

**TITLE 3**  
**LUMMI NATION CODE OF LAWS**  
**TRIBAL COURT CIVIL ACTIONS**

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**TITLE 3  
LUMMI NATION CODE OF LAWS  
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**Chapter 3.01 General Provisions**

**3.01.010 Application**

This Title shall be applicable to all civil actions in the Tribal Court of the Lummi Nation unless otherwise specifically provided in the Lummi Code of Laws. The term “civil action” shall include all court actions that do not have as their object the imposition of a criminal penalty.

**3.01.020 Jurisdiction**

The Lummi Tribal Court shall have jurisdiction over all actions arising on, or having sufficient minimum contacts with, the Lummi Reservation, or any lands held in trust for the Lummi Nation by the United States regardless of location, and over all civil actions relating to members of the Lummi Nation while exercising treaty hunting, fishing or harvesting rights outside of the Lummi Reservation. For purposes of this Title, "Trust Land" shall mean all lands held in trust for the Lummi Nation by the United States regardless of location.

Any person, whether or not a member of the Lummi Nation or a resident of the Lummi Reservation or trust lands, who in person or through an agent does any of the acts in this Section, thereby submits himself or, and if through an agent, his personal representative, to the jurisdiction of the Court of the Lummi Nation as to any cause of action arising from the duty of the following acts:

- (a) Transaction or attempted transaction of any business within the Reservation or trust lands.
- (b) The commission of a tortious act within the Reservation or trust lands.
- (c) The ownership, use, or possession of any property, whether real or personal, situated within the Reservation or trust lands.
- (d) Contracting to insure any person, property, or risk located within the Reservation or trust lands at the time of contracting.
- (e) Conduct within the Reservation or trust lands with respect to which a child is conceived.

(f) Living in a marital relation within the Reservation or trust lands, regardless of subsequent departure from the Reservation or trust lands, as to all proceedings authorized by the Domestic Relations Code of the Lummi Nation, so long as the petitioning party has continued to be eligible to invoke the jurisdiction of the Tribal Court under the provisions of that code.

(g) The violation of any ordinance, civil, criminal, or regulatory, within the Reservation or trust lands.

**Chapter 3.02 Civil Actions**

**3.02.010 Form of Action**

There shall be one form of action to be known as “civil action”.

**3.02.020 Parties**

The party initiating the lawsuit shall be known as the Plaintiff or Petitioner, depending upon the type of action initiated. The party against whom the action is commenced shall be known as the Defendant or Respondent. Additional parties may be added to a case after it has been initiated and they shall be designated as Plaintiff (Petitioners) or Defendants (Respondents), depending upon their interest in the case. Persons who would be liable to Defendants if the Defendant is found to be liable to the Plaintiff, may be joined as Third Party Defendants.

**3.02.030 Relief Allowed**

The Court shall have power to award the following types of relief, provided, that no action shall be maintained unless there is an actual controversy between the parties: money damages; injunctions; declarations of rights; and any other relief appropriate under the laws or custom of the Lummi Nation.

**3.02.040 Limitation of Actions**

No complaint shall be filed in a civil action unless the events complained of shall have occurred within a three (3) year period immediately prior to the date of the filing of the

complaint; provided, however, that this general civil statute of limitations does not apply to any action filed by the Lummi Nation, or the Lummi Indian Business Council (LIBC), or their respective subordinate entities, organizations, agencies, or instrumentalities, whether organized under tribal law or in some other manner.

### **3.02.050 Survival of Actions**

(a) All causes of action by a person or persons against another person or persons shall survive to the personal representatives of the former, and against the personal representatives of the latter.

(b) It does not matter whether the actions arise on contract or otherwise, or whether or not such actions would have survived at common law prior to the date of enactment of this Section.

(c) An action to recover damages for death or injury may be maintained against the personal representative of a person where death or an injury to person or property results from a wrongful act, neglect, or default, or occurs simultaneously with or after the death of a person who would have been liable for it if his death had not occurred simultaneously with such death or injury or had not intervened between the wrongful act, neglect, or default and the resulting death or injury.

## **Chapter 3.03 Filing, Service, and Answer**

### **3.03.010 Commencement of Action - Filing Fee**

(a) Except as otherwise specified in this Code, all civil actions shall be commenced by the filing of a complaint in the Tribal Court.

(b) The filing fee for all civil actions shall be established in the Court Fee Schedule, which may be waived by the Court upon good cause shown. No fee will be charged if the Lummi Nation is the plaintiff or petitioner.

(c) No case shall be filed, and no summons shall be issued, without payment or waiver of the filing fee unless otherwise provided in this Code.

### **3.03.020 Commencement of Action - Complaint Contents**

The complaint shall be in writing and shall contain the following:

- (a) Names of the parties, if known;
- (b) A brief statement of the facts which show the Court has jurisdiction over the parties and the subject matter of the lawsuit;
- (c) A brief statement of the facts which justify the granting of the relief asked for;
- (d) A statement of relief asked for;
- (e) A statement, signed by the plaintiff or petitioner, affirming that:
  - (1) the person signing the complaint has read the complaint, or had it read to him; and
  - (2) the person understands the contents of the complaint, and believes those contents to be true and correct, and to the best of the person's knowledge, information, and belief, formed after reasonable inquiry.

### **3.03.030 Service of Notice**

(a) After the complaint has been filed, the Defendant shall be served with a copy of the complaint and a summons in the form set out in this Title.

(b) Service of the Summons and Complaint shall be the responsibility of the complaining party. Service may be accomplished by certified mail, return receipt requested, or by personal service by any person over the age of eighteen (18) years who is competent to testify and is not a party to the action, or by publication under the circumstances set out in LCL §3.03.040, below.

(c) In all cases, the person who serves notice on the defendant named in the complaint shall supply the Court with proof of service as set forth in LCL §3.03.090.

(d) Personal service may be effected by personally delivering a copy of the summons and complaint to the party, or by leaving a copy of the summons and complaint with a person of suitable age and discretion at the residence of the person to be served, with directions to deliver it to the person to be served.

**3.03.040 Service by Publication**

(a) When the defendant cannot be found within the Lummi Reservation or trust lands, or within the State of Washington, and upon the filing with the Court of an affidavit by the plaintiff, his agent, or spokesperson stating that:

(1) he believes that the defendant is not a resident of the Reservation or trust lands or the State, or cannot be found therein or in any other place; and

(2) that attempts to serve the defendant personally and by certified mail in accordance with LCL §3.03.030 have failed.

(3) Service may be made by publication of the summons in any case where personal service upon the defendant would be allowed under LCL §3.01.020 of this Code.

(b) Service by publication of the summons shall be made in a newspaper of general circulation, in the county where the defendant is believed to reside, at least one (1) time a week for each of two (2) consecutive weeks, or if the defendant is believed to reside within the boundaries of the Lummi Reservation or trust lands, service by publication may be made in the tribal newspaper, and publication in its monthly edition shall be sufficient. In either case, service shall be deemed complete thirty (30) days after the first publication.

**3.03.050 Summons - Content - Default Judgment**

The summons shall notify the defendant that the complaint has been filed, and that if he does not appear or answer the complaint within twenty-one (21) days from the date the summons is served upon him, the Court will grant a default judgment in favor of the plaintiff.

**3.03.060 Summons - Proof of Service**

The person serving the summons and complaint shall file a certification with the Court that he has served the defendant, including the date and place of service.

(a) If personal service was made on a person other than the defendant, the certification shall state the name of the person served, the date and place of service, and the instructions given to that person.

(b) If service was made by certified mail, the return receipt, signed by the defendant, is proof of service.

(c) If service was made by publication, the affidavit of publication or invoice from the publisher, including a clipping or copy of the notice as it was published, is proof of service.

**3.03.070 Defendant’s Answer, Defenses, and Counterclaims**

Within twenty-one (21) days after the defendant is served with a copy of the civil complaint and summons, he must either contact the court clerk and state whether he will appear in court to respond to the complaint or file a written answer.

(a) A written answer stating the nature of the defense must be filed with the Court and a copy served on the plaintiff.

(b) If a written answer is not filed, an oral answer may be given if requested by the defendant. The clerk shall set a hearing within the time for response for the defendant to state his answer on the record. Notice shall be given to the plaintiff of the date and time of the hearing for presenting the answer.

(c) In addition to any defenses the defendant may raise, the defendant may counterclaim against the plaintiff for relief as long as the injury which the defendant complains of occurred within the jurisdiction of the Lummi Tribal Court.

**3.03.080 Civil Jury - Demand and Requirements**

Any party may request a trial by a jury of six persons in an action where money damages are the primary relief requested by a party or is the primary issue which caused the complaining party to file an action. A jury is not available in any other civil actions, including civil infractions.

(a) A party requesting a jury trial must file a jury demand and submit a jury fee, established in the Court Fee Schedule, to the Tribal Court. The jury fee may be waived by the Court upon good cause shown. No jury fee will be charged if a jury is requested by the Lummi Nation or its subordinate entities, agencies, or instrumentalities.

(b) A jury demand may be made in the complaint, answer, or orally requested on the record. A jury demand must be filed not less than twenty-eight (28) days after the answer is filed.

### **Chapter 3.04 Preliminary Relief**

#### **3.04.010 Temporary Restraining Orders - Ex Parte Order**

In emergency situations where the complaining party demonstrates to the Court that immediate and irreparable damage, loss, or injury is threatened or is substantially certain to occur unless restrained by the Court, the Court may issue a temporary restraining order ex parte.

(a) A temporary order granted without notice will only be issued when:

(1) it is clear to the Court, from specific facts shown by affidavit, verified complaint, or sworn testimony, that immediate and irreparable damage, loss, or injury will result to the applicant before the adverse party or his attorney or spokesperson can be heard in opposition; and

(2) the applicant, or the applicant's attorney or spokesperson, certifies to the Court, in writing, what efforts, if any, have been made to give the notice, and the reasons supporting the claim that notice should not be required.

(3) A temporary restraining order shall be effective when it is served on the adverse party and shall remain in effect until the date set for the hearing, unless otherwise ordered by the Court.

This Section shall not be applicable when otherwise required by a specific rule or law of the Lummi Nation.

(b) If a temporary restraining order is granted without notice, the Court shall set a date for a hearing on the applicant's motion for restraining order at the earliest time practicable within fourteen (14) days of the entry of the order. At the hearing on the motion, the party requesting the temporary restraining order shall present his proof as to why the restraining order should be issued. The opposing party may present his reply and proof if any. Failure of the requesting party to prove the allegations

in the motion by a preponderance of evidence or failure of the requesting party to appear at the hearing will result in the Court dissolving the temporary restraining order. Failure of the responding party to appear, after proper proof of service, may result in a default order being entered granting the relief requested by the requesting party.

(c) A temporary restraining order will only be issued if the Court finds that it is necessary to maintain the status quo to prevent irreparable harm to the party requesting the order, pending a hearing for preliminary injunction.

(d) A temporary restraining order may be modified, vacated, or set aside by motion of either party upon notice and opportunity for a hearing.

#### **3.04.020 Preliminary Injunctions**

Following a motion and opportunity for hearing, either on affidavits or on sworn testimony, the Court may enter a preliminary injunction restraining a party from taking certain action or requiring a party to take certain action, during the pendency of the lawsuit. A preliminary injunction may be entered only after an appropriate motion by a party after notice and an opportunity to be heard by the opposing party or parties. A preliminary injunction will only be issued on a showing that:

(a) from the specific facts proven, that immediate and irreparable damage, loss, or injury will result to the party requesting the relief during the pendency of the lawsuit;

(b) from the specific facts proven, on balance, the party requesting relief will be more likely to suffer a more serious and irreparable harm than the party opposing the injunction; and

(c) the party requesting relief has raised serious legal questions and demonstrated a likelihood of prevailing on the merits of his claims.

#### **3.04.030 Bond**

The Court may, in its discretion, require the party seeking preliminary relief to post a bond to protect the party to be restrained, in the event that such relief is ultimately determined to be unjustified. No bond will be required of the Lummi Nation unless specifically allowed by ordinance or resolution of the LIBC.



## **Chapter 3.05 Pretrial Hearings**

### **3.05.010 Motions**

All requests for action by the Court in a particular matter shall be made by motion. All motions in a case pending before the Tribal Court shall be made on seven (7) days notice to the opposing party, or in open court during the course of a proceeding. A party requesting action by the Court on a motion shall also request that the Court set a hearing date on the motion. The Court will set a date for hearing. When motions are made in open court, the Court may allow the opposing party to respond and will set a time for the response to be filed. On motions made with proper notice, all responses shall be filed within two (2) days prior to the date set for the hearing. No response or reply is required until a hearing date is requested by the moving party and set by the Court. The Court may shorten or extend the time for responding to any motion if justice requires.

### **3.05.020 Modification of Existing Orders**

In any case where the Court has continuing jurisdiction, a party may move the Court for an order modifying a previously entered order, judgment, or decree.

(a) A motion to modify shall be served in the same manner as a complaint, and shall include a notice that the person seeking the modification may be granted the relief he desires if the opposing party fails to appear or respond in writing.

(b) Unless shortened by the Court on a showing of good cause, the time to answer a motion to modify will be the same as for answering a complaint.

### **3.05.030 Orders to Show Cause**

An order to show cause shall be issued by the Court only when it appears to the Court, on the basis of a written complaint under oath, that the person to whom the order is to be directed has violated a valid and existing written order of the Court, after he has received actual or constructive notice of the order. A person seeking the order shall specify:

(a) the substance of the order which is claimed

to have been violated, providing a copy of the order if available;

(b) the date on which the order was entered;

(c) the circumstances showing that the violating party knew of the order; and

(d) the specific facts which show the order was violated, including the date and place of violation.

## **Chapter 3.06 Discovery**

### **3.06.010 General Policy**

The facts will be revealed more readily if all parties in a civil case have access to all information and evidence related to the case. In preparation for a trial, therefore, the parties may ask each other for, and will make available to each other upon request, all information in each other's possession or control which can reasonably be expected to lead to admissible evidence, unless the information is protected by a recognized privilege. These rules will be liberally construed to provide for the maximum allowable inquiry into information.

### **3.06.020 Methods of Discovery, Requests, and Effect of Failure to Respond**

(a) The Court may fashion any method of discovering or exchanging information that is reasonable considering the nature of the lawsuit. The Court may also approve discovery methods agreed to by the parties. Methods of discovering and exchanging information may include, but are not limited to:

(1) written questions;

(2) questions upon oral examination;

(3) requests for the names of witnesses;

(4) requests for admissions;

(5) requests to physically inspect real and/or personal property;

(6) requests to perform scientific or physical tests upon a showing of good cause.

(b) The party requesting the information must be as clear and specific about the information requested as possible.

(c) The Court may not consider evidence presented at trial unless the opposing party has had access to the evidence when it was

properly requested.

### **3.06.030 Response to Discovery Request**

A party who receives a request for information under this rule will respond either with the requested information, with a statement of where and when the information will be available for copying and/or inspection, or with an objection to the question. An answer, statement of availability of the information, or objection to a question must be served on the requesting party by mail within twenty-eight (28) days of service of the request. Failure to respond is grounds for the Court to issue an order requiring a response or taking other action that is appropriate to insure information is available, including issuing sanctions against a party for willful failure to comply, or limiting the evidence or remedy requested by the non-responding party.

### **3.06.040 Privileges**

A party may refuse to make available the information requested if its release would cause the responding party or third-party undue hardship, or would violate a confidence which it is in the tribal policy to protect. Such tribal policy must be expressed in this Code or by resolution of the LIBC. The refusal must be stated in the discovery response.

(a) If the parties disagree about whether the responding party is required to release the information, the judge shall decide the dispute at a hearing properly moved and noted for that purpose.

(b) The judge may place conditions on the release of information in order to protect confidential material, prevent unreasonable burden or expense to one party, or to otherwise insure fairness to all parties.

## **Chapter 3.07 Trials**

### **3.07.010 Order of Trial**

In the trial of all civil actions, the order of trial shall be as follows:

(a) Selection of the jury, if the case involves a jury.

(b) The plaintiff may give an opening statement summarizing what he intends to

prove.

(c) The defendant may give an opening statement summarizing what he intends to prove, or he may delay giving an opening statement until the start of his case.

(d) The plaintiff will call witnesses and present other evidence to the Court. The witnesses shall be subject to cross-examination by the other parties in the case. Following cross-examination, the plaintiff shall have a second opportunity to question the witnesses he has called. Then the other parties shall have a second opportunity to question the witnesses. When the plaintiff has presented all his witnesses and evidence, the plaintiff shall inform the Court that his case is complete.

(e) Following the completion of the plaintiff's case, the defendant may move to dismiss the case. If in the opinion of the judge, after resolving all the disputed pieces of evidence and testimony in favor of the plaintiff, and drawing all reasonable inferences in favor of the plaintiff, there is insufficient evidence to support the case, the case shall be dismissed.

(f) In the event the case is not dismissed, the defendant may call witnesses and present evidence. The witnesses shall be subject to cross-examination by all of the parties. The defendant shall then have a second opportunity to question the witnesses followed by a second opportunity for cross-examination by all other parties. Following the testimony of all witnesses and the introduction of all evidence by the defendant, the defendant shall inform the Court that his case is complete.

(g) The plaintiff shall then have an opportunity to introduce additional evidence to rebut the evidence produced by the defendant.

(h) The defendant shall then have an opportunity to present additional evidence to rebut the additional evidence presented by the plaintiff.

(i) The plaintiff shall then make a closing argument to the jury or the judge as the case may be.

(j) The defendant shall then have an opportunity to make his closing argument.

(k) The plaintiff shall have the final opportunity to rebut the arguments made by the

defendant.

(l) In the case of a jury trial, the Court shall then instruct the jury about the law governing the case.

(m) The jury or judge shall then deliberate upon the case and announce its verdict.

(n) Judgment shall be entered on the verdict in accordance with this Code.

### **3.07.020 Verdict**

After all the evidence is in, the judge, or jury if the case is a jury trial, shall consider all the evidence and decide whether the party with the burden of proof has carried that burden, and shall announce a verdict in favor of the prevailing party.

### **3.07.030 Punitive Damages**

The judge, or the jury if the case is a jury trial, may award punitive damages to the prevailing party if the opposing party is found to have acted knowingly and willfully in his disregard for the law and/or the damage or injury inflicted on the prevailing party. An award of punitive damages may not exceed five (5) times the compensatory damages awarded by the judge or the jury unless another section of the Lummi Code of Laws specifically provides otherwise.

### **3.07.040 Burden of Proof**

The party asking for the judgment shall have the burden of proving all the elements of his case by a preponderance of the evidence.

## **Chapter 3.08 Judgments**

### **3.08.010 Judgments - Generally**

In all civil cases, judgment shall consist of an order of the Court awarding money damages to be paid to the injured party, or directing the surrender of certain property to the injured party, or the performance or restraint of some other act for the benefit of the injured party, or entering a declaratory judgment, and such other relief as the Court deems proper and in accordance with the law.

### **3.08.020 Entry of Judgment**

Following the announcement of the verdict, the judge shall announce the judgment in the case. Where there is no jury, the verdict and

judgment may be combined in the same announcement.

(a) The judgment may be oral or in writing. An oral judgment shall be made in the presence of all affected parties and/or their spokespersons. It shall be reduced to writing and entered in the docket by the clerk. A written judgment shall be dated and signed by the judge. A copy shall be delivered to each of the parties or their spokesperson. A notation referring to the written judgment shall be entered in the docket by the clerk and a copy of the judgment shall be filed in the court file.

(b) No judgment shall be effective until it has been entered in the docket.

### **3.08.030 Contents of Judgments**

The judgment shall contain a statement of all the relief granted to the prevailing party including, where appropriate, the declaration of the rights and responsibilities of the parties, an assessment of damages, including a provision for interest if the judgment is not paid, an order directing that certain actions be taken or not taken, and an assessment of the costs of the action. Such costs shall be limited to the expenses of voluntary witnesses for which either party may be responsible under this Code, and the fees of jurors in those cases where a jury is had, and any further fees connected with the procedure required by this Code before the Court. Only where specifically authorized by the Code, or in a written contract between the parties, may the Court award a reasonable attorney's or spokesperson's fee to the prevailing party, which award shall also be included in the judgment or a separate judgment.

### **3.08.040 Preparation of Proposed Judgment**

Where desired by one or more of the parties, or where directed by the Court, the parties shall prepare a proposed written judgment incorporating the verdict of the jury or decision of the Court. In addition, the parties may prepare and present to the judge proposed findings of fact and conclusions of law. No such proposed findings, conclusions, or judgment shall be signed by the judge until the other parties have been given at least seven (7) days notice of their presentation to the judge, or

such notice has been waived in writing.

### **3.08.050 Default Judgment**

When a party against whom a judgment is sought fails to appear, plead, or otherwise defend within the time allowed, and that fact is demonstrated to the Court by appropriate motion and affidavit or testimony, a default judgment may be entered by the Court. The motion and affidavit must contain satisfactory proof to the Court that:

- (a) the summons and complaint were served and the time for answering has expired; and
- (b) the claim and the amount of damages is meritorious; and
- (c) the Court has jurisdiction over the persons and the subject matter of the action.

### **3.08.060 Motion to Set Aside Default Judgment**

A party against whom a default judgment has been entered may move to have the default set aside for good cause shown and upon such terms and conditions as the Court decides are just. A motion to set aside a default judgment must be brought within one year after entry of the judgment.

## **Chapter 3.09 Post-Judgment Procedure**

### **3.09.010 Motion for Reconsideration of Judgment or Relief from Judgment**

(a) Not later than seven (7) days after a judgment is final, a party may ask the judge for reconsideration of the judgment. A judge may grant a new hearing or reconsider and change the judgment for good cause shown.

(b) On the motion of a party and upon terms that are just, the Court may relieve a party from a final judgment for the following reasons:

- (1) the original judgment was based on or reached as a result of mistake or excusable neglect;
- (2) there is new information available which could have affected the outcome of the case and which could not, with reasonable effort, have been discovered in time for the hearing on the case;
- (3) fraud;

(4) the judgment is void; or

(5) any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time and for reasons (1) or (2) not more than one (1) year after the judgment.

(c) Clerical mistakes in judgments or orders arising from oversight or omission may be corrected by the Court at any time of its own initiative or on the motion of any party and after such notice, if any, as the Court orders.

## **Chapter 3.10 Enforcement of Judgments**

### **3.10.010 Purpose**

The general purposes of this Enforcement of Judgments ordinance are to provide a fair and equitable means of collecting on debts, to protect the rights of creditors and debtors, to better enable community members to secure credit by providing a process for creditors to collect on debts, and to provide flexibility for the Court to recognize and apply tribal customs.

### **3.10.020 Execution - When Allowed**

Execution shall be allowed on any final judgment on a debt in favor of a creditor which has been entered by the Lummi Tribal Court. Executions shall not be allowed until fourteen (14) or more days following the entry of the judgment. However, no execution may be issued on any judgments more than ten (10) years old.

### **3.10.030 Stay of Execution - When Allowed**

The Court, upon proper application and posting of a bond or other collateral in an amount sufficient to protect the prevailing party, may stay execution pending appeal of the judgment. Such stay and bond shall be conditioned upon the appellant diligently prosecuting his appeal, and may be revoked by the Court at any time, with notice to the judgment debtor, if he fails to appear for a hearing on the appeal.

### **3.10.040 Type of Execution**

Execution shall consist of two types of orders: Attachment and Garnishment, which may be used as follows:

- (a) Attachment shall be used to seize the property of a judgment debtor that is in the possession of the judgment debtor.
- (b) Garnishment shall be used to seize the property of the judgment debtor that is in the hands of a third party.

### **3.10.050 Application for Order**

The judgment creditor shall file an application for the desired order with the Court. The application shall contain the following information:

- (a) The date of entry of the judgment, the amount of the judgment, the amount paid on the judgment, the amount currently owing on the judgment including interest, the name of the court, and the cause number.
- (b) The name and address of the requesting party and his attorney or spokesperson.
- (c) A statement of the type of execution sought, the name and address of the person on whom it is to be served, and a description of the property to be seized.

### **3.10.060 Issuance of Order**

(a) Garnishments: Upon the filing of a proper application, the judge shall issue the requested order in the name of the Chief Judge. The garnishment order shall be directed to the person in possession of the garnished property and shall direct him to pay over to the Court any and all monies or other things of value in his possession and belonging to the judgment debtor up to the amount of the judgment and subject to the exemptions contained in LCL §3.10.090 of this Code.

(b) Attachments: An order of attachment shall be directed to the Lummi Nation Police Department and shall direct them to either seize the described property and hold it for sale at the direction of the Court, or to insure that the judgment creditor is able to take possession of the described property without disturbing the peace.

(c) Service: Orders of attachment or

garnishment shall be served in the same manner as the summons and complaint. Proof of service shall be filed with the Court.

### **3.10.070 Duties of Third Party (Garnishee - Defendant)**

Upon receipt of an order of garnishment, a third party shall pay over to the Court any property in his possession and belonging to or owed to the judgment debtor, subject to the exemptions set out in LCL §3.10.090, up to the amount of the judgment. Failure to respond to the order of garnishment or disbursal of the property to the judgment debtor, or failure to disburse the property to any person as directed by the court order, following receipt of the order, may subject the garnishee-defendant to prosecution for contempt of court.

### **3.10.080 Procedures - Notice**

When property has been paid over to the Court or seized and delivered to the Court in accordance with this Section, the Court, within fourteen (14) days of receipt, shall give the judgment debtor a written notice of the following:

- (a) that the described property is in the possession of the Court, or someone else the Court has designated to hold the property, pursuant to court order;
- (b) that the property will be sold at public auction, in a commercially reasonable manner, on a date specified in the notice, and the proceeds will be applied to the judgment and to the costs incurred by the Court or the Lummi Nation Police Department;
- (c) that the judgment debtor has the right to contest the execution order by filing an appropriate pleading with the Court and requesting a hearing; and
- (d) that the judgment debtor has the right to satisfy the judgment and obtain the return of the property.

### **3.10.090 Exemptions from Garnishment and Attachment**

In the execution of any judgment, the following shall be exempt from execution except as specifically provided herein:

(a) All wearing apparel of every person in the family, but not to exceed \$1,000 in value in furs or jewelry for any one person.

(b) Items of bona fide religious or cultural significance.

(c) Equipment, gear, and boats used in the harvesting of any natural resource or used in the exercise of any treaty-protected right, of a reasonable value to be determined by the Court.

(d) Tools, instruments, and materials used to carry on a trade, in a value not exceeding \$5,000.

(e) Reasonable provisions and fuel for the necessary maintenance of the home.

(f) Land (real property) or interests in land held in trust or subject to restrictions against alienation imposed by the United States of America, or the income from such property.

(g) 75% of the disposable wages (gross wages minus deductions required by law, but not including voluntary payroll deductions), salary, or other compensation regularly paid for personal services per pay period, unless otherwise provided by another section of the Lummi Code of Laws.

(h) One or more motor vehicles not exceeding \$2,500 in total value.

(i) The dwelling, house or mobile home in which the judgment debtor resides or intends to reside and the land on which the structure is located, if the land is held in trust or subject to restrictions against alienation imposed by the United States of America.

(j) Family photos and keepsakes.

No property shall be exempt under this Section from execution issued upon a judgment for all or any part of the purchase price of the property, or for any tax levied upon such property, or if the property has been specifically pledged as security to the judgment creditor, unless execution against the pledged property is inconsistent with another section of this Ordinance.

### **3.10.100 Claim of Exemption by Debtor**

At any time after judgment on a debt in favor

of a creditor, a judgment debtor may claim personal property to be exempt from any order of execution which may be issued by the Court. To claim property as exempt, the judgment debtor shall deliver to the officer executing the order, or to the Court, a list of property owned or claimed by him, with the items of the property he claims as exempt listed separately. Failure to claim items as exempt prior to their sale or delivery to the judgment creditor shall result in a waiver of the exemption provided that the judgment debtor shall be served with a copy of the exemption section and this Section of the Code at the time of the service of the writ of execution.

### **3.10.110 Absconding Debtors - Exemption Not Allowed**

(a) Nothing in this Chapter shall be construed to exempt from attachment or execution the personal property of a non-resident of the Lummi Reservation or trust lands, or the person who has left or is about to leave the Lummi Reservation or trust lands, with the intent to defraud his creditors.

(b) Any order, or application for an order, subjecting such property to execution shall be accompanied by a statement containing specific facts justifying the need to waive the exemption.

### **3.10.120 Substitution or Surrender of Property**

(a) Upon agreement in writing, a judgment debtor who owns property which is not exempt from execution may substitute other property of equal or greater value which is exempt from execution. This substitution will allow execution against the exempt property. The result is that the substituted property shall become exempt from execution and the previously exempt property shall be removed from exemption.

(b) A judgment debtor may voluntarily surrender, by written consent, secured personal property to the judgment creditor. The written consent of the judgment debtor must be obtained at the time of surrender. Contract provisions for voluntary surrender, executed in advance of the judgment debtor's voluntary surrender, are not allowed or valid.

### **3.10.130 Supplemental Proceedings**

After an order of execution has been issued, or upon motion by the judgment creditor, the Court may require the judgment debtor to submit a list of the location and nature of his assets which may be used to satisfy the judgment, and those assets which he wishes to claim as exempt. The list may be provided by written or oral response and shall be made under oath. A request by the Court to receive this list shall be answered and returned to the Court within five (5) days and the request shall carry instructions to that effect. If the judgment debtor fails to appear or respond in either oral or written form, the judgment creditor may obtain and serve him with an order to show cause why he should not be held in contempt.

## **Chapter 3.11 Repossession by Secured Creditors**

### **3.11.010 Prohibition of Self-Help Remedies - Exception**

All self-help remedies for the recovery of personal property, including, but not limited to, motor vehicles and mobile homes secured to insure payment of obligations, are hereby declared unavailable except as provided in this Chapter.

### **3.11.020 Request and Order for Order of Repossession**

Prior to repossessing personal property on the Lummi Reservation or trust lands, all secured creditors must first obtain an order from the Lummi Tribal Court authorizing repossession of a particular item or items of personal property. The Court shall issue an order of repossession upon a finding that the secured creditor has submitted proof of the following:

- (a) existence of a valid contact between the secured creditor and the secured debtor;
- (b) proof of the amount owed by the secured debtor on the secured collateral;
- (c) proof that the secured debtor is in default; and
- (d) proof that notification was given to the secured debtor(s) that he was delinquent in payments to the secured creditor.

### **3.11.030 Hearing on Request for Order of Repossession**

If the Court finds that a secured creditor has failed to provide proof of the information required in LCL §3.11.020, the Court shall schedule the matter for hearing within seven (7) days and shall serve notice of the date, time, and purpose of the hearing on the secured creditor and the secured debtor.

## **Chapter 3.12 Arbitration Agreements**

### **3.12.010 Scope of Ordinance**

This Chapter applies to any written contract, agreement or other instrument entered into by the Lummi Tribe of the Lummi Reservation, Washington also known as the Lummi Nation (Nation), by the LIBC, by any subdivision, instrumentality, wholly owned entity, or affiliate of the Nation or by any other person in a transaction that is subject to the jurisdiction of the Nation, in which the parties thereto agree to settle by arbitration any claim dispute or controversy arising out of such contract, agreement, or other instrument. Any prior legislation or other tribal laws which are inconsistent with the purpose and procedures established by this Chapter are hereby repealed to the extent of any such inconsistency.

### **3.12.020 Agreements to Arbitrate are Enforceable**

An agreement in any written contract, agreement, or other instrument, or in a separate writing executed by the parties to any written contract, agreement, or other instrument, to settle by arbitration any claim, dispute, or controversy thereafter arising out of such contract, agreement, or other instrument, or any other transaction contemplated thereunder, or a written agreement between two or more persons to submit to arbitration any claim, dispute, or controversy existing between them at the time of the agreement, shall be valid, irrevocable, and enforceable.

### **3.12.030 Law to be Applied**

(a) In any contract, agreement, or instrument described in LCL §3.11.010 of this Chapter, the parties may agree upon the jurisdiction whose substantive law shall govern the

interpretation and enforcement of the contract, agreement, instrument, or claim, dispute, or controversy. Such choice of law shall be valid and enforceable, and not subject to revocation by one party without the consent of the other party or parties thereto, provided that the subject matter of the contract, agreement, instrument, or claim, dispute, or controversy, or at least one of the parties thereto, shall have some contact with the jurisdiction so selected.

(b) In any proceeding under this Chapter, whenever the contract, agreement, or other instrument sets forth a choice of law provision, the Tribal Court shall apply the procedural rules of the Tribal Court and the substantive law of the jurisdiction selected in such choice of law provision; provided that no procedural rule of the Tribal Court shall bar, delay, or impair any action, proceeding, or remedy where such action, proceeding, or remedy would not be barred, delayed, or impaired by the procedural rules of the courts of the jurisdiction whose substantive law applies.

(c) In any proceeding under this Ordinance, whenever the contract, agreement, or other instrument does not set forth a choice of law provision, the Tribal Court shall apply the substantive law of the Nation, including any applicable choice of law principles.

### **3.12.040 Stay of Proceedings and Order to Proceed with Arbitration**

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(a) A contract, agreement, or instrument described in this Chapter, the Tribal Court shall not review the merits of the pending action or proceeding, but shall stay the action or proceeding until an arbitration has been had in compliance with the agreement.

(b) A party to any contract, agreement, or instrument described in this Chapter claiming the neglect or refusal of another party thereto to proceed with an arbitration thereunder may make application to the Tribal Court for an order directing the parties to proceed with the arbitration in compliance with their agreement. In such event, the Tribal Court shall order the parties to arbitration in accordance with the provisions of the contract, agreement, or instrument and the question of whether an obligation to arbitrate the dispute at issue exists shall be decided by the

arbitrator(s).

(c) To the extent not otherwise addressed in the provisions of the contract, agreement, or instrument in question, if the arbitrator(s) selected by the parties shall be unable or unwilling to serve as arbitrator(s) and/or the parties are unable to agree upon a method for selecting the arbitrator(s), the Tribal Court shall determine the method for selecting the arbitrator(s).

### **3.12.050 Advice of the Court**

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At any time during an arbitration, upon request of all the parties to the arbitration, the arbitrator(s) may make application to the Tribal Court for advice on any question of tribal or state law arising in the course of the arbitration so long as such parties agree in writing that the advice of the Court shall be final as to the question presented and that it shall bind the arbitrator(s) in rendering any award.

### **3.12.060 Time Within Which Award Shall be Rendered**

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(a) If the time within which an award is rendered has not been fixed in the arbitration agreement, the arbitrator(s) shall render the award within thirty days from the date the arbitration has been completed. The parties may expressly agree to extend the time in which the award may be made by an extension or ratification thereof in writing.

(b) An arbitration award shall be in writing and signed by the arbitrator(s). The arbitrator(s) shall provide written notice of the award to each party by certified or registered mail, return receipt requested.

### **3.12.070 Application for Order Confirming Award - Record to be Filed with Clerk of Court - Effect and Enforcement of Judgment**

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(a) At any time within one year after an arbitration award has been rendered and the parties thereto notified thereof, any party to the arbitration may make application to the Tribal Court for an order confirming the award.

(b) Any party applying for an order confirming an arbitration award shall, at the



time the application is filed with the clerk of the Tribal Court for entry of judgment thereon, file copies of the following papers with the clerk: (1) the agreement to arbitrate; (2) any prior orders of the Tribal Court pertaining to the agreement to arbitrate; 3) the selection or appointment, if any, of the arbitrator(s); (4) any written agreement requiring the reference of any question as provided in LCL §3.11.050; (5) each written extension of the time, if any, within which to make the award; (6) the award; (7) each notice and proof of service on the other parties of the application to confirm;; and (8) a proposed order of the Tribal Court upon such an application.

(c) An arbitration award shall not be subject to review or modification by the Tribal Court, but shall be confirmed strictly as provided by the arbitrator(s). The judgment confirming an award shall be docketed as if it were rendered in a civil action. The judgment so entered shall have the same force and effect in all respects as, and be subject to all the provisions of law relating to, a judgment in a civil action, and it may be enforced as if it has been rendered in a civil action in the Tribal Court. When the award requires the performance of any other act than the payment of money, the Tribal Court may direct the enforcement thereon in the manner provided by law.

(d) All police and other law enforcement officials of the Nation shall carry out any orders that may be entered by the Tribal Court pursuant to this Chapter that are directed to them.

**3.12.080 Arbitration Award Not Appealable**

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No further appeal may be taken from an order issued by the Tribal Court pursuant to this Chapter enforcing an agreement to arbitrate or an award issued by an arbitrator.

**3.12.090 Jurisdiction of the Tribal Court in Actions to which the Tribe is a Party**

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(a) The Tribal Court shall have jurisdiction over any action to enforce an agreement to arbitrate, to compel arbitration pursuant to such an agreement to arbitrate, and to enforce an award made by an arbitrator pursuant to

such agreement to arbitrate, contained in any contract, agreement, or other instrument described in this Chapter to which the Nation, the LIBC, or any subdivision, instrumentality, wholly owned entity, or affiliate of the Nation is a party; provided that in any such actions brought against the Nation, the LIBC, or any other entity so authorized shall have explicitly waived the defense of tribal sovereign immunity in the contract, agreement, or other instrument; and provided further that such contract, agreement, or other instrument does not expressly prohibit the Tribal Court from exercising jurisdiction thereunder.

(b) The explicit consent of the Nation, the LIBC, or any subdivision, instrumentality, wholly owned entity, or affiliate of the Nation to the jurisdiction of a state or federal court contained in a contract, agreement, or instrument described in this Chapter shall be valid and enforceable in accordance with its terms, to the extent allowed by federal law. The jurisdiction of such state or federal court shall be concurrent with the jurisdiction of the Tribal Court.

**3.12.100 Severability**

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If any section or part thereof of this Chapter or the application thereof to any party shall be held invalid for any reason whatsoever by a court of competent jurisdiction or by federal legislative action, the remainder of the relevant section or part of this Chapter shall not be affected thereby and shall remain in full force and effect.

**3.12.110 No Waiver of Sovereign Immunity**

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Nothing in this Chapter shall be interpreted to provide a waiver of the sovereign immunity of the Tribe, the LIBC, any subdivision, instrumentality, wholly owned entity, or affiliate of the Tribe or any of their respective officers, employees, or agents acting within the scope of their authority.

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