

Seneca Nation of Indians

President - Cyrus M. Schindler
Clerk - Shelley R. Huff

1490 ROUTE 438
IRVING, NEW YORK 14081

Tel. (716) 532-4900
FAX (716) 532-6272



Treasurer - Arnold N. Cooper, II

P.O. BOX 231
SALAMANCA, NEW YORK 14779

Tel. (716) 945-1790
FAX (716) 945-1565

AT THE SPECIAL SESSION OF COUNCIL OF THE SENECA NATION
OF INDIANS HELD ON OCTOBER 17, 2002, AT THE WILLIAM SENECA
ADMINISTRATION BUILDING ON THE CATTARAUGUS INDIAN
RESERVATION, IRVING, NEW YORK, 14081

CN: S-10-17-02-08

EXECUTIVES PRESENT:

PRESIDENT
CLERK

-
-

CYRUS M. SCHINDLER
SHELLEY R. HUFF

SENECA NATION OF INDIANS EVICTION AND FORECLOSURE ORDINANCE/APPROVAL

MOTION: by Arlene Bova, seconded by Richard Nephew, that Tribal Council accept the Eviction and
Foreclosure ordinance.
ALL IN FAVOR

MOTION CARRIED

CERTIFICATION

I hereby certify the foregoing extract is a true and correct copy from the minutes of the Special Session of Council of the Seneca Nation of Indians held on October 17, 2002, on the Cattaraugus Indian Reservation, original of which is on file in the Clerk's Office of the Seneca Nation of Indians.

IN TESTIMONY WHEREOF, I have herunto subscribed my name and causes the seal to be affixed at the William Seneca Building on the Cattaraugus Reservation, Irving, New York 14081, on the 30th day of October, 2002.

ATTEST:


Shelley R. Huff Clerk
SENECA NATION OF INDIANS

{ SEAL }

SENECA NATION OF INDIANS EVICTION AND FORECLOSURE ORDINANCE

ARTICLE 1

General Provisions:

1-101 Applicability

The "Seneca Nation of Indians Eviction and Foreclosure Ordinance" shall replace the existing Article 24 and 25 of the Civil Procedure Rules. It shall apply to any and all arrangements, formal or informal, written or agreed to orally or by the practice of the parties, 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.

The following arrangements are not governed by this Ordinance:

- (A) Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service; or
- (B) Occupancy in a hotel, motel, or other commercial lodging.

1-102 Jurisdiction

- (A) Jurisdiction is extended over all buildings and lands intended for human dwelling, occupation or residence which may lie within:
 - (1) The exterior boundaries of the Nation's Territory;
 - (2) Lands owned by the Nation, leased or used by the its members, its Housing Authority, or any other entity of the Nation; or
 - (3) The territory of the Nation, as may be defined from time to time by the laws of the Nation or of the United States.
- (B) Jurisdiction is extended over all persons or entities within the jurisdiction of the Nation who sell, rent, lease, or allow persons to occupy housing, dwellings, or accommodations for the purpose of human dwelling, occupation, or residence, and all persons who buy, rent, lease, or occupy such structures. Such personal jurisdiction is extended over all persons and entities, whether or not they are members of the Nation, whether they are Indian or non-Indian, and whether they have a place of business within the Nation's Territory. Any act within the Territory dealing with the subject matter of this Ordinance shall be subject to the jurisdiction of the Nation.
- (C) Jurisdiction is extended over:
 - (1) All buildings which may lie upon lands owned by Nation, leased or used by its members, its Housing Authority, or any other entity of the

the Nation.

- (2) All persons or entities within the jurisdiction of the Nation who lease, mortgage, or otherwise secure an interest in a building.
- (D) Jurisdiction over all matters arising within the jurisdiction of the Nation with respect to the subjects of this Ordinance, and jurisdiction with respect to any person or entity acting or causing actions which arise under this Ordinance shall be exercised by the Nation's Courts.

1-103 Purposes and Interpretation

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

- (A) To simplify the law governing the occupation of dwelling units, and to protect the rights of landlords and tenants.
- (B) To preserve the peace, harmony, safety, health and general welfare of the people of the Nation and those permitted to enter or reside on the Territory.
- (C) To provide eviction procedures and to require landlords to use those procedures when evicting tenants.
- (D) To encourage landlords and tenants to maintain and improve dwellings on the Territory in order to improve the quality of housing as a Nation resource.
- (E) To simplify the law governing the rights, obligations, and remedies of the owners, sellers, buyers, lessors, and lessees, of buildings.
- (F) To avail the Nation, Nation entities, and Nation members of financing for the construction and/or purchase of family residences on land within the jurisdiction of the Nation by prescribing procedures for the recording, priority and foreclosure of mortgages given to secure loans made by or through any government agency or lending institution.
- (G) To establish laws and procedures which are necessary in order to obtain governmental funding for Nation housing programs or loan guarantees for private or Nation housing construction, purchase, or renovation.

1-104 Relation to Other Laws

- (A) Applicable Law. Unless affected or displaced by this Ordinance, principles of law and equity in the common law of the Nation and Nation's customs and traditions are applicable, and the general principles of law of any other jurisdiction may be used as a guide to supplement and interpret this Ordinance.
- (B) Other Applicable Laws. Additional Nation and federal laws may apply with regard to Nation housing such as the ordinance establishing the Seneca Nation Housing Authority and governmental housing laws and regulations.

(C) Conflicts With Other Laws

- (1) Nation Laws: To the extent that this Ordinance may conflict with Nation laws or ordinances which have been enacted to comply with statutes or regulations of any agency of the United States, such Nation laws or ordinances shall govern over the provisions of this Ordinance if it has specific applicability and it is clearly in conflict with the provisions of this Ordinance.
- (2) Federal Laws: Where a conflict may appear between this Ordinance and any statute, regulation, or agreement ^{with} of the United States, the federal law shall govern if it has specific applicability and if it is clearly in conflict with the provisions of this Ordinance.
- (3) State Laws: To the extent that the laws of any state may be applicable to the subject matter of this Ordinance, such laws shall be read to be advisory and not directly binding and shall not govern the relations of the parties.

ARTICLE - 2

Eviction Procedures

2-101 Grounds for Eviction

A person 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 agreement date of payment, or ten (10) calendar days following the first day of the month in a month-to-month tenancy.
- (B) Any agreement in rent, costs, or damages which have been due and owing for thirty (30) calendar days or more. The receipt by a landlord of partial payments under an agreement shall not excuse the payment of any balance due upon demand.
- (C) Nuisance, intentional or reckless damage, destruction, or injury to the property of the landlord or other tenants, or disturbing another tenant's right to quite enjoyment of a dwelling unit.
- (D) Serious or repeated violations of the rental agreement, any reasonable rules or regulations adopted in accordance with this Ordinance, or any applicable building or housing ordinances.
- (E) Occupation of any premises without permission or agreement, following any reasonable demand by a person in authority over the premises to leave.
- (F) Under other terms in the rental agreement which do not conflict with the provisions of this Ordinance.

2-102 Notice to Quit or Comply Requirements

- (A) When Notice to Quit or Comply is Required. When a landlord desires to

obtain possession of a dwelling unit, and when there exists one or more legally cognizable reasons to evict the tenant or tenants occupying the unit as set forth in §2-101, the landlord shall give notice to the adult tenants to quit possession of such dwelling unit according to the provisions of this Article.

- (B) Purpose of Notice to Quit or Comply. The purpose of the Notice 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) Statement of Grounds for Eviction Required. The Notice to Quit or Comply shall be addressed to the adult tenants of the dwelling unit and shall state the legally cognizable reasons(s) for termination of the tenancy and the date by which the tenant is required to quit possession of the dwelling unit.
- (D) Form of Notice. The notice shall be in writing 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 (here insert the legally cognizable reason or reasons for the notice to quit possession using the statutory language of 2-101 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) Time Requirements for Notice. The notice must be delivered within the following periods of time:
 - (1) No less than fifteen (15) 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 five (5) 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) No less than thirty (30) calendar days in all other situations.

2-103 Serving the Notice to Quit or Comply

Any notice to Quit or Comply 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 the 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 premises in such a manner that it is not likely to blow away, and by posting a copy of the notice in some public place near the premises, including a Nation office, public store, or other commonly frequented place and by sending a copy first class mail, postage prepaid, addressed to the tenant at the premises.
- (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.

2-104 Pre-Eviction Options

- (A) Negotiated Settlement. After a Notice to Quit or Comply is served upon a tenant, the landlord and tenant may engage in discussions to avoid a proceeding to evict and to settle the issues between the parties. The agreement to enter into discussions will not affect the rights of the parties unless the parties reach an agreement to waive any of their rights.
- (B) Stay of Proceedings. Where the parties mutually agree in good faith to proceed with such discussions, AND Judicial Eviction procedures have been initiated, the Court will stay such proceedings until it is notified by one or both parties that a hearing is required or that a settlement has been reached.
- (C) Settlement Options. In reaching an agreement, the parties may consider, but are not limited to the following options:
 - (1) The parties may employ the use of advocates or attorneys;
 - (2) The parties may employ the use of a mediator;
 - (3) The parties may agree to options set forth in Section §2-112 (A)(4)(8);
 - (4) The parties may agree to any other barter for services and goods, or to any other means of securing a fair exchange of value for the use of the dwelling;
 - (5) The parties may agree to dismiss the matter in exchange for any agreement reached;
 - (6) The parties may agree to stipulate to a judgment to be entered by the Court.

2-105 Summons and Complaint

If, after the date set forth in the notice to quit or comply for the tenant to quit possession of the dwelling unit, and the landlord and tenant have not reached an agreement, and the tenant has not quit possession, the landlord may file a complaint in the Nation 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;
- (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 or comply and any required termination notices have been served in accordance with this ordinance or other applicable law; 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 the Nation's Housing Authority, a statement that the Housing Authority has complied with all required regulatory processes prior to filing the eviction action and has met the pre-eviction requirements of this Article.

2-106 Action Upon Filing Complaint

When a complaint is filed in the Nation Court, it shall be immediately presented to a Peacemakers Court Judge. This shall be on the date of filing, or, if no judge is present, on the first regular Court day after filing or when a judge may first be found. The judge shall review the complaint and shall, if it appears to be in compliance with §2-105 and served as set forth in §2-102 of this Ordinance, issue a summons of the Court requiring the defendant named in the complaint to appear before the Court on a certain date to contest the complaint. The date for appearance 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. Upon setting of the date for appearance, the plaintiff shall have defendant served with the complaint and a summons to appear for the court date.

2-107 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 defendant appears in person, a written response shall be served upon the plaintiff within five (5) calendar days of any hearing, excluding weekends and holidays.
- (B) The Court shall set a hearing date which is no more than fifteen (15) calendar days following the date for appearance, except when the hearing date would fall on a weekend or holiday, and in such a situation on the first regular Court

day following that date.

- (C) A defendant may, for good cause shown, and upon the payment of a reasonable sum for the fair rental value of the premises between the date on which the complaint was filed and the date of hearing, obtain an extension of time, beyond the fifteen (15) day period. The Court may refuse to extend the date of hearing where the complaint is based upon nuisance or injuries, 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 on motion from the landlord order the tenant to pay into the Court rents for the use and occupancy during the pendency of the eviction case.

2-108 Defenses

The Court shall grant the remedies allowed in the Eviction and Foreclosure Ordinance, unless it appears by the evidence that:

- (A) The premises are untenable, uninhabitable, or constitute a situation where there is a constructive eviction of the tenant, in that the premises are in such a condition, due to the fault of the landlord, that they constitute a real and serious hazard to human health and safety and not a mere inconvenience.
- (B) The landlord has failed or refused to make repairs which are his responsibility after a reasonable demand by a tenant to do so, without good cause, and the repairs are necessary for the reasonable enjoyment of the premises.
- (C) There are monies due and owing to the tenant because he has been required to make repairs which are the obligation of the landlord and the landlord has failed or refused to make them after a reasonable notice. Such sums may be a complete or partial defense to a complaint for eviction, but only to the extent that such sums set off monies owed for occupancy. A tenant may be evicted after such a period if he fails or refuses to pay the reasonable rental value of the premises.
- (D) That due to the conduct of the landlord, there is injury to the tenant in such a way that justice requires that relief be modified or denied. This shall include the equitable defenses of estoppel, laches, fraud, misrepresentation, and breaches of serious and material obligations for public health, safety, and peace standards.
- (E) That there are such serious and material breaches of applicable housing law on the part of the landlord that it would be unjust to grant him a remedy.
- (F) The landlord is evicting the tenant because of his/her race, sex, sexual orientation, religion, age, marital status, family status, or because the tenant is disabled.
- (G) The landlord terminated the tenancy in retaliation for the tenant's attempt to secure his rights under this Ordinance or to force the landlord to comply with his duties under this Ordinance.

- (H) Any other material or relevant fact the tenant might present that may explain why his eviction is unjust and unfair.

2-109 Discovery and Pre-hearing Proceedings

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

2-110 Evidence

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

2-111 Burden of Proof

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

2-112 Judgment

- (A) Within five (5) calendar days of the date of the hearing, the Court shall grant and enter judgment and the judgment shall grant all relief that the parties are entitled to as of the date of the judgment. The judgment may:
- (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 or the Housing Ordinance, including interest;
 - (3) Order the parties to carry out an obligation required by law;
 - (4) Establish a payment plan for the tenant;
 - (5) Order rent payments out of per capita payment or through garnishment;
 - (6) Establish a Power of Attorney in another person/agency to fulfill rights or obligations of either landlord or tenant;

- (7) Remediate the action in part or in whole through appropriate recalculation of rent;
 - (8) Order the tenant to perform work for the landlord or the owner to pay off back rent due and/or damages;
 - (9) Order the payment of attorneys' fees and, where allowed by law or agreement, costs and expenses of litigation;
 - (10) Order the parties into negotiations as provided in Section §2-104 of the Housing Ordinance; or
 - (11) Grant any relief provided in the Housing Ordinance or 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 plaintiff following a hearing to determine whether relief should be granted and the kind of relief that should be granted.

2-113 Form of Judgment

The judgment shall state the relief granted by the Court to any party and the reasons therefore. If a trial is held, the judge should, whenever possible, render his decision immediately after both parties have rested their case and award costs and restitution as appropriate.

2-114 Execution of Judgment

An eviction order may be executed by the Marshall of the Nation or a duly authorized law enforcement officer. To execute the order, the officer shall;

- (A) remove all the evicted persons from the dwelling and verbally order them not to re-enter;
- (B) provide a copy of the order of eviction to all adult tenants;
- (C) post copies of the order of eviction on the doors of the premises if there is not any adult tenant present at the time of execution; and
- (D) supervise the removal of the possessions of the evicted persons.

The Nation's Marshal shall, upon receipt of an order of the Court, execute the judgment or order made by it within five (5) calendar days of the date of the judgment or order and make a report to the Court on what was done to enforce it.

2-115 Stay of Execution

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

- (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);
or

(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 to any order of the court.

2-116 Appeals

Appeals under this Article shall be according to the general Nation appellate provisions. Notwithstanding any other laws, all orders from the Peacemakers Court will remain in effect during the pendency of an appeal under this Article unless otherwise ordered by the Peacemakers Court or the Appellate Court.

2-117 Miscellaneous Complaints and Claims

Any miscellaneous complaint or claim including a complaint or claim by a tenant which does not fall within the procedures of this Ordinance may be made under the general Nation civil procedure rules.

2-118 Notice to Leave the Premises

Any notice to leave a premises, shall be by written order of the court, and shall be delivered to the tenant in the following manner:

(A) Delivery shall be made by:

- (1) A law enforcement officer of the Nation, or
- (2) Any person authorized by the Nation's Court.

(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 the notice cannot be given by means of personal delivery, or the tenant cannot be found, the notice may be delivered by means of:

- (1) Certified mail, return receipt requested, at the last known address of the landlord or tenant, or
- (2) Securely taping a copy of the notice to the main entry door of the premises in such a manner that it is not likely to blow away, and by posting a copy of the notice in some public place near the premises, including a Nation office, public store, or other commonly frequented

place and by sending a copy first class mail, postage prepaid, addressed to the tenant at the premises.

2-119 Forcible Eviction

- (A) Where the Court orders an eviction, and the defendant or any other occupant of the premises refuses to vacate voluntarily by the effective date of that Order, the defendant or other occupants may be forcibly removed from the premises by the Nation Marshal or a duly authorized law enforcement officer. At the hearing where the eviction is ordered, the Court shall inform the defendant that if he does not vacate the premises voluntarily by the effective date, he and the other occupants will be subject to forcible eviction, and their personal property will be subject to storage, sale and disposal as set forth in subsection (C) below.
- (B) Following eviction, the Court may allow the landlord or the Indian Housing Authority access to any personal property leased by either of them for purposes of preserving and securing it.
- (C) Following forcible eviction of the defendant and/or other occupants, the former occupant's personal property shall be stored by the owner of the premises for at least thirty (30) days, either on the premises or at another suitable location. In order to reclaim their property, the former occupants shall pay the reasonable costs of its removal and storage. If they do not pay such costs within thirty (30) days, the owner is authorized to sell the property in order to recover these costs. The landlord shall not condition return of the former occupant's personal property on the payment of any costs or fees other than those of removal and storage of those personal possessions. Should the landlord attempt to condition return of personal possessions on payment of any other cost or fee, the landlord shall forfeit his right to the costs of removal and storage. Upon request by the former occupants, the landlord shall provide them with pertinent information concerning the sale, including the time, date and location. Any proceeds from the sale in excess of the storage and removal costs shall be remitted to the former occupants. Nothing in this section shall be construed to prevent the former occupants from reclaiming property remaining after the sale if they can arrange to do so in a manner satisfactory to the owner.

2-120 No Self-Help Eviction

No landlord may compel a tenant to vacate any premises in a forceful fashion or way which causes a breach of the peace. All landlords shall give a notice to quit and obtain a court order as provided in this Ordinance.

2-121 Security Deposits

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

pets or tenant history or prior damages.

- (B) Payment of Security Deposit at Termination of Tenancy. The landlord, at the time a tenancy is terminated shall pay to the individual the amount of the security deposit, less the value of any damages to the premises caused by the tenant. Damages shall not include normal wear and tear.
- (C) Action to Reclaim Security Deposit. Any tenant may bring a civil action in Nation Court to reclaim any part of his security deposit which may be due.

ARTICLE - 3

Mortgage and Foreclosure

3-101 Priority

All mortgages recorded in accordance with the recording procedures set forth in this Article, 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.

3-102 Recording

(A) The Nation's Clerk shall maintain a system for the recording of mortgages and such other documents in accordance with the recording procedures set forth in this Article.

(B) The Nation Clerk shall endorse upon any mortgage or other document

(1) The date and time of receipt of the mortgage or other document;

(2) The filing number, to be assigned by the Nation's Clerk, which shall be a unique number for each mortgage or other document received; and

(3) The name of the Nation's Clerk or designee receiving the mortgage or document.

Upon completion of the above cited endorsements, the Nation's Clerk shall make a true and correct copy of the mortgage or other document and shall certify the copy as follows:

Seneca Nation of Indians)) Ss.

Cattaraugus/Allegany/Oil Spring Territory)

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 Nation's 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.

(C) The Nation's Clerk shall also maintain a log of 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 of 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 Nation's Clerk; and
 - (6) The name of the Nation's Clerk or designee receiving the mortgage or document.
- (D) The certified copies of the mortgages and other documents and the log maintained by the Nation's Clerk shall be made available for inspection and copying. Rules for inspection and copying shall be established and designated by the Nation's Clerk.

3-103 Foreclosure Procedures

- (A) A Borrower/Mortgagor shall be considered to be in default when he is thirty (30) days past due on his mortgage payment(s) to the Lender/Mortgagee or when he has been in breach of any other material mortgage provision for at least thirty (30) days.
- (B) Before a Borrower/Mortgagor becomes ninety (90) days delinquent on his mortgage payments and before any foreclosure action or activity is initiated, the Lender/Mortgagee shall complete the following:
 - (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 for the purpose of trying to arrange a face-to-face interview.
- (C) Lender/Mortgagee may appoint an agent to perform the services or arranging and conducting 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 the Peacemakers Court, the Lender shall advise the Borrower/Mortgagor in writing by mail or by posting prominently on the unit, with a copy provided to the Clerk of the Nation, as follows:
 - (1) Advise the Borrower/Mortgagor that information regarding the loan and default will be given to credit bureaus.
 - (2) Advise the Borrower/Mortgagor of homeownership counseling opportunities/programs available through the Lender or otherwise.
 - (3) Advise the Borrower/Mortgagor of other available assistance regarding the mortgage/default.

(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 governmental 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 from the Lender/Mortgagee, if any, and that 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 delinquent 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 Peacemakers Court by filing a verified complaint pursuant to the Civil Procedure Rules.

3-104 Foreclosure Complaint and Summons

(A) The verified complaint in a mortgage foreclosure proceeding 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 Lien holder (except the Nation with respect to a claim for a Nation 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, 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) Nation ordinances and regulations, and/or (2) provisions of the Lease or Leasehold Mortgage, or security instrument (2) federal statutes and regulations

(B) The complaint shall be provided to the Peacemakers Court Clerk along with a summons specifying a date and time of appearance for the Defendant(s).

Still this way...

3-105 Service of Process and Procedures

- (A) Service of process shall be performed according to the procedures set forth for service of a notice to quit in §2-103 of this Ordinance.
- (B) Parties to the matter shall include the creditor, debtor, and all subordinate lien holders. For a leasehold agreement, additional parties shall include the Nation and the United States.
- (C) Defendants shall have twenty (20) days to file an answer, counterclaim, and/or affirmative defenses.
- (D) Evidence shall be admitted according to the Nation's Civil Procedure Rules.
- (E) The Burden of Proof shall be in accordance with §2-111 of this Ordinance.
- (F) Other procedural issues shall be determined under the generally applicable civil procedures of the Nation.

3-106 Cure of Default by Subordinate Lien holder

Prior to the entry of a judgment of foreclosure, any Borrower/Mortgagor or a Subordinate Lien holder may cure the default(s) under the Mortgage by making a full payment of the delinquency to the Lender/Mortgagee and all reasonable legal and Court costs incurred in foreclosing on the property. Any Subordinate Lien holder who has cured a default shall thereafter have included in its lien the amount of all payments made by such Subordinate Lien holder 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.

3-107 Judgment and Remedy

- (A) This matter shall be heard and decided by the Peacemakers 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 the Peacemakers Court finds for the Lender/Mortgagee, the Peacemakers Court shall enter judgment foreclosing the interest of the Borrower/Mortgagor and each other defendant, including Subordinate Lien holder, in the Mortgage, transferring the Mortgage to the Lender/Mortgagee or the Lender's Designated Assignee and ordering the sale of the foreclosed property. Said sale shall be executed by the Marshall of the Nation or a duly authorized law enforcement officer or officer of the Court, appointed by the Court for such purpose.
- (B) In the case of a Leasehold Mortgage, the Lease will be assigned to the Lender/Mortgagee or the Lender's Designated Assignee, subject to the following provisions:
 - (1) The Lender shall give the Nation the right of first refusal on any acceptable offer to purchase the Lease or Leasehold Mortgage which is subsequently obtained by the Lender or Lender's Designated Assignee.
 - (2) The Lender or Lender's Designated Assignee may only transfer, sell or

assign the Lease and/or Leasehold Mortgage to a Nation member, the Nation, or the Nation's Housing authority.

- (3) Any other transfer, sale or assignment of the Lease or Leasehold Mortgage shall only be made to a Nation member, the Nation, or the Nation's Housing Authority during the remaining period of the leasehold.

3-108 Foreclosure Evictions

Foreclosure evictions shall be handled according to the general eviction process set forth in Article 2 of this Ordinance, with the added provision that foreclosure eviction proceedings shall not occur until after the Borrower/Mortgagor, lessee, 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.

3-109 Certified Mailing to Nation and Lessor

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 Clerk of 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 Seneca Nation of Indians.

3-110 Intervention

The Nation or any Lessor may petition the Peacemakers Court to intervene in any Lease or Leasehold Mortgage foreclosure proceeding under this Ordinance. Neither the filing of a petition for intervention by the Nation, nor the granting of such a petition by the Peacemakers Court shall operate as a waiver of the sovereign immunity of the Nation.

3-111 Appeals

Appeals under this Article shall be handled in accordance with the general Nation appellate provisions.

ARTICLE - 4

4-101 Effective Date

This Ordinance shall take effect 60 days from the date of enactment.

4-102 Retroactive Effect

This Ordinance shall apply to all rental agreements subject to the provisions of this Ordinance, no matter when entered.