

CHAPTER 26
HOUSING

26-1 APPLICABILITY

26-1.01 This chapter shall be known as the Kootenai Tribe of Idaho Housing Ordinance. It shall apply to all written arrangements in selling, buying, renting, leasing, occupying, or using housing for human occupation. It shall also apply to all mortgages, leasehold mortgages and agreements to secure an interest in a building, except the Kootenai River Inn.

26-2 DEFINITIONS

26-2.01 In addition to those definitions included in Chapter 1, Section 1-12 of the Law and Order Code, the following words will have the meanings given them in this Chapter unless the context plainly requires otherwise:

(1) "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.

(2) "Adult person" is any person eighteen (18) years of age or older.

(3) "Borrower/Mortgagor" is the Tribe, Tribal entity, or any individual Indian or any heir, successor, executor, administrator, or assign of the Tribe or such Indian or non-Indian who has executed a Mortgage as defined in this Code or a Leasehold Mortgage as defined in this Code.

(4) "Building" is a structure, and any appurtenances or additions thereto, designed for habitation, shelter, storage and the like.

(5) "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.

(6) "Guest" is any person, other than the tenant, in or around a dwelling unit with the permission and consent of the tenant.

(7) "Housing Authority" is the Kootenai Tribal Council.

(8) "Landlord" can be the Tribe, Tribal entity, a person, entity or federal government agency which is the owner, lessor, or sublessor of a dwelling unit intended for the use of tenants.

(9) "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 or rental agreement.

(10) "Leasehold Mortgage" is the mortgage or lease of property given to secure a loan, and may be created under the auspices of any federal agency homebuyer program, the Mutual Help Homeownership administered by the Housing Authority, or any other agreement entered between a Borrower/Mortgagor and a Lender/Mortgagee.

(11) "Mortgage Foreclosure Proceeding" is a proceeding:

(a) To foreclose the interest of the Borrower/ Mortgagor, and each person or entity claiming through the Borrower/ Mortgagor, 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

(b) To assign where appropriate the Borrower/Mortgagor interest to a designated assignee.

(12) "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. It is also any lender

designated assignee or successor of such Lender/Mortgagee.

(13) "Lender Designated Assignee" Any lender as defined in this Code may assign or transfer its interest in a Mortgage or Lease and/or Leasehold Mortgage to a Designated Assignee. If the Mortgage or Lease and/or Leasehold Mortgage falls under a federal agency homebuyer 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 guaranteeing or insuring the Mortgage or Leasehold Mortgage acts as a Lender Designated Assignee.

(14) "Lessor" is the legal, beneficial, or equitable owner of property under a Lease, and may include the heir, successor, executor, administrator or assign of the lessor.

(15) "Lessee" is a tenant of a dwelling unit, user and/or occupier of real property, or the homebuyer under any federal mortgage program including the Mutual Help program. The lessee may, for purposes of federal agency home mortgage programs, be the Tribe or Indian Housing Authority.

(16) "Mortgage" is a lien as is commonly given to secure advances on, or the unpaid purchase price 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.

(17) "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 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.

(18) "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.

(19) "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.

(20) "Rent" is all periodic payments to be made to a landlord or lessor under a lease.

(21) "Shall", for the purposes of this Code, will be defined as mandatory or must.

(22) "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.

(23) "Tenant" is the lessee, sublessee, or person entitled under a lease or Mutual Help Occupancy Agreement to occupy a dwelling unit to the exclusion of others.

26-3 GROUND FOR EVICTION

26-3.01 A landlord may initiate proceedings to evict a tenant under the following circumstances:

(1) Nonpayment of rent under an agreement for the lease purchase or occupation of a dwelling unit 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 have 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, injuries or damage to common areas and property, or drug-related criminal activity.

(4) Serious or repeated violations of the rental agreement, any reasonable rules or regulations

adopted in accordance with this Code, or any applicable building or housing codes.

(5) Occupation of any premises without permission or agreement, following any demand by a person in authority over the premises to leave.

(6) Under other terms in the rental agreement which do not conflict with the provisions of this Code.

(7) Violation of any drug-free policy required by any federal or Tribal laws or regulations or insurance agreement, or any other activities that may render their insurance null and void.

26-4 NOTICE TO QUIT REQUIREMENTS

26-4.01 A Notice to Quit is required when a landlord desires to obtain possession of a dwelling unit, and when there exists one or more legally cognizable reasons to evict the tenant or tenants occupying the unit as set forth in 26-3. The landlord shall give notice to the adult tenants to quit possession of such dwelling unit according to the provisions of this Chapter.

(1) The purpose of the Notice to Quit is to provide advance notice to the tenant of a specific problem that 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.

(2) The Notice to Quit shall be addressed to the adult tenants of the dwelling unit and shall state the legally cognizable reasons for termination of the tenancy and the date by which the tenant is required to quit possession of the dwelling unit.

(3) The Notice shall be in writing and contain the following:

- (a) The name of the tenant;
- (b) The address or description of the dwelling unit;
- (c) The date the tenant must quit possession or occupancy;
- (d) The reasons for the Notice to Quit
- (e) The signature, name and address of the landlord; and

(f) The date and place of the signing.

(4) The Notice must be delivered within the following periods of time:

(a) 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.

(b) No less than three (3) calendar days prior to the date to quit specified in the notice of 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.

(c) No less than fourteen (14) calendar days in all other situations.

26-5 SERVING THE NOTICE TO QUIT

26-5.01 The Notice to Quit must be served in the manner provided for service of summons and complaint in Chapter 6, Section 6-4. If the Notice cannot be given by personal service or mail, the notice may be delivered by certified mail, return receipt requested, at the last known address of the tenant or by 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. Proof of service must be established in accordance with Chapter 6, Section 6-6 of the Law and Order Code.

26-6 PRE-EVICTION OPTIONS

26-6.01 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.

(1) Where the parties mutually agree in good faith to proceed with such discussions, and Eviction procedures have been initiated, the Court shall upon request by both parties stay such proceedings until it is notified by one or both parties that a hearing is required or that a settlement has been reached.

26-7 ACTIONS FOR EVICTION

26-7.01 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 manner provided by Chapter 6 of the Law and Order Code for eviction and such other relief as the Court may deem just and proper.

26-8 EVICTION PROCEDURES

26-8.01 Jurisdiction. The provisions of this section shall apply to all persons and property subject to the governing authority of the Kootenai Tribe as established by the Tribal Constitution, Tribal Code, or applicable federal law.

26-8.02 Unlawful Detainer. A Lessee, Sublessee, or other occupant of a Leasehold Estate subject to a Leasehold Mortgage shall be guilty of unlawful detainer if such person shall continue in occupancy of such Leasehold Estate without the requirement of any notice by the Lessor, after such person's Leasehold Estate has been foreclosed in a Leasehold Mortgage foreclosure proceeding in the Tribal Court.

26-8.03 Complaint and Summons. The lender or Federal Agency (which made, guaranteed or insured the mortgage loan) as appropriate, shall commence an action for unlawful detainer by filing with the Tribal Court, in writing, the following documents:

(1) A complaint, signed by the lender or Federal Agency, or an agent or attorney on their behalf:

(a) Citing facts alleging jurisdiction of the Tribal Court;

(b) Naming as defendants the mortgagors and any other record owner (including Sublessees and subordinate lien holders), of which the complainant has record notice (except the Tribe with respect to a claim for a Tribal tax on the Leasehold Estate subject to the Leasehold Mortgage);

(c) Describing the Leasehold Estate subject to the Leasehold Mortgage;

(d) Stating the facts concerning (1) the execution of the lease and the Leasehold Mortgage; (2) the recording of the Leasehold Mortgage; and (3) the facts upon which he or she seeks to recover;

(e) Stating any claim for damages or compensation due from the persons to be evicted; and

(f) Otherwise satisfying the requirements of the Tribal Court.

(2) A copy of the summons, issued in accordance with established Tribal Court rules and procedures, requiring the defendants to file a response to the complaint by the date specified in the summons. The deadline specified in the summons for filing a response shall be no less than 6 nor more than 30 days from the date of service of the summons and complaint. The summons shall notify the defendants that judgment will be taken against them in accordance with the terms of the complaint unless they file a response with the court by the date specified in the summons.

26-8.04 Service of Summons and Complaint. A copy of the summons and complaint shall be served upon the defendants in the manner provided by the Tribal Court rules for service of process in civil matters in Chapter 6.

26-8.05 Power of the Tribal Court. The Tribal Court shall enter an Order of Repossession if:

(1) Notice of suit is given by service of summons and complaint in accordance with applicable procedures provided herein; and

(2) The Tribal Court finds during pre-trial proceedings or at trial that the Lessee, Sublessee, or other occupant under color of law of the Leasehold Estate subject to the Leasehold Mortgage is guilty of an act of unlawful detainer.

26-8.06 Order of Repossession. Upon issuance, the Tribal Court shall have the authority to enter a judgment against the defendants for the following, as appropriate:

(1) back rent, unpaid utilities, and any charges due the Tribe, Tribal Housing Authority, other public Housing Authority, or Sublessor under any sublease or other written agreement (except for a Leasehold Mortgage);

(2) any and all amounts secured by the Leasehold Mortgage that are due the lender (or Federal Agency); and

(3) damages to the property caused by the defendants, other than ordinary wear and tear. The Tribal Court shall have the authority to award to the prevailing party its costs and reasonable attorneys fees in bringing suit.

26-8.07 Enforcement. Upon issuance of an Order of Repossession by the Tribal Court, Tribal law enforcement officers shall help plaintiffs enforce the same by evicting the defendants and their property from the unlawfully occupied Leasehold Estate. In all cases involving the lender or Federal Agency, the Order of Repossession shall be enforced no later than 45 days after a pre-trial proceeding or trial in which the Tribal Court finds against defendants, subject to Section 26-8.08, and provided, that no party exercised the right to cure a default or right of first refusal as described in Sections 26-15 and 26-16 of this ordinance.

26-8.08 Continuances in Cases Involving the Lender or Federal Agency (which originally made, insured or guaranteed) the mortgage loan. Except by agreement of all parties, there shall be no continuances in cases involving the lender or Federal Agency that will interfere with the requirement that the Order of Repossession be enforced not later than 45 days after a pre-trial proceeding or trial in which the Tribal Court finds

against defendants, subject to the sound discretion of the Court.

26-9 NO SELF-HELP EVICTION

26-9.01 Except by mutual consent of the parties, no landlord may compel a tenant to vacate any premises in a forceful fashion or way that causes a breach of the peace without giving a Notice to Quit and obtaining a Court order as provided in this Code.

26-10 PRIORITY

26-10.01 All mortgages recorded in accordance with the recording procedures set forth in this Chapter, including Leasehold Mortgages, and including loans guaranteed or held by a governmental agency, shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim excepting a lien or claim arising from a Tribal leasehold tax assessed after the recording of the mortgage. In those cases where the government direct, guaranteed or insured mortgage is created as a second mortgage, the loan shall assume that position.

26-11 RECORDING OF MORTGAGE LOAN DOCUMENTS

26-11.01 All mortgages will be recorded in the Boundary County Recording Clerk's office or such other recording location as designated by the Tribal Council.

26-11.02 Tribal Recording Office. The Tribal Recording Clerk shall maintain in the Tribal Realty Program a system for the recording of mortgage loans and such other documents as the Tribe may designate by laws or resolution.

26-11.03 The Tribal Recording Clerk shall endorse upon any mortgage loan or other document received for recording:

(1) The date and time of receipt of the mortgage or other document;

(2) The filing number, to be assigned by the Tribal Recording Clerk, which shall be a unique number for each mortgage or other document received and;

(3) The name of the Tribal Recording Clerk or designee receiving the mortgage or document.

(6) The name of the Tribal Recording Clerk or designee receiving the mortgage or document.

26-11.04 Upon completion of the above-cited endorsements, the Tribal Recording Clerk shall make a true and correct copy of the mortgage or other document and shall certify the copy as follows:

26-11.07 The certified copies of the mortgage loan and other documents and the log maintained by the Tribal Recording Clerk shall be made available for public inspection and copying. Rules for copying shall be established and disseminated by the Tribal Recording Clerk.

Kootenai Tribe of Idaho)
)ss.
Kootenai Indian Reservation)

26-11.08 All mortgages will be recorded with the BIA in addition to any Tribal recording provisions.

I certify that this is a true and correct copy of a document received for recording this date.

26-12 FORECLOSURE PROCEDURES

Given under my hand and seal this _____ day of _____.

26-12.01 A Borrower/Mortgagor shall be considered to be in default when he or she is thirty (30) days past due on his or her mortgage payment(s) or is in violation of any covenant under the mortgage for more than 30 days to the Lender/Mortgagee (i.e. the 31st day from the payment due date).

(SEAL) _____
(Signature)

26-12.02 When a Borrower/Mortgagor is thirty days past due on his or her mortgage and before any foreclosure action or activity is initiated, the Lender/Mortgagee shall complete the following:

_____ (Date)

2611.05 The Tribal Recording Clerk shall maintain the copy in the records of the recording system and shall return the original of the mortgage loan or other document to the person or entity that presented the same for recording.

(1) Make a reasonable effort to arrange a face-to-face interview with the Borrower/Mortgagor. This shall include at least one trip to meet with the Borrower/Mortgagor at the mortgaged property.

26-11.06 The Tribal Recording Clerk shall also maintain a log of each mortgage loan or other document recorded in which there shall be entered:

(2) Lender/Mortgagee shall document that it has made at least one phone call to the Borrower/Mortgagor (or the nearest phone as designated by the Borrower/Mortgagor, able to receive and relay messages to the Borrower/Mortgagor) for the purpose of trying to arrange a face-to-face interview.

(1) The name(s) of the Borrower/Mortgagor of each mortgage loan, identified as such;

26-12.03 Lender/Mortgagee may appoint an agent to perform the services of arranging and conducting the face-to-face interview specified in this action.

(2) The name(s) of the Lender/Mortgagee of each mortgage loan, identified as such;

26-12.04 When the Borrower/Mortgagor is past due on three installment payments and at least ten (10) days before initiating a foreclosure action in Tribal Court, the Lender shall advise the Borrower/Mortgagor in writing by mail or by posting

(3) The name(s) of the grantor(s), grantee(s) or other designation of each party named in any other documents filed or recorded;

(4) The date and time of the receipt;

(5) The filing number assigned by the Tribal Recording Clerk; and

prominently on the unit, with a copy provided to the Tribe, as follows:

(1) Advise the Borrower/Mortgagor that information regarding the loan and default/delinquency will be given to credit bureaus.

(2) Advise the Borrower/Mortgagor of homeownership counseling opportunities/programs available through the Lender or otherwise.

(3) Advise the Borrower/Mortgagor of other available assistance regarding the mortgage/default.

(4) In addition to the preceding notification requirements, the Lender/Mortgagee shall complete the following additional notice requirements:

(a) notify the Borrower/Mortgagor that if the Leasehold Mortgage remains past due on three installment payments, the Lender/Mortgagee may ask the applicable governmental agency to accept assignment of the Leasehold Mortgage if this is an option of the governmental program;

(b) notify the Borrower/Mortgagor of the qualifications for forbearance relief from the Lender/Mortgagee, if any, and that forbearance relief may be available from the government; and

(c) provide the Borrower/Mortgagor with names and addresses of government officials to whom further communications may be addressed, if any.

26-12.05 If a Borrower/Mortgagor is past due on three or more installment payments and the Lender/Mortgagee has complied with the procedures set forth in the first part of this Section, the Lender/Mortgagee may commence a foreclosure proceeding in the Tribal Court by filing a verified complaint as set forth below.

26-13 FORECLOSURE COMPLAINT AND SUMMONS

26-13.01 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), 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 a Leasehold Mortgage the lease; the facts concerning the recording of the Mortgage or the Leasehold Mortgage; the facts concerning the alleged default(s) of the Borrower/Mortgagor; and such other facts as may be necessary to constitute a cause of action;

(4) True and correct copies of each promissory note, if a Leasehold Mortgage then a copy of the Lease, the Mortgage, or assignment thereof relating to the property (appended as exhibits); and

(5) Any applicable allegations concerning relevant requirements and conditions prescribed in (1) federal statutes and regulations; (2) Tribal Codes, Ordinances and regulations; and/or (3) provisions of the Lease or Leasehold Mortgage, or security instrument.

26-13.02 The complaint shall be verified by the Tribal Court Clerk along with a summons specifying a date and time of appearance for the Defendant(s).

26-14 SERVICE OF PROCESS AND PROCEDURES

26-14.01 Service of process shall be performed according to the procedures set forth in Chapter 6 of the Law and Order Code.

26-15 CURE OF DEFAULT BY SUBORDINATE LIENHOLDER

26-15.01 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 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 default(s), plus interest on such amounts at the rate stated in the note for the mortgage. There shall be no right of redemption in any Leasehold Mortgage Foreclosure proceeding.

26-16 JUDGMENT AND REMEDY

26-16.01 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 for the Lender/Mortgagee, the Tribal Court shall enter judgment:

(1) Foreclosing the interest of the Borrower/Mortgagor and each other defendant, including Subordinate Lienholder, in the Mortgage, and

(2) Assigning the Mortgage to the Lender/Mortgagee or the Lender's Designated Assignee; in the case of a Leasehold Mortgage, the Lease will be assigned to the Lender/Mortgagee or the Lender's Designated Assignee, subject to the following provisions:

- (a) The Lender shall give the Tribe the right of first refusal on any acceptable offer to purchase the Lease or Leasehold Mortgage which is subsequently obtained by the Lender or Lender's Designated Assignee.
- (b) The Lender or Lender's Designated Assignee may only transfer, sell or assign the Lease and/or Leasehold Mortgage to a Tribal member, the Tribe, or the Housing Authority.
- (c) Any other transfer, sale or assignment of the Lease or Leasehold Mortgage shall only be made to a Tribal member, the Tribe, or the Housing Authority during the remaining period of the leasehold.

26-17a NO MERGER OF ESTATES

26-17a.01 There shall be no merger of estates by reason of the execution of a Lease or a Leasehold Mortgage or the assignment or assumption of the same, including an assignment adjudged by the Tribal Court, or by operation of law, except as such merger may arise upon satisfaction of the Leasehold Mortgage.

26-18 CERTIFIED MAILING TO TRIBE AND LESSOR

26-18.01 Any foreclosure proceedings on a Lease or Leasehold Mortgage where the Tribe or the Lessor is not named as a defendant, a copy of the summons and complaint shall be mailed to the Tribe and to the Lessor by certified mail, return receipt requested, within five (5) days after the issuance of the summons. If the location of the Lessor cannot be ascertained after reasonable inquiry, a copy of the summons and complaint shall be mailed to the Lessor in care of the superintendent of the applicable agency of the Bureau of Indian Affairs.

26-19 INTERVENTION

26-19.01 The Tribe or any Lessor may petition the Tribal Court to intervene in any 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 by the Tribe.

26-20 APPEALS

26-20.01 Appeals under this Chapter shall be handled in accordance with the general tribal appellate provisions.

26-21 EFFECTIVE DATE

26-21.01 This Chapter shall take effect on September 6, 2000.

26-22 RETROACTIVE EFFECT

26-22.01 This Chapter shall apply to all rental agreements subject to the provisions of the Code, no matter when entered.