

**TITLE 25. RESIDENTIAL FORECLOSURE AND EVICTION LAW**

**CHAPTER 1. SHORT TITLE, FINDINGS, AND PURPOSE**

25 M.P.T.L. ch. 1 § 1

**Section 1. Short Title**

This Law shall be known as the Residential Foreclosure and Eviction Law of the Mashantucket Pequot Tribal Nation (the "Tribe or MPTN").

25 M.P.T.L. ch. 1 § 2

**Section 2. Findings**

The Tribal Council of the Tribe (the "Council") hereby finds that:

a. Adequate and clear residential foreclosure and eviction procedures are a necessity for conducting a comprehensive housing program for the financing of Dwellings.

b. Residential foreclosure procedures are necessary to ensure a remedy for Loan Program Lenders in the event of a default. Residential Eviction procedures are necessary to assure the orderly utilization of available housing located on Trust Lands, to provide for the orderly enforcement of rights and obligations of Occupants and Authorized Residents and to provide for an orderly means of removing Unauthorized Residents.

c. Some federal programs require residential foreclosure and eviction procedures as a condition of funding. The Fannie Mae program also requires residential foreclosure and eviction procedures as a condition of participating in the program.

d. A single uniform foreclosure and eviction code would enhance the operations of the Tribal Government.

e. Procedures for the foreclosure of Assignment Mortgages are necessary to provide a remedy for Loan Program Lenders.

f. Procedures for the eviction of Occupants from Dwellings are necessary for the orderly operation of the Mashantucket Pequot Department of Housing, the protection of Tribal Members and the protection of the rights of said Loan Program Lenders.

25 M.P.T.L. ch. 1 § 3

**Section 3. Purpose**

The purpose of this Law is:

a. To promote greater clarity concerning the rights of Tribal Members with respect to Dwellings.

b. To preserve and protect the rights of Tribal Members and the Tribe in the orderly occupancy of Dwellings.

c. To provide recourse to Loan Program Lenders by providing for an orderly and fair method of foreclosing upon Assignment Mortgages on Assignments arising under Title XXVII of the Laws of the Tribe.

d. To provide for an orderly and fair means of evicting those persons found to have committed Unlawful Detainer.

25 M.P.T.L. ch. 1 § 4

#### **Section 4. Exclusion**

The provisions of this Law shall apply only to the adjudication of rights and obligations relating to Dwellings and the appurtenances thereto and shall not apply to commercial leasing, commercial occupancy rights, commercial financing arrangements involving the Tribe or any subdivision of, or any entity formed, owned, or controlled by the Tribe, of every kind and nature including, but not limited to, any aspect of the resort and gaming facilities now or in the future managed, controlled, and operated by the Tribe, whether by and through the Mashantucket Pequot Gaming Enterprise d/b/a Foxwoods or otherwise.

### **CHAPTER 2. SCOPE**

25 M.P.T.L. ch. 2 § 1

#### **Section 1. Scope**

The provisions of this Law shall apply only to the following matters relative to Dwellings:

a. The determination of the rights of the holders of Assignments and the rights of Program Loan Lenders holding an Assignment Mortgage interest in such Assignments.

b. The manner by which the rights of Occupants in and to Dwellings are terminated and the eviction of such Occupants.

c. The manner by which the derivative occupancy rights of Authorized Residents are to be terminated.

d. The manner by which eviction and ejection of Authorized Residents and Unauthorized Residents from Dwellings is to be effected.

## CHAPTER 3. DEFINITIONS

25 M.P.T.L. ch. 2 § 3

### Section 1. Definitions

Capitalized terms, wherever appearing in this law, shall have the meaning as set forth in this section.

a. "Assignment" shall have the same definition as is set forth in Chapter 1, Section 4 of Title XXVII of the Laws of the Tribe and shall include any Dwelling thereon located.

b. "Authorized Resident" means any person, not an Occupant, who occupies, or entered into occupancy of a dwelling unit with the knowledge and consent of an Occupant and/or the MPTN.

c. "Assignment Conveyance" shall have the same definition as is set forth in Chapter 1, Section 4 of Title XXVII of the Laws of the Tribe.

d. "Assignment Mortgage" shall have the same definition as is set forth in Chapter 1, Section 4 of Title XXVII of the Laws of the Tribe.

e. "Assignment Rights" shall have the same definition as is set forth in Chapter 1, Section 4 of Title XXVII of the Laws of the Tribe.

f. "Assignment Value" means the value of an Assignment as determined by the Tribal Court in the context of a foreclosure of an Assignment Mortgage pursuant to Chapter 4, Section 3 of this Title.

g. "Auction" shall mean the sale of an Assignment directed by the Tribal Court in the context of a foreclosure of an Assignment Mortgage pursuant to Chapter 4, Section 3 of this Title.

h. "Day" shall mean a calendar day. In the event an action or notice is required to be due or otherwise performed on a Day that is not a regular business day of the Tribal Court then any such action or notice shall be deferred until the next regular business day of the Tribal Court.

i. "Debt" means an obligation of a Tribal Member to pay a sum of money or perform an obligation to a Loan Program Lender (as defined hereafter), when such obligation(s) are secured by a Assignment Mortgage pursuant to the terms of a Loan Program duly adopted or approved by the Tribe.

j. "Debtor" means a Tribal Member who owes a Debt to a Loan Program Lender.

k. "DOH" or "Tribe's Housing Department" shall mean the Mashantucket Department of Housing.

l. "Dwelling" means a house, apartment, or other residential unit located on Trust Lands. No residential unit located on property other than Trust Lands shall be deemed a Dwelling for purposes of this Law.

m. "Judgment Debt" means the total monetary judgment awarded by the Tribal Court to a Loan Program Lender in the context of a foreclosure of an Assignment Mortgage pursuant to Chapter 4, Section 3 of this Title.

n. "Loan Program" shall have the same definition as set forth in Chapter 1, Section 4 of Title XXVII of the Laws of the Tribe.

o. "Occupant" means a Tribal Member who is the holder of an Assignment, the holder of a Residential Interest in a Dwelling and also includes a non-Tribal Member who claims a Residential Interest in a Dwelling by or through a Tribal Member. For purposes of this definition, a Residential Interest is the interest granted by, or arising under an Occupancy Agreement or otherwise recognized by tribal law, or the policies, procedures, and regulations of the Tribe's Housing Department, with regards to a Dwelling. The foregoing definition shall not be construed as to grant to any non-Tribal Member any legal or equitable rights in and to a Dwelling unless the same are specifically recognized by Tribal Law or the policies, procedures, and regulations of the Tribe's Housing Department.

p. "Occupancy Agreement" means a written agreement between the Tribe and a Tribal Member conferring rights to occupy a Dwelling located on Trust Land. An Assignment does not constitute an Occupancy Agreement for any purpose under this Title.

q. "Proceeds" includes whatever is received from the Auction, sale, exchange, collection, or other disposition of the Assignment pursuant to Chapter 4 of this Title. Insurance payable by reason of loss or damage to the Mortgaged property constitutes Proceeds, except to the extent that it is payable to someone other than a party to the Assignment Mortgage.

r. "Loan Program Lender" shall have the same definition as is set forth in Chapter 1, Section 4 of Title XXVII of the Laws of the Tribe.

s. "Tribal Member" means an individual who is an enrolled member of the Tribe in good standing.

t. "Tribal Court" shall mean the courts established by Title I of the Laws of the Tribe.

u. "Trust Land(s)" means any land held in trust by the United States of America for the benefit of the Mashantucket (Western) Pequot Tribe.

v. "Unauthorized Resident" means any person occupying or residing in a Dwelling, who is not an Occupant or Authorized Resident.

#### **CHAPTER 4. FORECLOSURE OF ASSIGNMENT MORTGAGE**

25 M.P.T.L. ch. 4 § 1

##### **Section 1. Limitation on Self-Help Remedies**

a. The remedies inuring to the benefit of Loan Program Lenders for defaults under an Assignment Mortgage provided for in this Ordinance shall be

exclusive. No "self-help" remedies including, but not limited to, "lock outs" shall be valid or permitted.

b. A Debtor may not voluntarily surrender an Assignment that is subject to an Assignment Mortgage to a Loan Program Lender. A Debtor may transfer an Assignment subject to an Assignment Mortgage provided such transfer is with the written consent of the Loan Program Lender and is made following at least 10 days notice to the Tribe as provided for in Section 4(a) of this Chapter. Any provision contained in an Assignment Mortgage or supplemental agreement purporting to otherwise provide for a voluntary surrender of an Assignment in advance of, or as a result of, default on a Debt shall be null and void.

25 M.P.T.L. ch. 4 § 2

### **Section 2. Jurisdiction**

a. The Tribal Court shall have exclusive jurisdiction to hear an action to determine any Debt and to enforce any Assignment Mortgage encumbering any Assignment. The Tribal Court is expressly authorized and empowered to direct the judicial sale of an Assignment by Auction as hereafter provided for. All such Actions shall be tried to the Tribal Court without any right to a trial by jury.

b. The Tribal Court is further authorized and empowered to enter such other orders and fashion such other remedies as are consistent with the purposes and intent of this Chapter and are necessary for the orderly and equitable administration of justice.

25 M.P.T.L. ch. 4 § 3

### **Section 3. Action to Foreclose Assignment Mortgage**

a. An action to enforce or foreclose an Assignment Mortgage shall be commenced by the filing of a complaint in the Tribal Court by the Loan Program Lender seeking the Auction of the Assignment so encumbered and such other relief as may be recognized by Tribal Law. The complaint may also seek ejectment of the Debtor or any Occupant or Authorized Resident as may claim an interest in any Dwelling appurtenant to such Assignment. The complaint may also seek ejectment of any Unauthorized Resident from such Dwelling.

b. A complaint to foreclose an Assignment Mortgage shall name the Debtor as the defendant. Such complaint may also name as additional defendants any Occupant, Authorized Resident and Unauthorized Resident as the Loan Program Lender may have reason to believe occupies such Dwelling or may otherwise claim an interest in or to such Dwelling. The Loan Program Lender as plaintiff shall have the right to amend the complaint to add such additional defendants at any time prior to final judgment in accordance with the Mashantucket Pequot Rules of Civil Procedure. No complaint may name as a party the United States of America nor name the Tribe without the express, prior written consent of such defendant in each instance but a copy of each complaint filed shall be served on the Office of Legal Counsel to the Tribe. The complaint may be served in the manner provided for service of notice pursuant to Chapter 5, Section 5(b) of this Title.

c. The Loan Program Lender shall bear the burden of proof in proving the default(s) entitling the Loan Program Lender to relief under the Assignment Mortgage, the existence and amount of the Debt secured by the Assignment Mortgage, and the rights of the Loan Program Lender with respect to the Assignment. The Tribal Court, after a hearing in compliance with its rules, shall make a determination of the rights of the parties based upon the preponderance of the evidence and, if such default(s) and the Debt is proven and the rights of the Loan Program Lender to enforcement under the Assignment Mortgage is upheld, the Tribal Court shall order the sale of the Debtor's Assignment by Auction as herein provided for and may enter such further orders as the Tribal Court may deem appropriate, including the ejection of the Debtor and any Occupant, Authorized Resident or Unauthorized Resident who is party to the action upon such terms as the Tribal Court may order. When so ordering any ejection, the Tribal Court shall not be bound by the eviction provisions of Chapter 5 of this Title but may incorporate by analogy such provisions of said Chapter as the Tribal Court may deem helpful to the fair and efficient administration of justice.

d. The Tribal Court shall determine the Assignment Value as of the date of entry of judgment and shall include such value in its judgment. The Assignment Value of the Debtor's Assignment shall be the fair market value of the Debtor's Assignment Rights as of the date of entry of judgment with due regard to the value of any residence or other improvement thereon located. To assist the Tribal Court in determining Assignment Value, the Tribal Court may direct DOH to obtain an appraisal at DOH's expense.

e. The Tribal Court shall determine the Judgment Debt as of the date of entry of judgment. The Judgment Debt shall be the sum of money the Tribal Court determines is due and payable to the Loan Program Lender under the terms of the Assignment Mortgage, the promissory note thereby secured and any other document otherwise evidencing or securing the Debt, to the extent allowed for by the Laws of the Tribe. In determining the Judgment Debt, the Tribal Court may award to the Loan Program Lender reasonable attorney's fees, costs of collection and an amount determined by the Court as a reasonable equivalent to per diem interest for the period commencing on the date of entry and running through such date as the Tribal Court determines Proceeds would be normally be disbursed pursuant to Section 7 of this Chapter. The Judgment Debt found by the Tribal Court shall be binding upon the parties absent further action by the Tribal Court for good cause shown, notwithstanding when or if the obligations of Debtor to the Loan Program Lender are discharged in full.

f. The Tribal Court shall determine whether the Assignment Value exceeds the Judgment Debt as of the date of entry of judgment. If so, the judgment shall be enforced by Auction as hereafter provided for. If not, and the Judgment Debt exceeds the Assignment Value, Tribal Court shall proceed in accordance with the provisions of Section 9 of this Chapter.

g. Subject to subsection f, above, and the provisions of Sections 6 and 9 of this Chapter, the Tribal Court shall proceed to order the sale of the Assignment by Auction after notice as hereafter provided unless the Tribe exercises any express right to redeem the Assignment arising under Tribal Law, as may be provided in the Assignment Mortgage or as may arise under the terms of any Loan Program under which the Assignment Mortgage was issued.

h. The Auction of the Assignment subject to the Assignment Mortgage by order of the Tribal Court shall be by Auction conducted by DOH in open Tribal Court

at such time between the hours of 9:00 a.m. and 5:00 p.m. and on such regular tribal business day as the Tribal Court shall direct. The date of Auction set by the Tribal Court shall be no less than thirty or more than 45 days from the date of entry of judgment by the Tribal Court. The Tribal Court shall direct DOH to act as its agent to conduct the Auction and DOH shall bear all cost and expense incurred relative to the same.

25 M.P.T.L. ch. 4 § 4

**Section 4. Auction of Assignment; Notice**

a. By United States certified mail, return receipt requested, the Tribal Court shall provide prompt notice of entry of judgment and a copy of such judgment to the Tribal Council Chairman, to the Office of Legal Counsel to the Tribe and to such other person(s) as the Council may from time to time designate. The failure to provide such notice shall not affect the validity of the judgment entered.

b. The Tribal Court shall direct DOH to post a Notice of Auction in at least four conspicuous public places on the Reservation, including one copy posted at the Tribal Post Office, one copy posted in the Community Center, one copy posted on the Assignment to be sold, and one copy posted at the Tribal Court. Each Notice of Auction shall: (1) specify the Assignment to be sold at Auction; (2) state the date and time of the Auction and that the Auction shall be held in the Tribal Court; (3) state the amount of the Judgment Debt and that the same constitutes a reserve below which no bid need be accepted; (4) state the amount of the Assignment Value; and (5) state any financial requirements to become a qualified bidder as may be imposed by the Tribal Court to facilitate an orderly and effective Auction process. The Notice of Auction shall be posted for a minimum of 20 days prior to any Auction.

c. The Tribal Court may direct such additional notice be given as the Tribal Court may determine will best serve the purposes of this ordinance.

25 M.P.T.L. ch. 4 § 5

**Section 5. Conduct of Auction**

a. All Auctions shall be conducted by DOH in accordance with the directions, rules, policies and procedures of the Tribal Court as may be established in accordance with Tribal Law and/or as the Tribal Court may determine the circumstances of the pending matter may require. The Tribe shall be a qualified bidder as of right and any Tribal Member who meets the financial requirements imposed by the Tribal Court, if any, shall be allowed to bid at the Auction, including the Debtor. No other person, including but not limited to the Loan Program Lender, shall be deemed a qualified bidder at any Auction.

b. No judge of the Tribal Court or any officer of DOH may bid at any Auction.

c. At any time prior to the opening of the Auction by DOH, the Debtor may redeem the Assignment by motion and payment of the Judgment Debt to the Tribal Court in good and immediately negotiable funds. The Tribal Court may condition its granting of the Debtor's motion for redemption upon the Debtor reimbursing any cost or expense of DOH incurred.

d. All rights of the Debtor to redeem the Assignment, however, shall lapse and terminate upon the opening of the first Auction of the Assignment by DOH, whether or not such Auction is later determined by the Tribal Court to be unsuccessful and whether or not a re-Auction of the Assignment is conducted, all as hereafter provided for. The limited right of the Debtor to redeem provided for in subsection c of this Section shall not be renewed or otherwise extended to Debtor or any party claiming by or through Debtor beyond such opening of the first Auction.

e. After the conclusion of the Auction, DOH shall cause all of the details of the sale to be entered onto a return provided to the Tribal Court including, but not limited to: (1) the date and location of posting of the Notice of Auction; (2) the full identification of the Assignment; (3) the name of the plaintiff Loan Program Lender; (4) the name of all bidders at the Auction and the particulars of their financial qualification, if applicable; and (5) the amount of the highest bid made by each such bidder.

f. The Tribal Court shall examine the return of DOH and shall award the Auction to the bidder making the highest bid that is equal to or greater than the Judgment Debt. If no bids are received equal to or greater than the Judgment Debt, the Court shall determine that the reserve was not met and the Tribal Court shall not recognize the Auction unless the foreclosing Loan Program Lender consents to accept a lesser bid in its sole and absolute discretion. If such consent is granted and the bidder making the highest bid less than the Judgment Debt is awarded the Auction, the Tribal Court shall enter a deficiency judgment against the Debtor for the difference between the amount of such bid as paid and the Judgment Debt. If such consent is not granted, then the Tribal Court shall proceed as set forth in subsection (h) of this Section.

g. The successful bidder shall have 30 days from the date of award by the Tribal Court to deposit with the Tribal Court the full bid less any amounts previously paid to the Tribal Court, if any. If such successful bidder fails, for any reason, to timely pay such balance, all deposits paid by such bidder, if any, shall be forfeited to the Tribal Court as additional sale Proceeds to be distributed upon the completion of a subsequent sale and the Tribal Court shall in open court after adequate notice to the parties re-examine the return of DOH pursuant to subsection (e) of this Section, as if the next highest bidder on that return was the original highest bidder. If there is no acceptable bid pursuant to said subsection, then the Tribal Court shall proceed as set forth in subsection (h) of this Section.

h. If after a finding by the Tribal Court of no acceptable bid under subsection (g) of this Section or a finding by the Tribal Court of non-recognition of an Auction under subsection (f) of this Section, the Tribal Court shall determine after a hearing whether the interest of the Loan Program Lender are best served by an immediate re-auction of the Assignment. If so, the Tribal Court shall order a re-auction of the Assignment to be held in not less than sixty Days from the date of unacceptable bid or non-recognition by the Tribal Court in accordance with the provisions of this Section and such notice as the Tribal Court may deem appropriate for the



efficient and orderly administration of justice. If the Tribal Court determines otherwise and finds that a delay beyond the sixty Day period for re-Auction is in the best interest of the Loan Program Lender and the efficient and orderly administration of justice, the Tribal Court shall name the DOH as trustee of the Tribal Court for the benefit of the Loan Program Lender pursuant to Section 9 of this Chapter. The Tribal Court may name DOH as a party of interest to the action in any hearing conducted under this subsection and may issue any orders with respect to possession of the Assignment during the pendency of a re-Auction as the Court may find best protects the rights of the Loan Program Lender.

25 M.P.T.L. ch. 4 § 6

#### **Section 6. Private Sale in Lieu of Auction**

The provisions of this Chapter with regards to Auction notwithstanding, the Tribal Court may waive the requirement of Auction and approve the terms of a private sale after hearing upon motion made by Debtor, the Loan Program Lender or the Tribe (if the Tribe elects to intervene for the limited purpose of requesting its own private purchase of the Assignment) if the Tribal Court finds the terms satisfactory. Notwithstanding, if the sales price proposed for such private sale is less than the Judgment Debt, the Tribal Court shall not approve such private sale unless:

- a. The Loan Program Lender consents to the terms of the private sale; and
- b. The Debtor either consents to the terms of the private sale or, as a condition to approval in the absence of such consent, that the Loan Program Lender covenants to release the Debtor from any obligation to such Lender arising by virtue of any shortfall between the sales price proposed and the Judgment Debt.

Unless otherwise directed by the Tribal Court, the proceeds of a private sale shall be treated the same as proceeds of an Auction.

25 M.P.T.L. ch. 4 § 7

#### **Section 7. Disbursement of Proceeds**

Unless otherwise ordered by the Tribal Court after hearing and for good cause shown, Proceeds shall be disbursed as follows:

a. With respect to payment in full of the bid of the successful bidder awarded the Auction under Section 5 of this Chapter, the Tribal Court shall direct the disbursement of the Proceeds received first to the Loan Program Lender on account of the discharge of the Judgment Debt, then to any obligations of the Debtor to the Tribe found by the Court in any proceedings (included but not limited to any Auction expenses of DOH) and then to Debtor.

b. With respect to any partial disbursements made to the Loan Program Lender out of rental income received by DOH as trustee pursuant to Section 9 of this Chapter, the Loan Program Lender may elect to credit against the Judgment

Debt only that portion of such disbursements remaining after deduction of the then accrued Interest Offset. For purposes of this paragraph, the "Interest Offset" shall be the amount that is equal to unpaid interest on the unpaid Judgment Debt if the same had accrued from the date of judgment to the date of calculation at a rate equal to the lesser of: (1) the default rate, if any, set forth in the Assignment Mortgage or in the promissory note secured thereby; or (2) at a rate of ten per cent per annum. The Interest Offset, as disbursed out of the Section 9 use and occupancy payments received by DOH, shall be retained by the Loan Program Lender as compensation for the delay in liquidation of the Loan Program Lender's security interest, and shall not otherwise entitle the Loan Program Lender to any sum in excess of the Judgment Debt.

25 M.P.T.L. ch. 4 § 8

#### **Section 8. Conveyance by the Court of the Auctioned Assignment**

a. Upon completion of the Auction process and timely payment in full by the successful bidder awarded the Auction by the Tribal Court, the Tribal Court shall by its order effect an Assignment Conveyance to such successful bidder. Upon the recording of such order pursuant to the provisions of Chapter 5 of Title XXVII of the Tribal Law, such conveyance shall be in full force and effect and the Assignment Rights thereby conveyed shall be free and clear of any and all interest of the Debtor, the Loan Program Lender or any person claiming by or through the Debtor or Loan Program Lender, however arising.

b. The Debtor shall have no right of redemption except as expressly provided for in subsections (c) and (d) of Section 5 of this Chapter.

c. Nothing contained in this Chapter shall be deemed to constitute a prohibition of any action by the Tribe against any Debtor whose Assignment was so foreclosed for any sum expended by the Tribe in connection therewith, including but not limited to an action to collect any sums paid to or retained by any third party under the terms of any Loan Program in connection therewith.

25 M.P.T.L. ch. 4 § 9

#### **Section 9. DOH as Trustee for Loan Program Lender in the Event of Insufficient Equity or Voided Auction**

a. If the Tribal Court determines that the Judgment Debt exceeds the Assignment Value as provided for in Section 3(f) of this Chapter, or if pursuant to Section 5(h) of this Chapter the Tribal Court determines that a re-Auction within the prescribed time period is not in the best interest of the Loan Program Lender, then the Tribal Court shall order the immediate ejectment of the Debtor and all Occupants, Authorized Residents and Unauthorized Residents in accordance with Section 4(c) of this Chapter (if such order had not previously been entered by the Tribal Court), direct DOH to inspect the Assignment and all improvements thereto and report to the Tribal Court as to the condition of the same and conditionally convey the Assignment Rights of the Debtor to DOH as trustee of the Tribal Court for the

benefit of the Loan Program Lender. Following receipt of such DOH report and after hearing held by motion of DOH made for such purpose, the Tribal Court may in its discretion increase the Judgment Debt to cover any repairs as may be required to render any housing unit comprising part of the Assignment habitable and in good and rentable condition but in no event shall any such finding affect the provisions of Section 7 of this Chapter relative to the priority of the disbursement of Proceeds. If no such motion is filed within fourteen Days of the date exclusive possession of the Assignment is provided to DOH (subject to the Tribal Court's right to extend such period for good cause shown), or upon a decision by the Tribal Court after such a hearing relative to the amount of the Judgment Debt, the Judgment Debt shall thereafter be fixed and no longer subject to adjustment for any reason, including but not limited to the passage of time and judgment shall be deemed final as it relates to the Debtor and all parties claiming by or through Debtor.

b. Upon naming DOH trustee of the Assignment as aforesaid, the Tribal Court shall direct DOH to undertake the following actions:

- (1) Prepare and maintain such Dwelling for use by an Occupant, selected as provided for below, at the sole cost and expense of DOH. Any such cost and expense incurred by DOH are subject to DOH's subordinate rights under Section 7 of this Chapter with respect to disbursement.
- (2) Solicit Tribal Members to enter into an Occupancy Agreement upon such terms as the Tribal Court may approve for the protection of the Loan Program Lender provided that in no event shall the use and occupancy payments due from such Occupant(s) be less than fair rental value nor shall the term be for more than one year.
- (3) Enter in to such Occupancy Agreements with such Tribal Member(s) upon approval of the Tribal Court after hearing.
- (4) As Trustee for the Tribal Court and the Loan Program Lender, collect all use and occupancy payments due under such Occupancy Agreements and remit the same promptly to the Loan Program Lender in accordance with Section 7 of this Chapter.
- (5) To periodically account to the Loan Program Lender and to the Tribal Court for its discharge of its duties hereunder.
- (6) To otherwise act with respect to the Assignment as it would with respect to any Dwelling subject to an Occupancy Agreement.

c. All Occupancy Agreements entered into pursuant to this Section are expressly for the purpose of preserving the Dwelling and the rights of the Loan Program Lender pending the conclusion of a successful Auction or re-Auction, as the case may be, while providing the Loan Program Lender the benefit of the interim disbursements provided for in Section 7(b) of this Chapter to the extent reasonably possible. Upon motion of DOH or the Loan Program Lender, the Tribal Court shall determine after hearing whether a re-Auction of the Assignment within sixty Days of the end of the term of any pending Occupancy Agreement (or if no such Occupancy Agreement, a re-Auction within sixty Days of the hearing on such motion) is in the best interest of the Loan Program Lender and the orderly and efficient administration of

justice. If so, the Tribal Court shall order a re-Auction in accordance with Section 5(h) of this Chapter. If not, the Tribal Court shall direct DOH to proceed with the discharge of its obligations as trustee as set forth in this Section 9.

## **CHAPTER 5. EVICTIONS FROM DWELLINGS**

25 M.P.T.L. ch. 5 § 1

### **Section 1. Limitation on Self-Help Remedies**

The remedies for recovery of possession of a Dwelling provided for in this Chapter shall be exclusive and shall apply to all Trust Lands of the Tribe wherever located. No "self-help" remedies including, but not limited to, "lock outs" shall be valid or permitted. An Occupant may voluntarily surrender a Dwelling to the MPTN only with the prior written agreement of MPTN and upon satisfaction of the terms and conditions of such written agreement. The rights of the Tribe, as provided herein, cannot be modified by contract.

25 M.P.T.L. ch. 5 § 2

### **Section 2. Jurisdiction**

a. The Tribal Court shall have exclusive jurisdiction to hear an action to determine the rights of any party arising under an Occupancy Agreement that relate to a Residential Real Property Interest or otherwise relating in any way to a Dwelling. Such Actions shall be tried to the Tribal Court without any right to a trial by jury.

b. The Tribal Court shall have exclusive jurisdiction to hear an eviction action as herein provided. Such Actions shall be tried to the Tribal Court without any right to a trial by jury.

25 M.P.T.L. ch. 5 § 3

### **Section 3. Definition of Unlawful Detainer**

A person commits an "Unlawful Detainer" if, he or she:

a. continues in possession of the Dwelling, or any part thereof, after the expiration of the term provided for in an Occupancy Agreement; or

b. fails to pay any sum as required by the Occupancy Agreement; or

- c. commits a breach of any other agreement or covenant contained in the Occupancy Agreement; or
- d. is a person in possession or occupation of a Dwelling in a manner that is not expressly permitted by Tribal Law or the policies, procedures, and regulations of the MPTN Housing Department; or
- e. was an Authorized Resident, but whose authorization to occupy the Dwelling has been terminated by MPTN or the Occupant of the Dwelling; or
- f. is an Unauthorized Resident of a Dwelling.

25 M.P.T.L. ch. 5 § 4

#### **Section 4. Remedies for Unlawful Detainer**

- a. MPTN may, in the exercise of its sole discretion, serve Notice upon any person committing an Unlawful Detainer, specifying the basis for such Unlawful Detainer.
- b. If the basis for an Unlawful Detainer is one of the grounds set forth in Section 3(a)(2), 3(a)(3) or 3(a)(4) of this Chapter, said notice shall set forth a period of ten business Days to cure the same. If such person fails to cure the basis for such Unlawful Detainer within the time period allowed MPTN may, in the exercise of its sole discretion, commence eviction proceedings against such person.
- c. If the basis for such Unlawful Detainer is one of the grounds set forth in Section 3(a)(1), 3(a)(5) or 3(a)(6) of this Chapter, said notice shall provide for a period of 10 days for the person to whom the notice is directed to vacate the Dwelling. If such person fails to vacate within the time set forth in the notice MPTN may, in the exercise of its sole discretion, commence eviction proceedings against such person.

25 M.P.T.L. ch. 5 § 5

#### **Section 5. Notice**

- a. An Occupant of a Dwelling may serve notice upon an Unauthorized Resident or Authorized Resident who commits an Unlawful Detainer of such Dwelling. Said notice shall provide for a period of no less than 10 days for the person to whom the notice is directed to vacate the Dwelling. If such person fails to vacate within the time set forth in the notice the Occupant may commence eviction proceedings against such person. MPTN shall be given notice of the initiation of any such action and, upon motion by MPTN, shall be made a party plaintiff. The provisions of this section shall not apply to domestic disputes which shall be governed by Title VI of the MPTN Laws.
- b. All Notices required by this Chapter shall be served by a disinterested person and may be served upon a person committing Unlawful Detainer:
  - (1) by delivering a copy to such person; or

- (2) by leaving a copy of such notice at the Dwelling that is the subject of the Unlawful Detainer action.

25 M.P.T.L. ch. 5 § 6

### **Section 6. Eviction Proceedings**

- a. Except as provided hereafter, all Eviction Proceedings shall be governed by the Mashantucket Pequot Rules of Civil Procedure, as they may be amended from time to time.
- b. The plaintiff's eviction complaint, in addition to setting forth the facts and allegations on which the plaintiff seeks to recover, may also set forth therein any relevant circumstances which may have accompanied the alleged Unlawful Detainer and claim damages therefore or compensation for the occupation of the Dwelling or both. When Unlawful Detainer is charged, after default in the payment of rent, the complaint must state the amount of rent owed or other damages sought. The Summons served with said complaint shall notify the defendant that an appearance must be filed within 10 days of the date the summons was served.
- c. Notwithstanding the provisions of the Mashantucket Rules of Civil Procedure, no discovery shall be allowed in an eviction proceeding, without the permission of the Tribal Court, which may be granted only upon a showing of compelling need.
- d. If the defendant appears but does not plead within three Days after said appearance, the plaintiff may file a motion for default for failure to plead. If the defendant fails to plead within three Days after the said motion has been filed with the Tribal Court Clerk, the Tribal Court shall forthwith enter judgment that the plaintiff shall recover possession or occupancy of the premises and the court shall issue an Order of Eviction accordingly. The Tribal Court may, in addition to any order regarding possession, also assess damages. In the alternative, the Tribal Court may bifurcate the proceedings and order a later trial for the purpose of assessing damages.
- f. All pleadings, including motions, shall advance at least one step within each successive three Days from the preceding pleading or motion. If the defendant fails to plead within any such period, the plaintiff may file a motion for judgment for failure to plead.
- g. The Tribal Court shall hear argument on any MPTN Tribal Court Rule 7 motion filed by the defendant in an eviction proceeding within 10 days of the date that the plaintiff responds thereto. The Tribal Court shall make every effort to decide any such motion in as expeditious a manner as possible.
- h. Trial shall be scheduled in any eviction proceeding within 10 days of the close of pleadings. The Tribal Court shall make every effort to enter judgment in as expeditious a manner as possible.
- i. The Tribal Court may require the parties to an eviction proceeding to participate in non-binding mediation, providing such mediation does not unduly delay the trial of the case.

**Section 7. Judgment**

a. If, after hearing, the Tribal Court shall render judgment in favor of the plaintiff granting the plaintiff the remedy of eviction against the defendant, judgment shall be entered for the plaintiff. Such judgment shall confirm in the plaintiff the sole and exclusive possession of the Dwelling and order the defendant to immediately quit and surrender possession of the Dwelling.

b. The judgment shall declare the termination and forfeiture of any Occupancy Agreement ("Order of Eviction"). The Order of Eviction shall further:

- (1) Name or identify each person to whom the order applies; and
- (2) require the defendant to remove his or her possessions and personal effects from the Dwelling by the date and time specified on the Order of Eviction, which date shall be after the expiration of the stay of execution set forth in Section 7(a) of this Chapter; and
- (3) order the Tribal Police, in the event the defendant has not removed himself or herself and their possessions from the Dwelling by the time specified, to remove such defendant and remove, or cause to be removed, the defendant's personal effects; and
- (4) order the Tribal Police to store, or cause to be stored, the said possessions and personal effects at the expense of the plaintiff but said expense shall be charged against the defendant; and
- (5) order that if such possessions and effects are not called for by the defendant and the expense of such removal and storage is not paid to the plaintiff within fifteen Days after such eviction, the plaintiff shall sell them at auction or dispose of them in some other commercially reasonable fashion (including discarding them if plaintiff reasonably believes they have no value); and
- (6) order any surplus of funds over the amount owed that may result from the disposition, after deduction for any costs of sale, be returned to the defendant.

c. The date specified in the Order of Eviction shall be no sooner than 10 days and no more than 20 days after the date of judgment. The Tribal Court may set such conditions with respect to said date as it may deem appropriate, except that if the date specified is more than 10 days after the date of judgment, the Tribal Court shall, in addition to any other conditions it may set, order the defendant to make periodic use and occupancy payments to the plaintiff equal to the proportional fair rental value of the premises. Should the defendant fail to make any such payment or should the defendant fail to

observe any other condition set by the court, the plaintiff may submit an affidavit to that effect to the Tribal Court, with a copy certified to the defendant in accordance with the Rules of Court. Unless the defendant files an objection within three Days of the filing of said affidavit, the Tribal Court shall issue an amended Order of Eviction providing for immediate removal of the defendant from the premises, in accordance with the procedure set forth in Section 7(b), above.

d. The Tribal Court may also assess damage caused to the plaintiff by the Unlawful Detainer, including but not limited to damage for waste by the defendant, and any sums due MPTN under the Occupancy Agreement.

e. Whenever an Order of Eviction is entered, such defendant and any other person named or identified in the Order of Eviction shall forthwith remove themselves, their possessions and all personal effects on the date and time as set forth on the Order of Eviction unless execution has been stayed pursuant to an order of the Tribal Court.

f. The Tribal Police shall, at least forty eight hours prior to the date and time specified in the Order of Eviction, use reasonable efforts to locate and notify the defendant or Occupant of the date and time such eviction is to take place. The notice shall be served upon each defendant and upon any other person named or identified in the order (minor children holding under the parents or guardians excepted) as provided in Section 5 of this Chapter.

g. Such notice shall be on a form prescribed by the Tribal Court and shall be in clear and simple language and in readable format and shall contain a copy of the Order of Eviction.

h. The Tribal Police shall return to the Dwelling on the date and time of the Order of Eviction and shall execute the requirements of the said Order.

i. Failure of the Tribal Police to perform any act required by an Order of Eviction or to do so within the time specified in this Chapter shall constitute contempt of court by the Chief of the Tribal Police and shall result in a civil penalty against the said Chief equivalent to one week's compensation for each such failure.

25 M.P.T.L. ch. 5 § 8

### **Section 8. Appeal**

a. Stay of Execution. Execution on all judgments rendered pursuant to Section 7 of this Chapter shall be stayed for a period of five Days. No appeal shall be taken from any such judgment unless it is filed within said five Day period.

b. Stay of Execution on Appeal. If an appeal is taken with the five Day period during which execution is stayed, the stay of execution shall remain in effect until the final determination of the cause, unless it appears to the judge who tried the case that the appeal was taken solely for the purpose of delay or unless the defendant fails to make use and occupancy payments as provided for in this Section.



c. Use and Occupancy Payments During Appeal. When any appeal is taken by a defendant, the Tribal Court shall schedule an immediate hearing for the purpose of issuing an order for the periodic payment of use and occupancy by the defendant during the period of the appeal. After hearing, the Tribal Court shall order the defendant to deposit periodic payments with the court clerk equal to the fair rental value of the premises. There shall be a rebuttable presumption that the fair rental value of the premises is equal to the last agreed upon rent or other periodic payment required under the Occupancy Agreement. If the defendant fails to make any payment when due, the Tribal Court shall, upon motion of the plaintiff, issue an Order of Eviction.

d. Distribution of payments after appeal. Upon final disposition of the appeal, the Tribal Court shall hold a hearing to determine the amount due each party from the accrued payments for use and occupancy and order distribution in accordance with such determination. Such determination shall be based upon the respective claims of the parties arising during the pendency of the proceedings after the date of the order for payments and shall be conclusive of those claims only to the extent of the total amount distributed.

## **CHAPTER 6. MISCELLANEOUS**

25 M.P.T.L. ch. 6 § 1

### **Section 1. Severability**

If any provision of this Law or its application to any person or circumstance is held invalid, the remainder of the Law or application of its provisions to other persons or circumstances shall not be affected, and to this end, the provisions of this Law are severable. All other Tribal Laws inconsistent with this law are hereby repealed.

25 M.P.T.L. ch. 6 § 2

### **Section 2. Effective Date**

The effective date of this law shall be the date of passage by the MPTN Council.