

LEECH LAKE BAND OF OJIBWE

UNLAWFUL DETAINER
CODE

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UNLAWFUL DETAINER AND
JUDICIAL EVICTION ORDINANCE

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LEECH LAKE BAND OF OJIBWE

UNLAWFUL DETAINER AND JUDICIAL EVICTION ORDINANCE

SECTION 1. PURPOSES AND INTERPRETATION

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

- 1.1 To protect the rights of landlords and tenants.
- 1.2 To preserve the peace, harmony, safety, health and general welfare of the Indian people of the Leech Lake Indian Reservation.
- 1.3 To provide eviction procedures and to require landlords to use those procedures when evicting tenants.
- 1.4 To encourage landlords and tenants to maintain and improve dwellings on the Reservation in order to improve the quality of housing.

SECTION 2. DEFINITIONS

- 2.1 Action, petition, complaint or defense: The terms action, petition, complaint or defense shall include any dispute between persons or entities which relate to the rental, use or occupancy of any housing, dwelling, or accomodation for human occupancy, including claims for the payment of money for such housing, dwellings, or accommodations, damages to such units, condition of such units or the relationships between owners and occupiers of such units, including the right to occupy them.
- 2.2 Adult Person: Any person eighteen (18) years of age or older.
- 2.3 Building: A structure, and any appurtenances or additions thereto, designed for habitation, shelter, storage and the like.
- 2.4 Dwelling Unit: A house or building or portion thereof which is rented or leased as a home or residence, by any person, not including public transient accommodation, such as hotel rooms.
- 2.5 Guest: Any person, other than the tenant, in or around a dwelling unit with the permission and consent of the tenant.
- 2.6 He/His: The use of he/his means he or she, him or her, and the singular includes the plural.

2.7 Indian: Any person recognized as being an Indian or Alaska Native by any Indian Tribe, Indian Band, Indian Community or by the government of the United States for any purpose.

2.8 Landlord: A person, entity, Tribe, Band, Indian Housing Authority, or a federal government agency which is the owner, lessor, or sublessor of a dwelling unit intended for the use of tenants.

2.9 Lease: An agreement, written or oral, as well as valid rules and regulations, regarding the tenants and conditions of the use and occupancy of real property, dwelling unit, building, or premises.

2.10 Lessor: The legal, beneficial or equitable owner of property under a lease. Lessor may also include the heirs, successors, executors, administrators, or assigns of the lessor.

2.11 Lessee: A tenant of a dwelling unit, user and/or occupier of real property.

2.12 Rent: Periodic payments to be made to a landlord or lessor under a lease.

2.13 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.

2.14 Owner: Any person or entity jointly or individually having legal or beneficial title to all or part of land or a dwelling, including the right to own, manage, use or control a dwelling unit under a mortgage, long-term lease, or any other security arrangement.

SECTION 3. JURISDICTION

3.1 Territorial: Jurisdiction is extended over all buildings and lands intended for human dwelling, occupation or residence which lie within the exterior boundaries of the Leech Lake Indian Reservation.

3.2 Personal and Subject Matter: Jurisdiction is extended over all actions wherein one or more of the parties is the Leech Lake Band, the Leech Lake Housing Authority, an Indian person, or other entities within the jurisdiction of the Leech Lake Band who occupy, sell, rent, lease or allow persons to occupy housing, dwellings or accommodations for the purpose of human dwelling, occupation, or residence.

3.3 Tribal Court Authority: Jurisdiction over all cases, actions, or matters arising within the jurisdiction of the Leech Lake Band with respect to the subjects of this Ordinance, and jurisdiction with respect to any person or entity acting or causing actions which arise under this Ordinance shall be exercised by the Leech Lake Tribal Court.

SECTION 4. FORCIBLE ENTRY PROHIBITED.

No person shall make entry upon land or buildings within the jurisdiction of the Leech Lake Band of Ojibwe except in cases where entry is allowed under law, and in such cases the person shall not enter by force but only in a peaceable manner.

SECTION 5. GROUNDS FOR EVICTION.

A person shall be guilty of unlawful detainer and may be evicted for:

4.1 Nonpayment of Rent: Nonpayment of rent under an agreement for the lease, purchase or occupation of a dwelling when such payments are not made after ten (10) calendar days of the agreed date of payment, or ten (10) calendar days following the first day of the month in a month-to-month tenancy. The receipt by the owner or landlord of partial payments under an agreement shall not excuse the payment of any balance due. Unless otherwise stated in a rental agreement rental periods shall be presumed to be on a month-to-month basis.

4.2 Nuisance, Intentional or Reckless Damage: Nuisance, intentional, or careless damage, destruction, or injury to the property of the landlord, owner, or other tenants, or disturbing another tenant's right to quiet enjoyment of a dwelling unit.

4.3 Rental Agreement Violations: Serious or repeated violations of the rental agreement, or any violations of any applicable housing or building codes.

4.4 Unlawful Occupation or Entry: Entry into or occupation of any real property of another without permission or agreement, following any reasonable demand by a person in authority over the premises to leave.

4.5 Holding Over: Continuing occupancy of a dwelling unit or other premises after the expiration of the term of a lease or other agreement; after receipt of a written notice to vacate in a month-to-month tenancy; or after a lease or mortgage covering the premises has been foreclosed in foreclosure proceedings in the Leech Lake Tribal Court.

4.6 Rental Agreements: Violation of other terms in a written or oral rental agreement which do not conflict with the provisions of this Ordinance or other Leech Lake Band laws.

SECTION 5. NOTICE TO VACATE REQUIREMENTS:

5.1 When Notice to Vacate is Required: When a landlord desires to obtain possession of a dwelling unit, and when one or more reasons to evict the tenant or tenants occupying the unit as set forth in Section 4 exist.

5.2 Statement of Grounds for Eviction Required: The notice to vacate shall be addressed to the adult tenants of the dwelling unit and shall state the legal reasons for termination of the tenancy and the date by which the tenant is required to vacate the dwelling unit.

5.3 Time Requirements for Notice: The notice must be delivered to the tenant within the following periods of time:

A) No less than three (3) calendar days prior to the date to vacate specified in the notice for serious injury to property, or injury to persons. In situations in which there is an emergency, such as a fire or other condition making the dwelling unsafe or uninhabitable, or in situations involving an imminent or serious threat to the dwelling unit, or the health or safety of the public, the notice may be made in a period of time which is reasonable in the circumstances.

B) No less than fourteen calendar days prior to the date to vacate specified in the notice for nuisance or failure to pay rent or other payments required by the rental agreement.

C) No less than thirty calendar days in all other situations.

D) Indian Housing Authority Termination Notice: When the landlord is the Leech Lake Housing Authority, the housing authority termination notice shall qualify as the notice to vacate required under this section so long as the time requirements of the housing authority termination notice are at least as long as the time requirements set forth in this Ordinance.

5.4 Service of the Notice to Vacate: Any notice to vacate must be in writing and must be delivered to the tenant in the following manner:

A) Delivery must be made by an adult person.

B) Delivery will be effective when it is:

(1) Personally delivered to a tenant or other adult living in the premises with a copy delivered by mail, or

(2) Personally delivered to an adult agent or employee of the tenant with a copy delivered by mail.

C) If the notice cannot be delivered 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 the main entry door of the premises in a manner that it is not likely to blow away, and sending a copy first class mail, postage prepaid, addressed to the tenant at the premises.

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

SECTION 6. JUDICIAL EVICTION PROCEEDINGS.

The owner of real property, lessor, or housing authority may commence an action for eviction or unlawful detainer by filing with the Leech Lake Tribal Court, in writing, a summons and complaint.

6.1 Complaint:

If, after the date set forth in the notice to vacate the dwelling unit, the tenant has not vacated, the landlord may file a complaint in the Tribal Court for eviction, any claim for money damages and such other relief as the Court may deem just and proper. The complaint shall be signed by the landlord, owner or the attorney for the landlord or owner and shall state:

(A) The names of the adult tenant(s) against whom the complaint is brought;

(B) A description of the rental agreement, if any;

(C) The address or reasonable description of the location of the premises;

(D) The grounds for eviction;

(E) A statement showing that the notice to vacate and any required termination notices have been served in accordance with this ordinance or other applicable

law; and

(F) A statement of the relief requested , including any claim(s) for restitution or possession of the dwelling unit, money damages, fees, costs, or other special relief.

(G) If the landlord is the Leech Lake Housing Authority, a statement that the housing authority has complied with all required regulatory processes prior to filing the eviction action.

6.2 Summons:

When a complaint is filed in the Tribal Court the Clerk or Administrator of the Tribal Court or a Tribal Court Judge shall issue a summons notifying the defendant named in the complaint to appear before the Court on a certain date to answer to the complaint. The hearing date shall be no less than six (6) nor more than thirty (30) days from the date of filing of the complaint. The summons must notify a defendant that judgment may be taken against him in accordance with the terms of the complaint unless he/she appears for hearing at the time, date and place set forth in the summons.

6.3 Service of the Summons and Complaint:

A copy of the summons and complaint shall be served upon all defendants by the plaintiff in the manner provided for service of the notice to vacate as set forth in Section 5 of this Ordinance. An affidavit of service swearing that the summons and complaint was served in compliance with the requirements of this Ordinance shall be filed by the plaintiff with the Tribal Court.

6.4 Request for Extension of Time:

A defendant may, for good cause shown request an extension of time for the hearing. The Court shall have discretion to require the defendant to post with the Court 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. The Court may refuse to extend the date of hearing where the complaint is based upon nuisance or injuries and shall not extend the hearing date where the complaint is based upon conduct which is alleged to constitute a serious danger to public health, safety, or peace.

6.5 Hearing:

The Leech Lake Tribal Court, sitting without a jury, may enter an order for eviction and/or judgment against the defendant if it finds that the defendant is guilty of an act of unlawful detainer

6.6 Evidence:

Evidence in proceedings under this Code shall be informal, and may include relevant and reliable hearsay evidence if such evidence is not the basis for a final decision. The books and records of the parties as to the payment or nonpayment of monies owed will be received in evidence and the files and business records of the landlord with respect to any agreement of the parties will be received upon their presentation to the Court; provided, however, that a tenant may examine the custodian of such records as to their contents.

6.7 Burden of Proof:

The burden of proof in all proceedings under this Ordinance shall be a preponderance of the evidence.

6.8 Judgment:

Within five business days after the date of the hearing, the Court shall enter judgment and the judgment shall grant all relief that the parties are entitled to as of the date of the judgment. The judgment shall state the relief granted by the Court to any party and may:

- (1) Order the immediate eviction of a tenant and delivery of the premises to the landlord. Any eviction order must provide for a date certain by which the tenant is required to vacate the premises and inform the tenant that if he/she has not vacated the premises within the time set by the Court that he/she and any other occupants will be forcibly removed by law enforcement officers.
- (2) Grant actual damages including back rents, unpaid utilities, cost of repair of damages, other than ordinary wear and tear, to the dwelling unit or other damages as provided in the agreement of the parties or this Ordinance;
- (3) Order the parties to carry out an obligation required by law;
- (4) Order rent or other payments due to the prevailing party through any garnishment provisions of Leech Lake Band laws;
- (5) Order the payment of attorney fees and court costs to the prevailing party.

6.9 Notice of Judgment Entered:

The prevailing party shall give notice of the entry of judgment and any order for eviction to all other parties by personal service of the judgment and order by a duly authorized law enforcement officer of the Leech Lake Band.

6.10 Execution of Eviction Order:

An eviction order may be executed by a duly authorized law enforcement officer of the Leech Lake Band of Ojibwe on request of the prevailing party. To execute the order, the officer shall:

- A) Provide a copy of the order of eviction to all adult tenants;
- B) Remove all the evicted persons from the dwelling and verbally order them not to re-enter;
- C) Post copies of the order of eviction on the doors of the premises if there is not any adult tenant present at the time of execution; and
- D) Supervise the removal of the possessions of the evicted persons and obtain an inventory of said possessions. The inventory shall be signed by the landlord and filed with the Tribal Court by the officer.

6.11 Duty of Prevailing Party to Store Tenant Possessions:

A party in whose favor an eviction order is granted shall safely pack and store the possessions of the tenant and other occupants of the dwelling unit. The tenant may redeem his/her possessions within thirty (30) days by paying to the prevailing party the reasonable cost of storage of the tenant's possessions.

6.11 Enforcement of Other Portions of Judgment:

All other portions of the Judgment shall be enforced in the manner otherwise provided under tribal law.

SECTION 7. APPEALS.

Appeals under this Ordinance shall be handled according to the general Tribal Court appellate provisions, with the exception that the party taking the appeal shall have only five (5) days from the entry of the order of judgment to file an appeal.

All orders of the Court will remain in effect during the pendency of an appeal under this Code unless a stay of execution is granted by the Trial Court. A defendant may apply for a stay of execution during the pendency of an appeal if the following is established:

- A) Execution of the judgment could result in extreme hardship for the defendant; and

B) There would be no substantial prejudice or injury to the prevailing party during the period of the stay; or

C) A bond is posted or monies are paid to the Court, to satisfy the judgment or payment for the reasonable use and occupancy of the premises during the period of the time following the judgment. No stay may exceed sixty (60) days.

SECTION 8. SOVEREIGN IMMUNITY OF THE LEECH LAKE BAND.

Nothing contained in this Ordinance shall be construed as a waiver of the sovereign immunity from suit of the Leech Lake Band of Ojibwe, its officials, employees, or agents acting within the scope of their authority and duty.

SECTION 9. EFFECTIVE DATE.

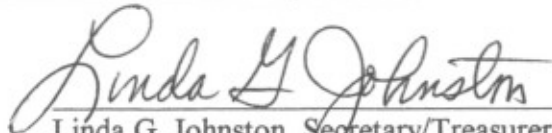
This Ordinance shall become effective upon adoption by the Leech Lake Reservation Tribal Council and its provisions shall supersede and render void any previously enacted ordinances, resolutions or codes dealing with the same subject matter.

CERTIFICATION

We hereby certify that the foregoing Resolution No. 01-76 was duly presented and acted upon by a vote of 3 For, and 0 Against, at the Tribal Council of the Leech Lake Band, quorum being present, held on February 1, 2001 at Winnie Dam Community Center.



Eli O. Hunt, Chairman
Leech Lake Tribal Council



Linda G. Johnston, Secretary/Treasurer
Leech Lake Tribal Council



Leech Lake Band of Ojibwe

Eli O. Hunt, Chairman

Linda G. Johnston, Secretary/Treasurer

District I Representative
Peter D. White

District II Representative
Lyman L. Losh

District III Representative
Richard R. Robinson, Jr.

LEECH LAKE BAND OF OJIBWE

ORDINANCE NO. 99-04

EVICITION ORDINANCE

Section 1. Forcible Entry. No person shall make entry into land or tenements within the jurisdiction of the Leech Lake Band of Ojibwe except in cases where entry is allowed under law, and in such cases the person shall not enter by force but only in a peaceable manner.

Section 2. Unlawful Detainer. A tenant or other occupier of land on the Leech Lake Reservation may be found guilty of unlawful detainer by the Leech Lake Tribal Court if such person shall continue in occupancy of real property under any of the following situations:

(a) Without the requirement of any notice:

- (1) After the expiration of the term of the lease or other agreement; or
- (2) If such person has entered onto or remains on the real property of another without the permission of the owner and without having any substantial claim of a lease or title of the real property; or
- (3) After the Indian Housing Authority or other Public Housing Authority has terminated such person's tenancy pursuant to procedures providing such person a hearing before the Housing Authority involved; or
- (4) After the interest of such person in a lease has been foreclosed in a Leasehold Mortgage foreclosure Proceedings in the Tribal Court.

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

(1) When such person has received notice:

(A) That he or she is in default in the payment of rent; or

(B) Requiring him or her to either pay the rent or surrender possession of the occupied property; and such person has remained in possession after

receipt of such notice without either surrendering possession of the property or paying the rent; or

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

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

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

(c) The person entitled to the premises may recover possession thereof in the manner hereinafter provided.

Section 3. Service of Notice. Notice required or authorized in the immediately preceding section shall be given in writing by either:

(a) Delivering a copy personally to the tenant or occupier or to any adult members of his or her family residing on the premises; or

(b) Posting said notice in a conspicuous place near the entrance to said premises, and by sending an additional copy to the tenant or occupier by certified mail, return receipt requested, properly addressed, postage prepaid.

Section 4. Proof of Service. 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 the two methods of service.

Section 5. Complaint and Summons. The owner of real property or lessor or Housing Authority shall commence an action for unlawful retainer by filing with the Court, in writing, the following documents:

(a) A Complaint, signed by the owner or lessor or the Housing Authority or its delegated agent or attorney, stating:

(1) The facts on which he or she seeks to recover;

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

(3) Any claim for damages or compensation due from the person(s) to be evicted.

(b) A Summons issued pursuant to the Rules of Civil Procedure of the Leech Lake jurisdiction. If a trial date is specified in the Summons shall be not less than six (6) nor more than thirty (30) days from the date of service of the Summons and Complaint. The Summons must notify a defendant that judgment will be taken against them in accordance with the terms of the Complaint unless he/she files with the Court an answer and appears for trial at the time, date and place ordered by the Court.

Section 6. Service of Summons and Complaint. A copy of the Summons and Complaint shall be served upon a defendant 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 authorized in the section on procedures for service of notice, above.

Section 7. Power of the Tribal Court. The Tribal Court may enter a Writ of Restitution if:

(a) The Tribal Court shall find after a duly noted hearing that the occupier of the real property is guilty of an act of unlawful retainer.

Section 8. Issuance of Writ of Restitution. Upon issuance of a Writ of Restitution, the Tribal Court shall have the authority to enter against the defendant a judgment for the following: back rent, unpaid utilities; charges due the Band, Indian Housing Authority, or land owner under any lease or occupancy agreement (not including a leasehold mortgage); and for damages caused by the defendant to the property other than ordinary wear and tear. The Tribal Court shall have the authority to award to the prevailing party his costs and reasonable attorney's fees in bringing suit.

Section 9. Appeal. The effect of an appeal on the issuance of a writ of restitution shall be as follows:

(a) A writ of restitution shall not issue for 24 hours after judgment, if the party against whom the judgment for restitution is rendered or the party's attorney states to the Court an intent to take an appeal.

(b) A writ may issue immediately in an action on a lease, against a tenant holding over after the expiration of the term thereof, or termination of the lease by notice to quit, notwithstanding such notice of appeal only if the plaintiff gives a bond conditioned to pay all costs and damage in the event that the appellate court reverses the judgment of restitution and a new trial is ordered.

Section 10. Appeal; Stay. If a party who is aggrieved by the judgment appeals within 10 days, all further proceeding in the case shall be stayed:

(a) If the party appealing remains in possession of the premises, bond shall be conditioned to pay all costs of such appeal and the party shall abide any order the court may make, and shall pay all rents and other damages accruing to the party excluded from possession while the appeal is pending.

(b) In an action of a lease against a tenant holding over after the expiration of the term of the lease or termination by notice to quit, if the plaintiff gives bond as provided above a writ of restitution shall issue as if no appeal had been taken and the appellate court shall thereafter issue all needful writs and processes to carry out any judgment which may be rendered in such court.

Section 11. Enforcement. Upon issuance of a Writ of Restitution by the Tribal Court, tribal law enforcement officers shall enforce the Writ of Restitution by evicting the defendant and his/her property from the premises which are unlawfully occupied.

Section 12. Severability. If any part of this Ordinance or the application thereof to any party, person, or entity or, in any circumstance, shall be held invalid for any reason whatsoever by the Tribal Court, the remainder of the Ordinance shall not be affected thereby and shall remain in full force and effect as though no part thereof has been declared to be invalid.

Section 13. No Waiver or Sovereign Immunity. Nothing in this Ordinance shall mean or be construed to provide a waiver of the Band's or any of its governmental officers' and or agents' sovereign immunity from suit except to the limited extent such waiver is explicitly and unequivocally expressed herein.

Section 14. Applicability of This Ordinance. This Ordinance shall apply with respect to any lease, including those leases provided by the Leech Lake Housing Authority and with respect to leasehold mortgages of leases of trust property within the boundaries of the Leech Lake Reservation or within the jurisdiction of the Leech Lake Band of Ojibwe.

Section 15. Use of Language From Other Laws. Inclusion of language, definitions, procedure, or other statutory or administrative provisions of other Tribal jurisdictions, the State of Minnesota, Federal administrative agencies, or other state or federal entities in this Ordinance shall not be deemed an adoption of that law by the Leech Lake Band of Ojibwe and shall not be deemed an action deferring to state or federal jurisdiction by the Leech Lake Band of Ojibwe where such state or federal jurisdiction is concurrent or does not otherwise exist.

Section 16. Jurisdiction. The provisions of this Ordinance shall apply to all persons and property subject to the governing authority of the Band, including, without limitation, all persons occupying or in possession of premises subject to this Ordinance. The Leech Lake Tribal Court shall have original jurisdiction to hear and adjudicate all actions arising from this Ordinance and any and all leases, lease and leasehold mortgages entered into or recorded pursuant to this Ordinance.

Section 1.6. Penalties for Violation. Any person who violates any provision of this Ordinance shall be subject to the following penalties.

- A. For conviction of the first offense, a civil fine of _____ dollars.
- B. For conviction of a second or more offense, a civil fine of _____ dollars.

Section 1.7. Applicability. This ordinance shall apply to all Indians present on the Leech Lake Reservation.

Section 1.8. Jurisdiction of the Leech Lake Tribal Court. The Leech Lake Tribal Court shall have jurisdiction to enforce the provisions and penalties of this Ordinance upon a presentation of a complaint by the Band prosecutor or other persons designated by the Tribal Council, or by a law enforcement official of the Band, State, or subdivision of the State. Prosecution of the complaint shall be carried out by the Band Prosecutor.

Section 1.9 Effective Date. This Ordinance shall take effect immediately upon passage, by the Leech Lake Tribal Council.

CERTIFICATION

WE DO HEREBY CERTIFY, that the foregoing Ordinance was duly presented and adopted by a vote of 4 in favor, 0 opposed, and 0 abstaining at a Special Meeting of the Leech Lake Tribal Council, a quorum being present, held on April 8, 1999 at Cass Lake, Minnesota.

Eli O. Hunt

Eli O. Hunt, Chairman
LEECH LAKE TRIBAL COUNCIL

Linda G. Johnston

Linda G. Johnston, Secretary/Treasurer
LEECH LAKE TRIBAL COUNCIL