

Pueblo of Jemez Housing Department

Homebuyer and Loan Payment Collection Eviction and Foreclosure Policy

Revised: _____

Resolution No. _____

PUEBLO OF JEMEZ HOUSING DEPARTMENT
HOMEBUYER PAYMENT COLLECTION AND EVICTION POLICY

INTRODUCTION

The U.S. Department of Housing and Urban Development (HUD) under the Indian Housing Program, 24 CFR 950.335 mandates the Pueblo of Jemez Housing Department (POJH) to plan, prepare and adopt a renter, homebuyer, or loan recipient payment collection policy. The policy shall further provide procedures for: 1) termination of a Mutual Help and Occupancy Agreement (MHOA) and/or other loan agreements; and 2) the eviction of any Mutual Help (MH) and/or homebuyers for failure to make required monthly payments; any loan recipient, or debtor for failure to make required monthly payments; 3) Collection of debts owed for assistance using Housing funds and/or services; and/or other federal monies secured through the Housing Department. The policy aims to assure prompt monthly payments from homebuyers; Rehabilitation program borrowers; and those securing funds or services subject to payment to Pueblo of Jemez Housing Department for continued occupancy.

DEFINITIONS

Administration Charge. That portion of the homebuyer’s monthly payment that is used by the POJH to cover the operating expenses as approved by HUD.

Client. Any recipient of funds or of housing services that requires payment to the housing department; i.e. homebuyers – renters –loan recipients.

Home. The dwelling unit covered by the MHO Agreement or loan agreement including the home site.

Homebuyer. The person(s) who has executed a MHO Agreement or Loan Agreement and who has not achieved homeownership.

HUD. The U.S. Department of Housing and Urban Development.

MH. Mutual Help.

MHO Agreement. A Mutual Help and Occupancy Agreement between the POJ and the Homebuyer.

MH Program. The Mutual Help Homeownership Opportunity Program.

NTAIS. Notice of Termination, Administrative Hearing and Intent to Sue: Formal notification from POJH to client regarding forthcoming actions.

NOD. Notice of Delinquency – written demand for payment prior to proceeding to collection processes.

Payment Agreement. An agreement between the POJH and the client for an additional money amount over the required monthly payment for the purpose of clearing a delinquency.

Payment Calculation. Payment amounts that may be subject to change depending on change of family status or change of family income.

Required Monthly Payment. An amount that the client shall pay each month to POJH during the term of the lease and/or payment term equal to the greater of: (1) the Administrative Charge, or (2) the Administrative Charge plus the monthly equity payment based on family income and composition, or (3) the amount agreed upon on a Payback Agreement.

PAYMENTS

The client(s) must make their monthly payment on or before the FIRST of each month. The client(s) may pay in the following manner:

1. By PERSONAL CHECK, CASHIERS CHECK, OR MONEY ORDER, payable to the POJH or Debit Card payments. The mailing address is: P. O. 100, Jemez Pueblo, NM 87024. Payments may also be made in person at the Tribal Finance Department.

Note: If the POJH's bank does not honor a client's personal check because of insufficient funds, POJH will redeposit the check and upon return the second time, the client's account shall be assessed a service charge of an amount comparable to local bank rates.

2. By CASH, if made in person at the Tribal Finance Department. (Cash should not be sent through the mail.) Upon acceptance of payment, a receipt must be provided to (or be requested by) and retained by the homeowner. **No claim of "paid by cash" will be honored without a valid receipt.**

3. By PAYROLL DEDUCTION with the POJH's approval. Each client must make arrangements with his or her employer to deduct the required payment from their wages. The employer shall then be responsible for mailing the required payment to the POJH at least once each month before the twenty-fifth (25th) day. Payment may also be made biweekly. Exceptions shall be made for employers who do not mail their payroll deductions. It is the responsibility of the debtor to see that the payroll deductions from those employers are mailed or delivered on time.

The client shall promptly inform POJH of any changes in their financial or family status.

NOTICE OF PAYMENTS

Before the FIRST of each month, a computer statement may or may not be mailed/emailed to each client. The intent of a statement would be to inform each client of his or her current accounts receivable status for the upcoming month. The statement might show:

1. The delinquent amount (if any).
2. The monthly charge; any increase/decrease in payment calculation.
3. Previous month's payment (if any).
4. Required monthly payment agreement.

POJH's closing date is the 25th of each month and the computer statement would automatically reflect the following month's required monthly payment amount.

Lack of statements provided by POJH will never be considered justification for a client's late or nonpayment. Statements, if provided, should be considered complementary informational documents. Leases, contracts, and agreements rule payment requirements. Statement errors cannot alter ruling legal documents.

ACKNOWLEDGEMENT OF PAYMENT

Upon payment, each client shall receive a receipt to acknowledge payment. **The client should keep all receipts for future reference.** Claims of payments paid will not be considered without receipt, cancelled check or other valid verifiable document.

RESIDENT SERVICES COUNSELORS

POJH Counselors are assigned to various pueblo programs. They shall primarily be responsible for providing application and qualification verification. They shall further have the discretion to recommend to the Housing Director a negotiated payment agreement with delinquent MH or Loan recipient(s) before the NOTICE OF TERMINATION, ADMINISTRATIVE HEARING AND INTENT TO SUE is served. Only the Housing Director can negotiate a repayment agreement, but final approval of negotiated agreements must be represented in writing with signature of the client and POJH then approved by the Governor's signature to be deemed effective. **However, NO payment agreement will be negotiated by the POJH once a civil complaint is filed.**

NOTICE OF DELINQUENCY (NOD)

The Notice of Delinquency is a general written demand for immediate payment on the past due balance and is in compliance with the Mutual Help and Occupancy Agreement (MHOA); lease provisions (See Exhibit A) and/or loan recipient payments. The Notice informs the delinquent client/loan recipient to make an immediate payment. Otherwise, POJH shall then begin to enforce its termination procedures.

Upon service of the NOTICE OF DELINQUENCY, the client(s) has TEN (10) days to remit the delinquent amount in full or commit to a payment agreement.

The Notice also recommends that the delinquent client(s) and/or loan recipient immediately contact the POJH Counselor or other POJH representatives regarding any financial problems or unusual circumstances. The client(s) and/or loan recipient may then request a payment agreement from the POJH representative. The POJH representative shall then determine whether the circumstances warrant a payment agreement.

If so, the client(s) or loan recipient shall then make a payment equal to the required monthly payment plus any additional amount towards the delinquent balance. The POJH Counselor may provide or recommend counseling to assist the delinquent client(s) in family budgeting and financial planning. The client(s) is required to cooperate and fully participate in POJH's Homeownership Counseling Program as stated in the MHO or other agreement when required by POJH. POJH is not required to offer Counseling unless mandated by contracts or agreements.

TENANTS ACCOUNTS RECEIVABLE

The client(s) must make prompt monthly payment to continue occupying the housing unit or to avoid collections if a loan recipient. If the client(s) fails to pay by the FIFTH (5th) day of the month, then he or she becomes delinquent.

If the client(s) becomes delinquent in monthly payments for two (2) consecutive months, the POJH shall serve the delinquent client(s) with a NOTICE OF DELINQUENCY (NOD) (See Exhibit A).

NOTICE OF TERMINATION, ADMINISTRATIVE HEARING AND INTENT TO SUE (NTAIS)

If, after TEN (10) days, the delinquent client(s) does not comply with the NOD, the POJH or Legal Counsel shall then serve the client(s) with a written NOTICE OF TERMINATION, ADMINISTRATIVE HEARING AND INTENT TO SUE (NTAIS) by certified mail return receipt requested and regular mail.

The NTAIS shall state the reasons for the termination (See Exhibit B). The client(s) may respond to the NTAIS within THIRTY (30) days from the date of notice, or may bring the delinquent amount current within thirty (30) days.

The Tribal Administration which has jurisdiction over the delinquent homebuyer(s) shall also receive a copy of the NTAIS.

The client(s) has the right to request a hearing in accordance with POJH's grievance procedure if there is a discrepancy with any of the notices. Otherwise, POJH shall begin its administrative hearing process.

POJH or Legal counsel shall inform the client(s) of the time, date and place of the administrative hearing.

The delinquent client(s) may represent him/herself or be represented by another person of his or her choice at the hearing. A representative of the tribal government may also represent the delinquent client(s). If the client(s) does not appear at the scheduled administrative hearing, POJH or Legal Counsel shall then immediately commence its civil proceedings in the Tribal Court which has jurisdiction over the client(s).

At the administrative hearing, POJH or Legal Counsel and the client may attempt to negotiate a payback agreement in which the client makes an additional amount to their required monthly payment to pay-off the past due balance. The payback agreement's term, if negotiated, shall not exceed two (2) years. If the client defaults on the payback agreement, the POJH or Legal Counsel shall commence eviction proceedings.

TRIBAL COURT/COUNCIL HEARING

If the delinquent client has failed to comply with the NOD and the NTAIS, or if the client(s) fails to comply with the payback agreement entered into at the administrative hearing, the POJH or Legal Counsel shall review POJH's procedure to see whether or not it has properly adhered to its Rent and Client Payment Collection and Eviction Policy with adequate notices to the client(s). Such procedures shall comply with the Indian Civil Rights Act, concerning the client(s) due process rights. The POJH or Legal Counsel shall prepare and submit its civil complaint against the delinquent client(s) to the designated tribal court or council. **The client(s) will be responsible for any legal fees incurred by POJH.**

The POJH shall seek support and assistance of the Tribal government in accordance with the provisions of the Tribal Ordinance. For example, one provision provides that "powers of the tribal government shall be vigorously utilized to enforce eviction of a tenant or client for non-payment or other contract violation." Nonpayment means failure to make the required monthly payment.

The complaint shall be premised on the client(s) breach of his or her MHO or other agreement with POJH. The contractual breach arises from non-payment or partial payment of the required monthly payment and/or destruction of the property as set forth in the client(s) MHO or other agreement with POJH. Other violations not pertaining to non-payment or partial payment of the required monthly payment and/or destruction shall be defined as "other just cause." The POJH shall then commence its civil action against the client(s) in the Tribal Court, or submit the complaint to the tribal governor and/or council.

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The complaint (See Exhibit C) shall be in writing and contain statement of facts and shall include:

- 1. The name and address of the client**
- 2. The POJH Project Number, Account Number and the Property Lot Number**
- 3. The date of when the client(s) entered into the MHO or other agreement with POJH**
- 4. The jurisdiction of the tribal court**
- 5. The clients accounts receivable status and the arrearage amount; and**
- 6. The client’s monthly charge.**

Copies of notices (delinquency, termination, administrative hearing and intent to sue) shall be attached as Exhibits to the complaint. POJH shall ask the court for an eviction or foreclosure of the client and judgment on the delinquent amount owed.

If the client(s) has paid the delinquent amount in full or has made a payment arrangement which has been agreed upon by both parties before the court date, a Motion to Dismiss will be filed with the tribal court.

The tribal court may order the client to pay the delinquent amount with a specific period of time or may order the client(s) to be evicted. POJH shall seek the authority and guidance of the Tribal laws and remedies in its request for eviction against the delinquent client(s). Once the eviction is granted by the Tribal Court, the client(s) shall have TEN (10) days to vacate the Mutual Help unit or other dwelling affected by nonpayment.

TERMINATED OCCUPANTS

For terminated occupants, a certified letter will be sent requiring payment in full for outstanding debts unless a signed agreement is in force.

Throughout its action to seek collection, termination, and/or eviction, the POJH must act in compliance with the adopted policies of POJH’s and all applicable federal regulations. The POJH must also act in compliance with both the Article 7, “Breach of Agreement” of the Mutual Help and Occupancy Agreement of 1961 and Article IX, “Termination of Agreement” of the Mutual Help and Occupancy Agreement of 1976, and the Indian Civil Rights Act, regarding due process rights.

This doctrine of POJH compliance to law shall apply to each contract or agreement.

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RECIPT OF POLICY STATEMENT

I, _____, have explained the PUEBLO OF JEMEZ HOUSING DEPARTMENT’S RENT AND CLIENT PAYMENT COLLECTION AND EVICTION POLICY and have provided a copy of same to _____ the _____ day of _____ 20__.

POJH Representative

Date

On this _____ day, the month of _____, 20__

I, _____ have read the PUEBLO OF JEMEZ HOUSING DEPARTMENT’S RENT CLIENT PAYMENT AND COLLECTION AND EVICTION POLICY. I understand the provisions of the policy. I also understand that I am required to make prompt payment each month to the Pueblo of Jemez Housing Department.

Client(s) Signature

Date

**Cc: Client
Client’s File**

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EXHIBIT A: NOTICE OF DELINQUENCY

DATE

Project # Account #

Name

Address

City

RE: NOTICE OF DELINQUENCY

Payments required by your Mutual Help and Occupancy Agreement (MHOA), Loan or other agreement with POJH must be made by you as they come due or your agreement can be terminated and you can be evicted from your home. Payments must be received in our office monthly, on or before the first day of each month. Failure to make the required payments may result in a termination of your agreement and/or court proceedings in the Tribal Court for your eviction and judgment against you for the amount unpaid.

Your required monthly payment under the MHOA, loan or rental agreement is \$ _____. As of the date of this letter, your delinquent amount is \$ _____. I urge you to make immediate payment of the delinquent amount. If we do not hear from you within (10) days from the date of the notice, we will turn your account over to POJH or Legal Counsel for further action.

If there are unforeseen or unusual problems which have prevented you from making payment, please make an appointment to meet with me. Certain circumstances may warrant special arrangements which would allow you to pay the delinquent amount within a reasonable period of time.

Sincerely,

PUEBLO OF JEMEZ HOUSING DEPARTMENT

HOUSING DIRECTOR

cc: File

**NOTICE OF TERMINATION,
ADMINISTRATIVE HEARING,
AND INTENT TO SUE**

EXHIBIT B

COLLECTION & EVICTION POLICY

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DATE:

Project #

Account #

Requested

Address

City, State, and Zip

**CERTIFIED MAIL
RETURN RECEIPT**

RE: NOTICE OF TERMINATION, ADMINISTRATIVE HEARING AND INTENT TO SUE

NOTICE OF DELINQUENCY SENT: _____

DELINQUENT AMOUNT: _____

Dear:

On _____20__, the Pueblo of Jemez Housing Department (POJH) served you with a Notice of Delinquency by regular mail. You have not contacted the POJH office regarding your delinquency nor have you made full payment. Therefore, you are now notified as follows:

1. You have breached your agreement with POJH by failing to make your regular payments, which is reason for POJH to terminate your loan payment and/or lease agreement.
2. You may, within thirty (30) days of this letter, either pay the delinquent amount in full or respond to POJH or Legal Counsel regarding the reason for termination. In any such response, you may be represented or accompanied by a person of your choice, including a representative of the tribal government.
3. If within the thirty (30) days above referred to, you either pay the delinquent amount in full or present to POJH evidence or assurances that you will cure the breach and continue to carry out your loan obligations; POJ HD may rescind or extend the NTAIS. Unless there is such a revision or extension, the lease term and the MHOA shall terminate on the 30th day from the date of this letter.

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4. POJH has scheduled an administrative hearing for you on _____, 20__ at _____, a.m. /p.m. at the offices of POJH, PO Box 100, Jemez Pueblo, NM 87024. You are to attend and may be accompanied or represented by a person of your choice, including Legal Counsel or a member of your tribal government.
5. If you fail to either pay the delinquent amount or appear at the hearing as scheduled, POJH shall terminate your MHOA and/or Loan Agreement on the 30th day and will thereafter file a civil complaint against you in the Jemez Tribal Court, seeking a judgment against you for the full amount of the delinquency, eviction and repossession of your home.

Please do not fail to appear for your administrative hearing. IF YOU CANNOT ATTEND ON THE DATE OR TIME SPECIFIED, PLEASE CALL THIS OFFICE IMMEDIATELY AT (575) 834-0305 TO RESCHEDULE THE HEARING. You will be allowed only one opportunity to reschedule the administrative hearing. You will only be entitled to reschedule the hearing if, in the opinion of POJH, you have a valid reason which would prohibit you from attending the scheduled hearing. If the hearing is rescheduled, the date for the new hearing will be set to take place no later than five (5) days after the date originally set for the hearing.

Your continued non-response or failure to make full payment in accordance with your MHOA and/or loan agreement will result in termination of your agreement as stated above. Tribal government, by copy of this letter, is hereby notified of the termination of your agreement, of the administrative hearing date and time, and of POJH's intent to sue as herein set forth.

****THIS IS THE LAST NOTICE YOU WILL RECEIVE BEFORE SUIT IS FILED****

Sincerely,

cc: Client – via First-Class mail
Resident Services Counselor
Pueblo Tribal Officials

Client File

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CIVIL COMPLAINT

EXHIBIT C

**IN THE TRIBAL COURT OF THE PUEBLO OF JEMEZ
PUEBLO OF JEMEZ HOUSING DEPARTMENT**

PLAINTIFF

VS

NO. _____

PROJ#*/*ACCT#

***FNAME* *MI* *LNAME*,**

DEFENDANT,

COMPLAINT

Comes now the Pueblo of Jemez Housing Department, by and through its attorney and for its complaint states:

1. The plaintiff, Pueblo of Jemez Housing Department, is a tribally identified housing entity of Jemez Pueblo.
2. The defendant resides at *PROJ#*, LOT#* within the outer boundaries of Jemez Pueblo.
3. On *Date*, the defendant entered into a certain Mutual Help and Occupancy Agreement (MHOA) or loan agreement with the plaintiff. (A copy of the said Agreement appended hereto as Exhibit ___ and made a part hereof by reference.)
4. Based upon the annual recertification completed on _____, the contract, as amended, called for required monthly client charges in the amount of *MONTHLY CHARGE*.
5. The defendant is in breach of Article ___ of said Agreement in that the defendant failed and refused to comply with his obligations under this Agreement.
6. On _____, defendant was sent a Notice of Delinquency (NOD) advising defendant to bring the TAR balance current. The NOD also advised defendant that failure to make the necessary payments would require plaintiff to enforce termination procedures. A copy of the NOD is attached as Exhibit ___.
7. Defendant failed to respond to the NOD and on _____ POJH or Legal Counsel sent via certified mail its Notice of Termination, Administrative Hearing and Intent to Sue (NTAIS). A copy of the NTAIS is attached hereto as Exhibit B.

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8. (A) On _____, defendant appeared at the administrative hearing and agreed to a payback agreement. A copy of the payback agreement is attached hereto as Exhibit _____. Defendant, however, has failed or refused to make payments pursuant to the payback agreement; or
B) Defendant failed to appear at the administrative hearing.

WHEREFORE, the plaintiff prays for a judgment as follows:

1. Damages upon the arrears of *TAR BALANCE* (court cost of \$_____ included) plus any accrued charges thereafter, for the reasonable use and occupancy of the premises, or in the alternative, if payment is not made;
2. An order compelling the defendant to vacate the premises and surrender the same to the possession of the plaintiff; and,
3. Such other and further relief as this court may deem just and proper.

RESPECTFULLY SUBMITTED,

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DATE

Project # Account #

Name

Address

City

RE: NOTICE OF DELINQUENCY

Payments required by your Mutual Help and Occupancy Agreement (MHOA), Loan or other agreement with POJH must be made by you as they come due or your agreement can be terminated and you can be evicted from your home. Payments must be received in our office monthly, on or before the first day of each month. Failure to make the required payments may result in a termination of your agreement and/or court proceedings in the Tribal Court for your eviction and judgment against you for the amount unpaid.

Your required monthly payment under the MHOA, loan or rental agreement is \$_____. As of the data of this letter, your delinquent amount is \$_____. I urge you to make immediate payment of the delinquent amount. If we do not hear from you within (10) days from the date of the notice, we will turn your account over to POJH or Legal Counsel for further action.

If there are unforeseen or unusual problems which have prevented you from making payment, please make an appointment to meet with me. Certain circumstances may warrant special arrangements which would allow you to pay the delinquent amount within a reasonable period of time.

Sincerely,

PUEBLO OF JEMEZ HOUSING DEPARTMENT

HOUSING DIRECTOR

cc: File