

**FORECLOSURE AND EVICTION ORDINANCE**  
of the Hoopa Valley Tribe Hoopa Valley Indian Reservation  
Title 36  
Hoopa Valley Tribal Code

**ORDINANCE NO.:** 5-95

**DATE APPROVED:** Amended June 18, 2009, As Amended September 18, 2008, As Amended October 6, 1997, Original July 20, 1995

**SUBJECT: FORECLOSURE AND EVICTION ORDINANCE**

**WHEREAS:** The Hoopa Valley Tribe adopted a Constitution and Bylaws (Tribal Constitution) on June 20, 1972, which was approved by the Commissioner of Indian Affairs on August 18, 1972, and ratified and confirmed by Congress on October 31, 1988 in section 8 of Pub. L. 100-580, and amended on June 19, 1990 and, by tribal law, the sovereign authority of the Tribe over the matter described herein is delegated to the Hoopa Valley Tribal Council, acting by law; and

**WHEREAS:** The Tribal Council has concluded that it is necessary to exercise tribal authority over foreclosure and eviction actions within the exterior boundaries of the Hoopa Valley Reservation, and over other activities in order to protect tribal property interests and the public health and safety; and

**WHEREAS:** Pursuant to the review process set forth in LPA Section 6.3, the Council concludes that it is now appropriate to enact said Ordinance on a

**THEREFORE BE IT NOW ORDAINED THAT:** Pursuant permanent basis, as modified by departmental comments and legal review developed during the review process.

to Section 6.3 of the Legislative Procedures Act, and the tribal constitutional and legal authorities recited herein, the Tribal Council hereby enacts the attached Foreclosure and Eviction Ordinance, in order to protect the fundamental tribal values identified in Article IX § (l) thereof and the Tribe's sovereign governmental authority.

**BE IT FURTHER ORDAINED THAT:** The Tribal Council hereby reaffirms its intent that the provisions of this Ordinance be enforceable against Tribal members and non-members and upon private lands within the Reservation, and accordingly the Tribal Chairman is authorized and directed, in consultation with the Office of Tribal Attorney, to transmit this Ordinance to the Bureau of Indian Affairs for any review and approval that may be necessary, and to seek the support of that agency, if necessary, for this assertion of tribal jurisdiction.

**BE IT FURTHER ORDAINED THAT:** It shall be the policy of the Tribe and its authorized entities and departments to vigorously enforce the provisions of this Ordinance, and to oppose any assertion of jurisdiction by Humboldt County, or by

the State of California or any of its agencies, that purports to regulate the matters herein regulated by tribal authority.

## **CHAPTER 1 GENERAL PROVISIONS FORECLOSURES & EVICTIONS**

### **36.1.01 SHORT TITLE.**

This Ordinance shall be known as the **Foreclosure and Eviction Ordinance** of the Hoopa Valley Tribe.

### **SECTION 36.1.02 AUTHORITY**

This Title is enacted pursuant to Article IX, Sections (k) and (l) of the Hoopa Valley Tribe's Constitution.

### **SECTION 36.1.03 FINDINGS**

The Tribal Council hereby finds that adequate and clear foreclosure and eviction are a necessity for conducting tribal business and for private lenders. Some tribal entities own and manage properties and require foreclosure and eviction procedures for their operations. Several Federal home loan guarantee programs require standardized eviction procedures. A single uniform code would enhance the operations of tribal government.

### **36.1.04 PURPOSES AND INTERPRETATION.**

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

- (a) To simplify the law governing the occupation of dwelling units, and to protect the rights of landlords and tenants.
- (b) To provide summary procedures and proceedings for forcible entry and unlawful and forcible detainer, and to require landlords to use these summary procedures and proceedings in forcible entry and unlawful and forcible detainer actions.
- (c) To amend and supplement existing Hoopa procedures to reflect the summary procedures and proceedings set forth in this Ordinance, including changes to the timeframes governing motion practice, discovery, and pretrial conferences.
- (d) To encourage landlords and tenants to maintain and improve dwelling units on the Reservation in order to improve the quality of housing as a tribal resource.
- (e) To establish laws and procedures which are necessary to obtain federal or state funding for tribal housing programs.

- (f) To preserve the peace, harmony, safety, health and general welfare of the people of the Tribe and those permitted to enter or reside on the Reservation

**SECTION 36.1.05 APPLICABILITY (AND SCOPE).**

The provisions of this Ordinance shall apply to all real or personal property, held in trust or held in fee, by members of the Tribe or by non-members, within or without the exterior boundaries of the Reservation. The provisions of this ordinance shall not apply to storage units located within the exterior boundaries of the Hoopa Valley Reservation.

**36.1.06 JURISDICTION.**

The provisions of this Ordinance shall apply to all persons and property subject to the governing authority or jurisdiction of the Hoopa Valley Tribe as established by the Constitution and Bylaws of the Hoopa Valley Tribe.

**36.1.07 CONSTRUCTION**

This Code shall be strictly interpreted and construed. The terms and provisions of Chapter 1 through Chapter 14 shall be construed according to the fair import of their terms, but when the language is susceptible to differing construction, it shall be interpreted to further the general purposes stated in this Chapter. Where a term is not defined herein, it shall be given its ordinary meaning. Any reference to "he," "him" or other masculine terms shall include male and female persons. Any reference to a singular term includes the plural.

**36.1.08 RETROACTIVE EFFECT.**

This Ordinance shall apply to all rental agreements subject to the provisions of the Hoopa Valley Tribal Code, no matter when entered.

**36.1.09 SOVEREIGN IMMUNITY PRESERVED.**

Nothing in this code shall be deemed to constitute a waiver by the Hoopa Valley Indian Tribe of its sovereign immunity, rights, powers or privileges

**36.1.10 SEVERABILITY.**

If any provision of Chapter 1 through Chapter 14 or its application to any person or circumstance is held invalid, the remainder of the Title, or the application of the provision to other persons or circumstances, remains in effect.

**PART 1 FORECLOSURES  
CHAPTER 2 DEFINITIONS- FORECLOSURE**

**SECTION 36.2.01 SECURED TRANSACTION DEFINITIONS**

Unless the context plainly requires otherwise, the following terms shall mean:

(a) "Debtor": is the person who owes payment or other performance of an obligation secured, whether or not such person owns or has rights in the collateral. If the debtor and the owner of the collateral are not the same person, the term refers to the owner in any provision of the governing law dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context requires. The term "debtor" includes a seller of accounts or chattel paper.

(b) "Secured Party": is a lender, seller or other person in whose favor there is a security interest. The term includes a person to whom accounts or chattel paper have been sold. When the holders of obligations issued—under an indenture of trust, equipment trust agreement, or the like—are represented by a trustee or other persons, their representative is the secured party.

(c) "Security Agreement". is an agreement which creates or provides for a security interest.

(d) "Security Interest". is an interest in personal property or fixtures which secures payment or performance of an obligation. The term includes any interest of a buyer of accounts or chattel paper.

(e) "Purchase Money Security Interest": results when a security interest is taken or retained by the seller of the collateral to secure all or part of its price. It also results when a security interest is taken by a person who, by making advances or incurring an obligation, gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.

(f) "Collateral". is property subject to a security interest. It includes accounts and chattel paper which have been sold.

(g) "Proceeds": includes whatever is received on the sale, exchange, collection, or other disposition of collateral proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to someone other than a party to the security agreement. Money, checks, deposit accounts, and the like are termed "cash proceeds." All other types of proceeds are "noncash proceeds."

### **CHAPTER 3 FORECLOSURE OF SECURED TRANSACTIONS**

#### **SECTION 36.3.01 SELF-HELP REMEDIES ELIMINATED.**

##### **(a) Eliminated Remedies**

All self help remedies for the recovery of real or personal property secured to insure payment of obligations are hereby declared unavailable except as otherwise specifically provided herein.

**(b) Voluntary Surrender Excluded**

This section shall not be construed to prevent the voluntary surrender of secured property to a creditor by a debtor, provided, however, that such voluntary surrender occurs at the time of such surrender. All contractual provisions for such executed in advance of the need shall be of no effect.

**SECTION 36.3.02 ONE ACTION TO FORECLOSE SECURITY INTEREST.**

**(a) Single Action Rule**

There can be but one action in the Tribal Court to recover any debt or enforce or foreclose any right secured by a mortgage or other security interest on non-trust real or non-trust personal property situated or located within the boundaries of the Hoopa Valley Indian Reservation, on trust property, or land located within Hoopa Indian Country, which action must be in accordance with the procedures outlined herein.

**(b) Installment Payment Exception**

Notwithstanding the provisions next above, if the debt for which the encumbrance is held is not all due, but is payable in installments, whether such debt is evidenced by one or more principal notes or otherwise, such encumbrance may be foreclosed, at the election of the holder thereof, for the installment or installments due or other charges which are to be paid by the mortgagor, and the Court may by its judgment, direct the sale of the encumbered property or the equity of the defendants therein, or so much thereof as may be necessary to satisfy the amount due, and such encumbrance shall otherwise remain in full force and effect and the holder thereof shall the right to foreclose on the balance or any part thereof.

**SECTION 36.3.03 ACTION TO FORECLOSE INTEREST IN PERSONAL PROPERTY.**

**(a) Complaint**

An action to foreclose a security interest in nontrust personal property shall be commenced by filing a complaint in the Hoopa Valley Tribal Court.

**(b) Remedies**

The Tribal Court shall determine the issues presented and may, by its judgment, direct the sale of the encumbered property, or so much thereof as may be necessary, and direct the application of proceeds of the sale to the payment of the costs of the Court, the expenses of such sale and to the amount due the plaintiff. If it appears from the police officer's return on the sale that the proceeds thereof are insufficient and that an amount still remains due, the court can direct entry of a judgment for such balance against the defendant or defendants as provided in Chapter 4 of this Code.

**(c) Order Protecting Property that is Subject of Dispute**

If it is reasonably made to appear after the complaint is filed that the collateral is in imminent danger of being concealed, removed from the Reservation, or otherwise disposed of in a manner inconsistent with the security interest, the Court may order the person in possession or control over such property to appear and show cause why such property should not be taken into the custody of the Court or other security provided to prevent the improper disposal of the collateral.

**SECTION 36.3.04 ACTION TO FORECLOSE MORTGAGE.**

**(a) Complaint**

An action to foreclose a mortgage or other security interest in trust and non-trust real property shall be commenced by filing a complaint of foreclosure in the Tribal Court.

**(b) Persons who Must be Named in Complaint**

A complaint to foreclose a security interest in real property shall name as parties all persons who claim an interest in said property as a result of a proper recordation of such interest in Tribal, federal or county records, or any or all, as applicable.

**(c) Interests of Hoopa Valley Tribe**

No interest of the Hoopa Valley Tribe, whether recorded or not, may be affected in any action in which the Tribe is not a party by its own affirmative action or consent.

**(d) Non-Recorded Interests in Property**

Interests in the secured property which are not recorded may be affected as if recorded and the owner thereof made a party.

**(e) Remedies**

The Tribal Court shall determine the issues presented and may, by its judgment, direct the sale of the encumbered property or so much thereof as is necessary, and direct the application of the proceeds to the costs of court, the expenses of sale, and to the amount due the plaintiff, except that in all cases where the mortgage secures a loan provided pursuant to Section 184 Indian Housing Loan Guarantee Program, said mortgage shall be satisfied before any other obligations are satisfied (other than any Tribal leasehold taxes against the property assessed thereto after the property was mortgaged). If it appears from the police officer's return on the sale that the proceeds thereof are insufficient and that an amount still remains due, the Court can direct the entry of a judgment for such balance against the defendant or defendants as provided in chapter 4 of this Code.

**CHAPTER 4 SALE OF PROPERTY**

## **SECTION 36.4.01 NOTICE.**

### **(a) Posting Notice**

Before the sale of real property subject to a decree of foreclosure and order of sale, notice thereof must be given as follows: by posting written notice of the time and place of the sale giving a specific legal and general description of the property for 20 days in at least four public places on the Reservation, including one copy posted at the Tribal Offices in the Neighborhood Facilities Building, one copy posted on the property to be sold, and one copy posted at the Tribal Court.

### **(b) Remedy for Noncompliance with Notice Provisions**

If ever there is a sale of property conducted without at least good faith, substantial compliance with the notice requirements as set forth herein, said sale may be declared void and of no effect by the Tribal Court.

## **SECTION 36.4.02 CONDUCT OF SALE.**

### **(a) Time and Location of Sale**

All sales of property under decrees of foreclosure and orders for sale must be made at auction conducted at the Tribal Court, to the highest bidder between the hours of 9:00 A.M. and 5:00 P.M. on any tribal business day.

### **(b) Termination of Sale Once Judgment Satisfied**

Once sufficient property has been sold to satisfy the judgment plus the costs of court and of the sale, no more property shall be sold.

### **(c) Conflict of Interest Prohibited**

The person conducting the sale may not be a purchaser or be interested in any purchase at such sale.

### **(d) Requirement that Multiple Lots or Parcels be Sold Individually**

If the property being sold consists of several known lots or parcels, they must be sold separately. The judgment debtor, if present at the sale, may direct the order in which the property shall be sold when such property consists of several known lots or parcels. If a third person claims an interest in part of the property sold, he may require that such part be sold separately.

### **(e) Consequences for Failure to Pay Bid**

If a purchaser refuses to pay the amount bid by him for the property sold to him at sale, the officer conducting the sale may again sell the property to the highest bidder and if any loss be occasioned thereby, the officer may recover the amount of such loss, plus costs, from the bidder so refusing, in the Tribal Court. When a purchaser refuses to pay, the officer may, in his discretion, thereafter reject any subsequent bid of such person.

## **SECTION 36.4.03 RETURN ON SALE.**

### **(a) Duty of Law Enforcement Conducting Sale**

The tribal law enforcement officer conducting the sale shall make a return thereon to the Tribal Court reciting all of the details of the sale.

**(b) Filing of Sale Documents with County Recorder and BIA**

A certified copy of such return together with a certified copy of the Court's order directing said sale shall be filed by the purchaser in the appropriate county recorder's office, the tribal real property office, and in the real property office of the nearest Bureau of Indian Affairs' Agency or Area Office.

**SECTION 36.4.04 TITLE TO REAL PROPERTY.**

**(a) Rights of Purchaser**

On a sale of real property, the purchaser is substituted to, and acquires all of the right, title, interest and claim of the judgment debtors thereto.

**(b) Right of Redemption**

The property so acquired is subject to redemption as provided in section 36.4.05.

**(c) Certificate of Sale**

**(1) Requirement**

At the time payment for the sale is made, the officer conducting such must give to the purchaser a Certificate of Sale containing:

- (A) the name of the purchaser;
- (B) the name of the judgment debtor;
- (C) the particular legal description of property sold;
- (D) the price bid for each particular lot or parcel (if applicable);
- (E) the total price paid; and,
- (F) a statement that the sale is subject to redemption.

**(2) Number of Copies of Certificate of Sale to be Provided**

The officer conducting the sale shall provide the purchaser with sufficient certified copies of the Certificate of Sale that the purchaser may file one copy with the office of the Recorder in each county where the property is located. The purchaser shall be provided with one certified copy for his own records and one copy shall be filed with the officer's return on the sale in the Tribal Court.

**(d) Purchaser's Remedy if Title Fails because of Irregularities in Proceedings**

**(1) Remedy**

If the purchaser of real property sold pursuant to an order of sale, or his successor in interest, should be evicted therefrom in consequence of irregularities in the proceedings concerning the sale, or of the reversal or discharge of the judgment, he may receive the price paid plus interest at the rate of 8% per annum from the judgment creditor.

**(2) Procedure to Secure Remedy**



If the purchaser of real property sold pursuant to an order of sale, or his successor in interest, fails to obtain possession of the property as a consequence of irregularity in the proceedings related to the sale, or because the property sold was not subject to execution and sale, the Tribal Court must, after notice and on motion of such party in interest, revive the original judgment in the name of the petitioner, for the amount paid by such purchaser, with interest thereon at the rate of 8% per annum, and the judgment so revived has the same force and effect as would the original judgment as of the date of revival.

#### **SECTION 36.4.05 REDEMPTION.**

All real property sold as provided herein is subject to redemption, in the manner hereinafter provided, by the judgment debtor or his successor in interest in the whole or any part of the property.

##### **(a) Calculation of Redemption Amount**

The judgment debtor or redemptioner may redeem real property from the purchaser within six months after the sale by paying the purchaser for the amount of his purchase together with interest thereon at the rate of 8% per annum from the date of sale to the date of redemption, together with the amount of any assessments or reasonable additional costs which the purchaser may have paid thereon after the date of purchase.

##### **(b) Notice Required**

Written notice of redemption must be given to the tribal real property office and a duplicate filed with the office of the County Recorder, and the real property office of the local Bureau of Indian Affairs' Agency or Area Office.

##### **(c) Effect of Redemption**

If the debtor redeems, the effect of the sale is terminated and he is restored to his estate.

##### **(d) Certificate of Redemption Requirement & Filing Procedure**

Upon redemption by the debtor, the person to whom the payment is made must execute and deliver to him sufficient copies of a Certificate of Redemption acknowledged and proved before a Notary Public authorized to take acknowledgments of conveyances of real property. Copies of such certificates shall be filed at the tribal real property office, the appropriate county recorder's office and the Bureau of Indian Affairs real property offices.

##### **(e) Acceptable forms of Redemption Payment**

Redemption payment must be made in U.S. currency or by certified or Cashier's check and be made to the purchaser or his successor.

##### **(f) Affidavit Requirement for Redemption**

A judgment debtor or successor in interest desiring to redeem property must present to the person from whom he seeks to redeem 1) a certified copy of the

judgment and order of sale under which he claims a right to redeem, and 2) his own affidavit that he is the person entitled to redeem and showing the amount due to effect the redemption.

**(g) Property Restraints During Redemption Period**

Until expiration of the time for the redemption, the Tribal Court may restrain the commission of waste or changing the character of the property, but it shall not be waste for the person entitled to possession of the property to continue to use it in the manner it had been previously used, or use it in the ordinary course of husbandry, or to make necessary repairs thereon, or to make a reasonable use of the wood and timber thereon for the benefit of the property or the possessor in his reasonable enjoyment of the property.

**(h) Rent Paid During Redemption Period & Right to Accounting**

The purchaser from the time of sale until redemption is entitled to receive from the tenants in possession, the rents of the property sold, or the value of the use and occupation thereof. However, when any rents or profits have been received by the purchaser, or his assigns from the property thus sold prior to redemption, the amount of such rents and profits shall be a credit on the redemption money to be paid. If the judgment debtor or person entitled to redeem, prior to the expiration of the time for redemption, demands of the purchaser or his assigns a written and verified statement of the amount of such rents and profits received, and assessments or costs paid by the purchaser, the period of redemption is extended until five days after such sworn statement is received by the redemptioner. If such purchaser or his assign fails or refuses for a period of one month to give such statement, the redemptioner may, within 60 days of such demand, bring an action in the Tribal Court to compel an accounting and disclosure of such rents and profits, and until fifteen days after the final determination of such action, the right of redemption is extended to such redemptioner.

**(i) Refund of Purchase Price Due to Irregularities in Sale Proceedings**

If the purchaser of real property sold pursuant to sale, or his successor in interest be evicted therefrom, in consequence of irregularities in the proceedings concerning the sale, or of the reversal or discharge of the judgment, he may recover the price paid, with interest, from the judgment creditor. If the purchaser of property at the sale, or his successor in interest, fail to recover possession in consequence of irregularity in the proceedings concerning the sale, or because the property sold was not subject to execution and sale, the Tribal Court must, after notice and on motion of such party in interest, revive the original judgment in the name of the petitioner, for the amount paid by such purchaser at sale, with interest thereon from the time of payment at the same rate that the original judgment was for; and the judgment so revived has the same force and effect as would the original judgment of the date of revival and no more.

**(j) Expiration of Redemption Period & Issuance of Deed**

If no redemption is made within six months, the purchaser or his assignee is entitled to a conveyance by means of a Deed to be issued upon the order of the Tribal Court. Such Deeds shall be recorded at the tribal real property office, the appropriate county recorder's office, and the Bureau of Indian Affairs' real property offices. Such deed shall be prepared by the tribal real property office.

**SECTION 36.4.06 SURPLUSES AND DEFICIENCIES FROM SALES.**

**(a) Sale Surplus**

If there remains surplus money remaining after the payment of the costs of court and of the sale and payment of the judgment creditor, such funds shall be distributed by the Tribal Court to the judgment debtor or other person entitled thereto.

**(b) Sale Deficiencies**

A deficiency judgment may be entered by the tribal Court in a case involving the foreclosure and sale of real property whenever the amount due under the secured indebtedness plus costs of court and of the sale exceed the reasonable value of the property at the time of sale. The Tribal Court is not bound by the price for the property received at the sale but may take evidence to determine the actual reasonable value.

**PART II EVICTIONS**

**CHAPTER. 5 ACTIONS TO RECOVER POSSESSION OF REAL PROPERTY – EVICTIONS**

**SECTION 36.5.1 DEFINITIONS- EVICTIONS**

Unless the context plainly requires otherwise, the following terms shall mean:

- (a) **"Abandon"** Real property is abandoned by the lessee, where the lessee has vacated the property and failed to meet any of his obligations as to the property under the lease or rental agreement, and has no apparent intention of resuming any claim on the property.
  
- (b) **"Abandonment."** Real property shall be deemed abandoned under this code and the lease shall terminate if the lessor gives written notice of his belief of abandonment as provided in this Ordinance and the lessee fails to give the lessor written notice, prior to the date of termination specified in the lessor's notice, stating that he does not intend to abandon the real property and stating an address at which the lessee may be served by certified mail in any action for unlawful detainer of the real property.

- (c) "Building and housing codes." Any law, ordinance, or governmental regulation of the Hoopa Valley Tribe or an agency of the United States which deals with fitness for habitation, health conditions, or the safety, construction, maintenance, operation, occupancy, use, or appearance of any dwelling unit.
- (d) "Court" Hoopa Valley Tribal Court, unless otherwise indicated.
- (e) "Drug-related criminal activity." The illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance as defined in section 102 of the Controlled Substance Act (21 U.S.C. § 802).
- (f) "Dwelling unit." A house or building or portion thereof that is used as a home or residence by any person, not including public transient accommodations, such as hotel rooms.
- (g) "Forcible entry" and "person in lawful possession." A person is guilty of a forcible entry
  - (1) by breaking open doors, windows, or other parts of a house on a premises of another or by any kind of violence or circumstance of terror enters onto the premises of another; or
  - (2) after entering peaceably upon the premises of another turns out by force, threats, or menacing conduct, any person in lawful possession of the premises. As used in this section, the phrase "person in lawful possession" means any person who has the authority to occupy the premises through a valid lease, sublease, mortgage, or some other valid legal instrument or agreement.
- (h) "Forcible detainer" and "occupant of premises." A person is guilty of a forcible detainer who
  - (1) by force or by menace and threats of violence, unlawfully holds and keeps the possession of any premises whether the same was acquired peaceably or otherwise; or
  - (2) in the night time or during the absence of the occupant of premises, unlawfully enters upon said premises and who, after demand is made for the surrender thereof, for the period of one day, refuses to surrender the same to such former occupant. As used in this section, the terms

“occupant of premises” means any person who within one day preceding such unlawful entry, was in the peaceable and undisturbed possession of such premises.

- (i) "Guest." Any person, other than the tenant, in or around a dwelling unit with the permission and consent of the tenant.
- (j) "Housing Authority." The Hoopa Valley Housing Authority established by the Tribal Housing Ordinance for the purpose of constructing and maintaining dwelling units for public use within the Hoopa Valley Reservation.
- (k) "Indian." Any person recognized as being an Indian or an Alaska Native by any Tribe, or by the government of the United States.
- (l) "Landlord." Any person, entity, or government agency that is the owner, lessor, or sublessor of a dwelling unit intended for the use of tenants.
- (m) "Lease." Any agreement, written or oral, as well as valid rules and regulations regarding the terms and conditions concerning the use or occupancy of a dwelling unit or premises, for a specific period of time, including lease-purchase agreements and the occupation of land.
- (n) "Nuisance." The maintenance or allowance on real property of a condition which one has the ability to control and which unreasonably threatens the health or safety of the public or neighboring land users or unreasonably and substantially interferes with the ability of neighboring property users to enjoy the reasonable use and occupancy of their property.
- (o) "Owner." Any person or entity jointly or individually having legal title to all or part of land or a dwelling unit, including the legal right to own, manage, use, or control a dwelling unit under a mortgage, long-term lease, or any other security arrangement.
- (p) "Person." Any individual, organization, corporation, partnership, or other entity, and, where required by the language of this Code, a public agency. The term "Person" shall not mean the Hoopa Valley Housing Authority, Hoopa Valley Tribe or any their officers or employees acting at the direction of the Board of Commissioners or Tribal Council under this Ordinance.
- (q) "Premises." A dwelling unit and the structure of which it is a part, and all facilities and areas connected with it, including grounds,

common areas, and facilities intended for the use of tenants or the use of which is promised for tenants.

- (r) "Rent." All periodic payments to be made to a landlord under a rental agreement.
- (s) "Rental Agreement" Any agreement, written or oral, as well as valid rules and regulations regarding the terms and conditions concerning the use or occupancy of a dwelling unit or premises.
- (t) "Reservation." Hoopa Valley Indian Reservation.
- (u) "Security deposit." A cash deposit used for any purpose, including, but not limited to, any of the following:
  - (1) The compensation of a landlord for a tenant's default in the payment of rent.
  - (2) The repair of damages to the premises, exclusive of ordinary wear and tear, caused by the tenant or by a guest or licensee of the tenant.
  - (3) The cleaning of the premises upon termination of the tenancy necessary to return the unit to the same level of cleanliness it was in at the inception of the tenancy.
  - (4) reimbursement for costs associated with processing a new tenant
  - (5) an advance payment of rent,
- (v) "Serious Nuisance." Inflicting bodily harm upon another tenant, the landlord, or the landlord's agent(s) or threatening to inflict such harm with the present ability to effect the harm and under circumstances which would lead a reasonable person to believe that such threat will be carried out; substantial and willful destruction of part of the dwelling unit or premises; conduct which presents an immediate and serious danger to the safety of other tenants, the landlord, or the landlord's agent(s); using the premises for any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants; or any drug-related criminal activity on the premises, engaged in by a tenant, his guest, or any other person under the tenant's control.

- (w) Tenancy at Will: Rental agreement that has no expiration date, but may be terminated at any time by either the tenant or the landlord serving the other party with a written 30 day notice.
- (x) "Tenant." The lessee, sublessee, or person entitled under a lease or rental agreement to occupy a dwelling unit to the exclusion of others.
- (y) "Tribe." The Hoopa Valley Tribe.
- (z) "Unlawful Detainer." A person commits an "unlawful detainer" if, being a tenant of real property with a term of less than his life, if any of the following occurs.
- (1) The tenant continues in possession, in person or by subtenant, of the property or any part thereof, after the expiration of the term for which it is let to him. In all cases where real property is leased or rented for a specified term or period, or by express or implied contract, whether written or parole, the tenancy shall be terminated without notice at the expiration of such specified term or period; or
  - (2) When the tenant or subtenant continues in possession after default in the payment of rent according to the lease or rental agreement under which the premises is held, and three days after the tenant, and if the subtenant occupies the premises, the subtenant, is served with notice demanding payment of the amount due or possession of the premises; or
  - (3) When the tenant or subtenant continues in possession after a neglect or failure to perform conditions or covenants of the lease or agreement under which the premises is held, including any covenant not to assign or sublet the premises, and three days after the tenant, and if the subtenant occupies the premises, the subtenant, is served with notice requiring the performance of such conditions or covenants. Within three days after service of the notice, the tenant, subtenant, encumbrancer or other interested person may perform the conditions or covenants of the lease, and thereby save the lease from termination, but if the broken condition or covenant cannot be cured, the required notice need not list such performance as an alternative; or
  - (4) When the tenant or subtenant commits or permits waste upon the premises, or maintains, commits, or permits the maintenance or commission of a nuisance upon the

premises or uses the premises for an unlawful purpose, and three days after the tenant, and if the subtenant occupies the premises, the subtenant, is served with notice to quit continues in possession of the property; or

- (5) When the tenant gives written notice of his intent to terminate occupation of the premises, or makes a written offer to surrender which is accepted in writing by the landlord, but fails to vacate the premises at the time specified in the notice without the permission of the landlord; or
- (6) When the tenant, who has leased or rented the property for an indefinite period of time with monthly or other periodic rent reserved, continues in possession in person or by subtenant after the end of such month or period after having been served with notice requiring him to quit the premises at the end of such month or period; or
- (7) When a tenant under a tenancy at will continues in possession by person or subtenant after the expiration of a thirty day notice to terminate the tenancy.

## **CHAPTER 6 LEASES & RENTAL AGREEMENTS**

### **36.6.01 TERMS PROHIBITED IN LEASES.**

No lease or rental agreement shall provide that the tenant agrees: (1) to waive or forfeit his rights or remedies under this Ordinance; (2) to exculpate or limit the liability of the landlord or to indemnify the landlord for that liability or the costs connected therewith; or (3) to permit the landlord to dispossess him without resort to court order. A provision prohibited by this subsection shall be unenforceable.

### **36.6.02 TERM OF TENANCY.**

In the absence of a definite term in the lease or rental agreement, the tenancy shall be month-to-month.

### **36.6.03 PAYMENT OF RENT.**

In the absence of definite terms in the lease, rent is payable at the dwelling unit and the amount of rent shall be the fair market value of the rental unit.

### **36.6.04 RULES AND REGULATIONS.**

The landlord may promulgate reasonable rules and regulations regarding the use and occupancy of the dwelling unit.



## **CHAPTER 7 LANDLORD RESPONSIBILITIES & RIGHTS.**

### **36.7.01 LANDLORD RESPONSIBILITIES**

Each landlord subject to the provisions of this Ordinance shall:

- (a) Maintain the dwelling unit in a decent, safe, and sanitary condition.
- (b) Comply with applicable building and housing codes.
- (c) Make all necessary repairs to put and maintain the premises in a fit and habitable condition, except where the premises are rendered unfit or uninhabitable by the tenant or his guest in violation of Chapter 5 of this Code, in which case such duty shall be the responsibility of the tenant.
- (d) Keep common areas clean, safe, and secure.
- (e) Maintain in good condition and safe working order all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, where such things are not the responsibility of the tenant or are generated by an installation within the exclusive control of the tenant.
- (f) Provide running water, hot water and heat in accordance with applicable building and housing codes, except to the extent the tenant is required to provide such for himself.
- (g) Guarantee the right of quiet enjoyment of the dwelling unit to the tenant and insure that the conduct of other tenants, their guests, and other persons on the premises does not cause a nuisance, endangerment of public health and safety, breach of peace, or interference with the quiet enjoyment of the tenant.
- (h) Give sole possession of the dwelling unit to the tenant in accordance with the lease and refrain from: (1) entering the unit, except as authorized in Section 36.7.03; (2) making repeated demands for entry otherwise lawful under Section 36.7.03(a) but which have the effect of unreasonably harassing the tenant; (3) sexually harassing or physically assaulting the tenant in or around his dwelling unit; or (4) locking the tenant out of his dwelling unit without the tenant's consent.

### **36.7.02. RETALIATION PROHIBITED.**

#### **(a) Prohibition**

A landlord or agent may not retaliate against a tenant who has complained to the landlord or an appropriate agency about the habitability of the premises.

#### **(b) Liability for Retaliation**

Anyone who violates this section shall be liable to the tenant for actual damages sustained plus punitive damages in an amount of not less than one hundred dollars (\$100) nor more than two thousand dollars (\$2,000) for each retaliatory

act where the landlord or agent has been guilty of fraud, oppression, or malice with respect to that act. The court shall award reasonable attorney's fees to the prevailing party if either party requests attorney's fees upon the initiation of the action.

### **36.7.03 LANDLORD'S ENTRY; NOTICE.**

#### **(a) Right of Entry**

A landlord may enter the dwelling unit only in the following cases:

- (1) In case of emergency.
- (2) To make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors or to make an inspection pursuant to Section 36.3.01.
- (3) When the tenant has abandoned or surrendered the premises.
- (4) Pursuant to court order.

#### **(b) Hours of Entry**

Except in cases of emergency or when the tenant has abandoned or surrendered the premises, entry may not be made during other than normal business hours unless the tenant consents to an entry during other than normal business hours at the time of entry.

#### **(c) Harassment Prohibited**

The landlord may not abuse the right of access or use it to harass the tenant.

#### **(d) Notice Required**

Except as provided in subsections (b) or (e), the landlord shall give the tenant reasonable notice in writing of his or her intent to enter and enter only during normal business hours. The notice shall include the date, approximate time, and purpose of the entry. The notice may be personally delivered to the tenant, left with someone of a suitable age and discretion at the premises, or, left on, near, or under the usual entry door of the premises in a manner in which a reasonable person would discover the notice. Twenty-four hours shall be presumed to be reasonable notice in absence of evidence to the contrary. The notice may be mailed to the tenant. Mailing of the notice at least six days prior to an intended entry is presumed reasonable notice in the absence of evidence to the contrary.

**(e) Exceptions to Notice Requirement**

No notice of entry is required under this section:

- (1) To respond to an emergency.
- (2) If the tenant is present and consents to the entry at the time of entry.
- (3) After the tenant has abandoned or surrendered the unit.
- (4) The tenant and the landlord may agree orally to an entry to make agreed repairs or supply agreed services. The agreement shall include the date and approximate time of the entry, which shall be within one week of the agreement. In this case, the landlord is not required to provide the tenant a written notice.

**36.7.04 NO SELF-HELP EVICTION.**

**(a) Prohibition**

No landlord may compel a tenant to vacate any premises without issuing a notice to quit on the tenant, initiating a civil eviction action, and obtaining a Tribal Court order as provided in this code. Self Help Evictions include turning off the water or power to the home, locking the plaintiff out of the home or property, throwing the plaintiff's belongings out into the yard.

**(b) Penalty for Self Help Eviction**

Any the landlord who uses unlawful methods to evict a tenant, may be subject to liability for the tenant's actual damages, as well as penalties of up to \$100 per day for the time that the landlord used the unlawful methods.

**CHAPTER 8 SECURITY DEPOSITS**

**36.8.01 AMOUNT OF SECURITY DEPOSIT.**

A landlord may demand a security deposit as part of the rental or lease agreement. Any security deposit amount must be stated in writing in the rental agreement or lease.

**36.8.02 SECURITY DEPOSIT HELD FOR TENANT.**

The landlord shall hold the security deposit for the tenant who is party to the lease or agreement.

**36.8.03 REASONABLY NECESSARY CLAIM; PREEXISTING DEFECTS; ORDINARY WEAR AND TEAR.**

The landlord's claim for any of the security deposit shall be reasonably necessary. The landlord may not assert a claim against the tenant or the security for damages to the premises or any defective conditions that preexisted the

tenancy, for ordinary wear and tear or the effects thereof, whether the wear and tear preexisted the tenancy or occurred during the tenancy, or for the cumulative effects of ordinary wear and tear occurring during any one or more tenancies.

#### **36.8.04 RETURN OF SECURITY DEPOSIT; ITEMIZED STATEMENT**

Within 21 days of the termination of a tenancy the landlord shall furnish the tenant, by personal delivery or by first-class mail, postage prepaid, a copy of an itemized statement indicating the basis for, and the amount of, any security received and specifying repairs, cleaning deductions or other disposition of the security, and shall return any remaining portion of the security to the tenant.

#### **36.8.05 ACTION TO RECLAIM SECURITY DEPOSIT.**

Any tenant may bring an action for money damages in Tribal Court to reclaim any part of the security deposit that may be due.

### **CHAPTER 9 TENANT'S RESPONSIBILITIES & RIGHTS**

#### **36.9.01 TENANT RESPONSIBILITIES.**

Each tenant subject to the provisions of this Ordinance shall:

- (a) Pay rent without demand or notice at the time and place agreed upon by the parties.
- (b) Immediately notify the landlord of any defects in the premises hazardous to life, health, or safety.
- (c) Keep the dwelling unit reasonably clean and dispose of all ashes, garbage, rubbish, junk, and abandoned vehicles in a proper, sanitary, and safe manner.
- (d) Use all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances that are part of the dwelling unit or premises, and the property of the landlord, in a proper, safe, sanitary, and reasonable manner.
- (e) Refrain from destroying, defacing, damaging, or removing any part of the dwelling unit, premises, or common areas, and to require guests to act in like manner.
- (f) Pay reasonable charges for the repair of damages, other than normal wear and tear, to the dwelling unit, premises, or common areas caused by the tenant or his guests, or to repair such damages as required under the rental agreement, within 30 calendar days of such damage.
- (g) Conduct himself, and require his guests to conduct themselves, in a manner which does not disturb the quiet enjoyment of others or cause a breach of the peace.

(h) Not give up the dwelling unit to others, assign a lease arrangement, or sublease the dwelling unit without the written or oral permission of the landlord.

(i) Use the dwelling unit for residential purposes as agreed, and not to use the unit or permit its use for illegal conduct or any other activity that may harm the physical or social environment of the premises or the area around it.

(j) Abide by all rules and regulations promulgated by the landlord.

(k) Provide the landlord access to the dwelling unit to perform maintenance and repairs, inspect the premises, supply necessary or agreed services, or show the dwelling unit to prospective buyers or tenants, provided that such access shall be at reasonable times when the tenant is present, and upon reasonable written or oral notice from the landlord, except in emergency situations where the health, safety or welfare of the tenant or the tenant's neighbors is in immediate danger, substantial damage to property is imminent, or where the tenant consents. No tenant who unreasonably denies access to a landlord for these purposes may pursue an action or grievance on the grounds that any services or repairs were not provided.

#### **36.9.02 TENANT MAINTENANCE.**

Any agreement by a tenant waiving or modifying his rights under Sections 36.3.01 or 36.4.01 shall be void as contrary to public policy with respect to any condition which renders the premises uninhabitable, except that the landlord and the tenant may agree that the tenant shall undertake to improve, repair or maintain all or stipulated portions of the dwelling as part of the consideration for rental.

#### **36.9.03 REPAIR AND DEDUCT.**

If within a reasonable time after written or oral notice to the landlord or his agent of dilapidations rendering the premises untenable, which the landlord ought to repair but neglects to do so, the tenant may repair the same himself where the cost of such repairs does not require an expenditure more than one month's rent of the premises and deduct the expenses of such repairs from the rent when due, or the tenant may vacate the premises, in which case the tenant shall be discharged from further payment of rent, or performance of other conditions as of the date of vacating the premises. This remedy shall not be available to the tenant more than twice in any 12-month period.

### **CHAPTER 10 ABANDONMENT**

#### **36.10.01 PROCEDURAL REQUIREMENTS TO ESTABLISH ABANDONMENT**

If a tenant abandons the property before the end of the term it is a breach of the lease or rental agreement. The landlord may give a notice of belief of abandonment to the tenant only where the rent on the property has been due

and unpaid for at least fourteen consecutive days and the landlord reasonably believes that the tenant has abandoned the property. The date of termination of the lease or rental agreement shall be specified in the landlord's notice and shall be not less than 15 days after the notice is served personally or, if mailed, not less than 20 days after the notice is deposited in the mail.

**36.10.02 SERVICE OF NOTICE OF ABANDONMENT**

The landlord's notice of belief of abandonment shall be personally delivered to the tenant or sent by first-class mail, postage prepaid, to the tenant at his last known address and, if there is reason to believe that the notice sent to that address will not be received by the tenant, also to such other address, if any, known to the landlord where the tenant may reasonably be expected to receive the notice.

**36.10.03 CONTENT OF NOTICE OF ABANDONMENT**

The notice of belief of abandonment shall be in substantially the following form:

Notice of Belief of Abandonment

To:

\_\_\_\_\_  
(Name of lessee/tenant)

\_\_\_\_\_  
(Address of lessee/tenant)

This notice is given pursuant to Chapter 6 of the Hoopa Valley Landlord Tenant Ordinance concerning the real property leased by you at \_\_\_\_\_ (state location of the property by address or other sufficient description). The rent on this property has been due and unpaid for 14 consecutive days and the lessor/landlord believes that you have abandoned the property.

The real property will be deemed abandoned within the meaning of Chapter 6 of the Hoopa Valley Landlord Tenant Ordinance and your lease or rental agreement will terminate on \_\_\_\_\_ (here insert a date not less than 15 days after this notice is served personally or, if mailed, not less than 20 days after this notice is deposited in the mail) unless before such date the under-signed receives at the address indicated below a written notice from you stating both of the following:

- (1) Your intent not to abandon the real property.
- (2) An address at which you may be served by certified mail in any action for  
unlawful detainer of the real property.

You are required to pay the rent due and unpaid on this real property as required by the lease, and your failure to do so can lead to a court proceeding against you.

Dated: \_\_\_\_\_

---

(Signature of lessor/landlord)

---

(Type or print name of lessor/landlord)

---

(Address to which lessee/tenant is to send notice)

#### **36.10.04 DEFENSES TO CLAIM OF ABANDONMENT**

The real property shall not be deemed to be abandoned pursuant to this section if the tenant proves any of the following:

- (a) At the time the notice of belief of abandonment was given, the rent was not due and unpaid for 14 consecutive days.
- (b) At the time the notice of belief of abandonment was given, it was not reasonable for the landlord to believe that the tenant had abandoned the real property. The fact that the landlord knew that the tenant left personal property on the real property does not, of itself, justify a finding that the landlord did not reasonably believe that the tenant had abandoned the real property.
- (c) Prior to the date specified in the landlord's notice, the tenant gave written notice to the landlord stating his intent not to abandon the real property and stating an address at which he may be served by certified mail in any action for unlawful detainer of the real property.
- (d) During the period commencing 14 days before the time the notice of belief of abandonment was given and ending on the date the lease would have terminated pursuant to the notice, the tenant paid to the landlord all or a portion of the rent due and unpaid on the real property.
- (e) Nothing in this section precludes the landlord or the tenant from otherwise proving that the real property has been abandoned by the tenant.
- (f) Nothing in this section precludes the landlord from serving a notice requiring the tenant to pay rent or quit as provided in Section 36.6.13 (z) (2) of this code at any time permitted by those sections, or affects the time and manner of giving any other notice required or permitted by law. The giving of the notice provided by this section does not satisfy the requirements of Section 36.11.01 of this code.

### **CHAPTER 11 EVICTION**

#### **36.11.01 NOTICE; METHOD OF SERVICE.**

**(a) Timing of Notice**

When a landlord desires to obtain possession of a dwelling unit, and when there exists one or more reasons to evict the tenant or tenants occupying the unit, the landlord shall give notice to at least one adult tenant to quit possession of such dwelling unit at least three days before the date specified in the notice for the tenant or tenants to quit possession. The Notice must comply with the timeline in 36.6.13 (z) in unlawful detainer cases.

**(b) Persons to be Noticed**

The notice shall be addressed to the adult tenants of the dwelling unit, and shall state the reason(s) for termination of the tenancy and the date by which the tenant is required to quit possession of the dwelling unit.

**(c) Content of Notice**he notice shall be in writing and shall state the reasons for the termination of the tenancy and the date by which the tenant is required to quit possession of the premises. If any remedies are available to cure the alleged violations of the rental agreement or lease, the notice shall advise the tenant of those remedies and the timeline for the performance of the remedial acts. The landlord shall date and sign the notice, and include his or her address on the notice.

**(d) Form of Notice**

Any notice that complies with the subsection (c) requirements shall be sufficient. The Hoopa Valley Tribal Court Clerk's office shall have standard Termination of Tenancy forms available for use by the public.

**(e) Copy of Notice and Proof of Service**

The landlord must keep a copy of the notice and proof of service by affidavit or other manner recognized by law.

**(f) Notice of Termination of Tenancy**

Any notice to terminate a Tenancy shall be in writing and shall be delivered to the tenant or landlord by:

- (1) A law enforcement officer of the Tribe; or
- (2) The tenant or landlord or any agent of them.

**(g) Personal Service of Notice**

Delivery of notice will be effective when it is:

- (1) Personally delivered to a tenant of suitable age and discretion to understand the content of the Notice of Termination of Tenancy (at least 16 years old),



- (2) Personally delivered to a non-party adult (at least 16 years-old) living in the premises with a copy delivered by first class mail, or
- (3) Personally delivered to an adult agent or employee of the landlord or the tenant with a copy delivered by mail.

**(h) Others Means of Service of Notice**

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

- (1) Certified mail, return receipt requested, at the last known address of the tenant, or
- (2) Securely taping a copy of the notice to a conspicuous place on the premises and by sending a copy first class mail, postage prepaid, addressed to the tenant at the premises.

**(i) Service on a Subtenant**

Service on a subtenant may be made in the same manner.

**(j) Exception to Notice Requirement**

No notice is required prior to the filing of a complaint of forcible entry or forcible detainer.

**(k) Failure to Comply with Notice Requirements**

The notice requirements of this section shall be strictly construed and any landlord who fails to comply with the terms of notice specified in this code section shall have the Notice of Termination of Tenancy held invalid by the court should an eviction proceeding be filed by the landlord. The tenant must be re-noticed in compliance with the provisions of this code section if the original notice does not comply with the terms specified subsections (a) –(j).

**36.11.02. GROUNDS FOR EVICTION.**

A tenant may be evicted from a dwelling unit when:

(a) The lease or rental agreement terminates for any of the following reasons:

- (1) By reason of an expressed stipulation in the rental agreement;
- (2) Nonpayment of rent within five days of the agreed date of payment or, in month-to-month tenancies where there is no agreed date of payment, by the fifth day of the month;

- (3) Violations of the rental agreement, any reasonable rules or regulations adopted in accordance with Section 36.6.04, or any applicable building or housing codes;
- (4) Nuisance;
- (5) Serious nuisance;

(b) The dwelling unit, or any part thereof, is occupied by one who never had a right or privilege to occupy such premises;

(c) The tenant originally had the right or privilege to occupy the dwelling unit other than under a rental agreement or lease but such right or privilege has terminated; or

(d) Abandonment.

## **CHAPTER 12 PROCEDURAL RULES FOR ALL CASES HEARD UNDER THIS TITLE**

### **36.12.01. SUMMARY PROCEEDING.**

In all proceedings brought to recover the possession of real property pursuant to the provisions of this Ordinance, the Tribal Court shall give such actions precedence over all other civil actions, except actions to which special precedence is given by law, and shall set hearings and trials for quick determinations consistent with this Ordinance.

### **36.12.02. NECESSARY PARTY TENANTS; JOINDER; JUDGMENT; SUBTENANTS AFTER NOTICE TO TENANT; PERSONS BOUND BY JUDGMENT.**

No person, other than the tenant of the premises and the subtenant, if there be one, in the actual occupation of the premises when the complaint is filed need be made party defendants in the proceeding, but when it appears that any of the parties served in the process or appearing in the proceeding have committed forcible detainer or unlawful detainer, judgment shall be rendered against the tenant or subtenant. In case a defendant has become a subtenant of the premises in controversy, after the service of the notice upon the tenant of the premises under Section 36.11.01, the fact that such notice was not served on each subtenant shall constitute no defense to the action. All persons who enter the premises under the tenant after the commencement of the suit shall be bound by the judgment, the same as if he or she or they had been made a party to the action.

### **36.12.03. SUMMONS AND COMPLAINT.**

(a) **Complaint.**

If, after the date set forth in the notice for the tenant to quit possession of the dwelling unit, the tenant has not quit possession, the landlord may file a complaint in the Tribal Court for eviction and such other relief as the Court may deem just and proper. The complaint shall state:

- (1) The names of the adult tenants against whom the suit is brought;
- (2) A description of the rental agreement, if any;
- (3) The address or reasonable description of the location of the premises;
- (4) The grounds for eviction;
- (5) A statement showing that any required termination notices have been served in accordance with this Ordinance or other applicable law; and
- (6) A statement of the relief demanded, including any claim(s) for possession of the dwelling unit, damages, fees, costs, or other special relief.

**(b) Summons and Notice of Hearing**

The summons shall be in the form that conforms to Title 2 Section 2.1.04 requirements except that the defendant's time to respond to the complaint shall be five days after the summons is served upon him/her and the summons shall include the date and time of the court hearing. In all other respects, the summons shall be issued, served, and returned in the same manner as a summons in a civil action specified under the Title 2.

**36.12.04. APPEARANCE; ANSWER, DISMISS OR STAY; TIME ALLOWED.**

On or before the date fixed for the defendant's appearance, the defendant may appear and answer or move to dismiss the plaintiff's complaint.

(a) Unless otherwise ordered by the Tribal Court for good cause shown, the time allowed for the defendant to answer the complaint or an amended complaint, or to amend the answer shall not exceed 5 days.

(b) Where the defendant files a motion to dismiss the complaint or to stay proceedings, the time for filing the motion shall be the same as filing an answer, and the time for the Tribal Court to hear the motion shall not be less than 5 days after the personal service of a copy of the motion and a notice of the hearing or not less than 10 days after the service by mail of a copy of the motion and a notice of hearing; and

(c) The service and filing of the motion under subdivision (b) shall extend the defendant's time to file an answer until five days after service upon the defendant of the written notice of entry of an order denying the defendant's motion, except that for good cause shown the Tribal Court may extend the defendant's time to answer for an additional period not exceeding fifteen days.

**36.12.05. MOTION FOR SUMMARY JUDGMENT.**

Notwithstanding any other provision of law, in any action under this Title:

(a) A motion for summary judgment filed under this Ordinance may be made at any time after the answer is filed upon giving 5 days notice. Summary judgment shall be granted or denied on the same basis as a motion filed under 2 HVTC Section 2.4.04.

(b) Opposition to a motion filed under subdivision (a) shall be filed no later than five days after the written motion is served on the plaintiff, and the defendant's reply shall be filed no later than three days after the written opposition is served on the defendant.

(c) A motion filed under subdivision (a) shall be filed and served on the plaintiff at least 14 days before the time the Court hears the motion, and opposition to the motion shall be filed and served on the defendant no later than seven days before the time the Court hears the motion, and the defendant's reply to the opposition shall be filed and served on the plaintiff no later than three days before the time the Court hears the motion. The Court shall hear the motion for summary judgment no later than 14 days before trial, unless the Court for good cause shown orders otherwise.

**36.12.06. EXTENSION OF TIME; CONSENT OF ADVERSE PARTY.**

Unless otherwise ordered by the Court 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, no extension of time allowed in any action under this Title for the causes specified in this Title shall exceed ten days without the consent of the adverse party.

**36.12.07. ENTRY OF DEFAULT; APPLICATION FOR RELIEF.**

**(a) Timeline for Entry of Default Judgment**

If a defendant served with summons fails to appear and defend in person or in writing on or before the appointed time, the Judge shall, upon application of the plaintiff, enter the default of the defendant no more than 5 days following the date the application is filed with proof of personal service upon the defendant, and no more than 10 days after the application is filed with proof of service by mail upon the defendant,

**(b) Application for Relief**

Upon the entry of a default judgment, the plaintiff may apply to the court for the relief demanded in the complaint, including the costs against the defendant.

**(c) Timeline for Granting of Relief**

The court will grant the requested relief within 5 days of the filing of the application for relief, unless good cause is found to deny or postpone the granting of the requested relief. Good cause will be only found where the defendant appears for the first time after the entry of default of judgment where emergency circumstances previously prevented the defendant's prior appearance or for reasons other than legitimate notice issues that are not the defendant's fault.

**36.12.08. PRETRIAL CONFERENCE HEARINGS.**

Notwithstanding any other provision of law, pretrial conference hearings for unlawful detainer cases will be set as follows:

(a) A pretrial conference hearing will be set approximately fifteen days after filing of the complaint unless:

- (1) The case has already been set for trial.
- (2) The case has been designated as a general civil matter because possession is no longer at issue and the case is not entitled to preference according to Section 36.12.01 of this Code; or
- (3) A disposition has been entered, or a dismissal judgment, Notice of Settlement, or a transfer terminates or disposes of a case.

(b) Parties may begin discovery under this Title prior to the pretrial conference hearing.

(c) The Tribal Court Judge shall, not sooner than five days after the pretrial conference, assign the earliest date for trial within the next twenty days and notify all parties in writing of the trial date.

**36.12.09. TRIAL; NO JURY TRIAL; PRIMA FACIE CASE; RENT**

**(a) Timeline for Trial**

Whenever an issue of fact is presented by the pleadings, it must be tried by the Tribal Court Judge no more than thirty days following the date for defendant's first appearance, except when the trial date would fall on a weekend or holiday, and in such a situation on the first regular court day following that date.

**(b) Bench Trial**

No party shall have the right to a trial by jury.

**(c) Plaintiff's Burden**

The plaintiff has the burden of proof and must prove his case by a preponderance of the evidence. On the trial of any proceedings for abandonment, forcible entry or unlawful or forcible detainer, the plaintiff shall only be required to show, in addition to the abandonment, forcible entry or unlawful or forcible detainer complained of, that plaintiff was peaceably in the actual possession of the premises at the time of the forcible entry or was entitled to the possession at the time of the abandonment, unlawful or forcible detainer.

**(d) Rent During Pendency of Case**

The Court may in its discretion, on motion from the landlord, order the tenant to pay into the Court rents for the use and occupancy during the pendency of the case.

**36.12.10. DEFENSES.**

The Court shall 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; or
- (2) The landlord has failed or refused to make repairs, which are his responsibility, after a reasonable demand by a tenant to do so, without good cause, and the repairs are necessary for the reasonable enjoyment of the premises; or
- (3) There are monies due and owing to the tenant because he has been required to make repairs that are the obligation of the landlord and the landlord has failed or refused to make them after a reasonable notice. 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.
- (4) 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.
- (5) That there are such serious and material breaches of applicable housing law on the part of the landlord that it would be unjust to grant him a remedy.

(6) The landlord is evicting the tenant because of the tenant's race, sex, sexual orientation, religion, age, marital status, family status, political affiliation, or because the tenant is disabled.

(7) Any other material or relevant fact the tenant might present that may explain why his eviction is unjust and unfair.

## **CHAPTER 13 DISCOVERY**

### **36.13.01 DISCOVERY MOTIONS**

Notwithstanding any other provision of law, in any action under this Title, a discovery motion may be made at any time upon giving 5 days' notice if personally served, or 10 days notice if service is completed by mail.

### **36.13.02 DEPOSITIONS**

#### **(a) Timeline for Scheduling Depositions**

Oral depositions shall be scheduled for a date at least five days after service of the deposition notice, but not later than five days before trial. If, as set forth in 2 HVTC Section 2.4.27, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal or employment records, the deposition shall be scheduled for a date at least fifteen days after issuance of that subpoena.

#### **(b) Shortening or Extension of Time**

On motion or ex parte application of any party or deponent, for good cause shown, the court may shorten or extend the time for scheduling a deposition, or may stay its taking until the determination of a motion for a protective order under 2 HVTC Section 2.4.20(d).

### **36.13.03 INTERROGATORIES**

#### **(a) Timeline for Propounding**

##### **(1) Defendant**

A defendant may propound interrogatories to a party to the action without leave of court at any time.

##### **(2) Plaintiff**

A plaintiff may propound interrogatories to a party without leave of court at any time that is five days after service of the summons on or appearance by, that party, whichever occurs first. On motion with or without notice, the court, for good cause shown, may grant leave to a plaintiff to propound interrogatories at an earlier time.

#### **(b) Timeline for Responding**

Within five days after service of interrogatories the party to whom the interrogatories are propounded shall serve the original of the response to them on the propounding party, unless on motion of the propounding party the court

has shortened the time for response, or unless on motion of the responding party the court has extended the time for response.

**(c) Service of Response on Other Parties**

The party to whom the interrogatories are propounded shall also serve a copy of the response on all other parties who have appeared in the action. On motion, with or without notice, the court may relieve the party from this requirement on its determination that service on all other parties would be unduly expensive or burdensome.

**36.13.04 PRODUCTION OF DOCUMENTS; INSPECTIONS.**

**(a) Timeline for Demand for Inspection**

**(1) Defendant**

Defendant may make a demand for inspection without leave of court at any time.

**(2) Plaintiff**

Plaintiff may make a demand for inspection without leave of court at any time that is within five days after service of the summons on or appearance by, the party to whom the demand is directed, whichever occurs first. On motion with or without notice, the court, for good cause shown, may grant leave to a plaintiff to make an inspection demand at an earlier time.

**(b) Format of Demands**

**(1) Numbering**

A party demanding an inspection shall number each set of demands consecutively.

**(2) Identifying Information**

In the first paragraph immediately below the title of the case, there shall appear the identity of the demanding party, the set number, and the identity of the responding party.

**(c) Content of Demands**

Each demand in a set shall be separately set forth, identified by number or letter, and shall do all of the following:

- (1) Designate the documents, tangible things, or land or other property to be inspected either by specifically describing each individual item or by reasonably particularizing each category of item.
- (2) Specify a reasonable time for the inspection that is at least five days after service of the demand, unless the court for good cause shown has granted leave to specify an earlier date.



- (3) Specify a reasonable place for making the inspection, copying, and performing any related activity.
- (4) Specify any related activity that is being demanded in addition to an inspection and copying, as well as the manner in which that related activity will be performed, and whether that activity will permanently alter or destroy the item involved.

**(d) Timeline for Response**

Within five days of an inspection demand, the party to whom the demand is directed shall serve the original of the response to it on the party making the demand, and a copy of the response on all other parties who have appeared in the action, unless on motion of the party making the demand, the court has shortened the time for response, or unless on motion of the party to whom the demand has been directed, the court has extended the time for response.

**36.13.05 REQUEST FOR ADMISSIONS.**

**(a) Timeline for Request**

**(1) Defendant**

A defendant may make requests for admission by a party without leave of court at any time.

**(2) Plaintiff**

A plaintiff may make requests for admission by a party without leave of court at any time that is five days after the service of the summons on, or appearance by, that party, whichever occurs first. On motion with or without notice, the court, for good cause shown, may grant leave to a plaintiff to make requests for admission at an earlier time.

**(b) Timeline for Response**

Within five days after service of requests for admission, the party to whom the requests are directed shall serve the original of the response to them on the requesting party, and a copy of the response on all other parties who have appeared, unless on motion of the requesting party the court has shortened the time for response, or unless on motion of the responding party the court has extended the time for response.

**CHAPTER 14 JUDGMENT**

**36.14.01 JUDGMENT**

The written judgment shall issue within 5 days of the conclusion of trial or within 5 days of the submission of any supplemental briefs ordered by the court. The judgment shall clearly state which party the court is finding in favor of, and the reasons for that finding. The judgment shall also clearly state any relief granted to the parties.

### **36.14.02 RELIEF AVAILABLE TO PLAINTIFF.**

#### **(a) Restitution of Premises**

If, after trial, the judgment is in favor of the plaintiff, the judgment shall declare the forfeiture of the lease or rental agreement and the eviction of the defendant and the immediate restitution of the premises to plaintiff.

#### **(b) Other Relief Available**

In addition to the relief available under subsection (a), the court may also order any of the following:

- (1) Grant actual damages as provided in the agreement of the parties or this Title, any rent due, interest, or, if the defendant is found guilty of forcible entry, or forcible or unlawful detainer and malice is shown, the plaintiff may be awarded either damages and rent due or punitive damages in an amount which does not exceed three times the amount of damages and rent found due;
- (2) Order the parties to carry out an obligation required by law;
- (3) Establish a payment plan for the tenant;
- (4) Order rent payments out of per capita payments or through garnishment;
- (5) Establish a Power of Attorney in another person/agency to fulfill rights or obligations of either landlord or tenant;
- (6) Remediate the action, in part or in whole, through appropriate recalculation of rent where the owner is not the Housing Authority;
- (7) Order the tenant to perform work for the landlord or owner to pay off back rent due and/or damages;
- (8) Order the payment of attorneys' fees, costs and expenses of litigation; or
- (9) Grant any relief provided in this Title or allowed in law or equity.

### **36.14.03 JUDGMENT: DEFENDANT**

Where the court finds in favor of the defendant, any of the following remedies are available:

- (1) Dismissal of the case;
- (2) Order the payment of attorneys' fees, costs and expenses of litigation;

- (3) Order the parties to carry out an obligation required by law;
- (4) Money damages in an amount which does not exceed three times the amount of any damages found due because of the plaintiff's actions where the court finds that the law suit was frivolous;
- (5) Order the Plaintiff to immediately cease any harassment of the defendant.

**36.14.04 MONEY JUDGMENTS AGAINST HOOPA VALLEY TRIBE PROHIBITED**

Nothing in this code is deemed to waive the sovereign immunity of the Hoopa Valley Tribe, or its entities, from money judgments. The court has no authority under this code to order the Hoopa Valley Tribe to pay monetary damages or attorney's fees.

**36.14.05 WRIT OF POSSESSION OF REAL PROPERTY.**

**(a) Duty of Plaintiff**

Upon receiving a judgment of forcible entry, or forcible or unlawful detainer, the plaintiff shall petition the Tribal Court for a writ of possession to restore possession of the dwelling unit to the plaintiff based on the judgment. Plaintiff must file the petition with the Tribal Court within 60 days of the entry of judgment. The petition shall include a recommended date and time for execution of the writ of possession according to this Ordinance. The Plaintiff may petition the court for a writ of possession as an ex parte motion, without notice to the defendant.

**(b) Timeline for Issuance of Writ**

The Tribal Court Judge shall issue a writ of possession of real property within two days after the petition is filed, which the petitioner shall deliver to the Hoopa Valley Tribal Police for execution.

**(c) Form of Writ**

The writ of possession shall be in the name of the Tribal Court, sealed with its seal, and signed by the Tribal Court Judge. The writ shall be in the following form: (Venue and caption)

1. TO THE HOOPA VALLEY CHIEF OF POLICE OR HIS LAWFUL DEPUTIES:
2. ON \_\_\_\_\_ AT \_\_\_ A.M./P.M. YOU ARE DIRECTED TO LEVY UPON AND RETAIN UNTIL RELEASED TO THE PLAINTIFF THE FOLLOWING PROPERTY PURSUANT TO TITLE 36, CHAPTER 14 OF THE HOOPA VALLEY TRIBAL CODE:

\_\_\_\_\_ (description as in  
**Complaint), Hoopa Valley, California.**

3. YOU ARE DIRECTED TO ENTER THE ABOVE DESCRIBED PROPERTY TO LEVY THE PERSONAL PROPERTY AT THE OPTION OF DEFENDANT TO EITHER SURRENDER SAID PROPERTY TO PLAINTIFF IN RETENTION OR DISPOSITION, OR ADVERTISE AND SELL SAME AS IN THE CASE OF LEVY AND SALE UNDER EXECUTION AS PROVIDED BY LAW.

4. Fifteen (15) days after the tenant vacates the house the landlord may dispose of the tenant's personal property by public sale if he reasonably believes its value is more than \$300. If the landlord reasonably believes it is valued at less than \$300, he may dispose of the property by any means. Ceremonial regalia, basketry, and other traditional items used for cultural or religious purposes shall be returned to the owner(s), or alternatively, these items may be donated to the Tribe's museum. The landlord, if the Tribe or a Tribal entity, is not liable to the owner for any personal property disposed of in this manner.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_,

**SEAL:**  
**HOOPA VALLEY TRIBAL COURT**

**JUDGE** \_\_\_\_\_  
**HOOPA VALLEY TRIBAL COURT**

#### **36.14.06 EXECUTION OF JUDGMENT.**

##### **(a) Service of Writ**

A plaintiff, having obtained a writ of possession of the premises in accordance with this Title shall be entitled to have the premises restored to it immediately by officers charged by the Tribal Council with the enforcement of such writs. Promptly upon payment of any reasonable costs of service, the enforcing officer shall serve an occupant or post a copy of the writ on the premises as provided for in subsections 36.11.01 (g), (h)(2) or (i). In addition, where the copy is posted on the premises, another copy of the writ shall be mailed to the defendant at his business or residence address last known to the plaintiff or the plaintiff's attorney or, if no such address is known, at the premises.

##### **(b) Timeline for Compliance with Writ**

If a tenant does not vacate the premises within five days of the date of service or, if a copy of the writ is posted, within five days from the date of mailing of the additional notice, the enforcing officer shall remove the defendant and any other occupants and any personal property from the premises on the date specified in

the writ of possession, and place the plaintiff in possession thereof. It shall be the duty of the party delivering the writ to the officer for execution to furnish the officer a copy of the judgment and order of eviction.

#### **36.14.07 STAY OF EXECUTION.**

When the action is for unlawful detainer after defaulting in the payment of rent and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not issue until five days after the entry of judgment, within which time the tenant or any subtenant, or other party interested in the continuance of the term may pay into the Tribal Court the amount of the judgment, costs, and attorney fees and thereupon that portion of the judgment shall be satisfied and the tenancy shall be restored. If the payment is not made within five days, the judgment shall be enforced. In all other cases, the judgment shall be enforced immediately.

#### **36.14.08 SALE OF PROPERTY; RELEASE OF PROPERTY TO RIGHTFUL OWNER**

##### **(a) Circumstances in which Sale Allowed**

Fifteen (15) days after the tenant vacates the house the landlord may dispose of the tenant's personal property by public sale if he reasonably believes its value is more than \$300. If the landlord reasonably believes it is valued at less than \$300, he may dispose of the property by any means. Ceremonial regalia, basketry, and other traditional items used for cultural or religious purposes shall be returned to the owner(s), or alternatively, these items may be donated to the Tribe's museum.

##### **(b) Notice of Sale**

Notice of the time and place of the public sale shall be published once a week for two successive weeks in the Two River Tribune newspaper, or any other paper that is generally circulated within the Hoopa Valley. The last publication shall be not less than five days before the sale is to be held. The notice of the sale shall describe the property to be sold in a manner reasonably adequate to permit the owner of the property to identify it.

##### **(b) Proceeds from Sale**

The landlord shall deduct the costs of transportation, storage, advertising, sale, and any other related costs, and apply proceeds to the amount of judgment. The landlord shall retain any balance of the proceeds of the sale that is not claimed by the former tenant or an owner other than such tenant. The former tenant or other owner may claim the balance within one year of the sale by making application to the landlord.

##### **(c) Landlord's Duty to Safekeep Property**

The landlord shall store the personal property in a place of safekeeping until it is either sold or released as allowed under this section.

**(d) Release of Property to Rightful Owner**

The landlord shall release the personal property to the former tenant, or, at the landlord's option, to a person reasonably believed by the landlord to be its owner if such tenant or other person pays the cost of storage as provided herein and claims the personal property not later than the date specified in the writ of possession before which the former tenant must make his/her claim or the date specified in the notice before which a person other than the tenant must make his/her claim.

(1) Where the landlord releases personal property to the former tenant pursuant to subdivision (d), the landlord is not liable with respect to that property to any person.

(2) Where the landlord releases personal property pursuant to subdivision (d) to a person (other than a tenant) reasonably believed by the landlord to be its owner, the landlord is not liable with respect to that property to: (1) the former tenant or any person to whom notice was given pursuant to subdivision (d); or (2) any other person, unless in the case of landlord who is not the Tribe or a Tribal entity, such person proves, prior to releasing the property, that the landlord believed that a reasonable person should have believed that the person had an interest in the property and also that the landlord knew or should have known upon reasonable investigation the address of such person.

**(e) Liability of Landlord for Sale or Release of Property**

The landlord, if the Tribe or a Tribal entity, is not liable to the owner for any personal property disposed of under this section. Any landlord who is not the Tribe or a Tribal entity shall not be liable for property disposed of under this section unless it can be proven that the landlord knew or should have known of the identity of the rightful owner, and also that the landlord could have discovered the address of such person upon reasonable investigation.

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**CERTIFICATION**

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council, do hereby certify: that the Hoopa Valley Tribal Council is composed of eight (8) members of which seven (7) were present, constituting a quorum, at a Regular Meeting thereof, duly and regularly called, noticed, convened, and held on this 18th day of June, 2009; that this Ordinance was duly adopted by a vote of six (6) in favor, zero (0) opposed, and zero (0) abstaining; and that since its approval this Ordinance has not been rescinded, amended, or modified in any way.

Dated this 18th day of June 2009.

  
\_\_\_\_\_  
CLIFFORD LYLE MARSHALL, CHAIRMAN  
HOOPA VALLEY TRIBAL COUNCIL

ATTEST:   
\_\_\_\_\_  
DARCY A. MILLER, EXECUTIVE SECRETARY  
HOOPA VALLEY TRIBAL COUNCIL