

TITLE 18 – HOUSING AND CONSTRUCTION

CHAPTER 4 – HOUSING CODE

Legislative History: The Tohono O’odham Nation Housing Code was enacted and codified as 18 T.O.C. Chapter 4 by Resolution 07-080 effective February 9, 2007; amended by Resolution No. 15-212 (adopting May 2015 amendments) effective June 3, 2015, provided that the amendment deleting Article 6 is applicable only in a district adopting a resolution making that amendment applicable within its boundaries.

Related History: As of June 3, 2015, the Gu Achi District Council and Sells District Council had adopted resolutions making the Article 6 amendments adopted by Legislative Council Resolution No. 15-212 applicable within those districts.

TOHONO O’ODHAM NATION HOUSING CODE

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¹ Article 6 is inapplicable in a district which adopts a resolution approving the amendments made by Resolution No. 15-212. Article 6 remains in effect in any district that has not adopted such a resolution.

TOHONO O'ODHAM NATION HOUSING CODE

ARTICLE 1 - GENERAL PROVISIONS

§ 4101 **Applicability.**

The Tohono O'odham Nation Housing Code ("Code") shall apply to any and all arrangements, formal or informal, written or verbal, for selling, buying, renting, leasing, occupying, or using any and all housing, dwellings, or accommodations for human occupancy and residence. It shall also apply to any and all mortgages and agreements to secure an interest in a building for human occupancy and residence within the territorial jurisdiction of the Nation. Nothing in this Code shall be interpreted to prevent any person from leasing, renting, or occupying a traditional home constructed with traditional Tohono O'odham materials and methods.

The following arrangements are not governed by this Code:

- (A) Residence at a public or private institution, if incidental to detention or for the purpose of receiving medical, geriatric, educational, counseling, religious, or similar services; or
- (B) Occupancy in a hotel, motel, or other commercial lodging.

§ 4102 **Definitions.**

As used in this Code, the following definitions shall apply unless the context plainly requires otherwise:

- (A) *Action, suit or lawsuit, claim, complaint, or defense* shall include any dispute between persons or entities which relate to the sale, rental, use or occupancy of any housing, dwelling, or accommodation for human occupancy, including but not limited to monetary claims and claims for damages.
- (B) *Adult* is any person 18 years of age or older.
- (C) *Borrowers/Mortgagor* includes the Nation, the Ki:Ki Association, or any Nation's member who has executed a mortgage or a leasehold mortgage.
- (D) *Building* is a structure and any attachments, annexes, or additions designed for habitation, shelter (e.g., ramada), storage, etc.
- (E) *Building or housing codes* include any law, ordinance, or regulation of the Nation or an agency of the United States which deals with fitness for habitation, health conditions, or the safety, construction, maintenance, operation, occupancy, use or appearance of any dwelling unit.
- (F) *Court* is the Tohono O'odham Judicial Court, including each of its divisions, and any other courts established under the laws of the Tohono O'odham Nation

- (G) *District* means any District of the Nation recognized by the Constitution of the Tohono O’odham Nation or any future law of the Nation.
- (H) *Dwelling unit* is a house or building or portion thereof which is rented or leased as a home or residence by any person.
- (I) *Guest* is any person, other than the tenant, in or around a dwelling unit with the permission and consent of the tenant.
- (J) *Ki:Ki Association* is the Tohono O’odham Ki:Ki Association, a Tribally Designated Housing Entity established by Tohono O’odham Nation Ordinance No. 98-03, as amended.
- (K) *Indian* is any person who is enrolled or eligible for membership in any federally recognized Indian tribe.
- (L) *Indian Country*, the *territorial jurisdiction*, or the *jurisdiction* of the Nation shall include all lands owned by, held in trust for, leased, occupied, or otherwise controlled by the Nation as well as any ownership or use by an entity of the Nation; those terms shall include any and all areas which may constitute the Indian Country of the Nation under applicable provision of its laws or the laws of the United States specifically including allotted lands and privately owned lands within the boundaries of the Nation.
- (M) *Landlord* includes the Tohono O’odham Nation, Ki:Ki Association, a person, entity or federal government agency which is the owner, lessor, or sublessor of a dwelling unit intended for the use of tenants.
- (N) *Lease* is a written agreement, regarding the terms and conditions of the use and occupancy of real property, dwelling unit, building, or premises, including a lease-to-purchase agreement.
- (O) *Lease Mortgage* is the mortgage of lease of property given to secure a loan, and may be created under any federal agency homebuyer program, the Mutual Help Home Ownership administered by the Ki:Ki Association, or any other agreement entered between a borrower/mortgagor and a lender/mortgagee.
- (P) *Lender Designated Assignee*. Any lender as defined in the Code may assign or transfer its interest in a Mortgage or lease and/or leasehold mortgage to a designated assignee. If the mortgage or lease and/or leasehold mortgage falls under a federal agency homebuyer or loan guarantee program, the lender must seek written approval from the Nation of a proposed Designated Assignee any time prior to such assignment, transfer or assumption, except where the U.S. Government and federal agencies guaranteeing or insuring the

mortgage or leasehold mortgage acts as a lender-designated assignee.

- (Q) *Lender/Mortgagee* is any private lending institution established to primarily loan funds and not to invest in or purchase properties, the Tohono O’odham Nation, Ki:Ki Association, or a federal agency which loans money, guarantees or insures loans to a borrower for construction, acquisition, or rehabilitation of a home. It is also any lender-designated assignee or successor of such Lender/Mortgagee.
- (R) *Lessor* is the legal, beneficial, or equitable owner of property under a lease. Lessor may also include the heir, successor, executor, administrator, or assign of the lessor.
- (S) *Lessee* is a tenant of a dwelling unit, user and/or occupier of real property, or the homebuyer under any federal mortgage program. The lessee may, for purposes of federal agency home mortgage programs, be the Ki:Ki Association.
- (T) *Mobile home* is a structure designed for human habitation and for being moved on a street or highway. Mobile home includes prefab, modular and manufactured homes, but not recreational vehicles or commercial coaches.
- (U) *Mortgage* is a lien to secure advances on, or the unpaid purchase price of a building or land, any may refer both to a security instrument creating alien, whether called a mortgage, deed, or other term, as well as the credit instrument, or note secured thereby.
- (V) *Mortgage Foreclosure Proceeding* is a proceeding:
 - (1) To foreclose the interest of the Borrower(s)/Mortgagor(s), and each person or entity claiming through the Borrower(s)/Mortgagor(s), in real property, a building, or in the case of a leasehold mortgage, a lease for which a mortgage has been given under the home purchase program of any federal agency; and
 - (2) To assign where appropriate the Borrower(s)/Mortgagor(s), interest to a designated assignee.
- (W) *Nation* means the Tohono O’odham Nation. Depending upon the context, “Nation” means the government of the Tohono O’odham Nation, a sovereign and federally recognized Indian tribe; reservation lands within the exterior boundaries of the Nation and all lands within the jurisdiction of the Nation.
- (X) *Nuisance* is a condition or situation that interferes with health and safety or the use or enjoyment of property.
- (Y) *Owner* is any person or entity having legal title to all or part of land or a dwelling unit,

including the legal right to own, manage, use, or control a dwelling unit under a mortgage, long-term lease, or any other security arrangement.

- (Z) *Person* includes the Tohono O’odham Nation, Ki:Ki Association, an individual or organization. Depending upon the context, *person* may also mean a public agency, corporation, partnership, or other entity.
- (AA) *Premises* is a dwelling unit and the structure of which it is a part, and all facilities and areas connected with it, including grounds, common areas, and facilities intended for the use of tenants or the use of which is promised for tenants.
- (BB) *Rent* is all periodic payment to be made to a landlord or lessor under a lease.
- (CC) *Subordinate lienholder* is the holder of any lien, including a subsequent mortgage, perfected subsequent to the recording of a mortgage under the Code, except that the Tohono O’odham Nation shall not be considered a subordinate lienholder with respect to any claim regarding a tribal tax on real property.
- (DD) *Tenant* is the lessee, sublessee, or person entitled under a lease or occupancy agreement to occupy a dwelling unit.
- (EE) *Tribal Recording Clerk* is the Nation’s Realty Office administrator or other person designated by the Tohono O’odham Nation to perform the recording functions required by this Code or any deputy or designee of such person.

§ 4103 Jurisdiction.

- (A) Jurisdiction is extended over all buildings and lands intended for human dwelling, occupation or residence which may lie within:
 - (1) The exterior boundaries of the Tohono O’odham Nation;
 - (2) Lands owned by, held in trust for, leased or used by the Nation, its members, the Tohono O’odham Ki:Ki Association, or any other entity of the Nation; or
 - (3) The Indian Country of the Nation, as may be defined by the laws of the Nation or of the United States specifically including allotted lands and privately owned lands within the boundaries of the Nation.
- (B) Jurisdiction is extended over all persons or entities within the jurisdiction of the Nation who sell, rent, lease, mortgage or allow persons to occupy housing, dwellings, or accommodations for the purpose of human dwelling, occupation, or residence, and all

persons who buy, rent, lease, or occupy such structures. Such jurisdiction is extended over all Indian and non-Indian persons and entities whether they have a place of business within the Nation. Any act within the Nation dealing with the subject matter of this Code shall be within the jurisdiction of the Nation.

- (C) Jurisdiction is not extended over dwelling units owned or controlled by the Bureau of Indian Affairs or the Indian Health Service.
- (D) Jurisdiction over all matter arising within the jurisdiction of the Nation with respect to the subjects of this Code, and jurisdiction with respect to any persons or entity acting or causing actions which arise under this Code, shall be exercised by the Tohono O'odham Judicial Court.

§ 4104 Purposes and Interpretation.

This Code shall be interpreted and construed to fulfill the following purposes:

- (A) To simplify the law governing the occupation of the dwelling units, and to protect the rights of landlords and tenants.
- (B) To preserve the peace, harmony, safety, health and the general welfare of the people of the Nation and those entering or residing on the Nation.
- (C) To provide eviction procedures and require landlords to use those procedures when evicting tenants.
- (D) To encourage landlords and tenants to maintain and improve dwellings on the Nation in order to improve the quality of housing as a resource.
- (E) To simplify the law governing the rights, obligations, and remedies of owners, sellers, buyers, lessors, and lessees, of buildings.
- (F) To make financing for the construction and/or the purchase of residences available on trust land within the Tohono O'odham Nation by prescribing procedures for the recording, priority, and foreclosure of mortgages given to secure loans made by or through a government agency or lending institution.

§ 4105 Relation to Other Laws.

- (A) **Applicable Law.** Unless expressly provided for otherwise herein, the laws of the Tohono O'odham Nation shall apply to any action brought under this Code.

- (B) **Other Applicable Laws.** Federal housing laws and regulations, including but not limited to the Native American Housing Assistance and Self-Determination Act of 1996, as amended (“NAHASDA”), 25 U.S.C. §4101 et seq., may apply to actions brought under this Code.
- (C) **Conflicts with Other Laws.**
- (1) **Nation laws:** To the extent that this Code conflicts with laws of the Nation which have been enacted to comply with federal statutes or regulations, such other law of the Nation shall govern over the provisions of this Code if the other law of the Nation has specific applicability and is clearly in conflict with the provisions of this Code.
 - (2) **Except for laws of the Nation referred to in Section (C)(1) above:** All resolutions and ordinances of the Nation heretofore enacted relating to the subject matter of this Code, which are in conflict with this Code, are hereby repealed only to the extent of such conflict.
 - (3) **Federal laws:** To the extent that this Code conflicts with any statute or regulation of the United States, the federal law shall govern if it has specific applicability and it is clearly in conflict with the provisions of this Code.
 - (4) **State laws:** To the extent that the laws of any state may be applicable to the subject matter of this Code, such laws shall be read to be advisory and not binding and shall not govern the relations of the parties.

§ 4106 Severability.

Each provision of this Code shall stand separate and independent of every other provision. If any provision of the Code or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity shall not affect any other provisions or applications of this Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are severable.

ARTICLE 2 - LANDLORD/TENANT RESPONSIBILITIES AND REMEDIES

§ 4201 Rental Agreements.

- (A) **Effect of Rental Agreements.** The provisions of this Code establish the minimum rights and responsibilities of landlords and tenants. A rental agreement may supplement these minimum rights and responsibilities provided the agreement is not inconsistent with

them.

- (B) **Terms Prohibited in Rental Agreements.** Unless expressly authorized by federal law or regulation, no rental agreement (including a lease reinstatement agreement) provision shall be enforceable which requires the tenant to: (1) waive or forfeit his rights or remedies under this Code or any other applicable laws; (2) legally excuse or limit the liability of the landlord or to indemnify the landlord for any liability or responsibility imposed by this Code; (3) permit the landlord to evict the tenant without a court order; or (4) pay a late charge prior to the expiration of the grace period set forth in § 4301 (A).
- (C) **Term of Tenancy.** In the absence of a definite term in the rental agreement, the tenancy shall be month-to-month.
- (D) **Payment of Rent.** In the absence of definite terms in the rental agreement, rent is payable at the landlord's office (if known) or at the dwelling unit. In the absence of definite amount, the amount of rent shall be the fair market value of the rental unit.

§ 4202 Rules and Regulations.

- (A) The landlord may adopt reasonable rules and regulations regarding the use and occupancy of the dwelling unit.
- (B) Such rules and regulations are enforceable against the tenant only if:
 - (1) their purpose is to promote the health, safety, or welfare of the tenants, preserve the landlord's property from abusive use or make a fair distribution of services and facilities for all tenants generally;
 - (2) the rules and regulations are reasonably related to the purpose for which they are adopted;
 - (3) the rules and regulations apply to all tenants in a fair manner;
 - (4) the rules and regulations are sufficiently clear to fairly inform tenants of their rights and duties; and
 - (5) the tenant has notice of the rules and regulations before entering the rental agreement or when such rules or regulations are adopted.
- (C) A rule or regulation that is adopted after the tenant enters into the rental agreement and that would result in substantial modification of the terms of the rental agreement shall not be valid unless the tenant consents to such a rule or regulations in writing.

§ 4203 Landlord Responsibilities. Each landlord who is subject to the provisions of the Code shall:

- (A) Maintain the dwelling unit in a decent, safe, and sanitary condition.
- (B) Comply with applicable building and housing codes.
- (C) Make all necessary repairs to put and maintain the premises in a fit and habitable condition, except when the tenant or purchaser or tenant's guest intentionally make the premises unfit or uninhabitable, in which case the tenant or purchaser shall be responsible for making such repairs.
- (D) Keep common areas clean, safe, and secure.
- (E) Ensure tenant or purchaser access to the dwelling unit.
- (F) Maintain in good condition and safe working order all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, where such things are not the responsibility of the tenant or purchaser or are generated by an installation within the exclusive control of the tenant or purchaser.
- (G) Provide and maintain proper and appropriate receptacles and facilities for the disposal of ashes, garbage, rubbish, and other waste.
- (H) Provide running water, hot water, heat and ventilation in accordance with applicable building and housing codes, except to the extent the tenant or purchaser is required to do so.
- (I) Guarantee the right of quiet enjoyment of the dwelling unit to the tenant or purchaser and ensure that the conduct of other tenants or purchasers, their guest, and other persons on the premises do not cause a nuisance, endangerment of public health and safety breach of peace or interference with the quiet enjoyment of the tenant or purchaser.
- (J) Give sole possession of the dwelling unit to the tenant or purchaser in accordance with a rental agreement and refrain from: (1) entering the unit, except as authorized in § 4204(K); (2) making repeated demands for entry otherwise lawful under § 4204(K) but which have the effect of reasonably harassing the tenant or purchaser; (3) harassing, threatening, or physically assaulting the tenant or purchaser; or (4) locking the tenant or purchaser out of his dwelling unit without the tenant's or purchaser's consent.
- (K) Disclose, in writing, the name, address, and telephone number of the person responsible for receiving rent, notices, and demands under this Code, the person authorized to

manage the dwelling unit, the owner of the premises or his agent, and the person responsible for making repairs, where they are required.

§ 4204 Tenant Responsibilities. Each tenant who is subject to the provisions of the Code shall:

- (A) Pay rent without demand or notice at the time and place agreed upon by the parties.
- (B) Immediately notify the landlord of any defects in the premises hazardous to life, health, or safety.
- (C) Keep the dwelling unit reasonably clean and dispose of all ashes, garbage, rubbish, junk, and abandoned vehicles in a proper, sanitary, and safe manner.
- (D) Use all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances which are part of the dwelling unit or premises, and the property of the landlord, in a proper, safe, sanitary, and reasonable manner.
- (E) Refrain from destroying, defacing, damaging, or removing any part of the dwelling unit, premises, or common areas.
- (F) Pay reasonable charges for the repair or damages, other than normal wear and tear, to the dwelling unit, premises, or common areas caused by the tenant or guest, or to repair such damages as required under the rental agreement, within 30 calendar days of such damage.
- (G) Not disturb the quiet and enjoyment of others or cause a breach of the peace.
- (H) Not give up the dwelling unit to others, assign a lease arrangement, or sublease the dwelling unit without the landlord's written permission.
- (I) Use the dwelling unit only for residential purposes as agreed, and not to use the unit or permit its use for any other purpose, including illegal conduct or any other activity which may harm the physical or social environment of the premises or the area around it. Vending or other activities may be permitted by written agreement with the landlord.
- (J) Abide by all rules and regulations established by the landlord in accordance with § 4203 of this Code.
- (K) Provide the landlord access to the dwelling unit to perform maintenance and repairs, inspect the premises, supply necessary or agreed services, or show the dwelling unit to prospective buyers or tenants, provided that such access shall be at reasonable times when the tenant is present, and upon ten days' written notice from the landlord, except in emergency situations where the health, safety or welfare of the tenant or the tenant's

neighbors is in immediate danger or where the tenant consents. No tenant who unreasonably denies access to a landlord for these purposes may pursue an action or grievance on the grounds that any services or repairs were not provided.

§ 4205 Tenant or Purchaser Remedies.

- (A) Dwelling Unit Conditions. Unless expressly authorized by federal law or regulation, where a landlord has not complied with the landlord's responsibilities regarding dwelling unit conditions, as set forth in § 4203(A)-(K) of this Code, and where the tenant or purchaser has given written notice to the landlord and the landlord has failed, within a reasonable period of time, to cure the landlord's noncompliance, the tenant or purchaser may:
- (1) Withhold rent in cases where the landlord's noncompliance renders the dwelling unit uninhabitable; or
 - (2) Make necessary repairs and deduct the cost of such repairs from the rent; or
 - (3) Pursue an action in the Court seeking:
 - (a) (i) an order compelling the landlord to comply with his responsibilities as set forth in § 4203(A)-(K); (ii) an award of money damages, which may include a retroactive abatement of rent; and/or (iii) such other relief in law or equity as the court may deem proper, provided that no tenant or purchaser may institute such an action if a valid notice to quit based upon nonpayment of rent has been served on the tenant or purchaser prior to pursuing legal action.
 - (b) to terminate the rental or purchase agreement.
- (B) Harassment and Quiet Enjoyment. Where a landlord violates his responsibilities as set forth in § 4203(I) and § 4203(J) of this Code, the tenant or purchaser may:
- (1) Recover damages not less than an amount equal to one month's rent and reasonable attorney's fees.
 - (2) Pursue an action in the Court seeking an order compelling the landlord to comply with his responsibilities as set forth in § 4203(A)-(K), and such other relief in law or equity as the court may deem proper, provided that no tenant or purchaser may institute such an action if a valid notice to terminate lease or mortgage based upon nonpayment of rent has been served on him prior to his filing of the action.
 - (3) Terminate the rental agreement.

- (C) Identification of Landlord. Where a landlord fails to identify himself to the tenant or purchaser in accordance with § 4203(K) of this Code, the tenant or purchaser is under no obligation to pay rent and terminate any existing rental or purchase agreement.

§ 4206 Landlord Remedies.

Where a tenant or purchaser has not complied with this Code or the agreement of the parties, the landlord has the right to:

- (A) Give written notice to the tenant or purchaser to comply with the tenant's or purchaser's obligations, pay any monies due and owing under the agreement of the parties, or to terminate the agreement under which the tenant or purchaser occupies the premises and demand that all occupants leave the premises.
- (B) Require repairs or maintenance which are the responsibility of the tenant or purchaser and compliance with rules and regulations imposed pursuant to § 4202.
- (C) Seek a Court order or judgment for the payment of monies or costs for compliance with the agreements and obligations of the tenant or purchaser, for termination of an agreement, payment of damages, eviction, or any other relief that the landlord may be entitled to by law or by the agreement of the parties.

§ 4207 Abandoned Dwelling Units.

- (A) A landlord may regain possession of a dwelling unit, in accordance with this section, where the tenant has vacated the unit without notice to the landlord and does not intend to return. Intent not to return is shown by the removal by the tenant or tenant's agent of substantially all of the tenant's possessions and personal effects from the premises and either:
 - (1) Nonpayment of rent for two or more months,
 - (2) Terminated water or electrical utility services for more than one month, or
 - (3) The tenant's express statement of intent to not occupy the premises after a specified date.
- (B) The landlord may send notice to the tenant's last-known address both by regular mail, postage prepaid, and by certified mail, return receipt requested, stating that:
 - (1) The landlord has reason to believe that the occupant has abandoned the dwelling unit;

- (2) The landlord intends to reenter and take possessions of the dwelling unit unless the occupant contacts the landlord within ten days of receipt of the notice;
 - (3) If the tenant does not contact the landlord, the landlord intends to remove any possessions and personal effects remaining in the premises and to rent the premises; and
 - (4) If the tenant does not reclaim such possessions and personal effects within thirty days after the notice, they will be disposed of in accordance with § 4413(C) of this Code. This notice shall be in clear and simple language and shall include a telephone number and mailing address at which the landlord can be contacted. If the notice is returned as undeliverable, or if the tenant fails to contact the landlord within ten days of this receipt of the notice, the landlord may reenter and take possession of the dwelling unit, at which time any rental agreement in effect shall terminate.
- (C) The landlord need not comply with procedures set forth in Article 3 of this Code to obtain possession of a dwelling unit which has been abandoned.

ARTICLE 3 - GROUNDS FOR EVICTION; NOTICE TO TERMINATE LEASE OR MORTGAGE; REQUIREMENT/PRE-EVICTION OPTIONS

§ 4301 Grounds for Eviction.

A tenant may be evicted for:

- (A) Nonpayment of rent or purchase payments under an agreement for the lease, purchase or occupation of a dwelling when payments are not made after ten calendar days of the agreed payment date, or ten calendar days following the first day of the month in a month-to-month tenancy.
- (B) Any delinquent rent, purchase payments or other charges which are overdue for 30 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.
- (C) Nuisance, property damage, injuries to any person, disturbing the peace of other tenants, or injuries of damage to common areas.
- (D) Serious or repeated violations of the rental or purchase agreement, any reasonable rules or regulations adopted in accordance with § 4202 of this Code, or any applicable building or housing codes.

- (E) Occupation of any premises without permission or agreement, following any reasonable demand by a person with authority over the premises to leave.
- (F) Under other terms in the rental or purchase agreement which do not conflict with the provisions of this Code.
- (G) Conviction of illegal activities conducted on the premises shall be a violation of the rental or purchase agreement and shall be grounds for automatic eviction.

§ 4302 Notice of Intent to Terminate Lease or Mortgage.

- (A) **When Notice of Intent to Terminate Lease or Mortgage is Required.** When a landlord desires to obtain possession of a dwelling unit, and when there is a legally valid reason to evict the tenant(s) or purchaser(s) as set forth in § 4301, the landlord shall give notice to the adult tenant(s) or purchaser(s) to quit possession according to the provisions of this Article.
- (B) **Purpose of Notice of Intent to Terminate Lease or Mortgage.** The purpose of the notice of intent to terminate lease or mortgage is to provide advance notice to the tenant or purchaser of a specific problem which needs to be addressed. It is also intended to encourage the tenant or purchaser to resolve the problem with the landlord.
- (C) **Statement of Grounds for Eviction Required.** The written notice of intent to terminate lease or mortgage shall be addressed to the renter tenant or purchaser of the dwelling unit and shall state the legally valid reason(s) for terminating the tenancy and the date the tenant or purchaser is required to quit possession of the dwelling unit.
- (D) **Form of Notice.** The notice shall be written substantially in the following form: “I (or we) hereby give you notice that you are to quit possession or occupancy of the dwelling unit now occupied by you at (insert the address or other reasonable description of the location of the dwelling unit), on or before the (insert the date) for the following reasons (insert the legally valid reason(s) for the notice of intent to terminate dwelling unit possession using language from the agreement, ordinance, this Code, or other authority)/Signed (insert signature, name and address of the landlord, as well as the date and place of signing).”
- (E) **Time Requirements for Notice.** The notice must be delivered in accordance with the following time requirements:
 - (1) No less than seven calendar days prior to the date to terminate the lease specified in the notice for any failure to pay rent as required by the agreement.

- (2) No less than three days prior to the date to terminate the lease specified in the notice for nuisance, serious injury to property, injury to persons, or conviction of illegal activity. In emergency situations, such as a fire or condition making the dwelling unsafe or uninhabitable, or in situations involving an imminent or serious threat to public health or safety, the notice may be made in a period of time which is reasonable given the situation.
- (3) No less than 14 calendar days in all other situations.

§ 4303 Serving the Notice of Intent to Terminate Lease or Mortgage.

Any notice of intent to terminate lease or mortgage must be in writing, and must be delivered to the tenant or purchaser in the following manner:

- (A) Delivery must be made by an adult.
- (B) Delivery will be effective when it is:
 - (1) Personally delivered to a tenant or purchaser with a copy delivered by mail, or
 - (2) Personally delivered to an adult living in the premises with a copy delivered by mail, or
 - (3) Personally delivered to an adult agent or employee of the tenant or purchaser with a copy delivered by mail.
- (C) If the notice cannot be given by means of personal delivery, or the tenant or purchaser cannot be found, the notice may be delivered by means of:
 - (1) Certified mail, return receipt requested, at the last known address of the tenant or purchaser, or
 - (2) Securely taping a copy of the notice to the main entry door of the premises, and by posting a copy of the notice in some public place near the premises, including a tribal office, public store, or other commonly-frequented place and by sending a copy first class mail, postage prepaid, addressed to the tenant or purchaser at the premises.
- (D) The person giving the notice must keep a copy of the notice and proof of service in accordance with this section, by affidavit or other manner recognized by law.

§ 4304 Pre-Eviction Options.

- (A) Negotiated Settlement. After a notice of intent to terminate lease or mortgage is served upon a tenant or purchaser, the landlord and tenant or purchaser may engage in discussions to settle the dispute and to avoid a proceeding to evict. The agreement to enter into discussions will not affect the rights of the parties unless the parties reach an agreement to waive any of their rights.
- (B) Stay of Proceedings. Where the parties mutually agree in good faith to proceed with such discussions, and judicial eviction procedures have been initiated, the Court shall stay such proceedings for no more than 30 days. The Court may grant additional stays for no more than 30 days if necessary and upon the agreement of both parties.
- (C) Settlement Options. In reaching an agreement, the parties may consider, but are not limited to the following options:
 - (1) The parties may employ the use of advocates or attorneys.
 - (2) The parties may employ the use of a mediator.
 - (3) The parties may agree to arbitrate the issues in binding arbitration.
 - (4) The parties may agree to establish a payment plan including payment deadlines for the tenant.
 - (5) The parties may agree to payment through an exchange of goods or services, or to any other means of securing a fair exchange of value for the use of the dwelling.
 - (6) The parties may agree to dismiss the matter in exchange for any agreement reached.
 - (7) The parties may agree to a settlement to be ordered by the Court.

ARTICLE 4 - JUDICIAL EVICTION PROCEDURES

§ 4401 Filing a Complaint for Eviction.

If, after the date set in the notice of intent to terminate lease or mortgage for the tenant or purchaser to quit possession of the dwelling unit, the tenant or purchaser has not quit possession, the landlord may file a complaint for eviction in the Court which shall state:

- (1) The names of the adult tenant(s) or purchaser(s) against whom the suit is brought;
- (2) A description of the rental agreement, if any;

- (3) The address or reasonable description of and the location of the premises;
- (4) The grounds for eviction;
- (5) A statement that the notice of intent to terminate lease or mortgage and any required termination notices have been served in accordance with this Code or other applicable law;
- (6) A statement of the relief demanded, including any claim(s) for possession of the dwelling unit, damages, fees, costs, or other special relief; and
- (7) If the landlord is a Tribally Designated Housing Entity, a statement that the Tribally Designated Housing Entity has complied with all required regulatory processes prior to filing the eviction action.

§ 4402 Action Upon Filing Complaint.

When a complaint is filed in the Court, it shall be immediately presented to a Court judge. If the complaint complies with § 4401 and has been served in accordance with the rules of Court, the Court shall issue a summons requiring the respondent defendant to appear before the Court on a certain date to contest the complaint. The appearance date for answering the complaint shall be five working days after the date of the order in matters involving serious nuisance or ten working days in all other cases.

§ 4403 Commencement of Proceedings.

- (A) If the tenant or purchaser appears before the Court in person or in writing to challenge the complaint, the Court shall set a hearing date. Any written response to a complaint for eviction shall state any defenses or factual disputes and, where any defendant appears in person on the appearance date, a written response shall be served upon the plaintiff at least five calendar days prior to any hearing.
- (B) The Court shall set a hearing date which is no more than 15 calendar days following the date for appearance, except the when the hearing date would fall on a weekend or holiday, and in such a situation on the first regular Court day following that date.
- (C) A respondent defendant may, for good cause shown, and upon payment of a reasonable sum for the fair rental value of the premises between the date on which the complaint was filed and the date of the hearing, obtain an extension of time, beyond the 15-day period. The Court may exercise discretion in determining whether to grant such an extension, but shall not extend the date of hearing where the complaint is based upon conduct which is alleged to constitute serious danger to health, safety, or a serious disturbing of the peace.

- (D) The Court may in its discretion and on motion from the landlord order the tenant defendant to pay into the Court rents for the use and occupancy during the pendency of the eviction case.

§ 4404 Defenses.

The Court may grant the relief allowed in this Code, unless it is proven that:

- (A) The premises are unlivable, or constitute a situation where there is a constructive eviction of the tenant or purchaser, in that the premises are in such a condition, due to the fault of the landlord, that they constitute a real and serious hazard to human health or safety and not a mere inconvenience.
- (B) Without good cause, the landlord has failed or refused to make repairs which are the landlord's responsibility after a reasonable demand by a tenant or purchaser to do so and the repairs are necessary for the reasonable enjoyment of the premises.
- (C) There are monies owed to the tenant or purchaser because the tenant or purchaser has been required to make repairs which are the landlord's obligation, and the landlord has failed or refused to make them after a reasonable notice. Such sums may be a complete or partial defense to a complaint for eviction, but only to extent that such sums set off monies owed for occupancy. A tenant or purchaser may be evicted after such a period if the tenant or purchaser fails or refuses to pay the reasonable rent for the premises.
- (D) That due to the conduct of the landlord, there is injury to the tenant or purchaser in such a way that justice requires that relief be modified or denied.
- (E) That the landlord has committed such serious and material breaches of applicable housing law that it would be unjust to grant the landlord relief.
- (F) The landlord is evicting the tenant or purchaser because of the tenant's or purchaser's race, tribal affiliation, sex, sexual orientation, religion, age, marital status, or disability.
- (G) The tenant or purchaser has presented any other valid, equitable defense, including but not limited to fraud, misrepresentation, or breaches of serious and material obligations.

§ 4405 Discovery and Prehearing Proceedings.

Extensive, prolonged, time-consuming discovery and prehearing proceedings will not be permitted, except in the interest of justice and for good cause shown. Discovery shall be informal, and discoverable materials shall be provided upon demand of a party. Requests for discovery shall be completed at least five calendar days before the date of hearing. Requests for

discovery shall be made no later than three working days following the setting of a hearing date. The Court may enter reasonable orders requiring discovery or protecting the rights of the parties.

§ 4406 Standard of Proof.

The standard of proof in all proceedings under this Code shall be the preponderance of the evidence.

§ 4407 Judgment.

- (A) Within five calendar days after the hearing, the Court shall enter judgment and may:
- (1) Order the immediate eviction of a tenant or purchaser and delivery of the premises to the landlord;
 - (2) Grant actual damages as provided in an agreement of the parties, including interest;
 - (3) Order a party to carry out any obligation required by law within a definite time frame;
 - (4) Establish a payment plan including payment deadlines for the tenant or purchaser;
 - (5) Order garnishments, as provided by the laws of the Nation;
 - (6) Establish a power of attorney in another person or agency to fulfill rights or obligations of either landlord or tenant or purchaser;
 - (7) Grant relief, in part or in whole, through appropriate recalculation of rent;
 - (8) Order the tenant or purchaser to perform work for the landlord or the owner to pay off back rent due and/or damages, if agreed to by both parties;
 - (9) Order the payment of attorney fees and, where allowed by law or agreement, costs and expenses of litigation;
 - (10) Order the parties into settlement negotiations as provided in § 4304 of this Code;
or
 - (11) Grant any relief provided in this Code or allowed in law or equity.
- (B) The Court may set a review hearing within 90 calendar days after judgment is entered to determine whether the parties are complying with the Court's orders and whether further

review is necessary.

- (C) If a tenant defendant fails to appear in person at the eviction hearing and there is proof of proper notice as required by this Code and rules of Court, the Court shall enter judgment on behalf of the plaintiff following a hearing to determine whether relief should be granted and the kind of relief that should be granted.

§ 4408 Form of Judgment.

The judgment shall state the relief granted by the Court to any party, but need not state findings of fact or conclusions of law in support of the judgment. The judgment may state brief reasons for it. If a trial is held, the judge should, whenever possible, render a decision immediately after both parties have rested their cases and award costs and restitution as appropriate.

§ 4409 Execution of Judgment.

Any judgment may be immediately executed, and the judgments and orders of the Court shall be enforced by a duly-authorized law enforcement officer. Any law enforcement officer shall, upon receipt of an order of the Court, execute the judgment or order of the Court within five calendar days.

§ 4410 Stay of Execution.

If judgment of possession of the dwelling units is entered in favor of the landlord, the tenant or purchaser may apply for a stay of execution if within five days after the judgment is served on the tenant or purchaser, the following is established:

- (A) Good and reasonable grounds affecting the well-being of the party are stated;
- (B) There would be no substantial prejudice or injury to the prevailing tenant or purchaser during the period of the stay;
- (C) Execution of the judgment could result in extreme hardship for the tenant(s) or purchaser(s); and
- (D) A bond is posted or monies are paid to the Court, to satisfy the judgment and to pay for the reasonable use and occupancy of the premises during the period of time following the judgment. No stay may exceed three months in the aggregate. The clerk of the Court shall distribute such monies to the landlord in accordance with any order of the Court.

§ 4411 Appeals.

Appeals under this Article shall be according to the rules of appellate procedure adopted by the

Court.

§ 4412 Service of Order of Eviction.

Any order of eviction shall be by written order of the Court, and shall be delivered to the tenant or purchaser in the following manner:

- (A) Delivery shall be made by a law enforcement officer of the Nation or any person authorized by the Court.
- (B) Service shall be made in accordance with the provisions of § 4303 of this Code.

§ 4413 Forcible Eviction.

- (A) Where the Court orders an eviction, and the tenant or purchaser or any other occupant of the premises refuses to vacate voluntarily by the effective date of that order, the tenant or purchaser and other occupants may be forcibly removed from the premises by a Nation law enforcement officer of the Nation. At the hearing where the eviction is ordered, the Court shall inform the tenant or purchaser that if the tenant or purchaser does not vacate the premises voluntarily by the effective date, the tenant and the other occupants will be subject to forcible eviction, and their property will be subject to storage, sale, and disposal as set forth in subsection (C) below.
- (B) Following eviction, the Court may allow the landlord, mortgagee, or a law enforcement officer access to any property leased for purposes of preserving and securing it.
- (C) Following forcible eviction of the tenant, the purchaser and/or other occupants, the former occupant's personal property shall be stored by the owner of the premises for at least 30 calendar days, either on the premises or at another suitable location. In order to reclaim their property, the former occupant(s) shall pay the reasonable costs of its removal and storage. If such costs are not paid within 30 calendar days, the landlord or mortgagee is authorized to sell the property in order to recover these costs. Upon request by the former occupants, the landlord or mortgagee shall provide them with pertinent information concerning the sale, including the time, date and location. Any proceeds from the sale in excess of storage and removal costs shall be remitted to the former occupants. Nothing in this section shall be construed to prevent the former occupants from reclaiming property remaining after the sale if they can arrange to do so in a manner satisfactory to the landlord or mortgagee.

§ 4414 No Self-Help Eviction.

Except by mutual consent of the parties, no landlord or mortgagee may compel a tenant or purchaser to vacate any premises by force or in a way which causes a breach of the peace

without giving a notice of intent to terminate lease or mortgage and obtaining a court order as provided in this Code.

§ 4415 Security Deposits.

- (A) Security Deposit Limits. A landlord may demand a security deposit not greater than an amount equal to one month's rent. Additional security deposits may be allowed for special circumstances such as animals or pets or tenant history of prior damages.
- (B) Payment of Security Deposit at Termination of Tenancy. The landlord at the time a tenancy is terminated shall refund to the tenant or purchaser the amount of the security deposit, less any damages suffered as a result of the tenant's or purchaser(s) failure to comply with the tenant's or purchaser(s) obligations. Damages shall not include normal wear and tear.
- (C) Action to Reclaim Security Deposit. Any tenant or purchaser may bring a civil action in the Court to reclaim any part of the deposit which may be due.

ARTICLE 5 - MORTGAGE AND FORECLOSURE

§ 4501 Priority.

All mortgages recorded in accordance with this Article, including leasehold mortgages and loans guaranteed or held by a governmental agency, shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim excepting a lien or claim arising from a tribal leasehold tax assessed after the recording of the mortgage.

§ 4502 Recording.

- (A) The Tohono O'odham Nation Recording Clerk shall maintain in the Tohono O'odham Nation Realty a system for the recording of mortgages and such other documents as the Tohono O'odham Nation designate by law.
- (B) The Tohono O'odham Nation Recording Clerk shall endorse upon any mortgage or other document received for recording;
 - (1) The date and time of receipt of the mortgage or other document;
 - (2) The filing number, to be assigned by the Tohono O'odham Nation Recording Clerk, which shall be a unique number for each mortgage or other document received; and

- (3) The name of the Tohono O’odham Nation Recording Clerk or designee receiving the mortgage or document.

Upon completion of the above-cited endorsements, the Tohono O’odham Nation Recording Clerk shall make a true and correct copy of the mortgage or other document and shall certify the copy as follows:

Tohono O’odham Nation)
)ss.
Tohono O’odham Reservation)

I certify that 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)

(Date)

The Tohono O’odham Nation Recording Clerk shall maintain the copy in the records of the recording system and shall return the original of the mortgage or other document to the person or entity that presented the same for recording.

- (C) The Tohono O’odham Nation Recording Clerk shall also maintain a log of each mortgage or other document recorded in which there shall be entered:

 - (1) The name(s) of the borrower/mortgagor of each mortgage, identified as such;

 - (2) The name(s) of the lender/mortgagee 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 filed or recorded;

 - (4) The date and time of the receipt;

 - (5) The filing number assigned by the Tohono O’odham Nation Recording Clerk or designee receiving the mortgage or document.

- (D) The certified copies of the mortgages and other documents and log maintained by the Tohono O’odham Nation Recording Clerk shall be made available for public inspection and copying during business hours. Rules for copying shall be established and

disseminated by the Tohono O'odham Nation Recording Clerk.

- (E) All mortgages will be recorded with the BIA.

§ 4503 Foreclosure Procedures.

- (A) A Borrower/Mortgagor shall be considered to be in default when the Borrower/Mortgagor is 30 days past due on his mortgage payments(s) to the Lender/Mortgagee.
- (B) Before a Borrower/Mortgagor becomes 90 days delinquent on his mortgage payments and before any foreclosure action or activity is initiated, the Lender/Mortgagee shall complete the following:
 - (1) Make a reasonable effort to arrange a face-to-face interview with the Borrower/Mortgagor. This shall include at least one meeting with the Borrower/Mortgagor at the mortgaged property.
 - (2) Lender/Mortgagee shall make and document at least one telephone call to the Borrower/Mortgagor at a number designated by the Borrower/Mortgagor for the purpose of arranging a face-to-face interview. If no such number is designated or functioning, the Lender/Mortgagee shall attempt to arrange an interview by means of written correspondence.
- (C) Lender/Mortgagee may appoint an agent to perform the services of arranging and conducting the face-to-face interview specified in this section.
- (D) Before the Borrower/Mortgagor has been delinquent for 90 and at least ten days before initiating a foreclosure action in the Court, the lender shall advise the Borrower/Mortgagor in writing by mail or by posting prominently on the dwelling unit, with a copy provided to the Court, as follows:
 - (1) Advise the Borrower/Mortgagor that information regarding the loan and default will be given to credit and bureaus.
 - (2) Advise the Borrower/Mortgagor of home ownership counseling opportunities/programs available through the lender or otherwise.
 - (3) Advise the Borrower/Mortgagor of other available assistance regarding the mortgage/default.
 - (4) In addition to the proceeding notification requirements, the lender/mortgagee shall satisfy the following additional notice requirements when a leasehold mortgage is

involved; (I) notify the Borrower/Mortgagor that if the leasehold mortgage remains in default for more than ninety (90) days, the lender/mortgagee may ask the applicable federal governmental agency to accept assignment of the leasehold mortgage if this a requirement of the federal governmental program; (ii) notify the Borrower/Mortgagor of the qualifications for forbearance relief from the federal government if the mortgage is assigned; and (iii) provide the borrower/mortgagor with names and addresses of federal government officials to whom further communications may be addressed, if any.

- (E) If a Borrower/Mortgagor has been in default for 90 days or more and the Lender/Mortgagee has complied with the procedures set forth in this Section, the Lender/Mortgagee may commence a foreclosure proceeding in the Court by filing a verified complaint as set forth in § 4504 of this Code.

§ 4504 Foreclosure Complaint and Summons. The verified complaint in a mortgage foreclosure proceeding shall contain the following:

- (A) The name of the Borrower/Mortgagor and each person or entity claiming an interest in the dwelling unit including each subordinate lienholder, as a defendant;
- (B) A description of the dwelling unit subject to the mortgage;
- (C) A concise statement of the facts concerning the execution and recording of the mortgage or leasehold mortgage the facts concerning the default of the Borrower/Mortgagor, and such other facts as may be necessary to constitute a cause of action, including facts supporting the Lender/Mortgagee's compliance with the procedures set forth in Section 4503 of this Code.
- (D) True and correct copies of each promissory note, or if a leasehold mortgage, then a copy of the leasehold mortgage, or assignment of the leasehold mortgage relating to the dwelling unit (appended as exhibits); and
- (E) Citation to applicable (1) federal statutes and regulations and (2) Tohono O'odham Nation laws and regulations; and (3) provisions of the lease, leasehold mortgage, or security instrument which allow foreclosure.

§ 4505 Judicial Process.

Adjudication of the complaint shall be in accordance with the rules of civil procedure established by the Court. The court clerk shall issue a summons specifying a date and time for the appearance of the defendant(s).

§ 4506 Cure of Default by Subordinate Lienholder.

Prior to the entry of a judgment of foreclosure, any Borrower/Mortgagor or a subordinate lienholder may cure the default by paying the delinquent amount in full to the Lender/Mortgagee and all reasonable legal and court costs incurred in the foreclosure action. Any subordinate lienholder who has cured a default shall thereafter have included in its lien the amount of all payments made by such subordinate lienholder to cure the default(s), plus interest on such amounts at the rate stated in the mortgage note. There shall be no right of redemption in any leasehold mortgage foreclosure proceeding.

§ 4507 Judgment and Remedy.

- (A) If the alleged default has not been cured at the time of trial and the Court finds for the Lender/Mortgagee, the Court shall enter judgment (1) foreclosing the interest of the Borrower/Mortgagor and each other defendant, including subordinate lienholders, in the mortgage, (2) transferring the mortgage to the Lender/Mortgagee or the lender's designated assignee and (3) ordering the sale of the foreclosed dwelling unit. Said sale shall be executed by a duly authorized law enforcement officer or officer of the Court, appointed by the Court for such purpose in the manner specified by this Code.
- (B) In the case of a leasehold mortgage, the lease shall be assigned to the Lender/Mortgagee or the lender's designated assignee.
 - (1) The lender shall give the Nation the right of first refusal on any acceptable offer to purchase the leasehold mortgage which is subsequently obtained by the lender or lender's designated assignee.
 - (2) The lender or lender's designated assignee may only transfer, sell or assign the lease and/or leasehold mortgage to a Tohono O'odham Nation member, the Nation, or the Tohono O'odham Ki:Ki Association.
 - (3) Any other transfer, sale or assignment of the lease or leasehold mortgage shall only be made to a Tohono O'odham Nation member, the Tohono O'odham Nation, or the Tohono O'odham Ki:Ki Association during the remaining period of the leasehold.

§ 4508 Foreclosure Evictions.

Foreclosure evictions shall be undertaken in accordance with the general eviction process set forth in Article 3 and Article 4 of this Code, provided that foreclosure eviction proceedings shall not occur until after the borrower/mortgager, lessee, or occupier of the dwelling unit has received 30 calendar days' notice, and remains in possession on the property contrary to the terms of the notice. All foreclosure evictions shall occur within 60 days after the Court's written foreclosure decision or judgment is rendered.

§ 4509 Certified Mailing to Lessor.

In any foreclosure proceeding on a lease or leasehold mortgage in which the lessor(s) is not named as a defendant, a copy of the summons and complaint shall be mailed by the plaintiff to the lessor(s) by certified mail, return receipt requested, within five days after the issuance of the summons.

§ 4510 Intervention.

Any lessor may petition the Court to intervene in any lease or leasehold mortgage foreclosure proceeding under this Code. Neither the filing of a petition for intervention by the Nation, nor the granting of such petition by the Court shall operate as a waiver of the sovereign immunity of the Tohono O’odham Nation, except as may be expressly authorized by the Tohono O’odham Nation.

ARTICLE 6 - DISTRICT RIGHTS IN HOMESITE ASSIGNMENTS AFTER FORECLOSURE [Note: limited applicability]²

§ 4601 District Rights in Homesite Assignments.

Each District of the Nation has the sole right under the Constitution of the Tohono O’odham Nation, Article XVI, Section 4, to assign homesites to members of the Nation. Districts may also revoke and reassign homesites in accordance with traditional rules, written or oral, used by the District.

§ 4602 Effect of Foreclosure on Ownership of Homesites.

A foreclosure on the mortgage of a dwelling unit shall affect only the ownership and right of occupancy of the dwelling unit, and shall have no effect on the ownership and right of occupancy of the homesite assignment on which the dwelling unit is constructed.

§ 4603 Procedure for Reassignment of Homesites After Foreclosure.

(A) *Any person or entity which owns a dwelling unit on which a mortgage has been foreclosed, and which seeks to sell the dwelling unit to another purchaser, shall present the name of the proposed purchaser to the District in which the dwelling unit is located for approval of a homesite assignment.*

² Article 6 is inapplicable in a district which adopts a resolution approving the amendments made by Resolution No. 15-212. Article 6 remains in effect in any district that has not adopted such a resolution.

- (B) *The District shall consider the name of the proposed purchaser in accordance with its usual procedures for assignment of homesites.*
- (C) *Upon approving or disapproving the homesite assignment for the proposed purchaser, the District shall notify the owner of the dwelling unit of the District's approval or disapproval.*
- (D) *The steps outlined in subsections (A), (B), and (C)) above may be bypassed if the District Council has previously approved a list of eligible homeowners, and if the person or entity owning the dwelling unit maintains that list as an active waiting list for homes. In that event, the person or entity owning the dwelling unit on which a mortgage has been foreclosed may assign the vacant home to the next person on the District-approved waiting list. The previous District Council approval shall operate as a homesite assignment at the time that the dwelling unit is reassigned. The person or entity reassigned the home shall notify the District Council within 30 days of the reassignment so that the District can update its homesite assignment records.*