property or paying the rent; or,

(ii) When the lease of the property is for an indefinite time, with rent to be 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,

(iii) When such person shall continue to fail to keep or perform any condition or covenant of the lease or agreement under which the property is held after he has been given notice to either perform such condition or covenant or to surrender the property; or,

(iv) When such person continues to commit or to permit waste upon or maintain a nuisance upon the occupied property after having been given notice, in the alternative, either to cease such waste or maintenance of a nuisance or to surrender to property.

HISTORICAL AND STATUTORY NOTES

Subsection 21.02.010(a)(vi) was added to this section by Tribal Council Resolution 58-2011 dated May 24, 2011.

21.02.020 Procedures for Service of Notice

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

(a) Delivering a copy personally to the tenant or occupier or to any member of his family residing on the premises who is eighteen (18) years of age or older; or,

(b) Posting said notice in a conspicuous place near the entrance of said premises, and by sending additional copies to the tenant or occupier by regular mail and by certified mail, return receipt requested, properly addressed, postage prepaid. It is not necessary for the defendant to pick up the copy sent by certified mail for such service to be valid.

- (c) Proof of service by either of the above methods may be made by affidavit of any person eighteen (18) years of age or older stating that he or she has complied fully with the requirements of 1 of 2 methods of service. In any case involving the Nisqually Housing Authority, service may be made by a Housing Authority employee.

21.02.030 Complaint and Summons

An owner, a lessor, or the Tribe on behalf of a Tribal member owner or lessor may commence an action for unlawful detainer. When the action is commenced by an owner of an undivided interest in the property or by the Tribe on behalf of such owner, the other owners of undivided interests shall have a right to intervene in the action if they choose, but shall not be deemed to be necessary parties to the action. The action for unlawful detainer shall be commenced by filing with the Court, in writing, the following documents:

- (a) A complaint, signed by the owner, lessor, an agent, or attorney, stating:
 - (i) The facts on which he or she seeks to recover;
 - (ii) The type of notice, if any, which was given to the tenant or occupier, and the date and manner of service of such notice;
 - (iii) A description of the property so that it can be identified with reasonable certainty; and,
 - (iv) Any claim for damages or compensation due from the persons to be evicted.
- (b) A summons issued as in other cases requiring the defendants to appear for a trial upon the complaint on a date and time specified in the summons.
 - (i) The trial date specified shall be not less than ten (10) nor more than ninety (90) days from the date of service of the summons and complaint; provided that, if the complaint is in regard to a tenant in the Tribe's emergency housing program, the trial date may be as soon as three (3) days from the date of service.
 - (ii) The summons must notify the defendants that the judgment will be taken against them in accordance with the terms of the complaint unless they file with the court a timely answer and appear for trial at the time, date and place specified in the summons.

HISTORICAL AND STATUTORY NOTES

Subsection 21.02.030(b)(i) was amended by Tribal Council Resolution 58-2011 dated May 24, 2011.

21.02.040 Service of Summons and Complaint

A copy of the summons and complaint shall be served upon the defendants as follows:

- (a) By delivering a copy personally to the tenant or occupier or to any member of his family residing on the premises who is eighteen (18) years of age or older.
- (b) If, after every reasonable effort is made, the person attempting service is unable to serve the defendants in the above stated manner, the summons and complaint may be served by posting the summons and complaint in a conspicuous place near the entrance of the premises, and by sending additional copies to the tenant or occupier by regular mail and

by certified mail, return receipt requested, properly addressed, postage prepaid. It is not necessary for the defendant to pick up the copy sent by certified mail for such service to be valid.

- (c) Proof of service may be made by affidavit of any person eighteen (18) years of age or older stating that he has complied fully with the requirements for service. In any case involving the Nisqually Housing Authority, service may be made by an Housing Authority employee.
- (d) If service is made in the manner described in subsection (b), the affidavit of service must describe the efforts that were made to personally serve the defendant.

21.02.050 Answer

The defendants' answer to the summons and complaint must be received by the plaintiff and filed with the Court no later than 4:00 p.m. two days prior to the date set for hearing of the matter.

21.02.060 Power of the Court

- (a) The Court shall enter a Writ of Restitution if:
 - (i) Notice of suit and trial is given by service of summons and complaint in accordance with the procedures provided in this Title; and,
 - (ii) The Court shall find by a preponderance of the evidence that the occupier of the real property is guilty of an act of unlawful detainer.
- (b) Upon issuance of a Writ of Restitution, the Court shall have authority to enter against defendants a judgment for damages. Such damages may include, but are not limited to the following: back rent; unpaid utilities; any other unpaid obligations under defendants' lease; charges due the Tribe, Nisqually Housing Authority, any other Tribal entity, and the owner under any lease or occupancy agreement (not including under a leasehold mortgage); any other damages arising from breach of the lease; damages caused by the defendants to the property other than ordinary wear and tear; reasonable rental value or other measure of trespass damages where the property was occupied without a lease; and any other damages incurred by the owner as a result of the acts that constituted the unlawful detainer. The Court shall have jurisdiction to award such damages even if the property has been vacated by the defendant prior to the filing of the action (but within the limitation period provided for by Tribal law) or prior to the issuance of a Writ of Restitution.
- (c) A plaintiff may request that the Court enter a final appealable judgment issuing a Writ of Restitution prior to entry of a final judgment awarding damages. Such request shall freely be granted whenever it appears that the determination of damages might otherwise delay issuance of the Writ of Restitution.

- (d) The Court shall have authority to award the prevailing party his costs and reasonable attorney fees.
- (e) The Court shall have the authority to order wage garnishment and other methods of satisfying the judgment in accordance with Tribal procedures.
- (f) Whenever more than one person or entity has an undivided interest in the property, a judgment for damages shall include damages to all such undivided interests. In such a case, whenever the judgment is satisfied in full or in part, the funds received in satisfaction of the judgment shall be deposited with the Court. The Court shall then distribute the funds as follows:
 - (i) As to property held in trust by the United States, the funds shall be forwarded to the Superintendent, Puget Sound Agency, Bureau of Indian Affairs, for distribution to the beneficial owners.
 - (ii) As to property not held in trust by the United States, the Court shall distribute such funds to the owners in proportion to their ownership interests. The Court may hold supplemental proceedings to determine such distribution and may order that the plaintiff provide notice of the supplemental proceedings to others having undivided interests in the property.
- (g) A judgment rendered pursuant to this Title shall not preclude an owner from bringing a subsequent action against the defendant for damages (including but not limited to lost rental income) incurred after the date of the judgment as a result of the events that constituted the unlawful detainer.

21.02.070 Writ of Restitution

The Writ of Restitution shall provide that:

- (a) The eviction is to be carried out within twenty (20) days after the Writ has been issued;
- (b) The tenant shall be allowed three (3) days to vacate the premises voluntarily;
- (c) The officers enforcing the Writ of Restitution are authorized to use force when effectuating an eviction;
- (d) An owner or the owner's representative shall secure the real property by changing the locks on any structure or building located thereon;
- (e) Any and all personal property remaining on real property following an eviction shall be inventoried and stored by an owner or the owner's representative in a reasonably secure place;
- (f) Property inventoried and stored by an owner or the owner's representative shall be returned to the tenant after the tenant has paid the actual or reasonable storage costs,

whichever is less, or until it is sold or disposed of by an owner or the owner's representative in accordance with subsection G;

- (g) In the event that personal property is not retrieved by the tenant within ten (10) days after the date the eviction is carried out, an owner or the owner's representative shall have the authority to dispose of the property, provided, that before disposing of any property, an owner or the owner's representative must determine if any of the property could reasonably be valued at \$500 or more and, if so, an owner or the owner's representative must attempt to sell such property at an auction. Notice of the auction must be posted at the Tribal Administration Building and mailed to the evicted tenant at the tenant's last known address at least five (5) days prior to said auction; and
- (h) Any moneys collected from the auction in excess of the actual cost of inventorying and/or warehousing the personal property may be applied against moneys owed an owner or the owner's representative. Any moneys remaining thereafter shall be held by an owner or the owner's representative for the benefit of the tenant for a period of one year from the date of sale, and if no claim is made by the tenant for recovery thereof prior to the expiration of that time period, the balance shall become the property of an owner or the owner's representative, including any interest paid thereon.

21.02.080 Service of Writ

The Writ of Restitution shall be served on the defendant in the manner specified in Section 21.02.020.

21.02.090 Requests for Reconsideration/Appeals

- (a) If either party feels aggrieved by the judgment of the Court he or she may request reconsideration or appeal as in other civil actions; PROVIDED, that if the defendant requesting reconsideration or appealing desires a stay of proceedings he or she must petition the Court for a stay of execution of its order pending appeal. The Court may grant a stay of execution only when:
 - (i) An appeal has been filed;
 - (ii) All money damage awards and judgments have been satisfied or, a bond has been posted in an amount sufficient to cover such awards and judgments; and,
 - (iii) A bond has been posted by the occupier with the Court Clerk in an amount equal to one month's rent, or other amount ordered by the Court.
- (b) There shall be no appeal from the Court's decision to grant or deny a stay of execution.

21.03 ENFORCEMENT

21.03.010 Enforcement

Upon the issuance of a Writ of Restitution by the Court, tribal law enforcement officers or other authorized law enforcement officers shall enforce the Writ or Restitution by evicting the defendants and their property from the premises which are unlawfully occupied.

21.03.020 Return of Writ

The tribal law enforcement officers or other authorized law enforcement officers shall return their copy of the Writ of Restitution to the Court accompanied by a written affirmation that the eviction has been enforced in accordance with the Writ of Restitution. The copy of the Writ and the affirmation shall be filed with the court no later than thirty (30) days after the Writ of Restitution was issued.