

Evictions Procedures of the Coquille Indian Tribe

Adopted August 26, 1995

1. Title
This section shall be known as EVITION PROCEDURES of the Coquille Indian Tribe.
2. Jurisdiction
The provision of this title shall apply to ALL persons and property subject to the governing authority of the Coquille Tribal Council as established by the Coquille Tribal Constitution and Bylaws.
3. Definitions
 - (a) Tribe shall refer to the Coquille Indian Tribe as defined in Public Law 101-42 and the Coquille Constitution.
 - (b) 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.
 - (c) Lessor shall refer to the Tribe, Coquille 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 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.
 - (d) Secretary shall mean the Secretary of the United States Department of Housing and Urban Development (HUD) or his or her designee, attorney or agent, or the assignee of the Secretary.
 - (e) Tenant shall mean any person who occupies real property under a lease, rental agreement with a lessor as defined in this section.
 - (f) 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.
 - (g) Writ of Restitution is an order of the Tribal Court:
 - (1) Restoring an owner or lessor or the Secretary to possession of real property and,
 - (2) Evicting a tenant or other occupant therefrom.
 - (h) 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.
 - (i) 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.
 - (j) 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.

4. Unlawful Retainer

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

- (a) Without the requirement of any notice:
 - (1) After the expiration of the term of the lease or other agreement; or
 - (2) 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
 - (3) After an Indian Housing Authority or other Public Housing Authority has terminated such person's tenancy pursuant to procedures providing such person a hearing before Housing Authority involved; or
 - (4) After the interest of such person in a lease has been foreclosed in a leasehold mortgage foreclosure proceeding in the Tribal Court.
- (b) After having received 30 days' notice, the tenant or occupier shall remain in possession of the property contrary to the terms of the notice as follows:
 - (1) 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,
 - (2) 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 30 days prior to the end of the month or period; or,
 - (3) When such person shall continue to fail to keep or perform any condition or covenant of the lease 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,
 - (4) 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 or to surrender the property.

5. 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 adult member of his family residing on the premises; or,
- b) 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.

Proof of service by either of the above methods may be made by affidavit of any adult person stating that he or she has fully complied with the requirements of 1 of 2 methods of service.

6. Complaint and Summons

The owner of real property or lessor or the Secretary 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, the Secretary, 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 damages or compensation due from the persons to be evicted; and
- (b) A summons issued as in other cases required 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 not be less than 6 nor more than 30 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.

7. Service of Summons and Complaint

A copy of the summons and complaint shall be served upon defendants in the manner provided by the Tribal Court rules for service of process in civil matters. In absence of such Tribal Courts rules, the summons and complaint shall be served by one of the methods authorized in 39.05.010 above.

8. Power of the Tribal Court

The Tribal Court shall enter a Writ of Restitution if:

- (a) Notice of suit and trial is given by service of summons and complaint in accordance with the procedures provided in this Title; and,
- (b) The Tribal Court shall find that the occupier of the real property is guilty of an act of Unlawful Retainer.

Upon issuance of a Writ of Restitution, the Tribal Court shall have authority to enter against the defendants a judgment for the following: back rent; unpaid utilities; charges due the Coquille 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. The Tribal Court shall have authority to award to the prevailing party his costs and reasonable attorney's fees in bringing suit.

9. Continuances in Cases Involving the Secretary

Except by agreement of all parties, there shall be no continuances in cases involving the Secretary which will interfere with the requirements in 39.09.010 that the Writ of Restitution in a case involving the secretary be enforced not later than 60 days from the date of service of the summons and complaint.

10. Enforcement

Upon issuance of a Writ of Restitution by the Tribal Court, Tribal law enforcement officers shall enforce the Writ of Restitution by evicting the defendants and their property

from the premises which are unlawfully occupied. In all cases involving the Secretary, the Writ of Restitution shall be enforced not late than 60 days after the date of service of the summons and complaint.

11. **Alternate Remedies**

In those cases in which the persons or property are subject to the jurisdiction of the courts of the State of Oregon or the United States, the remedies and procedures provided by this section are in the alternative to the remedies and procedures provided by laws of the State of Oregon or the United States.