

CHAPTER 28 - UNLAWFUL DETAINER

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Section 28-1 Purpose and Jurisdiction

28-1.01 Purpose.

It is the legislative intent and purpose of the Spokane Tribal Council in enacting this Chapter:

- (a) To promote the health, welfare and peace of the people of the Spokane Reservation by providing an orderly, efficient and peaceful method of determining the rights of people to be on the lands of the Spokane Reservation and evicting them when necessary and just to do so.
- (b) To provide a judicial remedy for those who claim they are being evicted wrongfully from their lands or homes.
- (c) To prevent the wrongful damage and destruction of the real property and buildings of the people of the Spokane Reservation.

Readopted 8/01/06, Resolu. 2006-524.

28-1.02 Jurisdiction.

The Spokane Tribe of Indians enacts this Code to apply to all lands under its jurisdiction, namely all lands and water areas within the exterior boundaries of the Spokane Reservation, any extensions of the Reservation, and all Spokane Tribal and allotted Indian lands outside the exterior boundaries of the Spokane Indian Reservation, as well as those lands that fulfill the definition of "Indian Country" as defined in 18 USC Section 1151.

Readopted 8/01/06, Resolu. 2006-524.

Section 28-2 Definitions

28-2.01 Definitions.

For the purpose of this Code, the following words and phrases shall, unless otherwise indicated, have the following meaning:

- (a) "Forcible entry" means any person who enters upon any real property by means of any kind of violence, fraud, intimidation, stealth, or circumstances of terror; or who, by force, threats or menacing conduct, forces the party in actual possession of any real estate to leave.
- (b) "Forcible detainer" means any person who by force or threats of violence, unlawfully holds and keeps the possession of any real property; or who in the nighttime or during the absence of the

occupant of any real property, enters real property and refuses for the period of 3 days to surrender the same to such former occupant when ordered to leave.

- (c) "Secretary" means 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.
- (d) "Unlawful detainer" means a tenant of real property, who has less than a life estate, is guilty of unlawful detainer if:
 - (1) The person continues in possession of, or holds over, real property after the expiration of a lease;
 - (2) The person continues in possession of real property even though there is a default in the payment of rent due and owing under a lease, including a lease-purchase agreement, and he or she has been given notice to either pay the rent within 3 days or vacate the premises during that same period;
 - (3) The person continues in possession of the real property after failing to keep or perform a condition of the lease, including a lease-purchase agreement, and fails to cure the defect within 3 days after notice;
 - (4) The person commits waste or other damage or destruction to the property or the buildings, or allows or carries on any unlawful business or nuisance, and remains in possession after 3 days notice to vacate the premises;
 - (5) A person, who without the permission of the owner, and without having any color of title, enters upon the land of another and who fails to leave after 3 days notice.
 - (6) The person continues in possession of real property after the interest of a person in a Homebuyer Opportunity Agreement or other contract or agreement to purchase a home situated on such property has been forfeited or terminated.
 - A. Such an agreement shall include a lease-purchase agreement under which the option to purchase has been exercised.
 - (7) After the interest of a person in a lease has been foreclosed in a leasehold mortgage foreclosure proceeding.
- (e) "Occupant" means a person who for the 5 days preceding any unlawful entry, was in the peaceable and undisturbed possession of the real property.

Readopted 8/01/06, Resolu. 2006-524.

Section 28-3 Commencement of Action

28-3.01 Notice.

- (a) Before an unlawful detainer action can commence in Tribal Court, the defendant shall be served with a notice to vacate, stating the reasons and also stating the deadline for the defendant to vacate which shall not be less than 3 days nor more than 30 days from the date of service.
- (b) Service on the defendant shall be accomplished in conformity with Section 4 of this Code, namely 4-4.02, 4-4.03, and 4-4.04 of the Code.

Readopted 8/01/06, Resolu. 2006-524.

28-3.02 Commencement of the Action.

After the expiration of the time set by notice in conformity with Section 28-3.01, an unlawful detainer action may be commenced by the filing of the complaint with the Clerk of Tribal Court, noting:

- (a) The names of the plaintiff and defendant;
- (b) When notice to vacate was given and the failure of the defendant to cure the defect or vacate;
- (c) A description of the property and its location;
- (d) Facts upon which the action is based, i.e., failure to pay rent, failure to vacate after the expiration of the lease, etc;
- (e) Any allegations of fraud, force, violence, waste, destruction and any damages because of such;
- (f) The amount of rent due and owing;
- (g) Whether the property is to be restored to the plaintiff.

Readopted 8/01/06, Resolu. 2006-524.

Section 28-4 Summons

28-4.01 Summons.

- (a) Upon the filing of a complaint, the Clerk shall cause to be issued a summons directed to defendant requiring the defendant to appear before the Spokane Tribal Court at a date and time certain which shall be at least 3 days, but no more than 20 days after service of summons and complaint upon the other party.
- (b) Additionally, the summons shall notify defendant that failure to appear at the date and time specified will result in the granting of the relief sought in the complaint.

Readopted 8/01/06, Resolu. 2006-524.

28-4.02 Emergency Hearing.

- (a) If great risk to life or damage to property exists because of a violation of this Chapter, the plaintiff may seek an emergency hearing on the matter.
- (b) Upon a showing that great risk to life or property damage exists, the Court shall take appropriate steps to protect the life of the property at risk, including eviction of the premises, if necessary.
- (c) If the Court finds that sufficient grounds exist for emergency action, the Court shall note the matter for hearing as soon as possible, but not later than 5 days from the date of the emergency hearing.

Readopted 8/01/06, Resolu. 2006-524.

Section 28-5 Service of Summons and Complaint

28-5.01 Service.

A summons, with a copy of the complaint attached, shall be served upon the defendant by personal service, mail or publication in accordance with Chapter 4, Section 4-4.02, 4-4.03 and 4-4.04 of this Code.

Readopted 8/01/06, Resolu. 2006-524.

Section 28-6 Answer by Defendant

28-6.01 Answer by Defendant.

- (a) The defendant in any action brought under this Chapter shall, on the day fixed for his appearance, appear and answer the complaint, stating any claim of title or any grounds by which he claims right to possession of the real property subject to the action.
- (b) The defendant may answer in writing any day prior to the hearing, and serve a copy on the plaintiff prior to the hearing.

Readopted 8/01/06, Resolu. 2006-524.

Section 28-7 Continuance in Cases Involving the Secretary

28-7.01 Continuance in Cases Involving the Secretary.

Except by agreement of all parties, there shall be no continuance in cases involving the Secretary which would interfere with the requirement in 28-8.01 (2) that the property shall be restored to the plaintiff not later than 60 days after the date of service of the summons and complaint.

Readopted 8/01/06, Resolu. 2006-524.

Section 28-8 Judgment

28-8.01 Judgment.

- (a) If there is a finding of the Court in favor of the plaintiff and against the defendant, judgment shall be entered for the restoration of the property.
- (b) The judgment shall declare forfeiture of the lease, agreement or tenancy.
- (c) The Court shall assess damages caused by forcible entry, forcible detainer or unlawful detainer and the amount of any rent due and issue a judgment for twice the amount of the damages plus unpaid rent.
- (d) Any money judgment shall be enforced in conformity with Chapter 4 of the Law and Order Code.
- (e) Any judgment granting the restoration of the property of the plaintiff may be enforced immediately against the defendant, and the judgment shall be a sufficient order to request and receive the assistance of the Tribal Police to carry out the order, and no special order of the Court shall be necessary to do so.
- (f) In all cases involving the Secretary, the property shall be restored to the plaintiff not later than 60 days after the date of service of the summons and complaint.

Readopted 8/01/06, Resolu. 2006-524.

Section 28-9 Criminal Penalties

28-9.01 Criminal Violations.

Any persons guilty of forcible entry or forcible detainer may also be subject to the criminal offenses under Chapters 10 and 12 of this Code.

Readopted 8/01/06, Resolu. 2006-524.