

# TITLE 13: EVICTION CODE

## Chapter 1 Purposes and Interpretation

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

§ 13.1.01 To protect the rights of landlords and tenants.

§ 13.1.02 To preserve the peace, harmony, safety, health and general welfare of the people of the Makah Indian Reservation.

§ 13.1.03 To provide eviction procedures and to require landlords to use the procedures when evicting tenants.

## Chapter 2 Definitions

### § 13.2.01 "Action, petition, complaint or defense"

The terms action, petition, complaint or defense shall include any dispute between persons or entities which relate to the rental, use or occupancy of any housing, dwelling, or accommodation for human occupancy, including claims for the payment of money for such housing, dwellings, or accommodations, damages to such units, conditions of such units or the relationships between owners and occupiers of such units, including the right to occupy them.

### § 13.2.02 "Adult person"

Any person eighteen (18) years of age or older.

### § 13.2.03 "Building"

A structure, and any appurtenances or additions thereto designed for habitation, shelter, storage and the like.

### § 13.2.04 "Dwelling unit"

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.

**§ 13.2.05 "Guest"**

Any person, other than the tenant, in or around a dwelling unit with the permission and consent of the tenant.

**§ 13.2.06 "He/His"**

The use of he/his means he or she, him or her, and the singular includes the plural.

**§ 13.2.07 "Indian"**

Any person recognized as being Indian or Alaska Native by any Indian Tribe, Indian Band, Indian Community or by the government of the United States for any purpose.

**§ 13.2.08 "Landlord"**

A person, entity, Tribe, Band, Makah Tribal Housing Department or a federal government agency which is the owner, lessor, or such lessor of a dwelling unit intended for the use of tenants.

**§ 13.2.09 "Lease"**

An agreement, written or oral, as well as valid rules and regulations, regarding the tenants and conditions of the use and occupancy of real property, dwelling unit, building or premises.

**§ 13.2.10 "Lessor"**

The legal, beneficial or equitable owner of property under a lease. Lessor may also include the heirs, successors, executors, administrators or assigns of the lessor.

**§ 13.2.11 "Lessee"**

A tenant of a dwelling unit, user and/or occupier of real property.

**§ 13.2.12 "Rent"**

Periodic payments to be made to a landlord or lessor under a lease.

**§ 13.2.13 "Nuisance"**

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.

**§ 13.2.14 "Owner"**

Any person or entity jointly or individually having legal or beneficial title to all or part of land or a dwelling, including the right to own, manage, use or control a dwelling unit under a mortgage, long-term lease, or any other security arrangement.

**§ 13.2.15 "Unlawful Detainer"**

The act of retaining possession of property without legal right, such as after a lease has expired or after being served with a notice to vacate for breach of lease.

**Chapter 3  
Jurisdiction**

**§ 13.3.01 Territorial**

Jurisdiction is extended over all buildings and lands intended for human dwelling, occupation or residence which lie within the exterior boundaries of the Makah Indian Reservation.

**§ 13.3.02 Personal and Subject Matter**

Jurisdiction is extended over all actions wherein one or more of the parties is the Makah Tribe, the Makah Tribal Housing Department, individuals, or other entities within the jurisdiction of the Makah Tribe who occupy, sell, rent, lease or allow persons to occupy housing, dwellings or accommodations for the purpose of human dwelling, occupation or residence.

**§ 13.3.03 Tribal Court Authority**

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

**Chapter 4  
Forcible Entry Prohibited**

No person shall make entry upon land or buildings within the jurisdiction of the Makah Tribe except in cases where entry is allowed under law, and in such cases the person shall not enter by force but only in a peaceable manner.

**Chapter 5  
Grounds for Eviction - Unlawful Detainer**

A person shall be guilty of unlawful detainer and may be evicted for:

**§ 13.5.01 Nonpayment of Rent**

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 agreed date of payment, or

ten (10) calendar days following the first day of the month in a month-to-month tenancy. The receipt by the owner or landlord of partial payments under an agreement shall not excuse the payment of any balance due. Unless otherwise stated in a rental agreement, rental periods shall be presumed to be on a month-to-month basis.

**§ 13.5.02 Nuisance, Intentional or Reckless Damage**

Nuisance, intentional or careless damage, destruction, or injury to the property of the landlord, owner, or other tenants, or disturbing another tenant's right to quiet enjoyment of a dwelling unit.

**§ 13.5.03 Rental Agreement Violations**

Serious or repeated violations of the rental agreement, or any violations of any applicable housing or building codes.

**§ 13.5.04 Unlawful Occupation or Entry**

Entry into or occupation of any real property of another without permission or agreement, following any reasonable demand by a person in authority over the premises to leave.

**§ 13.5.05 Holding Over**

Continuing occupancy of a dwelling unit or other premises after the expiration of a lease of other agreement; after receipt of a written notice to vacate in a month-to-month tenancy; or after a lease or mortgage covering the premises has been foreclosed in foreclosure proceedings in the Makah Tribal Court.

**§ 13.5.06 Rental Agreements**

Violation of other terms in a written or oral rental agreement which do not conflict with the provisions of this Code or other Makah Tribal laws.

**Chapter 6  
Notice to Vacate Requirements**

**§ 13.6.01 When Notice to Vacate is Required**

When a landlord desires to obtain possession of a dwelling unit, and when one or more reasons to evict the tenant or tenants occupying the unit as set forth in Chapter 5 exist.

**§ 13.6.02 Statement of Grounds for Eviction Required**

The notice to vacate shall be addressed to the adult tenants of the dwelling unit and shall state the legal reasons for termination of the tenancy and the date by which the tenant is required to vacate the dwelling unit.

**§ 13.6.03 Time Requirements for Notice**

The notice must be delivered to the tenant within the following periods of time:

- (1) No less than three (3) calendar days prior to the date to vacate specified in the notice for serious injury to property, or injury to persons. In situations in which there is an emergency, such as a fire or other condition making the dwelling unsafe or uninhabitable, or in situations involving an imminent or serious threat to the dwelling unit, or the health or safety of the public, the notice may be made in a period of time which is reasonable in the circumstances.
- (2) No less than fourteen (14) calendar days prior to the date to vacate specified in the notice for nuisance for failure to pay rent or other payments required by the rental agreement.
- (3) No less than thirty calendar days in all other situations.
- (4) Makah Tribal Housing Department Notice of Termination: When the landlord is the Makah Tribal Housing Department, the notice of termination shall qualify as the notice to vacate required under this chapter so long as the time requirements of the housing department's notice of termination are at least as long as the time requirements set forth in this Code.

**§ 13.6.04 Service of the Notice to Vacate**

Any notice to vacate 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 other adult living in the premises with a copy delivered by mail; or
  - (b) Personally delivered to an adult agent or employee of the tenant with a copy of delivered by mail.
- (3) If the notice cannot be delivered by means of personal delivery or the 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 tenant; or

(b) Securely taping a copy of the notice to the main entry door of the premises in a manner that it is not likely to blow away, and sending a copy first class mail, postage prepaid, addressed to the tenant at the premises.

(4) The person giving notice must retain a copy of the notice and proof of service in accordance with this section.

## **Chapter 7**

### **Judicial Eviction Proceedings**

The owner of real property, lessor, or Makah Tribal Housing Department may commence an action for eviction or unlawful detainer by filing with the Makah Tribal Court, in writing, a summons and complaint.

#### **§13.7.01 Complaint**

If, after the date set forth in the notice to vacate the dwelling unit, the tenant has not vacated, the landlord may file a complaint in the Tribal Court for eviction, any claim for money damages and such other relief as the Court may deem just and proper. The complaint shall be signed by the landlord, owner or the attorney for the landlord or owner and shall state:

- (1) The names of the adult tenants against whom the complaint 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 vacate and any required termination notices have been served in accordance with this ordinance or other applicable law; and
- (6) A statement of the relief requested, including any claim(s) for restitution or possession of the dwelling unit, money damages, fees, costs, or other special relief.
- (7) If the landlord is the Makah Tribal Housing Department, a statement that the housing department has complied with all required regulatory processes prior to filing the eviction action.

#### **§ 13.7.02 Summons**

When a complaint is filed in the Tribal Court, the Clerk or Administrator of the Tribal Court or a Tribal Court Judge shall issue a summons notifying the respondent named in the complaint to

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appear before the Court on a certain date to answer to the complaint. The hearing date shall be no less than six (6) nor more than thirty (30) days from the date of the complaint. The summons must notify a respondent that judgment may be taken against him in accordance with the terms of the complaint unless he/she appears for hearing at the time, date and place set forth in the summons.

**§ 13.7.03 Service of the Summons and Complaint**

A copy of the summons and complaint shall be served upon all respondents by the plaintiff in the manner provided for service of the notice to vacate as set forth in Section 6 of this Code. Proof of service swearing that the summons and complaint was served in compliance with the requirements of this Code shall be filed by the plaintiff with the Tribal Court.

**§ 13.7.04 Request for Extension of Time**

A respondent may, for good cause shown, request an extension of time for the hearing. The Court shall have discretion to require the respondent to post with the Court 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. The Court may deny the request to extend the date of hearing.

**§ 13.7.05 Hearing**

The Makah Tribal Court, sitting without a jury, may enter an order for eviction and/or judgment against the respondent if it finds that the respondent is guilty of an act of unlawful detainer.

**§ 13.7.06 Evidence**

Evidence in proceedings under this Code shall be informal, and may include relevant and reliable hearsay evidence if such evidence is not the basis for a final decision. The books and records of the parties as to the payment or nonpayment of monies owed will be received in evidence and the files and business records of the landlord with respect to any agreement of the parties will be received upon their presentation to the Court; provided, however, that a tenant may examine the custodian of such records as to their contents.

**§ 13.7.07 Burden of Proof**

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

**§ 13.7.08 Judgment**

Within five (5) business days after the date of the hearing, the Court shall enter judgment and the judgment shall grant all relief that the parties are entitled to as of the date of the judgment. The judgment shall state the relief granted by the Court to any party and may:

- (1) Order the immediate eviction of a tenant and delivery of the premises to the landlord. Any eviction order must provide for a date certain by which the tenant is required to vacate the premises and inform the tenant that if he/she has not vacated the premises

within the time set by the Court that he/she and any other occupants will be forcibly removed by law enforcement officers.

(2) Grant actual damages including back rents, unpaid utilities, cost of repair of damages, other than ordinary wear and tear, to the dwelling unit or other damages as provided in the agreement of the parties or this Code;

(3) Order the parties to carry out any obligation required by law;

(4) Order rent or other payments due to the prevailing party through any garnishment provisions of Makah Tribal laws;

(5) Order the payment of spokesperson/attorney fees and court costs to the prevailing party.

**§ 13.7.09 Notice of Judgment Entered**

The prevailing party or the Makah Tribal Court shall give notice of the entry of judgment and any order for eviction to all other parties by personal service of the judgment and order.

**§ 13.7.10 Execution of Eviction Order**

An eviction order may be executed by a duly authorized law enforcement officer of the Makah Tribe on request of the prevailing party. To execute the order, the officer shall:

(1) Provide a copy of the order of eviction to all adult tenants or post copies of the order of eviction on the doors of the premises if there is not any adult tenant present at the time of execution; and

(2) Remove all the evicted persons from the dwelling and verbally order them not to re-enter.

**§ 13.7.11 Tenant Possessions**

The prevailing party may supervise the removal of the possessions of the evicted persons and obtain an inventory of said possessions. The landlord may file a signed inventory with the Makah Tribal Court.

**§ 13.7.12 Enforcement of Other Portions of Judgment**

All other portions of the Judgment shall be enforced in the manner otherwise provided under tribal law.



## **Chapter 8 Appeals**

Appeals under this Code shall be handled according to the general Tribal Court 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 of the Court will remain in effect during the pendency of an appeal under the Code unless a stay of execution is granted by the Trial Court. A respondent may apply for a stay of execution during the pendency of an appeal if the following is established:

- (1) Execution of the judgment could result in extreme hardship for the respondent; and
- (2) There would be no substantial prejudice or injury to the prevailing party during the period of the stay; or
- (3) A bond is posted or monies are paid to the Court, to satisfy the judgment or payment for the reasonable use and occupancy of the premises during the period of the time following the judgment. No stay may exceed sixty (60) days.

## **Chapter 9 Sovereign Immunity of the Makah Tribe**

Nothing contained in this Code shall be construed as a waiver of the sovereign immunity from suit of the Makah Tribe, its officials, employees or agents acting within the scope of their authority and duty.