

Ordinance Number 13.200. Amended by Resolution #2004-268, dated June 18, 2004; Resolution No. 2005-361, dated September 16, 2005.

Original Date: June 17, 2000
Subject: Tribal Housing

TRIBAL HOUSING ORDINANCE

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SECTION 1

GENERAL PROVISIONS

§ 13.200 APPLICABILITY

(a) This Ordinance shall be referred to as the “Siletz Tribal Housing Ordinance.” It shall apply to any and all arrangements, formal or informal, written or agreed to orally or by the practice of the parties, in selling, buying, renting, leasing, occupying, or using any and all housing, dwellings, or accommodations for human occupation and residence subject to the jurisdiction of the Siletz Tribe pursuant to the Native American Housing and Self Determination Act (NAHASDA). It shall also apply to any and all mortgages, leasehold mortgages and agreements to secure an interest in a building which is subject to the jurisdiction of the Siletz Tribe.

(b) The following arrangements are not governed by this Ordinance:

- (1) Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar services; or
- (2) Occupancy in a hotel, motel, or other commercial lodging.

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§ 13.201 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 Tribal reservation;
- (2) Lands owned by, held in trust for, leased or used by the Tribe, its members, its housing authority, or any other entity of the Tribe; or
- (3) The Indian Country of the Tribe, as may be defined from time to time by the laws of the Tribe or the United States.
- (4) The Service Area of the Tribe, as defined by the Siletz Restoration Act, 25 U.S.C. § 711 et seq., amendments thereto, and legislative history to those Acts.

(b) Jurisdiction is extended over all persons or entities within the jurisdiction of the Tribe, where tribal members live or have an interest in property, who sell, rent, lease, 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 personal jurisdiction is extended over all persons and entities, whether or not they are members of the Tribe, whether they are Indian or non-Indian, and whether they have a place of business within the Tribal Reservation. Any act within the Reservation dealing with the subject matter of this Ordinance shall be subject to the jurisdiction of the Tribe.

(c) Jurisdiction is extended over:

- (1) All buildings which may lie upon lands owned by, held in trust for, leased or used by the Tribe, its members, its Housing Authority, or any other entity of the Tribe.
- (2) All persons or entities within the jurisdiction of the Tribe who lease, mortgage, or otherwise secure an interest in a building to tribal members of families.

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(d) Jurisdiction over all matters arising within the jurisdiction of the Tribe with respect to the subjects of this Ordinance, and jurisdiction with respect to any person or entity acting or causing actions which arise under this Ordinance shall be exercised by the Tribal Court.

§ 13.202 PURPOSES AND INTERPRETATION

(a) This Ordinance shall be interpreted and construed to fulfill the following purposes:

- (1) To simplify the law governing the occupation of dwelling units, and to protect the rights of landlords and tenants.
- (2) To preserve the peace, harmony, safety, health and general welfare of the people of the Tribe and those permitted to enter or reside on lands within the jurisdiction of the Tribe.
- (3) To provide eviction procedures and to require landlords to use those procedures when evicting tribal members or families.
- (4) To encourage landlords and tenants to maintain and improve dwellings on tribal lands in order to improve the quality of housing as a tribal resource.
- (5) To simplify the law governing the rights, obligations, and remedies of the owners, sellers, buyers, lessors, and lessees, or buildings when tribal members or families are involved.
- (6) To avail the Tribe, tribal entities, and tribal members of financing for the construction and/or purchase of family residences on trust land within the jurisdiction of the Tribe by prescribing procedures for the recording, priority and foreclosure of mortgages given to secure lands made by or through any government agency or lending institution.
- (7) To establish laws and procedures which are necessary in order to obtain governmental funding for tribal housing programs or loan guarantees for private or tribal housing construction, purchase, or renovation.

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§ 13.203 RELATION TO OTHER LAWS

(a) Applicable Law. Unless affected or displaced by this Ordinance, principles of law and equity in the common law of the Tribe and the general principles of law of any other Tribe or any other state may be used as a guide to supplement and interpret this Ordinance.

(b) Other Applicable Laws. Additional tribal and federal laws may apply with regard to tribal housing such policies and procedures for the Siletz Housing Department which are approved by the Siletz Tribal Council and federal governmental housing laws and regulations.

(c) Conflicts With Other Laws.

(1) Tribal laws: To the extent that this Ordinance conflicts with tribal laws or ordinances which have been enacted to comply with statutes or regulations of any agency of the United States, such tribal laws or ordinances shall govern over the provisions of this Ordinance if they have specific applicability and they are clearly in conflict with the provisions of this Ordinance.

(2) Federal laws: Where a conflict may appear between this Ordinance and any statute, regulation, or agreement of the United States, the federal law shall govern if it has specific applicability and if it is clearly in conflict with the provisions of this Ordinance.

(3) State laws: To the extent that the laws of any state may be applicable to the subject matter of this Ordinance, such laws shall be read to be advisory and not directly binding and shall not govern the relations of the parties.

§ 13.204 DEFINITIONS

(a) As used in this Ordinance, the following words will have the meanings given them in this Section unless the context plainly requires otherwise:

(1) “Action, suit or lawsuit, claim, complaint or defense” means any dispute between persons or entities which relates to the sale, rental, use or occupancy of any housing, dwelling, or accommodation for human occupancy, including claims for the payment of monies for such housing, dwellings, or accommodations, damages to such units, condition of such

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units or the relationship between owners and occupiers of such units, including the right to occupy them.

- (2) “Adult person” is any person eighteen (18) years of age or older.
- (3) “Borrower/Mortgagor” is the Tribe, the Siletz Housing Department, or any individual Indians(s) or any heir(s), successor(s), executor(s), administrator(s), or assigns(s) of the Tribe or such Indian(s) or non-Indian(s) who has executed a Mortgage as defined in this Ordinance or a Leasehold Mortgage as defined in this Ordinance .
- (4) “Building” is a structure, and any appurtenances or additions thereto, designed for habitation, shelter, storage and the like.
- (5) “Buildings or housing codes” are any law, ordinance, or governmental regulation of the Tribe or any 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.
- (6) “Dwelling unit” is a house or portion thereof which is rented or leased as a home or residence by any person, not including public transient accommodation, such as hotel rooms.
- (7) “Guest” is any person, other than the tenant, in or around a dwelling unit with the permission and consent of the tenant.
- (8) “He/His:” the use of he/his means he or she, his or her, and the singular includes the plural.
- (9) “Housing Department” is the Siletz Housing Department, created by the Tribal Council for the purpose of constructing and maintaining dwellings for public use within the territorial jurisdiction of the Tribe.
- (10) “Indian” is any person who is a member of a federally recognized Indian tribe.

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- (11) The “jurisdiction” of the Tribe shall include all lands identified in §13.201(a).
- (12) “Landlord” can be the Tribe, Siletz Housing Department, a person, entity or federal government agency which is the owner, lessor, or sublessor of a dwelling unit intended for the use of tenants.
- (13) “Lease” is an agreement, written or oral, as well as valid rules and regulations, regarding the terms and conditions of the use and occupancy of real property, dwelling unit, building, or premises, including a lease-to-purchase agreement.
- (14) “Leasehold Mortgage” is the mortgage of a lease of property given to secure a loan, and may be created under the auspices of any federal agency home-buyer program, the Mutual Help Home Ownership program administered by the Housing Department, or any other agreement entered between a Borrower/Mortgagor and a Lender/Mortgagee.
- (15) “Mortgage Foreclosure Proceeding” is a proceeding:
- (1) To foreclose the interest of the borrowers(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.
- (16) “Lender Designated Assignee” Any lender as defined in the Ordinance 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 home-buyer program or federal agency loan guarantee program, the Lender must seek written approval from the Tribe of a proposed Designated Assignee any time prior to such assignment, transfer or assumption, except where the U.S.

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government and federal agencies guaranteeing or insuring the Mortgage or Leasehold Mortgage acts as a Lender Designated Assignee.

- (17) “Lender/Mortgagee” is any private lending institution established to primarily loan funds and not to invest in or purchase properties, the Tribe, an Indian Housing Authority, or a U.S. government agency which loans money, guarantees or insures loans to a Borrower for construction, acquisition, or rehabilitation of a home including a mobile home. It is also any lender designated assignee(s) or successor(s) of such Lender/Mortgagee.
- (18) “Lessor” is the legal, beneficial, or equitable owner of property under a Lease. Lessor may also include the heir(s), successor(s), executor(s), administrator(s), or assign(s) of the lessor.
- (19) “Lessee” is a tenant of a dwelling unit, user and/or occupier of real property, or the home buyer under any federal mortgage program including the Mutual Help program. The lessee may, for purposes of federal agency home mortgage programs, be the Indian Housing Authority.
- (20) “Mortgage” is a lien as is commonly given to secure advances on, or the unpaid purchase price of a building, mobile home or land, and may refer both to a security instrument creating a lien, whether called a mortgage, deed of trust, security deed, or other term, as well as the credit instrument, or note, secured thereby.
- (21) “Mortgagor/Borrower” - see Borrower/Mortgagor.
- (22) “Mortgagee/Lender” - see Lender/Mortgagee.
- (23) “Mobilehome” is a structure designed for human habitation and for being moved on a street or highway. Mobile home includes modular manufactured homes. Mobile home does not include a recreational vehicle or a commercial coach.
- (24) “Nuisance” is the maintenance or allowance on real property of a condition which one has the ability to control and which unreasonably

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threatens the health or safety of the public or neighboring land users or unreasonably and substantially interferes with the ability of neighboring property users to enjoy the reasonable use and occupancy of their property.

- (25) “Owner” is any person or entity jointly or individually having legal title to all or part of land or a dwelling, including the legal right to own, manage, use, or control a dwelling unit under a mortgage, long-term lease, or any other security arrangement.
- (26) “Person” includes the Tribe, Siletz Housing Department, an individual or organization, and where the meaning of a portion of this Ordinance requires, it means a public agency, corporation, partnership, or any other entity.
- (27) “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.
- (28) “Rent” is all periodic payments to be made to a landlord or lessor under a lease.
- (29) “Rental agreement” - see Lease.
- (30) “Reservation” is the Siletz Reservation in the State of Oregon.
- (31) “Residential Purposes” means use of a dwelling unit as the principal residence of the tenant, but may, upon application to and approval of the Housing Department, include the operation of a small business.
- (32) “Shall,” for the purposes of this Ordinance, will be defined as, mandatory or must.
- (33) “Subordinate Lienholder” is the holder of any lien, including a subsequent mortgage, perfected subsequent to the recording of a Mortgage under this Ordinance, except the Tribe shall not be considered a subordinate lienholder with respect to any claim regarding a tribal tax on real property.

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- (34) “Tenant” is the lessee(s), sublessee(s), or person(s) entitled under a lease or Mutual Help Occupancy Agreement to occupy a dwelling unit to the exclusion of others
- (35) “Tribal Court” is the Court as established by the laws and Constitution of the 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.
- (36) “Recording Clerk” is the person designated by the Tribe to perform the recording functions required by this Ordinance or any deputy or designee of such person.
- (37) “Tribe” is the Confederated Tribes of the Siletz Indians of Oregon.

SECTION 2

LANDLORD/TENANT RESPONSIBILITIES AND REMEDIES

§ 13.205 RENTAL AGREEMENTS

(a) Effect of Rental Agreements. The provisions of this Ordinance, as well as the applicable laws identified in §13.207, establish the minimum rights and responsibilities of landlords and tenants. Unless inconsistent with the provisions of this ordinance, rental agreements may supplement these minimum rights and responsibilities.

(b) Terms Prohibited in Rental Agreements. No rental agreement shall provide that the tenant agrees: (1) to waive or forfeit his rights or remedies under this Ordinance or any other applicable laws as identified in §13.207 and § 13.209; (2) to excuse or limit the liability of the landlord or to indemnify the landlord for that liability or the costs connected therewith; (3) to permit the landlord to dispossess him without resort to court order; or (4) to pay a late charge prior to the expiration of the grace period set forth in § 13.212. A provision prohibited by this subsection shall be unenforceable.

(c) Term of Tenancy. In the absence of a definite term in the rental agreement the tenancy shall be month-to-month.

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(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 terms the amount of rent shall be the fair market value of the rental unit.

§ 13.206 RULES AND REGULATIONS

(a) The landlord may promulgate 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 convenience, safety or welfare of the tenants in the premises, preserve the landlord's property from abusive use or make a fair distribution of services and facilities held out for all the 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 the premises in a fair manner; (4) the rules and regulations are sufficiently explicit in their prohibition, direction or limitation of the tenant's conduct to fairly inform him of what he shall or shall not do to comply; and (5) the tenant has notice of the rules and regulations at the time he enters into the rental agreement or when they are adopted.

(c) If a rule or regulation that would result in a substantial modification of the terms of the rental agreement is adopted after the tenant enters into the rental agreement, such tenant shall be entitled to receive notice of the rule or regulation at least 60 days prior to its effect.

§ 13.207 LANDLORD RESPONSIBILITIES

(a) Except as otherwise provided in a rental agreement or a Mutual Help Occupancy Agreement, each landlord subject to the provisions of this Ordinance shall:

- (1) Maintain the dwelling unit in a decent, safe, and sanitary condition.
- (2) Comply with applicable building and housing codes.
- (3) Make all necessary repairs to put and maintain the premises in a fit and habitable condition, except where the premises are intentionally rendered unfit or uninhabitable by the tenant or his guest, in which case such duty shall be the responsibility of the tenant.
- (4) Keep common areas clean, safe, and secure.

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- (5) Ensure tenant access to the dwelling unit.
- (6) 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 are generated by an installation within the exclusive control of the tenant.
- (7) Provide and maintain proper and appropriate receptacles and facilities for the disposal of ashes, garbage, rubbish, and other waste.
- (8) Provide running water, hot water, and heat in accordance with applicable building and housing codes, except to the extent the tenant is required to provide such for himself.
- (9) Guarantee the right of quiet enjoyment of the dwelling unit to the tenant and insure that the conduct of other tenants, their guests, and other persons on the premises does not cause a nuisance, endangerment of public health and safety, breach of peace, or interference with the quiet enjoyment of the tenant.
- (10) Give sole possession of the dwelling unit to the tenant in accordance with the rental agreement and refrain from: (1) entering the unit, except as authorized in § 13.208; (2) making repeated demands for entry otherwise lawful under § 13.208 but which have the effect of unreasonably harassing the tenant; (3) sexually harassing or physically assaulting the tenant in or around his dwelling unit; or (4) locking the tenant out of his dwelling unit without the tenant's consent except in cases where the tenant has been evicted pursuant to judicial eviction procedures provided for in this Ordinance.
- (11) Disclose, in writing, the name, address, and telephone number of the person responsible for receiving rent, notices and demands under this Ordinance, 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.

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§ 13.208 TENANT RESPONSIBILITIES

(a) Except as otherwise provided in a rental agreement or mutual help occupancy agreement, each tenant subject to the provisions of this Ordinance shall:

- (1) Pay rent without demand or notice at the time and place agreed upon by the parties.
- (2) Immediately notify the landlord of any defects in the premises hazardous to life, health, or safety.
- (3) Keep the dwelling unit clean and dispose of all ashes, garbage, rubbish, and abandoned vehicles or parts thereof in a proper, sanitary, and safe manner.
- (4) 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.
- (5) Refrain from destroying, defacing, damaging, or removing any part of the dwelling unit, premises, or common areas, and to require guests to act in like manner.
- (6) Pay reasonable charges for the repair of damages, other than normal wear and tear, to the dwelling unit, premises, or common areas caused by the tenant or his guests, or to repair such damages as required under the rental agreement, within thirty (30) calendar days of such damage.
- (7) Conduct himself, and require his guests to conduct themselves, in a manner which does not disturb the quiet enjoyment of others or cause a breach of the peace.
- (8) Not give up the dwelling unit to others, assign a lease arrangement, or sublease the dwelling unit without the written permission of the landlord.
- (9) 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

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conduct or any other activity which may harm the physical or social environment of the premises or the area around it.

- (10) Abide by all rules and regulations promulgated by the landlord in accordance with §13.206 of this Ordinance.
- (11) 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 reasonable written or oral 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.

§ 13.209 TENANT REMEDIES

(a) Conditions. Where a landlord has not complied with his responsibilities regarding dwelling unit conditions, as set forth in § 13.207 of this Ordinance, and where the tenant has given written notice to the landlord and the landlord has failed, within a reasonable period of time, to cure his noncompliance, the tenant 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 his rent; or
- (3) Institute an action in Tribal Court seeking:
 - (A) an order compelling the landlord to comply with his responsibilities as set forth in § 13.207 (1)B(11); (ii) an award of money damages, which may include a retroactive abatement of rent; and/or (iii) such other relief in law or equity the court may deem proper, provided that no tenant may institute such an action

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if a valid notice to quit based upon nonpayment of rent has been served on him prior to his institution of the action.

(4) Terminate the rental agreement.

(b) Harassment and Quiet Enjoyment. Where a landlord violates his responsibilities as set forth in § 13.207(9) and (10) of this Ordinance, the tenant may:

(1) Recover damages not less than an amount equal to one month's rent and reasonable attorney's fees.

(2) Institute an action in the Tribal Court seeking an order compelling the landlord to comply with his responsibilities as set forth in §13.207 (1)-(11), and such other relief in law or equity as the court may deem proper, provided that no tenant may institute such an action if a valid notice to quit based upon nonpayment of rent has been served on him prior to his institution of the action.

(3) Terminate the rental agreement.

(c) Identification of Landlord. Where a landlord fails to identify himself to the tenant in accordance with §13.207(1)-(11) of this Ordinance, the tenant is under no obligation to pay rent and may terminate any existing rental agreement.

§ 13.210 LANDLORD REMEDIES

(a) Where a tenant has not complied with this Ordinance or the agreement of the parties, the landlord has the right to:

(1) Give reasonable notice to the tenant: to comply with his obligations, pay any monies due and owing under the agreement of the parties, or the landlord has right to terminate the agreement under which the tenant occupies the premises, and demand that he and those with him leave the premises.

(2) Require repairs or maintenance which are the responsibility of the tenant and require compliance with reasonable rules and regulations for occupancy.

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- (3) Seek a Court order or judgment for the payment of monies or costs, for compliance with the agreements and obligations of tenants, for termination of an agreement, payment of damages, eviction of tenants, or any other relief to which it may be entitled by law or the agreement of the parties.

§ 13.211 ABANDONED DWELLING UNITS

Where a dwelling has been abandoned (the tenant has vacated without notice and does not intend to return which is evidenced by removal of possessions, nonpayment of rent, disconnected utilities, or expressed to the landlord or third party) a landlord, without further notice to the tenant may post a notice on the dwelling stating that the landlord intends to take possession and that the tenant's possessions will be inventoried and removed within ten (10) days from the posting. If the tenant's possessions are not claimed within thirty (30) days from their removal from the abandoned dwelling, the landlord may dispose of the possessions.

SECTION 3

GROUND FOR EVICTION/NOTICE TO QUIT/ PRE-EVICTION OPTIONS

§ 13.212 GROUND FOR EVICTION

- (a) A tenant may be evicted for:
 - (1) Nonpayment of rent under an agreement for the lease purchase or occupation of a dwelling when such payments are not made after ten (10) calendar days of the agreement date of payment, or ten (10) calendar days following the first day of the month in a month to-month tenancy.
 - (2) Any arrearage in rent, costs, or damages which has been due and owing for thirty (30) calendar days or more. The receipt by a landlord of partial payments under an agreement shall not excuse the payment of any balance due upon demand.
 - (3) Nuisance, property damage, or destruction, injuries to the property, person, or peace of other tenants, or injuries or damage to common areas and property.

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- (4) Serious or repeated violations of the rental agreement, any reasonable rules or regulations adopted in accordance with §13.206, this Ordinance, or any applicable building or housing codes.
- (5) Occupation of any premises without permission or agreement, following any reasonable demand by a person in authority over the premises to leave.
- (6) Violation of any other terms in the rental agreement which do not conflict with the provisions of this Ordinance.

§ 13.213 NOTICE TO QUIT REQUIREMENTS

(a) When Notice to Quit is Required. When a landlord desires to obtain possession of a dwelling unit, and after following established practices for notice and opportunity to cure, and when there exists one or more reasons to evict the tenant or tenants occupying the unit as set forth in §13.207, the landlord shall give notice to the tenant(s) who signed the lease to quit possession of such dwelling unit according to the provisions of this Ordinance.

(b) Purpose of Notice to Quit. The purpose of the notice to quit is to provide advance notice to the tenant of a specific problem which needs to be addressed. It is also intended to induce the tenant to enter into discussions with the landlord in order to resolve the problem.

(c) Statement of Grounds for Eviction Required. The notice to quit shall be addressed to the adult tenants of the dwelling unit and shall state the reasons(s) for termination of the tenancy and the date by which the tenant is required to quit possession of the dwelling unit

(d) Form of Notice. The notice shall be in writing 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 (here insert the address or other reasonable description of the location of the dwelling unit), on or before the (here insert the date) for the following reason (here insert the reason or reasons for the notice to quit possession using the statutory language or words of similar import). Signed, (here insert the 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 within the following periods of time:

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- (1) No less than fourteen (14) calendar days prior to the date to quit specified in the notice for any failure to pay rent or other payments required by the agreement.
- (2) No less than twenty-four (24) hours prior to the date to quit specified in the notice for nuisance, serious injury to property, or injury to persons. In situations in which there is an emergency, 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 thirty (30) calendar days in all other situations.

§ 13.214 SERVING THE NOTICE TO QUIT

(a) Any notice to quit must be in writing, and must be delivered to the tenant in the following manner:

- (1) Delivery must be made by an adult person.
- (2) Delivery will be effective when it is:
 - (A) Personally delivered to a tenant or any adult member of the household with a copy delivered by mail, or
 - (B) Personally delivered to an adult living in the premises with a copy delivered by mail, or
 - (C) Personally delivered to an adult guardian or caregiver of the tenant with a copy delivered by mail.
 - (D) If the notice cannot be given by means of personal delivery, or tenant cannot be found, the notice may be delivered by means of:
 - (i) Certified mail, return receipt requested, at the last known address of the landlord or tenant, and

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- (ii) Securely taping a copy of the notice to the main entry door of the premises..
- (E) The person giving notice must keep a copy of the notice and proof of service in accordance with this section, by affidavit or certificate of service.

§ 13.215 PRE-EVICTION OPTIONS

(a) Negotiated Settlement. After a Notice to Quit is served upon a tenant, the landlord and tenant may engage in discussions to avoid a proceeding to evict and to settle the issues between the parties. 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 will stay such proceedings until it is notified by one or both parties that a hearing is required or that a settlement has been reached.

(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 or conciliator;
- (3) The parties may agree to arbitrate the issues in binding arbitration;
- (4) The parties may agree to any other barter for services and goods, or to any other means of securing a fair exchange of value for the use of the dwelling;
- (5) The parties may agree to dismiss the matter in exchange for any agreement reached;
- (6) The parties may agree to stipulate to a judgment to be entered by the Court.

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SECTION 4

JUDICIAL EVICTION PROCEDURES

§ 13.216 SUMMONS AND COMPLAINT

(a) If, after the date set forth in the notice to quit for the tenant to quit possession of the dwelling unit, the tenant has not quit possession, the landlord may file a complaint in the Tribal Court for eviction and such other relief as the Court may deem just and proper. The complaint shall state:

- (1) The names of the adult tenant(s) against whom the suit is brought;
- (2) A description of the rental agreement, if any;
- (3) The address or reasonable description of the location of the premises;
- (4) The grounds for eviction;
- (5) A statement showing that the notice to quit and any required termination notices have been served in accordance with this Ordinance or other applicable law; and
- (6) A statement of the relief demanded, including any claim(s) for possession of the dwelling unit, damages, fees, costs, or other special relief.
- (7) If the landlord is the Siletz Housing Department, a statement that the Housing Department has complied with all required regulatory processes prior to filing the eviction action.

§ 13.217 ACTION UPON FILING COMPLAINT

When a complaint is filed in the Tribal Court, it shall be immediately presented to a Tribal Court Judge. This shall be on the date of filing, or, if no judge is present, on the first regular Court day after filing or when a judge may first be found. The judge shall review the complaint and shall, if it appears to be in compliance with §13.216 and served as set forth in §13.214, issue an order of the Court requiring the defendant named in the complaint to appear before the Court on the date a hearing is set (within 15 days) as provided for in §13.218 to

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contest the complaint. The date for appearance for answering the complaint shall be no less than three (3) calendar days after the date of the order in matters involving serious nuisance or ten (10) calendar days in all other cases.

§ 13.218 COMMENCEMENT OF PROCEEDINGS

(a) If the tenant appears before the Court in person or in writing to test the complaint the Court shall set a hearing date. Any written response shall state any defenses or factual disputes and where any defendant appears in person, a written response shall be served upon the plaintiff five (5) calendar days before any hearing, excluding weekends and holidays.

(b) The Court shall set a hearing date which is no more than fifteen (15) calendar days following the date for appearance, except 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 defendant may, for good cause shown, and upon the 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 hearing, obtain an extension of time, beyond the fifteen (15) day period. The Court may refuse to extend the date of hearing where the complaint is based upon nuisance or injuries provided in §13.212(a)(3), and shall not extend the date of hearing where the complaint is based upon conduct which is alleged to constitute a serious danger to public health, safety, or peace.

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

§ 13.219 DEFENSES

(a) The Court shall grant the remedies allowed in this Ordinance, unless it appears by the evidence that:

- (1) The premises are untenable, uninhabitable, or constitute a situation where there is a constructive eviction of the tenant, 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 and safety and not a mere inconvenience.

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- (2) The landlord has failed or refused to make repairs which are his responsibility after a reasonable demand by a tenant to do so, without good cause, and the repairs are necessary for the reasonable enjoyment of the premises.
- (3) There are monies due and owing to the tenant because he has been required to make repairs which are the obligation of the landlord 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 the extent that such sums set off monies owed for occupancy. A tenant may be evicted if he fails to start paying rent again after he or she has received costs.
- (4) That due to the conduct of the landlord, there is injury to the tenant in such a way that justice requires that relief be modified or denied. This shall include the equitable defenses of estoppel, laches, fraud, misrepresentation, and breaches of serious and material obligations for public health, safety, and peace standards.
- (5) That there are such serious and material breaches of applicable housing law on the part of the landlord that it would be unjust to grant him a remedy.
- (6) The landlord is evicting the tenant because of his/her race, sex, sexual orientation, religion, age, marital status, family status, or because the tenant is disabled.
- (7) Any other material or relevant fact the tenant might present that may explain why his eviction is unjust and unfair.
- (8) That the eviction is based on a retaliatory motive on the part of the landlord, whether the landlord is an individual or the Authority.

§ 13.220 DISCOVERY AND PREHEARING PROCEEDINGS

Extensive, prolonged, or time-consuming discovery and prehearing proceedings will not be permitted, except in the interests of justice and for good cause shown by the moving party. Discovery and procedure shall be informal, and reasonably provided on demand of a party, and it

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shall be completed within five (5) calendar days of the date of hearing. Requests for discovery shall be made no later than three (3) calendar days following the setting of a hearing date. The Court may enter reasonable orders requiring discovery or protecting the rights of the parties upon reasonable notice.

§ 13.221 **EVIDENCE**

(a) Evidence in proceedings under this Ordinance shall be according to the following provisions:

- (1) All evidence may be admitted which can be shown to be relevant and material to the case.
- (2) Fairness will dictate the decision of the judge on challenges to admissibility of evidence.
- (3) The Court may avail itself of any recognized and authoritative materials, books or documents as guidance in reaching a decision on the admissibility of evidence.
- (4) Evidence of customs and traditions of the Tribes shall be freely admitted.
- (5) Hearsay objections will not be permitted to procedurally deny the Court access to reasonably reliable information which would aid in reaching a just decision. Where a hearsay objection is made, the Court will make an independent determination of the competency of the evidence which is sought to be offered. Objections may be overruled where facts indicate that the evidence is relevant and material and reasonably competent under the circumstances. Hearsay evidence may be freely admitted where all parties to the out of Court statement are present before the Court and qualified to testify as to the statement made.
- (6) At the discretion of the Judge, evidence may be excluded if its value as proof is outweighed by the risk that its admission will create a substantial risk of undue prejudice; confuse the issues; or unfairly surprise the opposing party.

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- (7) Upon request of a party, the Court may take judicial notice, of specific facts which are so certain as not to be subject to reasonable dispute.

§ 13.222 **BURDEN OF PROOF**

The burden of proof in all proceedings under this Ordinance shall be a preponderance of the evidence.

§ 13.223 **JUDGMENT**

(a) Within five (5) calendar days of the date of the hearing, the Court shall grant and enter judgment and the judgment shall grant all relief that the parties are entitled to as of the date of the judgment. The judgment may:

- (1) Order the immediate eviction of a tenant and delivery of the premises to the landlord;
- (2) Grant actual damages as provided in the agreement of the parties or this Ordinance, including interest;
- (3) Order the parties to carry out an obligation required by law;
- (4) Establish a payment plan for the tenant;
- (5) Order rent payments out of per capita payments, or through garnishment or from other resources available to the tenant;
- (6) Establish a Power of Attorney in another person/agency to fulfill rights or obligations of either landlord or tenant;
- (7) Remediate the action - in part or in whole - through appropriate recalculation of rent;
- (8) Order the tenant to perform work for the landlord or the owner to pay off back rent due and/or damages;
- (9) Order the payment of attorneys' fees and, where allowed by law or agreement, costs and expenses of litigation;

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- (10) Order the parties into negotiations as provided in § 13.215 of this Ordinance; or
- (11) Grant any relief provided in this Ordinance or allowed in law or equity.
- (12) If a tenant fails to appear in person or in writing on or before the date of appearance, 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.

§ 13.224 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 his decision immediately after both parties have rested their case and award costs and restitution as appropriate.

§ 13.225 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 or officer of the Court, appointed by the Court for such a purpose. Any law enforcement officer shall, upon receipt of an order of the Court, execute the judgment or order made by it within five (5) calendar days of the date of the judgment or order and make a report to the Court on what was done to enforce it. Any law enforcement officer to whom a judgment or order is given for enforcement who fails, in the absence of good faith, or refuses to execute it shall be subject to the payment of reasonable damages, costs, and expenses to a party for failure to execute the judgment and/or suspension from employment. This Section shall also apply to any judgment on behalf of a tenant obtained under the general tribal civil procedure Ordinance and/or tribal small claims procedure code.

§ 13.226 STAY OF EXECUTION

(a) If judgment for possession of the dwelling unit is entered in favor of the landlord, the tenant may apply for a stay of execution of the judgment or order if within five (5) days of the judgment being rendered, the following is established:

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- (1) Good and reasonable grounds affecting the well-being of the party are stated; or
- (2) There would be no substantial prejudice or injury to the prevailing party during the period of the stay; or
- (3) Execution of the judgment could result in extreme hardship for the tenant(s); or
- (4) A bond is posted or monies are paid to the Court, to satisfy the judgement or payment 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 shall distribute such arrearage to the landlord in accordance to any order of the court.

§ 13.227 APPEALS

Appeals under this Ordinance shall be handled according to the general tribal appellate provisions, with the exception that the party taking the appeal shall have only five (5) days from the entry of the order of judgment to file an appeal. All orders from the Court will remain in effect during the pendency of an appeal under this Ordinance unless otherwise ordered by the Court.

§ 13.228 MISCELLANEOUS COMPLAINTS AND CLAIMS

Any miscellaneous complaint or claim including a complaint or claim by a tenant which does not fall within the procedures of this Ordinance may be made under the general tribal civil procedure Ordinance and/or tribal small claims procedure code. No automatic stays will be granted by the court on the sole basis that the claim or complaint fails to meet the procedures set forth in this Ordinance.

§ 13.229 NOTICE TO LEAVE THE PREMISES

(a) Any notice to leave a premises, shall be by written order of the court, and shall be delivered to the tenant in the following manner:

- (1) Delivery shall be made by:

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- (A) A law enforcement officer of the Tribe or an agency of the United States Government, or
- (B) Any person authorized by the Tribal Court.
- (2) Delivery will be effective when it is:
 - (A) Personally delivered to a tenant with a copy delivered by mail, or
 - (B) Personally delivered to an adult living in the premises with a copy delivered by mail, or
 - (C) Personally delivered to an adult agent or employee of the tenant with a copy delivered by mail.
- (3) If the notice cannot be given by means of personal delivery, or tenant cannot be found, the notice may be delivered by means of:
 - (A) Certified mail, return receipt requested, at the last known address of the landlord or tenant, or
 - (B) Securely taping a copy of the notice to the main entry door of the premises, in such a manner that it is not likely to blow away, 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 at the premises.

§ 13.230 FORCIBLE EVICTION

(a) Where the Court orders an eviction, and the defendant or any other occupant of the premises refuses to vacate voluntarily by the effective date of that Order, the defendant or other occupants may be forcibly removed from the premises by a tribal law enforcement officer. At the hearing where the eviction is ordered, the Court shall inform the defendant that if he does not vacate the premises voluntarily by the effective date he 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.

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(b) Following eviction, the Court may allow the landlord, or the Authority access to any property leased by either of them for purposes of preserving and securing it.

(c) Following forcible eviction of the defendant and/or other occupants, the former occupant's personal property shall be stored by the owner of the premises for at least thirty (30) days, either on the premises or at another suitable location. In order to reclaim their property, the former occupants shall pay the reasonable costs of its removal and storage. If they do not pay such costs within thirty (30) days, the owner is authorized to sell the property in order to recover these costs. Upon request by the former occupants the landlord shall provide them with pertinent information concerning the sale, including the time, date and location. Any proceeds from the sale in excess of the 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 call arrange to do so in a manner satisfactory to the landlord.

§ 13.231 NO SELF-HELP EVICTION

Except by mutual consent of the parties, no landlord may compel a tenant to vacate any premises in a forceful fashion or way which causes a breach of the peace without giving a notice to quit, and obtaining a Court order as provided in this Ordinance.

§ 13.232 SECURITY DEPOSITS

(a) Security Deposit Limits. A landlord may demand a security deposit of an amount equal to one-hundred dollars (\$100) or one month's periodic rent, whichever is greater, which may be in addition to the current 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 person who is the landlord at the time a tenancy is terminated shall pay to the tenant or former tenant the amount of the security deposit that was deposited by the tenant with the person who was landlord at the time such security deposit, was deposited less the value of any damages which any person, who was a landlord of such premises at any time during the tenancy of such tenant, has suffered as a result such tenant's failure to comply with such tenant's obligations. Damages shall not include normal wear and tear. Within 30 days after tenant vacates the dwelling unit after termination of a tenancy, the landlord shall deliver to the tenant a statement of charges made against the security deposit for such damages.

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(c) Action to Reclaim Security Deposit. Any tenant may bring a civil action in Tribal Court to reclaim any part of a security deposit which may be due. If tenant prevails he/she shall be awarded costs and attorney fees.

SECTION 6

Miscellaneous Provisions

§ 13.233 EFFECTIVE DATE

This Ordinance shall take effect on August 1, 2004.

§ 13.234 RETROACTIVE EFFECT

This Ordinance shall apply to all rental agreements subject to the provisions of the Ordinance, no matter when entered.