

## ***2019 - 2020 Law and Order Code Supplement***

A new version of the Law and Order Code is released annually to incorporate Resolutions that are approved by Council in any given year. The current version of the Code incorporates Tribal Council Resolutions passed as of September 30, 2019. This Supplement contains sections of the Code that have been amended by Resolutions passed after September 30, 2019, but prior to the next annual update of the Law and Order Code.

These sections repeal and replace their corresponding subparts (if any) in the Code. These amendments will be incorporated into the full version of the Law and Order Code during the next annual update.

### **November 21, 2019**

#### **V-18-1 Gaming Device Excise Tax**

(a) Imposition: Name. An excise tax is imposed on the privilege of engaging in gaming activities within the jurisdiction of the Pueblo of Pojoaque. This tax shall be known as the "Gaming Device Tax".

(b) Rate. The Gaming Device Excise Tax is an amount equal to ten (10) percent of the gross receipts of manufacturers and distributors from the sale, lease, or other transfer of gaming devices in or into the Pueblo, except receipts of a manufacturer from the sale, lease, or other transfer to a distributor for subsequent sale or lease may be excluded from gross receipts. For the purposes of this section, "gross receipts" means the total amount of money or the value of other consideration received from selling, leasing, or otherwise transferring gaming devices.

(c) Exclusive Imposition. The Gaming Device Excise Tax imposed is in lieu of other Pueblo gross receipts taxes on gross receipts attributable to gaming activities.

(d) Payment Due Date. The Gaming Device Excise Tax is to be paid on or before the fifteenth day of the month following the month in which the taxable event occurs.

(e) Effective Date. The Gaming Device Excise Tax became effective on November 21, 2019.

### **January 9, 2020**

#### **U-3 Tribal Elections**

(a) Eligibility of Candidates; Filing for Office.

1. Eligibility for Tribal Office. Any qualified enrolled member of the Pueblo of Pojoaque who is at least twenty-one (21) years of age, shall be eligible to seek and hold elective office.

2. Filing for Office. Each candidate must file a letter of intent with the Tribal Secretary no later than thirty (30) days prior to the election date. The letter of intent shall indicate which position the candidate is running for. No candidate may run for more than one (1) Tribal Official position in any given election.

(b) Qualifications for Candidacy. In order to be eligible to seek and hold elective office, candidates must:

1. Reside within the exterior boundaries of the Pueblo of Pojoaque for at least one year prior to the date the Candidate's letter of intent is filed (Proof of residency must be shown by two of the following: government issued ID, residential lease, land assignment, property deed, utility bill, bank statement, payroll stub, driver's license, or car registration, etc.);
2. For the election term of 2021-2022: Have attended at least seventy five percent (75%) of Regular Council meetings of the Pueblo for at least one year prior to the date the Candidate's letter of intent is filed. For all election terms thereafter: Have attended at least seventy five percent (75%) of Regular Council meetings of the Pueblo for at least two years prior to the date the Candidate's letter of intent is filed;
3. Be in good standing with both the Regular and General Tribal Council;
4. Not be banned from the Pueblo;
5. Be in good financial standing, and not be in default, with the Pueblo;
6. Have no felony convictions within the past seven years of the date the Candidate's letter of intent is filed (Any other criminal history must be disclosed to General Council at the Candidates' platform forum);
7. Be mentally capable of performing the duties of the office sought; and
8. Be subject to and pass a drug test administered by the Pueblo's Gaming Commission prior to being declared an eligible candidate.

(c) Affidavit and Release Authorization. Candidates shall be asked to sign an affidavit stating they meet the above listed requirements, and are a person of good character and sound judgment. All candidates must sign a release authorizing a criminal and financial background check. The criminal background check must include searches in tribal, state, and federal jurisdictions.

(d) Pending Criminal Matters. Candidates must disclose to the Tribal Council any pending criminal matters for which they are a party.

June 24, 2020

**J-22 Housing Code**

**General Provisions.**

(a) Applicability. The provisions of this Subpart apply to all private rental residences owned, mortgaged, or operated by the Pueblo of Pojoaque government. This Subpart does not apply to private rental residences owned, managed, or operated by a Tribally-chartered corporation or public housing owned and operated by the Pueblo. This Subpart also does not apply to commercial leases on Pueblo land.

(b) Jurisdiction.

1. As limited by section (a), the provisions of this Subpart shall apply to all persons, Pueblo entities, and property subject to the governing authority of the Pueblo as established by Pueblo laws, regulations, and resolutions, including but not limited to the land within the exterior boundaries of the Pueblo, lands owned by, held in trust for, leased or used by the Pueblo, its housing entity, or any other entity of the Pueblo, and Indian Country of the Pueblo as may be defined from time to time by the laws of the Tribe or the United States.

2. Jurisdiction is extended over all persons or entities within the jurisdiction of the Pueblo who rent, lease, or allow persons to occupy housing or dwellings for the purpose of establishing a residence, and all persons who rent, lease, or occupy such structures that are subject to this Subpart. Such personal jurisdiction is extended over all persons and entities, whether or not they are Pueblo members and whether Indian or non-Indian.

3. The Tribal Court shall have exclusive jurisdiction to enforce this Subpart.

(c) Relation to Other Laws.

1. Applicable Law: Unless affected and displaced by this Subpart, principles of Pueblo law and equity will apply and the general principles of law of other jurisdictions may be used as a guide to supplement this Subpart as determined by the Tribal Court.

2. Conflict of Laws: to the extent that any provisions in this Subpart conflict with any federal laws that apply to the subject matter of this Subpart, the federal law will control as determined by the Tribal Court.

(d) Definitions.

1. “Action, Suit, Lawsuit, Claim” shall include any dispute between persons or entities that relates to any private rental housing or dwelling, including claims for payment, damage, condition, and occupancy of such housing.

2. “Adult” means a person who is 18 years of age or older.
3. “Drug-Related Criminal Activity” means the manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use a controlled substance as defined in the federal Controlled Substances Act, Section 102 (21 U.S.C. Section 802).
4. “Dwelling or Dwelling Unit” means a structure or part of a structure that is used as a home, residence, or sleeping place by any person who maintains a household.
5. “Housing Entity” means the Pueblo of Pojoaque Housing Department (PPHD).
6. “Landlord” means the Pueblo, including PPHD, or any person, entity, or government agency, that is the owner, lessor, or sublessor of a dwelling unit or residence.
7. “Nuisance” means maintenance on the Leasehold Estate 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. “Owner” is the Pueblo, including PPHD, or any person or entity jointly or individually having legal title to all or part of land or a dwelling, including the legal right to own, manage, use, or control a dwelling unit under a mortgage, long-term lease, rental agreement, or any other security arrangement.
9. “Premises” means dwelling unit or residence and all structures, facilities and areas connected with it, including grounds, areas, facilities, yards, and fences intended for the use of tenants, or which is either installed for or by the tenants with permission of the landlord.
10. “Rent” means all payments to be made to an owner or landlord for the lease, purchase or occupancy of a dwelling or residence under an agreement for purchase or occupancy.
11. “Rental Agreement” means any written agreement, as well as valid rules and regulations, containing the terms and conditions for any use or occupancy of a dwelling, residence, or premises subject to this Subpart. Allowing occupancy in a dwelling, residence, or on the premises subject to this Subpart without a written rental agreement is prohibited.
12. “Tenant” means any person who rents, purchases, or occupies a dwelling under an agreement to rent, occupy, or rent-to-own a dwelling or residence, including any person actually occupying a dwelling or dwelling that the person does not own. The term includes

any person of the same household as the tenant, including guests, actual occupiers, heirs, or successors to any interest in a dwelling.

13. “Tribal Court” means the Pueblo of Pojoaque Tribal Court.

14. “Waste” means spoilage or destruction by a tenant of land, buildings, structures, yards, trees, or other improvements that result in substantial injury to the landlord’s interest in the property.

### **Landlord/Tenant Responsibilities and Remedies**

(e) Rights, Obligations, and Remedies. The rights, obligations, and remedies of landlords and tenants, as defined in this Subpart, are contained in:

1. the Pueblo Law and Order Code;
2. applicable federal statutes, regulations, and agreements;
3. leases and subleases to which the Pueblo is a party;
4. agreements with occupiers of dwellings or residences;
5. building or housing codes; and
6. the laws established by this Subpart.

(f) Rental Agreements.

1. Effect of Rental Agreements. The provisions of this Subpart, as well as the applicable laws identified in paragraph (e), establish the minimum rights and responsibilities of landlords and tenants.

2. Terms Prohibited in Rental Agreements. No rental agreement shall provide that the tenant agrees to:

- A. waive or forfeit rights or remedies under this Code or any other applicable laws;
- B. to exculpate or limit the liability of the landlord or to indemnify the landlord for that liability or the costs associated with it;
- C. to permit the landlord to dispossess the tenant without a Court order;
- D. to pay a late charge prior to the expiration of a grace period provided for in subsection (m).

A rental agreement provision prohibited by this subsection shall be unenforceable.

3. Term of Tenancy. In the absence of a definite term in the rental agreement, or in the event a rental agreement term expires and is not extended in writing or by renewal, the tenancy shall be month-to-month until a new rental agreement is entered into or the tenancy terminated.

4. Payment of Rent. In the absence of definite terms in the rental agreement, rent is payable at the landlord's office. In the absence of definite terms, the amount of rent shall be the fair market value of the rental unit.

5. Rules and Regulations. The landlord may promulgate reasonable rules and regulations regarding the use and occupancy of the dwelling unit. Such rules and regulations are enforceable against the tenant only if:

A. their purpose is to promote the convenience, safety, or welfare of tenants in the premises, preserve the landlord's property from abusive use or make a fair distribution of services and facilities held out for all tenants generally;

B. they are reasonably related to the purpose of ensuring, convenience, safety, and welfare of all tenants and protection of the property;

C. apply to all tenants in the premises in a fair manner;

D. they are clear as to what conduct is allowed or prohibited; and

E. the tenant has notice of the rules and regulations when entering the rental agreement or when they are adopted.

If a rule or regulation results in a substantial modification of the terms of the rental agreement after the tenant enters into an agreement, such rule or regulation is not valid unless the tenant consents to such rule or regulation in writing either through a rental agreement renewal or by signing a copy of the rules and regulations.

(h) Landlord Responsibilities. Except as otherwise fairly and reasonably provided in a rental agreement, each landlord subject to the provisions of this Code shall:

1. maintain the dwelling unit in a decent, safe, and sanitary condition;

2. comply with applicable building and housing codes;

3. make all necessary repairs to put and maintain the premises in a fit and habitable condition, except where the premises are intentionally rendered unfit or uninhabitable by

the tenant or a guest, in which case such duty shall be the responsibility of the tenant;

4. keep common areas clean, safe, and secure;
5. ensure tenant access to the dwelling unit;
6. 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;
7. provide and maintain proper and appropriate receptacles and facilities for the disposal of ashes, garbage, rubbish, and other waste;
8. provide running water, hot water, and heat in accordance with applicable codes, except to the extent the tenants are required to provide these services for themselves;
9. guarantee a right of quiet enjoyment to the tenant and insure that the conduct of other tenants, their guests, and other persons on the premises do not cause a nuisance, endangerment of public health and safety, breach of peace, or interference with the quiet enjoyment of the tenants;
10. give sole possession of the premises to the tenant in accordance with the rental agreement and refrain from locking tenants out of a dwelling unit without their consent; and
11. disclose in writing, the name, address, and telephone number of the person responsible for receiving rent, notices, and demands under this Subpart, the person authorized to manage the dwelling unit or residence, the owner of the premises or the owner's agent, and the person responsible for making repairs, where they are required.

(i) Tenant Responsibilities. Except as otherwise fairly and reasonably provided in a rental agreement, each tenant subject to the provisions of this Code shall.

1. pay rent without demand or notice at the time and place agreed upon by the parties;
2. immediately notify the landlord of any defects in the premises hazardous to life, health, or safety;
3. keep the dwelling unit reasonably clean and dispose of all ashes, garbage, rubbish, junk, and abandoned vehicles in a proper, sanitary, and safe manner;
4. 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;

5. 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;
6. 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 thirty (30) calendar days of such damage;
7. conduct him or herself, and require guests to conduct themselves, in a manner that does not disturb the quiet enjoyment of others, cause a breach of the peace, violate the law, or endanger anyone else;
8. not give up the dwelling unit to others, assign or transfer a rental agreement, or sublease the dwelling unit without the written permission of the landlord;
9. use the dwelling unit only for residential purposes as agreed, and not to use the unit or permit its use for any other purpose, including illegal conduct or any other activity which may harm the physical or social environment of the premises or the area around it;
10. abide by all rules and regulations promulgated by the landlord in accordance with subsection (g) of this Code; and
11. 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 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.

(j) Tenant Remedies. Where a landlord has not complied with the responsibilities regarding dwelling unit conditions, set forth in subsection (h) of this Code, and where the tenant has given notice to the landlord and the landlord has failed, within a reasonable period of time, to cure the noncompliance, the tenant may:

1. make necessary repairs and deduct the cost of such repairs from one month's rent, as long as the costs do not exceed one month's rent and the tenant provides receipts or invoices for the repairs, or as otherwise provided in the rental agreement; or
2. institute an action in the Tribal Court seeking:
  - A. an order compelling the landlord to comply with the responsibilities as set forth in subsection (h) of this Code;

B. an award of money damages, which may include a retroactive abatement of rent; and/or

C. such other relief in law or equity as the court may deem proper, provided that no tenant may institute such an action if a valid notice to vacate based upon nonpayment of rent has been served by the landlord prior to the tenant's institution of the action; or

3. terminate the rental agreement pursuant to the terms of the rental agreement.

(k) Landlord Remedies. Where a tenant has not complied with this Code or the agreement of the parties, the landlord has the right to:

1. give reasonable notice to the tenant to comply with the tenant's obligations and pay any monies due and owing under the rental agreement or the landlord has right to terminate the rental agreement;

2. require repairs or maintenance that are the responsibility of the tenant and/or require compliance with reasonable rules and regulations for occupancy; or

3. seek a Court order or judgment for the payment of monies or costs, for compliance with the agreements and obligations of tenants, for termination of an agreement, payment of damages, eviction of tenants, or any other relief to which the landlord may be entitled by law or the agreement of the parties.

(l) Abandoned Dwelling Units.

1. landlord may regain possession of a dwelling unit, in accordance with this section, where the tenant has vacated a residence, dwelling, or premises without notice to the landlord and does not intend to return (evidence of which may be determined by the tenant's removal of personal property from the premises or other reasonable evidence), and either:

A. nonpayment of rent for two or more months;

B. terminated water or electrical utility service for more than one month; or

C. an express statement by the tenant that he or she does not intend to occupy the premises after a specified date.

2. The landlord may the send notice to the tenant at the tenant's last known address both by regular mail, postage prepaid, and by certified mail, return receipt requested, stating that:

A. the landlord has reason to believe that the occupant has abandoned the dwelling unit;

B. the landlord intends to reenter and take possession of the dwelling unit unless the occupant contacts the landlord's office within ten (10) days of receipt of the notice;

C. if the tenant does not contact the landlord, the landlord intends to remove any possessions and personal effects remaining in the premises and to rent the premises; and

D. if the tenant does not reclaim such possessions and personal effects within sixty (60) days after the notice, they will be disposed of in accordance with subsection \_\_\_\_ of this Code.

The notice shall be in clear and simple language and shall include a telephone number and a mailing address at which the landlord can be contacted. If the notice is returned as undeliverable, or if the tenant fails to contact the landlord within ten (10) days of the receipt of the notice, the landlord may reenter and take possession of the dwelling unit, at which time any rental agreement in effect shall terminate.

3. The landlord need not comply with the Notice and Eviction procedures of this Subpart to obtain possession of a dwelling unit or residence that has been abandoned.

4. If the abandoned property is of Tribal cultural, religious, or ceremonial significance, the landlord shall have an affirmative duty to locate next of kin and/or make and document at least one attempt to contact a family member to return these items.

### **Grounds for Eviction and Notice to Vacate**

(m)Grounds for Eviction. A person may be evicted for:

1. Nonpayment of rent under a rental agreement, or occupation of a dwelling when such payments are not made after ten (10) calendar days of the agreement date of payment, or ten (10) calendar days following the first day of the month in a month-to-month tenancy.

2. Any agreement in rent, costs, or damages which have been due and owing for thirty (30) calendar days or more. The receipt by a landlord of partial payments under an agreement shall not excuse the payment of any balance due upon demand.

3. Nuisance, intentional or reckless damage, destruction, or injury to the property of the landlord or other tenants, or disturbing another tenant's right to quiet enjoyment of a dwelling unit.

4. Serious or repeated violations of the rental agreement, any reasonable rules or regulations adopted in accordance with subsection (g), this Code, or any applicable building or housing codes.

5. Occupation of any premises without permission or agreement, following any reasonable demand by a person with authority over the premises to leave.

6. Under other terms in the rental agreement that do not conflict with the provisions of this Code.

(n) Notice to Vacate Requirements.

1. When Notice to Vacate is Required. When a landlord desires to obtain possession of a dwelling unit, and when there exists one or more legally cognizable reasons to evict the tenant or tenants occupying the unit as set forth in subsection (m), the landlord shall give notice to the adult tenants, to vacate the dwelling unit according to the provisions of this section and any additional provisions in the rental agreement that do not conflict with this Subpart.

2. Purpose of Notice to Vacate. The purpose of the notice to vacate is to provide advance notice to the tenant of a specific problem that needs to be addressed. It is also intended to induce the tenant to enter into discussions with the landlord to resolve the problem.

3. Statement of Grounds for Eviction Required. The notice to vacate shall be addressed to the adult tenants of the dwelling unit or residence and shall state the legally cognizable reasons(s) for termination of the tenancy and the date by which the tenant is required to vacate the dwelling unit.

4. Form of Notice. The notice shall be in writing and contain, at a minimum, the following information:

A. [Landlord name] hereby gives [name of tenant(s)] notice that all occupants of this residence or dwelling unit must vacate the residence located at;

B. the address or other reasonable description of the location of the dwelling unit or residence;

C. date of notice;

D. reason(s) [insert the legally cognizable reason or reasons for the notice to vacate using the language in this code or other allowable reasons]; and

E. signature, name and address of the landlord, as well as the date and place of signing.

5. Time Requirements for Notice. The notice must be delivered the following periods of time:

A. No less than seven (7) calendar days prior to the date to vacate specified in the

notice for any failure to pay rent or other payments required by the agreement.

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

C. No less than fourteen (14) calendar days in all other situations.

(o) Serving the Notice to Vacate. Any notice to vacate must be in writing, and must be delivered to the tenant in the following manner:

1. Delivery must be made by an adult person.
2. Delivery will be effective when it is:
  - A. Personally delivered to a tenant with a copy delivered by mail; or
  - B. Personally delivered to an adult living in the premises with a copy delivered by mail; or
  - C. Personally delivered to an adult agent or employee of the tenant with a copy delivered by mail.
3. If the notice cannot be given by means of personal delivery, or tenant cannot be found, the notice may be delivered by means of:
  - A. Certified mail, return receipt requested, at the last known address of the tenant, or
  - B. Securely taping a copy of the notice to the main entry door of the residence or main entrance of the premises in such a manner that it is not likely to blow away, and by posting a copy of the notice in the Tribal Court and by sending a copy first class mail, postage prepaid, addressed to the tenant at the premises or the tenant's last known address.
4. The person giving notice must keep a copy of the notice and proof of service in accordance with this section, by affidavit or other manner recognized by law.

(p) Pre-Eviction Options.

1. Negotiated Settlement. After a Notice to Vacate is served upon a tenant, the landlord and tenant may engage in discussions to avoid a proceeding to evict and to settle the issues

between the parties. The agreement to enter into discussions will not affect the rights of the parties unless the parties reach an agreement to waive any of their rights.

2. Stay of Proceedings. Where the parties mutually agree in good faith to proceed with such discussions, and Judicial Eviction procedures have been initiated, the Court will stay such proceedings until it is notified by one or both parties that a hearing is required or that a settlement has been reached.

3. Settlement Options. In reaching an agreement, the parties may consider, but are not limited to the following options:

- A. the parties may employ the use of advocates or attorneys;
- B. the parties may employ the use of a mediator or conciliator;
- C. the parties may agree to options set forth in subsection \_\_\_\_;
- D. the parties may agree to dismiss the matter in exchange for an agreement that represents a fair and reasonable resolution at a fair value for use of the dwelling; or
- E. the parties may agree to stipulate to a judgment to be entered by the Court.

### **Judicial Eviction Procedures**

(q) Summons and Complaint. If, after the date set forth in the Notice to Vacate for the tenant to vacate the premises, the tenant has not vacated the premises, 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 tenant(s) 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 the Notice to Vacate and any required termination notices have been served in accordance with this code or other applicable law; and
- 6. a statement of the relief demanded, including any claim(s) for possession of the premises, damages, fees, costs, or other special relief.
- 7. If the landlord is an Indian Housing Entity, a statement that the Indian Housing Entity

has complied with all required regulatory processes prior to filing the eviction action.

(r) Action Upon Filing Complaint. When a complaint is filed in the Tribal Court, it shall be immediately presented to a Tribal Court Judge. This shall be on the date of filing, or, if no judge is present, on the first regular Court day after filing or when a judge may first be found. The judge shall review the complaint and shall, if it appears to be in compliance with [subsection \(q\)](#) and served as set forth in [subsection \(o\)](#), issue an order requiring the Defendant named in the complaint to appear before the Court on a certain date (Date for Appearance). The Date for Appearance shall be no less than three (3) calendar days after the date of the order in matters involving serious nuisance or ten (10) calendar days in all other cases. Upon setting of the Date for Appearance, the Court shall serve the Defendant, or require the Plaintiff to serve the Defendant, with the complaint and a summons to appear for the court date.

(s) Commencement of Proceedings.

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

2. The Court shall set a hearing date which is no more than fifteen (15) calendar days following the Date for Appearance, except when the hearing date would fall on a weekend or holiday, and in such a situation on the first regular Court day following that date.

3. A defendant may, for good cause shown, and upon the payment of a reasonable sum for the fair rental value of the premises between the date on which the complaint was filed and the date of hearing, obtain an extension of time, beyond the fifteen (15) day period. The Court may refuse to extend the date of hearing where the complaint is based upon nuisance or injuries provided in [§1-3-1\(C\)](#), and shall not extend the date of hearing where the complaint is based upon conduct which is alleged to constitute a serious danger to public health, safety, or peace.

4. 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 eviction case.

(t) 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.

2. The landlord has failed or refused to make repairs which are the landlord's 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.
3. There are monies due and owing to the tenant because the tenant has been required to make repairs which are the obligation of the landlord and the landlord has failed or refused to make them after a reasonable notice. 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 or she 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 standards.
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 the landlord a remedy.
6. The landlord is evicting the tenant for unlawful discriminatory reasons.
7. The landlord terminated the tenancy in retaliation for the tenant's attempt to secure his or her rights under this Code or to force the landlord to comply with the landlord's duties under this Code.
8. Any other material or relevant fact the tenant might present that may explain why an eviction is unjust and unfair.

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

(v) Evidence. Evidence in proceedings under this Code shall be under the provisions of the general tribal code of evidence.

(w) Judgment.

1. Within five (5) calendar days of the date of the hearing, the Court shall grant and enter judgment and the judgment shall grant all relief that the parties are entitled to as of the date of the judgment. The judgment may:

- A. order the immediate eviction of a tenant and delivery of the premises to the landlord;
  - B. grant actual damages as provided in the agreement of the parties or this Code, including interest;
  - C. order the parties to carry out an obligation required by law;
  - D. establish a payment plan for the tenant;
  - E. order rent payments out of Pueblo benefit payments or through garnishment;
  - F. establish a Power of Attorney in another person/agency to fulfill rights or obligations of either landlord or tenant;
  - G. remediate the action in part or in whole through appropriate recalculation of rent;
  - H. order the tenant to perform work for the landlord or the owner to pay off back rent due and/or damages;
  - I. order the payment of attorneys' fees and, where allowed by law or agreement, costs and expenses of litigation;
  - J. order the parties into negotiations as provided in this Code; or
  - K. grant any relief provided in this code or allowed in law or equity.
2. If a tenant fails to appear in person or in writing on or before the date of appearance, the Court shall enter judgment on behalf of the plaintiff following a hearing to determine whether relief should be granted and the kind of relief that should be granted.

(x) Form of Judgment. The judgment shall state the relief granted by the Court to any party, but need not state findings of fact or conclusions of law in support of the judgment. The judgment may state brief reasons for it. If a trial is held, the judge should, whenever possible, render a decision quickly after both parties have rested their case and award costs and restitution as appropriate.

(y) An eviction order may be executed by a duly authorized law enforcement officer or officer of the Court, appointed by the Court for such a purpose. To execute the order, the officer shall:

- 1. remove all evicted persons from the dwelling and verbally order them not to re-enter;
- 2. provide a copy of the eviction order to adult tenants and have at least one adult tenant

sign a form acknowledging receipt of the order;

3. post copies of the order of eviction on the doors or gates of the premises if there is not any adult tenant present at the time of execution and sign a form containing the officer's name, address of premises, date on which order was left at premises, and reason the order was not signed by a tenant [no one present, no adults present, dangerous condition present such as a vicious dog, etc.];
4. return the signed form describing service of the order to the Court; and
5. supervise the removal of the possessions of the evicted persons.

Any law enforcement officer shall, upon receipt of an order of the Court, execute the judgment or order made by it within five (5) calendar days of the date of the judgment or order and make a report to the Court on what was done to enforce it. This Section shall also apply to any judgment on behalf of a tenant obtained under the general tribal civil procedure code and/or tribal small claims procedure code. All other portions of the judgment shall be subject to execution in the manner otherwise provided under tribal law.

(z) Stay of Execution. If judgment for possession of the dwelling unit enters in favor of the landlord, the tenant may apply for a stay of execution of the judgment or order if within five (5) days of the judgment being rendered, the following is established:

1. Good and reasonable grounds affecting the well being of the party are stated; or
2. There would be no substantial prejudice or injury to the prevailing party during the period of the stay; or
3. Execution of the judgment could result in extreme hardship for the tenant(s); or

(aa) Appeals. Appeals under this Chapter shall be according to the general tribal appellate provisions.

(bb) Miscellaneous Complaints and Claims. Any miscellaneous complaint or claim including a complaint or claim by a tenant which does not fall within the procedures of this code may be made under the general tribal civil procedure code and/or tribal small claims procedure code.

(cc) Notice to Leave the Premises. Any notice to leave a premises, shall be by written order of the court, and shall be delivered to the tenant in the following manner:

1. Delivery shall be made by:
  - A. A law enforcement officer of the Tribe or an agency of the United States Government, or

- B. Any person authorized by the Tribal Court.
2. Delivery will be effective when it is:
    - A. Personally delivered to a tenant with a copy delivered by mail, or
    - B. Personally delivered to an adult living in the premises with a copy delivered by mail, or
    - C. Personally delivered to an adult agent or employee of the tenant with a copy delivered by mail.
  3. If the notice cannot be given by means of personal delivery, or tenant cannot be found, the notice may be delivered by means of:
    - A. certified mail, return receipt requested, at the last known address of the landlord or tenant; or
    - B. securely taping a copy of the notice to the main entry door of the premises in such a manner that it is not likely to blow away, and by posting a copy of the notice in some public place near the premises, including a tribal office, public store, or other commonly frequented place and by sending a copy first class mail, postage prepaid, addressed to the tenant at the premises.

(dd) Forcible Eviction.

1. Where the Court orders an eviction, and the defendant or any other occupant of the premises refuses to vacate voluntarily by the effective date of that Order, the defendant or other occupants may be forcibly removed from the premises by a tribal law enforcement officer. At the hearing where the eviction is ordered, the Court shall inform the defendant that if the tenant or other occupants do not vacate the premises voluntarily by the effective date, the tenant and other occupants will be subject to forcible eviction, and their property will be subject to storage, sale and disposal as set forth in subsection (3) below.
2. Following eviction, the Court may allow the landlord, the Pueblo, or the United States Government access to any property leased by either of them for purposes of preserving and securing it.
3. Following forcible eviction of the defendant and/or other occupants, the former occupant's personal property shall be stored by the 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 owner is authorized to sell the

property in order to recover these costs. The landlord shall not condition return of the former occupant's personal property on the payment of any costs or fees other than those of removal and storage of those personal possessions. Should the landlord attempt to condition return of personal possessions on payment of any other cost or fee, the landlord shall forfeit his right to the costs of removal and storage. Upon request by the former occupants, the landlord shall provide them 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 in a manner satisfactory to the owner. If the abandoned property is of Native American cultural, religious, or ceremonial significance, the landlord shall have a duty to locate a family member or the Tribe that it may belong to in order to return these items at the family or Tribe's cost.

(ee) No Self-Help Eviction. No landlord may compel a tenant to vacate any premises in a forceful fashion or way which causes a breach of the peace. All landlords shall give a notice to vacate and obtain a court order as provided in this Code.

(ff) Security Deposits.

1. Security Deposit Limits. A landlord may demand a security deposit of an amount equal to one-hundred dollars (\$100) or one month's periodic rent, whichever is greater, which may be in addition to the current month's rent. Additional security deposits may be allowed for special circumstances such as animals or pets or tenant history or prior damages.

2. Payment of Security Deposit at Termination of Tenancy. The person who is the landlord at the time a tenancy is terminated shall pay to the tenant or former tenant the amount of the security deposit that was deposited by the tenant with the person who was landlord at the time such security deposit was deposited less the value of any damages which any person, who was a landlord of such premises at any time during the tenancy of such tenant, has suffered as a result such tenant's failure to comply with such tenant's obligations. Damages shall not include normal wear and tear.

3. Action to Reclaim Security Deposit. Any tenant may bring a civil action in Tribal Court to reclaim any part of a security deposit which may be due.

## **J-23 Leasehold Mortgages**

### **General Provisions.**

(a) Purpose. The purpose of this Ordinance is to assist the Pueblo, the Pueblo of Pojoaque Housing Department ("PPHD"), and individual tribal members to obtain financing for the purchase, rehabilitation, and construction of residential housing and related infrastructure on Pueblo land, including but not limited to, conventional mortgage lending, lending under government loan guarantee programs, and under the loan acquisition programs of Fannie Mae,

a corporation organized and existing under the laws of the United States (“Fannie Mae”). The Ordinance seeks to achieve this purpose by providing legal procedures that will allow mortgaging of leasehold estates on tribal trust lands.

(b) Relation to Other Laws.

1. Applicable Law: Unless affected and displaced by this Subpart, principles of law and equity will apply and the general principles of law of other jurisdictions may be used as a guide to supplement this Subpart as determined by the Tribal Court.
2. Conflict of Laws: to the extent that any provisions in this Subpart conflict with any federal laws that apply to the subject matter of this Subpart, the federal law will control as determined by the Tribal Court.

(c) Definitions.

1. “Lease” means the residential ground lease or other agreement for use of Pueblo trust land on which a Leasehold Mortgage has or will be given.
2. “Leasehold Estate” means a leasehold estate established pursuant to a Lease between the Pueblo, as Lessor, and a Tribal organization, entity, member or other individual, as Tenant or Lessee; or between a Tribal organization, entity, or member, as Sublessor, and the Pueblo as Sublessee.
3. “Leasehold Mortgage” means the first-lien mortgage of a Leasehold Estate given to secure a mortgage loan made by a Mortgagee (e.g. – a bank).
4. “Leasehold Mortgage Foreclosure Proceeding” means a proceeding in Tribal Court:
  - A. to foreclose the interest of the Mortgagor(s) (i.e. the person or entity holding the mortgage from a lender), and each person or entity claiming through the Mortgagor(s), in a Leasehold Estate on which a Leasehold Mortgage has been made; and/or
  - B. to assign such Leasehold Estate to the Mortgagee or the Mortgagee’s successors and assigns.
5. “Lessor” means the Pueblo or the PPHD. The Pueblo is the beneficial or equitable owner of the land underlying a Leasehold Estate on which a Leasehold Mortgage has been given. The Lessor shall include the successor(s) or assign(s) of such Lessor.
6. “Lessee” means a Tenant or any person or Pueblo entity who holds a Lease from the Pueblo.

7. "Lien" means a charge imposed upon specific property, by which it is made a security for the performance of an act.
8. "Mortgagor" or "Borrower" means the Pueblo or any Pueblo member who has executed a Leasehold Mortgage, including any heirs(s), successor(s), executor(s), administrator(s), or assign(s) of such member, or the PPHD if it enters into a leasehold mortgage.
9. "Mortgagee" or "Lender" means the lender under any Leasehold Mortgage or any successors or assigns of any such lender, including HUD or Fannie Mae.
10. "Nuisance" means maintenance on the Leasehold Estate 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.
11. "Subordinate Lienholder" means the holder of any lien, including a mortgage, perfected subsequent to the recording of a Leasehold Mortgage under this Ordinance; provided, however, such terms shall not include the Tribe with respect to a claim for a Tribal leasehold tax.
12. "Tribal Court" means the Pueblo of Pojoaque Tribal Court.
13. "Tribal Recording Clerk" means the person designated by the Pueblo to perform recording functions required by this document or any deputy or designee of such person.
14. "Unlawful Detainer Action" is a suit brought before the Tribal Court to terminate a lessee's or sublessee's interest in a Leasehold Estate and/or to evict any person from occupancy of a Leasehold Estate.
15. "Waste" means spoil or destruction of land, buildings, landscaping, trees, or other improvements on the Leasehold Estate that results in substantial injury to the Lessor's interest in the Leasehold Estate.
16. "Writ of Restitution" is an order of the Tribal Court:
  - A. restoring an owner, Lessor, Mortgagee to possession of a Leasehold Estate subject to a Leasehold Mortgage; and
  - B. evicting a Lessee or other occupant from such property.

(d) Exclusivity. Notwithstanding any other provisions of the Pueblo of Pojoaque Law and Order Code, this Subpart shall provide the exclusive procedures for enforcement of loan agreements relating to Pueblo trust lands.

(e) Jurisdiction. The provisions of this Subpart shall apply to all persons, Pueblo entities, and property subject to the governing authority of the Pueblo as established by Pueblo laws, regulations, and resolutions including but not limited to the land within the exterior boundaries of the Pueblo, lands owned by, held in trust for, leased or used by the Pueblo, its housing entity, or any other entity of the Pueblo, and Indian Country of the Pueblo as may be defined from time to time by the laws of the Tribe or the United States. The Tribal Court shall have exclusive jurisdiction to enforce this Subpart.

### **Recording Leasehold Security Interests.**

(f) Priority. A Leasehold Mortgage recorded in accordance with the recording procedures set forth in this Ordinance shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim (except a lien or claim arising from a Tribal tax assessed against the Leasehold Estate subject to the Leasehold Mortgage).

(g) Recording.

1. Leases and Leasehold Mortgages shall be recorded at the offices of:

A. the Bureau of Indian Affairs Area Land Titles and Records Office; and

B. the Pueblo Realty Department.

2. Any individual entity, organization, or institution requiring that a notice of lien upon real property be filed in the office of the county clerk of the county in which the real property subject to a federal lien is situated shall be responsible for the filing the document with the county and paying the county filing fee.

3. The Pueblo Recording Clerk shall maintain a system for the recording of Leasehold Mortgages and such other documents as the Pueblo may designate by law or resolution, including, without limitation, the Lease.

4. The Tribal Recording Clerk shall endorse upon any Lease and Leasehold Mortgage or other document received for recording the following:

A. the date and time of receipt of the Lease and the Leasehold Mortgage or other document;

B. the filing number to be assigned by the Tribal Recording clerk, which shall be a unique number for each Lease and Leasehold Mortgage or other document received.

C. the name of the Tribal Recording Clerk receiving the Lease and Leasehold Mortgage or other documents.

Upon completion of the above endorsements, the Tribal Recording Clerk shall make true and correct copies of the Lease and Leasehold Mortgage or other security instrument and shall certify each copy as follows:

PUEBLO OF POJOAQUE

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

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

The Pueblo Recording Clerk shall maintain such copies in the records of the recording system and shall return the original Lease and Leasehold Mortgage or other document to the person or entity that presented the same for recording.

5. The Tribal Recording Clerk shall also maintain a log of each Lease and Leasehold Mortgage or other document recorded in which there shall be entered the following:

- A. the name of the Mortgagor(s) of each Leasehold Mortgage, identified as such;
- B. the name of the Mortgagee(s) of each Leasehold Mortgage, identified as such;
- C. the name(s) of the grantor(s), grantee(s) or other designation of each party named in any other documents including the Lease;
- D. the date and time receipt;
- E. the filing numbers assigned by the Tribal Recording Clerk; and
- F. the name of the Tribal Recording Clerk receiving the Lease, Leasehold Mortgage or other document.

6. Certified copies of mortgage documents may be available for inspection and copying for a fee and will be recorded with the BIA in addition to any Tribal recording provisions.

## **Foreclosure of Leasehold Interests**

### **(h) Leasehold Mortgage Foreclosure Proceedings.**

#### **1. Default.**

A. A borrower/mortgagor shall be considered in default when the borrower/mortgagor is thirty (30) days past due on mortgage payments.

B. When a borrower/mortgagor is thirty days past due on a mortgage and before any foreclosure action or activity is initiated, the lender/mortgagee shall complete the following:

- i. make a reasonable effort to arrange a face-to-face interview with the borrower/mortgagor. This shall include at least one trip to meet the borrower/mortgagor at the mortgaged property.
- ii. the lender/mortgagor shall document that it has made at least one phone call to the borrower/mortgagor for the purpose of trying to arrange a face-to-face interview.

C. Lender/mortgagee may appoint an agent to perform the services of arranging and conducting the face-to-face interview specified in this action.

D. When the borrower/mortgagor is past due on three installment payments and at least ten (10) days before initiating a foreclosure action in Tribal Court, the Lender shall advise the Borrower in writing by mail or by posting prominently on the unit, with a copy provided to the PPHD, as follows:

- i. advise the borrower/mortgagor if information regarding the loan and default delinquency will be given to credit bureaus;
- ii. advise the borrower/mortgagor of homeownership counseling opportunities or programs available through the Lender or otherwise; and
- iii. advise the borrower/mortgagor of other available assistance regarding the mortgage default.
- iv. In addition to the preceding notification requirements, the lender/mortgagee shall complete the following additional notice requirements:
  - a. If the Leasehold Mortgage remains past due for three installment payments, the lender/mortgagee may ask the applicable governmental

agency to accept assignment of the Leasehold Mortgage if this is an option of the governmental program;

b. Notify the borrower/mortgagor of the qualifications for forbearance relief from the lender/mortgagee, if any, and that forbearance relief may be available from the government; and

c. Provide the borrower/mortgagor with names and addresses of government officials to whom further communications may be addressed, if any.

E. If a borrower/mortgagor is past due on three or more installment payments and the lender/mortgagee has complied with the procedures in this section, the lender/mortgagee may commence foreclosure proceedings in Tribal Court as set forth in the following section (g)(2).

2. Foreclosure. Upon the default of the Mortgagor(s), and upon expiration of any applicable cure periods, under a Leasehold Mortgage, the Mortgagee or its successors and assigns, may commence a Leasehold Mortgage foreclosure proceeding in the Tribal Court as follows:

A. By filing a verified complaint:

- i. citing authority for the Tribal Court jurisdiction;
- ii. naming the Mortgagor(s) and each record owner claiming through the Mortgagor(s) subsequent to the recording of the Leasehold Mortgage, including each Subordinate Lien holder (except the Pueblo with respect to a claim for a Tribal tax on the Leasehold Estate subject to the Leasehold Mortgage), as a defendant;
- iii. describing the Leasehold Estate subject to the Leasehold Mortgage;
- iv. stating the facts concerning:
  - a. the execution of the Lease and the Leasehold Mortgage;
  - b. the recording of the Leasehold Mortgage; and
  - c. the alleged default(s) of the Mortgagor(s) (and any other facts as may be necessary to constitute a cause of action);
- v. having appended as exhibits true and correct copies of each promissory note, Lease, Leasehold Mortgage, and, if applicable, assignment thereof relating to such Leasehold Estate;

- vi. including an allegation that all relevant requirements and conditions prescribed by any applicable federal loan guarantee program have been complied with by the Mortgagee; and
- vii. otherwise satisfying the requirements of the Tribal Court.

B. By obtaining a summons, issued as in other cases, requiring the Mortgagor(s) and each other person or entity claiming through the Mortgagor, as defendants to appear for a trial upon the complaint on a date and time specified in the summons with the Tribal Court.

(i) Service of Process and Procedures. The Pueblo laws governing service of process and all other matters relating to the conduct of Tribal Court proceedings shall apply to any Leasehold Mortgage Foreclosure Proceeding pursuant to this Ordinance.

(j) Cure of Default by Subordinate Lienholder. Prior to the entry of a judgment of foreclosure of a Leasehold Mortgage pursuant to this Ordinance, any Mortgagor or any Subordinate Lienholder may cure the default(s) under the Leasehold Mortgage. Any Subordinate Lienholder who has cured a default shall thereafter have included in its lien the amount of all payments made by such Subordinate Lienholder to cure such default(s), plus interest on such amounts at the rate stated in the promissory note evidencing the subordinate lien.

(k) Judgment and Remedies. If the alleged default(s) have not been cured, and if the Tribal Court should find for the Mortgagee, the Tribal Court shall enter judgment:

1. Foreclosing the Leasehold Estate of the Mortgagor(s)/Borrower(s) and each other defendant named in the complaint upon whom proper and timely service has been made, including each such Subordinate Lienholder.
2. Assigning such Leasehold Estate to the Mortgagee/Lender, subject to the restrictions imposed under paragraph (k) of this Subpart.
3. The plaintiff may, in the complaint, demand judgment against every party who is personally liable for the debt secured by the mortgage or any deficiency that may remain due the plaintiff after transfer of the mortgaged premises.
4. Such other relief to which a party may be entitled in law or equity.

(l) Restrictions on the Assignability of Leasehold Estates. In the event the court issues a judgment of foreclosure under this Subpart, the following restrictions apply:

1. the Mortgagee/Lender shall give the Pueblo the right of first refusal on any acceptable offer to purchase the Lease or Leasehold Mortgage that is subsequently obtained by the Mortgagee.

2. the Mortgagee/Lender may transfer, sell or assign the Lease and/or Leasehold Mortgage only to a Pueblo member, the Pueblo, or the PPHD.

(m) Certified Mailing to Pueblo and Lessor. With respect to any foreclosure proceedings on a Lease or Leasehold Mortgage where the Tribe or the Lessor(s) is not named as a defendant, a copy of the summons and complaint shall be mailed to the Tribe and to the Lessor(s) by certified mail, return receipt requested, within five (5) days after the issuance of the summons.

(n) Intervention. The Tribe or Lessor may, by Notice of Intervention filed with the Court and served on all parties, intervene in any proceeding under this Chapter.

### **Leasehold Mortgage Eviction Procedures**

(o) Unlawful Detainer. A Lessee or other occupier of a Leasehold Estate subject to a Leasehold Mortgage shall be guilty of unlawful detainer under any of the following situations.

1. Regardless of whether notice has been given, a Lessee or other occupant is guilty of unlawful detainer if he or she continues to occupy the Leasehold Estate:

- A. after the expiration of the Lease term;
- B. 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 under the Lease or title to such property;
- C. after the Lessor has terminated such person's tenancy pursuant to procedures that provide such person a hearing before such Lessor; or
- D. after such person's Leasehold Estate has been foreclosed in a Leasehold Mortgage Foreclosure Proceeding in the Tribal Court.

2. After receiving 30 days' notice, the Lessee or occupier who remains in possession of a Leasehold Estate contrary to the terms of the notice is guilty of an unlawful detainer as follows:

- A. when such person has received notice:
  - i. that he or she is in default in the payment of rent; and
  - ii. requiring him or her to either pay such rent or surrender the possession of the occupied property and such person has not either surrendered possession of such property or paid the rent within the 30-day period provided in such notice;

B. when such person shall continue to fail to keep or perform any condition or covenant of the 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 or permit 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.

(p) Procedures for Service of Notice. Notices required or authorized in the Unlawful Detainer provisions of this Subpart shall be given in accordance with established Tribal Court rules and procedures. In the absence of such rules and procedures, notices shall be given in writing by either:

1. delivering a copy personally to the Lessee or occupier or to any adult members of his or her family residing on the Leasehold Estate; or
2. posting said notice in a conspicuous place near the entrance to the Leasehold Estate, and by sending an additional copy to the Lessee or occupier by certified mail, return receipt requested, properly addressed, postage prepaid.

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.

(q) Complaint and Summons. The Lessor or the Mortgagee shall commence an action for unlawful detainer by filing with the Tribal Court, in writing, the following documents:

1. A complaint, signed by the Lessor or the Mortgagee (or its successors or assigns), or an agent or attorney on their behalf including the following:
  - A. citing authority for the Tribal Court jurisdiction;
  - B. naming the Mortgagor(s) and each record owner claiming through the Mortgagor(s) subsequent to the recording of the Leasehold Mortgage, including each Subordinate Lien holder (except the Pueblo with respect to a claim for a Tribal tax on the Leasehold Estate subject to the Leasehold Mortgage), as a defendant;
  - C. describing the Leasehold Estate subject to the Leasehold Mortgage;
  - D. stating the facts concerning:
    - i. the execution of the Lease and the Leasehold Mortgage;
    - ii. the recording of the Leasehold Mortgage; and

iii. the alleged default(s) of the Mortgagor(s) (and any other facts as may be necessary to constitute a cause of action);

E. having appended as exhibits true and correct copies of each promissory note, Lease, Leasehold Mortgage, and, if applicable, assignment thereof relating to such Leasehold Estate;

F. including an allegation that all relevant requirements and conditions prescribed by any applicable federal loan guarantee program have been complied with by the Mortgagee; and

G. otherwise satisfying the requirements of the Tribal Court.

2. A copy of the summons, issued in accordance with established Tribal Court rules and procedures. 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 thirty (30) 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. The Civil Procedure rules of this Code shall apply to all proceedings filed under this Subpart.

(r) Writ of Restitution and Judgment. The Tribal Court shall have the authority to issue a Writ of Restitution and to enter a judgment for the following:

1. back rent, unpaid utilities, and any charges due the Pueblo as Lessor or Sublessor under any lease or occupancy agreement;
2. any and all amounts secured by the Leasehold Mortgage that are due the Mortgagee;
3. damages caused by the defendants to the property other than ordinary wear and tear; and
4. other relief to which a party may be entitled in law or equity.

(s) 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 defendants and their property from the Leasehold Estate. A Writ of Restitution issued under this Ordinance shall be enforced no later than 60 days after the date of service of the summons and complaint.

### **Waiver of Sovereign Immunity**

(t) Limited Waiver of Sovereign Immunity. In the case where the Pueblo or a Pueblo entity is the Mortgagor, pursuant to this Code at Subpart J-3, the Tribal Council may authorize a limited waiver of sovereign immunity that extends only to:

1. a complaint filed in Tribal Court pursuant to the provisions of this Subpart by a Mortgagee;
2. the terms and provisions of a Lease or Mortgage entered into by the Pueblo;
3. the term of that mortgage;
4. for the only the amount owed by the Pueblo, but no additional amounts, damages, costs, or fees;
5. only for the claims provided in this Subpart; and
6. for no other purpose.

(u) The Tribal Court shall enforce any waiver of sovereign immunity given by the Tribal Council in connection with any Lease, Mortgage, or other agreement enforceable under this Subpart or any agreement entered into by the Tribe to implement a federal government program facilitating mortgage lending on Pueblo land.

(v) Leins. Nothing in this ordinance shall be interpreted to create any lien other than a lien on a real estate lease pursuant to a residential mortgage instrument. This ordinance does not create or establish a right to a mechanics lien, abstractors lien, lien on personal property, or any other type of lien than that described in the provisions of this Subpart, nor shall it be construed to create a lien or interest in property not otherwise existing under Pueblo of Pojoaque law.

This ordinance is not intended to affect any other lien provided for by the Pueblo of Pojoaque Law and Order Code or a consensual lien now or hereafter recognized under Pueblo of Pojoaque law or the ability of the Pueblo of Pojoaque government or courts to impose equitable or constructive liens. Nonconsensual common law liens against real property shall not be recognized or be enforceable.

(w) Release of Mortgage.

1. When any debt or evidence of debt secured by a mortgage or deed of trust upon any Pueblo land has been fully satisfied, it is the duty of the mortgagee, trustee or the assignee of the debt or evidence of debt, as the case may be, to cause the full satisfaction of it to be entered of record in the Bureau of Indian Affairs Area Land Titles and Records Office and the Pueblo Realty Department where the mortgage or deed of trust is recorded.
2. If, at any time the obligation secured by the mortgage or deed of trust is fulfilled, and the balance is zero, the mortgagee or beneficiary shall cause the mortgage or deed of trust

to be released of record upon written demand of the mortgagor, trustor or the successor or assignee thereof. In the event of the death or incompetence of the mortgagor or trustor, the heirs, personal representative, conservator or guardian of the mortgagor or trustor as appropriate may make the demand for release described in this subsection.

3. Failure to release; penalty; civil liability. Any person who shall be guilty of violating this section, may be subject to a civil penalty imposed by the Tribal Court of not less than ten (\$10.00) nor more than twenty-five dollars (\$25.00), and shall be liable in a civil action to the owner of such real estate for all costs of clearing the title to said property including a reasonable attorney's fee.

(x) Appeals. Appeals under this Subpart shall be handled in accordance with the general Pueblo appellate provisions.

History note – This Ordinance supersedes the former Pueblo of Pojoaque Law and Order Code, Chapter 10, “Leasehold Mortgaging of Tribal Trust Lands”, adopted in 1998, and any amendments.