



TRIBAL HOUSING CODE

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TRIBAL HOUSING CODE

SECTION 1 **GENERAL PROVISIONS**

§1-1 **Applicability**

The following title shall hereinafter be referred to as the “Tribal Housing Code.” It shall apply to any and all arrangements, formal or informal, written or oral, in selling, buying, renting, leasing, occupying or using any and all housing, dwellings or accommodations for human occupation and residence on the Cocopah Reservation. It shall also apply to any and all mortgages, leasehold mortgages and agreements to secure an interest in a building or real property on Indian Country.

The following arrangements are not governed by this Code.

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

§1-2 **Jurisdiction**

- (A) Jurisdiction is extended over all buildings and lands intended for human dwelling, occupancy or residence which may lie within:
 - (1) The boundaries of the Cocopah 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 of the United States.
- (B) Jurisdiction is extended over all persons or entities within the jurisdiction of the Tribe who sell, rent, lease or allow persons to occupy housing, dwellings or accommodations for the purpose of human dwelling, occupancy or residence, and all persons who buy, rent, lease or occupy such structures. Jurisdiction is also extended to any person or entity who mortgages or otherwise secures an interest in a structure or building on Tribal land as set forth in subsection 1-2(A). Such jurisdiction is extended over all persons and entities, whether or not they are members of the Tribe or have a place of business on the Cocopah Reservation. Any act on the Reservation by a person or entity pertaining to the subject matter of this Code shall be subject to jurisdiction of the Tribe.
- (C) Jurisdiction over all matters which arise under this Code shall be exercised by the Tribal Court.

§1-3 **Purposes and Interpretation**

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

- (A) To simplify the law governing the occupation of dwelling units and to protect the rights of landlords and tenants.
- (B) To preserve the peace, harmony, safety, health and general welfare of the people of the Tribe and those permitted to enter or reside on the Reservation.
- (C) To provide eviction procedures and to require landlords to use those procedures when evicting tenants.
- (D) To encourage landlords and tenants to maintain and improve dwellings on the Reservation in order to improve the quality of housing as a tribal resource.
- (E) To simplify the law governing the rights, obligations and remedies of the owners, sellers, buyers, lessors, and lessees of the building.
- (F) 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 loans made by or through any government agency or lending institution.
- (G) To establish laws and procedures which are necessary in order to obtain government or private funding for tribal housing programs or loan guarantees for private or tribal housing construction, purchases or renovation.

§1-4 **Relation to Other Laws**

- (A) Applicable Law. Unless affected or displaced by this Code, principles of law and equity in the common law of the Tribe and Tribal customs and traditions are applicable. The general principles of law of any other Tribe or any other state may be used as guidance to supplement and interpret this Code.
- (B) Other Applicable Laws. Additional tribal and federal laws may apply with regard to tribal housing such as the ordinance establishing the Housing Authority and governmental housing laws and regulations.
- (C) Conflicts With Other Laws
 - (1) Tribal Laws: To the extent that this Code may conflict 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 Code.

- (2) Federal Laws: Where a conflict may appear between this Code 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 Code.
- (3) 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 directly binding and shall not govern the relations of the parties.

§1-5 Computation of Time

In computing any period of time prescribed or allowed by this Code the day of the act, event, or default from which the designated period of time begins to run shall not be included. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays and legal holidays shall not be included in the computation. When the period of time is eleven (11) days or more, intermediate Saturdays, Sundays and legal holidays shall be included in the computation. The last day of the period so computed shall also be included unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

§1-6 Definitions

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

- (A) *Action, suit or lawsuit, claim, complaint, or defense* shall include 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 units or the relationships between owners and occupiers of such units, including the right to occupy them.
- (B) *Adult Person* is any person eighteen (18) years of age or older.
- (C) *Borrower/Mortgagor* is the Tribe, the Cocopah Indian Housing and Development or any individual Indians(s) or any heirs(s), successor(s), executor(s), administrator(s) or assign(s) of the Tribe or such Indians(s) or non-Indian(s) who has executed a Mortgage as defined in this Code or a Leasehold Mortgage as defined in this Code.
- (D) *Building* is a structure and any appurtenances or additions thereto, designed for habitation, shelter, storage and the like.
- (E) *Building or housing codes* are any law, ordinance or governmental regulation of the Tribe 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) *Dwelling unit* is a house or building 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.
- (G) *Guest* is any person, other than the tenant, in or around a dwelling unit with the permission and consent of the tenant.
- (H) *He/His*: The use of he/his means he or she, his or her and singular includes the plural.
- (I) *Housing Authority* is Cocopah Indian Housing and Development established by Tribal Ordinance for the purpose of constructing and maintaining dwellings for public use within the territorial jurisdiction of the Tribe.
- (J) *Indian* is any person recognized as being an Indian or Alaska Native by any Tribe or by the government of the United States.
- (K) *Indian Country*, the *territorial jurisdiction* or the *jurisdiction* of the Tribe shall include all lands owned by, held in trust for, leased, occupied or otherwise controlled by the Tribe, as well as any such ownership or use by an entity of the Tribe and these terms shall include any and all areas which may constitute the *Indian Country* of the Tribe under applicable provisions of its laws or the laws of the United States.
- (L) *Landlord* can be the Tribe, Housing Authority, a person, entity or federal government agency which is the owner, lessor or sublessor of a dwelling unit intended for the use of tenants.
- (M) *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, a dwelling unit, a building or premises including a lease-to-purchase agreement.
- (N) *Leasehold Mortgage* is the mortgage of a lease or property given to secure a loan and may be created pursuant to any federal agency home buyer program or any other agreement entered between a Borrower/Mortgager and a Lender/Mortgagee.
- (O) *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 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. government and federal agencies guarantee or insure the Mortgage or Leasehold Mortgage.

- (P) *Lender/Mortgagee* is any private lending institution established to primarily loan funds and not to invest in or purchase properties, the Tribe, the 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. It is also any lender designated assignee(s) or successor(s) of such Lender/Mortgagee.
- (Q) *Lessee* is a tenant of a dwelling unit, user and/or occupier of real property or the home buyer under any governmental or private mortgage program.
- (R) *Lessor* is the legal, beneficial or equitable owner of property under a Lease. Lessor may also include the heir(s), successor(s), executor(s), administrators(s) or assign(s) of a lessor.
- (S) *Mobile home* is a structure designed for human habitation and for being moved on a street or highway. Mobile home includes pre-fab, modular and manufactured homes. Mobile home does not include a recreational vehicle or a commercial coach.
- (T) *Mortgage* is a lien as commonly given to secure advances on, or the unpaid purchase of a building 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.
- (U) *Mortgage Foreclosure Proceeding* is a proceeding 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 any governmental or private home purchase program.
- (V) *Mortgagee/Lender* – see Lender/Mortgagee.
- (W) *Mortgagor/Borrower* – see Borrower/Mortgagor.
- (X) *Nuisance* is the maintenance or allowance on real property of a condition which one has the ability to control and which unreasonably threatens the health and 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.
- (Y) *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.
- (Z) *Person* includes the Tribe, Cocopah Indian Housing and Development, an individual or organization and where the meaning of a portion of this Code requires, it means a public agency, corporation, partnership or any 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 reserved for tenants.
- (BB) *Rent* is all periodic payments to be made to a landlord or lessor under a lease.
- (CC) *Rental Agreement* – see Lease.
- (DD) *Reservation* is the Cocopah Reservation in the State of Arizona.
- (EE) *Shall* for the purposes of this Code will be defined as, mandatory or must.
- (FF) *Subordinate Lienholder* is the holder of any lien, including a subsequent mortgage, perfected subsequent to the recording of a Mortgage under this Code, except the Tribe shall not be considered a subordinate lienholder with respect to any claim regarding a tribal tax on real property.
- (GG) *Tenant* is the lessee(s), sublessee(s) or person(s) entitled under a lease to occupy a dwelling unit to the exclusion of others.
- (HH) *Tribal Court* is the Court as established by the laws of this Tribe or such body as may now or hereafter be authorized by the laws of the Tribe to exercise the powers and functions of a Court of law.
- (II) *Tribal Recording Clerk* is the director of the Tribal Real Estate program or such other person designated by the Tribe to perform the recording functions required by this document or any deputy or designee of such person.
- (JJ) *Tribe* is the Cocopah Tribe.

SECTION 2 **LANDLORD/TENANT RESPONSIBILITIES AND REMEDIES**

§2-1 **Rental Agreements**

- (A) Effect of Rental Agreements. The provisions of this Code, as well as the applicable laws identified in §1-4, establish the minimum rights and responsibilities of any landlord and tenant on the Cocopah Reservation. Unless inconsistent 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 Code or any other applicable laws as identified in §1-4; (2) to permit the landlord to dispossess a tenant without a court order; (3) to pay a late charge prior to the expiration of the grace period set forth in §3-1(A); (4) to pay the landlord's attorneys fees, except an agreement in writing may provide that attorneys fees may be awarded to prevailing party in the event of court action; or (5) to exculpation or limitation of any liability of the landlord arising under law or to indemnify the landlord for that liability or the costs connected therewith. A provision prohibited by this subsection shall be unenforceable.

- (C) Term of Tenancy. In the absence of a definite term in a 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, place of business or residence. In the absence of definite terms, the amount of rent shall be the fair market rental value of the premises.

§2-2 Rules and Regulations

- (A) The landlord may promulgate rules and regulations regarding the use and occupancy of the premises.
- (B) Such rules and regulations are enforceable against the tenant only of: (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 fair manner; (4) the rules and regulations are sufficiently explicit in their prohibition, direction or limitations of the tenant's conduct and fairly inform him of what he shall, or shall not do, to comply; and (5) the tenants has notice of the rules and regulations at the time he enters into the rental agreement or when they are adopted.

§2-3 Landlord Responsibilities

Except as otherwise provided in a rental agreement or a mutual help occupancy agreement, each landlord subject to the provisions of this Code shall:

- (A) Maintain the premises in a habitable condition in compliance with applicable building and housing codes materially affecting health and safety.
- (B) Make all necessary repairs and maintain the premises in a habitable condition.
- (C) Maintain the common areas.
- (D) Ensure tenant access to the premises.
- (E) Maintain in good condition and safe working order all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, where such matters are not the responsibility of the tenant.
- (F) Provide and maintain receptacles for the disposal of ash, garbage, rubbish, and other waste.
- (G) 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 services or utilities for himself.

- (H) Provide 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 premises, the owner of the premises or his agent, and the person responsible for making the repairs.

§2-4 Tenant Responsibilities

Except as otherwise provided in a rental agreement or a mutual help occupancy agreement, each tenant subject to the provisions of this 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 damages to the premises.
- (C) Keep the premises 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-condition, and other facilities and appliances which are part of the 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 premises or common areas and to require guests to act in like manner.
- (F) Pay reasonable charges and cost for the repair of damages, other than normal wear and tear, to the 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.
- (G) Conduct himself, and require his guests to conduct themselves, in a manner which does not disturb the quiet and peaceful enjoyment of other tenants or residents or cause a breach or disturbance of the peace.
- (H) Not give up the possession of the premises to others, assign a lease arrangement or sublease the premises or any portion thereof without the prior written consent of the landlord.
- (I) Use the premises only for residential purposes, and not to use the premises 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 area around it.
- (J) Abide by all the rules and regulations promulgated by the landlord in accordance with §2-2 of this Code.

- (K) Provide the landlord access to the Premises to perform maintenance and repairs, inspect the Premises, supply necessary or agreed services, or show the Premises 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.

§2-5 Tenant Remedies

- (A) Except as provided in the Code, if there is material noncompliance by the landlord with the rental agreement, including a material falsification of the written information provided to the tenant, the tenant may deliver actual notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than ten (10) days after receipt of such notice if the breach is not remedied in ten (10) days. If there is a noncompliance by the landlord with §2-3 materially affecting health and safety, the tenant may deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than five (5) days after receipt of the notice if the breach is not remedied in five (5) days. For the purposes of this section, material falsification shall include availability of the unit, except when a holdover tenant is in illegal possession or in violation of the rental agreement, the condition of the premises and any current services as represented by the landlord in writing as well, as any written representation regarding future utility services and the designation of the party responsible for the payment of utility service. The rental agreement shall terminate and the dwelling unit shall vacated as provided in the notice subject to the following:
 - (1) If the breach is remediable by repairs or the payment of damages or otherwise and the landlord adequately remedies the breach prior to the date specified in the notice, the rental agreement shall not terminate.
 - (2) The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, a member of the tenant's family or other person on the premises with the tenant's consent.
- (B) Except as provided in this Code, the tenant may recover damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or this Code.
- (C) The remedy provided in subsection B of this section is in addition to any right of the tenant arising under subsection A of this section.
- (D) If the rental agreement is terminated, the landlord shall return all security recoverable by the tenant under this Code.

§2-6 Landlord Remedies

Where a tenant has committed serious or repeated violations of his responsibilities as set forth in §2-4 of this Code, the landlord may institute an action in the Tribal Court seeking an order compelling the tenant to comply with his responsibilities as set forth in §2-4, an award of money damages, attorneys fees and costs and/or such other relief in law or equity as the Tribal Court may deem just and proper.

§2-7 Abandoned Premises

- (A) If the premises is abandoned after the time prescribed in subsection H of this section, the landlord shall send the tenant a notice of abandonment by certified mail, return receipt requested, addressed to the tenant's last known address and to any of the tenants alternate addresses known to the landlord. The landlord shall also post a notice of abandonment on the door to the premises or any other conspicuous place on the property for five (5) days.
- (B) Five (5) days after notices of abandonment has been both posted and mailed, the landlord may retake the premises and re-rent the premises at a fair rental value if no personal property remains in the premises. After the landlord retakes the premises, money held by the landlord as a security deposit is forfeited and shall be applied to the payment of any accrued rent and other reasonable costs incurred by the landlord by reason of the tenant's abandonment.
- (C) If the tenant abandons the premises, the landlord shall make reasonable efforts to rent it at a fair rental. If the landlord rents the premises for a term beginning prior to the expiration of the rental agreement, it is deemed to be terminated as of the date the new tenancy begins. If the landlord fails to use reasonable efforts to rent the premises at a fair rental or if the landlord accepts the abandonment as a surrender, the rental agreement is deemed to be terminated by the landlord as of the date the landlord has notice of the abandonment. If the tenancy is from month to month or week to week, the term of the rental agreement for this purpose shall be deemed to be a month or a week, as the case may be.
- (D) After the landlord has retaken possession of the premises, the landlord may store the tenant's personal possessions in the unoccupied premises that was abandoned by the tenant, in any other available unit or any storage space owned by the landlord or off the premises if the premises or storage space is not available. The landlord shall notify the tenant of the location of the personal property in the same manner prescribed in subsection A of this section.
- (E) The landlord shall hold the tenant's personal property for a period of sixty (60) days after the landlord's declaration of abandonment. The landlord shall use reasonable care in holding the tenant's personal property. If the landlord holds the property for this period and the tenant makes no reasonable effort to recover it, the landlord may sell the property, retain the proceeds and apply them toward the tenant's outstanding rent or other costs which are covered in

the lease agreement or otherwise provided for in this Code and have been incurred by the landlord due to the tenant's abandonment. Any excess proceeds shall be mailed to the tenant at the tenant's last known address. A tenant does not have any right of access to that property until the actual removal and storage costs have been paid in full, except that the tenant may obtain clothing and tools, apparatus and books of a trade or profession and any identification or financial documents, including all those related to the tenant's immigration status, employment status, public assistance or medical care. If provided by a written rental agreement, the landlord may destroy or otherwise dispose of some or all of the property if the landlord reasonably determines that the value of the property is so low that the cost of moving, storage and conducting a public sale exceeds the amount that would be realized from the sale.

- (F) For a period of twelve (12) months after the sale the landlord shall:
 - (1) Keep adequate records of the outstanding and unpaid rent and the sale of the tenant's personal property.
 - (2) Hold any excess proceeds which have been returned as undeliverable for the benefit of the tenant.
- (G) If the tenant notifies the landlord in writing on or before the date the landlord sells or otherwise dispose of the personal property that the tenant intends to remove the personal property from the dwelling unit or the place of safekeeping, the tenant have five (5) days to reclaim the personal property. To reclaim the personal property the tenant must only pay the landlord the cost of removal and storage for the period the tenant's personal property remained in the landlord's safekeeping.
- (H) In this section "abandonment" means either the absence of the tenant from the Premises, without notice to the landlord for at least seven (7) days, if rent for the premises is outstanding and unpaid for ten (10) days and there is no reasonable evidence other than the presence of the tenant's personal property that the tenant is occupying the residence, or the absence of the tenant for at least five (5) days, if the rent for the premises is outstanding and unpaid for five (5) days and none of the tenant's personal property is in the premises.

§2-8 Acceptance of Partial Payment

A landlord is not required to accept a partial payment of rent or other charges. A landlord accepting a partial payment of rent or other charges retains the right to proceed against a tenant only if the tenant agrees in a contemporaneous writing to the terms and conditions of the partial payment with regard to continuation of the tenancy. The written agreement shall contain a date on which the balance of the rent is due. The landlord may proceed as provided in this Code against a tenant in breach of this agreement or any other breach of the original rental agreement.

SECTION 3

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

§3-1 Grounds for Eviction

A tenant may be evicted for the following:

- (A) Nonpayment of rent under an agreement for the lease, purchase or occupation of premises when such payments are not made within ten (10) calendar days of the due date, or ten (10) calendar days following the first day of the month in a month-to-month tenancy.
- (B) Any arrearage in costs or damage which is thirty (30) calendar days or more past due. The receipt by the landlord of partial payments under an agreement shall not excuse the payment of any balance due upon demand.
- (C) Nuisance, damage or destruction to the premises, injury to person, interference with other tenants' peaceful and quiet enjoyment of their premises or damage or destruction to common areas and property.
- (D) Serious or repeated violations of the rental agreement, any reasonable rules or regulations adopted in accordance with §2-2 of this Code or any applicable building or housing codes. For the purposes of this Code repeated violations shall mean a second or an additional violation.
- (E) Occupation of any Premises without permission or consent of a landlord following any reasonable demand by a landlord or owner to vacate the premises.
- (F) Violation of any term or condition in a rental agreement which do not conflict with the provisions of this Code.
- (G) The entry of a judgment foreclosing a tenant's interest in a Mortgage or Leasehold Mortgage.

§3-2 Notice To Quit Requirements

- (A) When Notice to Quit is Required. When a landlord desires to obtain possession of a premises for any grounds or reason as set forth in §3-1, the landlord shall give written notice to the tenant to quit possession of such premises.
- (B) Statement of Grounds for Eviction. The notice to quit shall be addressed to the tenant of the premises and shall state the grounds or reasons for termination of the tenancy and the date by which the tenant is required to quit possession of the premises.

- (C) 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 premises now occupied by you at (here insert the address or other reasonable description of the location of the premises), on, or before the (here insert the date) for the following reason (here insert the grounds or reasons for the notice to quit possession). Signed, (here insert the signature, name and address of the landlord, and the date).
- (D) Time Requirements for Notice. The notice must be delivered within the following periods of time:
 - (1) No less than seven (7) 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 three (3) calendar days prior to the date to quit specified in the notice for serious nuisance, serious damage or destruction of property or injury to persons. In situations in which there is an emergency, such as a fire or condition making the premises unsafe or uninhabitable, or in situations involving an imminent or serious threat to public health, safety or the serious violation of any law or ordinance the notice may be a shorter period of time given the nature of the situation.
 - (3) No less than fourteen (14) calendar days in all other situations.
- (E) Cocopah Indian Housing and Development Termination Notice. When the landlord is Cocopah Indian Housing and Development, the termination notice from Cocopah Indian Housing and Development shall qualify as the notice to quit under this section so long as the time requirements of the Authority’s termination notice are at least as long as the time requirements set forth in §3-3(D) of this Code.
- (F) Right to Cure. Upon receipt of a notice to quit, the tenant has the right to cure, repair or rectify the grounds or reasons set forth in a notice to quit prior to the time set forth in §3-2(D) of this Code. If the tenant timely and adequately cures the grounds or reasons set forth in the notice to quit the rental agreement shall be reinstated.

§3-3 Service of the Notice to Quit

Any notice to quit must be delivered to the tenant in the following manner:

- (A) Delivery must be made by an adult person.
- (B) Delivery will be effective when it is:
 - (1) Personally delivered to a tenant with a copy mailed to the tenant by certified mail, return receipt requested, or

- (2) Personally delivered to an adult living in the premises with a copy mailed to the tenant by certified mail, return receipt requested, or
 - (3) Personally delivered to an adult, agent or employee of the tenant with a copy mailed to the tenant by certified mail, return receipt requested.
- (C) If the notice cannot be given by means of personal delivery, or tenant cannot be found, the notice may be delivered by means of:
- (1) Securely posting a copy of the notice to the main entry door of the premises in a secure manner, and by posting a copy of the notice in a public place near the premises, including a tribal office, public store, or other commonly-frequented place and by mailing a copy certified mail, return receipt requested addressed to the tenant at the tenant's last known address.
- (D) The person giving notice shall retain a copy of this notice and proof of service.
- (E) For the purpose of this Code any notice sent by certified mail, return receipt requested a tenant's last known address shall be presumed to be delivered to the tenant.

§3-4 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 proceedings 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 Tribal Court will stay such proceedings until it is notified by one by one or both parties that a hearing is required or that a settlement has been reached.
- (C) Settlement Options. In discussing and negotiating an settlement 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 barter for services and goods, or to any other means of securing a fair exchange of rental for the use of the premises;
 - (5) The parties may agree to dismiss the matter;

- (6) The parties may agree to stipulate to a judgment to be entered by the Court.

SECTION 4 **JUDICIAL EVICTION PROCEDURES**

§4-1 **Complaint**

If, after the date set forth in the notice to quit for the tenant to quit possession of the premises, 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:

- (A) The name of the tenant and adult tenant(s) against whom the suit is brought;
- (B) A description of the rental agreement, if any;
- (C) The address or reasonable description of the location of the premises;
- (D) The grounds for eviction;
- (E) A statement showing that the notice to quit and any required termination notices have been served in accordance with this Code or other applicable law; and
- (F) A statement of the relief demanded, including any claim(s) for possession of the premises, damages, fees, costs or other special relief.

§4-2 **Action Upon Filing Complaint**

- (A) The summons shall be issued on the day the complaint is filed and shall command the person against whom the complaint is made to appear and answer the complaint at the time and place named which shall be not more than fourteen (14) nor less than seven (7) days from the date of the summons. The tenant is deemed to have received the summons three (3) days after the summons is mailed if personal service is attempted and within one day of issuance of the summons a copy of the summons is conspicuously posted on the main entrance of the tenant's residence and on the same day the summons is sent by certified mail, return receipt requested, to the tenant's last known address. The summons in an eviction action shall be served at least two (2) days before the day assigned for trial. Service of process in this manner shall be deemed the equivalent of having served the tenant in person for the purposes of awarding a money judgment for all rent, damages, costs and attorney fees due.
- (B) For good cause shown, the trial may be postponed by the Tribal Court for not more than five (5) days.
- (C) In addition to determining the right to actual possession, the Court may assess damages, attorney fees and costs as prescribed by law.

- (D) If a complaint is filed alleging a material and irreparable breach pursuant to §3-2(D)(2), the summons shall be issued as provided in subsection (A) of this section, except that the trial date and return date shall be set no later than five (5) days following the filing of the complaint. If after the hearing the Court finds by preponderance of the evidence that the material and irreparable breach did occur, the Court shall order restitution in favor of the landlord not less than twenty-four (24) hours nor more than five (5) days later.
- (E) If the tenant is found guilty, the Court shall give judgment for the landlord for restitution of the premises, for any late charges stated in the rental agreement and for attorney fees and costs.
- (F) If the tenant is found not guilty, judgment shall be given for the tenant against the landlord for the tenant's attorneys fees and costs.

§4-3 Defenses

- (A) The Court shall grant the landlord the relief authorized in this Code, unless it appears by the evidence that:
 - (1) The premises are uninhabitable to the extent the premises are a serious hazard to human health and safety.
 - (2) The landlord has failed or refused to make repairs without good cause which are his responsibility after a reasonable written demand by a tenant to do so, and the repairs are necessary for the habitability of the premises.
- (B) There are monies due and owing to the tenant because he has made repairs to the premises which are the obligation of the landlord, and the landlord failed or refused to make the repairs after no less than thirty (30) days written notice to the landlord. Such sums may be a defense to a complaint for eviction, but only to the extent that such sums set off monies owed by tenant to the landlord. A tenant may be evicted if he fails or refuses to pay the remainder of the rental value after the deduction of any costs or repairs.

§4-4 Evidence

Evidence in proceedings under this Code shall be according to the following provisions:

- (A) All evidence may be admitted which can be shown to be relevant and material to the case.
- (B) Fairness will dictate the decision of the judge on challenges to admissibility of evidence.
- (C) 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.

- (D) Evidence of customs and traditions of the Cocopah Tribe may be admitted.
- (E) Hearsay objections will not be permitted to procedurally deny the Court access to reasonable reliable information which would aid in reaching a 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.
- (F) At the discretion of the Judge, evidence may be excluded if it's probative value is outweighed by the risk that in admission will create a substantial risk of undue prejudice; confusion mislead a jury or unfairly surprise the opposing party.
- (G) Upon request of a party, the Court make take judicial notice, of specific facts which are so certain as not to be subject to reasonable dispute.

§4-5 Burden of Proof

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

§4-6 Judgment

- (A) Within five (5) calendar days of the date of lodging a form of Judgment 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 Code, 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, execution or attachment;
 - (6) Establish a Power of Attorney in another person/agency or fulfill rights or obligations of either landlord or tenant;
 - (7) Remediate the action in part or in whole;

- (8) Order the payment of attorney s' fees and costs as authorized by law or agreement;
 - (9) Order the parties into negotiations as provided in Section 1-3-4 of this Code; or
 - (10) Grant any relief provided in this Code or allowed in law or equity.
- (B) If a tenant fails to appear in person or in writing on, or before, the date of hearing, the Court shall enter judgment on behalf of the landlord following a hearing to determine whether the requested relief should be granted and the relief that should be granted.

§4-7 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 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.

§4-8 Appeals

Appeals under this Chapter shall be according the general tribal appellate provisions.

§4-9 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 Code may be made under the general tribal civil procedure code and/or tribal small claims procedure code

§4-10 Writ of Restitution

Unless otherwise specified in a judgment, a tenant shall have five (5) days from the entry of judgment to vacate the premises. If a tenant fails or refuses to vacate the premises within the time prescribed in the judgment or this section, the Tribal Court shall issue a writ of restitution directing the Cocopah Tribal Police to remove the tenant and the tenant's possessions from the premises.

§4-11 No Self-Help Eviction

Except by mutual consent of the parties, no landlord may compel a tenant to vacate any premises without giving notice to quit, and obtaining a court order as provided in this Code.

§4-12 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. Additional security deposits may be allowed for special circumstances such as animals or pets or a tenant's history of prior damage to a premises.
- (B) Payment of Security Deposit at Termination of Tenancy. No later than ten (10) days after obtaining possession of the premises, the landlord shall pay to the tenant or former tenant the amount of the security deposit that was deposited by the tenant with the landlord less the value of any damages which the landlord incurred as a result of such tenant's failure to comply with the tenant's obligations. Damages shall not include normal wear and tear.
- (C) Action to Reclaim Security Deposit. Any tenant may bring a civil action in Tribal Court to reclaim any part of this security deposit which may be due and which the landlord refuses to return after seven (7) days written notice.

SECTION 5 MORTGAGE AND FORECLOSURE

§5-1 Priority

All mortgages filed and recorded with the Bureau of Indian Affairs' Land Titles Records Office in accordance with the recording procedures set forth in this Chapter, 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 except a lien or claim arising from a tribal leasehold tax assessed after the recording of the mortgage.

§5-2 Filing and Recording

- (A) All mortgages and other necessary associated documents relating to Indian Land shall be filed and recorded with the Bureau of Indian Affairs' Land Titles Records Offices in Albuquerque, New Mexico.
- (B) In the event Cocopah Indian Housing and Development participates or acts as an agent in the application, processing or recording of a mortgage or other document, Cocopah Indian Housing and Development shall also maintain a log of each mortgage or other document recorded and shall enter:
 - (1) The name(s) of the Borrower/Mortgagor of each Mortgage;
 - (2) The name(s) of the Lender/Mortgagee of each Mortgage;
 - (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 receipt of the mortgage or document;

- (5) The filing number assigned by the Land Titles Records Offices; and
 - (6) The name or the Supervisor, Manager or designee receiving the mortgage or document.
- (C) The log maintained by Cocopah Indian Housing and Development as set forth in Section 5-2(B) shall be made available for public inspection and copying. Rules for the copying shall be established and disseminated by Cocopah Indian Housing and Development.

§5-3 Foreclosure Proceedings

- (A) A Borrower/Mortgagor shall be considered to be in default under a mortgage when he is thirty (30) days delinquent on his mortgage payments(s) to the Lender/Mortgagee.
- (B) Upon a mortgage default, the Lender/Mortgagee shall mail by certified mail, return receipt requested a notice to the Borrower/Mortgagor, with a copy to Cocopah Indian Housing and Development, which shall include the following:
- (1) Advise the Borrower/Mortgagor he or she is more than thirty (30) days delinquent on his mortgage payments to Lender/Mortgagee and the amount necessary to cure the default as of the date of the notice.
 - (2) Advise the Borrower/Mortgagor that information regarding the mortgage default may be given to credit bureaus which may negatively effect a Borrower/Mortgagor's credit rating and ability to obtain future credit;
 - (3) Advise the Borrower/Mortgagor of any home ownership counseling opportunities or programs available through the Lender/Mortgagee
 - (4) Advise the Borrower/Mortgagor that if the Mortgage default is not paid in full within ninety (90) days the Lender/Mortgagee may file a complaint with the Tribal Court to foreclosure the mortgage and obtain possession of the Premises of Dwelling Unit;
 - (5) In addition to the foregoing requirements, the Lender/Mortgagee shall complete the following additional notice requirements when there is a leasehold mortgage:
 - a. 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 government agency to accept assignment of the leasehold mortgage;
 - b. Notify the Borrower/Mortgagor of the qualifications for any available relief which may be offered by the Lender/Mortgagee and that relief may be available from the applicable governmental agency if the leasehold mortgage is assigned; and

- c. Provide the Borrower/Mortgagor with the address of the governmental agency to whom further communication shall be addressed, if any.
- (C) Ten (10) days prior to the filing of a foreclosure complaint the Lender/Mortgagee shall mail by certified mail, return receipt requested, a notice to the Borrower/Mortgagor, with a copy to Cocopah Indian Housing and Development, in the same form as set forth in Section 5-3(B)(4) except that the ninety (90) days requirement set forth at Sections 5-3(B)(4) and 5-3(B)(5)(a) shall be replaced with ten (10) days.
- (D) If a Borrower/Mortgagor has been in default for ninety (90) days, or more, and the Lender/Mortgagee has complied with the requirements set forth in this Section, the Lender/Mortgagee may commence a foreclosure proceeding in the Tribal Court by filing a verified complaint as set forth in Section 5-4 of this Code.

§5-4 Foreclosure Complaint and Summons

- (A) The verified complaint in a mortgage foreclosure proceeding shall contain the following:
 - (1) The name of the Borrower/Mortgagor and each person or entity claiming through the Borrower/Mortgagor subsequent to the recording of the mortgage, including each Subordinate Lienholder (except the Tribe with respect to a claim for a tribal leasehold tax), as a defendant;
 - (2) A description of the property subject to the Mortgage;
 - (3) A concise statement of the facts concerning the execution of the Mortgage or in the case of Leasehold Mortgage the lease. The facts concerning the recording of the Mortgage of the Leasehold Mortgage. The facts concerning the alleged defaults(s) of the Borrower/Mortgagor and such other facts as may be necessary to constitute a cause of action for foreclosure;
 - (4) True and correct copies of each promissory note, or if a Leasehold Mortgage a copy of the Lease, the Mortgage, or assignment thereof (attached as exhibits); and
 - (5) Any applicable allegations concerning relevant requirements and conditions prescribed in applicable (1) federal statutes and regulations (2) tribal codes, ordinance, regulations, this Code; and/or (3) provisions of the Lease of Leasehold Mortgage, or security instrument.
- (B) The complaint shall be filed with the Tribal Court Clerk who shall issue a summons specifying a date and time of appearance for the Borrower/Mortgagor and all other parties.
- (C) The Lender/Mortgagee shall mail a copy of the foreclosure complaint and summons to Cocopah Indian Housing and Development.

§5-5 Service of Process and Procedures

Service of the process shall be completed in accordance with the procedures set forth in the Cocopah Indian Tribal Law and Order Code. If the whereabouts of the Lessee(s) or Borrower/Mortgagor cannot be ascertained after reasonable inquiry, three (3) copies of the summons and complaint shall be mailed to the Lessee(s) or Borrower/Mortgagor in care of the Superintendent of the applicable agency of the Bureau of Indian Affairs.

§5-6 Cure for Default

Prior to the entry of a judgment of foreclosure, any Borrower/Mortgagor, or a Subordinate Lienholder, may cure the default(s) under the Mortgage by making a full payment of the delinquency to the Lender/Mortgagee and all reasonable legal and Court costs incurred by the Lender/Mortgagee in foreclosing on the property. 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 defaults(s), plus interest on such amounts at the rate in the note for the Mortgage.

§5-7 Judgment and Remedy

This matter shall be heard and decided by the Tribal Court in a prompt and reasonable time period not to exceed sixty (60) days from the date of service of the Complaint on the Borrower/Mortgagor. If the alleged default has not been cured at the time of trial and the Tribal Court finds the Lender/Mortgagee, the Tribal Court shall enter judgment:

- (A) Foreclosing the interest of the Borrower/Mortgagor and each other defendant, including any Subordinate Lienholder, in the Mortgage, and
- (B) Assigning the Mortgage to the Lender/Mortgage, or the Lender's Designated Assignee, and if a Leasehold Mortgage, the Lease shall be assigned to the Lender/Mortgage, or Lender's Designated Assignee, subject to the following provisions:
 - (1) The Lender shall give the Tribe and Cocopah Indian Housing and Development a right of first refusal on any offer to the Lender or Lender's Designated Assignee to purchase the Mortgage, Lease or Leasehold Mortgage, or the collateral secured thereby. The Tribe or Cocopah Indian Housing and Development shall have thirty (30) days from the receipt of a valid offer to exercise the right of first refusal.
 - (2) The Lender of Lender's Designated Assignee may only transfer, sell or assign the Mortgage, Lease or Leasehold Mortgage or the collateral secured thereby to a Tribal member, the Tribe or Cocopah Indian Housing Development.

§5-8 No Right of Redemption

There shall be no right of redemption in a mortgage foreclosure proceeding.

§5-9 Foreclosure Evictions

Foreclosure evictions shall be in accordance with the eviction procedures set forth in Sections 2, 3, 4 of this Code.

§5-10 No Merger of Estates

There shall be no merger of estates by reason of the execution of a Lease or a Leasehold Mortgage or the assignment or the assumption of the same, including an assignment adjudged by the Tribal Court, or by operation of law, except as such merger may rise upon satisfaction of the Leasehold Mortgage.

§5-11 Notice to Tribe and Cocopah Indian Housing and Development

Copies of all foreclosure notices or foreclosure proceedings on a Mortgage, Lease or Leasehold Mortgage shall be mailed to the Tribe and Cocopah Indian Housing and Development by certified mail, return receipt requested, within five (5) days after the issuance of such to a Borrower/Mortgagee or Lessee.

§5-12 No Recovery of Deficiency

No action may be maintained against a Lessor or Borrower/Mortgagor to recover any deficiency between the amount obtained from the sale of any property securing a mortgage and the amount of the indebtedness including interest, attorneys fees and costs.

§5-13 Intervention

The Tribe or Cocopah Indian Housing and Development may petition the Tribal Court to intervene in any Mortgage, Lease or Leasehold Mortgage foreclosure proceeding under this Code. Neither the filing of a petition for intervention by the Tribe, nor the granting of such a petition by the Tribal Court shall operate as a waiver of the sovereign immunity of the Tribe, except as may be expressly authorized in writing by the Tribe.

§5-14 Appeals

Appeals under this Chapter shall be handled in accordance with the general tribal appellate provisions.

SECTION 6 TRANSFER OF PROPERTY

§6-1 Transfer of Conveyance

Unless expressly prohibited in a Mortgage, Lease, Leasehold Mortgage the Cocopah Tribal Code or applicable law, an Owner may transfer or convey his or her interest in real or personal property on Indian Land to any Person by a deed, written instrument or a will, which is notarized.

§6-2 Contents of Deed or Written Instrument

A deed, written instrument or will transferring or conveying an Owner's interest in property on Indian Land shall contain the following information:

1. Name of Owner/Grantor;
2. Name of Grantee;
3. Legal description, address or description of the property;
4. Date of transfer of conveyance;
5. Signature or Owner/Grantor in the presence of a notary public;

§6-3 Filing and Recording

A deed or document transferring or conveying an interest in property on Indian Land shall be filed and recorded with the Bureau of Indian Affairs' Land Titles Records Offices in Albuquerque, New Mexico.