



**HO-CHUNK NATION CODE (HCC)
TITLE 8 – HOUSING, REAL ESTATE AND PROPERTY CODE
SECTION 3 – EVICTION ORDINANCE**

ENACTED BY LEGISLATURE: AUGUST 17, 2005

CITE AS: 8 HCC § 3

This Ordinance supersedes the Eviction Ordinance (HCC 98-010) adopted by Legislative Resolution 3/2/99B.

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1. Authority.

a. Article V, Section 2(a) of the Ho-Chunk Nation Constitution (Constitution) grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.

b. Article V, Section 2(h) of the Constitution grants the Legislature the power to enact all laws prohibiting and regulating conduct, and imposing penalties upon all persons within the jurisdiction of the Nation.

c. Article V, Section 2(l) of the Constitution grants the Legislature the power to enact laws to manage, lease, permit, or otherwise deal with the Nation’s lands, interests in lands or other assets.

d. Article V, Section 2(o) of the Constitution grants the Legislature the power to enact laws to regulate and zone any lands within the jurisdiction of the Ho-Chunk Nation.

2. Purpose. This Ordinance establishes policy and procedures to enforce evictions on all property owned by the Ho-Chunk Nation (Nation).

3. Policy.

a. This Ordinance shall be used to evict tenants and lessors for non-payment and other violations.

b. All tenants and lessors shall agree to the jurisdiction of the Ho-Chunk Nation Trial Court (Court) as the primary forum to resolve any dispute or controversy. Under Wis. Stat. § 806.245, order and judgments of an Indian tribal court in Wisconsin shall have the same full faith and credit in the courts of this state as do the acts, records, orders and judgments of any other State court.

c. All tenants and lessors shall be given a copy of this Ordinance upon request.

4. Complaint in Eviction Actions. The complaint in an eviction action must be in writing and in accordance with the *Ho-Chunk Nation Rules of Civil Procedure*, subscribed by the plaintiff or attorney.

a. The complaint must contain the following information:

(1) The parties and the real property subject of the action, state the facts which authorize the removal of the defendant.

(2) A legal description of the real property as long as it reasonably identifies the property location and/or a physical address including a street name and unit identification, if applicable.

(3) If a cause of action, in addition to the claim for restitution, is joined, the same shall be separately stated. The relief shall be for the removal of the defendant or the personal property, or both, and, if an additional cause of action is joined for the other, relief sought by the plaintiff.

b. The complaint and summons shall be served pursuant to the *Ho-Chunk Nation Rules of Civil Procedure*.

5. Defendant's Pleading in Eviction Actions. The defendant must plead or answer the complaint in writing and subscribed in the same manner as the complaint. The defendant may counterclaim and any claim related to the rented property shall be considered as arising out of the transaction or occurrence which is the subject matter of the plaintiff's claim.

6. Order for Judgment; Writ of Restitution.

a. Order for Judgment. In an eviction action, if the Court finds that the plaintiff is entitled to possession, the decision order shall be for the restitution of the premises to plaintiff, and for such other relief as the Court orders.

b. Writ of Restitution. At the time of decision order publication for the restitution of premises, the Court shall order that a writ of restitution be issued. The writ shall be

delivered to the tribal law enforcement officer (hereinafter TLO) or sheriff for execution. If judgment is against a non-tribal member on the Nation's property that is not trust land, the writ shall be issued to the county sheriff in accordance with Wis. Stats. 799.45. No writ shall be executed if received by the sheriff more than thirty (30) days after its issuance.

7. Stay of Writ of Restitution. At the time of the decision order, upon application of the defendant with notice to the plaintiff, the Court may, in cases where it determines hardship to exist, stay the issuance of the writ by a period not to exceed thirty (30) days from the date of the decision order.

a. Any such stay shall be conditioned upon the defendant paying all rent, including fees normally associated with the rental unit, such as the charges associated with utility usage, or other charges due including court, moving, and storage costs upon such terms and at such times as the Court directs.

b. The Court may further require the defendant, as a condition of such stay, to give a bond in such amount and with such sureties as the Court directs, conditioned upon the defendant's faithful performance of the conditions of the stay. Upon the failure of the defendant to perform any of the conditions of the stay, the plaintiff may file an affidavit executed by the plaintiff or his or her attorney, stating the facts of such default, and a writ of restitution may be ordered.

8. Writ of Restitution; Form and Contents. The writ of restitution shall be in the name of the Court, sealed with its seal, signed by its clerk, directed to the TLO of the Nation. If the plaintiff is non-tribal member and subject property is not trust land, the writ shall be delivered to the sheriff of the county in which the real property is located. The writ shall be in substantially the following form: (Venue and caption)

THE HO-CHUNK NATION TRIAL COURT

To the Tribal Law Enforcement Officer of the Ho-Chunk Nation or Sheriff
of _____ County:

The plaintiff, _____, of _____,
recovered a judgment against the defendant, _____,
of _____, in an eviction action in the Ho-Chunk Nation
Trial Court of _____ County, on the ___ day of
_____, 20___, to have restitution of the following described
premises:

_____(description as in complaint), located in
_____ County, Wisconsin.

YOU ARE HEREBY COMMANDED to immediately remove the
defendant, _____, from the said premises and to

restore the plaintiff, _____, to the possession thereof. You are further commanded to remove from said premises all personal property not the property of the plaintiff, and to store and dispose of the same according to law, and to make due return of this writ within ten (10) days.

IT IS SO ORDERED.

Witness the Honorable, _____, Judge of the said Court, this _____ day of _____, 20__.

_____ Clerk of Courts

9. Execution of Writ of Restitution.

a. When Executed. Upon delivery of a writ of restitution to the TLO of the Nation or sheriff, and after payment to the TLO of the Nation or sheriff of the required fee (if there is one), then:

(1) If the defendant is a Tribal member, the TLO shall execute the writ. The Court may require that prior to the execution of any writ of restitution the plaintiff deposit a reasonable sum representing the probable cost of removing and storing the defendant's personal property chargeable to the plaintiff unless the defendant agrees to move himself out.

(2) When the defendant is a non-tribal member and the property is not in trust (fee simple), the sheriff of the county in which the property resides shall execute the writ with the express consent of the Nation's court limited to solely said incident. The sheriff may require that prior to the execution of any writ of restitution the plaintiff deposit a reasonable sum representing the probable cost of removing and storing the defendant's personal property chargeable to the plaintiff under Wis. Stat. § 59.28 (24) and (25) and of the services of deputies under Wis. Stat. § 59.28 (24). In case of dispute as to the amount of such required deposit, the amount thereof shall be determined by the Court under Wis. Stat. § 59.28 (25).

b. How Executed; Duties of the Tribal Law Enforcement Officer (TLO) or Sheriff. In executing the writ of restitution the TLO of the Nation or sheriff shall:

(1) Remove from the premises the defendant/named person in the writ, and all other persons found upon the premises, using such reasonable force as is necessary.

(2) Remove from the premises described in the writ all personal property owned by defendant, using such reasonable force as may be necessary.

(3) Exercise ordinary care in the removal of all persons and property from the premises and in the handling and storage of all property removed therefrom.

c. Manner of Removal and Disposition of Removed Personal Property.

(1) In accomplishing the removal of personal property from the premises described in the writ, the sheriff is authorized to engage the services of a mover or trucker.

(2) Except as provided in paragraph (3), below, the personal property removed from such premises shall be taken to some place of safekeeping.

(a) The place of safekeeping is to be determined by the Nation if the defendant is a Tribal member and the land is either trust land or non-trust land.

(b) The place of safekeeping is to be determined by the sheriff within the county of the premises if the defendant is a non-tribal member on land that is not in trust.

(3) Within three (3) days of the removal of the personal property, the TLO or sheriff shall mail a notice pursuant to paragraph d, below, to the defendant as the place where their personal property is stored and shall deliver to the defendant any receipt or other document required to obtain possession of the personal property. Warehouse or other similar receipts issued with respect to personal property stored by the TLO of the Nation or sheriff under this Section shall be taken in the name of the defendant. All expenses incurred for storage and other like charges after delivery by the TLO of the Nation or sheriff to a place of safekeeping shall be the responsibility of the defendant, and any person accepting the personal property from the sheriff for storage under this paragraph shall have all of the rights and remedies accorded by law against the defendant personally and against the personal property stored for the collection of such charges (including the lien of a warehouseman ordinarily prescribed under Wis. Stat. § 407.209). Risk of damages to or loss of such personal property shall be borne by the defendant after delivery by the TLO of the Nation sheriff to the place of safekeeping.

(4) When, in the exercise of ordinary care, the TLO of the Nation or sheriff determines that property removed from premises described in the writ is without monetary value, he or she may deliver or cause the same to be delivered to some appropriate place established for the collection, storage and disposal of refuse. In such case he shall notify the defendant as specified in this Section of the place to which the personal property has been delivered within three (3) days of the removal of the personal property.

(5) All of the rights and duties of the TLO of the Nation or sheriff under this Section may be exercised by or delegated to any of the deputies of the Nation or the county sheriff's department.

d. Manner of Giving Notice to Defendant. All notices required by paragraph c, above, given to the defendant by the TLO of the Nation or the sheriff shall be in writing and shall be personally served upon the defendant or mailed to the defendant at the last-known address, even if such address be the premises which are the subject of the eviction

action.

e. Return of Writ; Taxation of Additional Costs.

(1) Within ten (10) days of the receipt of the writ, the TLO of the Nation or sheriff shall execute the writ and perform all of the duties required by this Section and return the same to the court with the TLO's or sheriff's statement of the expenses and charges incurred in the execution of the writ and paid by plaintiff.

(2) If the property is not trust land, upon receipt of the returned writ and statement from the TLO of the Nation sheriff, the clerk shall tax and insert in the judgment (as ordinarily prescribed by Wis. Stat. § 799.25) the additional costs incurred by plaintiff.

Legislative History:

3/2/99 Eviction Ordinance enacted by Legislative Resolution 3/2/99B.
11/24/04 Eviction Ordinance reformatted IAW Legislative Resolution 11/16/04A as a Proposed Bill (8 HCC § 3) and submitted to the Office of the President for Executive Review and Coordination.
6/10/05 Legislature places Draft Bill out for 45-Day Public Review.
8/13/05 45-Day Public Review period ends. Comments provided by the Department of Housing.
8/17/05 Legislature adopts the Eviction Ordinance as 8 HCC § 3 by Legislative Resolution 8/17/05N.