

**POTAWATOMI LAW AND ORDER CODE**

**TITLE 20  
MISCELLANEOUS PROVISIONS**

**CHAPTER 20-2  
ANIMAL CONTROL AND REGULATION**

**General Provisions.**

**Section 20-2-1. Definitions.**

For the purpose of this Chapter, the following words and phrases are defined as follows:

- (A) **Abandon.** “Abandon” includes the leaving of a dog by its owner or other person responsible for its care or custody without making effective provisions for its proper care.
- (B) **At-Large.** “At-Large means to be outside of a fence, other enclosure or appropriate restraint which restrains the dog to a particular premise or not under the control, by leash or lead, of the owner or other authorized person capable of restraining the dog. Dogs tethered to a stationary object within range of public thoroughfares are deemed to be at-large.
- (C) **Bite.** “Bite” means any actual or suspected abrasion, scratch, puncture, tear, bruise, or piercing of the skin, caused by any dog, which is actually or suspected of being contaminated or inoculated with saliva from the dog, directly or indirectly, regardless of the health of the dog causing such bite.
- (D) **Dangerous or Vicious Dog.** “Dangerous or Vicious Dog” means any dog deemed to be dangerous or vicious under this act.
- (E) **Dog.** “Dog” means any member of the species *Canis Familiaris*, regardless of sex.
- (F) **Harborer.** “Harborer means any person who shall allow any dog to habitually remain or lodge or to be fed within his or her home, store, yard, enclosure or place of business or any other premises where he or she resides or controls.
- (G) **Immediate Control.** “Immediate Control” means the regulation and supervision by a competent person so that an animal is unable to run or get loose at will.

**(H) Kennel.** “Kennel” means any establishment, commercial or otherwise, maintained for breeding, rearing, grooming, boarding, or otherwise harboring in an enclosure in one location only, more than 10 dogs.

**(I) Nation.** “Nation” means the Prairie Band Potawatomi Nation.

**(J) Owner.** “Owner” means the one who owns a dog, or his or her employee, agent, or other competent person into whose charge a dog has been placed by the actual owner.

**(K) Reservation.** “Reservation” means the Prairie Band Potawatomi Indian Reservation. For the purpose of this Title, the term Reservation shall be as defined in Article I of the Prairie Band Potawatomi Nation’s Constitution.

**(L) Reservation Housing Area.** "Reservation Housing Area or Housing Area" means any land within the exterior boundaries of the three tribal housing cluster areas or any other land areas having comparable or greater residential housing density.

**(M) Vaccination.** “Vaccination” means an injection of a vaccine, approved by the Health Center and administered by competent authority for the purpose of immunizing a dog against rabies.

**(N) Veterinarian.** “Veterinarian” means a doctor of Veterinary Medicine appropriately licensed by competent authority.

(Amended by PBP TC No. 99-103, July 7, 1999.)

**Section 20-2-2. Animal Control Officer, Duty to Impound, Citation Alternative.**

**(A)** In the absence of a duly appointed Animal Control Officer, the Nation’s Chief of Police or other competent authority shall be charged with the enforcement of this chapter. Law Enforcement Personnel and any person employed by the Nation as an Animal Control Officer shall have the powers and authority as allowed by law in the enforcement of this chapter. In addition to the Animal Control Officer, the Nation may also employ assistant Animal Control Officers, who shall have the powers and authority to enforce this chapter. All Animal Control Officers shall be appointed by the Tribal Chief of Police, subject to Tribal Council approval, and shall be subject to the supervision and direction of the Tribal Chief of Police.

**(B)** Except as proved in subsection (C), it shall be the duty of the Animal Control Officer to take up, impound or, after the completion of any attempts required under this law to contact or notify the owner and to give the owner the opportunity to reclaim the dog, destroy all dogs found upon the Prairie Band Potawatomi Reservation; which are in violation of the provisions of this chapter.

**(C)** As an alternative to the provisions of subsection (B) of this section, any Law Enforcement Officer or the Animal Control Officer may issue a citation to the owner,

harborer or keeper of a dog in violation of this chapter, and the person receiving the citation shall appear in the Tribal Court to answer the charged violation of this chapter. In lieu of a citation and at the discretion of the Officer, for the first offense a warning ticket may be issued with instructions for how the offender may avoid further violations of this law. This warning ticket is not required and shall not be a prerequisite for the issuance of a citation.

(Amended by PBP TC No. 99-67, May 12, 1999; amended by PBP TC No. 99-103, July 7, 1999)

### **Section 20-2-3. Capture and Destruction.**

When deemed necessary by Law Enforcement Officers or the Animal Control Officer for the health, safety and welfare of the residents of the Prairie Band Potawatomi Reservation, such Officers or their Agents may:

- (A) Place a humane trap on public property or a requesting resident's property for the purpose of capturing any dog which is creating a nuisance.
- (B) Use any tranquilizer guns, humane traps, or other suitable devices to subdue and capture any dog that is deemed by the Animal Control Officer, in his or her discretion, to be a danger to itself or to the public health and safety.
- (C) Use firearms or other suitable weapons to destroy any rabid dog, any vicious dog or any dog creating a nuisance as defined, where such dog is impossible or impractical to capture. The Animal Control Officer shall exercise authority under this subsection with restraint. If possible or practical, attempts shall first be made to capture the dog unharmed.

(Amended by PBP TC No. 99-103, July 7, 1999)

### **Section 20-2-4. Right of Entry, Unlawful Interference.**

- (A) The Animal Control Officer or any Law Enforcement Officer shall have the right of entry upon any private unenclosed lots or lands for the purpose of collecting any dog whose presence thereupon is a violation of this chapter. Actions taken by them to enter upon such private property shall be respectful of the privacy of persons living there and shall be conducted in ways that help to minimize the intrusion upon their privacy.
- (B) It shall be unlawful for any person to interfere with any tribal agent in the exercise of his or her duties under this chapter.

(Amended by PBP TC No. 99-67, May 12, 1999)

**Section 20-2-5. Noisy Animals.**

The keeping, or harboring of any dog which by loud, frequent and habitually barking, howling, and yelping, disturbs the peace of any neighborhood is hereby prohibited. It shall be the duty of the person harboring or keeping such loud and noisy dog or dogs to abate the condition, and if he or she fails to do so, the Nation may abate it by taking up, impounding or, after notice and an opportunity for a hearing in Tribal Court, destroying the dog at the expense of the owner.

(Amended by PBP TC No. 99-103, July 7, 1999)

**Section 20-2-6. Nuisance, Animal Activities Prohibited.**

(A) It shall be unlawful for the owner of any dog to keep or maintain such dog within the Reservation so as to constitute a nuisance. For the purpose of this section, nuisance is defined as any dog which is described in any one of the following:

- (1) Molests or interferes with persons in the public right-of-way.
- (2) Attacks or injures persons, or other domestic animals.
- (3) Damages public or private property other than that of its owner or harborer by its activities or with its excrement.
- (4) Scatters refuse that is bagged or otherwise contained.
- (5) Causes any condition which threatens or endangers the health or well being of persons or other animals.

(B) If a summons is issued charging a violation of this provision, a subpoena shall also be issued to the complainant to testify to the nuisance under oath.

**Section 20-2-7. Death of Dogs.**

All dead dogs shall be disposed of by the owner or keepers within 24 hours of the dog's death by burial, incineration in a facility approved by the Animal Control Officer, by rendering or by other lawful means approved by the Animal Control Officer. No dead dog shall be dumped on any public or private property.

(Amended by PBP TC No. 99-67, May 12, 1999)

**Section 20-2-8. Vicious Dogs.**

(A) It shall be unlawful for any person to keep, possess or harbor a vicious dog on the Reservation. Impoundment or destruction of dogs whose owners have been cited for violation of this section shall be at the discretion of the Nation. If the dog presents a clear and present danger to the public health or safety, it shall be the duty of the Animal Control Officer or Law Enforcement to impound or destroy such dog.

(B) For the purpose of this chapter, a vicious dog shall include any of the following:

(1) Any dog with a known propensity, tendency or disposition to attack unprovoked with the obvious and immanent intention and ability to cause injury or to otherwise endanger the safety of human beings or domestic animals.

(2) Any dog which attacks a human being or domestic animal without provocation.

(3) Any dog owned or harbored primarily or in part for the purpose of fighting or any animal trained for fighting.

(4) Any dog which is urged by its owner or harbored to attack, or whose owner or harborer threatens to provoke such animal to attack any Law Enforcement Officer while such officer is engaged in the performance of official duty.

(C) **Complaint.** Whenever a sworn complaint is filed in the Tribal Court against the owner of a dog alleging that such dog is vicious and in violation of this section, the Tribal Court Judge shall hold a hearing to determine whether or not the dog is vicious and there is a violation of this section. The owner of the dog shall be notified in writing of the time and place of the hearing at least one week prior to the hearing. In making a determination, the Tribal Court Judge shall consider the following:

(1) The seriousness of the attack or bite.

(2) Past history of attacks or bites.

(3) Likelihood of attacks or bites in the future.

(4) The condition and circumstances under which the dog is kept or confined.

(5) Other factors which may reasonably relate to the determination of whether or not the dog is vicious.

(D) The Tribal Court Judge shall order the impoundment, the muzzling, or the confinement of the dog accused of being in violation of this section in a manner and location that will insure that it is no threat to persons or other animals pending the outcome of the hearing. If such impoundment, muzzling or otherwise safe confinement is not possible or if prior court orders to restrain such dog have gone unheeded, the judge may order the dog immediately destroyed.

(E) **Vicious Dogs to be muzzled.** It shall be the duty of every owner, keeper or harborer of any dog within the Reservation, which dog is vicious or has been known to bite, chase, or run after any person or animal in the streets, alleys, or any public place within the Reservation, to keep the same muzzled with a good and sufficient wire or leather muzzle, securely fastened so as to wholly prevent such dog from biting any animal or person until such time as a determination has been made by the court as to whether the dog is vicious or not. Any person owning, keeping or harboring any dog within the Reservation contrary to this section shall be guilty of a violation of this code.

**(F) Immediate Destruction.** Nothing in this chapter shall be construed to prevent the Animal Control Officer or any Law Enforcement Officer from taking whatever action is reasonably necessary to protect himself or herself or members of the public from injury or danger, including immediate destruction of any vicious dog without notice to the owner.

**(G) Release.** If a complaint has been filed in the Tribal Court against the owner of an impounded dog for a charge under this section, the dog shall not be released except on the order of the Tribal Court Judge, who may also direct the owner to pay all impounding fees in addition to any penalties for violation of this chapter. The Judge may, upon making a finding that a dog is vicious, order the dog destroyed. Surrender of a dog by the owner thereof to the Animal Control Officer or Law Enforcement Officer does not relieve or render the owner immune from the decision of the court, nor to the fees and fines which may result from a violation of this section.

(Amended by PBP TC No. 99-67, May 12, 1999; amended by PBP TC No. 99-103, July 7, 1999)

### **Section 20-2-9. Running at Large.**

It shall be unlawful for any person to willfully allow any dog under his or her control to be or to run at large in any reservation housing area. Any dog that runs at large in a housing area shall be impounded or, after the completion of any attempts required under this law to contact or notify the owner and to give the owner the opportunity to reclaim the dog, destroyed.

(Amended by PBP TC No. 99-103, July 7, 1999)

### **Section 20-2-10. Impoundment of Rabies Suspects.**

**(A)** Any Law Enforcement Officer or Local Health Officer may take up, upon private or public property, any dog which has bitten or scratched a person or other animal and impound the dog in the Tribal Pound, securely penned and separated from other animals, or in a Veterinary Hospital or Animal Care Facility for a period of not more than 30 days during which time the local health officer shall determine whether or not such dog is suffering from a disease and, if not, the local health officer shall authorize the release of the animal upon payment by the owner of the boarding fee therefore. The health officer may authorize the keeping of any such dog on the owner's premises if the owner produces a rabies vaccination certificate showing that the dog has valid rabies vaccination protection. Impoundment costs shall be borne by the owner. If in the opinion of the local health officer symptoms develop justifying a microscopic examination, then the dog shall be killed and examination made by the appropriate authority.

(B) In lieu of the provisions of subsection (A), the owner of such dog may, at his or her own expense, take such dog to any duly qualified and licensed veterinarian for observation. Such veterinarian shall report his or her findings in writing to the local health officer. If in the opinion of such veterinarian a microscopic examination is justified, then the dog shall be turned over to the Animal Control Officer or any Law Enforcement Officer to be killed and examination made by the appropriate authority.

(C) Any dog desired for observation by the local health officer under this section shall be delivered to the Animal Control Officer or any Law Enforcement Officer upon demand and shall not be withheld, hidden or harbored. Any person violating this provision shall be guilty of a violation of this code. Upon refusal of any person to so deliver such dog, the Tribal Court Judge shall cause a warrant to be issued for the arrest of such person, which warrant shall also provide for the surrender of the dog and shall be lawful authority for the apprehending and forcible taking of such dog.

**Section 20-2-11. Animals Bitten by Rabid Animals.**

(A) Whenever a dog or other animal is bitten by a rabid dog or animal later proved to have been rabid, it shall be the duty of the owner of the dog or animal that is bitten, to report that fact to the local health officer, the Animal Control Officer or Law Enforcement. It shall also be the duty of the owner of the bitten animal to either destroy or have his or her bitten animal destroyed unless the animal which was bitten had been vaccinated against rabies at least three weeks before being bitten and has a current vaccination.

(B) If the bitten animal has a current vaccination, it shall be confined for 30 days. The bitten animal shall be released from confinement only upon written order from the local health officer, who declares the animal to be free of rabies. If the animal is found to have contracted rabies during confinement, it shall be properly disposed of.

(Amended by PBP TC No. 99-67, May 12, 1999)

**Section 20-2-12. Registration and Vaccination Required, Fee.**

(A) Every owner of any dog over three months of age shall annually register with the Tribal Police his or her name and address with the name, sex and description of each dog owned and kept within the Reservation. It shall be unlawful for the owner of any newly acquired dog or any dog brought within the boundaries of the Reservation to fail to register such dog within 30 days from acquisition or bringing the dog within the Reservation. It shall be unlawful for the owner of any previously registered dog to fail to maintain current registration of such dog.

(B) Upon registration, the owner shall present a current, completed certificate of immunization against rabies. No registration shall follow without evidence of this document, and it shall be unlawful for the owner of any dog over six months of age to fail to maintain effective rabies immunization of such dog.

(C) The owner or harbinger of any dog shall, at the time of registering such dog, present to the Tribal Police a certificate from an accredited veterinarian showing that a male dog has been neutered or a female dog has been spayed, if the dog has been neutered or spayed.

(D) The Tribal Police shall collect an annual registration fee of \$6.00 for each neutered male dog and for each spayed female dog, and \$12.00 for each unneutered male dog and for each unspayed female dog.

(E) The registration year shall be from January 1<sup>st</sup> through December 31<sup>st</sup> of each year. The fee shall be payable before January 31<sup>st</sup> of each year without penalty. Registration fees as enumerated above may be prorated for newly acquired dogs or for dogs owned by a person or persons moving to and establishing a home within the Reservation during a calendar. Every owner or harbinger of a dog or dogs who shall fail to register the same prior to the 1<sup>st</sup> day of March of each year shall pay in addition to the registration fee herein provided a penalty fee for late registration of \$2.00 per month.

**Section 20-2-13. Dog Tags.**

(A) It shall be the duty of the Tribal Police or designated representative, upon a showing of current rabies immunization and receipt of the registration fee hereinbefore required, to keep in a book suitable for the registration of dogs, the time of the registration, the name of the owner or keeper, the number of the registration and the amount paid therefore, and shall deliver to the owner or keeper of the dog a certificate in writing, stating that the person has registered the dog and the number by which the dog is registered, and shall also deliver to the owner or keeper of the dog a tag with the registration number and the registration year thereon, which shall be, by the owner or keeper, attached to the collar to be used on the dog so registered. When any tag has become lost during a registration period, the owner of the dog may request a duplicate tag for the remainder of the registration period. When so requested, the Tribal Police shall, upon presentation of the registration certificate, issue a duplicate of such tag. It shall be unlawful for any person to take off or remove the Tribal registration Tag from any dog belonging to another, or remove the strap or collar on which the same is fastened.

(B) It shall be unlawful for any person to place on any dog a tag issued for any other dog or to make use of any false, forged or counterfeit tag or imitation thereof.

**Section 20-2-14. Evidence of Vaccination.**

It shall be unlawful for the owner of any dog kept within the Reservation to fail to display a current certificate of immunization against rabies issue by an accredited veterinarian or other competent authority evidencing the vaccination of such dog within two years, when requested by the Animal Control Officer or any Law Enforcement Officer.

**Section 20-2-15. Visiting Dogs.**

The provisions of this chapter with respect to registration shall not apply to any dog owned by any person visiting or temporarily remaining within the Reservation for less than 30 days. However, such dogs shall be kept under restraint by the owner thereof at all times.

(Amended by PBP TC No. 99-103, July 7, 1999)

**Section 20-2-16. Running at Large, Fine, Hunting Dogs.**

(A) It shall be unlawful for the owner or harborer of any dog to permit such dog to run at large within a reservation housing area at any time.

(B) Any dog which runs at large within a housing area shall be impounded or, after the completion of any attempts required under this law to contact or notify the owner and to give the owner the opportunity to reclaim the dog, destroyed.

(C) The owner of any dog impounded for running at large without a tag shall, for the first offense, pay a fine of \$25.00 plus the boarding bill.

(D) For the first offense of a dog running at large with a tag as required, the owner or harborer claiming such dog, shall, in addition to presenting a registration receipt, pay the cost of the boarding bill. For a second offense within a one year period, the owner or harborer shall pay a fine of \$25.00 plus the board bill. For a third and all subsequent offenses within a one year period, the owner or harborer shall pay a fine of \$50.00 plus the cost of the board bill.

(E) Dogs actively involved in supervised seasonal or religious hunting activities will not be considered to be dogs at large.

(Amended by PBP TC No. 99-103, July 7, 1999)

**Section 20-2-17. Impoundment, Record, Notice, Redemption, and Minimum Fee.**

(A) Any dog found in violation of the provisions of this chapter shall be subject to impoundment by the Nation.

**(B)** A record of all dogs impounded or destroyed shall be kept by the Nation containing the following information: color, sex, weight, height, identifying marks, registration number (if any) and the date of impoundment or destruction.

**(C)** If the dog impounded has a current registration tag attached to its collar or if the impounding officer knows the identity of the dog's owner, the owner of such dog, as shown by the records of the Tribal Police shall be notified in writing as soon as possible or at least 24 hours before such dog is disposed by destruction or sale. If, at the end of 30 days the Tribal Police have been unable to locate the owner, or the owner, upon having been located, refuses to claim or redeem said dog, then the dog may be sold, euthanized or otherwise disposed of.

**(D)** If the dog impounded has no current registration tag and the identity of the dog's owner is unknown to the Animal Control Officer or the impounding Law Enforcement Officer then such impounding officer shall, upon taking any such dog into custody and impounding same, make a record thereof, with a description of the dog and the date and place taken into custody and the place of impounding. The Officer shall thereupon immediately post a public notice and shall also publish such notice in a newspaper suitable for legal notices for two consecutive weeks at the owner's expense. The notice shall state that the dog, describing the same with the date and place of taking, has been taken up, and that unless the charges of impounding the same, together with any license or other fees due and unpaid, are paid within three business days from the date of the last published notice, that the dog will be disposed of, as provided in this code. If within three full business days the owner does not appear to claim the dog, then the dog may be sold, euthanized or otherwise disposed of.

**(E)** If at any time before the sale or destruction of any dog impounded under the provisions of this code, the owner of an impounded dog does appear and redeem the dog, it shall be turned over to the person claiming it upon payment of any impoundment fees or penalties plus the actual cost of impoundment, and upon compliance with the registration provisions of this code. This subsection shall not apply to any dog alleged as being viscous or suspected of rabies.

**(F)** The minimum daily impoundment fee shall be set by the Animal Control Officer.

**(G)** Any dog impounded may not be released without a current rabies vaccination.

**(H)** Impoundment hereunder shall not preclude any court from imposing and executing any fine which might otherwise be levied under this code for violation of any of the provisions thereof nor shall impoundment be a defense in any prosecution commenced hereunder.

(Amended by PBP TC No. 99-67, May 12, 1999; amended by PBP TC No. 99-103, July 7, 1999)

**Section 20-2-18. Disposition of Unclaimed Dogs.**

If any dog is not redeemed by its owner or harborer within the time allowed for redemption as specified thereof, the Animal Control Officer, any authorized Law Enforcement Officer, any Authorized Veterinarian or any Duly Authorized Pound Personnel may destroy such dog or sell the same for the costs of impoundment and keeping, plus any registration fee due for the current year, or put the dog up for adoption at no cost.

**Section 20-2-19. Confinement of Dogs in Heat.**

Any unspayed female dog in the stage of estrus (heat) shall be confined during such period of time in a house, building or secure enclosure, and the area of enclosure shall be so constructed that no other dog or dogs may gain voluntary access to the confined dog except for purposes of planned breeding. Any dog that is in the state of estrus (heat) and that is not properly confined, or any such dog that is creating a neighborhood nuisance, shall be removed to a boarding kennel, to a veterinary hospital or to the animal shelter. All expenses incurred as a result of the confinement shall be paid by the owner. The owner of dogs removed to the shelter shall be charged at the rate established from time to time by the shelter for routine confinement.

**Section 20-2-20. Muzzling.**

Whenever the Tribal Chairperson shall deem it necessary for the protection and welfare of the inhabitants of the Nation, he or she shall issue an order requiring all dogs kept within the Reservation to be effectively muzzled for such length of time as may be specified in the order, to prevent them from biting or injuring persons or animals. Such order shall be published in a public place for such period of time as the Chairperson may deem necessary.

**Section 20-2-21. Pit Bull Dogs, Rottweiler Dogs, Doberman Pincher Dogs.**

(A) It shall be unlawful to keep, harbor, own or in any way possess within the Reservation any Pit Bull, Rottweiler or Doberman Pincher dogs, except that such dogs that reside on the Reservation on or before December 31, 1999 may be kept within the Reservation, subject to the provisions herein.

(Amending PBP TC No. 2008-148, June 18, 2008)

(B) All owners, keepers or harborers of Pit Bulls, Rotweillers and Doberman Pincher dogs within the Reservation shall conspicuously display a sign on the premises where they are kept which states that type of dog is on the premises.

(Amended by PBP TC No. 99-103, July 7, 1999)

**Section 20-2-22. Leash and Muzzle.**

No person shall permit a Pit Bull, Rottweiler or Doberman Pincher dog to go outside its kennel or pen unless such dog is securely leashed with a leash no longer than four feet in

length. No person shall permit said dog to be kept on a chain, rope or other type of leash outside its kennel open unless a person is in physical control of the leash. Such dogs may not be leashed to inanimate objects such as trees, posts, buildings, etc. In addition, all such dogs on a leash outside the dog's kennel must be muzzled by a muzzling device to prevent such dog from biting persons or other animals.

**Section 20-2-23. Confinement.**

All Pit Bull, Rottweiler or Doberman Pincher dogs shall be securely confined indoors or in a securely enclosed and locked pen or kennel, except when leashed and muzzled as above provided. Such pen, kennel or structure must have secure sides and a secure top attached to the sides. All structures used to confine such dogs must be locked with a key or combination lock when such dogs are within the structure. Such structure must have a secure bottom floor attached to the sides of the pen or the sides of the pen must be embedded in the ground not less than two feet. All structures erected to house such dogs must comply with all Tribal Building Regulations. All such structures must be adequately lighted and ventilated and kept in a clean and sanitary condition.

**Section 20-2-24. Confinement Indoors.**

No Pit Bull, Rottweiler or Doberman Pincher may be kept on a porch, patio or in any part of a house or structure that would allow the dog to exit such building on its own volition. In addition, no such dog may be kept in a house or structure when the windows are open or when screen windows or screen doors are the only obstacle preventing the dog from exiting the structure.

**Section 20-2-25. Signs.**

All owners, keepers or harborers of Pit Bulls, Rottweillers and Doberman Pincher dogs within the Reservation shall within 10 days of the effective date of this code display in a prominent place on their premises a sign easily readable by the public using the words "Beware of Dog". In addition, a similar sign is required to be posted on the kennel or pen of such dog.

**Section 20-2-26. Reporting Requirements.**

All owners, keepers or harborers of Pit Bull, Rottweiler or Doberman Pincher dogs must within 10 days of an incident, report the following information in writing to the Tribal Police as required hereinafter;

- (1) The removal from the Reservation or death of such dog;
- (2) The birth of offspring of such dog;
- (3) The new address of such dog's owner if the owner relocates within the Reservation.

**Section 20-2-27. Irrebuttable Presumptions.**

There shall be an irrebuttable presumption that any Pit Bull, Rottweiler or Doberman

Pincher dog is in fact a dog subject to the requirements of this code.

**Section 20-2-28. Failure to Comply.**

It shall be unlawful for the owners, keepers or harborers of a Pit Bull, Rottweiler or Doberman Pincher to fail to comply with the requirements and conditions set forth in this code. Any dog found to be the subject of a violation of this code shall be subject to immediate seizure and impoundment or destruction. In addition, failure to comply will result in the revocation of the license of such dog resulting in the immediate removal or destruction of the dog from the Reservation.

**Section 20-2-29. Violations and Penalties.**

Any person violating or permitting the violation of any provision of this code shall, upon conviction in Tribal Court, be fined a sum of not more than \$500.00. In addition to the fine imposed, the court may sentence the defendant to imprisonment in the Tribal Jail for a period not to exceed 10 days. The court may order the registration of the offending dog revoked and the dog removed from the Reservation. In the event the defendant refuses to remove the dog from the Reservation the Tribal Court judge shall find the person in contempt and order the immediate confiscation, impoundment or destruction of the dog. Each day that a violation of this code continues shall be deemed a separate offense. In addition to the foregoing penalties, any person who violates this code shall pay all expenses, including shelter, food, handling, veterinary care and testimony necessitated by the enforcement of this code.

**Section 20-2-30. Exceptions.**

(A) Dogs which are used by the Tribal Police Department or other law enforcement agencies to assist in law enforcement shall be exempt from the application of this chapter with regard to actions taken by them to attack, restrain or track in the regular course of their law enforcement activities.

(B) Dogs which are held in commercial kennels in the ordinary course of business for sale to the public shall not be subject to licensing under this law until such time as they are removed from the kennel.

(Enacted by PBP TC No. 99-63, April 29, 1999; amended by PBP TC 99-67, May 12, 1999; amended by PBP TC No. 99-103, July 7, 1999)

**CHAPTER 20-3  
EVICITION CODE**

**Section 20-3-1. Preamble.**

(A) The Prairie Band Potawatomi Nation of the Potawatomi Reservation is a self-governing Indian Nation deriving its governing authority from its inherent sovereignty. The Nation stands in a government-to-government relation with the Government of the United States through applicable tribal and federal laws, agreements and other pertinent arrangements.

(B) It is the obligation of the Prairie Band Potawatomi Nation to make certain there is decent, safe and sanitary housing for tribal members and such other persons as may from time to time be allowed to reside on the reservation, and to regulate the use of such accommodations for public uses and purposes.

(C) The Nation has a legitimate governmental interest in regulating the occupation of all residential housing and accommodations within its jurisdiction, and such housing is a protectable asset of the Nation.

(D) It is necessary to regulate disputes between persons and entities over housing, dwellings and accommodations in order to protect the public peace, welfare and safety and to assure order and justice for all those who reside on the reservation.

(E) The activities of all persons within the jurisdiction of the Prairie Band Potawatomi Nation must be regulated because of the tribal interest in dwelling accommodations and the necessity of preserving the peace and preventing disputes which may cause community disruption, turmoil or conflict.

(F) The Indian Housing Authority of the Prairie Band Potawatomi Nation has certain obligations under its laws, the laws of the United States, the regulations of and agreements with the Department of Housing and Urban Development (HUD) and other agencies, which require the Indian Housing Authority to adequately and efficiently carry out its obligations. Therefore there is a need for a comprehensive tribal code or ordinance which regulates the rights, obligations and remedies of all persons, Indian or non-Indian, member or non-member, who occupy housing, dwellings or accommodations when they do not own outright, and those of persons or entities that sell, rent or allow the occupation of residential housing.

(G) It is in the interests of justice and good government to regulate in an orderly, fair and speedy manner, the rights, obligations and remedies of landlords and tenants within the Potawatomi Reservation or under its jurisdiction.

**Section 20-3-2. General Provisions.**

(A) **Title.** This code may be known and cited as the Eviction Code of the Prairie Band Potawatomi Nation.

(B) **Jurisdiction.** This code shall apply to any and all arrangements, formal or informal, written or agreed to orally or by the practice of the parties, in selling, renting, leasing, occupying or using any and all housing, dwellings or accommodations for human occupation and residence.

(1) Jurisdiction is extended over all buildings and lands intended for human dwelling occupation or residence which may lie within:

(a) the exterior boundaries of the Potawatomi Reservation;

(b) lands owned by, held in trust for, leased or used by the Prairie Band Potawatomi Nation, its Indian Housing Authority, or any other entity of the Nation; or

(c) the Indian Country of the Prairie Band Potawatomi Nation, as may be defined from time to time by the laws of the Nation or of the United States.

(2) Jurisdiction is extended over all persons or entities within the jurisdiction of the Nation who sell, rent or lease or allow persons to occupy housing, dwellings or accommodations for the purpose of human dwelling occupation or residence, and all persons who buy, rent, lease or occupy such structures. Such personal jurisdiction is extended over all persons and entities, whether they are members of the Prairie Band Potawatomi Nation or not, whether they are Indian or non-Indian, and whether they have a place of business within the Potawatomi Reservation. Any act within the Potawatomi Reservation dealing with the subject matter of this code shall be subject to the Prairie Band Potawatomi Nation.

(3) Jurisdiction over all matters arising within the jurisdiction of the Nation with respect to the subjects of this code, and jurisdiction with respect to any person or entity acting or causing actions which are within the code shall be exercised by the Prairie Band Potawatomi Tribal Court of the Prairie Band Potawatomi Nation.

(C) **Relation of the code to other laws.**

(1) Statutes, regulations and agreements with the United States. This code will not be interpreted in such a way as to conflict with statutes, regulations, or other laws of the United States, or agreements with the United States, which are specifically applicable to the subjects of this code. Where a conflict may appear between this code and any such provision, such statute, regulation or agreement of the United States will govern if it has specific applications and if it clearly is in conflict with the provisions of this code.

(2) State statutes and laws. This code shall govern and shall pre-empt the application of any state laws.

(3) Other 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 the Department of Housing and Urban Development or other agencies of the United States, such tribal laws or ordinances will govern over the provisions of this code.

(4) Other principles of law. Unless affected or displaced by this code, principles of law and equity in the unwritten common law of the Prairie Band Potawatomi Nation are applicable.

**(D) Purposes of this code and its interpretation.** This code shall be liberally construed and applied to carry out its purposes and intent, and the code shall:

(1) Simplify, clarify, modernize and revise the law governing the occupation of dwelling units and accommodations, as well as the rights, obligations and remedies of the owners, sellers, lessors, landlords, lessees, tenants and occupiers of such structures.

(2) Encourage owners and occupiers of dwellings to maintain and improve them in order to improve the quality of housing as a tribal resource; and

(3) Preserve the peace, harmony and safety of the people of the Prairie Band Potawatomi Nation and those permitted to enter or reside on the Potawatomi Reservation.

(4) There exists within the jurisdiction of the Potawatomi Nation and the Potawatomi Reservation unsanitary, unsafe and overcrowded dwelling accommodations, and there is a shortage of safe, decent and sanitary housing available at rents or prices which persons of low income can afford, and that shortage forces persons to occupy unsanitary, unsafe and overcrowded dwelling accommodations.

(5) These conditions also cause an increase in and spread of disease and crime, and constitute a menace to health, safety, morals, welfare and traditional ways, and they require excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety protection, fire and accident prevention, and other public services and facilities.

**(E) Definitions.** As used in this code the following words will have the meanings given them in this section:

(1) An "action", "suit or law suit", "claim", "complaint" or "defense" will include any dispute between persons or entities which relates to the sale, rental, use or occupancy of any housing, dwelling or accommodations for human occupancy, including claims for the payment of monies for such housing, dwellings or accommodations, damages to such units, fees, costs or expenses relating to them, the condition of such units or the relationships between owners and occupiers of such units, including the right to occupy them.

(2) "Building or housing codes" are any law, ordinance or governmental regulation of the Nation 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. Where appropriate to the situation, standard or nationally-recognized building standards or codes may be applied as "building or housing codes".

(3) A "dwelling or dwelling units" means a structure or part of a structure that is used as a home, residence, or sleeping place by any person who maintains a household.

(4) An "Indian" is any person who is a member of a federally-recognized Indian tribe.

(5) "Indian country", the "territorial jurisdiction" or the "jurisdiction" of the Nation shall include all lands owned by, held in trust for, leased, occupied or otherwise controlled by or for the benefit of the Prairie Band Potawatomi Nation or its members, as well as any such ownership or use by an entity of the Nation, and those terms will include any and all areas which may constitute the "Indian Country" of the Nation under applicable provisions of its laws or the laws of the United States.

(6) The "Indian Housing Authority" or "Housing Authority" is that entity established under the laws of the Nation, or other applicable law, or otherwise for the purpose of constructing and maintaining dwelling for public use within the territorial jurisdiction of the Nation.

(7) A "landlord" is any person or entity or agency of government that is the owner, lessor or sublessor of a dwelling unit, and it also means a manager of any such dwelling unit.

(8) An "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.

(9) A "person" includes 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 recognized by law.

(10) A "premises" is a dwelling unit and the structure of which it is a part, and all facilities and areas connected with it, including grounds, areas and facilities intended for the use of tenants or whose use is either promised or practiced for tenants.

(11) "Rent" means all payments to be made to an owner or landlord for the lease, purchase or occupancy of a dwelling under an express or implied agreement for the purchase or occupancy of it. For the purposes of this code the term rent will be used to refer to payments to be made under any agreement for either the purchase or occupation of a dwelling, including all lease or mutual help and occupancy agreements between a Housing Authority and any person. It shall also be deemed to include a "MH Contribution". The term shall also include any payment due and owing for the purposes of any eviction due to a default in a mutual help and occupancy agreement, purchase agreement or other agreement for the sale of housing.

(12) A "rental agreement" means any agreement, written, oral or by practice of the parties, as well as valid rules and regulations regarding the terms and

conditions for any use or occupancy of a dwelling or premises. For the purpose of this code it shall also include any agreement which governs the use and occupancy of a dwelling under a use and occupancy agreement, a MHO agreement or any sales agreement where a person has not yet achieved home ownership under that agreement.

(13) The "reservation" in this code is the Potawatomi Reservation of the Prairie Band Potawatomi Nation.

(14) A "tenant" is any person entitled to rent, purchase, or occupy a dwelling, and it includes any person actually occupying a dwelling that he or she does not own. It will also include any person of the same household of a tenant, including guests, actual occupiers, heirs or successors to any interest in a dwelling.

(15) The "Nation" is the Prairie Band Potawatomi Nation.

### **Section 20-3-3. Rights, Obligations and Remedies of Landlords.**

(A) **Sources of rights, obligations and remedies.** The rights, obligations and remedies of landlords, as defined in this code, are contained in:

- (1) The laws of the Nation;
- (2) Applicable treaties, statutes, regulations and agreements with agencies of the United States;
- (3) Agreements with occupiers of dwellings;
- (4) Building or housing codes;
- (5) Other laws which are made applicable through the provisions of this code.

(B) **Effect of any agreement regarding dwellings.** Unless an agreement or an applicable provision of it is contrary to this code or other applicable law, the agreement or provision will govern the rights and obligations of any party before the tribal court, and the court must grant the relief provided for in the agreement according to its terms. Where there is no written agreement, the intent of the parties expressed in their oral agreement or relationship will govern, as well as the applicable provisions of this code.

(C) **Landlord rights.** Each landlord under this code, has the right to:

- (1) Be paid any rent or money due under an agreement within ten (10) days from the agreed date of payment or within ten (10) days following the first day of a month in a month-to-month agreement for dwelling occupancy.
- (2) Adopt reasonable rules and regulations for the use and occupancy of a dwelling which are designed to promote the convenience, safety or welfare of occupants, preserve the property from abusive or improper use, make a fair distribution or use of services and facilities for those who occupy dwellings or otherwise preserve the peace and quiet enjoyment of other tenants.

(3) Have access to the dwelling for maintenance, repairs, decorations, alterations or improvements, to inspect the premises, supply necessary or agreed services, or show the dwelling to prospective buyers or tenants, and to otherwise have reasonable access to the premises. Such access must be at reasonable access to the premises. Such access must be at reasonable times when the tenant is present, and upon a notice of at least 24 hours, except in situations involving an emergency or where the tenant consents. No tenant who unreasonably denies access to a landlord for these purposes may complain that any services or repairs were not provided.

(4) Require that any tenant comply with codes or regulations regarding housing, health, safety or public order, keep the premises reasonably clean and safe, dispose of all ashes, garbage, rubbish and waste in a clean and safe manner, keep the premises and its parts in good repair, reasonably use all electrical, plumbing, sanitary, heating, ventilating, air-conditioning or other facilities and appliances, conduct himself and require others on the premises to conduct themselves in a way that will not disturb the peaceful enjoyment of others or abuse property, use all parts of the premises in a way they were intended or designed, and refrain from destroying, defacing, damaging or removing any part of the premises or allow any other person to do so.

(5) Reasonably enjoy all rights which are given by law or the agreement of the parties.

**(D) Landlord obligations.** Every landlord under this code has these obligations:

(1) To maintain the dwelling in a decent, safe and sanitary condition, except to the extent that a tenant has that obligation under an agreement.

(2) To guarantee the right of quiet enjoyment of the dwelling to the tenant and insure that the conduct of other tenants and those with them does not cause a nuisance, endangerment of public health and safety, breach of the peace or interference with the quiet enjoyment of others.

(3) To comply with applicable building or housing codes, where that is the responsibility of the landlord.

(4) To make necessary repairs to the premises, except where the tenant has that obligation by agreement or applicable law.

(5) To keep dwellings, facilities and common areas which are not assigned to a specific tenant in a clean and safe condition.

(6) To maintain in good and safe working order and condition all electrical, plumbing, sanitary, hearing, ventilating, air-conditioning and other facilities and appliances, where such things are not the responsibility of a tenant.

(7) To provide and maintain proper and appropriate receptacles and facilities (except for those of the individual tenant) for the proper disposal of ashes, garbage, rubbish and other waste from the dwelling.

(8) To provide running water and hot water and heat which is appropriate for the season of the year and in accordance with applicable housing and health codes, except to the extent the tenant is required to provide for them himself.

- (9) To disclose, in writing, the name, address and telephone number of any person authorized to manage the dwelling, the owner of the premises or his agent, the person responsible for receiving rent, notices and demands under this code, and the person responsible for making repairs, where they are required. If such a disclosure is not made, then any person who receives payments or deals with a tenant as an apparent landlord or manager will be deemed to be the proper landlord for actions under this code.
- (10) To give possession of the premises to the tenant in accordance with the agreement to occupy.
- (11) To respect the rights of tenants as set forth in this code.

(E) **Remedies.** Where a tenant has not complied with this code or the agreement of the parties, the landlord has the right to;

- (1) Give reasonable notice to the tenant to comply with his obligations, pay any monies due and owing under the agreement of the parties, or to terminate the agreement under which the tenant occupies the premises and demand that he and those with him leave the premises.
- (2) Require repairs or maintenance which are the responsibility of the tenant and comply with reasonable rules and regulations for occupancy.
- (3) Seek a court order or judgment for the payment of monies or costs, compliance with the agreements and obligations of tenants, terminate an agreement, payment of damages, evictions of tenants and any other relief to which he may be entitled to by law or the agreement of the parties.

#### **Section 20-3-4. Rights, Obligations and Remedies of Tenants**

(A) **Tenant rights.** Each tenant under this code shall have the right to:

- (1) Quiet enjoyment of the premises and protection of that right by the landlord against offending persons or things that are under his control.
- (2) Receipt of reasonable notice, as provided by this code, for compliance with the agreement of the tenant, termination of an agreement or eviction.
- (3) Compliance with applicable building or housing codes.
- (4) A reasonable and effective means of dealing with the landlord or his agents, making complaints regarding the premises or agreement and having them resolved in a reasonable manner, having a grievance resolved through a reasonable grievance procedure, disputing any notice to comply with the agreement of the parties or the law, including a notice terminating the agreement, and otherwise have an effective opportunity to be heard and fairly treated. This right includes all grievance, notice and hearing rights required of any Housing Authority and a reasonable formal or informal procedure in dealing with a landlord that is not a Housing Authority.
- (5) Apply to the tribal court in any action authorized by this code or law, to enforce rights under this code.

**(B) Tenant obligations.** Every tenant under this code will have these obligations:

- (1) To pay rent, purchase payments, costs, fees, or damages in accordance with the agreement of the parties, this code and applicable law.
- (2) To respect and comply with the rights of landlords recited in of this code.
- (3) To maintain the premises in a safe and clean manner, and to otherwise maintain the premises as may be required by agreement or this code and conduct themselves in using the premises and common areas in a way which does not disturb the quiet enjoyment of others or cause a breach of the peace. These obligations include the duty to require that those who occupy or use the premises as guests or by invitation conduct themselves in a similar way.
- (4) To not give up the premises to others, assign a lease agreement, sublease, provide accommodations for borders, lodgers or others who are not parties to the agreement over the premises without the permission of the landlord. No guest or other person invited to stay at the premises may remain for more than thirty (30) days without the permission of the landlord.
- (5) To use the premises only for a personal and private dwelling as agreed, and not to use or permit its use for any other purpose.
- (6) To abide by necessary and reasonable rules and regulations made by the landlord.
- (7) To keep the premises and assigned areas in a clean and safe condition and use them in the ways in which they were designed or intended.
- (8) To dispose of all ashes, garbage, rubbish and other waste, as well as junk, abandoned vehicles or other unnecessary items in a proper, sanitary and safe manner.
- (9) To use all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities that are a part of the premises, and the property of the tenant, in a proper, safe, sanitary and reasonable manner.
- (10) To refrain from destroying, defacing, damaging, or removing any part of the premises or common tenant areas, and to require family members and guests to act in like manner.
- (11) To pay reasonable charges (other than for wear and tear) for the repair of damages to the premises or common areas caused by the tenant, his household or guests, or to make repairs for such damages where that is the obligation of the tenant, all within thirty (30) days of such damage.
- (12) To conduct himself and cause other persons to conduct themselves in a way that will not disturb or injure neighbors, and in a way that will keep the dwelling and common areas in a decent, safe and sanitary condition.
- (13) To refrain from illegal conduct or any other activity that is contrary to written or traditional law which may harm the physical or social environment of the premises or the area around it.
- (14) To perform seasonal maintenance or other maintenance reasonably required by the agreement of the tenant or the reasonable rules and regulations of the landlord.

**(C) Tenant remedies.** Where a landlord has not complied with this code or the agreement of the parties, the tenant has the right to:

- (1) Give reasonable notice to the landlord to comply with his obligations, demand repairs which are the responsibility of the landlord or terminate the agreement under which the tenant occupies the premises.
- (2) Require repairs or maintenance which are the responsibility of the landlord.
- (3) Seek a court order or judgment for the payment of monies or cost, compliance with the agreements and obligations of landlords, terminate an agreement, pay damages or any other relief to which he may be entitled by law or the agreement of the parties.

**Section 20-3-5. Procedures.**

**(A) Grounds for Eviction.** Any tenant, as defined in this code, may be evicted from any premises, ordered to pay damages and costs, or otherwise be subjected to the order or judgment of the tribal court for the breach of any obligation under this code, any agreement, including an agreement to purchase or rent any dwelling, or for any other obligation provided by law. A tenant may be evicted for:

- (1) Nonpayment of payments under an agreement for the purchase or occupation of a dwelling when such payments are not made within ten (10) days of the agreement date of payment or ten (10) days following the first day of the month in a month-to-month tenancy.
- (2) Any rearrange in payments, costs, damages which have been due and owing for thirty (30) days or more. The receipt by a landlord of partial payments under an agreement shall not excuse the payment of any balance due upon demand.
- (3) Nuisance, property damage or destruction, injuries to the property, person or peace of other tenants, or injuries or damage to common areas and property.
- (4) Noncompliance with this code, building or housing codes or the reasonable rules and regulations of the landlord.
- (5) Occupying any premises without permission or agreement, following any reasonable demand by a person in authority over the premises to leave.

**(B) Notices.** A tenant by reason of a rental agreement or any purchase agreement with a Housing Authority shall be entitled to such notice as may be required by laws and regulations of the United States, the laws governing the authority or its regulations, and otherwise notices will be governed by the provisions of this part.

**(C) Manner of Giving Notice.**

(1) Notices other than notices to cancel or terminate an agreement. Any notice to a landlord or tenant to comply with the agreement of the parties or this code, other than a notice to cancel or terminate the agreement of the parties, may be given in any reasonable manner or as provided by the agreement of the parties.

(2) Notices to cancel or terminate agreements, and notices to leave the premises. Any notice to cancel or terminate an agreement for the purchase, use or occupancy of a dwelling or to leave a premises must be in writing, and must be delivered to the tenant or landlord in the following manner:

(a) Delivery must be made by:

(i) A law enforcement officer of the Nation, an agency of the United States or other applicable agency,

(ii) Any person authorized by the Tribal Court; or

(iii) Any adult member of the Nation who resides on the reservation who is not an employee or agent of the landlord or tenant.

(iv) Registered or Certified U.S. mail.

(b) Delivery will be effective when it is:

(i) Personally delivered to a tenant;

(ii) Personally delivered to an adult living in the premises; or

(iii) Personally delivered to an adult agent or employee of the landlord or tenant;

(c) If the notice cannot be given by means of personal delivery or the landlord or tenant cannot be found, the notice may be delivered by means of:

(i) Certified mail, return receipt requested, at the last known address of the landlord or tenant; or

(ii) 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.

(iii) The person giving notice must keep a copy of the notice and proof of service in accordance with this section, by affidavit or other manner recognized by law.

**(D) Termination of a Lease.** An agreement of the parties for the lease of a premises, and not for the purchase of a premises, may be terminated in the following manner.

(1) Termination shall be only for good cause under this code or the agreement of the parties, and in the situation where a Housing Authority is the landlord, termination of the lease shall be for violation of the material terms of

the lease, including the failure to make agreed payments, the failure to fulfill tenant obligations or for other good cause.

(2) The written notice must contain the reasons for the termination, and inform the person receiving notice of the right to make a reply.

(3) Where the landlord is a Housing Authority, the notice must inform the tenant of the right to request a hearing in accordance with the Authority's grievance procedures.

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

(a) No less than thirty (30) days prior to the termination of the lease for any failure to pay rent or other payments required by the agreement;

(b) No less than three (3) days prior to the termination of the lease for nuisance, serious injury to property or injury to persons. In situations where 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 thirty (30) days in all other situations.

**(E) Termination of a Purchase Agreement or MHO Agreement.** An agreement of the parties for the purchase of a dwelling may be terminated in the following manner:

(1) Where the landlord is a Housing Authority, the purchase or MHO agreement may be terminated for failure to comply with obligations under the agreement, misrepresentation or withholding of material information with respect to admission, income or family composition or any other material breach of the agreement. In all other cases the agreement may be terminated for its breach.

(2) The notice of termination must be in writing and must contain:

(a) The reason(s) for termination;

(b) A statement that the home buyer or tenant may respond to the landlord in writing or in person regarding the reason given;

(c) A statement of the time in which the response must be made;

(d) Where the person giving notice is a Housing Authority, a statement that the person may be represented or accompanied by a person of his choice, including a representative of the Nation;

(e) Where the person giving notice is a Housing Authority, a statement that the agreement will terminate on the thirtieth (30th) day after the date of receipt of the notice, but that if within that time the person receiving notice gives satisfactory evidence or assurances he will cure the breach and continue to carry out his obligations under the agreement the Housing Authority may rescind or extend the notice. There shall also be a statement that if there is no rescission or extension, the agreement shall terminate on the thirtieth (30th) day after the date of receipt of the notice.

(f) In situations where the person giving notice is not a Housing Authority, the notice must state the date of termination of the agreement, which must be no sooner than the thirtieth (30th) day after delivery of the notice.

(3) In all cases the notice must be delivered no less than thirty (30) days prior to the termination of the agreement and a reasonable opportunity must be given to the person receiving notice to discuss or contest the reason for termination and to cure any breach.

**(F) Required Hearings and Grievances.** Where a Housing Authority is required to conduct a hearing or conduct a grievance process prior to the termination or cancellation of an agreement.

(1) the hearing or grievance procedure must be offered or held prior to seeking relief from the court;

(2) the hearing or grievance procedure must be capable of being held prior to the cancellation or termination of the agreement;

(3) any hearing or grievance procedure may be held either at a date, time and place stated in the notice or it may be by an arrangement of the parties.

**(G) Notice to Quit.** Following any notice which terminates or cancels an agreement or any notice to a person who occupies a dwelling without an agreement to leave it, a tenant may be given a notice to quit possession of the premises as follows:

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

(2) The notice to quit may be served by any tribal or other law enforcement officer or any person appointed by the tribal court for service of process, and it must be served as provided for the manner of giving notice in this code.

(3) The notice must be addressed to the known tenants of the premises, although unknown occupants need not be named, and its shall state the reason(s) for the notice and state a date by which the tenant must leave the premises and surrender it to the landlord.

(4) Any notice which substantially complies with the following form will be sufficient:

"TO: [name of tenants] and occupiers of [address of premises or reasonable description of location]

You are required to quit possession or occupancy of these premises, move out and return the possession of the premises to the landlord on or before [state the date] for the following reasons(s): [state what they are].

[name and address of person giving notice, date and signature]"

(5) The notice must provide not less than five (5) days following the date of service of the notice to quit in order to leave, except in cases of nuisance or injuries.

**Section 20-3-6. Court Procedures.**

(A) **Complaint.** At any time after the expiration of the time set in the notice of quit, if the tenant or occupant of the premises refuses to quiet possession or occupancy of the premises, the landlord may file a complaint in tribal court for eviction and other relief. The complaint must state:

- (1) The name and known address of the tenants against whom the suit is brought, but it need not state the names of any other occupants, who will be considered to be bound by a court order;
- (2) A description of the agreement of the parties or the terms under which the persons being sued occupy the premises;
- (3) The address or location of the premises in sufficient terms to allow a law enforcement officer to carry out any order of the court;
- (4) A description of the obligation the tenant has breached or the reason for the action;
- (5) A statement showing that any required notices and the notice to quit have been served in accordance with the provisions of this code requiring them; and
- (6) The relief demanded, including any claims for damages, fees, costs or other special relief.

(B) **Action upon Filing Complaint.** When a complaint is filed in tribal court it must be immediately presented to a tribal court judge. This must be on the date of filing or, if a judge is not present, on the first working day after filing or when a judge may first be found. The judge must review the complaint and must, if it appears to be in compliance with this code, issue an order of the court requiring the defendant named in the complaint to appear before the court on a certain date to contest the complaint. The date for appearance of answering the complaint must be no less than five days after the date of the order in matters involving a nuisance or injuries or ten days in all other cases.

(C) **Appearance Date and Judgment.**

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

(2) The court must set a hearing date which is no more than fifteen days following the date for appearance, except when the hearing date would fall on a weekend or holiday, and in such a situation on the first working day following that date.

(3) A defendant may, for good cause shown, and upon the payment of a reasonable sum for the fair rental value of the premises between the date on which the complaint was filed and the date of hearing, obtain an extension of time beyond the fifteen (15) day period. The court may refuse to extend the date of hearing where the complaint is based upon nuisance or injuries and must not extend the date of hearing where the complaint is based upon conduct which is alleged to constitute a serious danger to public health, safety or peace.

(4) If a tenant fails to appear in person or in writing on or before the date of appearance, the court must enter judgment on behalf of the plaintiff following a hearing to determine whether relief should be granted and the kind of relief that should be granted.

**(D) Defenses.** The court must grant the remedies allowed in this code, unless it appears by the evidence that:

(1) The premises are untenable, uninhabitable or constitute a situation where there is a constructive eviction of the tenant, in that the premises are in such a condition, due to the fault of the landlord, that they constitute a real and serious hazard to human health and safety and not a mere inconvenience.

(2) The landlord has failed or refused to make repairs which are his responsibility after a reasonable demand by a tenant to do so and for a period of more than thirty (30) days after the demand, without good cause, and the repairs are necessary for the reasonable habitation of the premises.

(3) No defense may be founded upon either of the grounds listed in the above two subsections unless:

(a) The obligation to maintain or repair is that of the landlord under this code or the agreement of the parties, and a clear and reasonable demand was made by the tenant to correct such conditions or the landlord knew of them; and

(b) The landlord has had a reasonable opportunity to maintain or make repairs and the tenant has been cooperative in allowing them.

(4) There are monies due and owing to the tenant because he has been required to make repairs which are the obligation of the landlord and the landlord has failed or refused to make them after a reasonable notice of not less than thirty (30) days. Such sums may be a complete or partial defense to a complaint for eviction, but only to the extent that such sums set off monies owed for occupancy. A tenant may be evicted after such a period if he fails or refuses to pay the reasonable rental value of the premises.

(5) That due to the conduct of the landlord there is injury to the tenant in such a way that justice requires that relief be modified or denied. This shall include the equitable defenses of estoppel, laches, fraud, misrepresentation and breaches of serious and material obligations for public health, safety and peace

standards. Any such defense must be strictly construed to avoid abuse or the denial of a fair remedy to the landlord. No such defense will be allowed unless it involves actual prejudice or injury to the tenant and serious violations of fairness and justice.

(6) That there are serious and material breaches of applicable housing law on the part of the landlord that it would be unjust to grant him a remedy. This defense must be strictly construed to avoid abuse and the denial of a fair remedy to the landlord and to assure that the dwelling is preserved.

**(E) Tenant Complaints and Claims.** Any complaint or claim by a tenant which does not fall within the procedures of this section may be made under the rules of civil procedure of the tribal court.

**(F) Discovery and Prehearing Proceedings.** Extensive, prolonged or time-consuming discovery and prehearing proceedings will not be permitted, except in the interests of justice and for good cause shown by the moving party. Discovery shall be informal, and reasonably provided on demand of a party, and it shall be completed within five (5) days of the date of hearing. Requests for discovery must be made no later than three (3) days following the setting of a hearing date. The court may enter reasonable orders requiring discovery or protecting the rights of the parties upon reasonable notice.

**(G) Evidence.** Evidence in proceedings under this section shall be informal, and may include 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 the agreement of the parties will be received in evidence upon their presentation to the court. Provided, however, that a tenant may examine the custodian of such records as to their contents. All hearings will be informal and designed to receive evidence in a fair and just manner.

**(H) Prehearing Conferences.** The court may require that the parties attend a prehearing conference prior to the hearing in order to simplify the issues and evidence at trial and to discuss a reasonable disposition of the case.

**(I) Substantial Compliance.** No complaint will be dismissed on the ground a plaintiff has not complied with the notice, hearing and grievance provisions of this code unless it appears that he has abused or willfully failed to comply with them, that he is not in substantial compliance with them and that it would be in the interests of justice to deny relief or a remedy. Any landlord who has substantially complied with the procedures of this code will not be denied relief.

**(J) Judgment.** Within five (5) days of the date of the hearing the court must grant and enter judgment, and the judgment must grant all relief that the parties are entitled to as of the date of entry 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) Order the payment, costs and expenses of litigation; or
- (5) Grant any relief provided in this code or allowed in law or equity.

**(K) Form of Judgment.** The judgment shall state the relief granted by the court to any party but need not state findings of fact or conclusion of law in support of the judgment. The judgment may state brief reasons for it.

**(L) Execution of Judgment.** Any judgment may be immediately executed, and the judgments and orders of the court must be enforced by a duly-authorized law enforcement officer or officer of the court, appointed by the court for such a purpose. Any law enforcement officer must, upon receipt of an order of the court, execute the judgment or order made by it within five days of the date of the judgment or order and make a report to the court on what was done to enforce it. Any law enforcement officer to whom a judgment or order is given for enforcement who fails or refuses to execute it shall be guilty of an offense, which shall be punishable by imprisonment of up to thirty days, a fine of up to \$200, exclusion from the reservation, dismissal from employment and the payment of the reasonable damages, costs and expenses to a party for the failure to execute the judgment. This section shall also apply to any judgment on behalf of a tenant obtained under the rules of civil procedure of the court.

**(M) Stay of Execution.** The losing party may apply for a stay of execution of the judgment of order if:

- (1) Good and reasonable grounds affecting the well-being of the party are stated;
- (2) There would be no substantial prejudice or injury to the prevailing party during the period of the stay; and
- (3) Monies, security or reasonable arrangements are paid or made to satisfy the judgment or pay for the reasonable use and occupancy of the premises during the period of appeal or a reasonable period of time following the judgment.

**(N) Appeals.** There is no rights to an appeal of any judgment or order under the provisions of this code, but such an appeal may be allowed upon the payment of or security for any damages granted in a judgment or other arrangements found satisfactory by the Court of Appeals. An appeal may be disallowed by the Chief Judge or the presiding judge of the Court of Appeals where it appears to be without merit or where the judgment is based upon conduct which constitutes serious damage to property or the endangerment of public safety and welfare.

**(O) Procedure on Appeal.** Within three (3) days of the date of judgment a notice of appeal must be filed with the trial judge of the court who presided over the case, and the notice must state the reasons for the appeal. The trial judge must, upon receipt of the notice of appeal, present the notice to the chief judge or presiding judge of the Court of Appeals for a determination of whether an appeal will be allowed. Such judge will immediately either grant the appeal and set a date for a hearing upon it or deny the appeal and order execution of the judgment or order. The Court of Appeals may set reasonable conditions for the appeal.

**(P) Hearing on Appeal.** If an appeal is granted, notice shall be given to the parties by means of first class mail of the date for hearing. The notice may require the parties to file briefs or written submissions to the court. The appeal shall be upon the evidence of the parties and not upon the record at trial, and it shall be conducted in a speedy fashion.

**(Q) Rules of Court.** The chief judge of the Tribal Court may, after public notice and a hearing, adopt rules of pleading, practice and procedure to enforce the provisions of this code, and may adopt model forms for actions under this code.

**(R) Miscellaneous Provisions.** Any provision of law which is in direct conflict with this code shall be deemed repealed, and should any provision of this code be found to be null, void or contrary to law, such a finding will not affect the validity and enforceability of the remainder hereof.

**CHAPTER 20-4**  
**SHAB-EH-NAY**

**Section 20-4-1. Shab-eh-nay.**

In all cases involving the Shab-eh-nay Reservation, the jurisdiction of the Nation and the substantive and procedural requirements of this Title shall apply, provided that, if the substantive requirements of this Title directly conflict with the substantive requirements of the laws of Illinois or DeKalb County, compliance with those requirements shall be sufficient for the purposes of tribal law. However, in no event shall the jurisdiction of the State of Illinois or DeKalb County or the procedural requirements of Illinois state law or DeKalb County code apply to any activity within the boundaries of the Shab-eh-nay Reservation.

(Enacted by PBP TC No. 99-155, December 21, 1999; amended by PBP TC. No 2005-024)

**CHAPTER 20-5**  
**TRIBAL CASINO OCCUPATIONAL INJURY CODE**

**Section 20-5-1. Forward.**

There shall be a Tribal Occupational Injury Code for all covered employees and workers at the Prairie Band Potawatomi Nation's Casino. The Prairie Band Potawatomi Nation, exercising its inherent sovereign authority, adopts this system, establishing a Tribal Occupational Injury Code. Indian tribes have a strong interest as a sovereign in regulating economic activity within their own territory, and they may enact laws governing such activity. A tribe may regulate the activities of nonmembers who enter consensual relationships through commercial dealings, contracts, leases, or other arrangements and may also exercise civil authority over the conduct of non-members on any lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe. Such consensual relationships with non-members include all transactions where the Nation or its members are involved, either directly or indirectly, in the activity to which the transaction relates. Tribal regulation of and jurisdiction over non-members may also be appropriate under other circumstances. Congress has recognized and declared under 25 U.S.C. §2701(5) that "Indian tribes have the exclusive right to regulate gaming activity on Indian lands" as long as the activity does not violate federal law or state criminal law. This exclusive right to regulate gaming facilities includes the right to determine when and how to compensate for claims for injuries occurring with respect to such gaming facilities. The Nation has a significant governmental and economic self-determination interest in all matters pertaining to its gaming facilities on its reservation.

**Section 20-5-2. Acknowledgment of Program and Notice to Employees.**

(A) All covered employees, workers and persons asserting a claim shall be conclusively presumed to have elected to take occupational injury benefits in accordance with the tenets, conditions and provisions of this program (including the schedule of benefits) by virtue of employment at the Prairie Band Potawatomi Nation's Casino, exclusive of any other claims the employee may have with regards to the injury. All covered employees and/or persons asserting a claim for occupational injury benefits acknowledge that the Prairie Band Potawatomi Nation is, in fact, a federally recognized Indian Tribe and for the purposes of occupational injury benefits, is exercising its inherent sovereign authority. This Tribal Occupational Injury Code applies regardless of location of injury.

(B) The employer at the Casino shall be responsible for posting a notice of this program in a conspicuous location in substantially the following form:

## NOTICE TO EMPLOYEES

YOUR EMPLOYER IS INSURED UNDER THE PRAIRIE BAND POTAWATOMI NATION'S TRIBAL OCCUPATIONAL INJURY CODE.

If you have an injury or occupational disease arising out of and in the course of your employment at the Nation's Casino, you may be entitled to benefits as provided by the Tribal Occupational Injury Code.

NOTIFY YOUR SUPERVISOR IMMEDIATELY OF ANY INJURIES, NO MATTER HOW SLIGHT.

If you fail to do so, you may lose your benefits under the Tribal Occupational Injury Code. In no event shall benefits be paid to an employee who failed to notify their employer within thirty (30) calendar days after sustaining such work related injury.

Your exclusive remedy for any such work related injury or disease is through the Prairie Band Potawatomi Nation's Tribal Occupational Injury Code. The State Workers Compensation Commissioner will not accept a claim from you as you are employed with the territory of a sovereign Indian Nation which has exclusive jurisdiction under its Tribal Occupational Injury Code.

## NOTICE TO EMPLOYERS

You are required to display this poster conspicuously in a manner that will be of greatest benefit to employees.

It is your responsibility to file a claim on behalf of your employee.

You are required to report any injuries or notification of occupational disease as soon as possible, and in no event, more than ten (10) calendar days after you have knowledge thereof.

It is your responsibility to obtain any necessary forms from the following:

**(Name, address and telephone  
of Administrator)**

(C) A copy of this program will be made available to the employee or the employee's representative upon request.

### **Section 20-5-3. Administration of Program.**

(A) To provide medical treatment for injured workers and fair income benefits to injured workers and their dependents;

- (B) To provide an administrative system for the delivery of medical and financial benefits to injured workers;
- (C) To create a process whereby disputes over compensation can be resolved in a fair and unbiased manner; and
- (D) To restore the injured worker physically and economically to a self-sufficient status in an expeditious manner and to the greatest extent practicable.

**Section 20-5-4. Definitions.**

In this program, unless the context otherwise requires:

- (A) **“Administrator”** means the insurance company providing coverage or its designee, including any third party administrator.
- (B) **“Benefit(s)”** means the findings or decision of the Administrator or designee regarding the amount of medical and lost time benefits due to an injured employee or the dependent of a deceased employee under the rules of the Tribal Occupational Injury Code.
- (C) **“Claimant(s)”** means the injured covered employee, or in the event of death of the covered employee, dependents of the deceased.
- (D) **“Compensation”** means lost time wages while disabled or unable to work due to a work related injury. This also includes if the employer is unable to accommodate modified duty work within physical restrictions assigned by the treating physician.
- (E) **“Covered Employee(s)”, “Employee(s)” and “Worker(s)”** means:
  - (1) Every person employed at the Prairie Band Potawatomi Nation's Casino, but does not include leased employees, independent contractors or volunteers.
  - (2) Excluded as not in the employ at the Prairie Band Potawatomi Nation's Casino are consultants, independent contractors and all other persons not considered under common law to be employed by the Prairie Band Potawatomi Nation or its manager unless a written contractual agreement between the Prairie Band Potawatomi Nation and an entity provides for occupational injury benefits. In the event of such a contract, the contract shall be specific as to whom, when, where, and why this coverage is provided and all third parties and/or covered employees shall agree to all terms, conditions and provisions of this program.
- (F) **“Occupational Injury Benefits”** include weekly benefits and medical benefits further defined as follows:

(1) **“Medical”** means medical expense and other expenses associated with medical treatment reasonably related to the work injury. Medical mileage expense will be paid at the rate of \$.30 per mile.

(2) **“Weekly Benefit(s)”** means 66 2/3 percent of the employee’s average weekly wage. In the case of temporary partial disability, the weekly benefit amount is 66 2/3 percent of the difference between the employee’s average gross weekly earnings at the time of the injury and the employee’s wages while temporarily working at the lesser paying job. The maximum weekly benefit payable is \$483.00/week or such other appropriate amount under Section 20-4-5.

(3) **“Temporary Total Disability Benefits”** (TTD benefits) means the weekly benefit paid when an injury results in seven (7) or more calendar days of disability with a three (3) week retroactive period.

(4) **“Temporary Partial Disability Benefits”** (TPD benefits) means the weekly benefits paid if the employee returns to work at a lesser paying job, because of the injury but before the employee reaches maximum medical improvement.

(5) **“Permanent Partial Disability Benefits”** (PPD benefits) means the weekly benefits paid for the partial loss of a scheduled member or a non-scheduled member.

(6) **“Permanent Total Disability Benefits”** (PTD benefits) means the weekly benefits paid for a non-scheduled injury when the job-related injury leaves an employee totally and permanently incapacitated. This means that the employee’s physical disability causes the employee to be unable to secure anything more than sporadic employment resulting in an income of less than 90% of their average weekly wage at the time of injury.

(7) **“Death Benefits”** means the weekly benefits paid to dependents as a result of any fatality of the employee as a direct result of their employment.

(G) **“Worker Appeal Committee”** means the committee defined in Section 20-4-8.

**Section 20-5-5. Schedule of Benefits.**

(A) Until amended by Tribal Resolution, and notwithstanding any other provision of this statute, the Prairie Band Potawatomi Nation's Tribal Occupational Injury Code adopts the benefit levels equal to those under the Workers’ Compensation laws of the State of Kansas.

**Section 20-5-6. Procedures for Disputed Claims.**

(A) In the event of any dispute over payment, denial or termination of benefits payable under this program, the claimant shall have the right to appeal the disputed claim as follows:

(1) Claimant must request reconsideration by the Administrator. The reconsideration request must be made in writing, specifying what action is in dispute, why the claimant disagrees with the Administrator's action and the desired result. Any additional supporting documentation or evidence to be considered must be submitted by the claimant with the reconsideration request unless an extension of time to submit such evidence is specifically requested in the reconsideration request. The request for reconsideration must be filed within thirty (30) calendar days of the date of the Administrator's adverse action or decision. A reconsideration request is deemed filed upon mailing by regular or certified mail. Failure to request reconsideration within the above time period shall be deemed a waiver of any further rights of appeal herein.

(2) Upon denial of the reconsideration request or an adverse decision of the reconsideration request, the claimant may request a hearing before the Worker Appeal Committee. The hearing request must be made in writing and shall contain a plain, concise statement of the disputed action of the Administrator, the date of the action and the claimant's reasons for appeal. Any issues not raised in the request for hearing application by either party are deemed waived. Any new supporting documentation or evidence to be considered must be submitted by the claimant with the hearing request unless an extension of time to do so is specifically requested in the hearing request. A request for hearing must be filed by mail or hand-delivered within fourteen (14) calendar days of the date of the Administrator's adverse decision to the Worker Appeal Committee, Prairie Band Potawatomi Nation Casino, 12305 150th Road, Mayetta, KS 66509. A hearing request is deemed filed upon mailing by regular or certified mail. Failure to request a hearing within the above time period shall be deemed a waiver of any further right of appeal herein.

(B) The burden of proof, throughout the above appeal process, rests on the covered worker to prove that the worker sustained an injury which is directly related to the employment and that the employee is entitled to the benefits claimed under this program.

(C) A claimant may be represented in an appeal by any person. Attorney fees shall be limited to twenty-five percent (25%) of the first \$2,000 of increased benefit and twenty percent (20%) percent of the remaining increased benefit obtained by a claimant or the maximum fee of \$4,500. "Increased benefit" means any benefits above those provided by the original decision of the Administrator. It is the claimant's responsibility to pay the representative.

**(D)** Hearing procedures before the Worker Appeal Committee:

**(1)** Upon filing of a request for hearing before the Worker Appeal Committee, a copy of the hearing request and all supporting evidence submitted by the employee shall be sent by the Worker Appeal Committee to the Administrator within fourteen (14) calendar days of receipt of the hearing request. The Administrator, as the adverse party in this proceeding, shall have fourteen (14) calendar days to file a written response with the Worker Appeal Committee, with a copy to the employee. Any issues not raised at the time of hearing by either party are deemed waived.

**(2)** Any member of the Worker Appeal Committee having any personal interest in any claim or appeal presented before the Worker Appeal Committee shall be disqualified for cause. A claimant shall have the right to challenge for cause any member of the Worker Appeal Committee and in the event that disqualification(s) result in less than a quorum, alternate members shall be temporarily appointed to serve by the Tribal Council.

**(3)** A claimant or the claimant's representative shall have the right, in all matters presented before the Worker Appeal Committee, to cross-examine all witnesses and to review all evidence of any nature, as may relate to the matter under consideration. However, attorney fees are limited as provided herein.

**(4)** The Worker Appeal Committee, the Prairie Band Potawatomi Nation or its manager, the Administrator and the claimant shall have the right to cross-examine all witnesses and to perform such discovery activity as may be deemed necessary to fully explore all aspects surrounding the occurrence and injury.

**(5)** The Worker Appeal Committee shall not be bound by the rules of evidence or by technical or formal rules of procedure and may conduct investigations in such a manner that is best calculated to ascertain the substantial rights of the parties and to carry out the spirit of the Nation's Tribal Occupational Injury Code. Either party may request development of further medical evidence. The Administrator has the right to designate an examining medical expert at the Administrator's expense. Failure of the employee to comply with any reasonable request for examination will result in dismissal of the employee's appeal with prejudice.

**(E)** A full and complete record shall be kept of all proceedings held before the Worker Appeal Committee for investigation, appeals, or the taking of testimony by an electronic recording means. A party may request the proceeding be reported by a certified stenographer at the requesting party's expense.

**(F)** The Worker Appeal Committee shall convene as necessary, but in no event will an employee be deprived of a hearing for more than forty-five (45) days after the

Worker Appeal Committee's receipt of written hearing request, unless a request for extension of time has been filed by a party.

(G) All parties shall have the right to request a continuance of the hearing after it has first convened for the purpose of further developing evidence.

(H) The Worker Appeal Committee shall act only by majority vote, in writing and with at least three (3) members present and voting. The Worker Appeal Committee may utilize Tribally approved attorneys as legal counsel. A written decision will be issued by the Worker Appeal Committee within ninety (90) calendar days of the hearing, which will become final and binding on the parties. However, decisions or settlements in excess of \$50,000 in matters before the Worker Appeal Committee may be paid only if approved by the Nation's Tribal Council, whose decision shall be final and binding on the parties.

(I) During the pendency of the appeal, claimant shall continue to receive all benefits approved by the Administrator in its original written decision, but shall not receive any new benefits claimed in the appeal. Payments made to claimant during the pendency of an appeal shall not be recouped or recovered by the Administrator or otherwise.

(J) Any award agreed to by the claimant for benefits under this program shall constitute a full and final settlement and all benefits shall cease upon settlement, except where the award provides for other than a lump sum settlement. If other than a lump sum settlement, the terms of the award agreement shall apply.

**Section 20-5-7. Experts.**

(A) The employee may engage the services of medical or vocational experts for purposes of a disputed claim, at the employee's cost, which is not reimbursable regardless of the ultimate outcome of the dispute. The opinions of such experts will be considered in a disputed case.

**Section 20-5-8. Worker Appeal Committee Membership.**

(A) The Worker Appeal Committee shall be comprised of five (5) members. Three (3) of the members shall be those administrative employees at the Prairie Band Potawatomi Casino and any corresponding entity filling the administrative positions, such as the Human Resource Director and Finance Director from the same, as applicable. One member of the Committee shall serve as Chairperson. Three (3) members will constitute a quorum. All members of the Committee shall be appointed by, and may be removed by, the Tribal Council.

(B) The Worker Appeal Committee shall receive no additional expenses or compensation other than their regular salary. Expenses for training in the area of occupational injury benefits shall be paid by the Prairie Band Potawatomi Nation's

Casino.

**Section 20-5-9 Liability of Third Person to Injured Employee; Subrogation Powers.**

(A) If a covered employee entitled to benefits under this system is injured or killed by the negligence or wrongful actions of another person(s) not in the employ of the Nation or one of its entities, such injured employee, or dependents in the event of death, may pursue a remedy against such other person while receiving benefits under this system. If the employee entitled to benefits under this system or dependents do not pursue a remedy against such other person by instituting an action within one year after the cause of action accrues, the claim against such other person shall be deemed assigned to the Tribal Occupational Injury Ordinance. Such a claim so assigned may be prosecuted or compromised by the Administrator for benefits paid. Acceptance of benefits under this Ordinance constitutes an assignment of the employee's rights to the employer to the extent of benefits paid or payable.

(B) If employee or dependents proceed against such other person, occupational injury benefits shall be paid as provided in this program and the Tribal Occupational Injury Ordinance shall have a lien on the amount recovered from such other person to the extent occupational injury benefits were owed or paid. Compromise of any claim by the covered employee or the employee's dependents at an amount less than the weekly benefits owed or paid shall be made only with written approval of the Administrator of the Tribal Occupational Injury Ordinance.

(C) The Administrator of the Tribal Occupational Injury Ordinance shall have the right of subrogation for the amount of occupational injury benefits paid under this program, upon the resolution of a claim or completion of a settlement with the claimant.

(Amended by PBP TC. No. 2008-042, February 7, 2008)

(Amended by PBP TC. No 2006-185, September 7, 2006, amended by PBP TC No. 2006-185a, October 10, 2006; amended by PBP TC. No. 2008-042, February 7, 2008.)

**CHAPTER 20-6**  
**REGULATIONS FOR DROP-IN PROGRAMS SERVING**  
**SCHOOL AGE CHILDREN AND YOUTH**

**Section 20-6-1. Definitions.**

(A) **"Adult responsible for a child or youth"** means any of the following adults who is other than the child's or youth's legal parent and who is responsible for the care and upbringing of the child or youth:

- (1) A stepparent;
- (2) a grandparent;
- (3) another relative; or
- (4) a foster parent.

(B) **"Annual renewal date"** means the date assigned to each licensee for the submission of the documents required to maintain the license and payment of the annual license fee.

(C) **"Applicant"** means any person who has submitted an initial application for a license to operate a drop-in program but has not received a license.

(D) **"Drop-in program"** means a child care facility that is not located in an individual's residence, that serves exclusively school-age children and youth, and in which the operator permits children and youth to arrive at and depart from the program at their own volition and at unscheduled times.

(E) **"Kindergarten-age child"** means a child who is attending kindergarten or who has completed kindergarten and has not entered first grade.

(F) **"License"** means the document issued by the Tribal Council that authorizes a person to operate a drop-in program.

(G) **"Operator"** means a person who holds a license to conduct a drop-in program.

(H) **"Premises"** means the location, including each building and the adjoining grounds, for which the operator has a license to conduct a drop-in program.

(I) **"School-age child" and "child"** mean an individual who is of kindergarten age through the academic year in which the child is in the sixth grade and who is attending the drop-in program.

(J) **"School-age youth" and "youth"** mean an individual who meets the following conditions:

- (1) Has completed sixth grade or is 12 years of age or older;
- (2) is less than 18 years of age;
- (3) is attending the program; and
- (4) is not a volunteer or employee.

(K) **"Staff member"** means both of the following:

- (1) All personnel, including employees' substitutes and volunteers, who provide administrative or direct services to children and youth; and
- (2) auxiliary personnel, including cooks, drivers, office workers, and housekeeping staff, who provide indirect services.

**Section 20-6-2. Licensure; application; renewal.**

(A) Each person shall have a tribal license to operate a drop-in program before children or youth are in attendance.

(B) Each operator shall submit a new application, the required forms, and the license fee, and shall obtain a new license from the Tribal Council or the Tribal Treasurer, as follows:

- (1) Before a drop-in program that has been closed is reopened;
- (2) if there is a change in the location of the drop-in program; or
- (3) if there is a change of ownership of the drop-in program.

(C) Each person wishing to conduct a drop-in program shall submit a complete application. The application shall be submitted at least 90 calendar days before the planned opening date of the drop-in program for new programs and shall include the following:

- (1) A description of activities and services to be offered;
- (2) a copy of the program's records showing for each person who works, substitutes or regularly volunteers in the program that requests for a criminal history and child abuse registry background check have been made and are currently approved by the program for each of them at least every two years; and
- (3) a nonrefundable license fee of \$20.00 except for public and non-profit programs.

(D) Each individual applying for a license shall be 21 years of age or older at the time of application.

(E) Each corporation applying for a license shall be in good standing with the Nation.

(F) (1) Before the annual renewal date, each licensee wishing to maintain the license shall submit the annual nonrefundable license fee and shall complete and

submit the following to the Nation for issuance of a license renewal by the Tribal Council or Tribal Treasurer:

- (a) An application to renew the license; and
  - (b) a copy of the program's records showing for each person who works, substitutes or regularly volunteers in the program that requests for a criminal history and child abuse registry background check have been made and are currently approved by the program for each of them at least every two years.
- (2) Each failure to submit the annual renewal documents and fee as required by paragraph (F)(1) of this regulation shall result in an assessment of a \$10.00 late fee payable to the Nation and may result in suspension of the license. Each late renewal fee assessed shall be paid upon request.

**Section 20-6-3. Inspections; investigations.**

Each applicant and each operator shall give the Nation immediate entry and access to the premises and to any records kept, to determine compliance with applicable statutes and with the drop-in program regulations.

**Section 20-6-4. Recordkeeping.**

(A) Each operator shall obtain the following information for each child or youth before or on the first day of attending the drop-in program:

- (1) The first and last name and date of birth; and
- (2) the name, address, and telephone number of each parent or other adult responsible for the child or youth, the names of any other persons authorized to pick up the child or youth, and emergency contact information.

(B) Each operator shall obtain written authorization for emergency medical care, signed by the parent or legal guardian of each child or youth, before the child or youth attends the program or within the second week of attendance.

**Section 20-6-5. Attendance policy; supervision.**

(A) Each operator of a drop-in program shall meet the following requirements:

- (1) Each operator shall develop and implement an attendance policy that allows children and youth to arrive at and depart the premises unsupervised, at unscheduled times and at their own volition.
- (2) The operator shall inform the parent or other adult responsible for each child or youth of the policy specified in paragraph (A)(1). The parent or guardian of each child or youth utilizing the drop-in program shall receive a written disclosure describing the activities in which the child or youth can participate and the level of supervision provided.
- (3) Each operator shall immediately notify the parent or guardian when a

child or youth either is injured and requires medical attention or dies.

(B) Each staff member working with children and youth shall provide attentive supervision to protect the health, safety, and welfare of the children and youth, and to reduce the risk of injury, illness, and abuse,

**Section 20-6-6. Criminal history and child abuse registry background check.**

(A) Each applicant and each operator shall submit to the appropriate agency the identifying information that is necessary to complete a current criminal history and child abuse registry background check for each individual who works, substitutes, or regularly volunteers in the program, as follows:

- (1) When applying for a license;
- (2) when submitting an application to renew the license; and
- (3) before allowing each new individual to work, substitute, or regularly volunteer in the program.

(Enacted by PBP TC No. 2007-166, September 6, 2007; amended by PBP TC No. 2008-099, April 28, 2008)

**CHAPTER 20-7**  
**ATHLETIC COMMISSION**

**Section 20-7-1. Authority.**

The Prairie Band Potawatomi Nation Tribal Council is empowered to exercise the legislative authority of the Prairie Band Potawatomi Nation pursuant to Article V of the Prairie Band Potawatomi Nation Constitution. Formation of the Prairie Band Potawatomi Athletic Commission, herein after the "Athletic Commission", is an exercise of the inherent sovereign authority of the Prairie Band Potawatomi Nation.

**Section 20-7-2. Purpose.**

(A) The Prairie Band Potawatomi Nation desires to form an Athletic Commission offer both professional and amateur sport activities on the Prairie Band Potawatomi Nation. The Athletic Commission shall regulate, by licensure, permitting and rules and regulations, including penalties and sanctions, all sporting events held between licensed contestants within the boundaries of the Prairie Band Potawatomi Nation; provided that all rules and regulations promulgated by the Athletic Commission shall not be in effect unless and until approved by Resolution of the Prairie Band Potawatomi Nation Tribal Council.

(B) For purposes of this Section, a "professional" event means a contest between individuals for financial compensation

(C) The Athletic Commission shall also have the authority to regulate at its discretion, amateur sport activities held within the boundaries of the Prairie Band Potawatomi Nation.

(D) The Athletic Commission shall regulate its own operations through development of by-laws consistent with the provisions of this Section.

(Amended by PBP TC No. 2008-064, March 6, 2008)

**Section 20-7-3. Membership and Term of Membership of Commission.**

(A) Prairie Band Potawatomi Athletic Commission shall be comprised of three members including one member of the Tribal Council. Athletic Commission members shall be appointed by Resolution of the Prairie Band Potawatomi Nation Tribal Council. The Tribal Council reserves the right at any time and for any reason to remove members of the Athletic Commission by Tribal Council Resolution.

(B) Upon adoption of this Section by the Prairie Band Potawatomi Nation Tribal Council, the Council shall be Resolution appoint the Athletic Commission members. The Commission members shall serve initial terms as follows: two years for two of the members and three years for the third member. At the expiration of these initial terms, the Tribal Council shall appoint the successors for a term of two years.

**Section 20-7-4. Commission Qualifications.**

(A) Two members of the Athletic Commission shall have experience and knowledge in the conduct and regulation of sporting activities.

(B) Members of the Athletic Commission during their term of office, shall not be involved in the promotion of professional sporting activities that are regulated by the Athletic Commission.

**Section 20-7-5. Conflict of Interest.**

No member of the Athletic Commission may belong to, contract with, or receive any compensation from any person who sanctions, arranges, or promotes a professional boxing event or contest or who otherwise has a financial interest in an active boxer currently registered with a boxer registry. The Athletic Commission may enter into a contract with any professional boxing commission of a tribe or state to supervise a professional boxing event or contest in the Prairie Band Potawatomi Nation or to carry out provisions of this Code. The supervision of a professional boxing event or contest or regulation of professional boxing on the Nation under this Code by a professional boxing commission of any state under an agreement or contract with the Commission shall not be construed as authorizing the extension of state law to the Nation.

**Section 20-7-6. Budget; Staff**

It is expected that the Commission shall be self-supporting, either through the assessment of licensing fees or the assessment of other charges against on-reservation sport activities regulated by the Commission. The Commission may hire staff as necessary and appropriate, and as the Commission's budget permits. Any staff of the Commission shall be subject to the Nation's personnel policies. The Commission may appoint inspectors and other agents as may be necessary to assist in performing the powers, duties, and functions of the Commission.

**Section 20-7-7. Athletic Tax.**

The Commission shall collect a tax imposed on the gross receipts of every regulated sports contest held by the Commission. The tax shall be five percent, a fixed amount which, together with all other revenues of the Commission, shall be sufficient to support the administration and enforcement of the duties of the Commission.

**Section 20-7-8.****Athletic Fund.**

There is hereby established an Athletic Fund (“Fund”) to be administered by the Commission. All moneys received by or for the Commission from fees, charges, penalties or taxes shall be deposited to the credit of the Fund. All moneys credited to the Fund shall be expended for the administration of the powers, duties, functions, and operating expenses of the Commission. All expenditures from the Fund shall be made in accordance with the requirements of the financial policies and procedures of the Commission.

**Section 20-7-9.****Licenses; Conditions of Issuance.**

(A) The Commission shall not issue any license to hold professional boxing, professional wrestling, professional kickboxing, or professional full-contact karate contests on the Reservation unless the following requirements are met:

- (1) Such contests are sponsored by a promoter licensed by the Commission;
- (2) Such contests are no more than twelve rounds each with three minutes duration per round; and
- (3) In such contests a decision shall be rendered by three judges licensed by the Commission.

(B) The Commission shall accept applications and may issue licenses to referees, judges, physicians, manager, contestants, timekeepers, seconds, promoters and matchmakers for regulated sports contests. A license issued under this subsection and each renewal:

- (1) Shall expire on June 30 of the year succeeding the year the license was issued, unless revoked for cause.
- (2) Shall be renewable from year to year upon filing a renewal application prior to the expiration of such license and payment of the applicable fee.

(Amended by PBP TC No. 2008-074, March 19, 2008)

**Section 20-7-10.****Mandatory Medical Suspensions. Medically Retired Persons.**

(A) In order to protect the health and welfare of the contestants, there shall be a mandatory medical suspension of any contestant who loses consciousness or who has been injured as a result of blows received to the head or body during a regulated sports contest, bout or semi-professional elimination contest. A medical suspension shall be for a period of time not to exceed 180 days. The determination of consciousness is to be made only by a physician licensed by the State of Kansas and licensed by the Commission pursuant to this code. Prior to releasing a contestant from medical suspension, the Commission may require the contestant to undergo any medical test deemed necessary to prove such contestant is medically fit. Medical suspensions issued in accordance with this section shall not be subject to review by any court or tribunal.

**(B)** Any person who has been injured in such a manner that such person is unable to compete as a contestant in regulated sports in the future shall be deemed medically retired. A person with a status of medically retired shall not compete in any events governed by this act and shall not be eligible for licensure as a contestant. A determination of medical retirement shall not be subject to any court or tribunal.

**Section 20-7-11. Prohibition of Prize Fights**

Any professional boxing event or contest conforming to the requirements of this code and to the rules and regulations of this Commission shall be deemed to be a professional boxing event or contest and not a prize fight.

**Section 20-7-12. Complaints against licensees; refusal to issue license; grounds.**

**(A)** Any person wishing to make a complaint against a licensee shall file the written complaint with the Commission setting forth supporting details. If the Commission determines that the complaint warrants a hearing to determine whether the licensee shall be disciplined, the Commission shall hold a hearing in a reasonable manner and enter a final decision. Any person holding more than one license issued by the Commission and disciplined under one license will be automatically disciplined under all licenses. The licensee may appeal the Commission's decision with the tribal court and the court shall hear the appeal applying the "arbitrary and capricious" standard of review to the decision of the Commission.

**(B)** The Commission may refuse to issue any license for one or more of the following reasons specified in this section. The Commission shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of their right to appeal the decision of the Commission with the tribal court. The tribal court shall hear the appeal applying the "arbitrary and capricious" standard of review to the decision of the Commission.

**(C)** The Commission may file an action with the tribal court against any holder of a license issued by the Commission, or against any person who has failed to renew their license or who has failed to surrender their license for any of the following reasons:

**(1)** Use of an alcoholic beverage or any controlled substance before or during a bout.

**(2)** The person has been found guilty or has entered a plea of guilty or nolo contendere in a criminal prosecution under any tribal, state or federal law for any offense reasonably related to the qualifications, functions or duties of any tribal, state or federal law for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this section, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not a sentence is imposed.

**(3)** Use of fraud, deception, misrepresentation or bribery in securing any license issued pursuant to this section.

- (4) Intentionally providing false information on applications or medical forms.
- (5) Incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performing of the functions or duties of any profession licensed or regulated by this act.
- (6) Impersonating any license holder or allowing any person to use the licensee's license.
- (7) Failing to put forth the best effort during the bout.
- (8) Disciplinary action against a holder of a license or other right to practice any profession regulated by this section and issued by another tribe, state, territory, federal agency or country upon grounds for which revocation or suspension is authorized in this Nation.
- (9) Adjudged mentally incompetent by a court of competent jurisdiction.
- (10) Use of any advertisement or solicitation which is false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation primarily is directed.
- (11) Violating or enabling any person to violate any provision of this section or any rule and regulation adopted pursuant to this section.
- (12) Disruptive conduct at regulated sports contests, including the use of foul or abusive language or mannerisms or threats of physical harm by any person associated with any bout or contest licensed pursuant to this section.
- (13) Issuance of a license based upon a mistake of fact.
- (14) Use of grease, ointments, strong smelling liniment, drugs which cause nausea or harmful reactions, liquids or powders or illegal substances is prohibited during a regulated sports contest.

(D) The appeal of a final decision by the Commission shall be heard in tribal court with the "arbitrary and capricious" standard of review to the decision of the Commission. If the Judge finds, under such standard of review, that a person has violated one or more of the grounds specified in this section, the judge may limit and condition the license for a period not to exceed five years, suspend the person's license for a period not to exceed three years, or may revoke the person's license or may remand the case to the Commission which shall determine an appropriate sanction.

(E) The Commission may refuse to issue a license to any person who has violated any of the grounds specified in this section.

### **Section 20-7-13. Liability Insurance.**

The promoter of any regulated sports contest, as a condition for conducting a professional boxing event, shall file a surety bond in an amount to be determined by the Commission, but not less than ten thousand dollars. Said surety bond is conditioned upon the faithful performance by the promoter of the provisions of these rules, and the payment of the athletic tax, officials, and contracts as provided for herein and the observance of all rules of the Commission.

**Section 20-7-14. Bout Contracts Required.**

(A) The promoter of a regulated sports contest shall sign written bout contracts with each professional contestant. Original bout contracts shall be filed with the Commission prior to the contest as required by rules of the Commission. The bout contract shall be on a form supplied by the Commission and contain at least the following:

- (1) The weight of the contestant at weigh-in;
- (2) The amount of the purse to be paid for the contest;
- (3) The date and location of the contest;
- (4) The glove size allotted for each contestant;
- (5) Any other payment or consideration provided to the contestant;
- (6) List of all fees, charges, and expenses including training expenses that will be assessed to the contestant or deducted from the contestant's purse;
- (7) Any advances paid to the contestant before the bout;
- (8) The amount of any compensation or consideration that a promoter has contracted to receive in connection with the bout or contest;
- (9) The signature of the promoter and contestant;
- (10) Any information required by the office.

(B) If the bout contract between a contestant and promoter is changed, the promoter shall provide the Commission with the amended contract containing all contract changes at least two hours prior to the scheduled start time of the regulated sports contest. The amended contract shall comply with all requirements for original bout contracts and shall contain the signature of the promoter and contestant.

(C) The promoter of a regulated sports contest shall not be a manager for a contestant who is contracted for ten rounds or more at the event.

(D) Prior to the start of the contest, the promoter shall provide payment for the fees of the contest officials to the Commission. The form of payment shall be at the discretion of the Commission.

**TITLE 20-8  
MORTGAGE LENDING ACT**

**GENERAL PROVISIONS**

**Section 20-8-1. Purpose**

The Prairie Band Potawatomi Nation enacts this Tribal Mortgage Lending Act (the “Act”) for the purpose of encouraging home ownership on trust or restricted lands within the Nation’s jurisdiction by members of the Nation. This Act is intended, and shall be construed, to provide prompt and effective remedies to lenders upon default of any loan secured by a mortgage on a Tribal member’s interest in a lease on trust or restricted lands while, at the same time (i) protecting the rights of members by providing due process and permitting the recovery of the member’s equity and (ii) protecting the sovereignty of the Nation by assuring the Nation’s interest in preventing alienation of Trust Lands to anyone other than a member of the Nation.

**Section 20-8-2. Scope.**

The Act shall apply to all mortgage lending on trust land within the Nation’s jurisdiction except as may be otherwise provided by Tribal law, resolution or statute.

**Section 20-6-3. Definitions.**

For purposes of this Act,

- (A) “**BIA**” means the Bureau of Indian Affairs.
- (B) “**Guarantor**” means any entity that guarantees a loan secured by a Mortgage.
- (C) “**Lease**” means the residential ground lease or other agreement for use of Trust Land (defined below) between the Nation, as Lessor, and a member of the Nation, as a lessee or sublessee (“Lessee”).
- (D) “**Leased Premises**” means the property and improvements subject to a Residential Lease.
- (E) “**Leasehold Interest**” means the interest of a Lessee (defined below) in the Residential Lease.
- (F) “**Member(s)**” means one or more registered members of the the Nation.
- (G) “**Mortgage**” means a security interest in the Leasehold Interest given to secure a Note.
- (H) “**Mortgagor**” means a Lessee who has executed a Mortgage on his or her Leasehold Interest and its successors and assigns.

- (I) **“Mortgagee”** means any lender approved by the Tribal Council in writing, by memorandum of understanding, resolution, or express reference in a lease document, to make and hold a Mortgage and its successors and assigns.
- (J) **“Nation” or “Tribal”** refers to the Prairie Band Potawatomi Nation.
- (K) **“Note”** means a promissory note executed by a Member in favor of a Mortgagee.
- (L) **“Recording Clerk”** means the Realty Office Director or such other person designated by the Nation to perform the recording functions required by this document or any deputy or designee of such person.
- (M) **“Secretary”** means the Secretary of the Interior or his or her delegate.
- (N) **“Subordinate Lienholder”** means the holder of any lien, including any security interest in a Leasehold Interest, perfected subsequent to the recording of a Mortgage under this Act.
- (O) **“Tribal Court”** means the Prairie Band Potawatomi Tribal Court.
- (P) **“Trust Land”** means land within the jurisdiction of the Nation, (i) title to which is held by the United States or any state for the benefit of the Nation or a Member or (ii) that is subject to restrictions against alienation imposed by federal treaty, statute, Executive Order, or the Nation.
- (Q) **“Waste”** shall mean spoilage, damage or destruction of land, buildings, gardens, trees or other improvements beyond normal wear and tear on the Mortgaged property which result in substantial injury to such property.

**Section 20-8-4. Right of Access.**

Any Lender or Guarantor, or prospective Lender or Guarantor, of a loan secured by a Mortgage shall have the right of access to tribal lands for the purpose of servicing and evaluating properties that are mortgaged or may be mortgaged pursuant to this Act.

**PRIORITY AND RECORDING OF MORTGAGES AND LIENS**

**Section 20-8-5. Mortgages of Leasehold Interests in Tribal Trust Land.**

A Residential Lease may be mortgaged, provided that the lender or lending program has been approved by the Tribal Council by written agreement, memorandum of understanding, resolution or express provision in a Residential Lease. All mortgages shall comply with this Act.

**Section 20-8-6. Recording of Mortgages by the County Clerk and the Bureau of Indian Affairs.**

All mortgages shall be recorded with the Bureau of Indian Affairs to the extent required by federal law. Pending certification by the Tribal Council of an approved tribal land records system, mortgages shall also be recorded with the county register of deeds. Upon certification of the tribal land records system, recording with the county register of deeds shall no longer be required.

**Section 20-8-7. Recording of Mortgages by Tribal Recording Clerk.**

(A) **Effective Date.** This section shall become operative upon the Tribal Council's certification of a tribal Land Records system.

(B) The Recording Clerk shall record each Mortgage or other document in a log, which shall contain, at a minimum, the following information:

- (1) The name(s) of the Mortgagor of each Mortgage, identified as such;
- (2) The name(s) of the Mortgagee of each Mortgage, identified as such;
- (3) The name(s) of the grantor(s), grantee(s) or other designation of each party named in any other documents received for recordation;
- (4) The date and time of the receipt;
- (5) The filing number to be assigned by the Recording Clerk, which shall be a unique number for each Mortgage or other document received for filing; and
- (6) The name of the Recording Clerk or designee receiving the Mortgage or document.

(C) The Recording Clerk shall endorse the following information from the log upon any Mortgage or other document received for recording:

- (1) The date and time of receipt of the Mortgage or other document;
- (2) The filing number assigned by the Recording Clerk; and
- (3) The name of the Recording Clerk or designee receiving the Mortgage or document.

**(D)** The Recording Clerk shall make a true and correct copy of the endorsed Mortgage or other document and shall certify the copy as follows:

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

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

**(E)** Post-Recording Procedures.

**(1)** The Recording Clerk shall maintain a public tract index where copies or images of all certified Mortgages or other documents recorded against a Leased Premise are located and may be retrieved by a search based on the legal description of the Leased Premises.

**(2)** The Recording Clerk shall send the original Mortgage for filing with the Land Titles and Records Office of the BIA in accordance with 25 C.F.R. Parts 150 and 162 and shall obtain approval of the Secretary of the Mortgage or other document if required by federal law and such approval has not be granted in the Lease or Mortgage.

**(3)** If, following recording by BIA, the original Mortgage is returned to the Recording Clerk, the Recording Clerk shall retain a copy of the endorsed, BIA-recorded Mortgage or other document and transmit the original to the Mortgagee or person who delivered the document for recording to the Recording Clerk.

**(F)** Copies of the certified Mortgage and other documents and the log shall be made available for public inspection and copying. The Recording Clerk shall establish rules for copying and may assess reasonable charges therefore.

**(G)** Upon the Mortgagee's commencement of a foreclosure action or application for the appointment of a receiver in connection with an assignment of a Leasehold Interest in lieu of foreclosure, the Recording Clerk shall not accept any other Mortgage or other document for recording until the Leasehold Interest has been transferred according to the terms of this Act.

**Section 20-8-8. Priority of Liens.**

(A) Except as provided under subsection (B), the priority of a mortgage or other lien or encumbrance shall be determined by the date and time such mortgage, lien or encumbrance is recorded by the Jackson County register of deeds.

(B) After certification by the Tribal Council of the tribal land records system and public notice of such certification, priority of any Mortgage or other lien or encumbrance shall be determined by the date and time it was received by the Tribal Recording Clerk for recording (unless the Mortgage or other document expressly states that it is made subordinate to other liens). That priority shall be superior to all Subordinate Liens other than liens for Tribal taxes. Notwithstanding the date and time endorsed on the Mortgage, the log shall definitively establish the date and time a Mortgage or other document is received for recording. This subsection (B) shall not effect the priority of existing mortgages and liens recorded pursuant to subsection (A).

**ASSIGNMENT OF LEASEHOLD INTEREST IN LIEU OF FORECLOSURE**

**Section 20-8-9. Procedure for Assignment.**

At any time after a default, the Mortgagor may enter into a written assignment of his or her interest in lieu of foreclosure, subject to the following provisions:

(A) Thirty (30) days shall have expired after the Mortgagee has given the Nation written notice of the Lessor's Option pursuant to Section 20-8-12(B) and the Nation, as Lessor, has not exercised the same.

(B) The assignment shall contain (i) the Mortgagor's warranty that the Mortgagor, in good faith, believes that the value of the Interest is equal to or less than the amount currently due, or to become due after a foreclosure, under the Mortgage and (ii) the Mortgagee shall release the Mortgagor from the obligation to repay the Note;

(C) The Mortgagee shall petition the Tribal Court to appoint the Nation, as receiver, to receive title to the Interest and to liquidate it in accordance with the provisions of this Act;

(D) Such petition shall include a copy of the assignment and shall be served on the Mortgagor and the Nation;

(E) The order appointing the receiver shall assign the Interest to the receiver, with a right to sell the Interest at private sale or rent the Premises subject to the same conditions as provided in this Act for a foreclosure.

**Section 20-8-10. Designation of Receiver.**

Except as expressly agreed by the Nation, the Receiver shall be the Nation.

**FORECLOSURE**

**Section 20-8-11. Jurisdiction.**

Jurisdiction over all actions ~~to~~ relating to foreclosure of interests in tribal lands, agreements by the Tribal Council relating to mortgage lending programs and other matters within the scope of this Act shall lie exclusively in Tribal Court.

**Section 20-8-12. Satisfaction of Conditions Prior to Commencing Foreclosure.**

(A) Prior to commencing foreclosure proceedings, Mortgagee shall provide all written notices and take such other actions as may be required by the Note, Mortgage and any tribal, state or federal government program that applies to the Mortgage.

(B) Lessor's Option:

(1) Upon the expiration of any right to cure provided in the Mortgage, Mortgagee shall provide a written notice to the Nation, as Lessor, that (i) identifies the Lessee, the address of the Leased Premises, the amount due under the Note and Mortgage (including, principal, interest, costs and fees, including reasonable attorney fees), and (ii) offers to assign the Lender's interest in the Note, Mortgage and any other documents, judgments or orders, to the Lessor upon payment in full of the outstanding obligations.

(2) Lender shall not accept any assignment of Leasehold Interest in lieu of foreclosure or commence a foreclosure action until thirty (30) days after the delivery of such notice.

(3) Upon receipt of such notice, the Nation may, but is under no obligation to, pay to the Lender the amounts due under the Note and Mortgage. The Nation may exercise the Lessor's Option at any time prior to the sale or transfer of the Leasehold Interest to a Member or a Tribal Housing Entity under the Act's foreclosure provisions. Upon payment of such amounts, the Lender shall take all such action, and execute all such documents, as may be necessary to immediately transfer all of its interests to the Lessor. Thereafter, the Nation shall have the same rights as the Lender hereunder. No merger of title of the Nation shall occur until the Note is paid in full.

**Section 20-8-13. Complaint.**

Upon fulfillment of the conditions to commencing a foreclosure, the Mortgagee may commence a foreclosure action by filing a verified complaint, which shall include:

(A) The name of the Mortgagor and each person or entity claiming an interest in the Leasehold Interest, including each Subordinate Lienholder (except for the Nation with respect to a claim for a Tribal taxes), as a defendant;

(B) A description of the Leased Premises;

(C) A concise statement of the facts concerning the execution of the Mortgage and the Lease, if applicable; the facts concerning the recording of the Mortgage; the facts concerning the alleged default(s) of the Mortgagor; and such other facts as may be necessary to constitute a cause of action;

(D) True and correct copies of each Note, Mortgage, deed of trust or other recorded real property security instrument, Lease (if applicable) and any assignment of any of these documents; and

(E) Any applicable allegations concerning compliance with any relevant requirements and conditions prescribed in (i) federal statutes and regulations, (ii) Tribal codes, ordinance acts and regulations, and/or (iii) provisions of the Note, Mortgage and the Lease.

**Section 20-8-14. Service of Process.**

A copy of the summons and complaint shall be served on the all defendants and the Nation in accordance with Tribal law.

**Section 20-8-15. Receiver: Appointment, Duties and Responsibilities**

(A) In addition to appointing a receiver upon petition of the Mortgagee in connection with an assignment of Leasehold Interest in lieu of foreclosure, the Tribal Court shall appoint a receiver upon commencement of a foreclosure action and shall have the authority to prevent waste from occurring on the Lease Premises during the pendency of the proceeding.

(B) Except as otherwise agreed by the Nation pursuant to a memorandum of understanding or other agreement with a Mortgagee, the receiver shall be a person designated by the Nation. The receiver shall have the authority to hire such professionals as directed by the Mortgagee to manage and secure the Leased Premises.

(C) The receiver shall be an officer of the Tribal Court and shall be immune from all liability except that arising from its own negligence or willful acts. All contracts for services entered into by the receiver shall be satisfied solely from the proceeds from the sale or rental of the Leased premises or shall be advanced by the Mortgagee.

(D) The Tribal Court shall discharge the receiver when the Leased Premises are sold and the proceeds are distributed according to this Act.

## **Section 20-8-16. Judgment and Remedy.**

A foreclosure action shall be heard and decided in a prompt and reasonable time period not to exceed sixty (60) days from the date of service of the complaint on the defendants. If the mortgagor has no defense to the foreclosure and has failed to satisfy requirements for reinstatement of the Mortgage (if permitted under the terms of the Mortgage), and the Tribal Court finds for the plaintiff, the Tribal Court shall enter judgment:

- (A) Foreclosing the interest of the Mortgagor, other defendants and anyone else acquiring an interest in the Leased Premises after the commencement of the foreclosure action;
- (B) Assigning title to the Leasehold Interest to the receiver, with authority to sell the Leasehold Interest or rent the Leased Premises;
- (C) Issuing a Writ of Restitution to law enforcement personnel to remove the defendants and all other occupants, and their personal property, from the Leased Premises;
- (D) Ordering a public sale not earlier than three months from the date of judgment or, in the event the Premise are abandoned, not earlier than 30 days from the date of judgment, and advertising the terms of such sale in a newspaper, or other means of communication typically used by the Nation for notices to members, and posting the notice on the Leased Premises and in the Tribal offices; In the event the Mortgagee seeks a deficiency judgment, no sale may be held earlier than one year after the date of judgment;
- (E) Providing for a right of redemption at any time before public sale upon payment by the Mortgagor of the amount specified in the judgment of foreclosure, which shall consist of (i) all principal and accrued interest secured by the mortgage and due as of the date of the judgment, (ii) all costs allowed by law, (iii) costs and expenses approved by the court, (iv) to the extent provided for in the mortgage and approved by the court, additional costs, expenses and reasonable attorneys' fees incurred by the mortgagee, (v) amounts paid by a Mortgagee, with court approval, in connection with liens, encumbrances or interests reasonably necessary to preserve the status of title, and (vi) per diem interest from the date of judgment to the date of redemption calculated at the mortgage rate of interest applicable as if no default had occurred; and the amount of other expenses authorized by the court which the mortgagee reasonably incurs between the date of judgment and the date of redemption;
- (F) Providing for the distribution of any funds in excess of the amounts due to the Mortgagee to the Subordinate Lienholders (if any) in order of lien priority and then to the Mortgagor;
- (G) Requiring that all sales of the Leasehold Interest be made only to a Member, the Nation, the Tribal Housing Authority or, as may be expressly agreed in writing by the Nation, to any other party;

(H) Providing that the Leased Premises may be rented prior to a sale, to financially qualified Members, the Nation or the Tribal Housing Authority;

(I) Awarding monetary damages to the plaintiff for damages caused to the Leased Premises in excess of ordinary wear and tear.

**Section 20-8-17. Rights of the Mortgagee.**

Subject to this Act and the terms of the Mortgage, a Mortgagee has the following rights in connection with an assignment of Leasehold Interest in lieu of foreclosure or a foreclosure judgment:

(A) The receiver shall follow the directions of the Mortgagee in setting the terms of, and conducting, a public or private sale and the acceptance of any offer to buy the Property, subject to the following:

(1) All assignments shall be in form and substance satisfactory to the Mortgagee.

(2) All assignees shall be bound by the terms of the Lease.

(3) The receiver shall obtain the consent of the Secretary if such consent is required by law and has not been given.

(B) The Mortgagee need not accept any offer at the public sale other than a bona fide cash offer, to be paid within forty-five (45) days of the public sale, in an amount equal to or greater than the amount due on the judgment, plus all accrued interest and expenses to date of sale.

(C) If no offer is accepted at the public sale, the receiver may sell the Leasehold Interest at private sale; the Mortgagor shall have no interest in the proceeds and all proceeds, including any proceeds in excess of the amount due under the judgment, shall be paid to the Mortgagee.

(D) The Receiver shall follow the directions of the Mortgagee in renting the Leased Premises, subject to the following:

(1) All rental agreements shall be in a form approved by the Nation.

(2) Only Members, the Nation, a Tribal Entity or, as may be expressly agreed in writing by the Nation, any other party, are eligible renters.

(3) All renters shall be provided with a copy of the Lease and shall agree in writing to be bound by the terms thereof.

(4) All rental proceeds shall be paid to the Mortgagee and shall be applied to amount outstanding under the Note or judgment.

(5) The receiver shall obtain the consent of the Secretary if such consent is required by law and has not been given.

**Section 20-8-18. Enforcement of Writ of Restitution.**

Upon issuance of a Writ of Restitution, Tribal law enforcement officers shall enforce it by removing from the Leased Premises the Mortgagor and any other persons occupying the Leased Premises together with their personal property. Alternatively, a Writ of Restitution may be enforced by county law enforcement officers pursuant to any applicable intergovernmental cooperation agreement with the Nation. The Writ of Restitution shall be enforced no later than five days before the date set for public sale.

**Section 20-8-19. No Merger of Estates.**

If the Nation takes an assignment of lease, the lease shall continue with the Nation in the position of both Lessor and Lessee for as long as the Lease is subject to a mortgage.

**Section 20-8-20. Right of Nation, as Lessor, to Notice and Right to Intervene**

(A) In any Mortgage foreclosure proceeding in which the Nation is not named as a defendant, a copy of the summons and complaint shall be served on the Nation in accordance with the court rules relating to service of process or, alternatively, by certified mail, return receipt requested, within five (5) days after the issuance of the summons.

(B) The Nation may petition the Tribal Court to intervene in any foreclosure proceeding under this Act. Neither the filing of a petition for intervention by the Nation, nor the granting of such petition by the Tribal Court shall operate as a waiver of the sovereign immunity of the Nation, except as may be expressly authorized by the Nation.

(Enacted by PBP TC No. 2007-130 on July 6, 2007.)

(Enacted by PBP TC No. 99-63, April 28, 1999; amended by PBP TC No. 99-67, May 12, 1999; amended by PBP TC No. 99-103, July 7, 1999; enacted by PBP TC No. 99-155, December 21, 1999; amended by PBP TC. No 2005-024; amended by PBP TC. No 2006-185, September 7, 2006; amended by PBP TC No. 2006-185a, October 10, 2006; enacted by PBP TC No. 2007-166, September 6, 2007; amended by PBP TC No. 2007-180, October 10, 2007, amended by PBP TC No. 2007-180A, December 3, 2007; amended by PBP TC No. 2008-064, March 6, 2008; amended by PBP TC No. 2008-074, March 19, 2008; amended by PBP TC No. 2008-099, April 28, 2008; enacted by PBP TC No. 2007-130 on July 6, 2007.