

TITLE EIGHT

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TITLE EIGHT

Chapter 1 - EXTRADITION

8-1-1 All requests for extradition of persons to be taken from the Rosebud Sioux Reservation shall be directed to the Tribal Chairman. In the event that the Rosebud Sioux Tribe has entered into a reciprocal extradition agreement with the governmental agency requesting such extradition, the Tribal Chairman shall cause such request for extradition along with certified copies of the Complaint, Information or Indictment and Arrest Warrant from the executive authority of the agency making the request to be presented to the Chief Tribal Judge. The Chief Tribal Judge shall cause any person named in such extradition proceedings and subject to jurisdiction of the Rosebud Sioux Tribe, to be brought before the Court to determine whether or not such person shall be extradited from the Reservation.

8-1-2 Any person arrested as provided in this section may demand a hearing, and if such demand is made, such person shall be taken before the Rosebud Tribal Court, where the Chief Judge shall hold a hearing to determine the apparent validity of the Complaint, Information or Indictment, and Arrest Warrant, and to determine whether the person in custody and before the Court is the same charged therein and whether such person should be extradited.

8-1-3 A person who is the subject of a request for extradition may waive such hearing by executing a Waiver of Hearing and Consent to extradition and thereupon such person shall be promptly delivered or turned over to the authorities requesting extradition.

8-1-4 The Tribal Chairman shall be the only authority which may request the extradition to the Rosebud Reservation of any person subject to the Tribal Court who has committed an offense on the Rosebud Reservation and who fled from the Rosebud Reservation thereafter to avoid prosecution.

CHAPTER TWO

CONTEMPT

8-2-1 Acts or failures to act for which the Court may find individuals or entities to be in contempt of Court:

- (1) Disorderly, contemptuous, or insolent behavior, committed during the holding of any Court session before a Judge or Magistrate of the Tribal Court, and in the immediate view and presence of the Court and directly tending to interrupt its proceedings or to impair the respect due to its authority.
- (2) Disobedience or resistance to any Order, Judgment, Subpoena, Warrant, Rule, Decree, Command or other process of the Court.
- (3) Refusing to be sworn or affirmed as a witness or refusal to answer as a witness after being sworn or affirmed.
- (4) Detaining or otherwise interfering with a witness or party to any action or Court proceeding while such person is going to or from or attending Court.
- (5) Any other interference with the processes, proceedings or dignity of any Tribal Court or Judge or Magistrate while in the performance of his duties.

8-2-2 Civil Contempt Distinguished from Criminal Contempt

- (1) Civil contempt procedure shall be used to enforce the adjudicated rights or parties to a civil action by enforcing the legal obligation to do or refrain from doing some act as provided for in a judicial Decree or Order.
- (2) Relief in a Civil Contempt Proceeding may be in the form of compensation to the aggrieved party or may be by coercive action on the part of the Court. Relief may also include a fine payable to the Court or the aggrieved party or by imprisonment of the contemptuous party or by both fine and imprisonment at the discretion of the Court.
- (3) Criminal Contempt is a willful disregard of the authority of the Court and need not arise out of a criminal action; but is conduct detrimental to the dignity of the Court.
- (4) Contempt is punishable by a fine of up to \$500.00 and by up to six months in jail, or both, at the discretion of the Court.

8-2-3 Contempt Procedure

- (1) Direct Contempt committed in the presence of the Court or disruptive of the proceedings thereof shall be adjudged and punished summarily and at the discretion of the Court.

(2) All other Contempts shall be determined at an Order to show cause hearing of which the accused person shall be given at least five (5) days notice and an opportunity to be heard.

CHAPTER THREE

UNLAWFUL DETAINER AND EVICTION

8-3-1 GROUND FOR MAINTENANCE OF ACTION--An action of forcible entry and detainer, or detainer only, is maintainable:

- (1) Where a party has by force, intimidation, fraud, or stealth, entered upon the prior actual possession of real property of another, and detains the same;
- (2) Where a party, after entering peaceably upon real property, turns out by force, threats, or menacing conduct, the party in possession;
- (3) Where he by force or by menace and threats of violence unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise;
- (4) Where a lessee in person or by subtenants holds over after the termination of his lease or expiration of his term, or fails to pay his rent for three days after same shall be due;
- (5) Where a party continues in possession after a sale of the real property under mortgage, execution, order, or any judicial process, after the expiration of the time fixed by law for redemption, and after the execution and delivery of a deed;
- (6) Where a party continues in possession after a judgment in partition, or after a sale under an order or decree of a court or competent jurisdiction;
- (7) Where a lessee commits waste upon the leased premises, or does or fails to perform any act which, under the terms of the lease operates to terminate the same; and/or
- (8) Where the lessee is not eligible for low rent housing assistance or Rosebud Sioux Housing Assistance.

8-3-2 NOTICE TO QUIT REQUIRED BEFORE COMMENCEMENT OF PROCEEDINGS-SERVICE AND RETURN--In all cases arising under subdivision (4), (5) and (6) three days' written notice to quit must be given to the lessee, subtenant, or party in possession, before proceedings can be instituted, and may be served and returned in like manner as a summons is served and returned.

8-3-3 JURISDICTION OF COURTS--The Rosebud Sioux Tribal Court shall have jurisdiction in any case of forcible entry and detainer or of detainer only, of real property within the Rosebud Sioux Tribe original tribal reservation boundaries.

8-3-4 JOINDER OF ACTIONS--An action under the provision of this chapter cannot be brought in connection with any other except for rents and profits or damages but the plaintiff may bring separate actions for the same if he so desires.

8-3-5 SURVIVAL OF CAUSE DESPITE DEATH OF PLAINTIFF--The legal representative of a person who might have been plaintiff, if alive, may bring an action under this chapter after his death.

8-3-6 VERIFIED COMPLAINT REQUIRED-SERVICE WITH SUMMONS-PROCEDURE AS IN OTHER ACTIONS--The Complaint must be verified by the Plaintiff or his agent or signed by his attorney, and served with a summons, and the procedure, except as otherwise provided, shall be the same as in other actions in the Court where the action is pending.

8-3-7 TIME ALLOWED FOR APPEARANCE BY DEFENDANT-UNDERTAKING REQUIRED FOR ADJOURNMENT--The time for appearance and pleading shall be four days from the time of service on the defendant, and no adjournment or continuance shall be made for more than five days, unless the defendant applying therefor shall give an undertaking to the plaintiff with good and sufficient surety to be approved by the Court, conditioned for the payment of the rent that may accrue, together with costs if judgment be rendered against the defendant.

8-3-8 TIME ACTION BROUGHT ON FOR TRIAL--An action under this chapter may be brought on for trial upon two days' notice after issue is joined.

8-3-9 JUDGMENT FOR PLAINTIFF-ELEMENTS INCLUDED--If the finding of the Court be in favor of the plaintiff, Judgement shall be entered for rents and profits or damages, where the same are claimed in the complaint, and for costs.

8-3-10 TIME OF SERVING EXECUTION--No execution for possession can be served except in the daytime.

8-3-11 NO RIGHT TO JURY TRIAL--Neither party shall be entitled to a jury trial under this chapter.

CHAPTER FOUR
HABEAS CORPUS

8-4-1 Right of person detained or imprisoned to apply for writ.

When any person shall be committed or detained, imprisoned or restrained of his or her liberty, under any color or pretense whatever, civil or criminal, he or she may apply to the Court for a writ of habeas corpus.

8-4-2 Inquiry into delay in bringing criminal prosecution to trial - Powers of Court on return of writ.

Any person committed for a criminal offense and not brought to trial, as provided by the provisions of this code, is entitled to have the delay inquired into upon a writ of habeas corpus, and the court or judge, upon the return of such writ, shall have power to remand or discharge the applicant or to admit him to bail, with or without sureties as the case may be.

8-4-3 Contents of application for writ - Documentary authority for commitment attached.

An application for writ of habeas corpus shall be in writing and signed by the applicant or some person on his behalf, setting forth the facts concerning his detention and in whose custody he is detained, and shall be accompanied by a copy of the warrant of commitment or other documentary authority, if any, or by an affidavit that such copy has been demanded of the person in whose custody he is detained and by him refused or not given.

8-4-4 Counsel appointed.

In any case where a person shall have been committed, detained, imprisoned, or restrained of his or her liberty, under any color or pretense whatever, civil or criminal, and where upon application made in good faith to the court or judge thereof, having jurisdiction, for a writ of habeas corpus, it is satisfactorily shown that such person is without means to prosecute the proceeding, the court or judge shall appoint counsel for such indigent person.

8-4-5 Writ awarded unless application shows no right to relief.

The court or judge to whom the application for a writ of habeas corpus is made shall forthwith award the writ, unless it shall appear from the application itself or from any document annexed thereto, that the applicant can neither be discharged nor admitted to bail, nor in any other manner relieved.

8-4-6 Forfeiture by judge for refusal or delay in issuing writ.

Any judge empowered by this chapter to issue writs of habeas corpus, who shall corruptly refuse to issue such writ, when legally applied to, in a case where such writ may lawfully issue, or who shall, for the purpose of oppression, unreasonably delay the issuing of such writ, shall, for every such offense, forfeit to the prisoner or person aggrieved the sum not exceeding five hundred dollars. Recovery of the penalty provided herein shall be no bar to a civil suit for damages.

8-4-7 Writ used to produce prisoners for testimony in criminal proceedings.

The Tribal Court shall have power to issue writs of habeas corpus for the purpose of bringing any person imprisoned in any prison before any court or magistrate, to testify in any criminal action or proceeding and returning such person to such prison.

8-4-9 Service of writ - Return of writ and production of body before judge.

Whenever a writ of habeas corpus shall, by any person, be served upon the sheriff, jailer, keeper, or other person to whom the same shall be directed, or is brought to him or left with any of his under officers or deputies at the jail or place where the applicant is detained, he or some of his under officers or deputies, shall, make return of such writ, and bring, or cause to be brought, the body of the applicant before the court or judge who granted the writ, and certify the true cause of his detention.

8-4-10 Contempt and forfeiture by sheriff or jailer for failing to return writ and produce applicant.

If any officer, sheriff, jailer, keeper, or other person to whom any writ of habeas corpus is directed shall neglect or refuse to make the return, or to bring the body of the applicant according to the command of such writ, he shall be punished for contempt and shall also forfeit to the prisoner or person aggrieved the sum not exceeding five hundred dollars. Recovery of the penalties provided herein shall be no bar to a civil suit for damages.

8-4-11 Day set for hearing of cause.

Upon the return of the writ of habeas corpus, a day shall be set for the hearing of the cause of imprisonment or detainer, not exceeding five days thereafter, unless the applicant shall request a longer time.

8-4-12 Hearing and disposition of cause by judge.

The court or judge shall proceed in a summary way to settle the facts by hearing the evidence and arguments, as well of all person interested civilly, if any there be, as of the applicant and the person who holds him in custody, and shall dispose of the applicant as the case may require.

8-4-13 Causes for discharge of applicant committed on judicial process.

If it appears on the return of a writ of habeas corpus that the applicant is in custody by virtue of process from any court legally constituted, he can be discharged only for one or more of the following causes:

- (1) Where the court has exceeded the limit of its jurisdiction, either as to the matter, place, sum, or person.
- (2) Where, though the original imprisonment was lawful, yet by some act, omission, or event, which has subsequently taken place, the party has become entitled to his discharge;

- (3) Where the process is defective in some substantial form required by law;
- (4) Where the process, though in proper form, has been issued in a case or under circumstances where the laws do not allow process or orders for imprisonment or arrest to issue;
- (5) When, although in proper form, the process has been issued or executed by a person either unauthorized to issue or execute the same, or where the person having the custody of the applicant, under the process, is not the person empowered by law to detain him;
- (6) Where the process appears to have been obtained by fraud, false pretense, or bribery; or
- (7) Where there is no general law nor any judgment, order, or decree of a court to authorize the process, if in a civil suit, nor any conviction, if in a criminal proceeding.

8-4-14 Intertribal Court of Appeals Order required for admission to bail pending application for writ or pending appellate review.

The prisoner shall not be admitted to bail pending application for the writ of habeas corpus, or pending appellate review of an order refusing the writ, except by order of the Intertribal Court of Appeals or one of the judges thereof.

8-4-15 Remand to custody or admission to bail pending review or order discharging writ.

Pending appellate review of an order discharging a writ of habeas corpus after it has been issued, the prisoner may be remanded to the custody from which he was taken by the writ, or detained in other appropriate custody, or admitted to bail, as to the court of judge rendering the decision may appear fitting in the circumstances of the particular case.

CHAPTER FIVE

LIABILITY FOR DEFAMATION

8-5-1 Obligation to refrain from defamation

Every person is obligated to refrain from infringing upon the right of others not to be defamed.

8-5-2 Classes of defamation

Defamation is effected by:

(1) Libel; or

(2) Slander

8-5-3 Libel defined

Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation.

8-5-4 Slander defined

Slander is a false and unprivileged publication, other than libel, which:

(1) Tends directly to injure him or her in respect to his or her office, profession, trade, or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade, or business that has a natural tendency to lesson its profit; or

(2) By natural consequence, causes actual damage.

8-5-5 Privileged communications - Malice not inferred by publication.

A privileged communication is one made:

(1) In the proper discharge of an official duty;

(2) In any legislative or judicial proceeding, or in any other official proceeding authorized by law:

(3) In a communication, without malice, to a person interested therein, by one who is also interested, or by one who stands in such relation to the person interested as to afford a reasonable ground for supporting the motive for the communication innocent, or who is requested by the person interested to give the information;

(4) By a fair and true report, without malice, of a judicial, legislative, or other public official proceeding or of anything said in the course thereof.

CHAPTER SIX

ACTION FOR DAMAGES GENERALLY

8-6-1 Right to damages for detriment from unlawful act or omission of another. Every person who suffers detriment from the unlawful act or omission of another may recover from the person in fault a compensation thereof in money, which is called damages. Detriment is a loss or harm suffered in person or property.

8-6-2 Nominal damages for breach of duty without detriment. When a breach of duty has caused no appreciable detriment to the party affected, he may yet recover nominal damages.

8-6-3 Damages to be reasonable. Damages must in all cases be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages, contrary to substantial justice, no more than reasonable damages can be recovered.

8-6-4 Punitive damages only as provided. The general remedy by damages does not include punitive damages.

8-6-5 Interest. Interest on damages awarded shall be 15% from the date of judgment until paid.

CHAPTER SEVEN

DAMAGES FOR BREACH OF CONTRACT

8-7-1 General measure of damages for breach of contract - uncertain damages not recovered

For the breach of an obligation arising from contract, the measure of damages is in the amount which will compensate the party aggrieved for all the detriment proximately caused thereby, or which, in the ordinary course of things, would be likely to result therefrom. No damages can be recovered for a breach of contract which are not clearly ascertainable in both their nature and their origin.

8-7-2 Damages for breach of obligation to pay money.

The detriment caused by the breach of an obligation to pay money only is deemed to be the amount due by the terms of the obligation with interest thereon.

8-7-3 Damages for breach of agreement to sell real property.

The detriment caused by the breach of an agreement to convey an estate in real property is deemed to be the price paid, and the expenses properly incurred in examining the title and preparing the necessary papers, with interest thereon; but adding thereto, in case of bad faith, the difference between the price agreed to be paid, and the value of the estate agreed to be conveyed, at the time of the breach, and the expenses properly incurred in preparing to enter upon the land.

8-7-4 Damages for breach of agreement to buy real property.

The detriment caused by the breach of an agreement to purchase an estate in real property is deemed to be the excess, if any, of the amount which would have been due to the seller under the contract, over the value of the property to him.

CHAPTER EIGHT

PERSONAL INJURIES

8-8-1 General Measure of damages for breach of noncontractual obligation - For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by this code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.

8-8-2 Punitive damages in discretion of jury or Tribal Court. In any action for the breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud, or malice, actual or presumed, or in any case of wrongful and wonton misconduct, in disregard of humanity, the jury or trial court in addition to the actual damage, may give damages for the sake of example, and by way of punishing the defendant.

8-8-3 Presumed damages for wrongful conversion of personal property - Presumptions conclusive when possession wrongful from beginning. The detriment caused by the wrongful conversion of personal property is presumed to be:

- (1) The value of the property at the time of the conversion, with the interest from that time;
- (2) Where the action has been prosecuted with reasonable diligence, the highest market value of the property at any time between the conversion and the verdict, without interest, at the option of the injured party;
- (3) A fair compensation for the time and money properly expended in pursuit of the property. Such presumptions cannot be repelled in favor of one whose possession was wrongful from the beginning by his subsequent application of the property to the benefit of the owner, without his consent.

8-8-4 General measure of damages for wrongful occupation of real property. The detriment caused by the wrongful occupation of real property, is deemed to be the value of the use of the property for the time of such occupation, not exceeding six years next preceding the commencement of the action or proceeding to enforce the rights of damages, and the costs, if any, of recovering the possession.

8-8-5 Treble damages for forcible exclusion from real property. For forcible ejecting or excluding a person from the possession of real property, the measure of damages is three times such a sum as would compensate for the detriment caused to him by the act complained of.

8-8-6 Double damages for failure of tenant to give up premises after notice of intention. For the failure of a tenant to give the premises held by him, when he has given notice of his intention to do so, the measure of damages is double the rent which he ought otherwise to pay.

8-8-7 Double damages for holding over by tenant after expiration of term and notice to quit. For willfully holding over real property, by a tenant after the end of his term, and after notice to quit has been duly given, and demand of possession made, the measure of damages is double the yearly value of the property, for the time of withholding, in addition to compensation for the detriment occasioned thereby.

CHAPTER NINE

SMALL CLAIMS PROCEDURE

8-9-1 PURPOSE AND SCOPE OF PROCEDURE--The purpose of this chapter is to provide for a simple, informal, and inexpensive procedure for the determination of claims in the nature of contract and tort in which plaintiff does not claim as a debt or damages, more than Two Thousand Dollars (\$2,000.00).

8-9-2 ALTERNATIVE TO OTHER ACTIONS--The procedure set forth herein shall not be exclusive but shall be alternative to the formal procedure for actions begun by summons.

8-9-3 FILING FEE; SUMMONS NOT REQUIRED; STATEMENT TO CLERK OR JUSTICE IN LIEU OF PLEADING--The procedure shall involve the payment of a filing fee but without summons, and without requirement, except by order of the Court, or any other pleading than a statement to the Clerk of Court or Judge, who shall reduce the same to concise written form in a docket kept for the purpose.

8-9-4 ASSISTANT CLERK AUTHORIZED TO ACT--The word "Clerk" in this chapter shall include an assistant Clerk. If the claim is filed with a Judge, the duties to be performed by the Clerk in this Chapter shall be performed by the Judge.

8-9-5 PLAINTIFF'S STATEMENT OF CLAIM TO CLERK; ENTRY IN DOCKET--The Plaintiff or attorney shall also state to the Clerk who, after due inquiry, shall cause the claim to be reduced to writing in the docket in concise, untechnical form, and to be signed by the Plaintiff or attorney. The signature shall be deemed the beginning of the action.

8-9-6 The plaintiff or attorney shall also state to the Clerk the Plaintiff's place of employment, or such thereof as the Clerk may deem necessary, and the Clerk shall note the same in the docket.

8-9-7 DETERMINATION OF SUFFICIENCY OF PLAINTIFF'S STATEMENT--If the Clerk deems the statement of claim insufficient, the Court at the request of the Plaintiff or attorney shall decide whether such claim shall be received.

8-9-8 TIME OF HEARING; MEMORANDUM TO PLAINTIFF--The Clerk shall fix the time set for hearing. The time fixed should be sufficient to enable registered or certified mail by regular course, or personal service, to reach Defendant and to enable Defendant to appear in person or by attorney before the Court. The Clerk shall give to the person signed the claim a memorandum of the time and place set for hearing.

8-9-9 NOTICE BY MAIL TO DEFENDANT; FORM OF NOTICE--The Clerk shall mail to the Defendant, at one or more of the addresses supplied by the Plaintiff, as the Clerk may deem necessary or proper, by registered or certified mail, return receipt requested, the expense being prepaid by the Plaintiff, or cause to be served upon the Defendant personally, a notice signed by the Clerk which, after setting forth the name of the Court, shall read substantially as follows:

To (Name of Defendant) :

(Insert Name of Plaintiff) asks judgment in this Court against you for (Insert amount in dollars and cents) upon the following claim: _____

(Insert nature of claim as it appears on docket)

The Court will hold a hearing upon this claim at the Rosebud Sioux Tribal Courtroom at Rosebud, South Dakota at _____ a.m./p.m. on (Weekday), the _____ day of _____, 19__ . You can be represented by yourself or by your attorney if you consent to the claim.

If you deny the claim, in whole or in part, you must, not later than (Weekday) the ___ day of _____, 19 __, personally or by attorney, state to the Clerk, orally or in writing, that you desire time to pay, and you must also appear at the hearing and show your reasons for desiring time to pay.

8-9-10 DOCKET ENTRIES ON NOTICES TO DEFENDANT--The Clerk shall note in the docket, the mailing date and address, the date of delivery shown by the return receipt and the name of the addressee or agent signing the receipt. If Defendant is served personally, the Clerk shall note the month, day, and year of service and the name of the person making service.

8-9-11 JURY TRIAL AND APPEAL WAIVED--All actions begun under this procedure shall be decided by the Court without Jury and no right of appeal shall exist.

8-9-12 DOCKET ENTRY OF DEFENSE; CONTENTS OF ENTRY--The Clerk shall enter the substance of the defense in the docket, and the docket entry shall be deemed the answer. The answer shall state fully and specifically, but in concise and untechnical form, what parts of the claim are contested, and grounds of the contest.

8-9-13 SETOFF OR COUNTERCLAIM STATED BY DEFENDANT; NOTICE TO PLAINTIFF--The Defendant within the time for answer may, in the manner provided in 8-9-5 claim any setoff or counterclaim within the jurisdiction of the Court. Upon making of such claim by Defendant, the Clerk shall give a notice to the Plaintiff similar to that provided in 8-9-9. The Defendant's claim shall be answered in the manner provided in 8-9-9.

8-9-14 DISPOSITION OF CLAIM ON FAILURE OF PLAINTIFF TO APPEAR FOR HEARING--If the Plaintiff does not appear at the time set for hearing, the Court may dismiss the claim for want of prosecution or enter a finding on the merits for the Defendant or make such other disposition as may be proper.

8-9-15 WITNESSES AND EVIDENCE RECEIVED ON HEARING--Witnesses shall be sworn, but the Court shall conduct the hearing in such order and form and with such methods of proof as it deems best suited to discover the facts and to determine the justice of the case.

8-9-16 AFTER THE DETERMINATION--After the determination of the action, the Judge shall affix his signature to the docket card.

8-9-17 COURT ORDER AS TO METHOD OF PAYMENT OF JUDGEMENT; STAY OF EXECUTION DURING COMPLIANCE—The Court may order that the judgment shall be paid to the prevailing party or , if it so orders, into Court for the use of the prevailing party at a certain date or by specified installments, and may stay the issue of execution during compliance with such order.

CHAPTER 10

REMOVAL OF NON-MEMBERS

8-10-1 Definitions

As used in this chapter:

(1) "Rosebud lands" means:

(a) lands owned by or held in trust for the Rosebud Sioux Tribe, the Tribal Land Enterprise, or any other tribal entity, regardless of whether such lands are located inside or outside the Rosebud Reservation; and

(b) allotments inside the Rosebud Reservation which are either held in trust by the United States for an individual Indian or Indians, or owned by an individual Indian or Indians and subject to restrictions upon alienation imposed by the United States; provided, that the term does not include public highways on such lands.

(2) "Complaining witness" means the person, acting for himself or as an officer or member of a tribal entity, who files a request pursuant to Section 6 that the Tribal Prosecutor bring an exclusion action on behalf of the Tribe.

(3) "Respondent" means the person against whom the exclusion action is filed.

8-10-2 Who May Be Excluded; Extent of Exclusion

Any non-member of the Rosebud Sioux Tribe, except a person authorized by federal law to be present on Rosebud lands, may be temporarily or permanently excluded and removed from all or any portion of Rosebud lands.

8-10-3 Grounds for Exclusion

Any non-member may be excluded and removed from Rosebud lands, as provided in this Ordinance, for commission of one or more of the following acts inside the Reservation or on Rosebud lands outside the Reservation:

(1) Disorderly conduct.

(2) Repeated public drunkenness.

(3) Entering an area in violation of any order of the Tribal Council designating such area as closed because of fire hazard or for any other reason.

- (4) Failing or refusing to pay any taxes, rents or other charges justly due the Rosebud Sioux Tribe or any tribal entity, after reasonable notice and an opportunity to pay.
- (5) Mining, cutting timber or vegetation or other use, abuse or damage to tribal property without authorization from the Tribe or the Secretary of the Interior.
- (6) Any act causing physical loss of damage of any nature to the property of the Tribe, its enrolled members, or the other residents of the Reservation or off-Reservation Rosebud lands.
- (7) A crime, as defined by South Dakota, federal or tribal law, or any act which, if committed by a member of the Rosebud Sioux Tribe, would be a crime under tribal law.
- (8) Violating any law of the Tribe, including any provision of the Tribal Tax Code or any rule or regulation of the Tribal Tax Commission.
- (9) Forcing entry into any home within the Rosebud Reservation or on off-Reservation Rosebud lands without the consent of the occupant.
- (10) Unauthorized prospecting.
- (11) Committing a fraud, a confidence game, or usury against any tribal member or any other resident of the Reservation or off-Reservation Rosebud lands.
- (12) Inducing any tribal member or other resident of the Reservation or off-Reservation Rosebud lands to enter into an unconscionable or grossly unfair contract of any nature.
- (13) Trading or conducting business within the Reservation in violation of tribal or federal law.
- (14) Defrauding any tribal member of just compensation for his labor or service of any nature done at the request of the non-member.
- (15) Hunting, fishing or trapping without lawful authority or permission or in violation of tribal or federal law.
- (16) Entering or remaining upon the Reservation or upon off-Reservation Rosebud lands while afflicted by a serious communicable or contagious disease which poses a substantial threat to the life or health of others.
- (17) Unauthorized taking of any property from the Reservation or from off-Reservation Rosebud lands.
- (18) Using, possessing or selling of any narcotic drug or controlled substance in violation of tribal, South Dakota, or federal law.
- (19) Exploring or excavating items, sites or locations of historic, religious or scientific significance without the lawful authority or permission of the Tribe or in violation of tribal or federal law.

- (20) Violating tribal customs.
- (21) Threatening to cause disturbances or riots or to conduct any activity prohibited by the Tribe.
- (22) Failing to obey an order of the Tribal Court.

8-10-4 Request to Tribal Prosecutor

Any person, acting for himself or as an officer or staff member of a tribal entity, may request that the Tribal Prosecutor bring an exclusion action pursuant to this Ordinance on behalf of the Tribe in Tribal Court. Forms for such requests shall be available to the public in the Office of the Tribal Prosecutor. The complaining witness filing the request must set forth, under oath and penalty of perjury, the grounds on which exclusion is sought. The request shall be valid only if it bears the notarized signature of the complaining witness. After the request has been duly sworn to, signed and notarized, it shall be filed in the Office of the Tribal Prosecutor.

8-10-5 Prosecutorial Discretion to Bring Exclusion Action

Whenever a request is filed pursuant to Section 6 of this Ordinance, the Tribal Prosecutor shall cause the matter to be investigated sufficiently to determine whether, in his discretion, an exclusion action should be filed on behalf of the Tribe. No complaint shall be filed unless the Tribal Prosecutor determines that (1) there is a reasonable basis to believe that the potential respondent committed one or more acts that constitute grounds for exclusion, as set forth in Section 5, and (2) the alleged acts were of sufficient severity or are sufficiently likely to be repeated to warrant filing of a complaint. Unless a complaint for exclusion is filed in Tribal Court, the Prosecutor shall keep the existence and content of the request for exclusion and all information resulting from the investigation of the request confidential, except to the extent that disclosure is necessary to properly investigate the allegation in the request. The Tribal Council may, however, by resolution, order release of such information to the Tribal Council.

8-10-6 Filing in Tribal Court—Notice of Hearing

If, pursuant to Section 7, the Tribal Prosecutor determines that it is appropriate to bring an exclusion action, he shall file in Tribal Court, on behalf of the Tribe, a complaint for exclusion setting forth the identity of the respondent and complaining witness and the grounds on which exclusion is sought. Upon the filing of a complaint for exclusion, the Tribal Prosecutor shall promptly cause notice and a copy of the complaint to be served personally or by Registered Mail upon the respondent and the complaining witness. The notice shall state the time and place at which a Tribal Court hearing will be held on the complaint.

The hearing shall not be less than ten days after the time of service or mailing; provided, that if a judge of the Tribal Court finds that there is reasonable cause to believe that an emergency exists, and the notice so states, the hearing may be held anytime after 24 hours after the time of service.

10-7 Tribal Court Exclusion Hearing

After notice to the respondent and complaining witness, as provided for in Section 8, the Tribal Court shall hold a hearing for the purpose of determining the facts and recommending to the Tribal Court what action, if any, should be taken. The respondent shall be given an opportunity to present his defense at the hearing, including evidence, witnesses and argument, and may be represented by counsel at his own expense. The Tribal Court may, in its discretion, grant a continuance of the hearing on request by the Tribal Prosecutor or respondent, or upon its own motion.

8-10-8 Tribal Court Findings of Fact and Recommendation as to Sanction

At the time of or after the hearing provided for in Section 9, or at or after the time set for the hearing if the respondent does not appear, the Tribal Court shall make findings of fact regarding the allegation of the complaint and the defenses, if any, presented by the respondent. If the Tribal Court finds that the Tribal Prosecutor has failed to prove by a preponderance of the evidence that respondent committed one or more of the acts set forth in Section 5, the Court shall dismiss the complaint. If the Tribal Court finds by a preponderance of the evidence that the respondent did commit one or more of the acts set forth in Section 5, it shall issue a written recommendation to the Tribal Council as to the appropriate sanction. The recommended sanction may be either permanent or temporary exclusion from either all or a portion of the Rosebud lands. In addition, the Tribal Court may recommend that the exclusion be suspended upon condition that respondent comply with specified requirements which may include, among other things, payment of taxes, interest, and penalties owed to the Tribe, as determined by the Tribal Tax Commission; refraining from the act or acts that gave rise to the exclusion action; payment of restitution to the Tribe or to any person for damage caused by the respondent; performance of labor; payment of a civil monetary penalty; and any other requirements that the Court deems just. Any penalty suggested as a condition for suspension of the exclusion shall not be a criminal fine but shall be a civil penalty for the purpose of defraying costs of enforcing this Ordinance and protecting lives and property on Rosebud lands.

8-10-9 Final Action by Tribal Council-Discretionary Hearing

Upon receipt from the Tribal Court of finding of fact and a recommendation as to sanction as provided in Section 10, the Tribal Council may, in its sole discretion, conduct a hearing either before the Council as a whole or before a committee designated by the Council. If such a hearing is held, the respondent, the complaining witness, and the Tribal Prosecutor shall be provided with prior notice of the time and place of the hearing, and shall be given an opportunity to be heard, but shall not be allowed to present evidence or witnesses.

No sanction may be imposed pursuant to this Ordinance except upon a majority vote of the Tribal Council. The Tribal Council may impose as a sanction either permanent or temporary exclusion from either all or a portion of the Rosebud lands. The Tribal Council may suspend the exclusion on condition that respondent comply, within a specific time limit, with such requirements as the Council may specify, which may include, without limitation, payment of taxes, interest, and penalties owed to the Tribe as determined by the Tribal Tax Commission; refraining from the act or acts that gave rise to the exclusion action; payment of restitution to the Tribe or to any person for damage caused by respondent; performance of labor; payment of a civil monetary penalty; and any other requirements that the Tribal Council deems just. Any penalty imposed as a condition of suspension of the exclusion shall not be a criminal fine but shall be a civil penalty for the purpose of defraying costs of enforcing

this Ordinance and protecting lives and property on Rosebud lands. The Tribal Council shall in no respect be bound by the recommendation of the Tribal Court as the sanction or conditions for suspension or exclusion, if any, it imposes. The decision of the Tribal Council. The Court shall promptly cause copies of the Exclusion Order to be served personally or by Registered Mail upon the respondent, complaining witness, and Tribal Prosecutor.

8-10-10 Enforcement Proceedings

If any respondent ordered excluded from Rosebud lands pursuant to this Ordinance does not promptly obey the Exclusion Order, the Tribal Court shall issue a Writ of Exclusion which shall order any police officer to (1) remove the respondent from all Rosebud lands covered by the Exclusion Order at the respondent's expense, and (2) prevent the reentry of the respondent onto any Rosebud lands covered by the Exclusion Order for so long as the Exclusion Order remains in effect. The police officer executing the Writ shall use only so much force as is necessary to effect the removal or prevent the reentry. The Tribal Court may also refer the matter to the United States Attorney for prosecution of any federal crime committed.

8-10-11 Physical Removal - Emergency

In cases involving immediate danger to the life, health, morals, or property of the Tribe or any of its members or the non-member proposed for exclusion, or where delay would result in irreparable damage, a judge of the Tribal Court may, either before or after the Tribal Court hearing provided for in Section 9 of this Ordinance, issue an Emergency Writ of Exclusion which shall order any police officer to (1) remove the non-member from all Rosebud lands covered by the Emergency Writ at the non-member's expense, and (2) prevent the reentry of the non-member onto any Rosebud lands covered by the Emergency Writ for so long as the Emergency Writ remains in effect. The police officer executing the Writ shall use only so much force as is necessary to effect the removal. If service of the notice provided for in Section 8 of this Ordinance has not already been made on the respondent, the Tribal Court shall cause the police officer to serve the notice upon the respondent at the time of removal or as soon after removal as possible. An Emergency Writ of Exclusion shall remain in effect for ten days in order to allow time for an emergency Tribal Court hearing, as provided for in Section 8 and 9, and action by the Tribal Council pursuant to Section 11; provided, that the Emergency Writ shall be revoked by the Tribal Court if the Court determines that the emergency no longer exists or if the Court dismisses the complaint pursuant to Section 10.

8-10-12 Finality of Exclusion Order

An Exclusion Order entered pursuant to this Ordinance shall be final. Any person so excluded may apply to the Tribal Council to have the order modified or vacated at such time as the order provides, or if the order makes no such provision, after one year. The Tribal Council may refer such application to the Tribal Court for its recommendation as to what action the Council should take, but such recommendation shall in no way bind the Council. A prior Exclusion Order may be modified or vacated only by a majority vote of the Tribal Council.