

TITLE 24. HOUSING CUKOVLKVT

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Table of Prior Statutes

| Former Section | New Sections | Former Section | New Sections |
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| 1-101 | 1-102, 2-102 | 1-305 | 2-107 |
| 1-102 | 1-102 | 1-401 | none |
| 1-103 | 1-102 | 1-402 | none |
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| 1-201 | none | 1-404 | none |
| 1-202 | none | 1-405 | none |
| 1-203 | 2-102 | 1-406 | none |
| 1-204 | none | 1-407 | none |
| 1-205 | none | 1-408 | none |
| 1-206 | none | 1-501 | none |
| 1-207 | none | 1-502 | 4-101 |
| 1-208 | none | 1-503 | none |
| 1-301 | none | 1-504 | none |
| 1-302 | 4-105 | 1-505 | none |
| 1-303 | 2-101, 2-102, 2-105, 2-108, 3-101, 3-102, 3-103, 3-104 | 1-506 | none |
| 1-304 | none | 1-507 | none |
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Historical and Statutory Notes

Chapters 1 to 4 of Title 24 were repealed and replaced with new Chapters by NCA 04-055, § 3, on April 15, 2004. Chapter 3 was subsequently repealed by NCA 06-092, § 1, on May 4, 2006.

United States Code Annotated

Native American Housing Assistance and Self-Determination Act, see 25 U.S.C.A. § 3201 et seq.

CHAPTER 1. GENERAL PROVISIONS

Section

- 1-101. Short title.
- 1-102. Purpose.
- 1-103. Definitions.
- 1-104. Applicability.

§ 1-101. Short title

This act may be cited as the Muscogee (Creek) Nation Housing Act of 2004.
[Added by NCA 04-055, § 1, eff. April 15, 2004.]

Title 24, § 1-101

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Historical and Statutory Notes

Former sections: NCA 92-29, § 100 and repealed by NCA 04-055, § 3.
Former § 1-101, which established the Creek Nation Indian Housing Authority, was added by

Library References

Indians ⇄227.
Westlaw Topic No. 209.
C.J.S. Indians § 76.

§ 1-102. Purpose

The purpose of this Act is to establish a Housing Division in order to remedy unsafe and unsanitary housing conditions that are injurious to the public health, safety and morals; alleviate the acute shortage of decent, safe and sanitary dwelling for low income families; and provide employment opportunities through the construction, reconstruction, improvement, extension, alteration or repair and operation of dwellings for low income families.

[Added by NCA 04-055, § 1, eff. April 15, 2004.]

Historical and Statutory Notes

Derivation: Title 24, § 1-101, added by NCA 92-29, § 100, and repealed by NCA 04-055, § 3. Title 24, § 1-102, added by NCA 92-29, §§ 101 to 106, and repealed by NCA 04-055, § 3. Title 24, § 1-103, added by NCA 92-29, §§ 201, and repealed by 04-055, § 3.

Former sections: Former § 1-102, which declared the need for a Tribal housing authority, was added by NCA 92-29, §§ 101 to 106 and repealed by NCA 04-055, § 3.

Library References

Indians ⇄227.
Westlaw Topic No. 209.
C.J.S. Indians § 76.

§ 1-103. Definitions

The following terms, wherever used or referred to in this Title, shall have the following respective meanings, unless a different meaning clearly appears from the context:

- A. "Homebuyer" means a person(s) who has executed a housing lease-purchase agreement, and who has not yet achieved home ownership.
- B. "Housing Division" means the Housing Division established as part of the Muscogee (Creek) Nation Executive Department.
- C. "HUD" means the United States Department of Housing and Urban Development.
- D. "IHBG" means the Indian Housing Block Grant, as that term is used in NAHASDA, 25 U.S.C. § 4101 et seq., and the implementing regulations.
- E. "IHP" means the Indian Housing Plan, including any amendments thereto, approved by duly adopted law of the Nation.
- F. "NAHASDA" means the Native American Housing Assistance and Self Determination Act of 1996, and any amendments thereto, codified at 25 U.S.C. § 4101 et seq.

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G. "Nation" means the Muscogee (Creek) Nation.

H. "National Council" means the National Council of the Muscogee (Creek) Nation.

I. "Principal Chief" means the Principal Chief of the Muscogee (Creek) Nation.

J. "Program income" means all income, funds and property earned, acquired or realized from the disbursement of grant amounts by the Nation and/or the Housing Authority as more specifically defined in applicable federal regulations.

K. "Qualified account" means an account at a banking or other financial institution that has been approved by HUD for holding IHBG funds and Program Income. HUD approval of a qualified account may be evidenced by the execution of an account agreement by an authorized representative of HUD.

L. "Recipient" means a "recipient" as that term is defined in NAHASDA, and for the purposes of this Title shall in all cases mean the Muscogee (Creek) Nation.

M. "Related housing activities" means those administrative and planning activities authorized under any approved IHP as described in applicable federal regulations.

[Added by NCA 04-055, § 1, eff. April 15, 2004; amended by NCA 06-092, § 2, approved May 4, 2006.]

Historical and Statutory Notes

Derivation: Authority, was added by NCA 92-29, § 201 and Title 24, § 1-104, added by NCA 92-29, § 301, and repealed by NCA 04-055, § 3. repealed by NCA 04-055, § 3.

Former sections: Former § 1-103, which stated the purposes for organizing the Creek Nation Indian Housing

§ 1-104. Applicability

This Title shall apply to all of the Nation's affordable housing activities and related housing activities conducted from and after April 1, 2004, subject to the requirements of Section 203 of this Title, including (1) the investment, use and expenditure of all Indian Housing Block Grant funds and all program income earned thereon and (2) the maintenance of title, ownership, use or disposition of any property acquired with such funds or income. All such activities shall be conducted in accordance with and subject to the provisions of this Title.

[Added by NCA 04-055, § 1, eff. April 15, 2004; amended by NCA 06-092, § 1, approved May 4, 2006.]

Historical and Statutory Notes

Former sections: Former § 1-104, which provided definitions, was added by NCA 92-29, § 301 and repealed by NCA 04-055, § 3.

Title 24, § 1-104

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Library References

Indians ↻227.
Westlaw Topic No. 209.
C.J.S. Indians § 76.

CHAPTER 2. MUSCOGEE (CREEK) NATION AFFORDABLE HOUSING ACTIVITIES

Section

- 2-101. Recipient of IHBG funds.
- 2-102. Housing Division.
- 2-103. Transfer of functions, personnel and funds from Housing Authority; termination of Memorandum of Agreement.
- 2-104. Environmental functions.
- 2-105. Planning functions.
- 2-106. Annual assessment and report; HUD review activities.
- 2-107. Property.
- 2-108. Termination of homebuyer and tenant agreements; jurisdiction.

§ 2-101. Recipient of IHBG funds

The Nation shall be the exclusive recipient of all IHBG monies made available to fund affordable housing activities or related administrative and planning activities under an IHP. The Principal Chief is hereby authorized to prepare, execute and deliver any and all documents, forms, account agreements or other instruments that may be required to establish qualified accounts and to otherwise enable the Nation to receive, invest, transfer and expend IHBG funds and program income in accordance with NAHASDA, other applicable federal laws and regulations, the provisions of this Title and other applicable law of the Muscogee (Creek) Nation.

[Added by NCA 04-055, § 1, eff. April 15, 2004.]

Historical and Statutory Notes

Derivation:

Title 24, § 2-101, added by NCA 97-100, § 103; amended by NCA 98-70, § 103; NCA 02-040, § 4; and repealed by NCA 04-055, § 3.

HUD block grants, was added by NCA 97-100, § 103; amended NCA 98-70, § 103; NCA 02-040, § 4; and repealed by NCA 04-055, § 3.

Former sections:

Former § 2-101, which authorized the Creek Nation Indian Housing Authority to receive

Library References

Indians ☞ 139, 227.
Westlaw Topic No. 209.
C.J.S. Indians §§ 54 to 55, 76.

§ 2-102. Housing Division

A. Establishment. The Housing Division is hereby established to administer, operate and perform all affordable housing activities and related housing activities, as a governmental agency of the Nation for the benefit of the Nation, its citizens and other eligible Indian people to be served under the Nation's IHPs, except for the following: (1) monitoring functions assigned to the NAHASDA Grants Compliance Officer pursuant to NCA 02-009; and (2) conduct and approval of environmental studies, reviews, reports and certifications;

B. Deputy Director. The Housing Division shall be administered by a Deputy Director, who shall supervise, direct and monitor the day-to-day work

and activities of the Housing Division's employees, contractors or other persons or entities engaged by the Housing Division to perform affordable housing activities under any IHP. The Deputy Director shall be appointed by the Principal Chief and confirmed by the National Council by duly enacted Tribal Resolution. The Deputy Director shall report directly to the Executive Director.

C. Operating Policies and Procedures. The Housing Division shall adopt housing program operating policies and housing program admissions policies, which shall not be effective until approved by the Principal Chief and the National Council; provided that the Housing Division shall utilize housing program operating policies and housing program admissions policies that are in force and utilized by the Housing Authority as of April 1, 2003, until such time as it develops replacement policies and obtains approval of such policies by the Principal Chief and the National Council; provided further that nothing herein authorizes the use of any policy that is inconsistent with the provisions of this Title.

D. Signatory Authority. The Principal Chief and any person(s) designated by the Principal Chief in writing shall have the authority to approve contracts dealing with the day-to-day operations of the Division of Housing and for goods and services of the Division of Housing. The Principal Chief shall delegate said signatory authority in writing and provide a copy to the Tribal Affairs Committee and the Controller. All contracts with the exception of real property acquisitions which are subject to CFR 49 Part 24 must be procured in accordance with the Muscogee (Creek) Nation Procurement Policies and Procedures for the Expenditure of HUD Funding. A contract for day-to-day operations or goods and services in excess of one hundred fifty thousand dollars (\$150,000.00) must be approved in writing by the Principal Chief and by Tribal Resolution of the National Council. Provided that, only the Principal Chief is authorized to execute a contract wherein a limited waiver of the Nation's sovereign immunity is contained in said document, provided further that said waiver has been specifically approved by the National Council under separate legislation.

For purposes of this subsection, goods and services means tangible or moveable personal property other than money; e.g., office equipment and supplies. Goods and services shall also be defined to mean all things, including specially manufactured goods, that are moveable at the time of identification to a contract for sale and future goods. The term does not include money in which the price is to be paid, the subject matter of foreign exchange transactions, documents, letters of credit, letter-of-credit rights, instruments, investments property, accounts, chattel paper, deposit accounts or general intangibles.

[Added by NCA 04-055, § 1, eff. April 15, 2004; amended by NCA 05-030, § 1, eff. March 8, 2005; NCA 06-092, § 1, approved May 4, 2006; NCA 06-204, § 1, eff. Oct. 9, 2006.]

Historical and Statutory Notes

Derivation: Title 24, § 1-101, added by NCA 92-29, § 100, and repealed by NCA 04-055, § 3. Title 24, § 1-203, added by NCA 92-29, § 404, and repealed by NCA 04-055, § 3. Title 24, § 1-303, added by NCA 92-29, § 503; amended by NCA 01-194, § 3; and repealed by NCA 04-055, § 3.

Library References

Indians ↻216, 227.
Westlaw Topic No. 209.
C.J.S. Indians §§ 59, 76.

§ 2-103. Transfer of functions, personnel and funds from Housing Authority; termination of Memorandum of Agreement

A. Transfer of functions. All functions performed by the Housing Authority pursuant to the Memorandum of Agreement approved by National Council enactment of NCA 98-121, shall be transferred to the Housing Division in accordance with the requirements of this section, except those functions and activities described in Section 302 of this Title.

B. Hiring preference for Housing Authority Personnel. The Deputy Director shall determine the personnel needs of the Housing Division. A hiring preference for Housing Division positions shall be given to all qualified applicants who were employees of the Housing Authority as of April 1, 2004. In the event that a person subject to this hiring preference is hired as an employee of the Housing Division, the Controller is authorized to take any action that is necessary to ensure that said person's benefits, including accrued annual leave, accrued sick leave, insurance and retirement benefits, remain intact to the extent allowed by the Nation's benefit carriers; provided that the Controller is not authorized to expend or obligate funds related to transfer of employee benefits unless such funds were expressly appropriated or obligated for such purposes as of April 1, 2004.

C. Transfer of funds, securities and program income. No later than April 1, 2004, the Housing Authority shall transfer all IHBG funds, securities and program income held in Housing Authority accounts, to one or more qualified accounts held by the Nation in accordance with the instructions of the Nation's Controller. The Housing Authority shall prepare, execute and deliver any and all documents, forms, account agreements or other instruments that may be required to complete the transfer.

D. Other actions related to transfer of Housing Authority functions. The Principal Chief is authorized to execute leases and lease assignments of Housing Authority office sites, equipment leases, equipment maintenance agreements, and such other documents necessary for the transfer to the Housing Division of the functions of the Housing Authority exercised under the Memorandum of Agreement between the Muscogee (Creek) Nation and the Housing Authority approved by National Council enactment of NCA 98-121.

E. Memorandum of agreement effective until termination. Notwithstanding any other provision in this Title, the Memorandum of Agreement between the Muscogee (Creek) Nation and the Housing Authority approved by National Council enactment of NCA 98-121 shall remain in full force and effect until the Principal Chief issues written notice of termination stating that the transfer of

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the Housing Authority's functions has been made in a manner sufficient to allow the Housing Division's performance of affordable housing activities and related housing activities.

[Added by NCA 04–055, § 1, eff. April 15, 2004.]

Historical and Statutory Notes

Derivation: Title 24, § 1–303, added by NCA 92–29, § 503; amended by NCA 01–194, § 3; and repealed by NCA 04–055, § 3. Title 24, § 1–509, added by NCA 92–29, §§ 901 to 904, and repealed by NCA 04–055, § 3.

Library References

Indians ☞227.
Westlaw Topic No. 209.
C.J.S. Indians § 76.

§ 2–104. Environmental functions

The Housing Division shall utilize the services of the Muscogee (Creek) Nation Department of Environmental Services established pursuant to NCA 98–132 for the performance of necessary environmental studies and reviews and to prepare reports and certifications for its programs, subject to approval and execution by the Administrator of that Department.

[Added by NCA 04–055, § 1, eff. April 15, 2004.]

Library References

Environmental Law ☞578.
Indians ☞227.
Westlaw Topic Nos. 149E, 209.
C.J.S. Health and Environment §§ 106, 116.
C.J.S. Indians § 76.

§ 2–105. Planning functions

A. Indian Housing Plans. The Housing Division shall be responsible for developing and preparing Indian Housing Plans in accordance with the provisions of NAHASDA and NAHASDA regulations. The Housing Division Director shall timely submit a proposed IHP to the Principal Chief and the Speaker of the National Council no later than May 1 of each year so as to allow sufficient time for review and revision by the Principal Chief, and subsequent approval by the National Council by Tribal Resolution. The Housing Division Director shall timely submit the approved IHP to HUD, in order that the Nation may receive its annual allocation of IHBG funding. The IHP shall be utilized by the Housing Division as its official budget, description of work, and schedule for the completion and monitoring of affordable housing activities thereunder. Any amendment of the IHP shall be subject to National Council approval by Tribal Resolution.

B. Other housing related services. Subject to the availability of funds and appropriations by the National Council, developing or assisting in the development and coordination of plans for other housing related service programs conducted by the Muscogee (Creek) Nation.

[Added by NCA 04–055, § 1, eff. April 15, 2004.]

Historical and Statutory Notes

Derivation:

Title 24, § 1-303, added by NCA 92-29, § 503; amended by NCA 01-194, § 3; and repealed by NCA 04-055, § 3.

Library References

Indians ☞227.
Westlaw Topic No. 209.
C.J.S. Indians § 76.

§ 2-106. Annual assessment and report; HUD review activities

The Housing Division shall timely prepare and submit to HUD, the Principal Chief and the National Council an annual compliance assessment and an Annual Performance Report covering the assessment of program progress and goal attainment under applicable IHPs, including an evaluation of the Housing Division's and the Housing Authority's performance in light of performance objectives, measurements or standards. The Annual Performance Report shall be made available to the Principal Chief and the National Council no later than 60 days after the end of the program year as required by HUD regulations. The Housing Division or the Principal Chief shall notify the National Council in writing of the status of any HUD review activities or actions.

[Added by NCA 04-055, § 1, eff. April 15, 2004; amended by NCA 06-204, § 2, eff. Oct. 9, 2006.]

Library References

Indians ☞227.
Westlaw Topic No. 209.
C.J.S. Indians § 76.

§ 2-107. Property

A. Personal property. Personal property acquired with IHBG funds, program and non-program income shall remain the exclusive property of the Nation.

B. Use and disposal of property. Real property consisting of houses and land purchased by the Division of Housing for housing-related activities allowed by NAHASDA shall remain the property of the Nation until such time of conveyance to the home buyer.

C. Exemption from Nation's taxes. All property owned by Muscogee (Creek) Nation for housing purposes is declared to be held for public and governmental purposes and such property shall be exempt from all taxes and special assessments of the Muscogee (Creek) Nation.

[Added by NCA 04-055, § 1, eff. April 15, 2004; amended by NCA 06-092, §§ 1 and 2, approved May 4, 2006; NCA 06-204, § 3, eff. Oct. 9, 2006.]

Historical and Statutory Notes

Derivation:

Title 24, § 1-305, added by NCA 92-29, § 505; and repealed by NCA 04-055, § 3. Title 24, § 1-508, added by NCA 92-29, §§ 801, 802, and repealed by NCA 04-055, § 3.

Library References

Indians ☞141(1), 225, 227.
Westlaw Topic No. 209.
C.J.S. Indians §§ 36, 76, 140 to 149.

§ 2-108. Termination of homebuyer and tenant agreements; jurisdiction

The Housing Division shall have the authority to terminate any lease or rental agreement or lease purchase agreement when the tenant or homebuyer has violated the terms of such agreement, or failed to meet any of its obligations thereunder, or when such termination is otherwise authorized by the provisions of such agreement. The Housing Division is authorized to bring action for eviction against such tenant or homebuyer or for any other dispute resolution arising from such agreements in the Muscogee (Creek) Nation District Court, which shall have jurisdiction over such actions.

[Added by NCA 04-055, § 1, eff. April 15, 2004.]

Historical and Statutory Notes

Derivation:

Title 24, § 1-303, added by NCA 92-29, § 503; amended by NCA 01-194, § 3; and repealed by NCA 04-055, § 3.

Library References

Indians ☞176, 227.
Westlaw Topic No. 209.
C.J.S. Indians §§ 76, 109.

CHAPTER 3. ADDITIONAL DIVISION OF HOUSING FUNCTIONS

Section

- 3-101. Title to property.
- 3-102. Property transactions.
- 3-103. Conveyances to program participants.
- 3-104. Local cooperation agreements.
- 3-105. Inventory.

Historical and Statutory Notes

Former Chapters:

Former Chapter 3, which created the Housing Rehabilitation Program, was added by NCA 81-79, § 101, eff. Aug. 31, 1981; and repealed by NCA 04-055, § 2, eff. April 15, 2004. A

subsequent Chapter 3, which stated a memorandum of agreement with the Housing Authority of the Creek Nation of Oklahoma, was added by NCA 04-055, § 1, eff. April 15, 2004; and repealed by NCA-092, § 2, eff. May 4, 2006.

§ 3-101. Title to property

The Division of Housing Deputy Director is authorized to purchase real property, including but not limited to land, buildings and houses, on behalf of the Muscogee (Creek) Nation for NAHASDA activities and other eligible activities pursuant to NAHASDA. The Division of Housing Deputy director is hereby authorized to execute all documents necessary for the purchase of real property; provided that said documents have been reviewed by legal counsel for the Division of Housing or the Attorney General's Office, if said property will be placed into trust, prior to his execution and provided further that said documents do not contain a waiver of the Nation's sovereign immunity. If the documents reference the laws of the State of Oklahoma or attempt to waive the sovereign immunity of the Nation in language other than the language authorized in § 4-105 of this Title, then said documents must be approved by the National Council by way of Tribal Resolution. The title to all real property acquisitions shall be placed in the name of the Nation, subject to all requirements in this section.

[Added by NCA 06-204, § 4, eff. Oct. 9, 2006.]

Historical and Statutory Notes

Derivation:

Title 24, § 1-303, added by NCA 92-29, § 503; amended by NCA 01-194, § 3; and repealed by NCA 04-055, § 3.

Former sections:

Former § 3-101, which approved the Guidelines for the Muscogee (Creek) Nation Housing

Rehabilitation Program, was added by NCA 81-79, § 101 and repealed by NCA 04-055, § 3. A subsequent § 3-101, which described the status and composition of the Housing Authority, was added by NCA 04-055, § 1 and repealed by NCA 06-092, § 2.

Library References

Indians ⇄ 172, 227.
Westlaw Topic No. 209.

C.J.S. Indians §§ 37 to 38, 76, 96 to 97, 101 to 108, 110 to 111, 128.

§ 3-102. Property transactions

The Division of Housing Deputy Director is authorized to lease, rent, enter into lease purchase agreements, enter into lease with the option to purchase

agreements, exchange, transfer, assign real property, release liens and mortgages and perform other necessary transactions related to real property. However, the Division of Housing Deputy Director is solely authorized to purchase and sell property and accept donated property.

[Added by NCA 06–204, § 4, eff. Oct. 9, 2006.]

Historical and Statutory Notes

Derivation:

Title 24, § 1–303, added by NCA 92–29, § 503; amended by NCA 01–194, § 3; and repealed by NCA 04–055, § 3.

Former sections:

Former § 3–102, which required that amendments of the Guidelines for the Muscogee

(Creek) Nation Housing Rehabilitation Program be made by a law of the Muscogee Nation, was added by NCA 81–79, § 102 and repealed by NCA 04–055, § 3. A subsequent § 3–102, which stated a Memorandum of Agreement with the Housing Authority, was added by NCA 04–055, § 1 and repealed by NCA 06–092, § 2.

Library References

Indians ⇄176, 227.
Westlaw Topic No. 209.
C.J.S. Indians §§ 76, 109.

§ 3–103. Conveyances to program participants

The Division of Housing Deputy Director shall have the authority to convey title to real property to a program participant in the ordinary course of business, provided that all obligations under the participant’s contract have been satisfactorily completed.

[Added by NCA 06–204, § 4, eff. Oct. 9, 2006.]

Historical and Statutory Notes

Derivation:

Title 24, § 1–303, added by NCA 92–29, § 503; amended by NCA 01–194, § 3; and repealed by NCA 04–055, § 3.

Former sections:

Former § 3–103, which granted exclusive jurisdiction over all actions arising from the

Housing title to the Courts of the Muscogee Nation, was added by NCA 81–79, § 103 and repealed by NCA 04–055, § 3. A subsequent § 3–103, which described procedures for judicial review of Housing Authority decisions, was added by NCA 04–055, § 1 and repealed by NCA 06–092, § 2.

Library References

Indians ⇄151, 172, 227.
Westlaw Topic No. 209.
C.J.S. Indians §§ 37 to 38, 76, 96 to 97, 101 to 108, 110 to 111, 128.

§ 3–104. Local cooperation agreements

The Division of Housing Deputy Director is authorized to enter into local cooperative agreements with cities and counties; provided that said agreements are reviewed by the Attorney General’s Office to ensure there are no attempted waivers of sovereign immunity and that the agreements comply with Tribal and federal laws. The agreements may include provisions to pay the taxing authority a sum in lieu of taxes.

[Added by NCA 06–204, § 4, eff. Oct. 9, 2006.]

Historical and Statutory Notes

Derivation:

Title 24, § 3-303, added by NCA 92-29, § 503; amended by NCA 01-194, § 3; and repealed by NCA 04-055, § 3.

Former sections:

Former § 3-104, which provided that the Guidelines for the Muscogee (Creek) Nation Housing Rehabilitation Program would be superseded by any laws, Executive Orders of the

Muscogee Nation, or Federal program changes, was added by NCA 83-09; § 104 and repealed by NCA 04-055, § 3. A subsequent § 3-104, which granted exclusive jurisdiction over actions brought to enforce the Memorandum of Agreement with the Housing Authority to the Muscogee (Creek) Nation Courts, was added by NCA 04-055, § 1, and repealed by NCA 06-092, § 2.

Library References

Indians ↻227.
Westlaw Topic No. 209.
C.J.S. Indians § 76.

§ 3-105. Inventory

The Division of Housing shall maintain and regularly update a complete written inventory of all real property. Copies of the inventory list shall be provided to the Principal Chief, National Council Speaker and the Controller, upon written request. Updates for insurance purposes shall be provided to the Controller whenever necessary.

[Added by NCA 06-204, § 4, eff. Oct. 9, 2006.]

Library References

Indians ↻227.
Westlaw Topic No. 209.
C.J.S. Indians § 76.

CHAPTER 4. MISCELLANEOUS PROVISIONS

Section

- 4-101. Conflicts of interests.
- 4-102. Prohibited interests.
- 4-103. Jurisdiction.
- 4-104. Criminal activities involving the Nation's funds, IHBG funds, program income or other federal funds.
- 4-105. Limited waiver of sovereign immunity language to be used in new construction contracts.
- 4-106. Severability.

§ 4-101. Conflicts of interests

The officers and employees of the Nation and any other person who participates in the decision-making process or who gains inside information with regard to NAHASDA assisted activities, shall comply with the conflict of interest provision of applicable federal regulations; provided, that nothing herein shall be construed to limit the applicability of said regulations with regard to any other person not described in this section.

[Added by NCA 04-055, § 1, eff. April 15, 2004; amended by NCA 06-092, § 1, approved May 4, 2006.]

Historical and Statutory Notes

Derivation: Title 24, § 1-502, added by NCA 92-29, § 702; and repealed by NCA 04-055, § 3. Program, was added by NCA 96-105, § 106 and repealed by NCA 04-055, § 3.

Former sections: Former § 4-101, which provided guidelines for the Tribal Emergency Home Improvement

Library References

Indians ↻216, 227.
Westlaw Topic No. 209.
C.J.S. Indians §§ 59, 76.

§ 4-102. Prohibited interests

A. Interests in property during tenure. During his or her tenure of employment and for one (1) year thereafter, no employee of the Housing Division, no officer, employee or elected official of the Muscogee (Creek) Nation, and no other public official who exercises any responsibilities or functions with regard to affordable housing activities, shall voluntarily acquire any interest, direct or indirect, in any project or in any property included or planned to be included in any affordable housing activities, unless prior to such acquisition, said person discloses his or her interest in writing to the Housing Division, and such disclosure is entered in the records of the Housing Division, and the said person shall not participate in any action by the Nation relating to the property or contract in which he has any such interest.

B. Involuntarily acquired interests in property; interests in property acquired before tenure. If any employee of the Housing Division, any officer, employee or elected official of the Muscogee (Creek) Nation, or any other

public official who exercise any responsibilities or functions with regard to affordable housing activities, involuntarily acquires any interest, direct or indirect, in any project or in any property included or planned to be included in any affordable housing activities, or voluntarily or involuntarily acquired any such interest prior to appointment or employment, he or she shall immediately disclose his or her interest in writing to the Deputy Director and such disclosure shall be entered in the record of the Housing Division, and such person shall not participate in any action by the Housing Division or the Nation relating to the property or contract in which he or she has any such interest.

C. Violations; Misconduct in Office. Any violation of the foregoing provisions of this section shall constitute misconduct in office.

[Added by NCA 04–055, § 1, eff. April 15, 2004; amended by NCA 06–092, §§ 1 and 2, approved May 4, 2006.]

Library References

Indians ☞216, 227.
Westlaw Topic No. 209.
C.J.S. Indians §§ 59, 76.

§ 4–103. Jurisdiction

In conducting activities and performing its obligations under this Title, the Housing Division employees, all contractors receiving payment from IHBG funds or program income, and all other persons and entities that conduct business with the Housing Division shall be subject to the civil jurisdiction of the Nation and its courts. All such persons who are members of the Muscogee (Creek) Nation or any other federally recognized Indian Tribe shall be subject to the criminal jurisdiction of the Nation and its courts for any crime involving the use, receipt, expenditure, misappropriation or embezzlement of IHBG funds or program income.

[Added by NCA 04–055, § 1, eff. April 15, 2004; amended by NCA 06–092, § 1, approved May 4, 2006.]

Library References

Indians ☞227, 501.
Westlaw Topic No. 209.
C.J.S. Indians §§ 76, 151 to 179.

§ 4–104. Criminal activities involving the Nation’s funds, IHBG funds, program income or other federal funds

Whoever, being an officer, director, agent, or employee of or connection in any capacity with the Muscogee (Creek) Nation pursuant to this Title, embezzles, willfully misapplies, steals, or obtain by fraud any Tribal, IHBG funds, program income, or other federal money, funds, assets, or property held or administered by the Nation, shall be fined not more than five thousand dollars (\$5,000.00) or imprisoned for not more than one year, or both, but if the amount so embezzled, misapplied, stolen, or obtained by fraud does not exceed one hundred dollars (\$100.00), he shall be fined not more than one thousand dollars (\$1,000.00) or imprisoned not more than one (1) year, or both.

[Added by NCA 04–055, § 1, eff. April 15, 2004; amended by NCA 06–092, § 1, approved May 4, 2006.]

Library References

Indians ☞227, 264, 266, 311.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 76, 177 to 188, 191 to 194.

§ 4–105. Limited waiver of sovereign immunity language to be used in new construction contracts

The Division of Housing shall use the following standard limited waiver of sovereign immunity language in all new construction contract documents, provided that the National Council may approve alternative language by separate legislation: “The National Council hereby irrevocably and expressly grants a limited waiver of the Muscogee (Creek) Nation’s sovereign immunity from suit, with respect to specific enforcement of the Muscogee (Creek) Nation Division of Housing construction contract documents in the Muscogee (Creek) Nation District Court; provided, that such waiver shall not extend to disputes between the Muscogee (Creek) Nation and any person or entity other than the [Contractor/Architect/Engineer/Developer]; and provided further that such waiver of sovereign immunity shall constitute the Muscogee (Creek) Nation’s consent to suit by the [Contractor/Architect/Engineer/Developer] for the limited purpose of collection of the Muscogee (Creek) Nation’s financial obligations to the [Contractor/Architect/Engineer/Developer] established under the Muscogee (Creek) Nation Division of Housing construction contract documents from the NAHASDA funds or funds of the Muscogee (Creek) Nation that are not subject to restrictions by law of the Muscogee (Creek) Nation or other governmental authority, and shall not be construed as granting a waiver for the purpose of obtaining a court judgment or order requiring payment from, delivery of, or otherwise affecting any other funds or assets of the Muscogee (Creek) Nation, or any real property, personal property or chattels of the Muscogee (Creek) Nation or any entities, agencies or political subdivisions of the Muscogee (Creek) Nation, or any funds belonging to, or owed to, owned by, held in trust for, administered by or under the control of the Muscogee (Creek) Nation or any entities, agencies or political sub-divisions of the Muscogee (Creek) Nation; and provided further that nothing in this limited waiver of sovereign immunity shall be construed as allowing any award of punitive damages or exemplary damages against the Muscogee (Creek) Nation.”

[Added by NCA 04–055, § 1, eff. April 15, 2004, amended by NCA 05–029, § 1, eff. March 8, 2005; NCA 06–204, § 5, eff. Oct. 9, 2006.]

Historical and Statutory Notes**Derivation:**

Title 24, § 1–302, added by NCA 92–29,
 § 502, and repealed by NCA 04–055, § 3.

Library References

Indians ☞227, 234, 403, 405.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 59, 76, 151 to 179.

§ 4–106. Severability

In the event that any provision or provisions of this Title is determined by a court of competent jurisdiction to be invalid for any reason, the remaining

MISCELLANEOUS PROVISIONS

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provisions of the Title shall be deemed severable from the provision or provisions determined to be invalid and shall remain in full force and effect as though the invalid provisions had never been a part of the Title.

[Added by NCA 04-055, § 1, eff. April 15, 2004.]

CHAPTER 5. NAHASDA GRANT COMPLIANCE OFFICE

Section

- 5-101. Establishment of NAHASDA Grant Compliance Office.
5-102. Purpose of the NAHASDA Grant Compliance Office.
5-103. NAHASDA Grant Compliance Officer; minimum qualifications; duties; selection procedures.

Historical and Statutory Notes

NCA 98-130, §§ 501, 502, as amended by NCA 02-009, § 2, provide:

“Section 501. Findings: The National Council finds that:

“A. The Nation has submitted Indian housing plans to the Department of Housing and Urban Development (“HUD”) pursuant to the provisions of the Native American Housing Assistance and Self-Determination Act of 1996 (“NAHASDA”) [24 U.S.C.A. § 4101 et seq.], which plans set forth the Nation’s Indian housing program and the Affordable Housing Activities to be carried out with NAHASDA Indian housing block grant funds and program income derived therefrom.

“B. As the recipient of NAHASDA funds from HUD, the Nation must continue the oversight and monitoring of the progress of Affordable Housing Activities and the use and expenditure of NAHASDA funds, in order to assure that the Nation’s Indian housing plans are implemented as required by said plans and under the

provisions of NAHASDA, HUD’s NAHASDA regulations and all other applicable federal and tribal laws, rules and regulations.

“C. There is a need to establish an office of the Nation charged with the responsibility of monitoring activities in furtherance and implementation of the Nation’s Indian housing plans and assuring that all Indian housing block grant funds and housing program income are expended in a manner which is consistent with the Nation’s housing plans, the provisions of NAHASDA, other applicable federal and tribal laws and regulations, and federal rules on the use and expenditure of federal funds.

“Section 502. Purpose.

“The purpose of this Act is to create the NAHASDA Grant Compliance Office, to establish the minimum qualifications and duties for the position of NAHASDA Grant Compliance Officer and to set forth certain procedures to be followed in the selection and employment of said NAHASDA Grant Compliance Officer.”

§ 5-101. Establishment of NAHASDA Grant Compliance Office

There is hereby established within the Executive Branch, and under the direction of the Principal Chief, the Muscogee (Creek) Nation NAHASDA Grant Compliance Office. The NAHASDA Grant Compliance Office shall perform the oversight, monitoring and auditing functions and services described in Title 24, § 5-102, and shall be under the direction and control of the NAHASDA Grant Compliance Officer employed pursuant to Title 24, § 5-103.

[NCA 98-130, § 103, approved Dec. 28, 1998; amended by NCA 02-009, § 2, effective May 24, 2002.]

Library References

Indians ↻227.
Westlaw Topic No. 209.
C.J.S. Indians § 76.

§ 5-102. Purpose of the NAHASDA Grant Compliance Office

The purpose of the NAHASDA Grant Compliance Office shall be to perform oversight, monitoring and inspection activities and services to assure that the Nation’s Indian housing plans and activities thereunder are being carried out in accordance with the provisions and requirements of said plans and/or agreements for the implementation thereof and in compliance with the provisions of

NAHASDA,¹ other applicable federal and Tribal laws, regulations and rules governing the use and expenditure of federal or Tribal funds.

[NCA 98-130, § 104, approved Dec. 28, 1998; amended by NCA 02-009, § 2, effective May 24, 2002.]

¹ 25 U.S.C.A. § 4101 et seq.

Library References

Indians ☞227.
Westlaw Topic No. 209.
C.J.S. Indians § 76.

Code of Federal Regulations

Native American housing assistance, see 24 CFR 1000.1 et seq.

§ 5-103. NAHASDA Grant Compliance Officer; minimum qualifications; duties; selection procedures

A. NAHASDA Grant Compliance Officer. The NAHASDA Grant Compliance Office shall be under the direction and control of the NAHASDA Grant Compliance Officer, who shall answer directly to the Principal Chief and who shall have the minimum qualifications and duties set forth in subsections B and C of this section.

B. Minimum qualifications. The NAHASDA Grant Compliance Officer shall have at least a Bachelor's degree in accounting, finance, business management, business administration or public administration, or other equivalent or higher degree with a course of study similar to any of the foregoing degrees, from an accredited four-year college or university; and some work experience involving, and a general knowledge of, rules and regulations governing the use and expenditure of federal funds.

C. Duties. The NAHASDA Grant Compliance Officer shall have the following duties:

1. Monitor all activities conducted by any of the Nation's Indian housing plans adopted by the Nation under the provisions of NAHASDA,¹ including without limitation activities performed by employees or contractors of the Nation and/or employees or contractors of any entity designated by the Nation to perform such activities;

2. Inspect and monitor construction, rehabilitation and other activities conducted in the field in furtherance of or pursuant to any of the Indian housing plans adopted by the Nation under the provisions of NAHASDA, in order to assure that said plans are being properly and timely implemented in accordance with said plans and any agreements thereunder, provided that any such inspection shall not be a substitute for any plumbing, electrical or other building inspections required by law or contract;

3. Assure that all affordable housing activities, whether conducted by the Nation, the Housing Authority or another entity designated by the Nation under NAHASDA, are carried out in compliance with NAHASDA, HUD's NAHASDA regulations or other applicable federal or Tribal laws, rules or regulations.

4. From time to time, as needed in the NAHASDA Grant Compliance Officer's discretion, inspect or audit, or cause to be inspected or audited, the books, records, accounts, bank statements, contracts, plans, invoices, receipts or any other documents maintained by the Nation, Housing Authority or any other entity designated by the Nation under NAHASDA, or any contractor engaged by either, to assure that or determine whether all Indian Housing Block grant funds, program income and/or any property acquired with such funds or income, are being used and expended in compliance with applicable federal or Tribal laws, rules and regulations, including NAHASDA, and in accordance with the provisions of the applicable Indian housing plan and any agreement with the Nation implementing any such plan;

5. Upon request of the Principal Chief or the Housing Division Director, consult with and advise the Director on the appropriate or allowable expenditure of federal or Tribal funds, and give technical assistance where needed or requested on any aspect of NAHASDA grant compliance;

6. Inform and report to the Principal Chief and the Speaker of the National Council on the compliance or noncompliance of any aspect of the Nation's Indian housing program, and whenever the NAHASDA Grant Compliance Officer so reports to the National Council or any committee thereof, the Speaker or Chairperson of the Committee may, in his or her discretion, receive the NAHASDA Grant Compliance Officer's report in executive session in cases where criminal or civil legal action may be taken on the matters reported on;

7. In connection with any report authorized under this section, make recommendations as to any appropriate action that the Principal Chief or National Council should take;

8. Report any unlawful or criminal use of program funds or property to the Attorney General, and, if requested, assist the Attorney General in the preparation of any criminal action or any civil action to recover such funds or property;

9. Supervise, oversee and direct the personnel and support staff of the NAHASDA Grant Compliance Office in accordance with the Nation's policies and procedures;

10. Develop internal protocols, policies and procedures to be followed by the NAHASDA Grant Compliance Office in conducting its authorized activities, provided that such protocols, policies and procedures shall not be inconsistent with the administrative and personnel policies and procedures of the Nation;

11. Report to and advise the Principal Chief and National Council as to all activities of the NAHASDA Grant Compliance Office except for information or materials required to be kept confidential under applicable federal or Tribal laws; and

12. At all times exercise independent judgment, and administer and manage the activities and expenditures of the NAHASDA Grant Compliance Office in accordance with all applicable laws, including the laws and policies of the Muscogee (Creek) Nation.

D. Procedures for selection and hiring of NAHASDA Grant Compliance Officer. The NAHASDA Grant Compliance Officer shall be selected and hired by the Principal Chief in accordance with the following procedures, which shall

be followed in filling the vacancy existing at the time of the adoption of this chapter and any future vacancies in said position:

1. The Office of Personnel Services shall advertise the position of the NAHASDA Grant Compliance Officer in one or more newspapers of general circulation within the jurisdiction of the Muscogee (Creek) Nation, setting forth a brief description of the duties of the position and a statement of Indian preference, and shall otherwise give notice of the position in accordance with the procedures of said Office. The Office of Personnel Services shall initiate the advertising and the giving of notice in accordance with this paragraph as soon as practicable after any vacancy in said position exists or occurs.

2. The Office of Personnel Services shall screen all applicants in accordance with the Nation's personnel policies and shall identify in writing and recommend to the Principal Chief all candidates for the position of NAHASDA Grant Compliance Officer who meet the minimum qualifications set forth in subsection B of this section. The list of the names of such qualified candidates, their application forms and any evidence of their qualifications shall be furnished to the Principal Chief for his review.

3. The Principal Chief shall select from the list of qualified candidates furnished by the Office of Personnel Services not less than three candidates whom he determines to be the most qualified for the position and shall forward their names and copies of their applications and evidence of qualifications to the Speaker of the National Council, who shall distribute copies of said materials to the Chairperson of the Tribal Affairs Committee, who in turn shall place the matter on the agenda of the Committee's next meeting. No candidate shall be referred to the Council or otherwise considered for the position of NAHASDA Grant Compliance Officer unless he or she meets the minimum qualifications set forth in subsection B of this section. If Personnel Services identifies and recommends less than three (3) qualified candidates, then the Principal Chief may forward the list of less than three (3) candidates, applications and qualifications to the Speaker or he may, instead, request the Office of Personnel Services to readvertise the position in accordance with paragraph 1 of this subsection in order to increase the number of qualified candidates.

4. At the next monthly or special meeting of the Tribal Affairs Committee following the submission of a list of qualified candidates and supporting materials to the Committee, the Committee shall review the applications and evidence of qualifications of all candidates forwarded to it. The Committee may request any or all such candidates to appear before it at such meeting and respond to questions in order to verify that all candidates referred to the Committee meet the minimum qualifications set forth in subsection B of this section. The Committee may recommend any one candidate to the Principal Chief for employment but shall not be required to do so.

5. After the Tribal Affairs Committee has had an opportunity to review the qualifications of submitted candidates in accordance with the foregoing paragraphs, the Principal Chief shall select from the names submitted to the Committee the candidate who, in the Principal Chief's judgment, is the most qualified for the position, giving due regard and weight to the Committee's recommendation, if any; provided, however, that Indian preference shall be

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given and provided further that if any two (2) or more of the most qualified candidates are Indian and are equally qualified, and one (1) is a citizen, then preference in hiring shall be given to the citizen.

[NCA 98-130, § 504, approved Dec. 28, 1998; amended by NCA 02-009, § 2, effective May 24, 2002.]

¹ 25 U.S.C.A. § 4101 et seq.

Library References

Indians ⇄227.
Westlaw Topic No. 209.
C.J.S. Indians § 76.

Code of Federal Regulations

Native American housing assistance, see 24 CFR 1000.1 et seq.

CHAPTER 6. HOUSING INVENTORY SURVEY

Section

6-101. Policy.

§ 6-101. Policy

The Muscogee National Council endorses and supports the findings of the 1993 Muscogee (Creek) Nation Housing Inventory Survey Report. It is the policy of the Muscogee National Council to officially recognize the data from this housing inventory as the housing needs of the Muscogee (Creek) Nation.

[NCA 93-70, § 102, approved May 1, 1993.]

CHAPTER 7. MORTGAGE FORECLOSURE AND EVICTION CODE

Subchapter

1. General Provisions
2. Judicial Eviction Procedures
3. Mortgage and Foreclosure
4. Lien Procedures
5. Miscellaneous Provisions

Historical and Statutory Notes

NCA 99-109, § 101, provides:

“Section 101. Findings: The National Council finds that:

“A. The Department of Housing and Urban Development (“HUD”) offers various loan products and services to increase the availability and affordability of homeownership.

“B. Section 184 of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992) authorized the establishment of the Indian Housing Loan Guarantee Fund (the “Fund”) to provide access to sources of private financing to Indian Families and Indian housing authorities who otherwise could not acquire housing financing because of the unique legal status of Indian trust land.

“C. The Fund addresses these obstacles to mortgage financing by guaranteeing loans made to Indian families or Indian housing authorities to construct, acquire, or rehabilitate 1- to 4-family dwellings that are standard housing and are

located on trust land or land located in an Indian or Alaska Native area.

“D. In order for lenders to offer mortgages on trust restricted land, a tribe must: (1) enact or agree to enforce foreclosure laws or agree to follow state foreclosure procedures; (2) enact and agree to enforce eviction procedures; and (3) enact tribal law or follow state laws ensuring the 184 loan will be a first lien.

“E. There is a need to adopt a Mortgage Foreclosure and Eviction Code.”

“Section 104. Severability:

“In the event that any provision or portions thereof of this Act be held to be invalid by a court of competent jurisdiction, the provision, or portions thereof, so held to be invalid shall be deemed to be severable from all other provisions of this Act not held to be invalid and all such other provisions shall remain in full force and effect.”

SUBCHAPTER 1 GENERAL PROVISIONS

Section

- 7-101. Applicability.
- 7-102. Jurisdiction.
- 7-103. Purposes and interpretation.
- 7-104. Definitions.

§ 7-101. Applicability

This chapter shall hereinafter be referred to as the “Mortgage Foreclosure and Eviction Code.” It shall apply to any and all written arrangements, formal or informal, used in selling, buying, renting, leasing, occupying, or using any and all housing, dwellings, or accommodations for human occupation and residence. It shall also apply to any and all mortgages, leasehold mortgages and agreements to secure an interest in a building. Nothing in this chapter shall be construed to (a) authorize any person or court to assign or transfer an interest in or lien upon any lands held in trust for the Muscogee (Creek) Nation, or (b) waive the Nation’s sovereign immunity from suit.

[NCA 99-109, Title 1, § 1-1, eff. Aug. 31, 1999.]

§ 7-102. Jurisdiction

A. The provisions of this chapter shall apply to all property and parties to mortgages subject to the jurisdiction of the Muscogee (Creek) Nation.

B. The District Court of the Muscogee (Creek) Nation shall have jurisdiction over all actions brought under the provisions of this chapter, including actions for eviction and mortgage foreclosure proceedings. Jurisdiction over all matters arising within the jurisdiction of the Nation with respect to the subjects of this chapter, and jurisdiction with respect to any person or entity acting or causing actions which arise under this chapter shall be exercised by the Tribal Court.

[NCA 99-109, Title 1, § 1-2, eff. Aug. 31, 1999.]

§ 7-103. Purposes and interpretation

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

A. To preserve the peace, harmony, safety, health and general welfare of the people of the Nation and those permitted to enter or reside in the Nation.

B. To simplify the law governing the rights, obligations, and remedies of the owners, sellers, buyers, lessors, and lessees of buildings.

C. To avail the Nation and Tribal members of financing for the construction and/or purchase of family residences on trust land within the jurisdiction of the Nation by prescribing procedures of the recording, priority and foreclosure of mortgages given to secure loans made by or through any government agency or lending institution.

D. To establish laws and procedures which are necessary in order to obtain governmental funding for Tribal housing programs or loan guarantees for private or Tribal housing construction, purchase or renovation.

[NCA 99-109, Title 1, § 1-3, eff. Aug. 31, 1999.]

§ 7-104. Definitions

As used in this chapter, the following words will have the following meanings unless the context plainly requires otherwise:

A. "Borrower/mortgagor" shall mean the Nation, the Indian Housing Authority, or any individual Indian(s) or any heir(s), successor(s), executor(s), administrator(s), or assign(s) of the Tribe or such Indian(s) or non-Indian(s) who has executed a mortgage as defined in this chapter or a leasehold mortgage as defined in this chapter.

B. "Default" shall mean the failure by a borrower to make any payment or to perform any other obligation under the terms of a loan, when such failure continues for a period of more than thirty (30) days.

C. "Department" or "HUD" shall mean the U.S. Department of Housing.

D. "Housing Authority" shall mean the Creek Nation Housing Authority, established pursuant to Oklahoma law for the purpose of constructing and maintaining dwellings for public use within the territorial jurisdiction of the Nation.

E. "Indian" shall mean any person recognized as being an Indian or Alaska Native by any Tribe, the federal government or any state.

F. "Indian country" shall mean property within the territorial jurisdiction of the Nation, all lands owned by or held in trust for the Nation as well as any such ownership or use by an entity of the Nation; and including any and all areas which constitute the Indian Country of the Nation under applicable provisions of its laws or the laws of the United States, including without limitation areas within a dependent Indian community and individual restricted or trust land.

G. "Landlord" shall mean the Nation, the Indian Housing Authority, an agent, entity or federal government agency which is the owner, lessor, or sublessor of a dwelling unit intended for the use of tenants.

H. "Lease" or "lease agreement" shall mean the complete agreement for the lease of a building between the parties as it exists at any given time.

I. "Lease assignments" shall mean a transfer or conveyance of a valid existing leasehold interest or a portion thereof to a third party, who becomes the new lessee.

J. "Leasehold encumbrance" shall mean a mortgage, deed of trust, or other lien on the leasehold interest given to secure the repayment of a loan obtained by the lessee.

K. "Leasehold interest" shall mean the interest conveyed by the lessor to the lessee under the lease; in other words, the lessee's interest in the land. It consists of the right to the quiet enjoyment of the leased premises for the term of the lease, subject to the requirements of the contract.

L. "Leasehold mortgage" shall mean the mortgage of a lease of property given to secure a loan, and may be created under the auspices of any federal agency home buyer program, the mutual help home ownership administered by the Indian Housing Authority, or any other agreement entered into between a borrower/mortgagor and a lender/mortgagee.

M. "Lender's designated assignee" shall mean the designated assignee which the lender assigns or transfers its interest in a mortgage or lease and/or a leasehold mortgage.

N. "Lender/mortgagee" shall mean the lender under any mortgage made, or any successors or assigns of such lender. This definition also includes, without any consent by the Nation, any subsequent holder, whether by assignment, succession or otherwise, of the original mortgagee's right, title, or interest in and to the mortgage, together with the improvements.

O. "Lessee" shall mean a tenant of a dwelling unit, user and/or occupier of real property, or the home buyer under any federal mortgage program including the mutual help program. The lessee may, for purposes of federal agency home mortgage programs, be the Indian Housing Authority.

P. "Lessor" shall mean the Nation or an agency thereof, including the successor(s) administrator(s), or assign(s) of the Lessor.

Q. "Mortgage" shall mean a lien given to secure advances on, or the unpaid purchase price of, real estate under the laws of the jurisdiction where the

property is located, and may refer both to a security instrument creating a lien, whether called a mortgage, deed of trust, security deed, or other term, as well as the credit instrument, or note, secured thereby.

R. "Mortgage foreclosure proceeding" shall mean a proceeding in the Tribal Court:

1. To foreclose the interest of the borrower(s)/mortgagor(s), and each person or entity claiming through the borrower(s)/mortgagor(s), in property on which a mortgage was made by a mortgagee; and/or

2. To assign the borrower(s)/mortgagor(s) interest to a designated assignee.

S. "Mortgagor/borrower"—see borrower/mortgagor.

T. "Mortgagee/lender"—see lender/mortgagee.

U. "Nation" shall mean the Muscogee (Creek) Nation.

V. "Owner" shall mean 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, or any other security arrangement.

W. "Principal residence" shall mean the dwelling where the mortgagor maintains (or will maintain) his or her permanent place of abode, and typically spends (or will spend) the majority of the calendar year. A person may have only one principal residence at any one time. This term also includes mobile homes which have been affixed to the land.

X. "Secretary" shall mean the Secretary of Housing and Urban Development.

Y. "Shall" for the purposes of this chapter, shall mean mandatory or must.

Z. "Subordinate lienholder" shall mean is the holder of any lien, including a subsequent mortgage, perfected subsequent to the recording of a mortgage under this chapter, except the Nation shall not be considered a subordinate lienholder with respect to any claim regarding a Tribal tax on real property.

AA. "Tribal Court" shall mean the Court established by the laws of the Nation or such body as may now or hereafter be authorized by the laws of the Nation to exercise the powers and functions of a court of law.

[NCA 99-109, Title 1, § 1-4, eff. Aug. 31, 1999.]

SUBCHAPTER 2. JUDICIAL EVICTION PROCEDURES

Section

- 7-201. Grounds for eviction.
- 7-202. Notice to quit requirements.
- 7-203. Serving the notice to quit.
- 7-204. Summons and complaint.
- 7-205. Action upon filing complaint.
- 7-206. Commencement of proceedings.
- 7-207. Discovery and prehearing proceedings.
- 7-208. Evidence.
- 7-209. Burden of proof.

Section

- 7-210. Judgment.
- 7-211. Execution of judgment.
- 7-212. Stay of execution.
- 7-213. Appeals.
- 7-214. Forcible eviction.

§ 7-201. Grounds for eviction

A tenant may be evicted for:

A. 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 date for payment of rent set forth in the lease agreement between the landlord and tenant, or ten (10) calendar days following the first day of the month in the case of a month-to-month tenancy.

B. Any arrearage in rent, costs, or damages which have been due and owing for thirty (30) calendar days or more. Provided, the receipt by a landlord of partial payments under an agreement shall not operate to excuse the payment of any balance due upon demand or otherwise waive the landlord's right to initiate eviction proceedings.

C. Nuisance, property damage or destruction, injuries to the property, person, or peace of other tenants, or injuries or damage to common areas and property.

D. Serious or repeated violations of the lease agreement, any reasonable rules or regulations adopted or any applicable building or housing codes.

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

F. Violation of any other terms in an rental agreement which do not conflict with the provisions of this chapter.

[NCA 99-109, Title 1, § 2-1, eff. Aug. 31, 1999.]

Library References

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| Indians ☞176. | C.J.S. Indians § 109. |
| Landlord and Tenant ☞171(1). | C.J.S. Landlord and Tenant §§ 956 to 957. |
| Westlaw Topic Nos. 209, 233. | |

§ 7-202. Notice to quit requirements

A. 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 Title 24, § 7-201, the landlord shall give written notice to the tenants to quit possession of such dwelling unit.

B. The purpose of the notice to quit is to provide advance notice to the tenant of a specific problem which needs to be addressed. It is also intended to induce the tenant to enter into discussions with the landlord in order to resolve the problem.

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

D. The notice to quit shall be in writing and shall be substantially in the following form: "I (or we) hereby give you notice that you are to quit possession or occupancy of the dwelling unit now occupied by you at (here insert the address or other reasonable description of the location of the dwelling unit), on or before the (here insert the date) for the following reason(s) (here insert the legally cognizable reason or reasons for the notice to quit possession using the statutory language or words of similar import). Signed, (here insert the signature, name and address of the landlord, as well as the date and place of signing)."

E. The notice to quit must be delivered within the following periods of time:

1. No less than seven (7) calendar days prior to the date to quit specified in the notice for any failure to pay rent or other payments required by the agreement.

2. No less than three (3) calendar days prior to the date to quit 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.

3. In all other situations, no less than fourteen (14) calendar days prior to the date to quit.

[NCA 99-109, Title 1, § 2-2, eff. Aug. 31, 1999.]

Library References

Indians ☞176.

Landlord and Tenant ☞283.

Westlaw Topic Nos. 209, 233.

C.J.S. Indians § 109.

C.J.S. Landlord and Tenant §§ 1335 to 1336, 1341, 1343.

§ 7-203. Serving the notice to quit

Any notice to quit 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 with a copy delivered by mail; or
2. Personally delivered to an adult living in the premises with a copy delivered by mail; or
3. Personally delivered to an adult agent or employee of the tenant with a copy delivered by mail.

C. If notice cannot be given by means of personal delivery, or 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 landlord or tenant; or
2. Securely taping a copy of the notice to the main entry door of the premise in such a manner that 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

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store, or other commonly-frequented place and by sending a copy of the notice by first class mail, postage prepaid, addressed to the tenant at the premises.

D. 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.

[NCA 99-109, Title 1, § 2-3, eff. Aug. 31, 1999.]

Library References

Indians ☞176.

Landlord and Tenant ☞283.

Westlaw Topic Nos. 209, 233.

C.J.S. Indians § 109.

C.J.S. Landlord and Tenant §§ 1335 to 1336,
1341, 1343.

§ 7-204. Summons and complaint

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

- A. The names of the adult tenant(s) against whom the suit is brought;
- B. A description of the rental agreement, if any, or in lieu thereof a copy of said agreement may be attached to the complaint;
- 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 quit has been duly served in accordance with this chapter; and
- F. A statement of the relief demanded, including any claim(s) for possession of the dwelling unit, damages, fees, costs, or other special relief.
- G. If the landlord is an Indian Housing Authority, a statement that the Indian Housing Authority has complied with any applicable regulatory processes prior to filing the eviction action.

[NCA 99-109, Title 1, § 2-4, eff. Aug. 31, 1999.]

Library References

Indians ☞510, 511.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 7-205. Action upon filing complaint

When a complaint is filed in Tribal Court pursuant to Title 24, § 7-204, it shall be presented to a Tribal Court Judge as soon as possible. If possible, 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 Title 24, § 7-204 and served as set forth in Title 24, § 7-203, issue an Order of the Court requiring the tenant named in the complaint to appear before the Court on a certain date to contest the complaint. The date for appearing and for answering the complaint 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.

[NCA 99-109, Title 1, § 2-5, eff. Aug. 31, 1999.]

§ 7-206. Commencement of proceedings

A. 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 tenant appears in person, the tenant must serve or caused to be served upon the landlord a written response to the complaint a written response shall be served upon the landlord within five (5) calendar days of any hearing, excluding weekends and holidays.

B. The Court shall set a hearing date which is no more that fifteen (15) calendar days following the date for appearance, except when the hearing date would fall on a weekend or holiday. In such a situation, the hearing date shall be set for the first regular court day following said weekend or holiday.

C. A tenant may, for good cause shown and upon the payment of a reasonable sum for the fair rental value of the premises to be determined by the Court in its discretion, 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 any cause provided in subsection C of Title 24, § 7-201, 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.

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

[NCA 99-109, Title 1, § 2-6, eff. Aug. 31, 1999.]

Library References

Indians ⇄519.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 7-207. Discovery and prehearing proceedings

Extensive, prolonged, or time-consuming discovery and prehearing proceedings shall 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 unless the Court orders otherwise it shall be completed no less than five (5) calendar days before 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.

[NCA 99-109, Title 1, § 2-7, eff. Aug. 31, 1999.]

Library References

Indians ⇄515. Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 7-208. Evidence

Evidence in proceedings under this chapter shall be according to the following provisions:

A. All evidence may be admitted which can be shown to be relevant and material to the case.

B. Fairness will dictate the decision of the Judge on challenges to admissibility of evidence.

C. The Court may avail itself of any recognized and authoritative materials, books or documents as guidance in reaching a decision on the admissibility of evidence.

D. Evidence of customs and traditions of the Tribe shall be freely admitted.

E. Hearsay objections will not be permitted to procedurally deny the Court access to reasonable reliable information which would aid in reaching a just decision. Where a hearsay objection is made, the Court will make an independent determination of the competency of the evidence being offered. Objections may be overruled where facts indicate that the evidence is relevant and material and reasonably competent under the circumstances. Hearsay evidence may be freely admitted where all parties to the out of court statement are present before the court and qualified to testify as to the statement made.

F. At the discretion of the Judge, evidence may be excluded if its value as proof is outweighed by the risk that its admission will create a substantial risk of undue prejudice, confuse the issues, mislead the jury, or unfairly surprise the opposing party.

G. Upon request of a party, the Court may take judicial notice of specific facts which are so certain as not to be subject to reasonable dispute.

[NCA 99-109, Title 1, § 2-8, eff. Aug. 31, 1999.]

Library References

Indians ⇄520.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 7-209. Burden of proof

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

[NCA 99-109, Title 1, § 2-9, eff. Aug. 31, 1999.]

Library References

Indians ⇄520(2).
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 7-210. Judgment

A. Within five (5) calendar days after 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:

1. Order the immediate eviction of a tenant and delivery of the premises to the landlord;
2. Grant actual damages as provided in the agreement of the parties including interest;
3. Order the parties to carry out an obligation required by law;
4. Order rent payments through garnishment;
5. Establish a power of attorney in another person/agency to fulfill rights or obligations of either landlord or tenant.
6. Remediate the action—in part or in whole—through appropriate recalculation of rent;
7. Order the payment of reasonable attorney's fees to the prevailing party and, where allowed by law or agreement, costs and expenses of litigation;
8. Order the parties into negotiations; or
9. Grant any relief provided in this chapter or otherwise allowed in law or equity.

B. 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 landlord following a hearing to determine whether relief should be granted and the kind of relief that should be granted.

[NCA 99-109, Title 1, § 2-10, eff. Aug. 31, 1999.]

Library References

Indians ↻526.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 7-211. Execution of judgment

Any judgment may be immediately executed, and the judgments and orders of the Court shall be enforced by a duly authorized law enforcement officer or by an officer of the Court appointed by the Court for such a purpose. Any law enforcement officer shall, upon receipt of an order of the Court, execute the judgment or order of the Court within five (5) calendar days of the date of the judgment or order and make a report to the Court on any action taken to enforce the judgment or order.

[NCA 99-109, Title 1, § 2-11, eff. Aug. 31, 1999.]

Library References

Indians ↻526.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 7-212. Stay of execution

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

A. Good and reasonable grounds affecting the well-being of the party are stated; or

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

C. Execution of the judgment could result in extreme hardship for the tenant(s); and

D. 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 time following the judgment. No stay may exceed three months in the aggregate. The Clerk shall distribute such arrearages to the landlord in accordance with any order of the Court.

[NCA 99-109, Title 1, § 2-12, eff. Aug. 31, 1999.]

Library References

Indians ☞526.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 7-213. Appeals

Appeal under this chapter shall be handled according to the Nation's Judicial Code,¹ as amended, 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 from the Court will remain in effect during an appeal under this chapter unless otherwise ordered by the Court.

[NCA 99-109, Title 1, § 2-13, eff. Aug. 31, 1999.]

¹ Title 27 of the Muscogee (Creek) Nation Code.

Library References

Indians ☞540.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 7-214. Forcible eviction

A. Where the Court orders an eviction, and the tenant or any other occupant of the premises refuses to vacate voluntarily by the effective date of that order, the tenant 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 tenant that if tenant does not vacate the premises voluntarily by the effective date, the tenant and the other occupants will be subject to forcible eviction, and their property will be subject to storage, sale and disposal as set forth in subsection C below.

B. Following the eviction, the Court may allow the landlord, the Indian Housing Authority or the United States government access to any property leased by either of them for purposes of preserving and securing it.

C. Following forcible eviction of the tenant and/or other occupants, the former occupant's personal property shall be stored by the owner of the premises for a 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. 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 may be applied to any judgment in favor of the landlord for unpaid rent or damages, and the balance, if any, shall be remitted to the former occupants. Nothing in this section shall be construed to prevent the former occupants from reclaiming property remaining after the sale if they can arrange to do so in a manner satisfactory to the owner.

[NCA 99-109, Title 1, § 2-14, eff. Aug. 31, 1999.]

SUBCHAPTER 3. MORTGAGE AND FORECLOSURE

Section

- 7-301. Priority.
- 7-302. Recording.
- 7-303. Foreclosure procedures.
- 7-304. Foreclosure complaint and summons.
- 7-305. Service of process and procedures.
- 7-306. Cure of default by subordinate lienholder.
- 7-307. Judgment and remedy.
- 7-308. Foreclosure evictions.
- 7-309. No merger of estates.
- 7-310. Certified mailing to Nation and lessor.
- 7-311. Intervention.
- 7-312. Appeals.

§ 7-301. Priority

A mortgage recorded in accordance with the recording procedures set forth in this chapter, including leasehold mortgages, and including loans guaranteed or held by a governmental agency, shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim excepting a lien or claim arising from a Tribal leasehold tax assessed after the recording of the mortgage.

[NCA 99-109, Title 1, § 3-1, eff. Aug. 31, 1999.]

§ 7-302. Recording

A. The Recording Clerk shall maintain in the Nation's Office of Realty, a system for the recording of mortgages and such other documents as the Nation may designate by laws or resolution.

B. The Recording Clerk shall endorse upon any mortgage or other document to be recorded:

1. The date and time of receipt of the mortgage or other document to be recorded;
2. The filing number, to be assigned by the Recording Clerk, which shall be a unique number for each mortgage or other document received; and

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HOUSING

3. The name of the Recording Clerk or designee receiving the mortgage or document.

C. Upon completion of the above-cited endorsements, the Recording Clerk shall make a true and correct copy of the mortgage or other document and shall certify the copy as follows:

Muscogee (Creek) Nation)
) ss.
)

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

Given under my hand and seal this ___ day of ___.

(SEAL) _____

(Signature)

(Date)

The Recording Clerk shall maintain the copy in the records of the recording system, and shall return the original of the mortgage or other document to the person or entity that presented the same for recording.

D. The Recording Clerk shall also maintain a log for each mortgage or other document recorded, in which there shall be entered:

1. The name(s) of the borrower/mortgagor of each mortgage; identified as such;
2. The name(s) of the lender/mortgagee of each mortgage, identified as such;
3. The name(s) of the grantor(s), grantee(s), or other designation or each party named in any other documents filed or recorded;
4. The date and time of the receipt;
5. The filing number assigned by the Recording Clerk; and
6. The name of the Recording Clerk or designee receiving the mortgage or document.

E. The certified copies of the mortgages and other documents and the log maintained by the Recording Clerk shall be made available for public inspection and copying. Rules for copying shall be established and disseminated by the Nation’s Recording Clerk.

[NCA 99-109, Title 1, § 3-2, eff. Aug. 31, 1999.]

§ 7-303. Foreclosure procedures

A. A borrower/mortgagor shall be considered to be in default when he or she is thirty (30) days past due on his or her mortgage payment(s) to the lender/mortgagee.

B. Before a borrower/mortgagor becomes ninety (90) days delinquent on his or her mortgage payments and before any foreclosure action or activity is initiated, the lender/mortgagee shall take the following steps:

1. Make a reasonable effort to arrange a face-to-face interview with the borrower/mortgagor. This shall include at least one trip to meet with the borrower/mortgagor at the mortgaged property.

2. Lender/mortgagee shall document that it has made at least one phone call to the borrower/mortgagor (or the nearest phone as designated by the borrower/mortgagor, able to receive and relay messages 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 or arrange and conduct the face-to-face interview specified in this action.

D. Before the borrower/mortgagor has been delinquent for ninety (90) days and at least ten (10) days before initiating a foreclosure action in Tribal Court, the lender/mortgagee shall provide the following advice to the borrower/mortgagor in writing by first class mail, postage prepaid, to the borrower/mortgagor at his last known address, or by posting prominently on the door and the dwelling unit, with a copy to the Nation and the Housing Authority of the Creek Nation of Oklahoma, Inc.:

1. Advise the borrower/mortgagor that information regarding the loan and default will be given to credit bureaus.

2. Advise the borrower/mortgagor of home ownership counseling opportunities/programs available through the lender or otherwise.

3. Advise the borrower/mortgagor of other available assistance regarding the mortgage/default, if any such assistance is available.

4. In addition to the preceding notification requirements, the lender/mortgagee shall complete the following additional notice requirements when a leasehold mortgage is involved: (i) notify the borrower/mortgagor that if the leasehold mortgage remains in default for more than ninety (90) days, the lender/mortgagee may ask the applicable government agency to accept assignment of the leasehold mortgage if this is a requirement of the governmental program; (ii) notify the borrower/mortgagor of the qualifications for forbearance relief may be available from the government if the mortgage is assigned; and (iii) provide the borrower/mortgagor with names and address of government officials to whom further communications may be addressed, if any.

E. If a borrower/mortgagor has been in default for ninety (90) days or more and the lender/mortgagee has complied with the procedures set forth in the first part of this section, the lender/mortgagee may commence a foreclosure proceeding in the Tribal Court by filing a complaint as set forth in Title 24, § 7-304.

[NCA 99-109, Title 1, § 3-3, eff. Aug. 31, 1999.]

§ 7-304. Foreclosure complaint and summons

A. To initiate a mortgage foreclosure proceeding under this chapter, the lender/mortgagee or its assignee must file a verified complaint in Tribal Court. Said complaint shall contain the following:

1. The name of the borrower/mortgagor and each person or entity claiming through the borrower/mortgagor subsequent to the recording of the mortgage,

including each subordinate lienholder (except the Nation with respect to a claim for a Tribal leasehold), as a defendant.

2. A description of the property subject to the mortgage.

3. A concise statement of the facts concerning the execution of the mortgage or in the case of a leasehold mortgage, the lease; the facts concerning the recording of the mortgage or the leasehold mortgage; the facts concerning the alleged default(s) of the borrower/mortgagor; and such other facts as may be necessary to constitute a cause of action;

4. True and correct copies of each promissory note or if a leasehold mortgage, then a copy of the lease, the mortgage, or assignment thereof relating to the property (appended as exhibits); and

5. Any applicable allegations concerning relevant requirements and conditions prescribed in (1) federal statutes and regulations; (2) Tribal codes, laws and regulations; and/or (3) provisions of the lease or leasehold mortgage, or security instrument.

B. The complaint shall be verified by the plaintiff (or an officer or representative of the plaintiff) and certified by the Court Clerk, along with a summons specifying the date and time of appearance for the defendant(s).

[NCA 99-109, Title 1, § 3-4, eff. Aug. 31, 1999.]

§ 7-305. Service of process and procedures

Service of process shall be performed according to the procedures set forth as follows:

A. Service by personal delivery

1. At the election of the plaintiff, process shall be served by a law enforcement officer, a person licensed to make service of process in civil cases, or a person specially appointed for that purpose. The Tribal Court shall freely make special appointments to serve all process, other than a subpoena under this paragraph.

2. A summons and complaint to be served by a law enforcement officer shall be delivered to the law enforcement officer by the Court Clerk or attorney of record by the plaintiff.

3. Service shall be made as follows:

a. Upon an individual, other than an infant who is less than fifteen (15) years of age or an incompetent person, by delivering a copy of the summons and of the complaint to him or her personally or by leaving copies thereof at his or her dwelling, house or usual place of abode with some person then residing therein who is fifteen (15) years of age or older or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process;

b. Upon an infant who is less than fifteen (15) years of age, by serving the summons and complaint upon him or her personally and upon either of his or her parents or his or her guardian, or if they cannot be found, then upon the person having the care or control of the infant or with whom he or she lives;

and upon an incompetent person by serving the summons and complaint upon him personally and upon his or her guardian or other legal representative;

c. Upon the Housing Authority by delivering a copy of the summons and of the complaint to an officer or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by law to receive service of process by also mailing a copy to the defendant;

B. Service by mail

1. At the election of the plaintiff, a summons and complaint may be served by mail by the Court Clerk, by the plaintiff's attorney or by any person authorized to serve process pursuant to this chapter as previously stated herein. Service by mail shall be effective on the date of receipt or if refused, on the date of refusal of the summons and complaint by the defendant.

2. Service by mail shall be accomplished by mailing a copy of the summons and petition by certified mail, return receipt requested and delivery restricted to the addressee. When there is more than one defendant, the summons and a copy of the petition or order shall be sent by certified mail in a separate envelope to each defendant. If the summons is to be served by mail by the Court Clerk, the Court Clerk shall enclose the summons and a copy of the petition or order of the Court to be served in an envelope, prepared by the plaintiff, addressed to the defendant, or to the resident service agent if one has been appointed. The court clerk shall prepay the postage and mail the envelope to the defendant, or service agent, by certified mail, return receipt requested and delivery restricted to the addressee. Such return receipt shall be prepared by the plaintiff.

3. Service by mail shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing acceptance by the defendant or a returned envelope showing refusal of the process by the defendant. Failure of the defendant to accept or sign the receipt for the certified mail hereunder shall, for the purpose of this subsection B, be deemed a refusal of the process. Acceptance or refusal of service by mail by a person who is fifteen (15) years of age or older who resides at the defendant's dwelling house or usual place of abode shall constitute acceptance or refusal by the party addressed. In the case of an entity, acceptance or refusal by any officer or by any employee of the registered office or principal place of business who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed. A return receipt signed at such registered office or principal place of business shall be presumed to have been signed by an employee authorized to receive certified mail. In the case of a state municipal corporation, or other governmental organization thereof subject to suit, acceptance or refusal by an employee of the office of the officials who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed. If delivery of the process is refused, upon the receipt of notice of such refusal and at least ten (10) days before applying for entry of default, the person elected by plaintiff to serve the process shall mail to the defendant by first-class mail a copy of the summons and petition and a notice prepared by the plaintiff that despite such refusal the case will proceed and that judgment by default will be rendered against him or

her unless he or she appears to defend the suit. Any such default or judgment by default shall be set aside upon motion of the defendant if the defendant demonstrates to the court that the return receipt was signed or delivery was refused by an unauthorized person. Such motion shall be filed within one (1) year after the defendant has notice of the default or judgment by default but in no event more than two (2) years after the judgment.

C. Service by publication

1. Service of summons upon a named defendant may be made by publication when it is stated in the petition, verified by the plaintiff or his or her attorney, or in a separate affidavit by the plaintiff or his or her attorney filed with the court, that with due diligence service cannot be made upon the defendant by any other method.

2. Service of summons upon the unknown successors of a named defendant, a named decedent, or a dissolved partnership, corporation, or other association may be made by publication when it is stated in a petition, verified by the plaintiff or his or her attorney, or in a separate affidavit by the plaintiff or his or her attorney filed with the Court, that the person who verified the petition or the affiant does not know and with due diligence cannot ascertain the following:

- a. whether a person named as defendant is living or dead, and, if dead, the names or whereabouts of his successors, if any,
- b. the names or whereabouts of the unknown successors, if any, of a named decedent,
- c. whether a partnership, corporation, or other association named as a defendant continues to have legal existence or not; or the names or whereabouts of its officers or successors,
- d. whether any person designated in a record as a trustee continues to be the trustee; or the names or whereabouts of the successors of the trustee, or
- e. the names or whereabouts of the owners or holders of special assessment or improvement bonds, or any other bonds, sewer warrants or tax bills.

3. Service pursuant to this subsection shall be made by publication of a notice, signed by the Court Clerk, one (1) day a week for three (3) consecutive weeks in a newspaper authorized by law to publish legal notices which is published in the county where the land in question is located. If no newspaper authorized by law to publish legal notices is published in such county, the notice shall be published in some such newspaper of general circulation which is published in an adjoining county. All named parties and their unknown successors who may be served by publication may be included in one notice. The notice shall state the court in which the petition is filed and the names of the plaintiff and the parties served by publication, and shall designate the parties whose unknown successors are being served. The notice shall also state that the named defendants and their unknown successors have been sued and must answer the petition on or before a time to be stated (which shall not be less than forty-one (41) days from the date of the first publication), or judgment, the nature of which shall be stated, will be rendered accordingly. The real

property involved in the action, as well as any property or debts to be attached or garnished must be described in the notice.

[NCA 99-109, Title 1, § 3-5, eff. Aug. 31, 1999.]

§ 7-306. Cure of default by subordinate lienholder

Prior to the entry of a judgment of foreclosure, any borrower/mortgagor or a subordinate lienholder may cure the default(s) under the 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 the default(s), plus interest on such amounts at the rate stated in the note for the mortgage. There shall be no right of redemption in any leasehold mortgage foreclosure proceeding.

[NCA 99-109, Title 1, § 3-6, eff. Aug. 31, 1999.]

§ 7-307. Judgment and remedy

The plaintiff's claims and any defenses raised in the answer shall be heard and decided by the Tribal Court in a prompt and reasonable time period not to exceed sixty (60) days from the date of service of the complaint on the borrower/mortgagor. If the alleged default has not been cured at the time of trial and, after presentation of evidence in support of the compliant and/or any defenses thereto, the Tribal Court finds for the lender/mortgagee, the Tribal Court shall enter judgement:

A. Foreclosing the interest of the borrower/mortgagor and each other defendant, including subordinate lienholder, in the mortgaged property, and

B. Assigning the mortgaged property to the lender/mortgagee or the lender's designated assignee. Such assignment of the mortgaged property shall be subject to the following provisions:

1. The lender shall give the Nation the right of first refusal on any acceptable offer to purchase property. The Principal Chief shall have the authority to initiate the right of first refusal by giving written notice of same to the Court within thirty (30) days following the entry of judgment foreclosing the borrower's interest in the property. Subsequent disposition of the property acquired by the Nation by exercising such right shall be as provided in paragraph 4 below.

2. The lender or lender's designated assignee may only transfer, sell or assign the mortgaged property to a citizen of the Muscogee (Creek) Nation, the Nation, the Housing Authority of the Creek Nation of Oklahoma, Inc., or a Tribally designated housing entity, provided that if after ninety (90) days one of the enumerated parties does not choose to purchase the property, the lender shall hold title to the property until such time as one of the enumerated parties is willing to purchase the property, and provided further, that the lender may lease the property on a month-to-month basis until the property is purchased.

3. Any other transfer, sale or assignment of a leasehold interest shall only be made to a citizen of the Muscogee (Creek) Nation, the Nation, the Housing Authority of the Creek Nation of Oklahoma, Inc., or a Tribally-designated housing entity and shall only remain in effect for the remaining period of the leasehold.

4. a. Within ninety (90) days after the date of assignment of the property to the Nation pursuant to this section, the Nation, by duly adopted law or Tribal Resolution, shall determine the disposition of the assigned property. Such disposition may include but shall not be limited to:

i. transferring title to the property to the original owner or a member of the owner's immediate family;

ii. sale, lease, or exchange of the property for its fair market value; or

iii. transferring title to the property to the Housing Authority of the Creek Nation of Oklahoma, Inc., or other Tribally-designated housing entity.

b. If the Nation fails to adopt such a law, the title to the property shall remain in the Nation.

[NCA 99-109, Title 1, § 3-7, eff. Aug. 31, 1999; amended by NCA 06-003, § 2, approved Feb. 1, 2006.]

Library References

Indians ☞172, 200, 227, 508, 533.
Westlaw Topic No. 209.

C.J.S. Indians §§ 37 to 38, 76, 96 to 97, 101
to 108, 110 to 111, 128, 151 to 179.

§ 7-308. Foreclosure evictions

Foreclosure evictions shall be handled according to the general eviction process set forth in subchapter 2 of this chapter, with the added provision that foreclosure eviction proceedings shall not occur until after the borrower/mortgagor, lessee, or occupier has received thirty (30) calendar day's notice and remains in possession of the property contrary to the terms of the notice. All foreclosure evictions shall occur no later than sixty (60) days from the date of service of notice upon the borrower/mortgagor that foreclosure was completed.

[NCA 99-109, Title 1, § 3-8, eff. Aug. 31, 1999.]

§ 7-309. No merger of estates

There shall be no merger of estates by reason of the execution of a lease or a leasehold mortgage or the assignment or assumption of the same, including an assignment adjudged by the Tribal Court, or by operation of law, except as such merger may arise upon satisfaction of the leasehold mortgage.

[NCA 99-109, Title 1, § 3-9, eff. Aug. 31, 1999.]

§ 7-310. Certified mailing to Nation and lessor

In any foreclosure proceedings on a lease or leasehold mortgage where the Nation or the lessor(s) is not named as a defendant, a copy of the summons and complaint shall be mailed to the Nation and to the lessor(s) by certified mail, return receipt requested, within five (5) days after the issuance of the summons. If the location of the lessor(s) cannot be ascertained after reasonable inquiry, a copy of the summons and complaint shall be mailed to the lessor(s) in care of the Superintendent of the applicable agency of the Bureau of Indian Affairs.

[NCA 99-109, Title 1, § 3-10, eff. Aug. 31, 1999.]

§ 7-311. Intervention

The Nation or any lessor may petition the Tribal Court to intervene in any lease or leasehold mortgage foreclosure proceeding under this chapter. Neither the filing of a petition for intervention by the Nation, nor the granting of such a petition by the Tribal Court, shall operate as a waiver of the sovereign immunity of the Nation, except as may be expressly authorized by the Nation.

[NCA 99-109, Title 1, § 3-11, eff. Aug. 31, 1999.]

§ 7-312. Appeals

Appeals under this chapter shall be handled in accordance with the general Tribal appellate provisions.

[NCA 99-109, Title 1, § 3-12, eff. Aug. 31, 1999.]

SUBCHAPTER 4. LIEN PROCEDURES

Section

- 7-401. Application.
- 7-402. Creation of a lien.
- 7-403. Lien on future interest.
- 7-404. Limitations of liens.
- 7-405. Priority of liens.
- 7-406. Holder of a subordinate lien.
- 7-407. Redemption of a lien.
- 7-408. Limitation of time.
- 7-409. Partial performance.
- 7-410. Voluntary restoration as extinguishing lien.

§ 7-401. Application

Contracts of mortgage and pledge are subject to all provisions of this chapter.

[NCA 99-109, Title 1, § 4-1, eff. Aug. 31, 1999.]

§ 7-402. Creation of a lien

A lien is created:

- A. by contract of the parties; or
- B. by operation of law except that no lien arises by operation of law until the time the act to be secured has lapsed without performance.

[NCA 99-109, Title 1, § 4-2, eff. Aug. 31, 1999.]

§ 7-403. Lien on future interest

An agreement may be made to create a lien upon future interests in property. In such a case, the lien attaches at the time the property interest vests.

[NCA 99-109, Title 1, § 4-3, eff. Aug. 31, 1999.]

§ 7-404. Limitations of liens

- A. Notwithstanding any agreement to the contrary, a lien or a contract for a lien transfers no title to the property subject to the lien.

B. The creation of a lien does not of itself imply that any person is bound to perform the act for which the lien is a security.

C. The existence of a lien upon property does not entitle the lienholder to a lien upon the same property for the performance of any other obligations other than that for which the lien was originally secured.

D. The lienholder is not entitled to compensation from the property owner for any trouble or expense which he or she incurs.

[NCA 99-109, Title 1, § 4-4, eff. Aug. 31, 1999.]

§ 7-405. Priority of liens

A. A lien upon property held by the Nation for the payment of Tribal taxes shall not become subordinate to any other lien.

B. A mortgage given for the purchase or refinance of real property has priority over all other liens so long as the mortgage is duly recorded.

C. Liens have priority according to the time of their creation, so long as the instruments creating the liens are duly recorded, and unless otherwise accorded a different status under the Nation's law.

D. Where one has a lien upon several things, and other persons have subordinate liens upon or interests in some but not all of the same things, the person having the prior lien, if he or she can do so without the risk of loss to himself or herself or injustice to other persons must, on the demand of any interested party, resort to the property in the following order:

1. to the things upon which he or she has an exclusive lien;
2. to the things which are subject to the fewest subordinate liens;
3. in like manner inversely to the number of subordinate liens on the same thing; and
4. when several things are within one of the foregoing classes, and subject to the same number of liens, resort must be had:
 - a. to the things which have not been transferred since the prior lien was created;
 - b. to the things which have been so transferred without a valuable consideration; and
 - c. to the things which have been so transferred for a valuable consideration.

[NCA 99-109, Title 1, § 4-5, eff. Aug. 31, 1999.]

§ 7-406. Holder of a subordinate lien

A subordinate lienholder shall have a right:

A. to redeem the property in the same manner as its owner might, from a prior lien; and

B. to be subrogated to all the benefits of the prior lien, when necessary for the protection of his or her interests, upon satisfying the claim secured thereby.

[NCA 99-109, Title 1, § 4-6, eff. Aug. 31, 1999.]

§ 7-407. Redemption of a lien

Redemption of a lien is made by performing, or offering to perform, the act for the performance of which it is a security, and paying, or offering to pay, the damages, if any, to which the holder of the lien is entitled for delay.

[NCA 99-109, Title 1, § 4-7, eff. Aug. 31, 1999.]

§ 7-408. Limitation of time

A lien is extinguished by the lapse of the time within which, under the provisions of civil procedure, an action can be brought upon the principal obligation.

[NCA 99-109, Title 1, § 4-8, eff. Aug. 31, 1999.]

§ 7-409. Partial performance

The partial performance of an act secured by a lien does not extinguish the lien upon any part of the property subject thereto, even if it is divisible.

[NCA 99-109, Title 1, § 4-9, eff. Aug. 31, 1999.]

§ 7-410. Voluntary restoration as extinguishing lien

The voluntary restoration of property to its owner, by the lienholder, extinguishes the lien as to such property, unless otherwise agreed by the parties, and extinguishes it, notwithstanding any such agreements, as to creditors of the owner and persons subsequently acquiring title to the property, or a lien thereon, in good faith and for good consideration.

[NCA 99-109, Title 1, § 4-10, eff. Aug. 31, 1999.]

SUBCHAPTER 5. MISCELLANEOUS PROVISIONS**Section**

7-501. Severability.

7-502. Effective date.

§ 7-501. Severability

The provisions of this chapter are severable and if any part of the provisions hereto shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this chapter.

[NCA 99-109, Title 1, § 5-1, eff. Aug. 31, 1999.]

§ 7-502. Effective date

This chapter shall take effect upon the adoption in accordance with Article VI, Section 6, of the Constitution of Muscogee (Creek) Nation.

[NCA 99-109, Title 1, § 5-2, eff. Aug. 31, 1999.]

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