

CHAPTER XI

FORCIBLE ENTRY AND WRONGFUL DETAINER

Section 1

Definitions

A. Forcible Entry - Every person is guilty of a forcible entry who either:

(i) by breaking open doors, windows or other parts of a house, or by any kind of violence or circumstances of terror, enters upon or into any real property; or

(ii) who, after entering peaceably upon real property, turns out, by force, threats or menacing conduct, the party in possession.

B. Forcible Detainer - Every person is guilty of a forcible detainer who either:

(i) by force, or by menaces and threats of violence, unlawfully holds and keeps possession of any real property, whether the same was acquired peacefully or otherwise, or,

(ii) who, in the nighttime, or during the absence of the occupant of any lands, unlawfully enters upon real property, and who, after demand made for the surrender thereof, for the period of five (5) days, refuses to surrender the same to such former occupant. The occupant of real property, within the meaning of this subdivision, is one who, within five (5) days preceding such unlawful entry, was in the peaceable and undisturbed possession of such lands.

C. Wrongful Detainer - A tenant of real property, for a term less than life, is guilty of wrongful detainer:

(i) when he continues in possession, in person or by subtenant, of the property, or any part thereof, after the expiration of the term for which it is let to him, without the permission of his landlord, or the successor in estate of his landlord, if any there be; but in case of a tenancy at will, it must first be terminated by thirty (30) days notice.

(ii) where he continues in possession, in person or by subtenant, without permission of his landlord, or the successor in estate of his landlord, if any there be, after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and three (3) days' notice, in writing, requiring its payment, stating the amount which is due, or possession of the property, shall have been served upon him, and if there be a subtenant in actual occupation of the premises, also upon such subtenant. Such notice may be served at any time within one (1)

year after the rent becomes due. In all cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than sixty (60) days after the expiration of his term without any demand of possession or notice to quit by the landlord, or the successor in estate of his landlord, if any there be, he shall be deemed to be holding by permission of the landlord, or the successor in estate of his landlord, if any there be, and shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of a wrongful detainer during said year, and such holding over for the period aforesaid shall be taken and construed as a consent on the part of a tenant to hold for another year.

(iii) where he continues in possession in person, or by subtenants, after a neglect or failure to perform other conditions or covenants of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than the one for payment of rent, and three (3) days' notice, in writing, requiring the performance of such conditions or covenants, or the possession of the property, shall have been served upon him, and if there be a subtenant in actual possession of the premises, also upon such subtenant. Within three (3) days after the service of the notice, the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform the conditions or covenants of the lease, or pay the stipulated rent, as the case may be, and thereby save the lease from forfeiture: provided, if the covenants and conditions of the lease, violated by the lessee, cannot afterward be performed, then no notice, as last prescribed herein, need be given to said lessee or his subtenant demanding the performance of the violated covenant or conditions of the lease. A tenant may take proceedings similar to those prescribed in this chapter, to obtain possession of premises let to an undertenant, in case of his wrongful detention of the premises underlet to him.

(iv) a tenant or subtenant, assigning or subletting or committing waste upon, the demised premises contrary to the covenants of his lease, thereby terminates the lease, and the landlord, or his successor in estate, shall, upon service of three (3) days' notice to quit upon the person or persons possession, be entitled to restitution of possession of such demised premises under the provision of this chapter.

Section 2

Service of Notice

The notices required by the preceding section may be served either:

1. By delivering a copy to the tenant personally;  
or,

2. If he be absent from his place of residence and from his usual place of business, by leaving a copy with some person of suitable age and discretion at either place, and sending a copy through the mail addressed to the tenant at his place of residence; or, if such place of residence and business cannot be reasonably ascertained, or a person of suitable age or discretion cannot be found there, then by affixing a copy in a conspicuous place on the property, and also delivering a copy to a person there residing, if such person can be found; and also sending a copy through the mail addressed to the tenant at the place where the property is situated. Service upon a subtenant may be made in the same manner.

Section 3

Parties

A. Parties Defendant - No person other than the tenant of the premises, and subtenant, if there be one, in the actual occupation of the premises when the notice herein provided for was served, need be made parties defendant in the proceeding, nor shall any proceeding abate nor the plaintiff be nonsuited for the nonjoinder of any persons who might have been made parties defendant; but when it appears that any of the parties served with process or appearing in the proceeding are guilty of the offense charged, judgment must be rendered against them. Any person who shall become a subtenant of the premises or any part thereof after the service of notice as provided in this chapter shall be bound by the judgment. In case a married woman be a tenant or a subtenant, her coverture shall constitute no defense; but in case her husband be not joined, or unless she be doing business as a sole trader, an execution issued upon a personal judgment against her can only be enforced against property on the premises at the commencement of the action.

B. Parties Generally - Except as provided in the preceding subsection, the provisions of this code relating to parties to civil actions are applicable to this proceeding.

Section 4

Action For Possession - Complaint - Summons

In an action for possession of land for the nonpayment of rent, it is sufficient to state in the complaint:

1. A description of the premises with convenient certainty;
2. That the defendant is in possession of the premises;
3. That the defendant entered upon the premises, holds the premises, and is in default of the payment of rent;
4. That all notices required by law have been served upon the defendant in the required manner; and
5. That the plaintiff is entitled to the possession of the premises. Upon filing the complaint, a summons must be issued, served and returned as in other actions, provided, however, that at the time of issuance of the summons, the court shall schedule a trial within twelve (12) days from the filing of the complaint, and the service of the summons, complaint and trial setting on the defendant shall not be less than five (5) days before the day of trial appointed by the court.

Section 5

Continuance

In an action for possession of land for the nonpayment of rent, no continuance shall be granted for a longer period than two (2) days unless the defendant applying therefore gives an undertaking to the adverse party with good and sufficient security, to be approved by the court, conditioned for the payment of the rent that may accrue if judgment is rendered against the defendant.

Section 6

Judgment on Trial by Court

In an action for possession of land for the nonpayment of rent, if the action is tried by the court without a jury, and after hearing the evidence it concludes that the complaint is not true, it shall enter judgment against the plaintiff for costs and disbursements. If the court finds the complaint true or if judgment is rendered by default, it shall render a general judgment against the defendant and in favor of the plaintiff, for restitution of the premises and costs and disbursements of the action. If the court finds the complaint true in part, it shall render judgment for the restitution of such part only, and the costs and disbursements shall be taxed as the court deems just and equitable. No provision of this law shall be construed to prevent the bringing of an action for damages.

Section 7

Judgment and Verdict on Trial by Jury

In an action for possession of land for the nonpayment of rent, if the action is tried by a jury and they find the complaint true, they shall render a verdict against the defendant; if not true, they shall render a verdict setting forth the facts they find, and the court shall render judgment according to the verdict.

Section 8

Form of Execution

The execution, should judgment of restitution be rendered, may be in the following form:

SHOSHONE BANNOCK TRIBAL COURT  
FORT HALL RESERVATION, IDAHO

_____	)	
Plaintiff,	)	FORCIBLE ENTRY/WRONGFUL DETAINER
	)	WRIT OF EXECUTION
vs	)	
	)	No.
_____	)	
Defendant.	)	

TO THE CHIEF OF POLICE OF THE FORT HALL TRIBAL POLICE DEPARTMENT:

WHEREAS, a certain action for the possession of the following described premises, to wit:

\_\_\_\_\_

\_\_\_\_\_ lately tried before the above-entitled court, where \_\_\_\_\_ was plaintiff and \_\_\_\_\_ was defendant, judgment was rendered on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, that the plaintiff \_\_\_\_\_ have restitution of the premises, and also that he recover the costs and disbursements in the sum of \$\_\_\_\_\_;

In the name of the Shoshone-Bannock Tribes, you are, therefore, hereby commanded to cause the defendant and his goods and chattels to be forthwith removed from the premises and the plaintiff is to have restitution of the same. In the event the goods and the chattels are not promptly removed thereafter by the defendant you are authorized and empowered to cause the same to be removed to a safe place for storage. You are also commanded to levy on the goods and chattels of the defendant, and pay the costs and disbursements, aforesaid, and all accruing costs, and to make legal service and due return of this writ.

WITNESS My hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Judge, Shoshone-Bannock Tribal Court

Section 9

Additional Undertaking on Appeal

If judgment is rendered against the defendant for the restitution of the real property described in the complaint or any part thereof, no appeal shall be taken by the defendant from the judgment until he gives, in addition to the undertaking now required by law upon appeal, an undertaking to the adverse party, with two (2) sureties, who shall justify in like manner as bail upon arrest, for the payment to the plaintiff, if the judgment is affirmed on appeal, of the rental value of the real property of which restitution is adjudged from the commencement of the action in which the judgment was rendered until final judgment in the action. The time period within which to file an appeal in any other action shall also be applicable in proceedings under this chapter.

Section 10

Action for Damages - Complaint - Summons

In an action for damages incurred as a result of failure to pay rent, the plaintiff in his complaint must set forth the facts on which he seeks to recover. If the plaintiff combines his action for damages with an action for possession the complaint shall also describe the premises with reasonable certainty and may set forth therein any circumstances which may have accompanied the alleged nonpayment of rent and claim damages therefor; provided, that the early trial provision of Section 4 of this Chapter, shall not be applicable when an action for damages is combined with an action for possession. In an action for damages, a summons must be issued returnable as in other cases upon filing the complaint.

Section 11

Judgment by Default

If, at any time appointed, the defendant does not appear and defend, the court must enter his default and render judgment in favor of the plaintiff as prayed for in the complaint.

Section 12

Sufficiency of Evidence - Defenses

On the trial of any proceeding for any forcible entry or forcible detainer, the plaintiff shall only be required to show, in addition to the forcible entry or forcible detainer complained of, that he was peaceably in the actual possession at the time of the forcible entry, or was entitled to the possession at the time of the forcible detainer. The defendant may show in his defense that he or his ancestors, or those whose interest in such premises he claims, have been

in the quiet possession thereof for the space of one whole year together next before the commencement of the proceedings, and that his interest therein is not ended or determined; and such showing is a bar to the proceedings.

Section 13

Amendment of Complaint

When, upon the trial of any proceeding under this chapter, it appears from the evidence that the defendant has been guilty of either a forcible entry or a forcible or wrongful detainer, and other than the offense charged in the complaint, the judge must order that such complaint be forthwith amended to conform to such proofs. Such amendment must be without any imposition of terms. No continuance shall be permitted upon account of such amendment unless the defendant, by affidavit filed, shows to the satisfaction of the court good cause therefor.

Section 14

Judgment - Restitution

If, upon the trial, the verdict of the jury, or, if the case be tried without a jury, the finding of the court, be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceedings be for wrongful detainer after neglect or failure to perform the conditions or covenants of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of such lease or agreement.

The jury, or the court, if the proceeding be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or wrongful detainer, alleged in the complaint and proved on the trial, and find the amount of any rent due, if the alleged wrongful detainer be after default in the payment of rent, and the judgment shall be rendered against the defendant guilty of the forcible entry, or forcible or wrongful detainer, for the amount of the damages thus assessed, and of the rent due. When the proceeding is for a wrongful detainer after default in payment of rent, and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not be issued until the expiration of five (5) days after the entry of judgment, within which time the tenant, or any subtenant, or any mortgagee of the term, or other party interested in its continuance, may pay into the court, for the landlord, the amount found due as rent, with interest thereon, and the amount

of the damages found by the jury or the court for the wrongful detainer, and the costs of the proceeding, and thereupon the judgment shall be satisfied and the tenant be restored to his estate; but if payment as here provided be not made within the five (5) days the judgment may be enforced for its full amount, and for the possession of the premises. In all other cases the judgment may be enforced immediately.

Section 15

Pleadings Verified

The complaint and answer must be verified.

Section 16

Appeal as Stay

An appeal taken by the defendant does not stay proceedings, under this chapter, upon the judgment unless the court so directs.

Section 17

Action for Damages and Specific Performance by Tenant

A. A tenant may file an action against the landlord for damages and specific performance for:

- (1) Failure to provide reasonable waterproofing and weather protection of the premises;
- (2) Failure to maintain in good working order electrical, plumbing, heating, ventilation, cooling, or sanitary facilities supplied by the landlord;
- (3) Maintaining the premises in a manner hazardous to the health or safety of the tenant;
- (4) Failure to return a security deposit as and when required by law;
- (5) Breach of any term or provision of the lease or rental agreement materially affecting the health and safety of the tenant, whether explicitly or implicitly a part thereof.

Upon filing the complaint, a summons must be issued, served and returned as in other actions, provided, however, that in an action exclusively for specific performance, at the time of issuance of the summons, the court shall schedule a trial within twelve (12) days from the filing of the complaint, and the service of the summons, complaint and trial setting on the defendant shall not be less than five (5) days before the day of trial appointed by the court. If the plaintiff brings an action for damages with an action for specific performance, the early trial provision of this section shall not be applicable, and a summons must be issued returnable as in other cases upon filing the complaint.



B. In an action under this section, plaintiff, in his complaint, must set forth the facts on which he seeks to recover, describe the premises, and set forth any circumstances which may have accompanied the failure or breach by the landlord.

C. If upon the trial, the verdict of the jury, or, if the case be tried without a jury, the finding of the court, be in favor of the plaintiff against the defendant, judgment shall be entered for the amount of the damages assessed. Judgment may also be entered requiring specific performance for any breach of agreement showing by the evidence, and for costs and disbursements.

D. Before a tenant shall have standing to file an action under this section, he must give his landlord three (3) days' written notice, listing each failure or breach upon which his action will be premised and written demand requiring performance or cure. If, within three (3) days after service of the notice, any listed failure or breach has not been performed or cured by the landlord, the tenant may proceed to commence an action for damages and specific performance.

E. Nothing in this section shall be construed as a waiver by the Shoshone Bannock Tribes of their immunity from suit, and consent must be obtained from the Shoshone Bannock Business Council before said tribe can be made a party to any action under this Code.

#### Section 18

##### Security Deposits

Amounts deposited by a tenant with a landlord for any purpose other than the payment of rent shall be deemed security deposits. Upon termination of a lease or rental agreement and surrender of the premises by the tenant all amounts held by the landlord as a security deposit shall be refunded to the tenant, except amounts necessary to cover the contingencies specified in the deposit arrangement. The landlord shall not retain any part of a security deposit to cover normal wear and tear. "Normal wear and tear" means that deterioration which occurs based upon the use for which the rental unit is intended and without negligence, carelessness, accident, or misuse or abuse of the premises or contents by the tenant or members of his household, or their invitees or guests.

Refunds shall be made within twenty-one (21) days if no time is fixed by agreement, and in any event, within thirty (30) days after surrender of the premises by the tenant. Any refunds in an amount less than the full amount deposited by the tenant shall be accompanied by a signed statement itemizing the amounts lawfully retained by the landlord, the

purpose for the amounts retained, and a detailed list of expenditures made from the deposit.

If security deposits have been made as to a particular rental or lease property, and the property changes ownership during a tenancy, the new owner shall be liable for the refund of the deposits.

Section 19

Rules of Practice in General

The provisions of this code relative to civil actions, appeals and new trials, so far as they are not inconsistent with the provisions of this Chapter, shall apply to the proceedings mentioned in this Chapter.

Section 20

Service of Notice to Landlord

The notice required by Section 17 of this Chapter shall be served either:

1. By delivering a copy of the required papers to the landlord or his agent personally; or
2. If the landlord or his agent is absent from his usual place of business, by leaving a copy of the required papers with an employee at the usual place of business of the landlord or his agent; or
3. By sending a copy of the required papers to the landlord or his agent by United States certified mail, return receipt requested.