

Chapter 4. Evictions

8.401 JURISDICTIONAL / LIMITED WAIVER OF SOVEREIGN IMMUNITY / LIMITATIONS

A. Jurisdiction.

The Tribal Court of The Little Traverse Bay Bands of Odawa Indians (LTBB or Tribe) shall have exclusive jurisdiction over all eviction actions arising on all lands located within the exterior boundaries of the LTBB Reservation on trust lands, lands owned in fee by the Tribe, and any other property within the Reservation containing housing owned or financed by LTBB.

B. Limited Waiver of Sovereign Immunity.

LTBB hereby authorizes a limited waiver of immunity from suit, with respect to specific controversies or claims described in this section that may arise out of or relate to LTBB's obligation under a mortgage or lease entered into by LTBB under a mortgage assumption pursuant to Sections II (F)(2) or Section II(L) [WOTC 8.202(F)(2); 8.202(L)] of the Foreclosure Code of the LTBB. In connection with such limited waiver, LTBB consents solely to the jurisdiction of LTBB Tribal Courts with respect to (a) actions in equity brought by any party to such mortgage or lease seeking specific performance of any of LTBB's express obligations thereunder and (b) actions at law for actual damages which shall consist exclusively for remaining sums secured by a mortgage. This waiver of immunity is not intended, or shall it be construed (a) to extend to any claim for punitive or compensatory damages, (b) to waive LTBB's immunity from suit for any other purpose or with respect to any controversy, claim, or other matter not specifically mentioned in this section, or (c) to extend to the benefit of any person other than the parties to the documents or their successors or assigns. This limited waiver of immunity from suit shall not be construed as an admission of liability of LTBB as to any claim for damages or as an agreement or willingness to pay any amount as damages or as an agreement or willingness to pay any amount as damages absent a judicial determination of liability, and LTBB shall have the right to defend any of such claim fully on the merits.

(Source: WOS 2000-04, April 16, 2000, Section I)

8.402 EVICTION PROCEDURES

A. PURPOSE

The purpose of this Code is to prescribe procedures relating to evictions in connection with leases, subleases or other land assignments or interests made by LTBB, LTBB's Designated Housing Department or Entity or any owner of land or leasehold interest.

B. DEFINITIONS

- 1. "Lease"** shall mean a ground lease or other agreement for use of Land or other real property.
- 2. "Leasehold Estate"** shall mean a leasehold estate established pursuant to a Lease between an owner of land or land interest as Lessor, and a third party as Tenant.
- 3. "Lessor"** shall mean the owner of land or land interest, including the Tribe. The Tribe shall be the beneficial or equitable owner of certain Trust Land or Restricted Land underlying a Leasehold Estate on which a Mortgage has been given, The Lessor shall include the successor(s) or assign(s) of such Lessor.
- 4. "Mortgage"** shall mean the first-lien mortgage of a beneficial real property interest in Trust Land or Restricted Land given to secure a mortgage loan made by a Mortgagee.
- 5. "Mortgagee"** shall mean any mortgage lender or any successors or assigns of any such lender. This definition also includes any subsequent holder, whether by assignment, succession or otherwise, of the original Mortgagee's right, title or interest in and to the Mortgage and/or the Mortgaged property, together with the improvements.
- 6. "Mortgagor"** shall mean any eligible tribal member or entity borrower who has executed a Mortgage on its beneficial interest in Trust Land or Restricted land, including any heir(s), successor(s), executor(s), administrator(s) or assign(s)

of such borrower.

7. **“Nuisance”** shall mean maintenance on the Mortgaged property of a condition which:

- a. Unreasonably threatens the health or safety of the public or neighboring land users; or
- b. Unreasonably and substantially interferes with the ability of neighboring real property users to enjoy the reasonable use and occupancy of their property.

8. **“LTBB” or “Tribe”** shall mean the Little Traverse Bay Bands of Odawa Indians, a Federally recognized Indian tribe as reaffirmed under Public Law 103-324, 25 U.S.C. § 1300k.

9. **“Reservation”** shall mean all lands within the boundaries of the reservations for Little Traverse as set out in Article I, paragraphs third and fourth of the Treaty of 1855, 11 Stat. 621, plus any lands set out in Articles Second and Third of the Treaty of March 28, 1836, 7 Stat. 491, in the event that the 1836 reservation is determined to include lands which are not included within the 1855 reservation, plus any lands outside of those boundaries which are now or in the future declared to be Little Traverse reservation by the Department of the Interior.

10. **“Restricted Land”** shall mean land within the jurisdiction of LTBB that is subject to restrictions against alienation imposed by Federal Treaty, Statute, Executive Order, or LTBB.

11. **“Subordinate Lienholder”** shall mean the holder of any lien, including a mortgage, perfected subsequent to the recording of a mortgage under this Code; provided, however, such definition shall not include the Little Traverse Bay Bands of Odawa Indians with respect to a claim for a Tribal tax on the Mortgaged property, where applicable.

- 12.** “**Tenant**” shall mean any person who occupies Trust land or Restricted Land, as Lessee, under a Leasehold Estate with the Lessor.
- 13.** “**Tribal Court**” shall mean: (i) the LTBB Tribal Court; or (ii) such body as may now or hereafter be authorized by the laws of LTBB to exercise the powers and functions of a court of law.
- 14.** “**Trust Land**” shall mean land within the jurisdiction of LTBB, title to which is held by the United States for the benefit of the Tribe or an individual member of LTBB.
- 15.** “**Unlawful Detainer Action**” shall be a suit brought before the Tribal Court to terminate a Mortgagor’s or Tenant’s interest in Trust Land or Restricted Land and/or to evict any person from occupancy of such a property.
- 16.** “**Waste**” shall mean spoil or destruction of land, buildings, gardens, trees or other improvements on the Mortgaged property which result in substantial injury to such property.
- 17.** “**Writ of Restitution**” is an order of the Tribal Court Restoring an owner, Lessor, Mortgagee (or other successor in interest) to possession of Trust Land or Restricted Land subject to a Mortgage; and Evicting a Tenant or other occupant from such property.

C. UNLAWFUL DETAINER

A Tenant or other occupier of a beneficial interest in Trust Land or Restricted Land subject to a Mortgage or Lease shall be guilty of unlawful detainer if such person shall continue in occupancy of such property under any of the following situations:

- 1.** Without the requirement of any notice by LTBB or Lessor:
 - a.** After the expiration of the term of any Lease or Sublease;
 - b.** If such person has entered onto or remains on the real property or another without the permission of the owner and without having

any substantial claim under a Lease or title to such property;

- c.** After the Lessor has terminated such person's tenancy pursuant to the Lessor's procedures; or
- d.** After a Mortgagor's interest in Trust land or Restricted land has been foreclosed in a Mortgage foreclosure Proceeding in the Tribal Court.

2. After having received at least seven (7) days notice of termination and notice to vacate the premises, the Tenant or occupier remains in possession of such property contrary to the terms of the notice as follows:

- a.** When such person has received notice: (i) that he or she is in default in the payment of ground or unit rent; and (ii) requiring him or her to either pay such rent or surrender possession of the occupied property and such person has not either surrendered possession of such property or paid the rent within the time period provided in such notice;
- b.** When such person shall continue to fail to keep or perform any condition or covenant of any Lease or other use agreement under which the property is held after he or she has been given notice to comply with such condition or covenant or else to surrender the property; or
- c.** When such person continues to commit Waste upon or maintain a Nuisance upon the occupied property after having been given notice to either cease such Waste or maintenance of Nuisance or to surrender the property; or
- d.** When such person violates a material covenant of any Lease designed to protect the health and safety of persons.

D. PROCEDURES FOR SERVICE OF NOTICE

Notices required or authorized in the immediately preceding section shall be given in accordance with established Tribal Court rules and procedures or policies of LTBB's Designated Housing Department or Entity. In the absence of such rules and procedures, notices shall be given in writing by either:

1. Delivering a copy personally to the Tenant or occupier or to any adult members of his or her family residing on the Leased or Mortgaged property; or
2. Posting said notice in a conspicuous place near the entrance to said property, and by sending an additional copy to the Tenant or occupier by certified mail, return receipt requested, properly addressed, postage prepaid.
3. Proof of service by either of the above methods may be made by affidavit of any adult person stating that he or she has complied fully with the requirements of either of these two methods of service.

E. COMPLAINT AND SUMMONS

1. The Lessor of the Mortgagee (including its successors or assigns) shall commence an action for eviction by filing with the Tribal Court, in writing, the following documents:
 - a. A complaint, signed by the Lessor, the Mortgagee (or its successors or assigns), or an agent or attorney on their behalf including the following:
 - i. Citing authority for jurisdiction of the Tribal Court;
 - ii. If the property is mortgaged, naming the Mortgagor(s) and each record owner claiming through the Mortgagor(s) subsequent to the recording of the Mortgage, including each Subordinate Lien holder (except LTBB with respect to a claim for a Tribal tax on the property subject to the Mortgage), as a defendant;
 - iii. Describing the property subject to the Mortgage or Lease;

- iv. Stating the facts concerning (1) the execution of any Lease and/or the Mortgage; (2) the recording of any Mortgage; and (3) the facts upon which he or she seeks to recover; and
- v. Stating any claim for damages or compensation due from the persons to be evicted.

b. A copy of the summons, issued in accordance with established Tribal Court rules and procedures. In the absence of such rules and procedures for the issuance of a summons, the summons shall require defendants to appear for trial upon the complaint on a date and time specified in the summons. The trial date specified in the summons shall be no less than six (6) nor more than twenty (20) days from the date of service of the summons and complaint. The summons must notify the defendants that judgment will be taken against them in accordance with the terms of the complaint unless they file with the court an answer and appear for trial at the time, date and place specified in the summons.

F. SERVICE OF SUMMONS AND COMPLAINT

A copy of the summons and complaint shall be served upon the defendants in the manner provided by the Tribal court rules for service of process in civil matters. In the absence of such Tribal Court rules, the summons and complaint shall be served by one of the two methods provided in WOTCL 8.303(D) above.

G. POWER OF THE TRIBAL COURT

1. The only issue on an action for eviction shall be the right of actual possession. A lender who has foreclosed on a leasehold estate shall be deemed to have the right to actual possession. The merits of ownership of land interest shall be an issue to be determined by the laws and custom of LTBB. An action for eviction may not be brought in connection with any other action, nor may it be made the subject of any set off or counter claim.

2. The Tribal Court shall enter a Writ of Restitution if:

- a. Notice of suit and trial is given by service of summons and complaint in accordance with the procedures provided herein; and
- b. The Tribal Court:
 - i. finds that the occupier of the property subject to the Mortgage or Lease is guilty of an act of unlawful detainer; or
 - ii. determines that the Tenant failed to respond to the complaint.

3. Upon issuance of a Writ of Restitution the Tribal Court shall have the authority to enter against the defendants a judgement for the following: (1) back rent, unpaid utilities, and any charges due the Lessor under any lease or occupancy agreement; (2) any and all amounts secured by the Mortgage that are due the Mortgagee (or its successors or assigns); (3) damages caused by the defendants to the property other than ordinary wear and tear; and (4) costs and reasonable attorney's fees incurred in bringing suit.

4. At the hearing where the eviction is ordered, the Court shall inform the defendant that if he/she does not vacate the premises voluntarily by the effective date, he/she will be subject to forcible eviction, and his/her property will be subject to storage, sale and disposal as set forth in Section I below.

H. ENFORCEMENT

Upon issuance of a Writ of Restitution, Tribal law enforcement officers shall within five (5) days enforce the Writ of Restitution by removing the defendants and their personal property from the property which is unlawfully occupied, and levy damages and costs incurred by the Police Department in such removal. In cases involving a Mortgagee (or its successors or assigns), the Writ or Restitution shall be enforced no later than sixty (60) days after the date of service of the summons and complaint, subject to sub-section I. below.

I. CONTINUANCE IN CASES INVOLVING THE MORTGAGE

Except by agreement of all parties, there shall be no continuances in cases involving the Mortgagee (or its successors or assigns) which will interfere with the requirement that the Writ of Restitution be enforced not later than sixty (60) days from the date of service of the summons and complaint.

J. STORAGE OF PROPERTY

Following forcible eviction of the defendant and/or other occupants, the former occupant's personal property shall be stored by the Lessor or owner of the premises for at least thirty (30) days, either on the premises or at another suitable location. In order to reclaim their property, the former occupants shall pay the reasonable costs of its removal and storage. If they do not pay such costs within thirty (30) days, the Lessor or owner is authorized to sell the property in order to recover these costs. The Lessor or owner shall provide the evicted occupants with pertinent information concerning the sale, including the time, date and location. Any proceeds from the sale in excess of the storage and removal costs shall be remitted to the former occupants. Nothing in this section shall be construed to prevent the former occupants from reclaiming property remaining after the sale if they can arrange to do so in a manner satisfactory to the Lessor or owner.

(Source: WOS 2000-04, April 16, 2000, Section II)