

SHOALWATER BAY INDIAN TRIBE

TITLE 14

EVICITION PROCEDURES

PUBLIC HEARING: July 10, 1995
APPROVED: APRIL 6, 1995
RESOLUTION#04-06-95-27
RESOLUTION#05-31-95-44

TABLE OF CONTENTS

<u>TITLE 14</u>	1
EVICTION PROCEDURES.....	1
14.01.010 Title.....	1
14.02.010 Jurisdiction.....	1
14.03.010 Definitions.....	1
14.04.010 Unlawful Detainer.....	3
14.05.010 Procedures for Service of Notice.....	4
14.06.010 Complaint and Summons.....	5
14.07.010 Service of Summons and Complaint.....	5
14.08.010 Power of the Tribal Court.....	6
14.08.015 Continuances in Cases Involving the Secretary.....	6
14.09.010 Enforcement.....	7
14.10.010 Alternate Remedies.....	7

EVICTION PROCEDURES

14.01.010 Title

This section shall be known as EVICTION PROCEDURES of the Shoalwater Bay Indian Reservation.

14.02.010 Jurisdiction

This provision of this Title shall apply to ALL persons and property subject to the governing authority of the Tribe as established by the Tribal Constitution and By-Laws.

14.03.010 Definitions

(a) Tribe shall refer to the Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation as defined in the Tribal Constitution.

(b) Tribal Court shall mean the Tribal 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 the Tribal Court of Law.

(c) Lessor shall refer to the Tribe, Indian Housing Authority or to any other person or entity who shall have an interest in real property which for a limited time has been leased or rented to another; and the term lessor shall include an Indian Housing Authority which has leased real property under a Mutual Help and Occupancy Agreement, Rental Lease Agreement or other similar arrangement whereby the tenant may on certain conditions obtain ownership of the occupied Housing Unit at the end of occupancy under the agreement.

SHOALWATER BAY

(d) Secretary shall mean the Secretary of the United States Department of Housing and Urban Development (HUD) or his or her designee, attorney or agent, or the assignee of the Secretary.

(e) Tenant shall mean any person who occupies property under a lease, rental agreement or other agreement with a lessor as defined in this section.

(f) Unlawful Detainer Action shall be a suit brought before the Tribal Court to terminate a tenant's interest in property and/or to evict any person from occupancy of real property.

(g) Writ of Restitution is an order of the Tribal Court:

(1) Restoring an owner or lessor or the Secretary to possession of real property and,

(2) Evicting a tenant or other occupant therefrom.

(h) Nuisance is the maintenance on real property of a condition which:

(1) Unreasonably threatens the health or safety of the public or neighboring land users; or,

(2) Unreasonably and substantially interferes with the ability of neighboring property users to enjoy the reasonable use and occupancy of their property.

(i) Waste is spoil or destruction by a tenant of land, buildings, gardens, trees or other improvements which result in substantial injury to the lessor's interest in the property.

(j) Gender (singular or plural). Reference to persons by terms denoting one sex shall be taken as referring to either sex. Reference to persons by a term denoting the singular shall include the plural.

14.04.010 Unlawful Detainer

A tenant or other occupier of land shall be guilty of unlawful detainer if such person shall continue in occupancy of real property under any of the following situations:

(a) Without the requirement of any notice:

(1) After the expiration of the term of the lease or other agreement; or

(2) If such person has entered onto or remains on the real property of another without the permission of the owner and without having any substantial claim of a lease or to title of the property; or

(3) After an Indian Housing Authority or other Public Housing Authority has terminated such person's tenancy pursuant to procedures providing such person a hearing before the Housing Authority involved; or

(4) After the interest of such person in a lease has been foreclosed in a leasehold mortgage foreclosure proceeding in the Tribal Court.

(b) After having received 30 days' notice, the tenant or occupier shall remain in possession of the property contrary to the terms of the notice, as follows:

(1) When such person has received notice:

(i) That he is in default in the payment of rent; and

(ii) requiring him, in the alternative, to pay the rent or surrender possession of the occupied property;

SHOALWATER BAY

and such person has remained in possession after receipt of such notice without either surrendering the possession of the property or paying the rent; or,

(2) When the lease of the property is for an indefinite time, with rent to be paid monthly or by some other period, and the lessor has given notice of termination of the tenancy at least 30 days prior to the end of such month or period; or,

(3) When such person shall continue to fail to keep or perform any condition or covenant of the lease or agreement under which the property is held after he has been given notice to either perform such condition or covenant or to surrender the property; or

(4) When such person continues to commit or to permit waste upon or maintain a nuisance upon the occupied property after having been given notice, in the alternative, either to cease such waste or maintenance of nuisance or to surrender the property.

14.05.010 Procedures for Service of Notice

Notices required or authorized in the immediately preceding section shall be given in writing by either:

- (a) Delivering a copy personally to the tenant or occupier or to any adult member of his family residing on the premises; or,
- (b) Posting said notice in a conspicuous place near the entrance to said premises, and by sending an additional copy to the tenant or occupier by certified mail, return receipt requested, properly addressed, postage prepaid.

SHOALWATER BAY

Proof of service by either of the above methods may be made by affidavit of any adult person stating that he or she has complied fully with the requirements of (a & b) methods of service.

14.06.010 Complaint and Summons

The owner of real property or lessor or the Secretary shall commence an action for unlawful detainer by filing with the court, in writing, the following documents:

(a) A complaint, signed by the owner, lessor, the Secretary, an agent, or attorney, stating:

(1) The facts on which he seeks to recover.

(2) Describing the property so that it can be identified with reasonable certainty; and

(3) Any claim for damages or compensation due from the persons to be evicted; and

(b) A summons issued as in other cases requiring the defendants to appear for a trial upon the complaint on a date and time specified in the summons. The trial date specified in the summons shall be not less than 6 nor more than 30 days from the date of service of the summons and complaint. The summons must notify the defendants that judgment will be taken against them in accordance with the terms of the complaint unless they file with the court an answer and appear for trial at the time, date and place specified in the summons.

14.07.010 Service of Summons and Complaint

A copy of the summons and complaint shall be served upon the

SHOALWATER BAY

defendants in the manner provided by the Tribal Court rules for service of process in civil matters. In the absence of such Tribal Court rules, the summons and complaint shall be served by one of the methods authorized in 14.05.010 above.

14.08.010 Power of the Tribal Court

The Tribal Court shall enter a Writ of Restitution if:

(a) Notice of suit and trial is given by service of summons and complaint in accordance with the procedures provided in this Title; and,

(b) The Tribal Court shall find that the occupier of the real property is guilty of an act of unlawful detainer.

Upon issuance of a Writ of Restitution, the Tribal Court shall have authority to enter against the defendants a judgment for the following: back rent; unpaid utilities; charges due the Tribe, Indian Housing Authority, or land user under any lease or occupancy agreement (not including under a leasehold mortgage); and for damages caused by the defendants to the property other than ordinary wear and tear. The Tribal Court shall have authority to award to the prevailing party his costs and reasonable attorney's fees in bringing suit.

14.08.015 Continuances in Cases Involving the Secretary

Except by agreement of all parties, there shall be no continuances in cases involving the Secretary which will interfere with the requirements in 14.09.010 that the Writ of Restitution in a case involving the Secretary be enforced not later than 60 days from the date of service of the summons and complaint.

SHOALWATER BAY

14.09.010 Enforcement

Upon the issuance of a Writ of Restitution by the Tribal Court, tribal law enforcement officers shall enforce the Writ of Restitution by evicting the defendants and their property from the premises which are unlawfully occupied. In all cases involving the Secretary, the Writ of Restitution shall be enforced not later than 60 days after the date of service of the summons and complaint.

14.10.010 Alternate Remedies

In those cases in which the persons or property are subject to the jurisdiction of the courts of the State of Washington or the United States, the remedies and procedures provided by this Section are in the alternative to the remedies and procedures provided by the laws of the State of Washington or the United States.



SHOALWATER BAY INDIAN TRIBE

P.O. Box 130 • Tokeland, Washington 98590
Telephone (206) 267-6766 • FAX (206) 267-6778

SHOALWATER BAY INDIAN TRIBE RESOLUTION # 04-06-95-27

WHEREAS, the Shoalwater Bay Tribe is a Federally recognized Tribe Headquartered on the Shoalwater Bay Indian reservation in the State of Washington; and

WHEREAS, the Shoalwater Bay Tribal Council is the governing body of the Shoalwater Bay Tribe in accordance with their Constitution and By-laws; and

WHEREAS, the Shoalwater Bay Tribe is a member in good standing of the Southern Puget Sound Inter-Tribal Housing Authority (SPSITHA); and

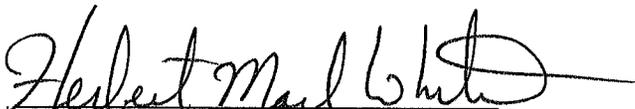
WHEREAS, the Shoalwater Bay Tribe will be receiving 10 new HUD housing units; and

WHEREAS, the Shoalwater Bay Tribe recognizes the necessity of have valid eviction procedures in place; and

NOW THEREFORE BE IT RESOLVED, that the Shoalwater Bay Tribe hereby accepts the eviction procedures as set forth in the attached document: Title 14.

CERTIFICATION

The above Resolution was passed at a regular Council meeting held April 6, 1995 at the Shoalwater Bay Tribal Center at which a quorum was present. 3 FOR 0 AGAINST
0 ABSTAIN


Herbert Mark Whitish, Chairman
Shoalwater Bay Indian Tribe


Lynn Clark, Secretary
Shoalwater Bay Indian Tribe

RESOLUTION NO 05-31-95-44

OF THE
SHOALWATER BAY TRIBAL COUNCIL

A RESOLUTION ESTABLISHING, APPROVING A MORTGAGE FORE-
CLOSURE ORDINANCE AND EVICTION ORDINANCE

WHEREAS, THE SHOALWATER BAY TRIBAL COUNCIL IS THE GOVERNING BODY OF THE SHOALWATER BAY INDIAN NATION, AND

WHEREAS, THE SHOALWATER BAY TRIBAL COUNCIL IS CHARGED WITH THE DUTY OF PROTECTING THE HEALTH, WELFARE AND SAFETY OF THE PEOPLE OF THE SHOALWATER BAY INDIAN NATION, AND

WHEREAS, THE SHOALWATER BAY INDIAN NATION DESIRES TO AVAIL THE NATION AND ITS MEMBERS (AND OTHER INDIANS) OF FINANCING FOR THE CONSTRUCTION AND/OR PURCHASE OF FAMILY RESIDENCES ON TRUST AND OTHERWISE RESTRICTED LANDS WITHIN THE JURISDICTION OF THE SHOALWATER INDIAN NATION BY PARTICIPATING IN THE FHA/HUD MORTGAGE INSURANCE PROGRAM UNDER SECTION 184 AND SECTION 248 OF THE NATIONAL HOUSING ACT, AND

WHEREAS, THE SHAOLWATER BAY INDIAN NATION DESIRES TO PROVIDE FOR THE RECORDING AND FORECLOSURE IN THE SHOALWATER BAY TRIBAL COURT OF LEASEHOLD MORTGAGES GIVEN TO SECURE LOANS INSURED UNDER SECTION 184 AND SECTION 248, AND WHEREAS, IT IS A REQUIREMENT OF THE UNITED STATES DEPT. OF HOUSING AND URBAN DEVELOPMENT (HUD) WHERE THE NATION HAS ASSUMED JURISDICTION OVER SUCH FORECLOSURE PROCEEDINGS THAT THE NATION ALSO ENACT A LAW PROVIDING FOR THE FIRST LIEN PRIORITY OF SUCH LEASEHOLD MORTGAGES: AND

WHEREAS, IT IS A REQUIREMENT FOR PARTICIPATION UNDER SECTION 184 AND SECTION 248 THAT THE NATION ENACT PROCEDURES FOR EVICTION OF DEFAULTED MORTGAGORS WHERE THE INSURED MORTGAGE HAS BEEN FORECLOSED: AND

WHEREAS, IT IS A REQUIREMENT OF HUD FOR PARTICIPATION UNDER SECTION 184 AND SECTION 248 THAT THE NATION PERMIT HUD ACCESS TO RESERVATION LANDS FOR SERVICING PROPERTIES FINANCED UNDER SECTION 184 AND SECTION 248, AND

WHEREAS, THE STANDARD LEASE FORM PRESCRIBED BY HOUSING & URBAN DEVELOPMENT WILL HEREBY BE AMENDED BY ADDING THE FOLLOWING LANGUAGE TO SECTION 3 OF THE FORM LEASE (USE OF PREMISES):

IN THE EVENT FINANCING TO CONSTRUCT, IMPROVE AND/OR MAINTAIN A DWELLING AND RELATED STRUCTURES IS NOT

OBTAINED BY THE LESSEE(S) WITHIN 12 MONTHS FROM DATE OF THIS LEASE, THE LESSOR MAY, IN ITS DISCRETION.

TERMINATE THE LEASE OR GRANT AN ADDITIONAL 12 MONTH EXTENSION AT THE REQUEST OF THE LESSEE(S) IN ORDER TO ALLOW LESSEE(S) TIME TO OBTAIN FINANCING, AND

NOW, THEREFORE, BE IT RESOLVED, THAT EVICTION PROCEDURES, AS AMENDED, AND LEASEHOLD MORTGAGES, STATUES, ARE ENACTED INTO THE LAW OF THE SHOALWATER BAY INDIAN NATION AND SHALL BE PLACED INTO THE SHOALWATER BAY TRIBAL CODE; AND

AND BE IT FURTHER RESOLVED, THAT THE SHOALWATER BAY INDIAN NATION WILL ENFORCE THE EVICTION PROCEDURES SET FORTH AS RELATES TO EVICTION OF DEFAULTED MORTGAGES WHERE THE INSURED MORTGAGE HAS BEEN FORECLOSED;

AND BE IT FURTHER RESOLVED, THAT THE SHAOLWATER BAY INDIAN NATION HEREBY GRANTS AND PERMITS HUD ACCESS TO RESERVATION LANDS FOR SERVICING PROPERTIES FINANCED UNDER SECTION 184 AND SECTION 248.


HERB WHITISH, CHAIRMAN
SHOALWATER BAY TRIBAL COUNCIL

CERTIFICATION

I HEREBY CERTIFY THAT THE ABOVE RESOLUTION WAS DULY ADOPTED AT A REGULAR MEETING OF THE SHOALWATER BAY TRIBAL COUNCIL AT TOKELAND, WASHINGTON, ON THE 3rd DAY OF May, 1995, AT WHICH TIME A QUORUM WAS PRESENT BY A VOTE OF 3 FOR AND 1 AGAINST.


LYNN CLARK, SECRETARY
SHOALWATER BAY TRIBAL COUNCIL