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REVISED NORTHERN CHEYENNE LAW &
ORDER CODE

TITLE 15
PROPERTY CODE

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NORTHERN CHEYENNE TRIBAL LANDLORD AND TENANT RIGHTS CODE

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TITLE 15 PROPERTY

Chapter 1. NORTHERN CHEYENNE TRIBAL LANDLORD AND TENANT RIGHTS CODE

15-1-1. Jurisdiction and Scope

A. This Chapter shall govern relationships between all landlords-tenants, on lands, improvements and property subject to the governing authority of the Northern Cheyenne Tribe, as established by the Tribal Constitution, Tribal Code, or applicable federal law.

Additionally, this Chapter shall enumerate the rights and due process of law which both landlords and tenants are entitled to, and shall govern the unlawful detainer process which applies to foreclosure evictions, once a Judgment of Foreclosure has been issued pursuant to the Northern Cheyenne Tribal Mortgage Lending Code.

1. "Landlords" are owners of improvements upon real property which the landlord either owns or has a leasehold interest, who have authorized the right of occupancy thereof; to another.
2. "Tenants" shall include all renters, lessees, and sublessees, whose right of occupancy is authorized by the landlord or his agent.
3. "Homebuyers" shall be used in a broad sense, and shall include all mortgagors, borrowers, purchasers, and sublessees whose title or right to possession is based upon a mortgage agreement, contract for deed, Mutual Help and Occupancy Agreement or some other contractual instrument.
4. "Mortgagees/Lenders/Sellers" shall include all owners of improvements upon real property, or holders of a financial interest therein.

B. Notwithstanding the provisions set forth herein, with the exception of the procedures for unlawful detainer actions, the Northern Cheyenne Tribal Housing Authority (NCTHA) may prescribe and implement its own policies which do not conflict with this Chapter.

C. With regard to unlawful detainer actions, all landlords, including the NCTHA, must comply with the provisions set forth herein; except in cases of recovery of abandoned units; provided that the tenant(s)/homebuyer(s) are no longer in actual possession of the unit, and the Occupancy Agreement has been properly terminated. Actual possession requires physical residence. Storage of personal property is not sufficient.

D. With regard to foreclosure eviction actions, all mortgagees must comply with the applicable eviction provisions set forth herein, except in cases of abandoned foreclosed units. Once a Judgment of Foreclosure has been issued pursuant to the Northern Cheyenne Tribal Mortgage Lending Code, abandoned foreclosed units may be recovered without the necessity of filing an

unlawful detainer action; provided that the mortgagor(s) are no longer in actual possession of the unit. Actual possession requires physical residence. Storage of personal property is not sufficient.

15-1-2. Grounds for Termination and Eviction.

(NOTE: A mortgagee's authority to foreclose a mortgage, and the procedures for the foreclosure of a mortgage is specifically controlled by the Northern Cheyenne Tribal Mortgage Lending Code. Once a Judgment of Foreclosure has been issued pursuant to the Northern Cheyenne Tribal Mortgage Lending Code, and the Mortgage is properly foreclosed, the eviction procedures contained herein shall apply).

A landlord (other than a mortgagee) has the authority to terminate an agreement for the rental; lease, sublease, or occupation, or Mutual Help and Occupancy Agreement, (hereinafter all generally referred to as "Occupancy Agreement") of a dwelling or housing unit ("unit") when any of the following occurs:

- A. A serious violation of any term or condition of the Occupancy Agreement and/or repeated violations of any term or condition of the Agreement, including repeated minor violations.
- B. Non-payment of rent, under an Occupancy Agreement, when such payments are not made after thirty (30) calendar days of the payment due date, or thirty (30) calendar days following the first day of the month with regard to a month to month tenancy. For purposes of this chapter, any occupancy which is not supported by a valid lease or rental agreement for a longer period of time, shall be deemed to constitute a month to month tenancy;
- C. Arrears in rent payments, costs or damages which have been due and owing for thirty (30) calendar days or more. The receipt by a landlord of partial payments under an Agreement shall not excuse the payment of any balance due upon demand; nor shall it constitute a waiver of any right the landlord may have to require timely payments in the future.
- D. Tenant/homebuyer, or any member of their household, or any guest or visitor of the household, engages in any nuisance, property damage and/or destruction or injuries to property, persons and/or peace of the community or community residents, or injuries and/or damage to common areas and property.
- E. Tenant/homebuyer, or any member of their household, or any guest or visitor of the household, is convicted of a serious crime, (including "no contest" pleas), which was committed on or off the premises. Serious crimes shall include but are not limited to drug related crimes, bootlegging, violent crimes, sex crimes, burglary, and arson.

- 1. Drug-related crimes include, but are not limited to, the illegal manufacture, sale, distribution, use, or possession of a controlled substance, as defined in the

Federal Controlled Substance Act, with intent to manufacture, sell, distribute, on or off the premises of the unit.

2. Eviction proceedings related to the commission of a crime, may only be commenced after a tenant, tenant family member or their guest or visitor has been convicted of a serious criminal offense which occurred on or off the premises of the unit.

F. Abandonment of the unit. Abandonment exists where the tenant/homebuyer and their family listed as part of the household composition is absent from the unit for a period of over thirty (20) continuous calendar days without authorization of the landlord. The continued presence of tenant/homebuyer's personal belongings in the unit does not affect the status of the unit as abandoned.

1. Unlawful detainer actions are not required for the recovery of abandoned units. Once the abandonment of a unit has been determined as set forth above, the landlord may recover the abandoned unit by conspicuously posting a copy of the Notice of Termination of Occupancy and Eviction, on the door of the unit, and mailing the Notice to the tenant's last known address by certified mail. Such Notice must comply with the requirements of Section 15-1-3, herein. If the tenant fails to cure the abandonment by the deadline, the landlord may thereafter immediately recover possession of the unit.

G. Occupation of a unit without the permission of the landlord, or a written Occupancy Agreement, shall be deemed trespass. The refusal by a trespasser to vacate the premises, upon the demand by the landlord or his agent, to quit the premises, shall subject the trespasser to immediate removal from such premises, without right to any notice, and subject to payment of pro rata rent and actual damages.

15-1-3. Notice of Termination of Occupancy and Eviction.

(NOTE: A mortgagee's authority to foreclose a mortgage, and the procedures for the foreclosure of a mortgage is specifically controlled by the Northern Cheyenne Tribal Mortgage Lending Code. Once a Judgment of Foreclosure has been issued pursuant to the Northern Cheyenne Tribal Mortgage Lending Code, and the mortgage is properly foreclosed, the eviction procedures contained herein shall apply.)

When a landlord (non-mortgagee) desires to obtain possession of a unit, and when there exist~ legal cause to terminate the Occupancy Agreement and evict the tenant, as set forth at Section 15-1-2 herein, the landlord shall serve the tenant, or an adult member of the tenant's household, with a Notice of Termination of Occupancy and Eviction, addressed to an) adult tenant of the unit.

A. Requirements. The Notice shall include the following information;

1. Name and address of the tenant, and in the case of NCTHA units, the unit number must be identified;
2. A statement of the specific ground (s) for termination and eviction, pursuant to Section 15-1-2 herein.
3. A statement that the Occupancy Agreement has been terminated and that the tenant must quit the premises on or before a specific date, not less than thirty (30) calendar days from the date that the Notice was mailed. If the grounds for termination are remediable, the Notice shall state the required remedy to be performed and that the deadline for such performance is the date by which the tenant must quit the premises, in accordance with Section 15-1-3(C);
4. A statement that the tenant is required to quit possession of the unit on a specific date, should the tenant fail to remedy the grounds for termination by such date (if termination is remediable), pursuant to Section 15-1-3(C);
5. A statement that if the tenant has not remedied the situation and does not quit possession of the unit by the required date, the landlord may file a civil court action for unlawful detainer.

B. In the case of abandonment, pursuant to Section 15-1-3(F), a statement that if the tenant does not repossess the unit and make any unpaid payments by the required date, the Occupancy Agreement will not be reinstated; and that the landlord may recover possession of the unit after such date, without any further proceedings. Any unclaimed personal belongings will be treated in accordance with Section 15-1-3(F).

C. Remedy of Grounds.

1. If it is a first offense and the grounds for termination and eviction is remediable by repairs, the payment of rent and/or damages, or otherwise; and the tenant adequately remedies the situation, including payment of any enforcement related costs incurred by the Landlord, before the date to quit the premises specified in the Termination and Eviction Notice; the tenant's right of occupancy will not terminate and the tenant will not be required to quit possession. In such cases, the Occupancy Agreement will be fully reinstated.
2. Notwithstanding remedy by the tenant, if the tenant has repeated the same offense, constituting grounds for termination and eviction, two or more times, the landlord at his/her option, may elect to proceed with termination and eviction proceedings.
3. In the case of abandonment, remedy is accomplished if the tenant repossesses the unit and pays any and all unpaid rent and enforcement costs incurred by the Landlord, by the required date.

4. Terminations based upon conviction of a criminal offense, pursuant to 15-1-2 (E), are not remediable.

D. Time Periods. The Termination and Eviction Notice must be mailed or delivered to the tenant, pursuant to Section 15-1-3(E), within the following periods of time:

1. Not less than thirty (30) calendar days prior to the date to quit specified in the Notice.

2. In situations in which there is an emergency, such as fire or condition making the unit unsafe or uninhabitable; or in situations involving an imminent or serious threat to public health or safety, or serious damage to the unit, the Notice may be delivered within a period of time which is reasonable, given the situation.

E. Service of Notice. The Termination and Eviction Notice must be in writing and delivered to the tenant in the following manner:

1. Personal service to the tenant or any adult member of the household composition, residing in the unit; or

2. Delivery may be accomplished by mailing the Notice to the tenant's last known address, by certified mail, with return receipt requested, and conspicuously posting a copy of the Notice on the front door of the unit;

3. In cases of abandonment, service may be accomplished by mailing the Notice to the tenant's last known address, by certified mail, with return receipt requested, and conspicuously posting a copy of the Notice on the front door of the unit.

F. Disposition of Tenant's Personal-Belongings. Upon termination of the Occupancy Agreement, and after the tenant has vacated the unit, the landlord may take possession of the tenant's personal belongings left in the unit and at his option either dispose of such belongings or sell them. The tenant shall be responsible for any storage costs incurred by the landlord, not to exceed thirty (30) calendar days, and the landlord may file a small claims action for collection of such costs. The receipt of any monies from the sale of such property shall apply first towards the costs of such storage and disposal; and secondly to any unpaid rent or other bill owed to the landlord by the tenant. The landlord shall have no liability to the tenant for any property which is left in the unit after the tenant has vacated the unit.

15-1-4. Failure to Comply with Termination and Eviction Notice. In the event the tenant fails to voluntarily vacate the premises by the required date, or fails to remedy the grounds for termination and eviction by the required date, the tenant must Vacate the premises immediately or be subject to an action for unlawful detainer.

15-1-5. Unlawful detainer.

Upon the failure of the tenant/homebuyer to comply with the Notice of Termination and Eviction, or the failure of a mortgagor to comply with a Judgment of Foreclosure, the landlord or mortgagee may file a civil court action for unlawful detainer,

A. Definitions.

1. An action for unlawful detainer means any suit brought in Tribal Court to evict any person from occupancy of real property and any unit, dwelling or improvements thereupon.

a. A person is guilty of unlawful detainer if he or she;

i. Holds over any lands, dwellings, tenements, or other improvements on real property after termination of his or her right to possession, either due to expiration of the Occupancy Agreement, or through the procedures set forth at Section 15-1-3 herein, or through the mortgage foreclosure procedures set forth under the Northern Cheyenne Tribal Mortgage Lending Code.

b. An unlawful detainer occurs if a tenant/homebuyer or mortgagor fails or refuses to quit possession of the premises under any of the following situations:

i. After the expiration of the term of the Occupancy Agreement;

ii. After termination of the Occupancy Agreement through the procedures set forth at Section 15-1-3 herein;

iii. Upon entering onto or remaining on the real property of another without permission of the owner and without having any substantial claim to the property; or

iv. After the NCTHA has terminated such person's tenancy pursuant to this Chapter or any procedures established by the NCTHA.

v. After a tenant has executed a written document stating his/her voluntary termination of the Occupancy Agreement

vi. After the Tribal Court has issued a Judgment of Foreclosure, foreclosing the interest of the Homebuyer/Borrower/Mortgagor and each other defendant, including Subordinate Lienholders, in the mortgaged property, and granting title to the property to the Lender/Mortgagee or the Lender's Designated Assignee, pursuant to the Northern Cheyenne Tribal Mortgage Lending Code.

B. Procedural Requirements. The following guidelines must be observed before any action for unlawful detainer is taken:

1. The tenant/homebuyer must have been provided notice pursuant to Section 15-1-3.
2. The mortgagor must have been provided the due process required pursuant to the Northern Cheyenne Tribal Mortgage Lending Code; and a Judgment of Foreclosure must have been issued in conformance with the provisions thereof.
3. If the NCTHA is bringing the action, the tenant must have been afforded an opportunity to request a hearing before the NCTHA Board of Commissioners.

C. Requirements of Action in Tribal Court. The Rules of Civil Procedure, set forth at Title IV of the Northern Cheyenne Law and Order Code shall generally control any actions brought for unlawful detainer in the Northern Cheyenne Tribal Court, except that:

1. In addition to the requirements for Complaint and Summons imposed under the Rules of Civil Procedure, the Complaint must include the following:
 - a. The facts which entitle plaintiff to possession of the property and authorize the action;
 - b. Description of the property so it can be identified with reasonable certainty;
 - c. Any claim for damages or compensation due from the persons to be evicted; and
 - d. In cases of foreclosure evictions, the complaint must contain the information required pursuant to the Northern Cheyenne Tribal Mortgage Lending Code.
2. A hearing upon a Petition for unlawful detainer is subject to the following time frames:
 - a. Defendant shall have ten (10) calendar days from the service of the Petition to file a response;
 - b. The Court shall conduct a hearing within fourteen (14) calendar days of the deadline for Defendant to file a response, provided the parties are given at least five (5) calendar days written notice of the hearing.
 - c. The Court must issue a decision within five (5) calendar days of the hearing.

E. Defenses. In any action for unlawful detainer, it shall not be a defense to such action that the tenant is unable to pay rent or other monthly payments when due.

F. Writ of Restitution.

1. If judgment is entered for the plaintiff; the Court shall order that the defendant pay to the plaintiff all costs, damages, and rent found to be due and unpaid at the time of judgment, plus-litigation costs. The Court shall grant a Writ of Restitution, granting plaintiff possession of the premises, and a Warrant of

Removal, commanding the Jaw enforcement authorities to immediately remove the defendant from the premises.

2. If judgment is entered for the defendant, the court shall order that the plaintiff pay the defendant's litigation costs, and if it appears that the plaintiff has acquired possession of the premises since commencement of the action, a Writ of Restitution, and if applicable, a Warrant of Removal, shall issue in favor of the defendant.

G: Order of Repossession.

1. In a foreclosure eviction action, if judgment is entered for the plaintiff; the Court shall order that the defendant pay to the plaintiff all costs, damages, payments, and rent found to be due and unpaid at the time of judgment, plus litigation costs. The Court shall issue an Order of Repossession, granting plaintiff possession of; and title to, the premises, and a Warrant of Removal, commanding the Jaw enforcement authorities to immediately remove the defendant from the premises.

2. In a foreclosure eviction action, if judgment is entered for the defendant, the court shall order that the plaintiff pay the defendant's litigation costs, and if it appears that the plaintiff has acquired possession of the premises since commencement of the action, a Writ of Restitution, and if applicable, a Warrant of Removal, shall issue in favor of the defendant.

H. The proceedings under an unlawful detainer action shall not bar an action for criminal trespass, waste, small claims or any other action at law or equity.

15-1-6. Appeal.

The Superior Court and Appeals Code, codified at Title II of the Northern Cheyenne Tribal Law and Order Code, and Rule 38 of the Tribal Court Rules of Civil Procedure, codified at Title IV, shall govern any appeal from the decision of the Trial Court in an unlawful detainer action.