

**WHITE EARTH BAND OF OJIBWE
HOUSING, TRIBAL PROPERTY AND UNLAWFUL DETAINER
AND MORTGAGE FORECLOSURE CODE**

TITLE 3: HOUSING

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**WHITE EARTH BAND OF OJIBWE
HOUSING, TRIBAL PROPERTY AND UNLAWFUL DETAINER AND
MORTGAGE FORECLOSURE CODE**

TITLE 3: HOUSING
CHAPTER I
SHORT TITLE, PURPOSE AND DEFINITIONS

Section 1. Short Title.

Title 3 shall be entitled “Housing, Tribal Property, Landlord/Tenant and Mortgage Foreclosure Code”.

Section 2. Findings and Determination.

- (a) The White Earth Tribal Council hereby finds that enrolled members of the White Earth Band and other persons have entered into contractual arrangements/lease agreements for the purpose of securing adequate housing on lands within the boundaries of the White Earth Reservation. Some of these housing units are under the jurisdiction of the White Earth Reservation Housing Authority (hereinafter “WERHA”) while others are private rental, lease and contractual agreements. Many of these WERHA dwellings were constructed with funds from the United States Department of Housing and Urban Development (HUD) on lands held in trust for the White Earth Band or the Minnesota Chippewa Tribe. Some lessees of these housing units have defaulted or are otherwise in violation of their lease agreements. This has created a need for the WERHA to recover possession of said housing and/or multiple dwelling units.
- (b) The White Earth Tribal Council hereby finds and determines that it is in the best interests of the White Earth Band of Chippewa/Ojibwe to make laws which govern the use, misuse and right to occupy all buildings, offices, property or places owned, operated, leased by or used by the White Earth Tribal Council for official business or commercial activities.
- (c) The White Earth Tribal Council hereby finds and determines that it is in the best interests of the White Earth Band to provide a forum which is fair, accessible and culturally appropriate to which all persons may bring disputes involving housing matters.
- (d) The White Earth Tribal Council hereby finds and determines that it is in the best interests of the White Earth Band to adjudicate all cases in the White Earth Band’s Tribal Court.
- (e) The White Earth Tribal Council hereby finds and determines that the White Earth Band of Chippewa has never waived any sovereign immunity with regard to the provision of housing units on territories under the jurisdiction of the White Earth Band or the White Earth Reservation Housing Authority.

Section 3. Purposes of this Code and its Interpretation.

This Code shall be liberally construed and applied to carry out its purposes and intent and the Code shall:

- (a) Simplify, clarify, modernize and revise the law governing the occupation of dwelling units and accommodations, as well as the rights, obligations and remedies of the owners, sellers, lessors, landlords, lessees, tenants and occupiers of such structures; and
- (b) Encourage owners and occupiers of dwellings to maintain and improve them in order to improve the quality of housing as a tribal resource; and
- (c) Resolve disputes regarding the use, enjoyment and control of all tribally owned or leased buildings, offices, property and real estate; and
- (d) Preserve the peace, harmony and safety of the people of the White Earth Band of Chippewa and those who enter or reside within the exterior boundaries of the White Earth Reservation; and
- (e) To avail the Band, tribal entities, and tribal members of financing for the construction and/or buying of family residences on trust or fee land within the jurisdiction of the Band by setting forth procedures for the recording, priority and foreclosure of mortgages given to secure loans made by or through any government lending institution; and
- (f) To establish laws and procedures which are necessary to obtain governmental funding for tribal housing programs or loan guarantees for private or tribal housing construction, purchase or renovation.

Section 4. Definitions.

The following definitions shall apply for the purposes of this Code unless a different meaning is expressly provided or the context clearly indicates a different meaning:

- (a) An “*action*,” “*suit or lawsuit*,” “*claim*,” “*complaint*” or “*defense*” will include any dispute between persons, entities or tribal agencies which relates to the sale, rent, use or occupancy of any housing, dwelling, tribal office or tribally owned or leased property or accommodation for occupancy, including claims for the payment of monies for such housing, dwelling, tribal office or tribally owned or leased property or accommodations, damages to such buildings, fees, costs or expenses relating to them, the condition of such buildings, fees, costs or expenses related to them, the condition of such buildings or the relationships between the owners and occupiers of such buildings, including the right to occupy or use them.
- (b) The “*Band*” is the White Earth Band of Chippewa or Ojibwe of the White Earth Indian Reservation.
- (c) “*Building or housing codes*” are any law, ordinance or governmental

regulation of the White Earth Band 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. Where appropriate to the situation, standard or nationally-recognized building standards or codes may be applied as building codes or housing codes.

- (d) “*Deposit*” includes any money or other property required by a landlord from a tenant as and for security and which is to be returned to the tenant upon termination of the rental agreement, less any deductions properly made and allowed by this Code or any law, rule or regulation of the United States of America promulgated to effectuate the Mutual Help Home Ownership Program, Low Income Rental Program or any other low income housing program, or U.S. governmental housing program administered by the WERHA.
- (e) A “*dwelling*” or “*dwelling unit*” means a structure or part of a structure that is used as a home, residence or sleeping place by one or more persons.
- (f) “*Good faith*” means honesty in fact in the conduct of the transaction concerned.
- (g) An “*Indian*” is any person recognized as being Indian or Alaskan Native by any Tribe, the government of the United States, or any state, or any person who is recognized or acknowledged to be Indian in the community and who has an ancestor or ancestors who resided on the North American continent prior to 1492.
- (h) “*Indian country*” the “*territorial jurisdiction*” or the “*jurisdiction*” of the White Earth Band shall include all lands within the boundaries of the White Earth Indian Reservation.
- (i) “*Landlord*” means the owner, manager, lessor, or sublessor of the dwelling unit or the building of which it is a part.
- (j) “*Owner*” means one or more persons, entity, tribal agency or agency of any government, either jointly or severally in whom is vested:
 - (1) All or part of the legal title to the property; or
 - (2) All or part of the beneficial ownership and a right to present use and enjoyment of the property, and such term includes a mortgagee in possession.
- (k) A “*person*” includes an individual, organization, public agency, corporation, partnership or any other entity recognized by law.
- (l) “*Premises*” means a dwelling unit and the structure of which it is a part, the facilities and appurtenances therein, and the grounds, areas, facilities held out for the use of the tenant generally or use of which is promised to the tenant.

- (m) “*Rent*” means all payments to be made to an owner or landlord for the lease, purchase, or occupancy of a dwelling under an express or implied agreement for the purchase or occupancy of it. For the purposes of this Code, this does not include deposits and damages, but does include all other payments to be made under any agreement for either the purchase or occupation of a dwelling, including all lease or mutual help and occupancy agreements between the Tribal Housing Authority and any person. The term shall also include any payment due and owing for the purposes of any eviction due to a default in a mutual help and occupancy agreement, purchase agreement or any other agreement for the sale of housing.
- (n) “*Rental Agreement*” means any agreement, written or oral, of the parties, as well as valid rules and regulations regarding the terms and conditions for any use or occupancy of a dwelling or premises. For purposes of this Code, it shall also include any agreement which governs the use and occupancy of a dwelling under a use and occupancy agreement, lease, a mutual help agreement or any sales agreement where a person has not yet achieved home ownership under that agreement.
- (o) “*Single-Family Residence*” means a structure used and maintained as a single dwelling unit. A dwelling unit, including those with common walls, shall be deemed a single-family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with any other dwelling unit.
- (p) The “*reservation*” means the exterior boundaries of the White Earth Band of Chippewa/Ojibwe Indians.
- (q) A “*tenant*” is any person entitled to rent, purchase or occupy a dwelling under a written or oral agreement to rent, occupy or purchase a dwelling, and it includes any person legally occupying a dwelling that he or she does not own.
- (r) “*Tribal Council*” means the governing body of the White Earth Band of Chippewa/Ojibwe.
- (s) “*Tribal Court*” means the judicial body of the White Earth Band of Chippewa/Ojibwe.
- (t) “*Tribal Office*” means any building, structure or place used by the White Earth tribal government for business.
- (u) “*Borrower/Mortgagor*” is the White Earth Band of Chippewa/Ojibwe, the White Earth Reservation Housing Authority, or any individual Indian(s) or any heir(s), successor(s), executor(s), administrator(s), or assign(s) of the Band 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
- (v) “*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 Mutual Help Homeownership administered by the White Earth Reservation Housing Authority, the Minnesota Chippewa Tribe or any other agreement entered into between a borrower/mortgagor and a lender/mortgagee.

(w) “*Lender/Mortgagee*” is any private lending institution established to primarily loan funds and to invest in or buy properties, the Tribe, an Indian Housing Authority, or a U.S. government agency which loans money, guarantees or insures loans to a borrower for construction, acquisition, or rehabilitation of a home. It is also any lender assignee(s) or successor(s) of such lender/mortgagee.

(x) “*Mortgage Foreclosure Proceeding*” is a processing:

(1) To foreclose the interest of 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.

(y) “*Lender Designated Assignee*” is any lender defined in the Code who may assign or transfer its interest in a mortgage or lease and/or leasehold mortgage to a designated assignee. If the mortgage or lease and/or leasehold mortgage falls under a federal agency homebuyer program or federal agency loan guarantee program, the lender must seek written approval from the Tribe of a proposed designated assignee any time before such assignment, transfer or assumption, except where the U.S. government and federal agencies guaranteeing or insuring the mortgage or leasehold mortgage acts as a lender designated assignee.

(z) “*Mortgage*” is a lien as is commonly given to secure advances on, or the unpaid purchase price of a building, mobile home or land, and may refer both to a security interest 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.

CHAPTER II JURISDICTION

This Code shall apply to any and all agreements, whether written or oral, in selling, renting, leasing, occupying or using any and all housing, dwelling, offices, places or accommodations for residential or commercial purposes.

- (a) The White Earth Tribal Court shall assert jurisdiction over all buildings and lands intended for dwelling, occupation, residence or commercial development which may lie within the exterior boundaries of the White Earth Indian Reservation and all other lands owned by the White Earth Indian Reservation.
- (b) Jurisdiction is extended over all persons or entities within the jurisdiction of the White Earth Band who sell, rent, lease, or allow persons to occupy housing, dwellings, or accommodations for the purpose of residence or commercial development, and all persons who buy, rent, lease or occupy such structures. Such personal jurisdiction is extended over all persons and entities, who rent, lease, or otherwise occupy or reside in buildings or lands described in Chapter II, Section 1(a), whether they are members of the White Earth Band or not; and
- (c) The White Earth Tribal Court shall exercise exclusive jurisdiction over all matters with respect to this Code which arise within the exterior boundaries of the White Earth Reservation and all other lands owned by the White Earth Indian Reservation and involve any person or entity entering into consensual transactions with the White Earth Band of Chippewa/Ojibwe and any of its governmental agencies including but not limited to the WERHA.
- (d) Jurisdiction is extended over all buildings situated on lands owned by, held in trust for, leased by the Band, its members, its Housing Authority or any other entity of the Band, irrespective of its situs.

CHAPTER III
RIGHTS, OBLIGATIONS AND REMEDIES, ENFORCEMENT; DAMAGES,
CLAIMS, PERFORMANCE AND MAINTENANCE

Section 1. Rights, Obligations, Remedies and Who May Proceed on Behalf of the WERHA.

- (a) Any right, obligation or remedy declared by this Code is enforceable exclusively in the White Earth Tribal Court and may be prosecuted as part of an action for forcible entry, unlawful detainer or mortgage foreclosure. Any action for breach of a rental agreement or Mutual Help Occupancy Agreement, Lease for Low Rent Housing or any other WERHA program may proceed pursuant to this Code.
- (b) Any action brought pursuant to this Code on behalf of the WERHA may be brought by an attorney duly licensed by the White Earth Tribal Court or by any WERHA staff person designated to represent the WERHA.

Section 2. Mitigation of Damages, Parent and/or Guardian Responsible for the Damages Caused By Minors.

- (a) An aggrieved party under the provisions of this Code has a duty to mitigate damages.
- (b) Every parent or guardian is financially responsible for the damages caused by their minor children whether those damages be intentional or unintentional. Such responsibility is not limited to the actual residence of the parent or guardian but also includes any and all damages caused by said minor children to any dwelling, structure, home, residence, building or business whether inhabited or uninhabited.

Section 3. Settlement of Claim.

A claim or right arising or brought pursuant to this Code or a rental agreement may be settled by agreement of the parties.

Section 4. Good Faith Performance or Enforcement.

Every duty under this Code and every act which must be performed as a condition precedent to the exercise of a right or remedy under this Code imposes an obligation of good faith in its performance or enforcement.

Section 5. Beneficial Owner to Maintain Premises.

Any agreement, assignment, conveyance, trust deed or security instrument which authorizes a person other than the beneficial owner to act as a landlord of a dwelling unit shall not relieve the beneficial owner of the duty to conform with this Code and any other controlling law, code, ordinance or regulation concerning the maintenance and operation of the premises.

CHAPTER IV
RENT AND TENANCY

Section 1. Rent.

- (a) In the absence of an agreement, the occupants of a dwelling unit shall pay to the landlord as rent the fair rental value for the use and occupancy of the dwelling unit.
- (b) Rent shall be payable at the time and place agreed to by the parties. Unless otherwise agreed, the entire rent shall be payable at the dwelling unit at the beginning of any term of one (1) month or less, while one (1) month's rent shall be payable at the beginning of each month of a longer term.

Section 2. Tenancy and Termination of Tenancy.

- (a) Unless the rental agreement fixes a definite term in writing, the tenancy is week-to-week in the case of a roomer or boarder who pays weekly rent, and in all other cases month-to-month.
- (b) Except as otherwise provided, when the tenancy is month-to-month or a tenancy at will, the landlord or tenant may terminate the tenancy provided the landlord or tenant gives a written notice to the other at least thirty (30) days before the date upon which the termination is to become effective. The thirty day period to terminate shall begin to run from the date notice to terminate is served as provided in this Section.
- (c) Except as otherwise provided, when the tenancy is less than month-to-month, the landlord or tenant may terminate the tenancy provided the landlord or tenant gives to the other a written notice served as provided in this Section at least seven (7) days before the date upon which the termination is to become effective.
- (d) Unless earlier terminated or unless otherwise agreed upon, a tenancy for a definite term expires on the ending date thereof without notice.
- (e) If the tenant remains in possession without the landlord's consent after the expiration of the rental agreement or its termination by operation of law, the landlord may immediately bring an action for possession and damages. If the tenant's holdover is willful and not in good faith, the landlord may also recover an amount which is twice the average monthly rental, computed and pro rated on a daily basis, for each month or portion thereof that said tenant remains in possession.
- (f) The written notice to terminate any tenancy shall be served upon the tenant or landlord personally unless otherwise specified by law. If the tenant cannot be located, service shall be made by delivering the notice to any family member of such tenant over the age of twelve (12) years residing within the tenement. If service cannot be made on the tenant personally or on such family member, notice shall be posted at a

conspicuous place on the dwelling unit of the tenant. If the notice is posted, a copy of such notice shall be mailed to the tenant by certified mail, return receipt requested.

Section 3. Duties of Parties Upon Termination of Tenancy.

Except as otherwise provided in this Code, whenever either party to a rental agreement rightfully elects to terminate, the duties of each party under the rental agreement shall cease and be determined upon the effective date of said termination, and the parties shall thereupon discharge any remaining obligations under this Code as soon as practicable.

CHAPTER V
RENTAL AGREEMENTS; DAMAGE AND SECURITY DEPOSITS

Section 1. Rental Agreements.

A rental agreement may not provide that either party thereto:

- (a) Agrees to waive or forego any rights or remedies under this Code;
- (b) Authorizes any person other than the landlord or tenant to confess judgment on a claim arising out of the rental agreement;
- (c) Agrees to the exculpation, limitation or indemnification of any liability arising under law for damages or injuries to persons or property caused by or resulting from the acts or omissions of either party, their agents, servants or employees in the operation or maintenance of the dwelling unit or the premises of which it is a part; or
- (d) Agrees to the establishment of a lien except as allowed by this Code in and to the property of the other party.

A provision prohibited by this Section and included in a rental agreement is unenforceable.

Section 2. Damage or Security Deposits.

- (a) Any damage or security deposit required by a landlord of a tenant must be kept in an escrow account for the tenant. Misappropriation of the security deposit shall be subject to civil penalties not to exceed treble the amount of the damage deposit misappropriated from the escrow account.
- (b) Upon termination of the tenancy, any security deposit held by the landlord may be applied to the payment of accrued rent and the amount of damages which the landlord has suffered by reason of the non-compliance with this Code and the rental agreement, all as itemized by the landlord in a written statement to be delivered by mail with a return receipt requested and to be signed for by any person of statutory service age at such address or in person to the tenant if he or she can be found. If the landlord proposed to

retain any portion of the security deposit for rent, damages or other legally allowable charges under the provisions of this Code or the rental agreement, the landlord shall return the balance of the security deposit without interest to the tenant within thirty (30) days after the termination of the tenancy and delivery of possession.

- (c) Upon cessation of a landlord's interest in the dwelling unit, including but not limited to, termination of interest by sale, assignment, death, bankruptcy, appointment of receiver or otherwise, the person in possession of the tenant's damage or security deposits at his or her option or pursuant to court order shall, within a reasonable time:
 - (1) Transfer said deposits to the landlord's successor in interest and notify the tenant(s) in writing of such transfer and of the transferee's name and address; or
 - (2) Return the deposits to the tenant(s).
- (d) Upon receipt of the transferred deposits as set out in Section (c)(1) above, the transferee, in relation to such deposits, shall have all the rights and obligations of a landlord holding such deposits under this Code.
- (e) If a landlord or manager fails to comply with this Section or fails to return any prepaid rent required to be paid to a tenant under this Code, the tenant may recover the damage and security deposit and prepaid rent, if any.
- (f) Except as otherwise provided by the rental agreement, a tenant shall not apply or deduct any portion of the security deposit from the last month's rent or use or apply such tenant's security deposit at any time in lieu of payment of rent.
- (g) This Section does not preclude the landlord or tenant from recovering other damages to which he or she may be entitled under this Code.
- (h) Tenants in rental units under the ownership or management of the WERHA may bring an action for settlement or accounting of the disputed accounts and contributions only after the tenants have exhausted his or her administrative remedies provided by the WERHA.

CHAPTER VI
SERVICE; IDENTITY OF OWNER; FAILURE TO COMPLY

Section 1. Person to Accept Service or Notice, Identity of Owner and Manager, Failure to Comply.

- (a) As part of any rental agreement, the lessor shall prominently and in writing identify what person at what address is entitled to accept service or notice under this Code. The landlord or any person authorized to enter into a rental agreement on his or her behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of:
- (1) The person or persons authorized to manage the premises;
 - (2) The owner or owners of the premises; or
 - (3) The name and address of a person authorized to act for and on behalf of the owner for the purpose of receipt of service of process and notices.

The information required by this Section shall be kept current and this Section extends to and is enforceable against any successor owner, landlord or manager. Failure to comply with this Section may result in sanctions against the owner or landlord.

CHAPTER VII
RIGHTS AND DUTIES; CONVEYANCE; POSSESSION; BREACH
DEDUCTIONS; DAMAGE OR DESTRUCTION OF DWELLING

Section 1. Commencement of Tenancy, Delivery of Possession, Wrongful Possession.

At the commencement of the term of tenancy, a landlord shall deliver full possession of the premises to the tenant in compliance with the rental agreement. Except as otherwise provided in this Code, the landlord may bring an action for possession against any other person wrongfully in possession and may recover his or her damages.

Section 2. Duties of Landlord/Tenant.

A landlord shall at all times during the tenancy:

- (a) Except in cases of a one or two-family residence, keep all common areas of his or her building, grounds, facilities and appurtenances in a clean, safe and sanitary condition; and
- (b) Make all repairs and do whatever is necessary to put and keep the tenant's dwelling unit and premises in a fit and habitable condition; and
- (c) Maintain in good and safe working order and condition all electrical,

plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators, supplied or required to be supplied; and

- (d) Except in the case of one or two-family residences or where provided by a governmental entity, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish and other waste incidental to the occupancy of the dwelling unit and arrange for the frequent removal of such wastes; and
- (e) Except in the case of a on or two-family residence or where the service is supplied by direct and independently-metered utility connections to the dwelling unit, supply running water and reasonable amounts of hot water at all times and reasonable heat.
- (f) The landlord/tenant of a dwelling may agree by a conspicuous writing independent of the rental agreement that the tenant is to perform specified repairs, maintenance tasks, alterations or remodeling.

Section 3. Conveyance of Property; Attornment of Tenant (Note: This means to transfer homage; to acknowledge a new landlord).

- (a) A conveyance of real estate, or of any interest therein, by a landlord shall be valid without the attornment of the tenant, but the payment of rent by the tenant to the grantor at any time before written notice of the conveyance is given to the tenant shall be good against the grantee.
- (b) The attornment of a tenant to a stranger shall be void and shall not affect the possession of the landlord unless it is made with the consent of the landlord, or pursuant to a judgment at law, or the order or decree of a court.
- (c) Unless otherwise agreed and except as otherwise provided in this Code, upon termination of the owner's interest in the dwelling unit, including but not limited to, terminations of interest by sale, assignment, death, bankruptcy, appointment of a receiver or otherwise, the owner is relieved of all liability under the rental agreement and of all obligations under this Code as to events occurring subsequent to written notice to the resident of the termination of the owner's interest. The successor in interest to the owner shall be liable for all obligations under the rental agreement or under this Code. Upon receipt by a resident of written notice of the termination of the owner's interest in the dwelling unit, a resident shall pay all future rental payments, when due, to the successor in interest to the owner.
- (d) Unless otherwise agreed and except as otherwise provided in this Code, a manager of premises that includes a dwelling unit is relieved of liability under a rental agreement and this Code as to events occurring after written notice to the tenant of the termination of his management.

Section 4. Failure of Landlord to Deliver Possession.

If the landlord fails to deliver possession of the dwelling unit to the tenant, rent abates until possession is delivered and the tenant may terminate the rental agreement by giving a written notice of such termination to the landlord, whereupon the landlord shall return all prepaid rent and deposit, or the tenant may at his option, demand performance of the rental agreement by the landlord and maintain an action for possession of the dwelling unit against any person wrongfully in possession and recover the actual damages sustained by him or her.

Section 5. Landlord's Breach of Rental Agreement.

- (a) Except as otherwise provided in this Code, if there is a material non-compliance by the landlord with the terms of the rental agreement or a non-compliance with any of the provisions of Chapter VII, Section 2 of this Code which non-compliance materially affects health or safety, the tenant may deliver to the landlord a written notice specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than thirty (30) days after receipt of the notice if the breach is not remedied within fourteen (14) days, and thereafter the rental agreement shall so terminate as provided in the notice unless the landlord adequately remedies the breach within the time specified.
- (b) Except as otherwise provided in this Code, if there is a material non-compliance by the landlord with any of the terms of the rental agreement which non-compliance materially affects health or safety and the breach is remediable by repairs, the reasonable cost of which is less than one hundred dollars (\$100.00), the tenant may notify the landlord in writing of his intention to correct the condition at the landlord's expense after the expiration of fourteen (14) days. If the landlord fails to comply within said fourteen (14) days, or as promptly as conditions require in the case of an emergency, the tenant may thereafter cause the work to be done in a workmanlike manner and, after submitting to the landlord an itemized statement, deduct from his rent the actual and reasonable cost of the work, not exceeding the amount specified in this Section, in which event the rental agreement shall not terminate by reason of that breach.
- (c) Except as otherwise provided in this Code, if, contrary to this Code, the landlord willfully or negligently fails to supply heat, running water, hot water, electricity, gas, or other essential services, the tenant may give written notice to the landlord specifying the breach and thereafter may:
 - (1) Upon written notice, immediately terminate the rental agreement;
or
 - (2) Procure reasonable amounts of heat, hot water, running water, electric, gas or other essential service during the period of the landlord's non-compliance and deduct their actual and reasonable cost from the rent; or

- (3) Recover damages based upon the diminution of the fair rental value of the dwelling unit; or
 - (4) Upon written notice, procure reasonable substitute housing during the period of the landlord's non-compliance, in which the tenant is excused from paying rent for the period of the landlord's non-compliance.
- (d) Except as otherwise provided in this Code, if there is a non-compliance by the landlord with the terms of the rental agreement, which non-compliance renders the dwelling unit uninhabitable or poses an imminent threat to the health and safety of any occupant of the dwelling unit and which non-compliance is not remedied as promptly as conditions require, the tenant may immediately terminate the rental agreement upon written notice to the landlord which specifies the non-compliance.
- (e) All rights of the tenant under this Section do not arise until he or she has given written notice to the landlord or if the condition complained of was caused by a deliberate or negligent act or omission of the tenant, a member of his family, his animal or pet or other person or animal on the premises with the tenant's consent.

Section 6. Damage to or Destruction of Dwelling Unit.

- (a) If the dwelling unit or the premises are damaged or destroyed by fire or other casualty to an extent that enjoyment of the dwelling unit is substantially impaired, unless the impairment is caused by the deliberate or negligent act or omission of the tenant, a member of his family, his animal or pet or other person or animal on the premises with the tenant's consent, the tenant may:
- (1) Immediately vacate the premises and notify the landlord in writing within one (1) week thereafter of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of the vacating; or
 - (2) If continued occupancy is possible, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the tenant's liability for rent is reduced in proportion to the diminution in the fair value of the dwelling unit.
- (b) If the rental agreement is terminated under this Section, the landlord shall return all unused deposits and all prepaid and unearned rent. Accounting for rent in the event of termination or apportionment shall be made as of the date of the fire or casualty.

Section 7. Wrongful Removal or Exclusion from Dwelling Unit.

If a landlord wrongfully removes or excludes a tenant from possession of a dwelling unit, the tenant may recover possession by a proceeding brought in the White Earth Tribal Court, or terminate the rental agreement after giving notice of such intention to the landlord, and in either case recover an amount not more than three times the average monthly rental, or his actual damages, whichever is greater. If the rental agreement is terminated, the landlord shall return all unused deposits and all prepaid and unearned rent.

Section 8. Unlawful Entry or Lawful Entry in Unreasonable Manner.

If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or harasses the tenant by making repeated unreasonable demands for entry, the tenant may obtain injunctive relief to prevent the recurrence of the conduct or, upon written notice, terminate the rental agreement. In either case, the tenant may recover actual damages.

Section 9. Defective Condition of Premises.

Any defective condition of the premises which comes to the tenant's attention, and which the tenant has reason to believe is unknown to the landlord, shall be reported by the tenant to the landlord as soon as practicable.

CHAPTER VIII

USE AND OCCUPANCY OF PREMISES; RULES AND REGULATIONS; DUTIES OF TENANT; ENTRY ABANDONMENT; SURRENDER; EVICTION

Section 1. Tenant's Use and Occupancy of Premises; Rules and Regulations.

A landlord, from time to time, may adopt a rule or regulation, however described, concerning the tenant's use and occupancy of the premises. Such a rule or regulation is enforceable against the tenant only if:

- (a) Its purpose is to promote the convenience, peace, safety or welfare of the tenant(s) in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenant(s) generally; and
- (b) It is reasonably related to the purpose for which it is adopted; and
- (c) It applies to all tenants in the premises in a fair manner; and
- (d) It is sufficiently explicit in its prohibition, direction or limitation of the tenant's conduct to fairly inform the tenant of expectations; and
- (e) It is not for the purpose of evading the obligations of the landlord; and
- (f) The tenant has notice of it at the time such tenant enters into the rental agreement or within a reasonable time after it is adopted.

If the rule or regulation is adopted after the tenant enters into the rental agreement and that rule or regulation works a substantial modification of such tenant's bargain, the rule or regulation so adopted is not valid and enforceable against the tenant unless the tenant consents to it in writing.

Section 2. Duties of Tenant.

The tenant shall at all times during the tenancy comply with the following in such a manner as to protect the property interest of the landlord and any person who resides near the boundary of the tenant's dwelling unit:

- (a) Keep that part of the premises which such tenant occupies and uses as safe, clean and sanitary as the condition of the premises permits.
- (b) Dispose from such tenants dwelling unit all ashes, garbage, rubbish and other waste in a safe, clean, and sanitary manner.
- (c) Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean and sanitary as their condition permits.
- (d) Use in a safe and non-destructive manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances including elevators in the premises.
- (e) Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or permit any person, animal or pet to do so.
- (f) Not engage in conduct or allow any person or animal or pet on the premises with the express or implied permission or consent of the tenant, to engage in conduct that will disturb the quiet and peaceful enjoyment of the premises of other tenants.
- (g) Not allow children or other members of the household to deface, destroy, paint with graffiti, mutilate or damage the premises in any way. Parents or adults with responsibility for supervising and controlling said children shall be legally and financially responsible for all actions of such children.

The White Earth Band the White Earth Reservation Housing Authority or any person who resides near the offending tenant's dwelling unit and whose peaceful enjoyment or property is damaged by violation of this Section may bring against the tenant or any third party a cause of action for abatement of the violation or damages.

Section 3. Consent of Tenant for Landlord to Enter; Emergency Entry; Abuse of Right.

- (a) A tenant shall not unreasonably withhold consent to the landlord, the landlord's agents or employees, to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen or contractors.
- (b) A landlord, the landlord's agents, employees or contractors may enter the dwelling unit without consent of the tenant in case of an emergency.
- (c) A landlord shall not abuse the right of access or use it to harass the tenant. Except in case of emergency or unless it is impracticable to do so, the landlord shall give the tenant at least one (1) day's notice of intent to enter and may enter only at reasonable times.
- (d) Unless the tenant has abandoned or surrendered the premises, a landlord has no right of access during a tenancy except as is provided in this Code or pursuant to a court order or the rental agreement.
- (e) If the tenant refuses to allow lawful access, the landlord may obtain injunctive relief to compel access or the landlord may terminate the rental agreement.

Section 4. Tenant's Breach of Rental Agreement.

- (a) Unless otherwise agreed, use by the tenant of the dwelling unit for any purpose other than as a place of abode shall constitute a breach of the rental agreement and shall be grounds for terminating the rental agreement.
- (b) If the tenant allows other persons to take over the dwelling unit without going through the process of signing a new rental agreement in the new tenants names or in an attempt to bypass the normal process of obtaining housing such as low rental units and Mutual Help units, the rental agreement may be deemed to have automatically terminated if the landlord should so elect.
- (c) If the tenant wrongfully quits and abandons the dwelling unit during the term of the tenancy, the landlord shall make reasonable efforts to make the dwelling unit available for rental. If the landlord rents the dwelling unit for a term beginning before the expiration of the rental agreement, said rental agreement automatically terminates without further notice as of the commencement date of the new tenancy.

Section 5. Abandoning, Surrender or Eviction.

If the tenant abandons or surrenders possession of the dwelling unit or has been lawfully removed from the premises through eviction proceedings and leaves household goods, furnishings, fixtures, or any other personal property in the dwelling unit, the landlord may take possession of the property, and if, in the judgment of the landlord, the property has no ascertainable or apparent value, the landlord may dispose of the property without any duty of accounting or any liability to any party.

CHAPTER IX
DELINQUENT RENT; LIEN ON TENANT'S PROPERTY; ENFORCEMENT

Section 1. Delinquent Rent.

- (a) If rent is unpaid when due, the landlord may bring an action for recovery of the rent at any time.
- (b) A landlord may terminate a rental agreement for failure to pay rent when due if the tenant fails to pay rent within five (5) days after written notice of landlord's demand for payment.
- (c) Demand for past due rent is deemed a demand for possession of the premises and no further notice to quit possession need be given by the landlord to the tenant for any purpose.

Section 2. Lien on Tenant's Property.

A landlord shall have a lien upon that part of the property belonging to the tenant which has a reasonable relationship as nearly as practicable to the amount of the debt owed, which may be in a rental unit used by the tenant at the time the notice is given, for the property charges owed by the tenant, and for the cost of enforcing the lien, with the right to possession of the property until the debt obligation is paid to the landlord. Provided, however, that such lien shall be secondary to the claim of any prior bona fide holder of chattel mortgage or to the rights of a conditional seller of such property, other than the tenant.

Section 3. Procedure for Enforcement of Lien.

- (a) The lien provided for by Chapter IX, Section 2, may be foreclosed by a sale of such personal property upon notice and in the manner following. The notice shall contain:
 - (1) The names of the owner, if known, and any other party or parties who may claim any interest in said property; and
 - (2) A description of the property to be sold; and
 - (3) The value of the rent provided and unpaid and the dates thereof; and

- (4) The time and place of sale; and
 - (5) The name of the party, agent or attorney foreclosing such lien.
- (b) Such notice shall be posted on the front door of the tenant's unit at least ten (10) days before the time therein specified for such sale, and a copy of said notice shall be mailed to the owner and any other party or parties claiming interest in said property, if known.
- (c) Proceedings for foreclosure under this Code shall not be commenced until thirty (30) days after said lien has accrued.

CHAPTER X MORTGAGE AND FORECLOSURE

Section 1. Recording.

All mortgages must be recorded in accord with the recording procedures designated by the Tribe, whether it be recorded in Aberdeen Area office or another designated entity.

Section 2. Foreclosure Procedures.

- (a) A borrower/mortgagor shall be considered to be in default when he or she is thirty (30) days past due on his or her mortgage payment(s) to the lender/mortgagee.
- (b) Before a borrower/mortgagor becomes ninety (90) days delinquent on his or her mortgage payments, the lender shall make a reasonable effort to arrange a face-to-face interview, provided the borrower/mortgagor complies with the request to meet with the borrower/mortgagor.
- (c) Lender/mortgagee shall document that it has made at least one (1) telephone call to the borrower/mortgagor to set up a face-to-face interview.
- (d) Before the borrower/mortgagor has been delinquent for ninety (90) days and at least ten (10) days before the beginning of 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; and
 - (2) Advise the borrower/mortgagor of homeownership counseling opportunities/programs available through the lender or otherwise; and
 - (3) Advise the borrower/mortgagor of other available assistance

regarding the mortgage/default; and

- (4) In addition to all the foregoing notice requirements, the lender/mortgagee shall complete the following additional requirements when a leasehold mortgage is involved:
 - (i) Notify the borrower/mortgagor that if the leasehold 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; and
 - (ii) 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
 - (iii) Provide the borrower/mortgagor with names and addresses of government officials to whom further communications may be addressed, if any.
- (e) If a borrower/mortgagor has been in default 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.

Section 3. Summons and Complaint.

- (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 as a defendant; and
 - (2) A description of the property subject to the mortgage; and
 - (3) A concise statement of facts concerning the execution of the mortgage or in the case of a leasehold mortgage, the lease; the facts concerning the recording and the alleged default; and
 - (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; and
 - (5) Any applicable allegations concerning relevant requirements and conditions prescribed in federal laws and regulations, tribal codes, ordinances and regulations and/or provisions of lease or leasehold mortgages or security instruments.
- (b) The complaint shall be verified by the Tribal Court Clerk along with the

summons specifying a date and time of appearance for the defendants.

Section 4. 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 the property. There shall be no right of redemption in any leasehold mortgage foreclosure proceeding.

Section 5. Judgment and Remedy.

This matter shall be heard within sixty (60) days from the date of service of the complaint on the borrower/mortgagor. The Tribal Court shall enter judgment to foreclose the interest of the borrower/mortgagor, assign the mortgage to the lender/mortgagee or the lender's designated assignee; 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:

- (a) The lender shall give the Band the right of first refusal on any acceptable offer to purchase the lease or leasehold mortgage which is later obtained by the lender or lender's designated assignee.
- (b) The lender or lender's assignee may only transfer, sell or assign the lease and/or leasehold mortgage to a tribal member, the Tribe or the Tribal Housing Authority.
- (c) Any other transfer, sale or assignment of the lease or leasehold mortgage shall only be made to a tribal member or the Tribal Housing Authority during the remaining period of the leasehold.

Section 6. Foreclosure Evictions.

Foreclosure evictions shall be handled the same as unlawful detainer evictions, with the added provision that foreclosure eviction proceedings shall not happen until after the borrower/mortgagor, lessee, occupier has received thirty (30) calendar days notice, and remains in possession of the property contrary to the terms of the notice. All foreclosure evictions shall happen no later than sixty (60) days from the date of service of notice upon the borrower/mortgagor that foreclosure was completed.

Section 7. Certified Mailing to Tribe and Lessor.

Any foreclosure proceeding on a lease or leasehold mortgage where the Tribe or the lessor 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 summons was issued. If the lessor's location cannot be ascertained, the summons and complaint shall be mailed to the Bureau of Indian Affairs.

Section 8. 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 a Tribe, nor the granting of such 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 9. Appeals.

Any appeals under this Chapter shall be handled in accord with the general tribal appellate provisions.

CHAPTER XI
FEDERAL RULES AND REGULATIONS

Any rule or regulation that has been promulgated by the U.S. Department of Housing and Urban Development for the said purpose of implementation and management of Indian Housing programs and which the White Earth Reservation Housing Authority is required to follow in order to qualify for federal funds shall supersede the provisions of this Code for those federally funded housing units only. Prior to commencement of any action in White Earth Tribal Court any aggrieved party must first exhaust all available administrative remedies, if any.

CHAPTER XII
FORCIBLE ENTRY AND UNLAWFUL DETAINER

Section 1. Recovery, Defenses, Procedure, Appeal, Execution and Writ of Restitution.

No person shall make entry into lands or tenements except in cases where such entry is allowed by law and in such cases shall not enter by force but shall enter in a peaceable manner unless, in the course of law enforcement action which requires such entry by force.

- (a) When any person has made unlawful or forcible entry into lands or tenements and detains the same, the person entitled to the premises may recover possession thereof in the manner hereinafter provided.
- (b) When any person holds over lands or tenements:
 - (1) After a sale thereof; or
 - (2) On an execution or judgment; or
 - (3) On a foreclosure of a mortgage after expiration of the time for redemption; or

- (4) After termination of contract to convey the same; or
- (5) After termination of the time for which they are leased to the person or persons holding over; or
- (6) Contrary to the conditions or covenants of the lease or agreement under which the person holds; or
- (7) After any rent becomes due according to the terms of such lease or agreement; or
- (8) When any tenant at will holds over after the determination of any such estate by notice to quit; or
- (9) When any dwelling unit has been vacant for any period of time and the person currently holding possession of the property has no lawful right to occupy the building, said person shall be considered to be a criminal trespasser pursuant to White Earth Tribal trespass laws and may be cited criminally and held civilly responsible for any and all damages.

In all such cases the rightful owner, manager, or administrator may recover possession of the premises in the manner hereinafter provided.

- (c) It shall be a defense to an action for recovery of premises following the alleged termination of a tenancy by notice to quit for the defendant to prove by a preponderance of the evidence that:
 - (1) The alleged termination was intended in whole or in part as a penalty for the defendant's good faith attempt to secure or enforce rights under a lease or contract.
 - (2) The alleged termination was intended in whole or in part as a penalty for the defendant's report to a governmental authority of the plaintiff's violation of any criminal, health, safety, housing or building codes or ordinances. If the notice to quit was served within 90 days after the date of such report, the burden of proving that the notice to quit was not served in whole or in part for the retaliatory purpose shall rest with the plaintiff.
 - (3) In any proceeding for the restitution of premises upon the ground of nonpayment of rent, it shall be a defense thereto, if the tenant establishes by a preponderance of the evidence that the plaintiff increased the rent or decreased services as a penalty for any lawful act, provided that the tenant tenders to the court or to the plaintiff the amount of rent due and payable under the original obligation.
 - (4) Nothing contained herein shall limit the right of the lessor to terminate a tenancy for a willful violation by the tenant of a lawful, material provision of the lease or contract, whether written or oral,

or to hold the tenant liable for damage to the premises caused by the tenant or a person acting under his discretion or control.

- (d) The complainant shall file a complaint with the White Earth Tribal Court describing the premises of which possession is claimed, stating the facts which authorize the recovery and praying for restitution thereof. The Court shall thereupon issue a summons commanding the person against whom such a complaint is made to appear before the Court on a day and at a place named in such summons, which shall not be less than seven (7) days from the day of the service of said summons.
- (e) If the defendant appears, he or she may answer the complaint and all matters therein. The proceedings in such action shall be the same as in other civil actions in White Earth Tribal Court, except as otherwise provided by this Code.
- (f) The White Earth Tribal Court may in its discretion continue the matter, however, the Court may require a bond for all rent past due and which may accrue during the pendency of the action.
- (g) If, upon after a full hearing on the matter, the White Earth Tribal Court finds for the plaintiff, the Court shall immediately enter judgment that the plaintiff have restitution of the premises and damages. The Court shall immediately issue execution in favor of the plaintiff for his costs and also immediately issue a writ of restitution. No stay of the writ of restitution may be granted except upon a showing by the defendant that the restitution would cause a severe and substantial hardship upon the defendant. Upon a proper showing by the defendant of severe and substantial hardship, the judge may stay the writ of restitution for a reasonable period not to exceed seven (7) days.
- (h) If the Court finds for the defendant, the Court shall enter judgment for the defendant, assess costs against the plaintiff and issue execution thereof.
- (i) If the party against whom the judgment for restitution is rendered or his or her counsel states to the Court an intent to file an appeal, a writ of restitution shall not issue for 72 hours after judgment. In an action on a lease against a tenant holding over after the expiration of the term thereof or a termination thereof by a notice to quit, such writ of restitution may issue forthwith notwithstanding such notice of appeal.
- (j) If either party feels aggrieved by the judgment an appeal may be filed within ten (10) days.
- (k) No personal property shall be seized by any law enforcement officer of the White Earth Band or any other person after lawful entry of any judgment if said seizure involves a basic life-sustaining item required for the general welfare of any person under the jurisdiction of the White Earth Band between November 1 and April 1 of any year.

- (1) The writ of restitution shall be personally served by an officer of the White Earth Tribal Police upon the defendant if he or she can be found, or on any adult member of the defendant's family or household holding possession of the premises, or other person in charge thereof, for possession of the premises, and that the defendant remove all persons and all personal property from such premises within 24 hours after such demand. If the defendant or other adults present in the dwelling fail to comply with the demand, the officer shall take with him or her whatever assistance may be necessary and immediately remove the defendant, the defendant's family and all personal property from the premises and place the plaintiff in possession thereof. In case defendant cannot be found and there is no person in charge, the officer shall enter the premises, breaking in if necessary, and remove all property from the premises. The plaintiff shall have a lien upon all of the goods upon the premises for the reasonable costs and expenses incurred for removing the defendant and defendant's property.

CHAPTER XIII PUBLIC POLICY

The public policy of the White Earth Band shall be to ensure the protection of property and the peaceful enjoyment of all dwellings by their rightful owners and tenants. It shall also be the public policy of the White Earth Band to hold all parents, guardians and adult supervisors responsible for the damages, civil and/or criminal acts of their minor children. The White Earth Tribal Court is empowered to use all lawful remedies available to fulfill this policy.

CHAPTER XIV RULES OF EVIDENCE

Until such a time as White Earth Tribal Court Rules of Evidence are drafted, the Federal Rules of Evidence and amendments shall apply to all proceedings pursuant to this Code in White Earth Tribal Court.