



Title X – Housing Code

Alabama-Coushatta Tribe of Texas Comprehensive Codes of Justice

“Housing Code”

**Adopted and Codified as Title X of the A-C, C.C.J.
on June 25, 2012, by Tribal Resolution #2012-43**

Title X – Housing Code is comprised of Tribal statutes relevant to the selling, buying, renting, leasing, occupying, or using any and all housing, dwellings, or accommodation for human occupation and residence located on the Alabama-Coushatta Tribe of Texas “Reservation” as defined herein.

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**Title X- Housing Code/C.C.J.****CHAPTER 1. GENERAL PROVISIONS****Sec. 101 Applicability**

The following title shall hereinafter be referred to as the "Tribal Housing Code". It shall apply to any and all arrangements, formal or informal, written or agreed to orally or by the practice of the parties, in selling, buying, renting, leasing, occupying, or using any and all housing, dwellings, or accommodations for human occupation and residence. It shall also apply to any and all mortgages, leasehold mortgages and agreements to secure an interest in a building.

The following arrangements are not governed by this Code:

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

Sec. 102 Jurisdiction

(A) Jurisdiction is extended over all buildings and lands intended for human dwelling, occupation or residence which may lie within the following (hereinafter collectively referred to as the "Reservation"):

- (1) The exterior boundaries of the Alabama-Coushatta Indian Reservation;
- (2) Lands owned by, held in trust, leased or used by the Tribe, its members, its Housing Authority, or any other entity of the Tribe; or
- (3) The Indian Country of the Tribe, as may be defined from time to time by the laws of the Tribe or of the United States.

(B) Jurisdiction is extended over all persons or entities within the jurisdiction of the Tribe who sell, rent, lease or allow persons to occupy housing, dwellings, or accommodations for the purpose of human dwelling, occupation, or residence, and to all persons who buy, rent, lease, or occupy such structures. Such personal jurisdiction is extended over all persons and entities, whether or not they are members of the Tribe, whether they are Indian or non-Indian, and whether they have a place of business within the Tribal Reservation. Any act within the Reservation dealing with the subject matter of this Code shall be subject to the jurisdiction of the Tribe.

(C) Jurisdiction is extended over:

- (1) All buildings which may lie upon lands owned by, held in trust for, leased or used by the Tribe, its members, its Housing Authority, or any other entity of the Tribe;
- (2) All persons or entities within the jurisdiction of the Tribe who lease, mortgage, or otherwise secure an interest in a building.

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(D) Jurisdiction over all matters arising within the jurisdiction of the Tribe with respect to the subjects of this Code, and jurisdiction with respect to any person or entity acting or causing actions which arise under this Code, shall be exercised by the Alabama-Coushatta Tribal Court.

Sec. 103 Purposes and Interpretation

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

(A) To simplify the law governing the occupation of dwelling units, and to protect the rights of landlords and tenants.

(B) To preserve the peace, harmony, safety, health and general welfare of the members of the Tribe and those permitted to enter or reside on the Reservation.

(C) To provide eviction procedures and to require landlords to use those procedures when evicting tenants.

(D) To encourage landlords and tenants to maintain and improve dwellings on the Reservation in order to improve the quality of housing as a tribal resource.

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

(F) To avail the Tribe, tribal entities, and tribal members for financing of the construction and/or purchase of family residences on the Reservation by prescribing procedures for the recording, priority and foreclosure of mortgages to secure loans made by or through any government agency or lending institution.

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

Sec. 104 Relation to Other Laws

(A) **Applicable Law.** Unless affected or displaced by this Code, principles of law and equity in the common law of the Tribe, tribal customs and traditions are applicable. The general principles of law of any other Tribe or the federal government may be used as a guide to supplement and interpret this Code.

(B) **Other Applicable Laws.** Additional tribal and federal laws may apply with regard to tribal housing such as the ordinance establishing the Alabama-Coushatta Indian Housing Authority and governmental housing laws and regulations.

(C) **Conflicts with Other Laws**

(1) **Tribal Laws:** To the extent that this Code may conflict with tribal laws or ordinances which have been enacted to comply with statutes or regulations of any agency of the United States, such tribal laws or ordinances shall govern over the provisions of this Codes if they have specific applicability and they are clearly in conflict with the provisions of this Code.

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(2) **Federal Laws:** Where a conflict may appear between this Code and any statute, regulation, or agreement of the United States, the federal law shall govern if it has specific applicability and if it is clearly in conflict with the provisions of this Code.

(3) **State Laws:** To the extent that the laws of any state may be applicable to the subject matter of this Code, such laws shall be read to be advisory and not directly binding and shall not govern the relations of the parties.

Sec. 105 Definitions

As used in this Code, the following words will have the meanings given them in this Section unless the context plainly requires other interpretation.

(A) **Action, suit or lawsuit, claim, complaint or defense** shall include any dispute between persons or entities which relates to the sale, rental, use or occupancy of any housing, dwellings, or accommodations for human occupancy, including claims for the payment of monies for such housing, dwellings, or accommodations, damages to such units, condition of such units, or the relationships between the owners/landlords/lessors and tenants/lessees of such units, including the right to occupy them.

(B) **Adult Person** is any person eighteen (18) years of age or older.

(C) **BIA** means the Bureau of Indian Affairs – Southern Plains Regional Office.

(D) **Borrower/Mortgagor** is the Tribe, the Alabama-Coushatta Indian Housing Authority, or any individual Indian(s) or any heirs, successor(s), executor(s), administrator(s), or assign(s) of the Tribe or such Indian(s), or non-Indian(s) who has executed a Mortgage as defined in this Code or a Leasehold Mortgage as defined in this Code.

(E) **Building** is a structure, and any appurtenances or additions thereto, designed for habitation, shelter, storage and the like.

(F) **Building or Housing Codes** are any law, ordinance, or governmental regulation of the Tribe or an agency of the United States which deals with fitness for habitation, health conditions, or the safety, construction, maintenance, operation, occupancy, use, or appearance of any dwelling unit.

(G) **Dwelling Unit** is a house or building or portion thereof which is rented or leased as a home or residence by any person, not including public transient accommodations, such as hotel rooms.

(H) **Guest** is any person, other than the tenant, in or around a dwelling unit with the permission and consent of the tenant.

(I) **He/His** means he or she, his or her, and the singular includes the plural.

(J) **Housing Authority** is the Alabama-Coushatta Indian Housing Authority (ACIHA) which is the Tribally Designated Housing Entity, authorized or established under

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the authority of the Native American Housing Assistance and Self-Determination Act of 1996 (Public Law 104-330).

(K) HUD is the Department of Housing and Urban Development.

(L) Indian is any person who is a member of the Alabama-Coushatta Tribe of Texas or other federally recognized tribe, or who is eligible to become a member of the tribe or other federally recognized tribe for which written verification must be submitted.

(M) Landlord is the Tribe, ACIHA, a person, entity or federal governmental agency which is the owner, Lessor, or Sublessor of a dwelling unit intended for the use of tenants.

(N) Lease is an agreement, written or oral, as well as valid rules and regulations, regarding the tenants and conditions of the use and occupancy of real property, a dwelling unit, a building, or premises, including a lease-to-purchase agreement.

(O) Leasehold Mortgage is the mortgage of a lease of property given to secure a loan, and may be created under the auspices of any federal agency homebuyer program, the ACIHA, or any other agreement entered between a Borrower/Mortgagor and a Lender/Mortgagee.

(P) Mortgage Foreclosure Proceeding is a proceeding:

(1) To foreclose the interest of the Borrower(s)/Mortgagor(s), and each person or entity claiming through the Borrower(s)/Mortgagor(s), in real property, a building, or in case of a Leasehold Mortgage, a Lease for which a Mortgage has been given under the home purchase program of any federal agency; and

(2) To assign where appropriate the Borrower(s)/Mortgagor(s) interest to a designated assignee.

(Q) Lender Designated Assignee is any lender as defined in this Code that may assign or transfer its interest in a Mortgage or Lease and/or Leasehold Mortgage to a Designated Assignee.

(R) Lender/Mortgagee is any private lending institution established to primarily loan funds and not to invest in or purchase properties, the Tribe, ACIHA, or a U.S. governmental agency or private individual which loans money, guarantees or insures loans to a Borrower for construction, acquisition, or rehabilitation of a home. It is also any lender designated assignee(s) or successor(s) of such Lender/Mortgagee.

(S) Lessor is the legal, beneficial, or equitable owner of property under a Lease. Lessor may include the heir(s), successor(s), executor(s), administrator(s), or assign(s) of the Lessor.

(T) Lessee is a tenant of a dwelling unit, user and/or occupier of real property, or the homebuyer under any federal mortgage program including the Mutual Help program. The Lessee may, for purposes of federal agency home mortgage programs, be the ACIHA.

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(U) **Mortgage** is a lien as is commonly given to secure advances on, or the unpaid purchase price of a building or land, and may refer both to a security instrument creating a lien, whether called a mortgage, deed of trust, security deed, or other term, as well as the credit instrument, or note, secured thereby.

(V) **Mortgagor/Borrower** – See Borrower/Mortgagor

(W) **Mortgagee/Lender** – See Lender/Mortgagee

(X) **Mobile home** is a structure designed for human habitation and for being moved on a street or highway. Mobile home includes pre-fabricated, modular and manufactured homes. Mobile home does not include a recreational vehicle or a commercial coach.

(Y) **Nuisance** is the maintenance or allowance on real property of a condition which one has the ability to control and which unreasonably threatens the health or safety of the public or neighboring land users or unreasonably and substantially interferes with the ability of neighboring property users to enjoy the reasonable use and occupancy of their property.

(Z) **Owner** is any person or entity jointly or individually having legal title to all or part of land or a dwelling, including the legal right to own, manage, use, or control a dwelling unit under a mortgage, long-term lease, or any other security arrangement.

(AA) **Person** includes the Tribe, ACIHA, an individual or organization, and where the meaning of a portion of this Code requires, it means a public agency, corporation, partnership, or any other entity.

(BB) **Premises** is a dwelling unit and the structure of which it is part, and all facilities and areas connected with it, including grounds, common areas, and facilities intended for the use of tenants or the use of which is promised to tenants.

(CC) **Rent** is all periodic payments to be made to a landlord or Lessor under a Lease.

(DD) **Rental Agreement** – See Lease

(EE) **Reservation** shall have the meaning set out in Section 102(A) of this Code.

(FF) **Shall**, for the purposes of this Code, will be defined as mandatory or must.

(GG) **Subordinate Lienholder** is the holder of any lien, including a subsequent mortgage, perfected subsequent to the recording of a Mortgage under this Code, except the Tribe shall not be construed a subordinate lien holder with respect to any claim regarding tribal tax on real property.

(HH) **Tenant** is the Lessee(s), Sublessee(s), or person(s) entitled under a lease or Mutual Help Occupancy Agreement to occupy a dwelling unit to the exclusion of others.

(II) **Tribal Court** is the Court as established by the laws of the Tribe or such body as may now or hereafter be authorized by the laws of the Tribe to exercise the powers and functions of a Court of Law.

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(JJ) ***Tribal Recording Clerk*** is the director of the Tribal Real Estate program or such other person designated by the Tribe to perform the recording functions required by this Code or any deputy or designee of such person.

(KK) ***Tribe*** is the Alabama-Coushatta Tribe of Texas.

CHAPTER 2. LANDLORD/TENANT RESPONSIBILITIES AND REMEDIES**Sec. 201 Rental Agreements**

(A) **Effects of Rental Agreements.** The provisions of this Code, as well as the applicable laws identified in Section 104, establish the minimum rights and responsibilities of landlords and tenants. Unless inconsistent therewith, rental agreements may supplement these minimum rights and responsibilities.

(B) **Terms Prohibited in Rental Agreements.** No rental agreement shall provide that the tenant agrees:

- (1) To waive or forfeit his rights or remedies under this Code or any other applicable laws as identified in Section 104;
- (2) To exculpate or limit the liability of the landlord or to indemnify the landlord for that liability or the costs connected therewith;
- (3) To permit the landlord to dispossess the tenant without resort to court order; or
- (4) To pay a late charge prior to the expiration of the grace period set forth in Section 301(A). A provision prohibited by this subsection shall be unenforceable.

(C) **Term of Tenancy.** In absence of a definite term in the rental agreement, the period of tenancy shall be month-to-month.

(D) **Payment of Rent.** In absence of definite terms in the rental agreement, rent is payable at the landlord's office (if known) or at the dwelling unit. In the absence of definite terms, the amount of rent shall be the fair market value of the rental unit.

Sec. 202 Rules and Regulations

(A) The landlord may promulgate reasonable rules and regulations regarding the use and occupancy of the dwelling unit.

(B) Such rules and regulations are enforceable against the tenant only if:

- (1) Their purpose is to promote the convenience, safety or welfare of the tenant in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for all the tenants generally;
- (2) The rules and regulations are reasonably related to the purpose for which they are adopted;



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(3) The rules and regulations apply to all tenants in the premises in a fair manner;

(4) The rules and regulations are sufficiently explicit in their prohibition, direction or limitation of the tenant's conduct to fairly inform the tenant of what the tenant shall or shall not do to comply;

(5) The tenant has notice of the rules and regulations at the time the tenant enters into the rental agreement or when they are adopted.

(C) If a rule or regulation that would result in a substantial modification of the terms of the rental agreement is adopted after the tenant enters into the rental agreement, such rule or regulation is not valid unless the tenant consents to such rule or regulation in writing.

Sec. 203 Landlord Responsibilities

Except as otherwise fairly and reasonably provided in a rental agreement or a Mutual Help Occupancy Agreement, each landlord subject to the provisions of this Code shall:

(A) Maintain the dwelling unit in a decent, safe, and sanitary condition.

(B) Comply with applicable building and housing codes.

(C) Make all necessary repairs to put and maintain the premises in a fit and habitable condition, except where the premises are intentionally rendered unfit or uninhabitable by the tenant or his guest, in which case such duty shall be the responsibility of the tenant.

(D) Keep common areas clean, safe, and secure.

(E) Ensure tenant access to the dwelling unit.

(F) Maintain in good condition and safe working order all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, where such matters are not the responsibility of the tenant or are generated by an installation within the exclusive control of the tenant.

(G) Provide and maintain proper and appropriate receptacles and facilities for the disposal of ashes, garbage, rubbish, and other waste.

(H) Provide running water, hot water, and heat in accordance with applicable building and housing codes, except to the extent the tenant is required to provide such for himself.

(I) Guarantee the right of quiet enjoyment of the dwelling unit to the tenant and insure that the conduct of other tenants, their guests, and other persons on the premises does not cause a nuisance, endangerment of public health and safety, breach of peace, or interference with the quiet enjoyment of the tenant.



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(J) Give sole possession of the dwelling unit to the tenant in accordance with the rental agreement and refrain from:

- (1) Entering the unit, except as authorized in Section 204(K);
- (2) Making repeated demands for entry otherwise lawful under Section 204(K) but which have the effect of unreasonably harassing the tenant;
- (3) Sexually harassing or physically assaulting the tenant in or around the dwelling unit;
- (4) Locking the tenant out of the dwelling unit without the tenant's consent.

(K) Disclose, in writing, the name, address, and telephone number of the person responsible for receiving rent, notices and demands under this Code, the person authorized to manage the dwelling unit, the owner of the premises or the owner's agent, and the person responsible for making repairs where and when required.

Sec. 204 Tenant Responsibilities

Except as otherwise fairly and reasonably provided in a rental agreement or Mutual Help Occupancy Agreement, each tenant subject to the provisions of this Code shall:

- (A) Pay rent without demand or notice at the time and place agreed upon by the parties.
- (B) Immediately notify the landlord of any defects in the premises that may be hazardous to life, health, or safety of the tenant(s) and tenant's guest(s).
- (C) Keep the dwelling unit reasonably clean and dispose of all ashes, garbage, rubbish, junk, and abandoned vehicles in a proper, sanitary, and safe manner.
- (D) Use all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances which are part of the dwelling unit or premises, and the property of the landlord, in a proper, safe, sanitary, and reasonable manner.
- (E) Refrain from destroying, defacing, damaging, or removing any part of the dwelling unit, premises, or common areas, and shall require guests to act accordingly.
- (F) Pay reasonable charges for the repair of damages, other than normal wear and tear, to the dwelling unit, premises, or common areas caused by the tenant or tenant's guests, or repair such damages as required by the rental agreement within thirty (30) calendar days of such damage.
- (G) Conduct himself, and require tenant's guests to conduct themselves, in a manner which does not disturb the quiet enjoyment of others or cause a breach of the peace.
- (H) Not give up the dwelling unit to others, assign a lease arrangement, or sublease the dwelling unit without the written or oral permission of the landlord.

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(I) Use the dwelling unit only for residential purposes as agreed, and not use the unit or permit its use for any other purpose, including illegal conduct or other activity which may harm the physical or social environment of the premises or area around it.

(J) Abide by all rules and regulations promulgated by the landlord in accordance with Section 202 of this Code.

(K) Provide the landlord access to the dwelling unit to perform maintenance and repairs, inspect the premises, supply the necessary or agreed services, or show the dwelling to prospective buyers or tenants, provided that such access shall be at reasonable times when the tenant is present, and upon reasonable written or oral notice from the landlord, except in emergency situations where the health, safety, or welfare of the tenant or the tenant's neighbors is in immediate danger or where the tenant consents. No tenant who unreasonably denies access to the landlord for these purposes may pursue an action or grievance on the grounds that any services or repairs were not provided.

Sec. 205 Tenant Remedies

Where a landlord has not complied with this Code or the agreement of the parties, the tenant has the following rights:

(A) To give reasonable notice to the landlord to comply with landlord's obligations, including the right to require repairs or maintenance which are the responsibility of the landlord.

(B) Should the landlord fail to comply with landlord's duties after the provision of notice under subsection (A) above within a reasonable period of time, the tenant may make necessary repairs and take other remedial action and deduct the cost from the rental payment, or may terminate the agreement under which the tenant occupies the premises.

(C) To seek a Court order or judgment for the payment of monies or costs, compliance with the agreements and obligations of the landlord, terminate an agreement, pay damages, or any other relief to which tenant may be entitled by law or the agreement of the parties.

Sec. 206 Landlord Remedies

Where a tenant has not complied with this Code or the agreement of the parties, the landlord has the right to:

(A) Give reasonable notice to the tenant to comply with tenant's obligations, pay monies due and owing under the agreement of the parties, or terminate the agreement under which the tenant occupies the premises, and demand that tenant and those with tenant leave the premises.

(B) Require repairs or maintenance which are reasonably the responsibility of the tenant, and compliance with reasonable rules and regulations for occupancy.

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(C) Seek a Court order or judgment for the payment of monies or costs, for compliance with the agreements and obligations of the tenant, for termination of an agreement, payment for damages, eviction of the tenant, or any other relief to which landlord may be entitled by law or the agreement of the parties.

Sec. 207 Abandoned Dwelling Units

A landlord may regain possession of a dwelling unit, in accordance with this section, where a tenant has vacated the unit without notice to the landlord and does not intend to return, which is evidenced by the removal by the tenant or his agent of substantially all of tenant's possessions and personal effects from the premises and either:

- (1) Nonpayment of rent for two or more months;
- (2) Terminated water and/or electrical service for more than one month;
or
- (3) An express statement by the tenant that he does not intend to occupy the premises after a specified date.

(A) The landlord may send notice to the tenant at tenant's known address both by regular mail, postage prepaid, and by certified mail, return receipt requested, stating that:

- (1) He has reason to believe that the occupant has abandoned the dwelling unit;
- (2) He intends to re-enter and take possession of the dwelling unit unless the occupant contacts him within ten (10) calendar days of receipt of the notice;
- (3) If the tenant does not contact him, he intends to remove any possessions and personal effects remaining in the premises and to rent the premises; and
- (4) If the tenant does not reclaim such possessions and personal effects within sixty (60) calendar days after the notice, they will be disposed of in accordance with Section 415 of this Code. The notice shall be in clear and simple language and shall include a telephone number and mailing address at which the landlord can be contacted. If the notice is returned as undeliverable, or if the tenant fails to contact the landlord within ten (10) calendar days of the receipt of the notice, the landlord may re-enter and take possession of the dwelling unit, at which time any rental agreement in effect shall terminate.

(B) The landlord need not comply with the procedures set forth in Chapter 3 of this Code to obtain possession of a dwelling unit which has been abandoned.

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(C) If any items contained within the abandoned dwelling unit are of cultural, religious, or ceremonial significance, the landlord shall have an affirmative duty to locate tenant's next of kin and/or contact the Tribe in order to return such items.

CHAPTER 3. GROUNDS FOR EVICTION/NOTICE OF PRE-EVICTION OPTIONS**Sec. 301 Grounds for Eviction**

A tenant may be evicted for:

(A) Nonpayment of rent under an agreement for the lease purchase or occupation of a dwelling when such payments are not made after ten (10) calendar days of the agreement date of payment, or ten (10) calendar days following the first day of the month in a month-to-month tenancy.

(B) Nonpayment of any other agreement to pay rent, costs, damages or other amounts when such amounts have been due and owing for thirty (30) calendar days or more. The receipt by a landlord of partial payments under an agreement shall not excuse the payment of any balance due upon demand.

(C) Nuisance, intentional or reckless damage, destruction, or injury to the property of the landlord or other tenants, or disturbing another tenant's right to quiet enjoyment of a dwelling unit.

(D) Serious or repeated violations of the rental agreement, any reasonable rules or regulations adopted in accordance with Section 202 of this Code, or any applicable building or housing codes.

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

(F) Under other terms in the rental agreement which do not conflict with the provisions of this Code.

Sec. 302 Notice to Quit Requirements

(A) **When Notice to Quit is Required.** When a landlord desires to obtain possession of a dwelling unit, and when there exist one or more legally cognizable reasons to evict the tenant or tenants occupying the unit as set forth in Section 103, the landlord shall give notice to the adult tenant(s) to quit possession of such dwelling unit according to the provisions of this Section.

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

(C) **Statement of Grounds for Eviction Required.** The notice to quit shall be addressed to the adult tenants of the dwelling unit and shall state the legally cognizable

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reason(s) for termination of the tenancy and the date by which the tenant is required to quit possession of the dwelling unit.

(D) Form of Notice. The notice shall be in writing substantially in the following form: "I (or we) hereby give you notice that you are to quit possession or occupancy of the dwelling unit now occupied by you at (Physical Address or other reasonable description of the location of the dwelling unit), on or before the (Insert MM/DD/YYYY) for the following reason: (Insert the reason(s) for the Notice to Quit Possession using the statutory language or similar wording). Signed, (Insert Signature, Name and Address of the Landlord, Date, and Place of Signing)".

(E) Time Requirements for Notice. The notice must be delivered within the following periods of time:

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

(2) No less than three (3) calendar days prior to the date to quit specified in the notice for nuisance, serious injury to property, or injury to persons. In situations in which there is an emergency, such as a fire or condition making the dwelling unsafe or uninhabitable, or in situations involving an imminent or serious threat to public health or safety, the notice may be made in a period of time which is reasonable, given the situation.

(3) No less than fourteen (14) calendar days in all other situations.

(F) Alabama-Coushatta Indian Housing Authority Termination Notice.

When the landlord is the Alabama-Coushatta Indian Housing Authority, the ACIHA termination notice shall qualify as the notice to quit required under this section so long as the time requirements of the ACIHA termination notice are at least as long as the time requirements set forth in Section 302(E) of this Code.

Sec. 303 Serving the Notice to Quit

Any notice to quit must be in writing, and must be delivered to the tenant in the following manner:

(A) Delivery must be made by an adult person.

(B) Delivery will be effective when it is:

(1) Personally delivered to a tenant with a copy delivered by mail; or,

(2) Personally delivered to an adult living in the premises with a copy delivered by mail; or,

(3) Personally delivered to an adult agent or employee of the tenant with a copy delivered by mail.

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

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(1) Certified mail, return receipt requested, at the last known address of the tenant; or

(2) Securely taping a copy of the notice to the main entry door of the premises in such a manner that it is not likely to blow away, and by posting a copy of the notice in some public place near the premises, including a tribal office, public store, or other commonly frequented place and by sending a copy first class mail, postage prepaid, addressed to the tenant at the premises.

(D) The person giving notice must keep a copy of the notice and proof of service in accordance with this section, by affidavit or other manner recognized by law.

Sec. 304 Pre-Eviction Options

(A) **Negotiated Settlement.** After a Notice to Quit is served upon a tenant, the landlord and tenant may engage in discussions to avoid a proceeding to evict and to settle the issues between the parties. The agreement to enter into discussions will not affect the rights of the parties unless the parties reach an agreement to waive any of their rights.

(B) **Stay of Proceedings.** Where the parties mutually agree in good faith to proceed with such discussions, and Judicial Eviction procedures have been initiated, the Court will stay such proceedings until it is notified by one or both parties that a hearing is required or that a settlement has been reached.

(C) **Settlement Options.** In reaching an agreement, the parties may consider, but are not limited to the following options:

- (1) The parties may employ the use of advocates or attorneys;
- (2) The parties may employ the use of a mediator or conciliator;
- (3) The parties may agree to arbitrate the issues in binding arbitration;
- (4) The parties may agree to options set forth in Section 408(A) (4) (8);
- (5) The parties may agree to any other barter for services and goods, or to any other means of securing a fair exchange of value for the use of the dwelling;
- (6) The parties may agree to dismiss the matter in exchange for any agreement reached;
- (7) The parties may agree to stipulate to a judgment to be entered by the Court.

CHAPTER 4. JUDICIAL EVICTION PROCEDURES**Sec. 401 Summons and Complaint**

If, after the date set forth in the notice to quit for the tenant to quit possession of the dwelling unit, the tenant has not quit possession, the landlord may file a complaint in the

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Tribal Court for eviction and such other relief as the Court may deem just and proper: The complaint shall state:

- (A) The names of the adult tenant(s) against whom the suit is brought;
- (B) A description of the rental property, if any;
- (C) The address or reasonable description of the location of the premises;
- (D) The grounds for eviction;
- (E) A statement showing that the notice to quit and any required termination notices have been served in accordance with this Code or other applicable law;
- (F) A statement of the relief demanded, including any claims(s) for possession of the dwelling unit, damages, fees, costs, or other special relief.
- (G) If the landlord is the Alabama-Coushatta Indian Housing Authority, a statement that the ACIHA has complied with all required regulatory processes prior to filing the eviction action.

Sec. 402 Action Upon Filing Complaint

When a complaint is filed in the Tribal Court, it shall be presented to a Tribal Court Judge. This shall be on the date of the filing, or, if no judge is present, on the first regular Court day after filing or when a judge may first be found. The judge shall review the complaint and shall, if it appears to be in compliance with Section 401 and served as set forth in Section 303, issue an order of the Court requiring the defendant named in the complaint to appear before the Court on a certain date to contest the complaint. The date for appearance for answering the complaint shall be no less than three (3) calendar days after the date of the order in matters involving serious nuisances, or ten (10) calendar days in all other cases. Upon setting of the date for appearance, the plaintiff shall have defendant served with the complaint and a summons to appear for the court date.

Sec. 403 Commencement of Proceedings

(A) If the tenant appears before the Court in person or in writing to contest the complaint, the Court shall set a hearing date. Any written response shall state any defenses or factual disputes and where any defendant appears in person, a written response shall be served upon the plaintiff within five (5) calendar days of any hearing, excluding weekends and holidays.

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

(C) A defendant may, for good cause shown, and upon the payment of a reasonable sum for the fair rental value of the premises between the date on which the complaint was filed and the date of hearing, obtain an extension of time, beyond the fifteen

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(15) day period. The Court may refuse to extend the date of hearing where the complaint is based upon nuisance or injuries provided in Section 301(C), and shall not extend the date of hearing where the complaint is based upon conduct which is alleged to constitute serious danger to public health, safety, or peace.

(D) The Court may in its discretion on motion from the landlord order the tenant to pay into the Court rents for the use and occupancy during the pendency of the eviction case.

Sec. 404 Defenses

The Court shall grant the remedies allowed in this Code, unless it appears by the evidence that:

(A) The premises are untenable, uninhabitable, or constitute a situation where there is a constructive eviction of the tenant, in that the premises are in such a condition, due to the fault of the landlord, that they constitute a real and serious hazard to human health and safety and not a mere inconvenience.

(B) The landlord has failed or refused to make repairs which are landlord's responsibility after a reasonable demand by a tenant to do so, without good cause, and the repairs are necessary for the reasonable enjoyment of the premises.

(C) There are monies due and owing to the tenant because he has been required to make repairs which are the obligation of the landlord and the landlord has failed or refused to make them after a reasonable notice. Such sums may be a complete or partial defense to a complaint for eviction, but only to the extent that such sums set off monies owed for occupancy.

(D) Due to the conduct of the landlord, there is injury to the tenant in such a way that justice requires that relief be modified or denied. This shall include the equitable defenses of estoppels, laches, fraud, misrepresentation, and breaches of serious and material obligations for public health, safety, and peace standards.

(E) There are such serious and material breaches of applicable housing law on the part of the landlord that it would be unjust to grant landlord a remedy.

(F) The landlord is evicting the tenant because of tenant's race, sex, sexual orientation, religion, age, marital status, family status, or because the tenant is disabled.

(G) The landlord terminated the tenancy in retaliation for the tenant's attempt to secure tenant's rights under this Code or to force the landlord to comply with landlord's duties under this Code.

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

**Title X- Housing Code/C.C.J.****Sec. 405 Discovery and Prehearing Proceedings**

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

Sec. 406 Evidence

Evidence in proceedings under this Code shall be in accordance with the following provisions:

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

(B) Fairness will dictate the decision of the judge on challenges to admissibility of evidence.

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

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

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

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

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

Sec. 407 Standard of Proof

The standard of proof in all proceedings under this Code shall be preponderance of evidence.

**Title X- Housing Code/C.C.J.****Sec. 408 Judgment**

(A) Within five (5) calendar days of the date of the hearing, the Court shall grant and enter judgment and the judgment shall grant relief that all the parties are entitled to as of the date of the judgment. The judgment may:

- (1)** Order the immediate eviction of a tenant and delivery of the premises to the landlord;
- (2)** Grant actual damages as provided in the agreement of the parties or this Code, including interest;
- (3)** Order the parties to carry out an obligation required by law;
- (4)** Establish a payment plan for the tenant;
- (5)** Order rent payments out of distribution or per capita payment(s) or through garnishment;
- (6)** Establish a Power of Attorney in another person/agency to fulfill rights or obligations of either landlord or tenant;
- (7)** Remediate the action in part or in whole through appropriate recalculation of rent;
- (8)** Order the tenant to perform work for the landlord or the owner to pay off back rent due and/or damages;
- (9)** Order the payment of attorneys' fees, and where allowed by law or agreement, costs and expenses of litigation;
- (10)** Order the parties into negotiations as provided in Section 3.4 of this Code; or
- (11)** Grant any relief provided in this Code or allowed in law or equity.

(B) If a tenant fails to appear in person or in writing on or before the date of appearance, the Court shall enter judgment on behalf of the landlord following a hearing to determine whether relief should be granted and the kind of relief that should be granted.

Sec. 409 Form of Judgment

The Judgment shall state the relief granted by the Court to any party, but need not state findings of fact or conclusions of law in support of the judgment. The judgment may state brief reasons for it. If a trial is held, the judge should, whenever possible, render his decision immediately after both parties have rested their case and award costs and restitution as appropriate.

**Title X- Housing Code/C.C.J.****Sec. 410 Execution of Judgment**

An eviction order shall be executed by a duly authorized law enforcement officer or officer of the Court, appointed by the Court for such a purpose. To execute the order, the officer shall:

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

Any law enforcement officer shall, upon receipt of an order of the court, execute the judgment or order made by it within five (calendar) days of the date of the judgment or order and make a report to the Court on what was done to enforce it. Any law enforcement officer to whom a judgment or order is given for enforcement who fails, in the absence of good faith, or refuses to execute it shall be subject to the payment of reasonable charges, costs, and expenses to a party for failure to execute any judgment, and/or suspension from employment. This Section shall also apply to any judgment on behalf of a tenant obtained under the general tribal civil procedure code and/or tribal small claims procedure code. All other portions of the judgment shall be subject to execution in the manner otherwise provided under tribal law.

Sec. 411 Stay of Execution

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

- (A) Good and reasonable grounds affecting the well-being of the party are stated;
or
- (B) There would be no substantial prejudice or injury to the prevailing party during the period of the stay; or
- (C) Execution of the judgment could result in extreme hardship for the tenant(s);
or
- (D) A bond is posted or monies are paid to the Court to satisfy the judgment or payment for the reasonable use and occupancy of the premises during the period of time following the judgment. No stay may exceed three (3) months in the aggregate. The clerk shall distribute such arrearages to the landlord in accordance with any order of the Court.

**Title X- Housing Code/C.C.J.****Sec. 412 Appeals**

Appeals under this Code shall be handled according to the general tribal appellate provisions, with the exception that the party making the appeal shall have only five (5) days from the entry of the order of judgment to file an appeal. All orders from the Court will remain in effect during the pendency of an appeal under this Code unless otherwise ordered by the Court.

Sec. 413 Miscellaneous Complaints and Claims

Any miscellaneous complaint or claim including a complaint or claim by a tenant which does not fall within the procedures of this Code may be made under the general tribal civil procedure code and/or tribal small claims procedure code.

Sec. 414 Notice to Leave the Premises

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

(A) Delivery shall be made by:

- (1)** A law enforcement officer of the Tribe or an agent of the United States Government; or
- (2)** Any person authorized by the Tribal Court.

(B) Delivery will be effective when it is:

- (1)** Personally delivered to a tenant with a copy delivered by mail; or
- (2)** Personally delivered to an adult living in the premises with a copy delivered by mail; or
- (3)** Personally delivered to an adult agent or employee of the tenant with a copy delivered by mail.

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

- (1)** Certified mail, return receipt requested, at the last known address of the tenant; or
- (2)** Securely affixing a copy of the notice to the main entry door of the premises in such a manner that it is not likely to blow away, and by posting a copy of the notice in a public place near the premises, including a tribal office, public store, or commonly frequented place and by sending a copy via First Class mail, postage prepaid, addressed to the tenant of the premises.

Sec. 415 Forcible Eviction

(A) Where the Court orders an eviction, and the defendant or any other occupant of the premises refuses to vacate voluntarily by the effective date of the order, the

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defendant or other occupants may be forcibly removed from the premises by a tribal law enforcement officer. At the hearing where the eviction is ordered, the Court shall inform the defendant that if defendant does not vacate the premises voluntarily by the effective date, defendant and the other occupants will be subject to forcible eviction, and their property will be subject to storage, sale and disposal as set forth in subsection (C) below.

(B) Following eviction, the Court may allow the landlord, the ACIHA or the United States Government access to any property leased by defendant or other occupants for purposes of preserving and securing it.

(C) Following forcible eviction of the defendant and/or other occupants, the defendant's and former occupants' personal property shall be stored by the owner of the premises for at least thirty (30) days, either on the premises or at another suitable location. In order to reclaim their property, the defendant and former occupants shall pay reasonable costs of its removal and storage. If they do not pay such costs, the owner shall not condition return of the defendant's or former occupants' personal property on the payment of any costs or fees other than those of removal and storage of the personal property. Should an attempt be made by the owner to condition return of the personal property on payment of any other costs or fees, the owner shall forfeit owner's right to the costs of removal and storage. Any sale of the defendant's or former occupants' personal property shall be subject to the provisions of this paragraph, and shall further be conducted in accordance with applicable Tribal law. If there is no applicable Tribal law governing the sale of the defendant's or former occupants' personal property, then such sale shall be made in accordance with applicable federal or Texas state law; provided, however, that the storage, notice and other duties and obligations of the owner as set forth in this paragraph shall continue to apply, and in the event of any conflict between applicable law governing the sale of the defendant's or former occupants' personal property and the provisions of this paragraph, the provisions of this paragraph shall control and apply. Upon request by the defendant or former occupants, the owner shall provide them with pertinent information concerning the sale of personal property, including the time, date and location. Any sale proceeds in excess of the removal and storage costs shall be remitted to the defendant or former occupants. Nothing in this section shall be construed to prevent the defendant or former occupants from reclaiming property remaining after the sale if they can arrange to do in a manner satisfactory to the owner. If any items of the personal property are of cultural, religious, or ceremonial significance, the owner shall have an affirmative duty to locate the defendant's or former occupants' next of kin and/or contact the Tribe in order to return such items.

**Title X- Housing Code/C.C.J.****Sec. 416 No Self-Help Eviction**

No landlord may compel a tenant to vacate any premises in a forceful manner which causes a breach of the peace. All landlords shall give a notice to quit and obtain a Court order as provided in this Code.

Sec. 417 Security Deposits

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

(B) **Payment of Security Deposit at Termination of Tenancy.** Upon the termination of a tenancy, the security deposit remitted by the tenant with the landlord at the time such security deposit was required shall be returned less the value of any damages or outstanding bills which may be owed.

(C) **Action to Reclaim Security Account.** A tenant may bring a civil action in Tribal Court to reclaim any portion of the security deposit which may be due.

CHAPTER 5. MORTGAGE AND FORECLOSURE**Sec. 501 Lien Priority**

All mortgages recorded in accordance with the recording procedures set forth in this Section, including Leasehold Mortgages and loans made, guaranteed, insured or held by a governmental agency, shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim excepting a lien or claim arising from a tribal leasehold tax assessed after the recording of the mortgage. In those cases where the government direct, guaranteed or insured mortgage is created as a second mortgage, the loan shall assume that position.

Sec. 502 Recording of Mortgage Loan Documents

(A) The Tribal Recording Clerk shall maintain in the Tribal Real Estate program a system for the recording of mortgage loan documents and such other documents as the Tribe may designate by laws or resolution.

(B) The Tribal Recording Clerk shall endorse upon any mortgage loan or other document received for recording the following:

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

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(3) The name of the Tribal Recording Clerk or designee receiving the mortgage or other document.

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

Alabama-Coushatta Tribe of Texas) ss
Alabama-Coushatta Indian Reservation)

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

Given under my hand and seal this ____ day of _____, 20____.

(SEAL)

(Signature)

(Date)

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

(D) The Tribal Recording Clerk shall also maintain a log of each mortgage loan or other document recorded in which there shall be entered:

- (1)** The name(s) of the Borrower/Mortgagor of each mortgage, identified as such;
- (2)** The name(s) of the Lender/Mortgagee of each mortgage loan, identified as such;
- (3)** The name(s) of the Grantor(s), Grantee(s) or other designation of each party named in any other documents filed or recorded;
- (4)** The date and time of receipt;
- (5)** The filing number assigned by the Tribal Recording Clerk; and
- (6)** The name of the Tribal Recording Clerk or designee receiving the mortgage or other document.

(E) The certified copies of the mortgages and other documents and the log maintained by the Tribal Recording Clerk shall be made available for public inspection and

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copying. Rules for copying shall be established and disseminated by the Tribal Recording Clerk.

(F) All mortgages will be recorded with the BIA in addition to any Tribal recording provisions.

Sec. 503 Foreclosure Procedures

(A) A Borrower/Mortgagor shall be considered to be in default when the Borrower/Mortgagor is thirty (30) days past due on the Borrower/Mortgagor's mortgage payment(s) to the Lender/Mortgagee, or is in violation of any covenant or other obligation under the mortgage for more than thirty (30) days.

(B) When a Borrower/Mortgagor is thirty days (30) days past due on Borrower/Mortgagor's mortgage payments and before any foreclosure action or activity is initiated, the Lender/Mortgagee shall, in addition to any notice requirements or other Lender/Mortgagee obligations sets out in the mortgage or other loan documents, complete the following:

- (1)** Make a reasonable effort to arrange a face-to-face interview with the Borrower/Mortgagor. This shall include at least one trip to meet with the Borrower/Mortgagor at the mortgaged property.
- (2)** Lender/Mortgagee shall document that it has made at least one phone call to the Borrower/Mortgagor (or the nearest phone as designated by the Borrower/Mortgagor that is able to receive and relay messages to the Borrower/Mortgagor) for the purpose of trying to arrange a face-to-face interview.

(C) Lender/Mortgagee may appoint an agent to perform the services of arranging and conducting the face-to-face interview.

(D) When the Borrower/Mortgagor is past due on three (3) loan installment payments and at least ten (10) days before initiating a foreclosure action in Tribal Court, the Lender shall, in addition to any notice requirements or other Lender/Mortgagee obligations sets out in the mortgage or other loan documents, advise the Borrower/Mortgagor in writing by mail or by posting prominently on the dwelling, with a copy provided to the Tribe, as follows:

- (1)** Advise the Borrower/Mortgagor that information regarding the loan and default/delinquency will be given to credit bureaus.
- (2)** Advise the Borrower/Mortgagor of homeownership counseling opportunities/programs available through the Lender or otherwise.
- (3)** Advise the Borrower/Mortgagor of other available assistance regarding the mortgage/default.

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(4) In addition to the preceding notification requirements, the Lender/Mortgagee shall complete the following additional notice requirements when a Leasehold Mortgage is involved:

(a) Notify the Borrower/Mortgagor that if the Leasehold Mortgage remains past due on three (3) loan installment payments, the Lender/Mortgagee may ask the applicable governmental agency to accept assignment of the Leasehold Mortgage if this is an option of the governmental program;

(b) Notify the Borrower/Mortgagor of the qualifications for forbearance relief from the Lender/Mortgagee, if any, and that forbearance relief may be available from the government; and

(c) Provide the Borrower/Mortgagor with names and addresses of government officials to whom further communications may be addressed, if any.

(E) If a Borrower/Mortgagor is past due on three (3) or more loan installment payments and the Lender/Mortgagee has complied with the procedures set forth in the first part of this Section, the Lender/Mortgagee may commence a foreclosure proceeding in the Tribal Court by filing a verified complaint as set forth in Section 504 of this Code.

Sec. 504 Foreclosure Complaint and Summons

(A) The verified complaint in a mortgage foreclosure proceeding shall contain the following:

(1) The name of the Borrower/Mortgagor and each person or entity claiming through the Borrower/Mortgagor subsequent to the recording of the mortgage, including each Subordinate Lienholder (except the Tribe with respect to a claim for a tribal Leasehold), as a defendant;

(2) A description of the property subject to the mortgage loan;

(3) A concise statement of the facts concerning the execution of the mortgage loan or in the case of a Leasehold Mortgage, the lease; the facts concerning the recording of the mortgage loan or Leasehold Mortgage; the facts concerning the alleged default(s) of the Borrower/Mortgagor; and such other facts as may be necessary to constitute a cause of action;

(4) True and correct copies of each promissory note, mortgage, deed of trust or other recorded real property security instrument (each a "security instrument") and any other documents relating to the property and if a Leasehold Mortgage, a copy of the lease and any assignment of any of these documents; and



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(5) Any applicable allegations concerning relevant requirements and conditions prescribed in: Federal statutes and regulations; Tribal Codes, ordinances, and regulations; and/or provisions of the promissory note, security instrument(s) and if a Leasehold Mortgage, the lease.

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

Sec. 505 Service of Process and Procedures

Any foreclosure complaint must be in writing and must be delivered to the Borrower/Mortgagor in the following manner:

(A) Delivery must be made by an adult person and is effective when it is:

(1) Personally delivered to a Borrower/Mortgagor with a copy sent by mail; or

(2) Personally delivered to an adult living in the property with a copy sent by mail; or

(3) Personally delivered to an adult agent or employee of the Borrower/Mortgagor with a copy sent by mail.

(B) If the notice cannot be given by means of personal delivery or the Borrower/Mortgagor cannot be found, the notice may be delivered by means of:

(1) Certified mail, return receipt requested, at the last known address of the Borrower/Mortgagor; or

(2) Securely affixing a copy of the notice to the main entry door of the property in such a manner that it is not likely to blow away, and by posting a copy of the notice in some public place near the premises, including a tribal office, public store or other commonly frequented place, and by sending a copy First Class mail, postage prepaid, addressed to the Borrower/Mortgagor at the premises.

(3) The person giving notice must keep a copy of the notice and proof of service in accordance with this section, by affidavit or other manner recognized by law.

(C) Other procedural issues shall be determined under the generally applicable civil procedures of the Tribe.

Sec. 506 Cure of Default by Borrower/Mortgagor or Subordinate Lienholder

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

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subordinate Lienholder to cure the default(s), plus interest on such amounts at the rate stated in the note for the mortgage. There shall be no right of redemption in any Leasehold Mortgage.

Sec. 507 Judgment and Remedy

(A) The matter shall be heard and decided by the Tribal Court in a prompt and reasonable time period not to exceed sixty (60) days from the date of service of the Complaint on the Borrower/Mortgagor. If the alleged default has not been cured at the time of trial and the Tribal Court finds for the Lender/Mortgagee, the Tribal Court shall enter judgment:

- (1)** Foreclosing the interest of the Borrower/Mortgagor and each other defendant, including Subordinate Lienholder, in the mortgaged property; and
- (2)** Granting title to the property to the Lender/Mortgagee or the Lender/Mortgagee's Designated Assignee. In the case of a Leasehold Mortgage, the Lease and Leasehold Estate will be assigned to the Lender/Mortgagee or the Lender/Mortgagee's Designated Assignee, subject to the following provisions:

(a) The Lender/Mortgagee shall give the Tribe the right of first refusal on any acceptable offer to purchase the Lease or Lessee's Leasehold interest which is subsequently obtained by the Lender/Mortgagee or Lender/Mortgagee's Designated Assignee.

(b) The Lender/Mortgagee or Lender/Mortgagee's Designated Assignee may only transfer, sell or assign the Lease and the Lessee's Leasehold interest in the property described in the Lease to a Tribal member, the Tribe, or the ACIHA.

(c) The Lender/Mortgagee has the right to convey the Leasehold interest to the Secretary of HUD without providing the right of first refusal to the Tribe for Section 248.

Sec. 508 Foreclosure Evictions

Foreclosure evictions shall be handled according to the general eviction process set forth below:

(A) Jurisdiction. The provisions of this Section shall apply to all persons and property subject to the governing authority of the Tribe as established by the Tribal Constitution, Tribal Codes or applicable federal law.

(B) Unlawful Detainer. A Lessee, Sublessee or other occupant of a Leasehold Estate subject to a Leasehold Mortgage shall be guilty of unlawful detainer if such person shall continue in occupancy of such Leasehold Estate without the requirement of any notice

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by the Lessor, after such person's Leasehold Estate has been foreclosed in a Leasehold Mortgage foreclosure proceeding in the Tribal Court.

(C) Complaint and Summons. The Lender or Federal Agency (which made, guaranteed or insured the mortgage loan) as appropriate, shall commence an action of unlawful detainer by filing with the Tribal Court, in writing, the following documents:

(1) A complaint, signed by the Lender or Federal Agency, or an agent or attorney on their behalf:

(a) Citing the facts alleging jurisdiction of the Tribal Court;

(b) Naming as defendants the mortgagors and any other record owner, including Sublessee(s) and Subordinate Lienholder(s), of which the complainant has record notice (Except the Tribe with respect to a claim for a Tribal tax on the Leasehold estate subject to the Leasehold Mortgage);

(c) Describing the Leasehold Estate subject to the Leasehold Mortgage;

(d) Stating the facts concerning the execution of the Lease and the Leasehold Mortgage; the recording of the Leasehold Mortgage; and the facts upon which the Lender seeks to recover;

(e) Stating any claim for damages or compensation due from the persons to be evicted; and

(f) Otherwise satisfying the requirements of the Tribal Court.

(2) A copy of the summons, issued in accordance with established Tribal Court rules and procedures, requiring the defendant(s) to file a response to the complaint by the date specified in the summons for filing a response shall be no less than six (6) nor more than thirty (30) days from the date of service of the summons and complaint. The summons shall notify the defendant(s) that judgment will be taken against them in accordance with the terms of the complaint unless they file a response with the Court by the date specified in the summons.

(D) Service of Summons and Complaint. A copy of the summons and complaint shall be served upon the defendant(s) in the manner provided by the Tribal Court rules for service of process in civil matters. In absence of such Tribal Court rules, the summons and complaint shall be served by one of the two (2) methods set out in Section 508(E) below.

(E) Procedures for Service of Notice. Notices required or authorized in the immediate proceeding Section 508(D) shall be given in writing either by:

(1) Delivering a copy personally to the Borrower/Mortgagor or to any other occupant under color of law, or to any adult residing on the Leasehold Estate and, if applicable, to any Sublessee(s); or

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(2) Posting said notice in a conspicuous place near the entrance to said Leasehold Estate and sending an additional copy to the Lessee(s) or to any other occupant(s) under the color of law and, if applicable, to the Sublessee(s), by certified mail, return receipt requested, properly addressed, postage paid.

Proof of service may be made by affidavit of any adult person stating that he or she has complied with the requirements of one of the above methods of service.

(F) Power of the Tribal Court. The Tribal Court shall enter an Order of Repossession if:

(1) Notice of suit is given by service of summons and complaint in accordance with the procedures provided herein; and

(2) The Tribal Court shall find during the pre-trial proceedings or at trial that the Lessee(s), Sublessee(s), or other occupant(s) under color of law of the Leasehold Estate subject to the Leasehold Mortgage are guilty of an act of unlawful detainer.

(G) Upon issuance of an Order of Repossession, the Tribal Court shall have the authority to enter a judgment against the defendant(s) for the following, as appropriate:

(1) Back rent, unpaid utilities, and any charges due the Tribe, ACIHA, or Sublessor(s) under any sublease or written agreement (except for a Leasehold Mortgage);

(2) Any and all documents secured by the Leasehold Mortgage that are due the lender (or Federal Agency); and

(3) Damages to the property caused by the defendant(s), other than normal wear and tear.

(4) The Tribal Court shall have the authority to award to the prevailing party its legal costs and reasonable attorney's fees in bringing suit.

(H) Enforcement. Upon issuance of an Order of Repossession by the Tribal Court, Tribal law enforcement officers shall help plaintiff(s) enforce same by evicting the defendants and their property from the unlawfully occupied Leasehold Estate. In all cases involving the lender or Federal Agency, the Order of Repossession shall be enforced no later than forty-five (45) days after a pre-trial proceeding or trial in which the Tribal Court finds against defendant(s), subject to Subsection (I) below, and provided that no party exercised the right to cure a default or right of first refusal in Sections 506 and 507 above.

(I) Continuances in Cases Involving the Lender or Federal Agency Which Originally Made, Insured or Guaranteed the Mortgage Loan. Except by agreement of all parties, there shall be no continuances in cases involving the Lender or Federal Agency that will interfere with the requirement that the Order of Repossession be enforced not later 45

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days after a pre-trial proceeding or trial in which the Tribal Court finds against the defendant(s), subject to the sound discretion of the Court.

Sec. 509 No Merger of Estates

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

Sec. 510 Certified Mailing to Tribe and Lessor

In any foreclosure proceeding on a Leasehold Mortgage where the Tribe is not named as a defendant, a copy of the summons and complaint shall be mailed to the Tribe by certified mail, return receipt requested, within five (5) days after the issuance of the summons. If the Lessor(s) is not the Tribe, this notice will also be mailed to the Lessor(s) at the same time the notice is mailed to the Tribe. If the location of the Lessor(s) cannot be ascertained after reasonable inquiry, a copy of the summons and complaint shall be mailed to the Lessor(s) in care of the Superintendent of the applicable agency of the Bureau of Indian Affairs.

Sec. 511 Intervention

The Tribe or any Lessor(s) may petition the Tribal Court to intervene in any Lease or Leasehold Mortgage foreclosure proceeding under this Code. Neither the filing of a petition for intervention by the Tribe, nor the granting of such a petition by the Tribal Court, shall operate as a waiver of sovereign immunity of the Tribe, except as may be expressly authorized by the Tribe.

Sec. 512 Appeals

Appeals under this Section shall be handled in accordance with the general tribal appellate provisions.

CHAPTER 6. MISCELLANEOUS PROVISIONS**Sec. 601 Effective Date**

This Code shall take effect upon the passage by the Tribal Council of the Alabama-Coushatta Tribe of Texas of an appropriate Resolution enacting this Code.

Sec. 602 Retroactive Effect

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



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