

# CIVIL PROCEDURE

## CHAPTER FOURTEEN

### MANDAMUS

#### **Section 1401. Functions of Mandamus**

The writ of mandamus may be issued by the Supreme Court or the District Court, or any justice or judge thereof to any inferior tribunal, corporation, board or person, to compel the performance of any act which the law specially enjoins as a duty, resulting from an office, trust or station; but though it may require an inferior tribunal or officer to exercise its judgment or proceed to the discharge of any of its functions, it cannot control judicial discretion, or discretion committed to a Tribal Agency by law unless exercised in violation of law.

#### **Section 1402. Writ Not Issued Where Remedy at Law**

This writ may not be issued in any case where there is a plain and adequate remedy in the ordinary course of the law. It may be issued on the information of the party beneficially interested.

#### **Section 1403. Forms and Contents of Writs**

The writ is either alternative or peremptory. The alternative writ must state, concisely, the fact showing the obligation of the defendant to perform the act, and his omission to perform it, and command him that immediately upon the receipt of the writ, or at some other specified time, he do the act required to be performed or show cause before the Court at a specified time and place, why he has not done so; and that he then and there return the writ with his certificate of having done as he is commanded. The peremptory writ must be in a similar form, except that the words requiring the defendant to show cause why he has not done as commanded, must be omitted.

#### **Section 1404. When Peremptory Writ to Issue**

When the right to require the performance of the act is clear, and it is apparent that no valid excuse can be given for not performing it, a peremptory mandamus may be allowed in the first instance; in all other cases, the alternative writ must be first issued. The peremptory writ should not be issued if there is any doubt that a valid excuse may exist.

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### **Section 1405. Petition Upon Affidavit**

The petition for the writ must be made upon affidavit, and the Court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice.

### **Section 1406. Allowance and Service of Writ**

The allowance of the writ must be endorsed thereon, signed by the Judge of the Court granting it, and the writ must be served personally upon the defendant; if the defendant, duly served, neglect to return the same, he shall be proceeded against as for contempt.

### **Section 1407. Answer**

On the return day of the alternative writ, or such further day as the Court may allow, the party on whom the writ shall have been served may show cause, by answer made in the same manner as an answer to a complaint in a civil action.

### **Section 1408. Failure to Answer**

If no answer be made, a peremptory mandamus must be allowed against the defendant; if answer be made, containing new matter, the same shall not, in any respect, conclude the plaintiff, who may, on the trial or other proceeding, avail himself of any valid objections to its sufficiency, or may countervail it by proof, either in direct denial or by way of avoidance.

### **Section 1409. Similarity to Civil Action**

No other pleading or written allegation is allowed than the writ and answer; these are the pleadings in the case, and have the same effect, and are to be construed and may be amended in the same manner, as pleadings in a civil action; and the issues thereby joined must be tried, and the further proceedings thereon had, in the same manner as in a civil action.

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### **Section 1410. Recovery by Plaintiff**

If judgment be given for the plaintiff, he shall recover the damages which he shall have sustained, to be ascertained by the Court, or by referees, as in a civil action, and costs; and a peremptory mandamus shall also be granted to him without delay.

### **Section 1411. Damages Bar Further Actions**

A recovery of damages, by virtue of this Chapter against a party who shall have made a return to a writ of mandamus, is a bar to any other action against the same party for the making of such return.

### **Section 1412. Penalty for Refusal or Neglect to Perform**

(a) Whenever a peremptory mandamus is directed to any public officer, body or board, commanding the performance of any public duty specially enjoined by law, if it appear to the Court that such officer, or any member of such body or board, has, without just excuse, refused or neglected to perform the duty so enjoined, the Court may impose a fine, not exceeding Five Hundred Dollars (\$500.00), upon every such officer or members of such body or board. Such fine, when collected, shall be paid into the Tribal treasury,

(b) Whenever the peremptory writ of mandamus is directed to any private person commanding the performance of any private duty specifically enjoined by law, if it appear to the Court that such person has, without just excuse, refused or neglected to perform the duty so enjoined, the Court may impose a civil fine, not exceeding Five Hundred Dollars (\$500.00) upon such person and may commit him to the custody of the Tribal Police for a term of sixty (60) days or until he shall perform or agree to perform such duty or otherwise purge his contempt. The Court may, in an appropriate case, order the Chief of the Tribal Police to perform the act required which performance shall have the same effect as if performed by the person to whom the peremptory writ was issued.

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### CHAPTER FIFTEEN

#### QUO WARRANTO

##### **Section 1501. Quo Warranto - Relief Obtainable by Civil Action**

The writ of quo warranto, and proceedings by information in the nature of quo warranto, are abolished and the remedies heretofore obtainable in those forms may be had by civil action; provided, that such cause of action may be instituted and maintained by the contestant for such office at any time after the issuance of the certificate of election by the Tribal election board, and before the expiration of thirty (30) days after such official is inducted into office; provided further, that all suits now pending, contesting such elections, shall not be dismissed because of the prematurity as to time of their commencement, which shall be deemed valid and timely, if commenced after the issuance of the election certificate or after twenty (20) days after the result of said election having been declared by such election board; and provided further, that this Chapter shall not apply to any primary election.

##### **Section 1502. Grounds for Action**

Such action may be brought in the Supreme Court by its leave or in the District Court, in the following cases:

(a) When any person shall usurp, intrude into, or unlawfully hold or exercise any public office, or shall claim any franchise within the Tribal jurisdiction or any office in any corporation created by authority on this Tribe;

(b) Whenever any public officer shall have done or suffered any act which, by the provisions of law, shall work a forfeiture of his office;

(c) When any association or number of persons shall act within the Tribal jurisdiction as a corporation without being legally incorporated or domesticated;

(d) When any corporation does or admits acts which amount to a surrender or a forfeiture of its rights and privileges as a corporation, or when any corporation abuses its power or intentionally exercises powers not conferred by law;

(e) For any other cause for which a remedy might have been heretofore obtained by writ of quo warranto, or information in the nature of quo warranto.

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### **Section 1503. Persons Who May Bring Action**

When the action is brought by the Attorney General when directed to do so by competent authority, it shall be prosecuted in the name of the Tribe, but where the action is brought by a person claiming an interest in the office, franchise or corporation, or claiming any interest adverse to the franchise, gift or grant, which is the subject of the action, it shall be prosecuted in the name and under the direction, and at the expense of such persons. Whenever the action is brought against a person for usurping an office by the Attorney General, he shall set forth in the petition the name of the person rightfully entitled to the office and his right or title thereto; when the action in such case is brought by the person claiming title, he may claim and recover any damage he may have sustained.

### **Section 1504. Judgment in Contest for Office**

In every case contesting the right to an office, judgment shall be rendered according to the rights of the parties, and for the damages the plaintiff or person entitled may have sustained, if any, to the time of the judgment.

### **Section 1505. Judgment for Plaintiff**

If judgment be rendered in favor of the plaintiff or person entitled, he shall proceed to exercise the functions of the office, after he has been qualified as required by law; and the Court shall order the defendant to deliver over all the books and papers in his custody or within his power, belonging to the office from which he shall have been ousted.

### **Section 1506. Enforcement of Judgment**

If the defendant shall refuse or neglect to deliver over the books and papers, pursuant to the order, the Court, or judge thereof, shall enforce the order by attachment or imprisonment, or both.

### **Section 1507. Separate Action for Damages**

When judgment is rendered in favor of the plaintiff, he may, if he has not claimed his damages in the action, have a separate action for the damages at any time within one year after the judgment. The Court may give judgment of ouster against the defendant, and exclude him from the office, franchise or corporate rights; and in cases of corporations, may give judgment that the same shall be dissolved.

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### Section 1508. Corporations

If judgment be rendered against any corporation, or against any persons claiming to be a corporation, the Court may cause the costs to be collected by execution against the persons claiming to be a corporation, or by attachment against the directors or other officers of the corporation, and may restrain any disposition of the effects of the corporation, appoint a receiver of its property and effects, take an account, and make a distribution thereof among the creditors and persons entitled.

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**CHAPTER SIXTEEN**

**SMALL CLAIMS PROCEDURE**

**Section 1601. Small Claims**

The following suits may be brought under the small claims procedure:

(a) Actions for the recovery of money based on contract or tort, including subrogation claims, but excluding libel or slander, where the amount sought to be recovered, exclusive of attorney's fees and other court costs, does not exceed Two Thousand Dollars (\$2,000.00). Libel or slander actions may not be brought in the small claims court.

(b) Actions to replevy personal property where the value of personal property sought to be replevied does not exceed Two Thousand Dollars (\$2,000.00); where the claims for possession of personal property and to recover money are pleaded in the alternative, the joinder of claims is permissible if neither the value of the property nor the total amount of money sought to be recovered, exclusive of attorney's fees and other costs, does not exceed Two Thousand Dollars (\$2,000.00);

No action may be brought under small claims procedure by any collection agency, collection agent or any assignee of a claim. In those cases which are uncontested the amount of attorney's fees allowed shall not exceed ten percent (10%) of the judgment.

**Section 1602. Small Claims Affidavit**

Actions under the small claims procedure shall be initiated by plaintiff or his attorney filing an affidavit in substantially the following form with the Clerk of the Court:

IN THE DISTRICT COURT  
ABSENTEE SHAWNEE TRIBE OF OKLAHOMA  
SMALL CLAIMS DIVISION

\_\_\_\_\_  
Plaintiff )  
                  ) )  
                  ) )  
vs.                    ) Small Claims No. \_\_\_\_\_ )  
                  ) )  
\_\_\_\_\_  
Defendant            ) )

**SMALL CLAIMS AFFIDAVIT**

[NAME OF TRIBE]                    )  
                                          ) ss.

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[NAME OF RESERVATION])

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

That the defendant resides at \_\_\_\_\_,  
(within) (without) the Tribal jurisdiction, and that the mailing address of  
the defendant is \_\_\_\_\_.

That the defendant is indebted to the plaintiff in the sum of  
\$ \_\_\_\_\_ for \_\_\_\_\_,  
which arose (within) (without) the Tribal jurisdiction that plaintiff has  
demanded payment of said sum, but the defendant refused to pay the  
same and no part of the amount sued has been paid.

and/or

That the defendant is wrongfully in possession of certain personal  
property described as \_\_\_\_\_  
that the value of said personal property is \$ \_\_\_\_\_.  
That plaintiff is entitled to possession thereof and has demanded that  
defendant relinquish possession of said personal property, but that  
defendant wholly refused to do so.

\_\_\_\_\_  
Plaintiff

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

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

My Commission Expires: \_\_\_\_\_

On the affidavit shall be printed:

ORDER

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

You are hereby directed to appear and answer the foregoing claim  
and to have with you all books, papers and witnesses needed by you to  
establish your defense to said claim.

This matter shall be heard at [name and address of courthouse  
building], in [complete address of courthouse], at the hour of  
\_\_\_\_\_ o'clock of the \_\_\_\_\_ day of \_\_\_\_\_,  
19 \_\_, or at the same time and place seven (7) days after service hereof,  
whichever is the latter. And you are further notified that in case you  
do not so appear, judgment will be given against you as follows:



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For the amount of said claim as it is stated in said affidavit, for for possession of the personal property described in said affidavit, and, in addition, for costs of the action (including attorney fees where provided by law), including costs of service of this order.

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

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

### **Section 1603. Preparation of Affidavit**

The claimant shall prepare such an affidavit as is set forth in Section 1602 of this Chapter or, at his request, the Clerk of said Court shall draft the same for him. Such affidavit may be presented by the claimant in person or sent to the clerk by mail. Upon receipt of said affidavit, properly sworn to, the Clerk shall file the same and make a true and correct copy thereof, and the clerk shall fill in the blanks in the order printed on said copy and sign the order.,

### **Section 1604. Service of Affidavit**

Unless service by the Tribal Police Chief or other authorized person is requested by the plaintiff, the defendant shall be served by mail. The Clerk shall enclose a copy of the affidavit and the order in an envelope addressed to the defendant at the address stated in said affidavit, prepay the postage, and mail said envelope to said defendant by certified mail and request a return receipt from addressee only. The Clerk shall attach to the original affidavit the receipt for the certified letter and the return card thereon or other evidence of service of said affidavit and order. If the envelope is returned undelivered and sufficient time remains for making service, the clerk shall deliver a copy of the affidavit and order to the Tribal Police Chief who shall serve the defendant in the time stated in Section 1605.

### **Section 1605. Date for Appearance**

The date for the appearance of the defendant as provided in the order endorsed on the affidavit shall not be more than thirty (30) days nor less than ten (10) days from the date of said order. The order shall be served upon the defendant at least seven (7) days prior to the date specified in said order for the appearance of the defendant. If it is not served upon the defendant, the plaintiff must apply to the Clerk for a new alias order setting a new day for the appearance of the defendant, which shall not be more than thirty (30)

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days nor less than ten (10) days from the date of the issuance of the new order. When the clerk has fixed the date for appearance of the defendant, he shall inform the plaintiff, either in person or by certified mail, of said date and order the plaintiff to appear on said date.

**Section 1606. Transfer of Actions**

On motion of the defendant the action shall be transferred from the small claims docket to the general civil docket of the Court, provided said motion is filed and notice given to opposing party at least forty-eight (48) hours prior to the time fixed in the order for defendant to appear or answer and, provided further, that the defendant deposit the cost of filing a complaint in a civil action, and thereafter, the action shall proceed as other civil actions and shall not proceed under the small claims procedure. The clerk shall enclose a copy of the order transferring the action from the small claims docket to the general docket in an envelope addressed to the plaintiff, with postage prepaid. Within twenty (20) days of the date the transfer order is signed, the plaintiff shall file a civil complaint that conforms to the standards of civil pleadings and shall be answered and proceed to trial as in other civil actions. If the plaintiff ultimately prevails in the action so transferred by the defendant, a reasonable attorney's fee shall be allowed to plaintiff's attorney to be taxes as costs in the case.

**Section 1607. Counterclaim or Setoff**

No formal pleading, other than the claim and notice, shall be necessary, and there is no requirement to assert any counterclaim or cross claim, but if the defendant wishes to state new matter which constitutes a counterclaim or a setoff, he shall file a verified answer, a copy of which shall be delivered to the plaintiff or his attorney in person, and filed with the Clerk of the Court not later than forty-eight (48) hours prior to the hour set for the appearance of said defendant in such action. Such answer shall be made in substantially the following form:

**COUNTERCLAIM OR SETOFF**

**IN THE DISTRICT COURT  
ABSENTEE SHAWNEE TRIBE OF OKLAHOMA  
SMALL CLAIMS DIVISION**

_____	)	
Plaintiff,	)	
	)	
vs.	)	Small Claims No. _____
	)	
_____	)	
Defendant	)	

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CLAIM OF DEFENDANT

[NAME OF TRIBE] )
)
[NAME OF RESERVATION] ) ss.

being first duly sworn, deposes and says: That said plaintiff is indebted to said defendant in the sum of \$ for which amount defendant prays may be allowed as a claim against the plaintiff herein.

Defendant

Subscribed and sworn to before me this day of 19.

Notary Public (or Clerk or Judge)

Section 1608. Actions for Amounts Exceeding in Excess of Two Thousand Dollars

If a claim, a counterclaim, or a setoff is filed for an amount in excess of Two Thousand Dollars (\$2,000.00), the action shall be transferred to the general civil docket of the District Court unless both parties agree in writing and file said agreement with the papers in the action that said claim, counterclaim or setoff shall be tried under the small claims procedure. If such an agreement has not been filed, a judgment in excess of Two Thousand Dollars (\$2,000.00) may not be enforced for the part that exceeds Two Thousand Dollars (\$2,000.00) shall deposit with the Clerk of the Court costs that are charged in other cases, less any sums that have been already paid to the clerk, or his claim shall be dismissed and the remaining claims, if any, shall proceed under the small claims procedure.

Section 1609. Attachment or Garnishment, Other Matters

No attachment or prejudgment garnishment shall issue in any suit under the small claims procedure. Proceedings to enforce or collect a judgment rendered by the trial court in a suit under the small claims procedure shall be in all respects as in other cases. No depositions shall be taken or interrogatories or other discovery proceeding shall be used under the small claims procedure except in aid of execution. No new parties shall be brought into the action, and no party shall be allowed to intervene in the action.

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### **Section 1610. Trial by Court**

Actions under the small claims procedure shall be tried to the Court. Provided, however, if either party wishes a reporter, he must notify the Clerk of the Court in writing at least forty-eight (48) hours before the time set for the defendant's appearance and must deposit with said notice with the Clerk the sum of twenty dollars (\$20.00) against the costs of producing the record. The plaintiff and the defendant shall have the right to offer evidence in their behalf by witnesses appearing at such hearing, and the judge may call such witnesses and order the production of such documents as he may deem appropriate. The hearing and disposition of such actions shall be informal with the sole object of dispensing speedy justice between the parties.

### **Section 1611. Payment of Judgment**

If judgment be rendered against either party for the payment of money, said party shall pay the same forthwith, provided, however, the judge may make such order as to time of payment or otherwise as may, by him, be deemed to be right and just.

### **Section 1612. Appeals**

Appeals may be taken from the judgment rendered under small claims procedure to the Supreme Court of the Tribe in the same manner as appeals are taken in other civil actions, provided that any party which did not request a reporter and provided in Section 1610 shall not be granted a new trial or other relief on appeal due to lack of a record.

### **Section 1613. Fees**

A fee shall be charged and collected for the filing of the affidavit for the commencement of any action, for the filing of any counterclaim or setoff, for the mailing of the copy of the affidavit, as determined by rules of the Court, and, if the affidavit and order are served by the Tribal Police, the Clerk shall collect the usual police service fee, which shall be taxes as costs in the case. After judgment, the clerk shall issue such process and shall be entitled to collect such fees and charges as are allowed by law for the like services in other actions. All fees collected hereunder shall be deposited with other fees that are collected by the District Court. Provided that any statute providing for an award of attorney's fees shall be applicable to the small claims division if the attorney makes an appearance in the case, whether before or after judgment or on hearing for disclosure of assets.

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### **Section 1614. Costs**

The prevailing party in an action is entitled to costs of the action, including the costs of service of the order for the appearance of the defendant and the costs of enforcing any judgment rendered therein.

### **Section 1615. Judgments Rendered Under Small Claims Procedure**

(a) Except as otherwise provided herein, judgments rendered under the Small Claims Procedure shall not be entered upon the judgment docket. Such judgment shall not become a lien upon real property unless entered upon the judgment docket as hereinafter provided.

(b) Any small claims judgment, when satisfied by payment other than through the office of the Court Clerk or otherwise discharged, may be released by the Court upon written application to the Court by the judgment debtor and upon proof of due notice thereof having been mailed by the Court Clerk to the judgment creditor at his last known address at least ten (10) days prior to the hearing of the application. Payment of all costs necessary to accomplish said release shall be paid by the judgment debtor.

(c) Such judgment shall become a lien on any non-trust interest real property of the judgment debtor within the Tribal jurisdiction only from and after the time a certified copy of the judgment has been filed in the office of the Court Clerk for entry in the clerk's land tract records book. No judgment under the Small Claims Procedure Act shall be a lien on the real property of a judgment debtor until it has been filed in this manner. When a judgment is entered upon the judgment docket, the Court Clerk shall instruct the prevailing party of the manner in which to proceed to file such judgment for the purpose of obtaining a lien against the real property of the judgment debtor and the Court Clerk shall provide the proper certified copy of the judgment necessary to file.

### **Section 1616. Fee for Docketing Judgments**

The Court Clerk shall, upon payment by the prevailing party of a fee established by Court rule, cause the judgment to be entered upon the judgment docket. Fees collected pursuant to this section shall become part of the cost of the action.

### **Section 1617. Other Actions In Small Claims Court**

By leave of the Court, and with the consent of all parties, other actions not provided for herein, or exceeding the maximum amount allowed to be claimed by Sections 1601 and 1608, except actions for libel and slander, may

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be tried under the small claims procedure. The motion for leave to file in such cases shall contain the consent of the defendant endorsed thereon, or such consent shall be promptly filed upon the submittal for filing of the small claims affidavit.



CHAPTER SEVENTEEN  
FIREWORKS ORDINANCE

SECTION 1:

Whereas it is necessary to set procedures and policies for the retail sale and use of fireworks, this Ordinance shall be entitled the Fireworks Ordinance.

SECTION 2:

Definitions

- a. Fireworks: Any firecracker or other firework type device which is capable of or intended to explode ignite, become self-propelled, give off any projectile, spark or other ignited or fused objects or manifestation, or in any way give off sound or light by virtue of its burning or exploding.
- b. Realty Department: The Realty Department of the Absentee Shawnee Tribe.
- c. Tax Commission: The Tax Commission of the Absentee Shawnee Tribe.
- d. Secretary: The Secretary of the Absentee Shawnee Tribe.
- e. Retailer: A person seeking to sell Fireworks for profit in the jurisdiction of the Absentee Shawnee Tribe.

SECTION 3:

Any person wishing to make retail sales of Fireworks within the Absentee-Shawnee jurisdiction must enter into a lease with the Absentee Shawnee Realty Department on terms agreeable to the lessee and lessor but requiring the lessee to provide at a minimum One Million Dollars (\$1,000,000.00) of comprehensive liability insurance with proof of payment.

SECTION 4:

Sales of Fireworks can only be made between June 15<sup>th</sup> and July 7<sup>th</sup> of each year.

SECTION 5:

After obtaining a lease from the Realty Department the Retailer must obtain a Tax Identification Number from the Tax Commissioner and remit sales tax required by the Absentee Shawnee Tax Code.

- (a) A two hundred and fifty dollar (\$250.00) deposit must be paid by vendors to the tax commission. The deposit may be applied to taxes owed to the tribe or reimbursed after taxes have been paid in full.



- (b) Vendors have a five (5) day deadline after the last day of sales to pay sales tax to the tax commission. After this period, fines and penalties will be assessed.

SECTION 6:

After obtaining a Tax Identification Number, the Secretary will issue a license for the sale of Fireworks by the Retailers.

SECTION 7:

The license fee shall be One Hundred Dollars (\$100.00) per annum.

SECTION 8:

Any Retailer who fails to comply with these procedures shall be subject to criminal prosecution under Section 570 of the Code of Law, Criminal Offenses and a civil penalty of One Hundred Dollars (\$100.00) per day while in violation, which shall be paid directly to the Secretary to be placed in the Tribe's General Fund.

## CHAPTER 17

### 1701 **LAWFUL COLLATERAL FOR FEDERALLY GUARANTEED LOANS**

Lands held in fee simple by an Indian as defined by 25 CFR Section 955.103 within the Absentee-Shawnee Tribal Indian Area as defined by 25 CFR Section 955.103 and a properly approved residential lease on, up to and including two (2) acres of any appropriate land or lands held in Trust for a Member of the Absentee-Shawnee Tribe of Oklahoma may be utilized as collateral for loans Guaranteed by the U.S. Department of Housing and Urban Development under Section 184 Indian Housing Loan Guarantee Program. The availability of said collateral is dependant upon full compliance with the rules set forth in the sections hereinafter applicable to the specific category of collateral.

### 1702 **FEE LANDS**

1702 a. The laws governing lands held in fee as defined in Section 1701 herein shall be the laws of the State of Oklahoma pertaining to mortgages, foreclosures, liens and eviction.

1702 b. The Courts of the State of Oklahoma shall be the Court of Jurisdiction for Fee Lands.

### 1703 **LEASES OF TRUST LANDS**

1703 A. The laws of the Absentee-Shawnee Tribe of Oklahoma shall govern all actions pertaining to the mortgages, foreclosures, liens, and evictions associated with the use of Trust Lands as collateral.

1703 b. The jurisdiction for all actions pertaining to leases of Trust Lands as collateral shall be in the Absentee- Shawnee Tribal District Court.

### 1704 **DEFINITIONS**

The definitions set forth in 25 CFR Section 955.103 shall be applicable to all issues pertaining to this chapter unless more specifically defined in this or other chapters of the Laws of the Absentee-Shawnee Tribe of Oklahoma.

### 1705 **MORTGAGE AS A LIEN**

A mortgage entered into between the borrower and lender wherein a lease of restricted land is placed as collateral under the Section 184 Indian Housing Guaranteed Loan Program and

properly executed, approved and filed in accordance the Absentee-Shawnee Tribal laws shall be considered a lien against such lease and have priority over all other liens.

## **CHAPTER 17 A LIENS**

### **1701 LIENS DEFINED**

A lien is a charge imposed upon specific property, by which it is made security for the performance of an act.

### **1702 CLASSES OF LIENS**

Liens are either general or special.

### **1703 GENERAL LIEN**

A general lien is one which the holder thereof is entitled to enforce as a security for the performance of all the obligations, or all of a particular class of obligations, which exist in his favor against the owner of the property.

### **1704 SPECIAL LIEN - PRIOR LIEN**

A special lien is one which the holder thereof can enforce only as a security for the performance of a particular act or obligation, and of such obligations as may be incidental thereto. Where the holder of a special lien is compelled to satisfy a prior lien for his own protection, he may enforce payment of the amount so paid by him, as part of the claim for which his own lien exists.

### **1705 LAW APPLIES TO WHAT**

Contracts of mortgage and pledge, are subject to all the provisions of this chapter.

### **1706 LIEN CREATED, HOW**

A lien is created:

1. By contract of the parties; or,
2. By operation of law.

### **1707 LIEN CREATED BY LAW**

No lien arises by mere operation of law until the time at which the act to be secured thereby ought to be performed.

### **1708 LIEN OF FUTURE INTEREST**

An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien, or not yet in existence. In such case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing to the extent

of such interest.

**1709 LIEN TO TAKE IMMEDIATE EFFECT**

A lien may be created by contract, to take immediate effect, as security for the performance of obligations not then in existence.

**1710 LIEN TRANSFERS NO TITLE**

Notwithstanding an agreement to the contrary, a lien or a contract for a lien transfers no title to the property subject to the lien.

**1711 CONTRACTS FOR FORFEITURE OF PROPERTY AND RESTRAINING REDEMPTION**

All contracts for the forfeiture of property subject to a lien, in satisfaction of the obligation secured thereby, and all contracts in restraint of the right of redemption from a lien, are void.

**1712 LIEN DOES NOT IMPLY OBLIGATION**

The creation of a lien does not of itself imply that any person is bound to perform the act for which the lien is a security.

**1713 EXTENT OF LIEN LIMITED**

The existence of a lien upon property does not of itself entitle the person, in whose favor it exists, to a lien upon the same property for the performance of any other obligation than that which the lien originally secured.

**1714 HOLDER OF THE LIEN NOT ENTITLED TO COMPENSATION**

One who holds property by virtue of a lien thereon, is not entitled to compensation from the owner thereof for any trouble or expense which he incurs respecting it.

**1715 PRIORITY OF LIENS ACCORDING TO DATE**

Other things being equal, different liens upon the same property have priority according to the time of their creation.

**1716 PRIORITY OF MORTGAGE FOR PRICE OF REALTY**

A mortgage given for the price of real property, at the time of its conveyance, has priority over liens created against the purchaser, subject to the operation of recording laws.

**1717 ORDER FOR RESORT FOR PAYMENT OF PROPERTY LIENS**

Where one has a lien upon several things, and other persons have subordinate liens upon or interests in, some but not all of the same things, the person having the prior lien, if he can do so without the risk of loss to himself, or injustice to other persons, must resort to the property in the following order, on the demand of any party interested:

1. To the things upon which he has an exclusive lien.
2. To the things which are subject to the fewest subordinate liens.
3. In like manner inversely to the number of subordinate liens upon the same thing; and,
4. When several things are within one of the foregoing classes, and subject to the same number of liens, resort must be had, --
  - a. To the things which have not been transferred since the prior lien was created.
  - b. To the things which have been so transferred without a valuable consideration; and,
  - c. To the things which have been so transferred for a valuable consideration.

**1718 PERSONS ENTITLED TO REDEEM LIEN**

Every person having an interest in property subject to a lien, has a right to redeem it from the lien, at any time after the claim is due, and before his right of redemption is foreclosed.

**1719 HOLDER OF INFERIOR LIEN-REDEMPTION**

One who has a lien, inferior to another upon the same property, has a right:

1. To redeem the property in the same manner as its owner might, from the superior lien; and,
2. To be subrogated to all the benefits of the superior lien when necessary for the protection of his interests, upon satisfying the claim secured thereby.

**1720 REDEMPTION-HOW MADE**

Redemption from a lien is made by performing, or offering to perform, the act for the performance of which it is a security, and paying, or offering to pay, the damages, if any, to which the holder of the lien is entitled for delay.

**1721 LIEN IS AN ACCESSORY OBLIGATION**

A lien is to be deemed accessory to the act for the performance of which it is a security, whether any person is bound for such performance or not, and is extinguishable in like manner with any other accessory obligation.

**1722 SALE OR CONVERSION OF PROPERTY EXTINGUISHES LIEN**

The sale of any property on which there is a lien, in satisfaction of the claim secured thereby, or, in case of personal property, its wrongful conversion by the person holding the lien, extinguishes the lien thereon.

**1723 LIMITATION OF TIME**

A lien is extinguished by the mere lapse of the time within which, under the provisions of the Code of Civil Procedure, an action can be brought upon the principal obligation.

- 1724 **PARTIAL PERFORMANCE AS EXTINGUISHING LIEN**  
The partial performance of an act secured by a lien does not extinguish the lien upon any part of the property subject thereto, even if it is divisible.
- 1725 **VOLUNTARY RESTORATION AS EXTINGUISHING LIEN**  
The voluntary restoration of property to its owner, by the holder of a lien thereon, dependent upon possession, extinguishes the lien as to such property, unless otherwise agreed by the parties, and extinguishes it, notwithstanding any such agreement, as to creditors of the owner and persons subsequently acquiring title to the property, or a lien thereon, in good faith and for a good consideration.
- 1726 **VENDER'S LIEN FOR PRICE OF REALTY**  
One who sells real property has a special or vender's lien thereon, independent of possession, for so much of the price as remains unpaid and unsecured, otherwise than by the personal obligation of the buyer, subject to the rights of purchasers and incumbrancers, in good faith, without notice.
- 1727 **WAIVER OF VENDOR'S LIEN**  
Where the buyer of real property gives to the seller a written contract for payment of all or part of the price, an absolute transfer of such contract by the seller, waives his lien to the extent of the sum payable under the contract, but a transfer of such contract in trust to pay debts, and return the surplus, is not a waiver of the lien.
- 1728 **VALIDITY OF LIENS OF VENDORS AND PURCHASERS**  
The liens defined in Sections 1726 and 1729 of this chapter are valid against every one claiming under the debtor, except a purchaser or incumbrancer in good faith, and for value.
- 1729 **LIEN OF PURCHASER OF REAL PROPERTY**  
One who pays to the owner any part of the price of real property, under an agreement for the sale thereof, has a special lien upon the property, independent of possession, for such part of the amount paid as he may be entitled to recover back in case of a failure of consideration.
- 1730 **ASSIGNMENT OF LIENS**  
All claims for liens and rights of action to recover therefor hereunder shall be assignable so as to vest in the assignee all rights and remedies herein given, subject to all defenses thereto that might be made if such assignment had not been made. Where a statement has been filed and recorded as provided in Section 1731 of this title, such assignment may be made by an entry, on the same page of the mechanics' lien journal containing the record of the lien, signed by the claimant or his lawful representative, and attested by the Real Estate Office; or such assignment may be made by a separate instrument in writing.
- 1731 **STATEMENT TO BE FILED**  
Any person claiming a lien as aforesaid shall file in the Real Estate Office of the Absentee

Shawnee Tribe in which the land is situated a statement setting forth the amount claimed and the items thereof as nearly as practicable, the names of the owner, the contractor, the claimant, and a legal description of the property subject to the lien verified by affidavit. Such statement shall be filed within four (4) months after the date upon which material was last furnished or labor last performed under contract as aforesaid; and if the claim be for the planting of any trees, vines, plants, or hedge, such statement shall be filed within four (4) months from such planting. Immediately upon the receipt of such statement the Real Estate Office shall enter a record of the same against the tract index and in a book kept for that purpose, to be called the mechanics' lien journal, which shall be ruled off into separate columns, with headings as follows: "When filed," "Name of owner," "Name of Claimant," "Amount claimed," "Legal description of property," and "Remarks," and the Real Estate Office shall make the proper entry in each column.

## CHAPTER 18 MORTGAGES

### 1801 FORM OF MORTGAGE

A mortgage upon lease of real estate may be substantially in the following form, to-wit:

Know all these men by these Presents: That, .....and.....of.....County, in the jurisdiction of the Absentee Shawnee Tribe of Oklahoma, party of the first part, have mortgaged and hereby mortgage to .....of.....County.....of.....party..... .....the second part, the following described real estate and premises, situated in .....County, State of Oklahoma, to-wit.....,with all the improvements thereon and appurtenances thereunto belonging, and warrant the title to the same; .....This mortgage is given to secure the principal sum of .....dollars, with interest thereon at the rate of .....per centum per annum, payable.....annually from.....according to the terms of certain promissory note.....described as follows, to-wit:  
.....

Dated this .....day of ....., 19....

### 1802 FORMALITIES SIMILAR TO DEEDS

Mortgages of real property may be acknowledged or proved, certified, and recorded in like manner and with like effect as grants thereof.

### 1803 RECORD IS NOTICE

The record of a mortgage duly made, operates as notice to all subsequent purchasers and incumbrancers.

### 1804 GRANT INTENDED AS MORTGAGE RECORDED AS MORTGAGE

Every grant of real property, or of any estate therein, which appears by any other writing to be intended as a mortgage will be a mortgage within the meaning of this chapter.

### 1805 SEPARATE INSTRUMENT RECORDED

Every instrument explanatory of any deed or other writing purporting to be a conveyance but intended to be defeasible or as security for payment of money, shall be deemed a part thereof, and must be filed and recorded therewith; and unless such instruments are so filed and recorded together, they and each of them shall have no other effect than an unrecorded



mortgage, and the recording of the principal instrument shall secure no rights to the holder thereof.

**1806 ASSIGNMENT - UNRECORDED - PAYMENT**

In cases where assignments of real estate are made after the passage of this chapter, if such assignments are not recorded, the mortgagor, his heirs, personal representatives, or assigns, may pay all matured interest or the principal debt secured thereby, prior to recording of such assignment to the mortgagee, or if any assignment of such mortgage has been made that duly appears of record, then such payment may be paid to the last assignee whose assignment is recorded in accordance with the provisions of this section and 1731 of this Code of Civil Procedure, and such payment shall be effectual to extinguish the debt secured by such mortgage and all claims against such mortgagor, his heirs, personal representatives, and assigns, for or on account of such interest or such principal indebtedness; and no transfer of any note, bond or other evidence of indebtedness, by endorsement or otherwise, where such indebtedness is secured by mortgage on real estate within the jurisdiction of the Absentee Shawnee Tribe of Oklahoma, shall prevent or operate to defeat the defense of payment of such interest or principal by the mortgagor, his heirs, personal representatives, or assigns, where such payment has been made to the mortgagee or to the assignee whose assignment appears last of record under the provisions of this chapter: Provided, however, that in all such cases the assignee who may hold such unrecorded assignment shall have a right of action against his assignor to recover the amount of any such payment of interest or principal made to such assignor as upon an account for money had and received for the use of such assignee: Provided, this chapter applies only to mortgages which have been on record six months or more.

**1807 RELEASE BY ATTORNEY**

Any agent or attorney duly authorized to collect the debt secured thereby shall have power and authority to release a mortgage.

**1808 ASSIGNMENTS OF EXISTING MORTGAGES - RECORDING WITHIN FOUR MONTHS - MORTGAGES ON RECORD FOR SIX MONTHS**

All assignments of mortgages at present existing, bearing date prior to taking effect of this Act, shall within four (4) months next succeeding the taking effect of this chapter be recorded in the proper Real Estate Office, in accordance with the provisions of Section 1731 of this Code of Civil Procedure, whether such assignments be acknowledged or not, and in case such assignments are not recorded within the time herein provided, the payment of any interest or principal on the debts secured by such mortgages to the mortgagees or the assignees whose assignments appear last of record after the expiration of the time herein provided, and before the recording of such assignments, shall be and constitute a complete defense to any action on such mortgage or note or other evidence of indebtedness secured thereby as against the mortgagor, his heirs, personal representatives, or assigns: Provided, however, the last assignee of an unrecorded assignment shall have a right of action against the assignor to whom such interest or principal is paid; and provided further, that where the

mortgagor, his heirs, personal representatives, or assigns have actual notice or knowledge of such assignment or transfer, then in such case such payment shall constitute no defense, and none of the provisions of this Act shall apply. Provided, this Section applies only to mortgages which have been on record six (6) months or more.

**1809 HOLDER MUST RELEASE - PENALTY**

Any mortgage on real estate shall be released by the holder of any such mortgage within fifty (50) days of the payment of the debt secured by the mortgage and the holder of the mortgage shall file the release of the mortgage with the Real Estate Office where the mortgage is recorded. If, at the end of the fifty (50) day period, the holder has failed to release the mortgage, the mortgagee may at any time request in writing the holder of the mortgage to release the mortgage and the holder of the mortgage shall have ten (10) days from the date of the request to release such mortgage. If the holder of the mortgage fails to release the mortgage by the end of such ten (10) day period, he shall then forfeit and pay to the mortgagor a penalty of one percent (1%) of the principal debt not to exceed One Hundred Dollars (\$100.00) per day each day the release is not recorded after the ten (10) day period has expired and the penalty shall be recovered in a civil action in any court having jurisdiction thereof, but the request for the release shall be in writing and describe the mortgage and premises with reasonable certainty. Provided that, the total penalty shall not exceed one hundred percent (100%) of the total principal debt.

**1810 HOW RELEASED**

A mortgage on real property may be released by written instrument, duly signed and acknowledged and recorded in the Real Estate Office.

## **CHAPTER 19 FORECLOSURE**

### **1901 FORECLOSURE PROCEDURE**

Any action seeking the foreclosure of a mortgage properly issued and recorded under the laws of the Absentee-Shawnee Tribe of Oklahoma shall proceed as a civil action under said laws and be governed thereby. Any party filing a foreclosure action hereunder waives any objection to the jurisdiction of the Absentee-Shawnee Tribal Court and is deemed to have fully submitted themselves to said jurisdiction for any and all costs, counter claims or other causes of action arising out of the foreclosure procedures, including any subsequent eviction action, or other action required to put said party in possession of the lease which is the subject of the foreclosure action. The jurisdiction over the party seeking foreclosure shall continue for so long as said party shall have the ownership of the lease in question and shall apply to all tenants holding under such ownership. After the award of judgment in a foreclosure action, any and all further remedies and action are limited to actions taken by the U.S. Department of Housing and Urban Development, hereinafter referred to as HUD.

### **1902 COSTS AND ATTORNEY FEES**

All costs and reasonable attorney fees of the prevailing party in a foreclosure action shall be taxed against the other party thereto.

### **1903 SALE OF LEASEHOLD**

No sale of the lease hold secured by HUD shall be made until a judgment in a foreclosure action has been entered on the record for a period of thirty (30) days.

### **1904 EVICTION**

Upon application and after the judgment in a foreclosure in favor of the mortgagee has become final, HUD may apply to the court for an order immediately removing the mortgagor or any other person residing on the property subject to the foreclosure, along with their personal belongings therefrom. The order may, at the discretion of the court also contain therein a writ of assistance requiring the Tribal police to use whatever force and resources necessary to remove any person residing on the said property.

### **1905 COSTS OF REMOVAL**

Any and all costs incurred in the forcible removal of persons and property under Section 1904 shall be paid by the party seeking such assistance, to include labor, damages to Tribal officers and/or equipment, and all other costs of any kind. Such costs are to be in accordance

with the actual cost incurred by the Tribe and will be credited to the account of the particular office involved. The party seeking the removal hereunder shall have the option of providing their own labor and equipment for the removal procedures, which shall take place under the control of the Tribal Police.

**1906 EVICTION COMPLETE WHEN**

The eviction shall be deemed complete when the persons and personal property sought to be removed have been transported to the outer boundaries of the lease in question.

**1907 SALE OF LEASEHOLD UNDER FORECLOSURE PROCEDURES**

A. Lands and tenements taken on execution shall not be sold unless the party causing the execution to be issued:

1. Causes a written notice of sale executed by the chief law enforcement officer containing the legal description of the property to be sold and stating the date, time and place where the property will be sold to be mailed, by first class mail, postage prepaid, to the judgment debtor, any holder of interest of record in the property to be sold whose interest is sought to be extinguished, and all other persons of whom the party causing the execution to be issued has notice who claim a lien or any interest in the property whose interest is sought to be extinguished, at least ten (10) days prior to the date of the sale, if the names and addresses of such persons are known; and

2. Causes public notice of the date, time and place of sale to be given by publication for two (2) successive weeks in a newspaper published in the jurisdiction in which the property to be sold is situated, or in case no newspaper is published in such jurisdiction, then in a newspaper of general circulation therein and by putting up an advertisement upon the Tribal courthouse door and in five (5) other public places in such jurisdiction, two (2) of which shall be in the jurisdiction where such lands and tenements lie. Notice shall be executed by the Tribal Realty Department and state the name of any person having an interest in the property to be sold whose interest is sought to be extinguished and whose actual address is unknown, and shall designate the person or persons whose unknown successors are being notified; and

3. Files in the case an affidavit of proof of mailing and of publication or posting.

B. A written notice of sale executed prior to the effective date by the party causing the execution to be issued but otherwise conforming to the provisions of this section shall, for all purposes, be deemed valid.

C. Such sale shall not be held less than thirty (30) days after the date of first publication of the notice required in paragraph 2 of subsection A of this section. If purchaser other than the party causing the execution to be issued, when required by the chief law enforcement officer,

fails to post cash or certified funds equal to ten percent (10%) of the amount bid for the property within twenty-four (24) hours of the sale, excluding Sundays and legal holidays, or otherwise fails to complete the sale, the chief law enforcement officer may accept the highest bid. Except as otherwise provided for in subsection B of this section, sales for which the provisions of subsection A of this section have not been complied with shall be set aside on motion by the court to which the execution is returnable.

#### 1908 SALE RESTRICTIONS

The bidders in a sale under Section 1907 shall be limited to members of the Absentee-Shawnee Tribe of Oklahoma, HUD, and any other persons or agencies which are authorized to hold leases on Restricted lands, including but not limited to the Absentee Shawnee Tribe of Oklahoma.

#### 1909 APPROVAL OF PURCHASER

No sale subsequent to a foreclosure action shall be valid and effective until approved by the Absentee Shawnee Tribe of Oklahoma and the Secretary of the Interior and confirmed by the Court. Upon such approval and the payment of the proceeds of the sale, title of the lease shall be vested in the purchaser.

#### 1910 USE OF LEASEHOLD PROPERTY AFTER POSSESSION

After the leasehold is in actual possession of HUD, and prior to the sale thereof HUD may, with the approval of the Absentee Shawnee Tribe of Oklahoma, enter into a rental agreement with a member of the Absentee Shawnee Tribe for the leasehold. All proceeds from such rental agreement shall be applied to the judgment of foreclosure.

CIVIL PROCEDURE

CHAPTER 20

CIVIL ACTION FOR VIOLATION OF THE  
FREEDOM OF INFORMATION ACTS

Section 2001. Law Applicable for Civil Damages for a Violation of the Freedom of Information Acts

Any person violating Section 215, Criminal Offenses, relating to a violation of the Freedom of Information Acts of either the Absentee Shawnee Tribe (Legislative Resolution No. AS-92-38) or the federal law (5 U.S.C.A. § 552a(b)(2)) may be sued in Tribal Court for civil damages; provided that the Absentee Shawnee Tribe will be held harmless and immune from such suit and incur no liability for such act whatsoever.

## CHAPTER 21

### CIVIL PROCEDURE

#### Informal Administrative Hearings Guidelines

##### 2001. Purpose

To provide an informal forum for an employee to appeal the termination by a Department Head made in the Grievance procedures of the Administrative Systems Manual. See Chapter VII, Section Q. Grievances, of the Administrative Systems Manual.

##### 2002. Time to Appeal

After the Department Head has replied in writing to the employee's grievance, the employee who finds the Department Head's decision unsatisfactory may appeal the Department Head's decision to the Tribal District Court withing five (5) working days of the receipt of the Department Head's decision.

##### 2003. How to Appeal

The aggrieved employee will file a written or typed statement with the Court Clerk of why the employee finds the Department Head's decision to terminate to be unwarranted. This written statement should contain a summary of the reasons why the termination is believed to be unwarranted and a summary of the Department Head's response. Attached to the filed statement should be copies of the employee's written grievance upon termination and the Department Head's written response.

##### 2004. Delivery to Department Head

The aggrieved employee will hand deliver to the Department Head a copy of the file stamped document required by paragraph 2003 above as soon as possible after filing and not more than one (1) day later..

##### 2005. Response of Department Head

Within five (5) working days of the hand delivery of the employee's filed appeal, the Department Head may respond in writing to the appeal. Response is not mandatory.

##### 2006. Hearing Before Tribal District Judge

The Tribal District Court will set a date for an Administrative Hearing before a Tribal District Judge no earlier than twenty (20) working days after the filing of the employee's appeal but no later than thirty (30) working days after the filing of the appeal.

May 8, 2002  
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**2007. Notice to the Parties**

The Tribal Court Clerks shall direct timely notice of the hearing date to both parties.

**2008. No Filing Fees**

No filing fee will be assessed to any employee filing a grievance pursuant to his/her right under Section Q of the Administrative Systems Manual.

**2009 Hearing Process**

- a. To be conducted by a District Court Judge.
- b. No attorneys for either party may appear.
- c. The hearing is to be conducted in an informal manner rather than in a traditional trial-like manner.
- d. The District Court Judge will allow each party a reasonable amount of time, not to exceed forty-five (45) minutes per party to present his/her side of the dispute under oath.
- e. The parties in their above allotted time may present witnesses and/or documents in support of their individual positions. Neither Chapter 5 of this Code relating to witnesses nor Chapter 7 relating to Trial Procedures will apply. Each witness, if any, will present to the District Judge his or her testimony under oath.
- f. The hearing Judge will deliver an opinion in writing based on the presentation of information by both parties and their witnesses, if any, within five (5) working days of the hearing.
- g. The decision of the District Court Judge hearing the appeal is final.

Originally Passed by Resolution No. L-AS-2002-12  
Dated April 10, 2002  
Amended by Resolution No. L-AS-2002-16  
Dated May 8, 2002



## CIVIL PROCEDURE

### CHAPTER TWENTY-THREE

#### GOVERNMENT TRAVEL CHARGE CARD

**Section 2301.** If issued a Government Travel Charge Card ("GTCC"), it must be used for all official travel expenses UNLESS:

- (a) a vendor does not accept the travel charge card; or
- (b) the Administrator of the GSA has granted an exemption (see FTR Section 301-70.704, 41 CFR 301-304); or
- (c) your Department Head or his/her designee has granted an exemption.

**Section 2302.** The GTCC cannot be used to withdraw money for personal use.

**Section 2303.** Employees may retain for personal use any Frequent Flyer miles earned in official government travel.

**Section 2304.** Reimbursable from GTCC:

- (a) Airfare;
- (b) Maximum lodging amount allowed for the per diem locality excluding lodging tax;
- (c) Meals, up to the rate for the per diem locality;
- (d) Work related telephone calls and faxing;
- (e) Car rental if previously approved;
- (f) Shuttle and taxi fare; and
- (g) ATM fees when the GTCC is used to obtain a cash advance for official travel.

**Section 2305.** Not reimbursable from GTCC:

- (a) Business or first class airfares;
- (b) Amount in excess of the lodging amount allowed for the per diem unless previously approved;
- (c) Meal costs over the rate for per diem;
- (d) Personal telephone calls;
- (e) Gifts; and
- (f) Personal expenses.

Oct 9, 2002 L-AS-2002-51

**Section 2306.** Any intentional misuse of the GTCC shall be unlawful and subject the misuser to a fine of not less than the amount of misuse and not more than \$1,000.00 and/or imprisonment of not less than thirty (30) days and not more than one (1) year.

**Section 2307.** Any use of the GTCC prohibited by this Chapter will be presumed to be intentional within the meaning of Section 2306 above.

**Section 2308.** Each user of the GTCC must sign a waiver of any objection he/she might have under applicable law to the jurisdiction of the Absentee Shawnee Tribal Court System.

W A I V E R

I, \_\_\_\_\_, having been issued  
a Government Travel Charge Card ("GTCC") do knowingly waive any objection to  
the jurisdiction of the Absentee Shawnee Tribal Court System in the case of  
intentional misuse of the GTCC.

\_\_\_\_\_

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## CHAPTER TWENTY-FOUR

### ANIMAL CONTROL ORDINANCE

#### SECTION A: BASIC PROVISIONS

##### Section 100: Definitions

The following words and phrases when used in this Ordinance shall have the meanings when used in this Ordinance. The definitions are as follows:

1. "Animal" shall mean any reptile, fowl, mammal, or other living creature rather than a plant or tree; and
2. "Owner" shall mean any person, firm or corporation owning, harboring, or keeping an animal. Also, owner may be the occupant of any premises on which a domesticated or tamed animal remains, or which customarily remains, for a period or more than ten (10) days or more, shall be deemed to be harboring or keeping the animal; and
3. "Vicious animal" means an animal which has bitten, or attempted to bite, any person without undue provocation, or which attacks, or barks or growls at and acts as if it intends to attack or bites or bites a person or persons, when not unduly provoked; and
4. "Animal control officer" shall be that law enforcement officer designated by the Tribal Police Chief to investigate and control animals with the Absentee Shawnee Tribe of Oklahoma jurisdiction. Designation will be made on a case by case basis.

#### SECTION B: DOGS AND CATS VACCINATION AND HEALTH

##### Section 200: Dogs and Cats to be Vaccinated

The owner or keeper of any dog or cat of six (6) months of age or older withing the Tribal jurisdiction shall have the dog or cat vaccinated against rabies by a licensed veterinarian every calendar year. Owners shall affix, or have affixed, to the collar or harness of each vaccinated dog or cat a metal disc with sufficient information thereon that the vaccination certificate covering the animal may be readily traced. Failure to do so can result in the animal being impounded, and vaccinated at the sole expense of the owner or keeper, if necessary.

##### Section 201: Vicious Animal May be Killed

Any person may kill an animal in self-defense or in defense of another when the animal, without undue provocation, bites him/her or the other, or attacks, or attempts to bite or attack, him/her or the other in such manner that an ordinarily prudent person would be led to believe that the person toward whom the efforts of the animal are directed to be bitten or otherwise physically harmed.

Section 202: Keeping of Vicious Animals

No person shall own or harbor any rabid or vicious animal within the Tribal jurisdiction unless the same is kept upon private premises of such person and securely locked within a sufficient enclosure to prevent any possible means of escape. No license issued under this Section shall be authority to permit any rabid or vicious animal to run at large within the Tribal jurisdiction, muzzled or not.

Section 203: Dogs Muzzled or Cats Confined

A. When the animal control officer determines and certifies that a dog or cat, or any other animal within the Tribal jurisdiction, or within three (3) miles of the Tribal Jurisdiction is or was infected with rabies and that an epidemic of rabies threatens any portion of the Tribal jurisdiction, he/she may request that the Executive Committee, by Tribal resolution, order all dogs and cats within that particular area muzzled and/or confined, for such time until the risk of the rabies epidemic passes. The Resolution shall be given to all Tribal homes within the effected area, and shall be published in a newspaper of general circulation in the area.

B. While such resolution is in effect, it is unlawful for any owner or keeper of dogs or cats, to permit an unmuzzled dog or cat to be at large in violation of the resolution.

SECTION C: RABIES CONTROL AND PROCEDURES

Section 300: Rabies Control and Procedures

A. Every animal that bites or scratches a person shall be reported within four (4) hours to the Chief of Police or another police officer, and shall thereupon be securely quarantined, for a period of ten (10) days, at a veterinary hospital or other facility as may be approved by the officer designated as the animal control officer, at the expense of the owner or keeper of the animal, who may choose the veterinary clinic and shall not be released from such quarantine except by permission of the animal control officer and a licensed veterinarian. If an owner or keeper fails to quarantine his/her animal and is found guilty of such a violation a fine may be imposed by the Tribal Court not to exceed One Hundred Dollars (\$100.00).

B. In the case of stray animals, or if the ownership of the animal is unknown, such quarantine location shall be determined by the animal control officer.

C. The owner or keeper of an animal shall surrender any animal that has bitten or scratched a human, or which is suspected of having been exposed to rabies, for supervised quarantine, the expenses for which shall be borne by the owner and the animal may be reclaimed by the owner if adjudged free of rabies.

D. When an animal under quarantine has been diagnosed as being rabid, or suspected by a licensed veterinarian as being rabid, and dies while under such observation, the animal control officer or veterinarian shall immediately send the head of the animal to the State Department of Health for pathological examination, and notify the proper public health officials of human contacts and the diagnosis made of the suspected animal.

E. Any person that kills a rabid animal suspected or confirmed, shall notify the animal law enforcement officer, within four (4) hours of such killing.

F. The carcass of any dead animal exposed to rabies shall upon demand be surrendered to the animal control officer.

G. It is the duty of every physician, veterinarian or any other practitioner to report to the animal control officer the names and addresses of persons treated for bites inflicted by animals together with other information as will be helpful in rabies control.

#### SECTION D: MISCELLANEOUS PROVISIONS

##### Section 400: Animals to be Impounded, Entry on Property

The animal control officer, a police officer, or other law enforcement officer may authorize upon a showing of probable cause that an animal is a threat to the human population take into custody and impound any animal found at large or roaming, and/or that is in violation of any provision of this Ordinance. In taking an animal into custody under the authority of this Ordinance, the animal control officer may enter onto private property to gain custody of the animal.

##### Section 401: Fees and Procedures for Impoundment of an Animal

The owner of an impounded animal shall pay the actual fees charged for impounding and/or keeping any animal. The procedures for care and release of the animal shall be created by the police department and must be approved by the Executive Committee.

##### Section 402: Clean Space for Animals

Every place, building, or area where an animal is kept or permitted to be kept shall be maintained in a clean and sanitary condition, devoid of rodents and vermin and free from objectionable odors.

##### Section 403: Animal Control Officer to Inspect

The animal control officer or Tribal police chief, upon formal complaint of any person, shall inspect any structure, place or area where an animal is kept, and may do so on his/her own initiative. The animal control officer or Tribal police chief may issue any such reasonable ticket to bring the animal in compliance with this Ordinance. If the owner or keeper of the animal fails to comply with the ticket issued, the law enforcement officer or Tribal police chief may make request of the Tribal Court Trial judge to enforce any reasonable order protecting and promoting the public interests and providing a safe, healthy environment for the animal. The request for enforcement will allow the Tribal Judge to determine if the ticket issued is reasonable. If it is, and is not being complied with, the Judge may assess a fine of not more than One Hundred Dollars (\$100.00), and grant other relief the Tribal Judge determines is necessary, to bring compliance, including incarceration.