

TITLE VII
Santee Sioux Tribal Housing Code

Chapter 1
General Provisions

Section 1. Applicability

The following title shall hereinafter be referred to as the "Santee Sioux 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.

- A. The following arrangements are not governed by this Code:
1. Residence at an institution, public or private, if incidental to detention, or the provision of medical, geriatric, educational counseling, religious, or similar service, or
 2. Occupancy in a hotel, motel, or other commercial lodging.

Section 2. Jurisdiction

- A. Jurisdiction is extended over all buildings and lands intended for human dwelling, occupation, or residence which may lie within:
1. The exterior boundaries of the Santee Sioux Tribal Reservation
 2. Lands owned by, held in trust for, leased or used by the Santee Sioux 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 Santee Sioux Tribe who sell, rent, lease, or allow persons to occupy housing, dwellings, or accommodations for the purpose of human dwelling, occupation, or residence, and 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 Santee Sioux 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 Santee Sioux Tribe, its members, its Housing Authority, or any other entity of the Tribe.
 2. All persons or entities within the jurisdiction of the Santee Sioux Tribe who lease, mortgage, or otherwise secure an interest in a building.

- D. Jurisdiction over all matters arising within the jurisdiction of the Santee Sioux 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 Tribal Court.

COMMENTARY:

This Section sets forth a broad statement of jurisdiction over housing cases. An individual tribe should carefully review this section prior to adoption of this Code to determine if any modifications are required to meet their individual needs.

Section 3 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 people of the Santee Sioux 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 Santee Sioux Tribe, tribal entities, and tribal members of financing for the construction and/or purchase of family residences on trust land within the jurisdiction of the Santee Sioux Tribe by prescribing procedures for the recording, priority and foreclosure of mortgages given 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.

COMMENTARY:

This is a very important Section which sets forth the purposes and philosophy of this Tribal Housing Code. It contains an overall statement requiring the court to interpret and construe the Code to meet the purposes set forth in this section. A purpose section is a very useful provision in most codes especially a tribal housing code because it gives the court guidance and flexibility interpreting the specific provisions of the code. An individual tribe should carefully review this section prior to adoption of the Code to determine whether the seven purposes set forth in this section are appropriate to meet their needs and whether there are other purposes which should be added.

Section 4. 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 Santee Sioux Tribe and tribal

customs and traditions are applicable, and the general principles of law of any other Santee Sioux Tribe or any other state 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 Santee Sioux 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 Code if it has specific applicability and it is clearly in conflict with the provisions of this Code.
 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.

COMMENTARY:

This Section sets forth the applicable law and guidance for the court in handling potential conflicts with other laws. Chapter 1, Section 4 (A) recognizes that (1) tribal common law and tribal custom and tradition can be introduced to supplement and interpret this code and (2) that other tribal and state laws may be used as a guide to supplement and interpret this Code. Chapter 1, Section 4 (B) and Chapter 1, Section 4 (C) recognize that there may be current or future tribal and/or federal laws which may conflict with this Code and that these tribal/federal laws may govern over this Code only if these tribal/federal laws have specific applicability and are clearly in conflict with this Code (state laws are held to be advisory only). An individual tribe should carefully review this section prior to adoption of this Code to determine if any modifications are required to meet their individual needs.

Section 5 Definitions

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

- 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, dwelling, or accommodation 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 owners and occupiers of such units, including the right to occupy them.
- B. ***Adult Person***, is any person eighteen (18) years of age or older.
- C. ***Borrower / Mortgagor*** is the Santee Sioux Tribe, the Santee Sioux Housing Authority, or any individual Indian(s) or any heir(s), successor(s), executor(s), administrator(s), or assign(s) of the Santee

- Sioux 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.
- D. **Building** is a structure, and any appurtenances or additions thereto designed for habitation, shelter, storage and the like.
- E. **Building or housing codes** are any law, ordinance, or governmental regulation of the Santee Sioux 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.
- F. **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 accommodation, such as hotel rooms.
- G. **Guest** is any person, other than the tenant, in or around a dwelling unit with the permission and consent of the tenant.
- H. **He/His**: the use of he/his means he or she, his or her, and the singular includes the plural.
- I. **Housing Authority** is the which is the Tribally Designated Housing Entity, authorized or established under the authority of the Native American Housing Assistance and Self-Determination Act of 1996 (Public Law 104-330)
- J. **Indian** is any person recognized as being an Indian or Alaska Native by any Tribe, or by the government of the United States.
- K. **Landlord** can be the Santee Sioux Tribe, Santee Sioux Housing Authority, a person, entity, or federal government agency which is the owner, lessor, or sublessor of a dwelling unit intended for the use of tenants.
- L. **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, dwelling unit, building, or premises, including a lease-to-purchase agreement.
- M. **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 Santee Sioux Housing Authority, or any other agreement entered between a Borrower/Mortgagor and a Lender/Mortgagee.
- N. **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 the 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.

COMMENTARY:

Should the tribe decide to require lenders to foreclose on mobile homes located on the reservations it should include "mobile homes" with the list of properties that are subject to the tribe's foreclosure proceedings

- O. ***Lender Designated Assignee.*** Any lender as defined in this Code may assign or transfer its interest in a Mortgage or Lease and/or Leasehold Mortgage to a Designated Assignee.
- P. ***Lender/Mortgagee*** is any private lending institution established to primarily loan funds and not to invest in or purchase properties, the Santee Sioux Tribe, an Indian Housing Authority, or a U.S. government 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.

COMMENTARY:

Should the tribe decide to subject mobile homes to the foreclosure proceeding you should make the following amendment to definition (P): "Lender/Mortgagee loans to Borrower construction, rehabilitation, or acquisition of a home including a mobile home. It is also any lender."

- Q. ***Lessor*** is the legal, beneficial, or equitable owner of property under a Lease. Lessor may also include the heir(s), successor(s) executor(s), administrator(s), or assign(s) of the lessor.
- R. ***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 Santee Sioux Housing Authority.
- S. ***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.

COMMENTARY:

Should the tribe decide to subject mobile homes to the foreclosure process please add in "mobile home" after the word "building" on the second line of definition (s)

- T. ***Mortgagor/Borrower*** - see Borrower/Mortgagor.
- U. ***Mortgagee/Lender*** - see Lender/Mortgagee.
- V. ***Mobile home*** is a structure designed for human habitation and for being moved on a street or highway. Mobile home includes pre-fab, modular and manufactured homes. Mobile home does not include a recreational vehicle or a commercial coach.
- W. ***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.

- X. **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.
- Y. **Person** includes the Santee Sioux Tribe, Santee Sioux Housing Authority, 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.
- Z. **Premises** is a dwelling unit and the structure of which it is a 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 for tenants.
1. **Rent** is all periodic payments to be made to a landlord or lessor under a lease.
 2. **Rental Agreement** –See Lease
 3. **Reserrvation** is the Santee Sioux Reservation in the state of Nebraska.
 4. **Shall**, for the purposes of this Code, will be defined as, mandatory or must.
 5. **Subordinate Lien holder** is the holder of any lien, including a subsequent mortgage, perfected subsequent to the recording of a Mortgage under this Code, except the Santee Sioux Tribe shall not be considered a subordinate lien holder with respect to any claim regarding a tribal tax on real property.
 6. **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.
 7. **Tribal Court** is the Court as established by the laws of the Santee Sioux Tribe or such body as may now or hereafter be authorized by the laws of the Santee Sioux Tribe to exercise the powers and functions of a Court of law.
 8. **Tribal Recording Clerk** is the director of the Tribal Real Estate program or such other person designated by the Santee Sioux Tribe to perform the recording functions required by this document or any deputy or designee of such person.

COMMENTARY:

Should the tribe decide to rely on a state or Bureau of Indian Affairs recording system, definition 8 should be deleted.

9. **Tribe** is the Santee Sioux Tribe of Santee, Nebraska.

COMMENTARY:

This Section sets forth an extensive list of definitions in alphabetic order. Note that an individual tribe would need to fill in the blanks in three definitions (I) Housing Authority, (3) Reservation and (9) Tribe with their specific tribal information and/or adding the specific tribe identification information throughout the Code. Also, note that two terms ("borrower/mortgagor" and "lender-mortgagee") are used together throughout the code to reduce potential confusion created by using the terms mortgagor and mortgagee by themselves and that these terms are each referenced twice in this definitions Section. There may be additional definitions which could be added to this Section.

Chapter 2 Landlord/Tenant Responsibilities And Remedies

Section 1 Rental Agreements

- A. Effect of Rental Agreements. The provisions of this Code, as well as the applicable laws identified in §1-1-4, 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 §1-1-4;
 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 him without resort to court order; or
 4. to pay a late charge prior to the expiration of the grace period set forth in Chapter 3, Section 1 (A). A provision prohibited by this subsection shall be unenforceable.
- C. Term of Tenancy. In the absence of a definite term in the rental agreement, the tenancy shall be month-to-month.
- D. Payment of Rent. In the 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.

COMMENTARY:

This Section sets forth-specific provisions concerning rental agreements. First, it establishes that this Code establishes the minimal rights and responsibilities for landlords and tenants. Second, specific rental terms are prohibited. Third, it establishes that in the absence of definite terms, the tenancy shall be month-to-month, the rent shall be fair market value and the rent shall be payable at the landlord's office (if known) or at the dwelling unit. There are at least two additional issues which could also be addressed here. First, there may be a need to include a provision excluding those whose residence is conditional upon employment (such as resident managers and some seasonal workers) from the Code requirements - or at least to substantially modify the provisions for them. Second, although Chapter 2, Section 1 (B) identifies prohibited terms, it does not contain a remedy - some states have recently been adding laws which provide that a landlord who intentionally includes an illegal provision is required to pay damages and attorneys fees.

Section 2 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 tenants 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;
 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 him of what he shall or shall not do to comply; and
 5. The tenant has notice of the rules and regulations at the time he 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.

COMMENTARY:

This Section sets forth specific procedures by which landlords may establish rules and regulations concerning the use and occupancy of dwelling units. An individual tribe should review these provisions to determine if they should be applicable to all types of housing on an individual reservation.

Section 3 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 things 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.
- 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 Chapter 2, Section 4 (K);
 - 2. Making repeated demands for entry otherwise lawful under Chapter 2, Section 4(K), but which have the effect of unreasonably harassing the tenant;
 - 3. Sexually harassing or physically assaulting the tenant in or around his dwelling unit; or
 - 4. Locking the tenant out of his 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 his agent, and the person responsible for making repairs, where they are required.

COMMENTARY:

This Section sets forth eleven specific landlord responsibilities. An individual tribe should carefully review these landlord responsibilities for applicability and determine if revised and/or additional responsibilities are needed. In addition, it may be necessary to clarify that the landlord cannot simply alter or eliminate many of these responsibilities - some responsibilities (such as who provides garbage cans) should be subject to contract negotiations, but other responsibilities (such as the warranty of habitability) should not be subject to contract negotiations.

Section 4 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 hazardous to life, health, or safety.
- 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 to require guests to act in like manner.
- 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 his

guests, or to repair such damages as required under the rental agreement, within thirty (30) calendar days of such damage.

- G. Conduct himself, and require his 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.
- I. Use the dwelling unit only for residential purposes as agreed, and not to use the unit or permit its use for any other purpose, including illegal conduct or any other activity which may harm the physical or social environment of the premises or the area around it.
- J. Abide by all rules and regulations promulgated by the landlord in accordance with Chapter 2, Section 2 of this Title.
- K. Provide the landlord access to the dwelling unit to perform maintenance and repairs, inspect the premises, supply necessary or agreed services, or show the dwelling unit 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 a landlord for these purposes may pursue an action or grievance on the grounds that any services or repairs were not provided.

COMMENTARY:

This Section sets forth eleven specific tenant responsibilities. An individual tribe should carefully review these obligations to determine if revised and/or additional responsibilities are needed. In addition, it may be necessary to clarify that the tenant cannot simply alter or eliminate many of these responsibilities - some responsibilities (such as who provides garbage cans) should be subject to contract negotiations, but other responsibilities (such as the prohibition against illegal or unsafe usage) should not be subject to contract negotiations.

Section 5 Tenant Remedies (Option A)

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 his obligations, including the right to require repairs or maintenance which are the responsibility of the landlord.
- B. Should landlord fail to comply with his 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 necessary remedial action and deduct the cost from the rent 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 landlords, terminate an agreement, pay damages, or any other relief to which he may be entitled by law or the agreement of the parties.

Section 5 Tenant Remedies (Option B)

- A. Conditions. Where a landlord has not complied with his responsibilities regarding dwelling unit conditions, as set forth in Chapter 2, Section 3 (A) – Section 3 (K) of this Title, and where the tenant has given notice to the landlord and the landlord has failed, within a reasonable period of time, to cure his noncompliance, the tenant may:
1. Withhold rent in cases where the landlord's noncompliance renders the dwelling unit uninhabitable; or
 2. Make necessary repairs and deduct the cost of such repairs from his rent; or
 3. Institute an action in the Tribal Court seeking:
 - a. An order compelling the landlord to comply with his responsibilities as set forth in Chapter 2, Section 3 (A) – Section 3 (K) of this Title.
 - b. An award of money damages, which may include a retroactive abatement of rent; and/or
 - c. Such other relief in law or equity as the court may deem proper, provided that no tenant may institute such an action if a valid notice to quit based upon nonpayment of rent has been served on him prior to his institution of the action. Where a landlord violates his responsibilities as set forth in Chapter 2, Section 3 (i) of this Title or Chapter 2, Section 3 (c), damages shall be not less than an amount equal to one month's rent and tenant shall be further entitled to reasonable attorney's fees.
 4. Terminate the rental agreement.
- B. Identification of Landlord. Where a landlord fails to identify himself to the tenant in accordance with §1-2-3(K) of this Code, the tenant is under no obligation to pay rent and may terminate any existing rental agreement.

COMMENTARY:

There are two separate Tenant Remedies sections set forth in this Code. Option A is a more general provision. Option B is a more specific and detailed provision. An individual tribe should carefully review both of these options to determine which option is most appropriate. It also may be necessary to define "reasonable" time for specific actions and to clarify the time period during which there is "no obligation to pay rent" when there is a failure to identify the landlord.

Section 6 Landlord Remedies (Option A)

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 his obligations, pay any monies due and owing under the agreement of the parties, or landlord has right to terminate the agreement under which the tenant occupies the premises, and demand that he and those with him leave the premises.

- B. Require repairs or maintenance which are the responsibility of the tenant and compliance with reasonable rules and regulations for occupancy.
- C. Seek a Court order or judgment for the payment of monies or costs, for compliance with the agreements and obligations of tenants, for termination of an agreement, payment of damages, eviction of tenants, or any other relief to which he may be entitled by law or the agreement of the parties.

Section 6 Landlord Remedies (Opinion B)

Where a tenant has committed serious or repeated violations of his responsibilities as set forth in Chapter 2, Section 4 of this Title, the landlord may institute an action in the Tribal Court seeking an order compelling the tenant to comply with his responsibilities as set forth in Chapter 2, Section 4, an award of money damages, and/or such other relief in law or equity as the court may deem just and proper.

COMMENTARY:

There are two separate Landlord Remedies sections set forth in this draft. Option A is a slightly more detailed provision. Option B is a more summary provision. An individual tribe should carefully review both of these options to determine which option is most appropriate.

Section 7 Abandoned Dwelling Units (Option A)

Where a dwelling has been abandoned (the tenant has vacated without notice and does not intend to return which is evidenced by removal of Possessions, nonpayment of rent, disconnected utilities, or expressed to the landlord or third party) a landlord, without further notice to the tenant may post a notice on the dwelling stating that the landlord intends to take possession and that the tenant's possessions will be inventoried and removed within ten (10) days from the posting. If the tenant's possessions are not claimed within thirty (30) days from their removal from the abandoned dwelling, the landlord may dispose of the possessions. If the abandoned property is of cultural, religious, or ceremonial significance, the landlord shall have an affirmative duty to locate next of kin and/or contact the Santee Sioux Tribe in order to return these items.

Section 7 Abandoned Dwelling Units (Option B)

A landlord may regain possession of a dwelling unit, in accordance with this section, where the 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 his possessions and personal effects from the premises and either:

1. Nonpayment of rent for two or more months,
 2. Terminated water or electrical utility, 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 the notice to the tenant at his last 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 reenter and take possession of the dwelling unit unless the occupant contacts him within ten (10) 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) days after the notice, they will be disposed of in accordance with Chapter 4, Section 5 of this Title. The notice shall be in clear and simple language and shall include a telephone number and a 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) days of the receipt of the notice, the landlord may reenter 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 Title to obtain possession of a dwelling unit which has been abandoned.
- C. If the abandoned property is of cultural, religious, or ceremonial significance, the landlord shall have an affirmative duty to locate next of kin and/or contact the Santee Sioux Tribe in order to return these items.

COMMENTARY:

This Section sets forth two options concerning abandoned dwelling units. Option A is a more summary provision. Option B is a more detailed provision. An individual tribe should carefully review both of these options to determine which option is most appropriate. Note that sections have been added to both options setting out an affirmative duty to locate next of kin and/or the Tribe and return items of cultural, religious, or ceremonial significance.

Chapter 3
Grounds For Eviction/Notice to Pre-Eviction Options

Section 1 Grounds for Eviction

A person 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. Any agreement in rent, costs, or damages which 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 Chapter 2, Section 2 of this Title, 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.

COMMENTARY:

This Section sets forth six specific grounds for eviction. An individual tribe should carefully review these six grounds to determine if revised and/or additional grounds are needed. For example, this Code only allows a "no cause" eviction by a private landlord if it is set forth in the rental agreement under Chapter 3, Section 1 (f). An individual tribe may decide to broaden this to allow a private landlord to evict for no cause so long as it is not for "illegal purposes."

Section 2 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 exists one or more legally cognizable reasons to evict the tenant or tenants occupying the unit as set forth in Chapter 3, Section 1, the landlord shall give notice to the adult tenants to quit possession of such dwelling unit according to the provisions of this chapter.
- 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 reasons(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 (here insert the address or other reasonable description of the location of the dwelling unit), on or before the (here insert the date) for the following reason (here insert the legally cognizable reason or reasons for the notice to quit possession using the statutory language or words of similar import). Signed, (here insert the signature, name and address of the landlord, as well as the 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.

COMMENTARY:

This is a very important Section which sets forth the general requirements for the notice to quit. It sets forth when the notice to quit is appropriate, that a statement of the grounds for the eviction is needed (see Chapter 3, Section 1), the general form of the notice, and the time requirements for the notice to quit. An individual tribe should carefully review these provisions especially the time requirements to determine if these provisions are appropriate.

Note that an early draft of this Code set forth a separate section for termination which was required before the notice to quit could be utilized. The advantage of a separate termination system is that it is designed to give the tenant an opportunity to cure the problem. The tenant must first get a termination notice stating that the tenancy will terminate unless the problem is corrected. If the problem is not corrected, then the landlord can proceed to serve a notice to quit. Thus, it requires a two step process to evict a tenant - first a termination notice and then a notice to quit. This final version, however, combines and simplifies the process utilizing a one step notice to quit. The process is easier to understand, but the potential impact on tenants could be significant (It may be useful, however, to change the notice from simply a Notice to Quit to a Notice to Comply or Quit).

Consequently, the timing requirements should be carefully examined. This Code provides a general seven (7) day notice to quit. It might be necessary to extend this time period to protect the tenants. We would certainly recommend against reducing the time requirement from seven days. In fact, an individual tribe might decide that it is necessary to increase all three time requirements under this provision. For example, the time requirements under Chapter 3, Section 2 (E) (1) could be increased from 7 days to 15 days, the time requirements under Chapter 3, Section 2 (E) (2) could be increased from 3 days to 5 days, and the time requirements under Chapter 3, Section 2 (E) (3) could be increased from 14 days to 30 days.

An additional issue is whether the IHA notice to terminate counts as the notice to quit required under this Code. The current draft language of this Code assumes that the IHA must use a two step process by first going through the termination process and then going through the notice to quit process under this Code. If a individual tribe decides to reduce one step in this two step process by allowing the termination notice to count as the notice to quit, then an additional provision could be added to this section such as the following:

- F. Indian Housing, Authority Termination Notice. When the landlord is an Indian Housing Authority, the housing authority termination notice shall qualify as the notice to quit required under this section so long as the time requirements of the housing authority termination notice are at least as long as the time requirements set forth in Chapter 3, Section 2 (E) of this Title.

Section 3 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:
1. Certified mail, return receipt requested, at the last known address of the landlord or 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.

COMMENTARY:

This Section sets forth the specific requirements for serving the notice to quit.

Section 4 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 Chapter 4, Section 8 (A)(4);
 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.

COMMENTARY:

Many potential litigants do not realize their inherent powers to attempt to negotiate settlements to their disputes. This Section was inserted to encourage the parties to a dispute to enter into negotiations and give some ideas as to how such negotiations may take place and what may be considered.

Chapter 4 Judicial Eviction Procedures

Section 1 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 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 agreement, 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; and
- F. A statement of the relief demanded, including any claim(s) for possession of the dwelling unit, damages, fees, costs, or other special relief.
- G. If the landlord is an Santee Sioux Housing Authority, a statement that the Santee Sioux Housing Authority has complied with all required regulatory processes prior to filing the eviction action.

COMMENTARY:

This Section sets forth the procedures for summons and complaint under this Code. The provisions apply only when the steps set forth in Chapter 3 for notice to quit have been met. This Section sets forth seven specific requirements which shall be included in the complaint. An individual tribe should review these seven requirements to determine if revised and/or additional provisions are needed. For example, if an applicable traditional dispute resolution procedure is required prior to filing the complaint, it should be included here. This Section and other sections in the Chapter may not be necessary if these civil procedures are already adequately covered in the general tribal civil procedure code.

Section 2 Action upon Filing Complaint

When a complaint is filed in the Tribal Court, it shall be immediately presented to a Tribal Court Judge. This shall be on the date of 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 Chapter 4, Section 1 and served as set forth in Chapter 3, Section 3, 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 nuisance 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.

COMMENTARY:

This Section sets forth the actions which shall be taken by the tribal Court once a complaint has been filed under this Code. Note that it may be necessary to add a summary or expedited process here for certain types of cases.

Section 3 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 (15) day period. The Court may refuse to extend the date of hearing where the complaint is based upon nuisance or injuries provided in Chapter 3, Section 1(c), and shall not extend the date of hearing where the complaint is based upon conduct which is alleged to constitute a 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.

COMMENTARY:

This Section sets forth further guidance to the court concerning commencement of proceedings. An individual tribe should carefully review the time frames in this section to determine if these time frames are appropriate and realistic.

Section 4 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 his 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. A tenant may be evicted after such a period if he fails or refuses to pay the reasonable rental value of the premises.
- D. That 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 estoppel, laches, fraud, misrepresentation, and breaches of serious and material obligations for public health, safety, and peace standards.
- E. That there are such serious and material breaches of applicable housing law on the part of the landlord that it would be unjust to grant him a remedy.
- F. The landlord is evicting the tenant because of his/her 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 his rights under this Code or to force the landlord to comply with his 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.

COMMENTARY:

This Section sets forth possible defenses to an action under this Code.

Section 5 Discovery and Prehearing Proceedings

Extensive, prolonged, or time consuming discovery and preheating 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 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.

COMMENTARY:

This Section requires that discovery and preheating procedures should be minimized.

Section 6 Evidence (Option A)

Evidence in proceedings under this Code shall be under the provisions of the general tribal code of evidence.

Section 6 Evidence (Option-B)

Evidence in proceedings under this Code shall be informal, and may include relevant and reliable hearsay evidence if such evidence is not the basis for a final decision. The books and records of the parties as to the payment or nonpayment of monies owed will be received in evidence and the files and business records of the landlord with respect to the agreement of the parties will be received in evidence and the files and business records of the landlord with respect to the agreement of the parties will be received in evidence upon their presentation to the Court; provided, however, that a tenant may examine the custodian of such records as to their contents. All hearings will be informal and designed to receive evidence in a fair and just manner.

Section 6 Evidence (Option C)

Evidence in proceedings under this Code shall be according to 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 Dakota Santee Sioux Tribes shall be freely admitted.
- E. Hearsay objections will not be permitted to procedurally deny the Court access to reasonable 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 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; or, 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.

COMMENTARY:

There are three different options set forth for evidencing standards under this Code. The first option simply establishes that the general tribal rules of evidence shall apply. The other options provide more specific evidentiary guidance for housing cases. The choice of evidentiary standards is an important decision which should be carefully reviewed by a

particular tribe prior to adoption of the Code. Furthermore, consideration should be given to the issue of whether or not to provide for jury trials in eviction actions.

Section 7 Burden of Proof (Option A)

The burden of proof in all proceedings under this Code shall be clear and convincing evidence.

Section 7 Burden of Proof (Option B)

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

COMMENTARY:

There are two options provided for burden of proof - either preponderance of the evidence or clear and convincing proof. Clear and convincing proof is a significantly more difficult standard to meet. Again, this is an important choice for an individual tribe to decide before adopting this Code.

Section 8 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 all relief that 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 per capita payment 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 Chapter 3, Section 4 of this Title; 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 plaintiff following a hearing to determine whether relief should be granted and the kind of relief that should be granted.

COMMENTARY:

This section sets forth guidance for the court in housing case judgments. This provision includes a wide range of different judgment options in order to highlight for the judge that there are a wide variety of options which could be utilized to meet the requirements of both landlord and tenant without requiring an eviction.

Section 9 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.

COMMENTARY:

This section sets forth guidance for the court concerning the form of judgment. It may not be necessary to include this section.

Section 10 Execution of Judgment

An eviction order may 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; and
- 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 (5) 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 damages, costs, and expenses to a party for failure to execute the 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.

COMMENTARY:

This Section sets forth provisions concerning execution of judgment and should be read in conjunction with the following sections.

Section 11 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 months in the aggregate. The clerk shall distribute such arrearages to the landlord in accordance to any order of the court.

COMMENTARY:

This Section provides the terms under which a tenant can apply for a stay of execution to postpone an eviction order. It may be necessary to add a provision allowing an appeal without posting bond due to the tenant's inability to pay.

Section 12 Appeals (Option A)

Appeals under this Chapter shall be according to the general tribal appellate provisions.

Section 12 Appeals (Option B)

Appeals under this Code shall be handled according to the general tribal appellate provisions, with the exception that the party taking 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.

COMMENTARY:

This Section sets forth two options for appeals either under the standard tribal appellate procedures or under a separate procedure established under this Code.

Section 13 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.

COMMENTARY:

This Section provides that miscellaneous complaints and claims including tenant complaints and claims (see Chapter 2, Section 5) may be made under the general tribal

civil procedure code and/or tribal small claims procedure code. Note that when an individual tribe is considering adopting this code it would be best to change sections such as this Section to refer to the specific applicable Chapters or Sections that individual tribe's tribal civil procedure code or small claims code.

Section 14 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 Santee Sioux Tribe or an agency 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 landlord or 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.

Section 15 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 that Order, the 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 he does not vacate the premises voluntarily by the effective date, he 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 Santee Sioux Housing Authority or the United States Government access to any property leased by either of them for purposes of preserving and securing it.

- C. Following forcible eviction of the defendant and/or other occupants, the former occupant's 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 former occupants shall pay the reasonable costs of its removal and storage. If they do not pay such costs within thirty (30) days, the owner is authorized to sell the property in order to recover these costs. The landlord shall not condition return of the former occupant's personal property on the payment of any costs or fees other than those of removal and storage of those personal possessions. Should the landlord attempt to condition return of personal possessions on payment of any other cost or fee, the landlord shall forfeit his right to the costs of removal and storage. Upon request by the former occupants, the landlord shall provide them with pertinent information concerning the sale, including the time, date and location. Any proceeds from the sale in excess of the storage and removal costs shall be remitted to the former occupants. Nothing in this section shall be construed to prevent the former occupants from reclaiming property remaining after the sale if they can arrange to do in a manner satisfactory to the owner. If the abandoned property is of cultural, religious, or ceremonial significance, the landlord shall have an affirmative duty to locate next of kin and/or contact the Santee Sioux Tribe in order to return these items.

COMMENTARY:

This section sets forth procedures for forcible evictions and for storage of personal property following forcible eviction. Note that a section has been added setting out an affirmative duty to locate next of kin and/or the Tribe and return items of cultural, religious, or ceremonial significance.

Section 16 No Self-Help Eviction

No landlord may compel a tenant to vacate any premises in a forceful fashion or way 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.

COMMENTARY:

This Section simply prohibits self-help evictions by either the Indian Housing Authority or a private landlord.

Section 17 Security Deposits

- A. Security Deposit Limits. A landlord may demand a security deposit of an amount equal to five hundred dollars (\$500) 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 or pets or tenant history or prior damages.
- B. Payment of Security Deposit at Termination of Tenancy. The person who is the landlord at the time a tenancy is terminated shall pay to the tenant or former tenant the amount of the security deposit that was deposited by the tenant with the person who was landlord at the time such security deposit, was deposited less the value of any damages which any person, who was a landlord of such premises at any time during the tenancy of such tenant, has suffered as a result such tenant's failure to comply with such tenant's obligations. Damages shall not include normal wear and tear.
- C. Action to Reclaim Security Deposit. Any tenant may bring a civil action in Tribal Court to reclaim any part of his security deposit which may be due.

COMMENTARY:

This Section sets forth security deposit limits, procedures for payment of security deposit at termination of tenancy, and procedures for action to reclaim security deposits. An individual tribe should carefully review the limits in Chapter 4, Section 17 (A) to determine the appropriateness of these security deposit limits. Furthermore, it may be necessary to give the landlord legal impetus to return the deposit by requiring the landlord to account for any deposit not returned, allowing suit for the deposit without countersuit, and/or providing that damages for failure to return the deposit are equal to double the amount of the deposit.

Chapter 5 Mortgage and Foreclosure

Section 1 Priority

All mortgages recorded in accordance with the recording procedures set forth in this Chapter, including Leasehold Mortgages, and including loans guaranteed 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.

COMMENTARY:

This Chapter sets forth general procedures for mortgages and foreclosures. It is designed to meet not only the needs of the Section 184 Loan Guarantee Program (a brief overview of the Section 184 Program is set forth below), but also other governmental loan guarantee programs, as well as private mortgages. Specific to the Section 184 Program, the Santee Sioux Tribe must notify HUD that they have foreclosure and eviction procedures in place. Adoption of this Chapter allows the Santee Sioux Tribe to meet this requirement.

Section 184 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub.L.102-550, approved October 28, 1992) authorized the establishment of the Indian Housing Loan Guarantee Fund (the Fund) to provide access to sources of private financing to Indian families and Indian housing authorities who otherwise could not acquire housing financing because of the unique legal status of Indian trust land. In general, these lands, held in trust by the United States for the benefit of an Indian or Indian tribe, are inalienable. Trust lands under this program also include lands to which the title is held by an Indian tribe subject to a restriction against alienation imposed by the United States. Because titles to individual plots do not convey, and liens do not attach, conventional mortgage lending practices do not operate in this forum.

The Fund addresses these obstacles to mortgage financing by guaranteeing loans made to Indian families or Indian housing authorities to construct, acquire, or rehabilitate 1 to 4 family dwelling that are standard housing and are located on trust land or land located in an Indian or Alaska Native area. Loans may be made by any lender approved by the Secretary of Housing and Urban Development, the Secretary of Agriculture, or the Secretary of Veterans' Affairs; or, any lender which is supervised, approved, regulated or insured by any agency of the Federal Government. The first step in meeting the requirements of federal government loan guarantee programs is to provide a priority system with first priority for government guaranteed loans. The HUD home loan guarantee program, Section 184, allows a tribe to use either the state mortgage recording system or have mortgages filed with Bureau of Indian Affairs (BIA). Should your tribe choose either a state system or the BIA, you should amend Chapter 5, Section 1 to reflect what system you will be utilizing. Also note that if your tribe decides to use a state recording system the tribe will need to enact a law providing for such use.

Section 2 Recording

- A. The Tribal Recording Clerk shall maintain in the Tribal Real Estate program a system for the recording of mortgages and such other documents as the Tribe may designate by laws or resolution.
- B. The Tribal Recording Clerk shall endorse upon any mortgage or other document received for recording:
 - 1. The date and time of receipt of the mortgage 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
 - 3. The name of the Tribal Recording Clerk or designee receiving the mortgage or 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:

Santee Sioux Tribe))Ss. Santee Sioux Indian Reservation

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

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

(SEAL) _____

(Signature) _____

(Date) _____

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

- C. The Tribal Recording Clerk shall also maintain a log of each mortgage 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, 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 the 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 document.
- D. 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 copying. Rules for copying shall be established and designated by the Tribal Recording Clerk.

COMMENTARY:

Note commentary under Chapter 5, Section 1 above. Should the tribe adopt the Code as presented it is optional on whether or not the tribe wishes to house its Recording department within a "Tribal Real Estate" program. The tribe is free to place the Recording function in any tribal department it wishes.

Section 3 Foreclosure Procedures

- A. A Borrower/Mortgagor shall be considered to be in default when he is thirty (30) days past due on his mortgage payment(s) to the Lender/ Mortgagee or when he has been in breach of any other material mortgage provision for at least thirty (30) days.
- B. Before a Borrower/Mortgagor becomes ninety (90) days delinquent on his mortgage payments and before any foreclosure action or activity is initiated, the Lender/Mortgagee shall 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, 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 or arranging and conducting the face-to-face interview specified in this action.
- D. Before the Borrower/Mortgagor has been delinquent for ninety (90) days and at least ten (10) days before initiating a foreclosure action in Tribal Court, the Lender shall advise the Borrower/Mortgagor in writing by mail or by posting prominently on the unit, with a copy provided to the Tribe, as follows:
 1. Advise the Borrower/Mortgagor that information regarding the loan and default 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.
 4. In addition to the preceding notification requirements, the Lender/Mortgagee shall complete the following additional notice requirements when a Leasehold Mortgage is involved: (1) notify the Borrower/Mortgagor that if the Leasehold Mortgage remains in default for

more than ninety (90) days, the Lender/Mortgagee may ask the applicable governmental agency to accept assignment of the Leasehold Mortgage if this is a requirement of the governmental program; (2) 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 if the mortgage is assigned; and (3) provide the Borrower/Mortgagor with names and address of government officials to whom further communications may be addressed, if any.

- E. If a Borrower/Mortgagor has been delinquent for ninety (90) days or more 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 Chapter 5, Section 4 of this Title.

COMMENTARY:

Note commentary under Chapter 5, Section 1 above. This Section sets forth detailed foreclosure procedures designed to meet all of the foreclosure procedure requirements currently established under Section 184 and other relevant governmental loan guarantee programs.

Section 4 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;
 3. A concise statement of the facts concerning the execution of the Mortgage or in the case of a Leasehold Mortgage the lease; the facts concerning the recording of the Mortgage or the 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, if a Leasehold Mortgage then a copy of the Lease, the Mortgage, or assignment thereof relating to the property (Appended as exhibits); and
 5. Any applicable allegations concerning relevant requirements and conditions prescribed in (1) federal statutes and regulations (2) tribal codes, ordinances and regulations; and/or (3) provisions of the Lease or Leasehold Mortgage, or security instrument.
- 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).

Section 5 Service of Process and Procedures

- A. Service of process shall be performed according to the procedures set forth for service of a notice to quit in Chapter 3, Section 3 of this Title.
- B. Parties to the matter shall include the creditor, debtor, and all subordinate lienholders. For a leasehold agreement, additional parties shall include the Tribe and the United States.
- C. Defendants shall have twenty (20) days to file an answer, counterclaim, and/or affirmative defenses.
- D. Evidence shall be admitted according to Chapter 4, Section 6.
- E. The Burden of Proof shall be in accordance with Chapter 4, Section 7 of this Title.
- F. Other procedural issues shall be determined under the generally applicable civil procedures of the Tribe.

Section 6 Cure of Default by 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 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 Foreclosure proceeding.

COMMENTARY:

This Section does not allow for a "right of redemption. The "right of redemption" if provided in a Foreclosure Code allows a Borrower/Mortgagor to redeem (purchase) his/her foreclosed property after it has been sold at a foreclosure sale. Most state foreclosure laws have very strict time limits on how long a Borrower/Mortgagor has to redeem his/her property after a foreclosure sale, when the right to redeem will be allowed, and notice requirements that must be given the Borrower/Mortgagor following the sale of his/her foreclosed property. Because the right of redemption can be very specialized the drafters of this Code will leave to the discretion of the tribe whether or not to incorporate a "right of redemption" and under what terms. Some HUD mortgage insurance programs may not allow for a "right of redemption" and the tribe will want to qualify the right accordingly.

Section 7 Judgment and Remedy

- A. This 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 foreclosing the interest of the Borrower/Mortgagor and each other defendant, including Subordinate Lienholder, in the Mortgage, transferring the Mortgage to the Lender/Mortgagee or the Lender's Designated Assignee and ordering the sale of the foreclosed property. Said sale shall be executed by a duly authorized law enforcement officer or

officer of the Court, appointed by the Court for such a purpose in the manner specified in this Code.

- B. In the case of a Leasehold Mortgage, the Lease will be assigned to the Lender/Mortgagee or the Lender's Designated Assignee, subject to the following provisions:
1. The Lender shall give the Tribe the right of first refusal on any acceptable offer to purchase the Lease or Leasehold Mortgage which is subsequently obtained by the Lender or Lender's Designated Assignee.
 2. The Lender or Lender's Designated Assignee may only transfer, sell or assign the Lease and/or Leasehold Mortgage to a Tribal member, the Tribe, or the Tribal Housing authority.
 3. Any other transfer, sale or assignment of the Lease or Leasehold Mortgage shall only be made to a Tribal member, the Tribe, or the Tribal Housing Authority during the remaining period of the leasehold.

Section 8 Foreclosure Evictions

Foreclosure evictions shall be handled according to the general eviction process set forth in Chapter 3 of this Code, with the added provision that foreclosure eviction proceedings shall not occur until after the Borrower/Mortgagor, lessee, occupier has received thirty (30) calendar day's notice, and remains in possession of tile property contrary to the terms of the notice. All foreclosure evictions shall occur no later than sixty (60) days from the date of service of notice upon the Borrower/Mortgagor that foreclosure was completed.

Section 9 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.

Section 10 Certified Mailing to Tribe and Lessor

Any foreclosure proceedings on a Lease or Leasehold Mortgage where the Tribe or the Lessor(s) is not named as a defendant, a copy of the summons and complaint shall be mailed to the Tribe and to the Lessor(s) by certified mail, return receipt requested, within five (5) days after the issuance of the summons. 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.

Section 11 Intervention

The Tribe or any Lessor 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 the sovereign immunity of the Tribe, except as may be expressly authorized by the Tribe.

Section 12 Appeals

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

Chapter 6 Miscellaneous Provisions

Section 1 Effective Date

This Code shall take effect on December 1, 2003.

Section 2 Retroactive Effect

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