

**Title 3 – Tribal Courts**  
**Chapter 6 – Enforcement of Judgments**

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**Legislative History**

Enacted:

Enforcement of Judgments, Ord. 201 (2/5/04), BIA (3/1/04).

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**3-06.010 Title.**

This Chapter shall be known as the “Swinomish Enforcement of Judgments Code”.

[History] Ord. 201 (2/5/04).

**3-06.020 Authority.**

This Chapter is enacted pursuant to authority provided by Article VI, Section 1(b), (i), (k), (l), (o), (p), (r) and (s), and Article VI, Section 3 of the Swinomish Constitution.

[History] Ord. 201 (2/5/04).

**3-06.030 Definitions.**

Unless specifically stated elsewhere in this Chapter, the meaning of the terms used in this Chapter shall be as follows:

- (A) **“Enforcement Officer”** means an officer of the Swinomish Tribal Police or other officer designated to act in this capacity by the Senate.
- (B) **“Foreign Judgment”** means any judgment, decree or order of any other tribal, state or federal court.
- (C) **“Garnishee” or “Garnishee Defendant”** means the person served a writ of garnishment, usually a third party indebted to, or in possession of property of, a judgment debtor.
- (D) **“Judgment Creditor”** means the party in whose favor a judgment has been entered by a court.
- (E) **“Judgment Debt”** means and indebtedness evidenced by a judgment entered by a court.
- (F) **“Judgment Debtor”** means the party against whom a judgment has been entered by a court.
- (G) **“Net Wages or Salary”** means income by way of earnings, interest, or rent after deducting the payment of mandatory taxes and deductions, family insurance premiums, and voluntary retirement deductions up to five percent (5%) of gross wages.
- (H) **“Person”** means any natural person, corporation, trust, unincorporated association, partnership, and federal, state or local governments, agencies or subdivisions thereof.

- (I) **“Reservation”** means the lands and waters within the exterior boundaries of the Swinomish Indian Reservation.
- (J) **“Senate”** means the Swinomish Indian Senate, the governing body of the Swinomish Indian Tribal Community.
- (K) **“Tribe”** or **“Tribal Community”** means the Swinomish Indian Tribal Community, a federally recognized Indian Tribe organized pursuant to Section Sixteen of the Indian Reorganization Act of 1934.
- (L) **“Tribal Court”** or **“Court”** means the Swinomish Tribal Court.
- (M) **“Trust Land”** or **“Trust Property”** means property within the exterior boundaries of the Reservation or lands outside the boundaries of the Reservation held in trust by the United States for the Tribe or tribal members.

[History] Ord. 201 (2/5/04).

### **3-06.040 Purpose and Scope.**

The Senate enacts this Chapter to provide a means of enforcing the judgments of the Swinomish Tribal Court. This Chapter shall also provide the means by which foreign judgments may be enforced in the Swinomish Tribal Court.

[History] Ord. 201 (2/5/04).

### *Subchapter I – General Provisions*

### **3-06.050 Jurisdiction.**

The Tribal Court is vested with the fullest personal, subject matter and territorial jurisdiction permissible under the Constitution and By-Laws of the Swinomish Indian Tribal Community and to the extent consistent with federal law.

[History] Ord. 201 (2/5/04).

### **3-06.060 Enforcement of Judgments.**

If, after the time for appeal has run, a judgment debtor fails to pay or otherwise satisfy the terms or conditions of the judgment, the judgment creditor may seek satisfaction of the judgment in the manner provided for in this Chapter.

[History] Ord. 201 (2/5/04).

**3-06.070      Timing.**

Unless the judgment has been renewed by the Court before its expiration, and except as may be specifically provided elsewhere by tribal law, no judgment of the Tribal Court shall be enforceable after ten (10) years from the date of entry.

[History] Ord. 201 (2/5/04).

**3-06.080      Renewal of Judgments.**

Upon application of a judgment creditor, prior to the expiration of ten (10) years after the date of entry of the judgment, the Court shall order the judgment renewed and extended for an additional ten (10) years.

[History] Ord. 201 (2/5/04).

**3-06.090      Effect upon Estate.**

A judgment in Tribal Court shall be considered a lawful debt for purposes of probate proceedings or other actions regarding a decedent's estate.

[History] Ord. 201 (2/5/04).

**3-06.100      Service of Notice.**

- (A) Unless directed otherwise in this Chapter, any required notice shall be in writing and shall be delivered by either:
  - (1) Delivering a copy personally to the recipient, or to any member of his or her family who resides with the recipient and is eighteen (18) years of age or older; or
  - (2) Sending a copy by regular mail and by certified mail, return receipt requested, properly addressed, postage prepaid to the recipient's last known mailing address.
  
- (B) Proof of delivery by either of the above methods may be made by affidavit of any person not directly interested in the proceedings and eighteen (18) years of age or older stating that he or she has complied fully with the requirements of one of the two methods of service.

[History] Ord. 201 (2/5/04).

**3-06.110      Sovereign Immunity.**

Nothing in this Chapter shall affect the right of the Tribe to assert immunity from suit by

virtue of its status as a sovereign entity, except that the Tribe may not assert sovereign immunity when named and served as a garnishee in a garnishment order issued by the Tribal Court pursuant to this Chapter. Nothing in this Chapter shall be construed as a waiver of immunity for any administrative order or order from any other court.

[History] Ord. 201 (2/5/04).

**3-06.120 Supplemental Proceedings.**

- (A) After an order of execution has been issued, or upon the motion of a judgment creditor, the Court may require the judgment debtor to submit a list of the location and nature of his or her assets which may be used to satisfy the judgment, and those assets that he or she wishes to claim as exempt. The list may be provided by written or oral response and shall be made under oath.
- (B) A request by the Court to receive this list shall be answered and returned to the Court within ten (10) days and the request shall carry instructions to that effect. If the judgment debtor fails to respond in either oral or written form, the judgment creditor may obtain and serve the judgment debtor with an Order to Show Cause why he or she should not be held in contempt of court.

[History] Ord. 201 (2/5/04).

*Subchapter II – Exemptions*

**3-06.130 Exemptions – Generally.**

- (A) The Tribal Court shall order seizure and sale of only such property of the judgment debtor as will not impose an immediate and substantial hardship on his or her immediate family.
- (B) Only property owned by the judgment debtor may be subject to execution, and not property owned by the judgment debtor's family.
- (C) All trust property, income from trust property, or property subject to a restriction on alienation is exempt from execution under this Chapter, except for foreclosure against such property as may be allowed elsewhere by tribal code, ordinance, or resolution.

[History] Ord. 201 (2/5/04).

**3-06.140 Personal Exemptions.**

The following items of personal property are exempt from execution or garnishment:

- (A) All wearing apparel of every individual and family, but not to exceed one

thousand dollars (\$1,000) in value in furs, jewelry and personal ornaments for any individual;

- (B) All private libraries of every individual, but not to exceed fifteen hundred dollars (\$1,500) in value, and all family pictures and keepsakes;
- (C) **“Tools of the Trade”** necessary for any person to carry on the trade, occupation, or profession by which that person habitually earns his living not to exceed five thousand dollars (\$5,000), provided that, the Court may allow a greater sum value to be exempted where the “tools of the trade” are to be used in exercising a Treaty-protected right;
- (D) A reasonable motor vehicle(s) exemption may be allowed at the discretion of the Court, provided that no more than two (2) vehicles shall be exempted, and that the total aggregate value shall not exceed two thousand, five hundred dollars (\$2,500);
- (E) Insurance proceeds for exempt items that have been lost, stolen, or destroyed;
- (F) Proceeds of life and disability insurance and annuities;
- (G) Any items which have cultural or religious significance; and
- (H) Any property, wages or income that is otherwise protected under this Chapter.

[History] Ord. 201 (2/5/04).

**3-06.150 Residence Exemption.**

- (A) Except as provided in this Chapter, the residence of the judgment debtor is exempt from attachment, execution and forced sale for the debts of the owner up to the amount specified in Section 3-06.150(G).
- (B) The residence consists of the dwelling house or mobile home in which the debtor resides or intends to reside. Residence also includes those buildings or structures necessarily connected with the use and enjoyment of the dwelling house or mobile home, or buildings or structures when they are used with the land for its benefit, and the land on which the same are located.
- (C) If the debtor is married, the residence may consist of the community or jointly owned property of the spouses, or the separate property of either spouse.
- (D) If the debtor is not married, the residence may consist of any of his or her real property.
- (E) The same premises may not be claimed separately by both husband and wife for

the purpose of increasing the amount of the residence exemption.

- (F) The “**net value**” of a residence is the market value minus all liens and encumbrances.
- (G) The total amount of the residence exemption shall not exceed the lesser of:
  - (1) The total net value of the lands, residence and improvements, as described in this Section; or
  - (2) The sum of the forty thousand dollars (\$40,000).

[History] Ord. 201 (2/5/04).

**3-06.160 Exemption on Earnings.**

- (A) Except as provided in (B) of this Section, if a garnishee is an employer owing the judgment debtor earnings, then for each week of such earnings, an amount shall be exempt from garnishment that is the greater of the following:
  - (1) Thirty (30) times the federal minimum hourly wage prescribed by federal law in effect at the time the earnings are payable; or
  - (2) Seventy-five percent (75%) of the net wages or salary of the judgment debtor.
- (B) In the case of a garnishment based on a judgment or other court order for child support or court order for spousal maintenance the exemption shall be fifty percent (50%) of the net wages or salary of the judgment debtor if the individual is supporting a spouse or dependant child other than a spouse or child on whose behalf the garnishment is brought, or forty percent (40%) of the net wages or salary of the judgment debtor if the individual is not supporting such a spouse or dependant child.
- (C) The exemptions stated in this section shall apply whether such earnings are paid, or are to be paid, weekly, monthly, or at other intervals, and whether earnings are due the judgment debtor for one week, a portion of a week, or for a longer period.
- (D) Unless directed otherwise by the Court, the garnishee shall determine and deduct exempt amounts under this section as directed in the writ of garnishment and answer, and shall pay these amounts to the judgment debtor.

[History] Ord. 201 (2/5/04).



**3-06.170 Limitations on Exemptions.**

- (A) The residence exemption is not available against an execution or forced sale in satisfaction of judgments obtained:
  - (1) On debts secured by a mechanic's, laborer's, materialmen's or vendor's lien upon the residence; and
  - (2) On debts secured by either a security agreement describing as collateral a mobile home that is being claimed as a homestead, or by a mortgage or deed of trust on the residence that has been executed and acknowledged by the husband and wife or by an unmarried claimant.
- (B) Except as otherwise provided in this Chapter, no real property may be claimed as exempt from execution, attachment or garnishment issued upon a judgment for all or any part of the purchase price of the property in which the seller has perfected a security interest.
- (C) No property, except trust property, may be exempt under this Chapter from legal process issued upon a judgment for any tax levied upon that property.
- (D) The provisions of this Section 3-06.170 shall not apply to any residence to the extent that it is a fixture upon trust land except to the extent that may be permitted by foreclosure or otherwise by tribal code, ordinance, or resolution.

[History] Ord. 201 (2/5/04).

**3-06.180 Property Owned with Another.**

- (A) If the judgment debtor owns property jointly with another, a judgment creditor may obtain a writ of execution and force a sale of the debtor's interest, provided the property is not otherwise exempt. An individual who jointly owns property with a judgment debtor shall have the right to meet the highest bid at a sale, and thereby obtain the judgment debtor's interest.
- (B) A partner's right in specific partnership property is exempt except on a claim against the partnership.

[History] Ord. 201 (2/5/04).

**3-06.190 Review of Consumer Transactions.**

- (A) In considering any action to enforce a judgment or repossess personal property located within the Reservation in connection with a consumer transaction, the Tribal Court may review the underlying facts and circumstances of the consumer transaction in order to determine the existence of any unconscionable act or

practice by the supplier of the consumer goods.

- (B) In determining whether an act or practice by the supplier is unconscionable, the Tribal Court shall consider the following circumstances which the supplier knew or had reason to know that:
- (1) The supplier took advantage of the inability of the consumer reasonably to protect his or her interests because of physical infirmity, ignorance, illiteracy, inability to understand the language of an agreement, or similar factors;
  - (2) When the consumer transaction was entered into, the price grossly exceeded the price at which similar property or services were readily obtainable in similar transactions by like consumers;
  - (3) When the consumer transaction was entered into there was no reasonable probability of payment of the obligation in full by the consumer; or
  - (4) The supplier made a misleading statement of opinion on which the consumer was likely to rely to his or her detriment.
- (C) If the Tribal Court determines that an act or practice in a consumer transaction was unconscionable, the Court may deny the relief requested or may enforce only such part of a judgment that was not affected by the unconscionable act or practice.

[History] Ord. 201 (2/5/04).

### *Subchapter III – Writ of Execution*

#### **3-06.200      Petition for Writ of Execution.**

A judgment creditor may petition the Tribal Court for a Writ of Execution upon any non-exempt personal property belonging to the judgment debtor when such property is in the possession of the judgment debtor and is found within the jurisdiction of the Court. The petition shall state the following facts:

- (A) That the judgment creditor has a judgment wholly or partially unsatisfied in the Tribal Court;
- (B) The amount alleged to be due under that judgment;
- (C) That the judgment creditor has reason to believe and does believe that the judgment debtor has non-exempt property on which the judgment could be executed; and

- (D) A list of the specific non-exempt property on which the judgment creditor is seeking execution and the estimated value of each item of property.

[History] Ord. 201 (2/5/04).

**3-06.210 Hearing on Petition for Writ of Execution.**

Upon receipt of a petition for a Writ of Execution, the Court shall schedule a hearing date within twenty (20) days. At the hearing the judgment debtor may show that the judgment has been satisfied or that any or all of the property mentioned in the petition is exempt from execution. The Court shall not reconsider the merits of the original action, except as provided for in Section 3-06.190.

[History] Ord. 201 (2/5/04).

**3-06.220 Notice of Hearing.**

- (A) The judgment debtor shall be provided with a notice of the hearing and a copy of the petition no less than ten (10) days prior to the date of the hearing.
- (B) The notice shall inform the debtor that:
  - (1) the hearing is the debtor's opportunity to show that the judgment has been satisfied or that any or all of the property mentioned in the petition is exempt from execution; and
  - (2) if the debtor fails to appear, and unless other interested parties come forward with information, none of the property mentioned will be held exempt from execution, except property held in trust.

[History] Ord. 201 (2/5/04).

**3-06.230 Service of Petition and Notice of Hearing.**

The Petition for Writ of Execution and the Notice of Hearing shall be delivered to the judgment debtor in the manner provided for in Section 3-06.100 of this Chapter.

[History] Ord. 201 (2/5/04).

**3-06.240 Answer to Petition for Writ of Execution.**

- (A) The debtor may file with the Clerk of the Court a written answer or response to the creditor's petition.
- (B) The answer is due at least two (2) days before the hearing on the petition.

- (C) A copy of the answer or response must also be delivered to the judgment creditor in the manner provided in Section 3-06.100 at least two (2) days before the hearing on the petition.

[History] Ord. 201 (2/5/04).

**3-06.250 Power of the Court - Execution.**

- (A) The Court may issue a Writ of Execution when it finds that:
- (1) the judgment creditor has a valid judgment that has not been satisfied;
  - (2) the time for appeal of the judgment has run; and
  - (3) there exists non-exempt personal property upon which to execute the judgment.
- (B) The Court may issue a Writ of Execution solely on the affidavit of the judgment creditor if sufficient evidence is present to show that the property in fact belongs to the judgment debtor.
- (C) The Court shall assign a minimum reasonable value to the property for the purposes of beginning bidding at a sale. If the property is not able to be sold for the minimum reasonable value assigned, the Court may re-evaluate the minimum reasonable value.

[History] Ord. 201 (2/5/04).

**3-06.260 Writ of Execution - Contents.**

- (A) The Writ of Execution shall:
- (1) State the amount owing to the judgment creditor;
  - (2) Describe the property that is to be seized by the authorized enforcement officers;
  - (3) Direct the enforcement officers to sell as much of the seized property as is necessary to satisfy the judgment;
  - (4) State the date, time, and place of the sale and listing the items to be sold; and
  - (5) State that the judgment debtor has the right to satisfy the judgment and obtain the return of the property.

- (B) A copy of the Writ must be mailed to the judgment debtor at his or her last known address and posted at two public places within the Reservation for ten (10) days prior to the sale.

[History] Ord. 201 (2/5/04).

**3-06.270 Service of Writ of Execution.**

The Writ shall be served on the judgment debtor as provided in Section 3-06.100 of this Chapter.

[History] Ord. 201 (2/5/04).

**3-06.280 Substitution or Surrender of Property.**

- (A) A judgment debtor that owns property that is not exempt from execution may substitute other property of equal or greater value that is exempt from execution. This substitution will allow execution against 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 a judgment creditor. The written consent of the judgment debtor must be obtained at the time of the surrender. Contract provisions for voluntary surrender, executed in advance of the judgment debtor's voluntary surrender, are not allowed or valid.

[History] Ord. 201 (2/5/04).

**3-06.290 Execution Sale.**

- (A) The Execution sale shall be conducted by the enforcement officer who shall issue a bill of sale for the property to the highest bidder in return for a cash amount.
- (B) No item of property shall be sold for less than the minimum value assigned by the Court. If the minimum price is not offered the property shall be held and notice of another sale shall be given. The Court may re-evaluate the minimum reasonable value upon request.

- (C) Proceeds of the sale shall first go to satisfy the cost of the sale, second to any unpaid court costs, and third to satisfy any portion of the judgment still owing. Any amount remaining thereafter shall be held for the benefit of the judgment debtor for a period of one (1) year from the date of sale. If no claim is made by the debtor for recovery thereof, prior to the expiration of that time period, the balance shall become the property of the Tribe.

[History] Ord. 201 (2/5/04).

#### *Subchapter IV— Writ of Garnishment*

### **3-06.300 Petition for Writ of Garnishment.**

- (A) A judgment creditor may petition the Tribal Court for a Writ of Garnishment upon any specific personal property or credits, including earnings owed by another to the judgment debtor that is in the possession of a third party and is found within the jurisdiction of the Court.
- (B) The petition shall state the following facts:
- (1) That the judgment creditor has a tribal court judgment that is wholly or partially unsatisfied;
  - (2) The amount alleged to be due under that judgment;
  - (3) That the judgment creditor has reason to believe and does believe that the garnishee, stating the garnishee's name and residence or place of business, is indebted to the judgment debtor in amount exceeding those exempted under this Chapter, or that garnishee has possession or control of personal property or effects belonging to the judgment debtor which are not exempted from garnishment under this Chapter; and
  - (4) Whether or not the garnishee is the employer of the judgment debtor.

[History] Ord. 201 (2/5/04).

**3-06.310 Issuance of Writ of Garnishment.**

When a Petition for a Writ of Garnishment is made by a judgment creditor and the requirements of Section 3-06.300 have been complied with, the Tribal Court Clerk shall docket the case in the names of the judgment creditor as plaintiff, the judgment debtor as defendant, and the garnishee as garnishee defendant, and shall immediately issue and deliver a writ of garnishment to the judgment creditor, directed to the garnishee, commanding the garnishee to answer said writ within twenty (20) days after the service of the Writ on the garnishee.

[History] Ord. 201 (2/5/04).

**3-06.320 Writ of Garnishment-Contents.**

- (A) The Writ of Garnishment shall:
- (1) Specify the amount owing to the judgment creditor;
  - (2) Specify the name and address of the garnishee in possession of the personal property or credit;
  - (3) Order the garnishee not to pay or deliver to the debtor any non-exempt property or credit owing to the debtor;
  - (4) Order the garnishee to pay or deliver any non-exempt property or credit owing to the debtor over to the judgment creditor until otherwise ordered by the Court or until the amount owing the creditor has been satisfied, whichever is sooner;
  - (5) Require the garnishee to file a return with the Court containing the amount and a description of property of the judgment debtor which is in the garnishee's possession and such return shall be filed with the Court within twenty (20) days from the date the garnishee was served with notice of the garnishment; and
  - (6) Notify the garnishee that, if the garnishee relinquishes non-exempt personal property or credit to the judgment debtor after receipt of this notice, the garnishee may be found liable to the judgment creditor for the value of the property or credit wrongfully released.
- (B) The Writ of Garnishment shall state the garnishee's processing fee to be allowed.
- (1) The garnishee of a writ for a continuing lien on earnings may deduct a processing fee from the remainder of the judgment debtor's earnings after withholding the required amount under the writ. The processing fee may not exceed twenty dollars (\$20.00) for the first answer and ten dollars

(\$10.00) at the time the garnishee submits a subsequent answer.

- (2) For all other writs of garnishment, the garnishee is entitled to a check or money order payable to the garnishee in the amount of twenty dollars (\$20.00) at the time the writ of garnishment is served on the garnishee pursuant to Section 3-06.340.

[History] Ord. 201 (2/5/04).

### **3-06.330 Notice of Garnishment to Judgment Debtor.**

When a Writ of Garnishment is issued as provided in Section 3-06.310, the court clerk shall at the same time issue and deliver to the judgment creditor a Notice of Garnishment directed to the judgment debtor. The notice shall inform the judgment debtor that a Writ of Garnishment has been issued. It shall also inform the judgment debtor that a hearing may be requested if the debtor believes he or she is entitled to exemptions from garnishment other than those specified in the Writ.

[History] Ord. 201 (2/5/04).

### **3-06.340 Service of Writ and Notice of Garnishment.**

The Writ of Garnishment shall be served on the garnishee and the Notice of Garnishment shall be served on the judgment debtor as specified in Section 3-06.100. A copy of the Writ of Garnishment shall be attached to the Notice of Garnishment served on the judgment debtor.

[History] Ord. 201 (2/5/04).

### **3-06.350 Hearing on Writ of Garnishment.**

- (A) Upon proper request by the judgment debtor, judgment creditor, or garnishee and after the time for filing of the answer by the garnishee defendant has passed, the Court shall schedule a hearing on the matter.
- (B) The request for hearing must specify the reason the party is requesting the hearing.
- (C) If the judgment debtor is requesting the hearing he or she must specify any exemptions he or she is claiming.
- (D) The court clerk shall issue a Notice of Hearing, a copy of which shall be served, along with a copy of the request for hearing, on all parties no later than seven (7) days prior to the date of the hearing.

[History] Ord. 201 (2/5/04).



**3-06.360 Notice of Hearing.**

- (A) The Notice of Hearing on the Writ of Garnishment shall inform the parties:
- (1) the matters set for hearing as specified in the Request for Hearing;
  - (2) the date, time, and place of the hearing; and
  - (3) that the parties shall have an opportunity to contest the claims made by the party requesting the hearing.
- (B) If more than one party requests a hearing, the hearings shall be consolidated.

[History] Ord. 201 (2/5/04).

**3-06.370 Answer to Request for Hearing.**

Any party may file with the clerk a written answer or response to a Request for Hearing. This answer is due at least two (2) days before the scheduled hearing. A copy of the answer or response must also be delivered to the other parties in the manner provided in Section 3-06.100 at least two (2) days before the scheduled hearing.

[History] Ord. 201 (2/5/04).

**3-06.380 Power of the Court – Garnishment.**

The Tribal Court may amend the Writ of Garnishment on the basis of the evidence presented at the hearing on the Writ. The new Writ shall be issued in accordance with the procedures outlined above.

[History] Ord. 201 (2/5/04).

**3-06.390 Tribe as Garnishee.**

It shall be proper for the Tribal Court to issue a Writ of Garnishment against the Tribe upon a Tribal Court judgment when it is determined that the Tribe qualifies as a garnishee, and for this limited purpose the Tribe shall not exert its immunity from suit.

[History] Ord. 201 (2/5/04).

**3-06.400 Payment of Judgments from Individual Indian Monies.**

- (A) In cases where the judgment creditor is either the Tribe or a member of a federally recognized Indian tribe, the Tribal Court may order payment of a judgment debt from an Individual Indian Money Account under the provisions stated in this Section.

- (B) Whenever the Tribal Court has ordered payment of money damages to a judgment creditor and payment is not made within the time specified therein and when the judgment debtor has sufficient funds to his or her credit in an Individual Indian Money account with the BIA to satisfy all or part of the judgment, the Clerk of the Court shall certify a copy of the case record to the Superintendent of the agency where such funds are on deposit. The Superintendent shall send this record and a statement as to the amount of funds available in the individual's account to the Secretary of the Interior. The Secretary of the Interior, or his or her designee, may direct the disbursing agent to pay over from the judgment debtor's account to the judgment creditor the amount of the judgment, or such amount as may be specified by the Secretary of the Interior not to exceed the amount of the judgment.

[History] Ord. 201 (2/5/04).

### *Subchapter V – Writ of Recovery/Repossession*

#### **3-06.410 Personal Property Within the Reservation or held by Tribal Members.**

The Tribe possesses exclusive jurisdiction over the repossession of any personal property held by or belonging to a tribal member, and located within the exterior boundaries of the Swinomish Reservation or upon Swinomish tribal or allotted Indian lands outside the exterior boundaries of the reservation. Such personal property shall not be taken except pursuant to this Chapter.

[History] Ord. 201 (2/5/04).

#### **3-06.420 Self-Help Repossession Prohibited.**

Creditors shall not use "self-help repossession" but must repossess property only in conformity with this Chapter.

[History] Ord. 201 (2/5/04).

#### **3-06.430 Consent to Repossession.**

- (A) A creditor may contact a debtor orally or in writing concerning a dispute with such debtor that may lead to repossession of personal property located within the jurisdiction of the Tribe, unless the debtor has notified the creditor in writing to cease such contact.
- (B) A debtor may give written consent to the creditor permitting a repossession of the personal property without formal court proceedings. A creditor may enter on to the Reservation for the purpose of repossessing personal property pursuant to the

debtor's written consent. The creditor must abide by any restrictions concerning time or manner of repossession stated in the written consent.

[History] Ord. 201 (2/5/04).

**3-06.440 Court Order Absent Written Consent.**

If a debtor refuses to sign a written consent allowing repossession, the property may be removed by the creditor from the Reservation only by a Writ of Recovery issued by the Tribal Court.

[History] Ord. 201 (2/5/04).

**3-06.450 Petition for Writ of Recovery.**

- (A) A creditor may petition the Tribal Court for a Writ of Recovery when the creditor desires to repossess the personal property of a debtor and such property is located within the jurisdiction of the Court.
- (B) The petition shall be accompanied by a verified copy of the contract or other document entitling the creditor to repossess the personal property of the debtor.
- (C) The petition shall be served in the manner provided for in Section 3-06.100.

[History] Ord. 201 (2/5/04).

**3-06.460 Hearing on Petition for Writ of Recovery.**

- (A) Upon receipt of a petition for a Writ or Recovery, the Court shall schedule a hearing date within twenty (20) days.
- (B) The timing of the hearing may be accelerated by the Court if:
  - (1) The petition contains verified, specific facts showing reasonable cause to believe that the personal property involved may be lost, damaged or removed from the Reservation prior to a regularly scheduled hearing; and
  - (2) An accelerated hearing can be held without substantially prejudicing the ability of the debtor to present any good faith defenses to the petition for repossession.

[History] Ord. 201 (2/5/04).

**3-06.470 Notice of Hearing on Petition for Writ of Recovery.**

- (A) The debtor shall be provided with a notice of the hearing and a copy of the

petition no later than ten (10) days prior to the date of the hearing.

- (B) The notice shall inform the debtor that the hearing is the debtor's opportunity to contest the creditor's claim to a right of repossession.
- (C) The notice shall also inform the debtor that if he or she fails to appear, a Writ of Recovery may be issued and he or she will have lost his or her opportunity to contest the repossession of the property mentioned in the petition.

[History] Ord. 201 (2/5/04).

**3-06.480 Answer to Petition for Writ of Recovery.**

- (A) The debtor may file with the Clerk a written answer or response to the creditor's petition.
- (B) The answer is due at least two (2) days before the hearing on the petition.
- (C) A copy of the answer or response must be delivered to the creditor at least two (2) days before the hearing on the petition.

[History] Ord. 201 (2/5/04).

**3-06.490 Power of the Court – Recovery.**

- (A) If after a hearing, the Court determines that repossession is justified, the Court shall issue a Writ of Recovery authorizing the creditor to repossess the personal property involved in the proceeding.
- (B) If it appears to the Court that the return of the property to the creditor would be unjust because of the amount of equity the debtor has in the property, the Court may award money damages to the creditor in the amount owed by the debtor on the property.
- (C) The Court may enter a Writ of Recovery in the absence of the debtor if the debtor fails to appear at the hearing despite proper notice.

[History] Ord. 201 (2/5/04).

**3-06.500 Writ of Recovery – Contents.**

The Writ of Recovery shall provide that:

- (A) The property which has been specified is to be seized by the authorized enforcement officers and turned over to the judgment creditor; and

- (B) The enforcement officers are authorized to use reasonable force to enforce the Writ.

[History] Ord. 201 (2/5/04).

**3-06.510 Remedies for Violation of this Section.**

- (A) **Exclusion from Reservation.** Any non-member of the Tribe, except persons authorized by federal law to be present on the Reservation, may be excluded from the Reservation in accordance with the procedures set out in Chapter 5 of this Title, if such non-member is found by the Swinomish Tribal Court to be in deliberate or willful violation of the repossession provisions of this Chapter.
- (B) **Denial of Business Privileges.** Any creditor and any agents or employees of any creditor who are found by the Tribal Court to be in deliberate or willful violation of the repossession provisions of this Chapter may be denied the privilege of doing business within the Reservation. The Court shall afford any creditor fair notice and an opportunity for hearing prior to the denial of any business privilege on the Reservation.
- (C) **Civil Damage Liability.** Any person who violates this Chapter and any creditor whose agents or employees violate this Chapter shall be deemed to have breached the peace of the Reservation and they shall be liable to any debtor for any actual damages caused by the deliberate or negligent failure to comply with the provisions of this Chapter.

[History] Ord. 201 (2/5/04).

*Subchapter VI – Recognition and Enforcement of Foreign Judgments*

**3-06.520 Foreign Judgments – When Recognized.**

- (A) The Court shall not recognize or enforce any foreign judgment unless the proponent of the foreign judgment:
  - (1) Complies with the procedure set forth in this Subchapter;
  - (2) Submits proof that the person against whom the foreign judgment has been rendered is subject to the jurisdiction of the Tribal Court;
  - (3) Submits proof that the foreign judgment is based on valid subject matter and personal jurisdiction;
  - (4) Submits proof that an attempt was made to enforce the judgment in the jurisdiction in which the foreign judgment was rendered and that such attempt was unsuccessful; or good cause is shown why an attempt at

enforcement of the foreign judgment in that jurisdiction would be futile;  
and

- (5) Submits proof that the foreign judgment is final and that no appeal therefrom is allowed.
- (B) The Tribal Court shall not recognize or enforce a foreign judgment when to do so would require the Tribe to waive its immunity from suit except when the Tribe is to be served as a garnishee for the wages or property of a judgment debtor, in which case the requirements set out in Subchapter IV of this Chapter shall be followed.
- (C) The Tribal Court need not recognize a foreign judgment if:
- (1) The defendant in the proceedings in the foreign court did not receive notice of said proceedings in sufficient time to allow him or her to defend;
  - (2) The foreign judgment decree or order violated the Indian Civil Rights Act of 1968, 25 U.S.C. § 1301 -1341, or any state or federal constitution;
  - (3) The foreign judgment was obtained by fraud;
  - (4) The foreign judgment would serve to violate any federal law, tribal law, custom or tradition, or the Treaties between the Swinomish Indian Tribal Community and the federal government;
  - (5) The cause of action on which the judgment is based is contrary to the general welfare of the Tribe or its members; or
  - (6) The government from which the foreign judgment is issued does not provide reciprocal full faith and credit to the order, decrees and judgments of the Tribal Court.

[History] Ord. 201 (2/5/04).

**3-06.530 Procedure for Recognition and Enforcement of Foreign Judgments.**

- (A) In order for a foreign judgment to be recognized and enforced, such judgment shall be filed by its proponent with the Tribal Court within ten (10) years from the date of its issuance or renewal.
- (B) The proponent of a foreign judgment shall file in the Tribal Court:
- (1) a certified copy of the foreign judgment, identifying the date of its entry;
  - (2) the record of any subsequent entries affecting the judgment, such as levies

of execution and payments in partial satisfaction;

- (3) a motion requesting that the Tribal Court recognize and enforce the foreign judgment; and
  - (4) submission of proof required by Section 3-06.520(A).
- (C) A properly filed foreign judgment shall be docketed and recorded in the Tribal Court in the same manner as other cases.
- (D) Upon proper filing of a foreign judgment with the Tribal Court, the Court shall issue a summons directing the defendant to appear on a date not more than sixty (60) days or less than fourteen (14) days from the date of service and respond to the motion requesting the Tribal Court to recognize and enforce the foreign judgment. Such a summons shall be served on the defendant in a manner consistent with Section 3-06.100.
- (E) Failure of the defendant to appear as directed by the summons or failure to respond to the motion requesting the Court to recognize and enforce the foreign judgment once personal jurisdiction over the defendant has been obtained shall not prevent the Court from ruling on the motion.
- (F) After reviewing all the relevant evidence concerning the foreign judgment the Court shall issue an order granting or denying the motion to recognize and enforce the foreign judgment. Such an order shall be a final judgment of the Tribal Court in favor of either the plaintiff or defendant to the foreign judgment and shall be enforceable as such.

[History] Ord. 201 (2/5/04).

***Subchapter VII – Writ of Execution upon Real Property***

**3-06.540      Petition for Writ of Execution on Real Property**

[Reserved]

**3-06.550      Execution Sale.**

[Reserved]

**3-06.560      Redemption Rights.**

[Reserved]

*Subchapter VIII – Repealer and Severability*

**3-06.570 Repealer.**

[Reserved]

**3-06.580 Severability.**

If any provision of this Chapter or its application to any person or circumstances is held invalid, the remainder of this Chapter, or the application to other persons or other circumstances shall remain in effect.

[History] Ord. 201 (2/5/04).