

TITLE 39
LUMMI NATION CODE OF LAWS
EVICTON PROCEDURES CODE

Enacted: Resolution 92-70 (6/9/92)

Amended: Resolution 2003-97 (7/8/02)
Resolution 2006-159 (12/4/06)

**TITLE 39
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**TITLE 39
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EVICITION PROCEDURES CODE**

Chapter 39.01 Title

39.01.010 Title

This section shall be known as the Lummi Code of Laws Eviction Procedures.

Chapter 39.02 Jurisdiction

39.02.010 Jurisdiction

This Title shall apply to all persons and property subject to the governing authority of the Lummi Nation.

Chapter 39.03 Definitions

39.03.010 Definitions

(a) "Days" shall mean calendar days.

(b) "Dwelling unit" is a structure or that part of a structure which is used as a home, residence, or sleeping place by one person or by two or more persons maintaining a common household, including but not limited to single family residences and units of multiplexes, apartment buildings, and mobile homes.

(c) "Landlord" or "Lessor" shall mean the owner, lessor, or sublessor of the dwelling unit or the property of which it is a part, or the Lummi Nation Housing Division or Authority which is the administrator of a home which is part of a program through which an individual obtains home ownership opportunities.

(d) "Owner" shall mean one or more persons, jointly or severally, in whom is vested

(1) All or any part of the legal title to property; or

(2) All or part of the beneficial ownership of property, and the right to its present use and enjoyment.

(e) "Tenant" shall mean any person who is entitled to occupy a dwelling unit primarily for living or dwelling purposes under a lease,

rental, or home-ownership agreement.

(f) "Tribal Court" shall mean the Tribal Court as established by the laws of the Lummi Nation or such body as may now or hereafter be authorized by the laws of the Lummi Nation to exercise the powers and functions of a court of law.

(f) "Unlawful Detainer Action" shall be a suit brought before the Tribal Court to terminate a tenant's interest in a dwelling unit and/or real property and/or to evict any persons from occupancy of such.

(g) "Writ of Restitution" is an order of the Tribal Court:

(1) Restoring an owner or lessor to possession of real property; and

(2) Evicting a tenant or other occupant therefrom.

(h) "Nuisance" is the maintenance of real property in a condition which:

(1) Unreasonably threatens the health or safety of the public or neighboring land users; or

(2) Unreasonably and substantially interferes with the ability of neighboring property users to enjoy the reasonable use and occupancy of their property.

(i) "Waste" is spoil or destruction by a tenant of land, buildings, gardens, trees, or other improvements which result in substantial injury to the lessor's interest in the property.

39.03.020 Gender

Gender (singular or plural). Reference to persons by terms denoting sex shall be taken as referring to either sex. Reference to persons by a term denoting the singular shall include the plural.

Chapter 39.04 Unlawful Detainer Action

39.04.010 Unlawful Detainer

(a) A tenant or other occupier of a dwelling unit and/or real property shall be guilty of unlawful detainer, regardless of notice provided by the owner or lessor, if such person shall continue to occupy a dwelling unit or real property under any of the following situations:

- (1) After the expiration of the term of a lease, rental agreement, or other documents governing their occupancy; or
- (2) When such person has entered onto or remains on the real property of another without the permission of the owner and without having any substantial claim of a lease or title of the property; or
- (3) After termination of their tenancy in conformance with the terms of their lease, rental agreement, or other documents governing their occupancy; or
- (4) After a tenant's interest has been foreclosed upon in conformance with Title 36 (Leasehold Mortgages) of the Lummi Code of Laws.

(b) A tenant or other occupier of a dwelling unit or real property shall be guilty of unlawful detainer if, after having received 14 days notice of the termination of their lease, rental agreement, or other documents governing their occupancy they continue to occupy the premises. Such 14 day notice shall be required for termination based upon:

- (1) failure to keep or maintain any condition or covenant of the lease, rental agreement, or other documents governing their occupancy; or
- (2) Waste.

39.04.020 Summons and Complaint

The owner or lessor of a dwelling unit and/or real property shall commence an action for unlawful detainer by filing with the Court, in writing, the following documents:

(a) A Complaint, signed by the owner, lessor, or their agent which:

- (1) states the facts on which recovery is sought;
- (2) Describes the property so that it can be identified with reasonable certainty; and
- (3) states any claim for damages or compensation due from the persons to be evicted; and

(b) A summons which notifies the defendant(s) that a hearing will be held regarding the unlawful detainer/eviction at least five (5), but no more than ten (10) days after service of the Summons and Complaint, and that they will be provided notice of this hearing by the court. The Summons shall additionally notify the defendant(s) that they may file a written answer prior to the initial hearing, but that the written answer shall not release them of their duty to personally appear before the court. The summons must also notify the defendant(s) that judgment may be taken against them in accordance with the terms of the complaint unless they appear before the court when notified of the hearing time.

39.04.030 Service of Summons and Complaint

A copy of the summons and complaint shall be served upon the defendants in the manner provided by the Tribal Court Rules for service of process in civil matters.

39.04.040 Time for Hearing

Notwithstanding the provisions of Titles 3 or 38, the court shall set the initial hearing on all unlawful detainer actions at least five (5), but not more than ten (10) days after the Summons and Complaint has been served on the defendant(s).

39.04.050 Powers of the Tribal Court

The Tribal Court shall enter a Writ of Restitution if:

(a) Notice of suit and trial is given by service of summons and complaint in accordance with

the procedures provided in this Title; and,

(b) The Tribal Court shall find that the occupier of the dwelling unit and/or real property is guilty of an act of unlawful detainer.

Upon issuance of a Writ of Restitution, the Tribal Court shall have the authority to enter against the defendants a judgment for the following: back rent; unpaid utilities; charges due the lessor or owner under any lease, rental agreement, or other documents governing the defendant's occupancy ; and for damages caused by the defendants to the property other than ordinary wear and tear. The Tribal Court shall have the authority to award to the prevailing party his costs and reasonable attorney's fees in bringing suit.

39.04.060 Enforcement

Upon issuance of a Writ of Restitution by the Tribal Court, tribal law enforcement officers shall enforce the Writ of Restitution by evicting the defendants and their property from the premises which are unlawfully occupied.

39.04.070 Exemption of Student Housing From Unlawful Detainer Requirements

Multiple unit housing facilities operated by the Lummi Nation or the Northwest Indian College for occupation by students shall be exempt from the requirements of this Title. Occupancy and removal from these units shall be governed by policies and procedures approved by the Lummi Indian Business Council (if the units are operated by one of its departments or entities), or by the Northwest Indian College (if it is the operator of the units).