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TITLE 45

UNLAWFUL DETAINER

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CHAPTER 1

GENERAL PROVISIONS

45.01.010 Authority.

This Title is enacted pursuant to Art. VI, §§ 1(a) and 1(h), of the Constitution and Bylaws of the Nooksack Indian Tribe of Washington.

45.01.020 Purpose.

The purpose of this Title is to protect the real and personal property rights of all persons and entities subject to this Title and to establish a peaceable process by which a real property owner may regain possession of his or her property following the occupation of the property by another.

45.01.030 Title.

This Title shall be known as Unlawful Detainer Act.

45.01.040 Construction.

Provisions under this Title shall be liberally construed to promote the purposes outlined herein.

45.01.050 Jurisdiction.

The provisions of this Title shall apply to all persons and property subject to the governing authority of the Tribe as established by the Tribal Constitution and Bylaws.

45.01.060 Definitions.

- A. "Conveyed Unit" shall mean a Housing Unit previously subject to a Mutual Help Homeownership Opportunity agreement that has been legally transferred from the NIHA (or Tribe) to the unit owner.
- B. "Leasehold Mortgage Foreclosure" shall mean a Leasehold Mortgage Foreclosure under Title 44.
- C. "Lessor" shall refer to the Tribe, Nooksack Indian 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 an Indian Housing Authority which 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 occupancy under the agreement; the term lessor shall also include a person or entity who

Title 45 - Nooksack Tribal Unlawful Detainer Act
Amended by Res. No. 23-054, dated April 11, 2023

was the seller under a contract for the purchase of an interest in a home which was been forfeited or terminated; the term lessor shall also include a mortgagee who has been assigned a lease in a Leasehold Mortgage Foreclosure Proceeding in Tribal Court.

- D. “Manufactured or Mobile Home” shall mean either a manufactured home or a mobile home and may include:
1. single-family dwelling built according to the United States department of housing and urban development manufactured home construction and safety standards act, which is a national preemptive building code and
 2. a factory-built dwelling built prior to June 15, 1976, to standards other than the United States department of housing and urban development code, and acceptable under applicable state codes in effect at the time of construction or introduction of the home into the state.
- E. “Nuisance” is the maintenance on real property of a condition which:
1. Unreasonably threatens the health or safety of the public or neighboring land users; or,
 2. Unreasonably and substantially interferes with the ability of neighboring property users to enjoy the reasonable use and occupancy of their property.
- F. “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.
- G. “Tribal Court” shall mean the 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.
- H. “Tribe” shall refer to the Nooksack Indian Tribe as defined in the Tribal Constitution.
- I. “Unlawful Detainer Action” shall be a suit brought before the Tribal Court to terminate a tenant’s interest in real property and/or to evict any person from occupancy of real property.
- J. “Waste” is spoil 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.
- K. “Writ of Restitution” is an order of the Tribal Court:
1. Restoring an owner or lessor to possession of real property and,
 2. Evicting a tenant or other occupant.

CHAPTER 2

UNLAWFUL DETAINER PROCEEDINGS

45.02.010 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. After the expiration of the term of the lease or other agreement; or
- B. If such person has entered onto or remains on the real property of another without the permission of the owner and without having any substantial claim of a lease or to title of the property; or
- C. After the Nooksack Indian Housing Authority has terminated such person's tenancy pursuant to their Policies and Procedures; or
- D. When the person fails to keep or perform any condition or covenant of the lease or agreement under which the property is held; or
- E. When such person continues to commit or permit waste upon the property or maintain a nuisance upon the occupied property; or
- F. After the interest of such person in a lease has been foreclosed in a leasehold mortgage foreclosure proceeding in the Tribal Court.

45.02.020 Complaint and Summons.

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

- A. A complaint, signed by the owner, lessor, an agent, or attorney, stating:
 - 1. The facts on which he seeks to recover.
 - 2. Describing the property so that it can be identified with reasonable certainty; and
 - 3. Any claim for rents, 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. The trial date specified in the summons shall be not less than 5, nor more than 45 days from the date of service of the summons and complaint. The summons must notify the defendants that judgment will be taken against them in accordance with the terms of the complaint unless they file

with the court an answer and appear for trial at the time, date and place specified in the summons.

45.02.030 Service of Summons and Complaint.

A copy of the summons and complaint may be served upon the defendant(s) in any one of the following:

- A. Delivering a copy personally to the tenant or occupier or to any adult member of the family resident on the premises and filing with the Tribal Court a certificate of service; or
- B. Posting said notice in a conspicuous place near the entrance to said premises and sending an additional copy to the tenant or occupier by first class mail and filing an affidavit with the Tribal Court, or
- C. Mailing by certified mail, return receipt requested, proof of mailing filed with the Tribal Court.

45.02.040 Hearing.

The hearing shall be a summary judgment hearing based on the evidence submitted the day of the hearing. The Tribal Court must consider all proof in favor of the defendant(s). Once the plaintiff proves there are no genuine issues for trial, the burden shifts to the defendant(s) to set out specific facts that demonstrate there are genuine issues for trial. Partial payment of arrears does not constitute cure.

45.02.050 Jury.

In all actions under this Title neither party may elect trial by jury.

45.02.060 Judgment by Default.

If on the date appointed in the summons the defendant does not appear or answer, the tribal court shall render judgment in favor of the plaintiff as prayed for in the complaint.

45.02.070 Authority of the Tribal Court.

- A. Except for a Writ of Restitution entered pursuant to subsection (B), the Tribal Court shall enter a Writ of Restitution, with an eviction date no later than fourteen (14) days after the entry of the order of evictions, unless a later date is agreed to by the parties, if:
 - 1. Notice of suit and hearing is given by service of summons and complaint, in accordance with the procedures provided in this Title; and
 - 2. The Tribal Court finds that the occupier of the real property is guilty of an act of unlawful detainer.
- B. Absent good cause for extending the sixty (60) day maximum identified herein, the

Tribal Court shall enter a Writ of Restitution for any owner (or other occupier) of a Conveyed Unit, Manufactured or Mobile Home occupying real property, with an eviction date no earlier than thirty (30) days and no later than sixty (60) days after the entry of the order of evictions, unless a later date is agreed to by the parties, if:

1. Notice of suit and hearing is given by service of summons and complaint, in accordance with the procedures provided in this Title; and
2. The Tribal Court finds that the occupier of the real property is guilty of an act of unlawful detainer.

45.02.080 Issuance of the Writ of Restitution.

Upon issuance of a Writ of Restitution, the Tribal Court shall have the authority to enter against the defendant(s) a judgment for the following: back rent; unpaid utilities; any charges due to the Tribe, Nooksack Indian Housing Authority, or land owner under any lease or occupancy agreement (not including under a leasehold mortgage); and for damages caused by the defendants to the property other than ordinary wear and tear.

45.02.090 Amendments.

Amendments may be allowed by the Tribal Court at any time before final judgment, upon such terms as to the court may appear just, in the same manner and to the same extent as in civil actions.

45.02.100 Continuances.

Except by agreement of all parties, there shall be no continuances that will interfere with the enforcement of the Writ of Restitution.

45.02.110 Emergency Writ.

Upon a showing by clear and convincing evidence, the plaintiff may seek an *ex parte* emergency writ of restitution based on the defendant(s) committing or about to commit egregious waste to the property. The writ shall be valid for seventy-two (72) hours. Following entry of an *ex parte* emergency writ of restitution, the Court shall:

- A. Set a date for a hearing to be held within three (3) days after entry of an emergency writ of restitution.
- B. Cause the order to be delivered to the Nooksack Tribal Police Department for enforcement purposes and for service upon the respondent.

45.02.120 Enforcement.

Upon the issuance of a Writ of Restitution by the Tribal Court, tribal law enforcement officers or other authorized law enforcement officers shall enforce the Writ of Restitution by

evicting the defendants and their property from the premises, which are unlawfully occupied.

45.02.130 Abandonment/Personal Property Removed.

Any personal property, specifically including a Conveyed Unit, or a Manufactured or Mobile Home, not removed prior to execution of a Writ of Restitution shall be deemed abandoned and the Tribe or Nooksack Indian Housing Authority shall have no liability regarding any personal property removed thereafter and pursuant to a Writ of Restitution. In the event that a Conveyed Unit, or a Manufactured or Mobile Home, is abandoned following execution of a Writ of Restitution, the Tribe or Nooksack Indian Housing Authority may move the Court for an order of abandonment and order quieting title to the subject property.

45.02.140 Liability for Abandoned Property.

The tenant of occupier shall be liable for any removal or storage costs of personal property abandoned pursuant to a Writ of Restitution.

45.02.150 Liens.

The Tribe or Nooksack Indian Housing Authority shall have a lien upon all personal property, including a Conveyed Unit or Manufactured or Mobile Home, located upon its Real Property, for rent, labor, late fees, and costs of the sale, present or future, incurred pursuant to any rental agreement, for expenses necessary for the preservation, sale, or disposition of personal property, and judgments for the same, subject to this Title. The lien may be enforced consistent with Tribal law. However, any lien on property titled with another jurisdiction which has attached and is set forth in the documents of title shall have priority over any lien created pursuant to this Title.

CHAPTER 3

APPEALS

45.03.010 Appellate Review/Stay Bond.

Any party aggrieved by the judgment may seek appellate review of the judgment. If the defendant(s) desires a stay of execution, a hearing will be held requiring the defendant(s) to execute and file a bond for the amount of the judgment, the defendant shall be ordered to abide by the orders of the tribal court, and the defendant shall be ordered to pay all rents and other damages justly accruing to the plaintiff during the pendency of the appeal.

45.03.020 Effect of Stay Bond.

When the defendant appeals and files a bond, all further proceedings in the case shall be stayed until the determination of the appeal.

45.03.030 Writ of Restitution Suspended Pending Appeal.

If a writ of restitution has been issued previous to the taking of an appeal by the defendant, and said defendant shall execute and file a bond as provided in this chapter, the tribal court judge shall give the appellant an order allowing such appeal; and upon the service of such order upon the tribal law enforcement having such writ of restitution and they shall cease all further proceedings by virtue of such writ; and if such writ has been completely executed the defendant shall be restored to the possession of the premises, and shall remain in possession until the appeal is determined.

CHAPTER 4
MISCELLANEOUS

45.04.010 Effective Date.

This Title shall be effective from the date of its approval by the Tribal Council.

45.04.020 Amendments.

The Council may amend this Title by a majority vote of a quorum at duly called meeting.

45.04.030 Severability and Savings Clause.

If any provision of this Title, or its application to any party, is held invalid, that provision shall be stricken and severed from the remainder of this Title and the remainder of the Title shall be unaffected.

45.04.040 Pending Actions.

Any action pending at the date of the amendment of this Title shall not be affected by amendment of this Title, and the action shall proceed pursuant to prior provisions of the Nooksack Tribal Code or regulations enacted pursuant thereto.

45.04.050 Sovereign Immunity.

This Title does not, and shall not be construed to, waive the sovereign immunity of the Nooksack Indian Tribe or its officers or employees, except as specifically stated herein. Nothing herein shall be deemed a waiver of the Tribe's sovereign immunity to permit in any manner whatsoever, the payment of monetary damages or attorney's fees relating to claims arising from any claim identified herein, or create any private right of action except as stated herein.

LEGISLATIVE HISTORY

Adopted by Resolution No. 82-395, dated February 26, 1982

Recodified by Resolution No. 82-433, dated July 6, 1982

Amended by Resolution No. 00-033, dated October 12, 2000

Amended by Resolution 03-032, dated March 4, 2003

Amended by Resolution 04-049, dated June 22, 2004

Amended by Resolution No. 19-114, dated Sept. 18, 2019.

Amended by Resolution No. 23-054, dated April 11, 2023



NOOKSACK TRIBAL COUNCIL

4979 Mt. Baker Hwy, Suite G.
PO Box 157
Deming, WA 98244

RESOLUTION #23-054____ April 11, 2023

TITLE: Amendment of Unlawful Detainer Title to Remove typographical error.

WHEREAS, the Nooksack Indian Tribe is a party to the Treaty of Point Elliot dated January 22, 1855, 12 Stat. 927, and is a sovereign, federally-recognized Indian Tribe; and

WHEREAS, the Nooksack Tribal Council is the governing body of the Nooksack Indian Tribe in accordance with Article III, Section 1 of its Constitution and Bylaws approved by the Deputy Assistant Secretary of Indian Affairs on September 24, 1973, as amended; and

WHEREAS, the health, safety, welfare, education, economic security, employment and preservation of cultural and natural resources are primary goals and objectives of the Nooksack Indian Tribe; and

WHEREAS, NLO 45.02.040 contains a redundancy that apparently arose as the result of a typographical error; and

WHEREAS, the Nooksack Tribal Laws and Ordinances should not contain redundancies and typographical errors; and

NOW THEREFORE BE IT RESOLVED, that the third sentence of NLO 45.02.040 shall be amended to read "Once the plaintiff proves there are no genuine issues for trial, the burden shifts to the defendant(s) to set out specific facts that demonstrate there are genuine issues for trial."; and

BE IT FURTHER RESOLVED, that the Chairman (or other councilperson in his/her absence) is hereby authorized and directed to execute this resolution and any documents connected here within, and the Secretary (or other councilperson in his/her absence) are authorized and directed to execute the following certification.

CERTIFICATION

I, the undersigned do hereby certify that the Nooksack Tribal Council is composed of eight (8) members, of which 8 were present, constituting a quorum of a duly called meeting thereof held on this 11 day of April 2023 and that the above Resolution #23-054____ approving

Resolution #23-054____

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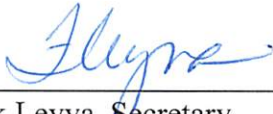
the *Amendment of unlawful detainer Title to remove typographical error*, was duly enacted by the Council Members vote of: 7 FOR, 0 OPPOSED, and 0 ABSTENTIONS, and since its approval this resolution has not been altered, rescinded, or amended in any way.

Dated this 11 day of April 2023.



Rosemary LaClair, Chairwoman
Nooksack Tribal Council

ATTEST:



Frank Leyva, Secretary
Nooksack Tribal Council