

# CIVIL PROCEDURE

## CHAPTER TWELVE

### FORCIBLE ENTRY AND DETAINER

#### Section 1201. Forcible Entry and Detention

The District Court shall have jurisdiction to try all actions for the forcible entry and detention, or detention only, of real property, and claims for the collection of rent or damages to the premises may be included in the same action, but other claims may not be included in the same action. A judgment in an action brought under this Title shall be conclusive as to any issues adjudicated therein, but it shall not be a bar to any other action brought by either party.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

#### Section 1202. Powers of Court

The Court shall have power to inquire, in the manner hereinafter directed, as well against those who make unlawful and forcible entry into lands and tenements, and detain the same, as against those who, having a lawful and peaceable entry into land or tenements, unlawfully and by force hold the same, and if it be found, upon such inquiry, that an unlawful and forcible entry has been made, and that the same lands and tenements are held unlawfully, then the court shall cause the party complaining to have restitution thereof.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

#### Section 1203. Extent of Jurisdiction

Proceedings under this Chapter may be had in all cases against tenants holding over their terms and, incident thereto, to determine whether or not tenants are holding over their terms; in sales or real estate on executions, orders or other judicial process, when the judgment debtor was in possession at the time of the rendition of the judgment or decree, by virtue of which such sale was made; in sales by executors, administrators, guardians and on partition, where any of the parties to the partition were in possession at the commencement of the suit, after such sales so made, on execution or otherwise, shall have been examined by the Court, and the same adjudged valid; and in the cases where the defendant is a settler or occupier of lands and tenements without color of title, and to which the complainant has the right of possession. This section is not to be construed as limiting the provisions of the preceding section.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

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### Section 1204. Issuance and Return of Summons

The summons shall be issued and returned as in other cases, except that it shall command the Chief of the Tribal Police or other person serving it, to summon the defendant to appear for trial at the time and place specified therein, which time shall be not less than five (5) days nor more than ten (10) days from the date that the summons is issued. The summons shall apprise the defendant of the nature of the claim that is being asserted against him; and there shall be endorsed upon the summons the relief sought and the amount for which the plaintiff will take judgment if the defendant fails to appear. In all cases, pleadings may be amended to conform to the evidence.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

### Section 1205. Service of Summons

The summons may be served as in other cases except that such service shall be at least three (3) days before the day of trial, and the return day shall not be later than the day of the trial, and it may also be served by leaving a copy thereof with some person over fifteen (15) years of age, residing on the premises, at least three (3) days before the day of trial; or, if service cannot be made by the exercise of reasonable diligence on the tenant or on any person over the age of fifteen (15) years residing on the premises, the same may be served by registered mail with return receipt postmarked at least three (3) days before the date of trial.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

### Section 1206. Constructive Service of Summons

If, in the exercise of reasonable diligence, service cannot be made upon the defendant personally nor upon any person residing upon the premises over fifteen (15) years of age, then in lieu of service by registered mail, service may be obtained for the sole purpose of adjudicating the right to restitution of the premises by the Tribal Police's posting said summons conspicuously on the building on the premises, and, if there be no building on said premises, then by posting the same at some conspicuous place on the premises sought to be recovered at least ten (10) days prior to the date of trial, and by the claimant's mailing a copy of said summons to the defendant at his last known address by registered or certified mail at least seven (7) days prior to said date of trial. Such service shall confer no jurisdiction upon the Court to render any judgment against the defendant for the payment of money nor for any relief other than the restoration of possession of the premises to the claimant. Such service shall not be rendered ineffectual by the failure of the defendant to actually receive or sign a return receipt for such mailed process.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

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### Section 1207. Answer of Affidavit By Defendant

(a) In all cases in which the defendant wishes to assert title to the land or that the boundaries of the land are in dispute, he shall, before the time for the trial of the cause, file a verified answer or an affidavit which contains a full and specific statement of the facts constituting his defense of title or boundary dispute. If the defendant files such a verified answer or affidavit, the action shall proceed as one in ejectment before the District Court. If the defendant files an affidavit he shall file answer within ten (10) days after the date the affidavit is filed.

(b) In all cases in which the cause of action is based on an asserted breach of a lease by the defendant, or the termination or expiration of a lease under which the defendant claims an interest in the property in a verified answer of affidavit, the plaintiff may proceed with the forcible entry and detainer action instead of an ejectment action.

(c) No answer by the defendant shall be required before the time for trial of the cause.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

### Section 1208. Trial by Court

All cases for forcible entry and detainer or detainer only shall be tried by the Court unless the rent and damages prayed for exceeds ten thousand (\$10,000.00) dollars.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

### Section 1209. Procedure Where No Jury Available

If a jury be properly demanded by either party, and no jury is available from the general panel, the judge shall immediately direct that an open venire be issued to the Chief of the Tribal Police or one of his deputies, for such number of jurors as may be deemed necessary, to be selected without resorting to the jury wheel. The persons selected shall have the qualifications of jurors.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

### Section 1210. Attorney Fee

A reasonable attorney fee shall be allowed by the Court to the prevailing party.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

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### Section 1211. Writ of Execution - Form - New Trial

If judgment be for plaintiff, the Court shall, at the request of the plaintiff, his agent or attorney, issue a writ of execution thereon, which shall be in substantially the following form:

[HEADING]

The [Tribe] to the Chief of the Tribal Police:

Whereas, in a certain action for the forcible entry and detention (or for the forcible detention as the case may be) of the following described premises, to wit: \_\_\_\_\_ tried before me, wherein, \_\_\_\_\_ was plaintiff, and the \_\_\_ day of \_\_\_\_\_, 19\_\_\_, that the plaintiff have restitution of said premises; and also that he recover rent, attorney fees and costs in the sum of \_\_\_\_\_; you, therefore, are hereby commanded to cause the defendant to be forthwith removed from said premises and the said plaintiff to have restitution of the same; also that you levy on the goods and chattels of the said defendant, and make the cost aforesaid, and all accruing costs, and of this writ, make legal service and due return.

Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_.

\_\_\_\_\_  
A.B. Judge

A motion for a new trial may be filed only within three (3) days of judgment but shall not operate to stay execution.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

### Section 1212. Stay of Execution

If no supersedeas bond be posted within the time provided herein, the officer shall forthwith restore the plaintiff to possession of the premises by executing the writ prescribed in the preceding section and shall make levy to collect the amount of the judgment and all accruing costs. The officer's return shall be as upon other executions.

The defendant shall have three (3) days after the date of judgment to post supersedeas bond conditioned as provided by law. This time limit may be enlarged by a trial judge's order to not more than ten (10) days after the date of judgment. The posting of a supersedeas bond shall not be construed to relieve the defendant of his duty to pay current rent as it becomes due while the appeal is pending. The rent shall be paid into the Court Clerk's office together with poundage. If there be controversy as to the amount of rent, the judge shall determine by order how much shall be paid in what time intervals. Withdrawal by the plaintiff of rent deposited in the Court Clerk's office pending appeal shall not operate to estop him from urging on appeal his right to the possession of the premises. Failure to pay current rentals while the appeal is pending shall be

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considered as abandonment of the appeal.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

### Section 1213. Forcible Entry and Detainer Action on Small Claims Docket

An action for forcible entry and detainer brought pursuant to procedures prescribed otherwise in this title standing alone and when joined with a claim for recovery of rent, damages to the premises, where the total recovery sought, exclusive of attorney's fees and other court costs, does not exceed the jurisdictional amount for the small claims court, shall be place on the small claims docket of the District Court. The Court Clerk shall in connection with such actions prepare the affidavit, by which the action is commenced, and the summons and generally assist the unrepresented plaintiffs to the same extent that he is now required so to do under the Small Claims Procedure Act.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

### Section 1214. Affidavit Form

The actions for unlawful entry and detainer standing alone or when joined with a claim for collection of rent or damages to the premises, or both, shall be commenced by filing an affidavit in substantially the following form with the Clerk of the Court:

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IN THE DISTRICT COURT  
[NAME OF TRIBE]

_____	)	
Plaintiff,	)	
	)	
vs.	)	Case No. SC-
	)	
_____	)	
Defendant	)	

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AFFIDAVIT**

[Name of Reservation]	)	
[Name of Tribe ]	)	ss.

\_\_\_\_\_, being duly sworn, deposes and says:

The defendant resides at \_\_\_\_\_, and defendant's mailing address is

\_\_\_\_\_.

The defendant is indebted to the plaintiff in the sum of \$\_\_\_\_\_ for rent and the further sum of \$\_\_\_\_\_ for damages to the premises rented by the defendant; the plaintiff has demanded payment of said sum(s) but the defendant refused to pay the same and no part of the amount sued for herein has been paid,  
and/or

The defendant is wrongfully in possession of certain real property within the Tribal jurisdiction described as \_\_\_\_\_; the plaintiff is entitled to possession thereof and has made demand on the defendant to vacate the premises, but the defendant refused to do so.

\_\_\_\_\_  
Plaintiff

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

\_\_\_\_\_  
Notary Public (Clerk or Judge)

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

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Section 1215. Summons - Form

The summons to be issued in an action for forcible entry and detainer shall be in the following form:

**SUMMONS**

The [Name of Tribe] to the within named defendant:

You are hereby directed to relinquish immediately to the plaintiff herein total possession of the real property described as \_\_\_\_\_ or to appear and show cause why you should be permitted to retain control and possession thereof.

This matter shall be heard at \_\_\_\_\_ [Name or address of Courthouse], in \_\_\_\_\_, [Town], [Name of Tribe], at the hour of \_\_\_\_\_ o'clock on the \_\_\_ day of \_\_\_\_\_ month, 19 \_\_\_, or at the same time and place three (3) days after service hereof, whichever is the latter. (This date shall be not less than five (5) days from the date summons is issued). You are further notified that if you do not appear on the date shown, judgment will be given against you as follows:

For the amount of the claim for deficient rent and/or damages to the premises, as it is stated in the affidavit of the plaintiff and for possession of the real property described in said affidavit, whereupon a writ of assistance shall issue directing the Tribal Police to remove you from said premises and take possession thereof.

In addition, a judgment for costs of the action, including attorney's fees and other costs, may also be given.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
Clerk of the Court (of Judge)

\_\_\_\_\_  
Plaintiff or Attorney

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]