



RESOLUTION NO. 95-13

WHEREAS, The Pueblo of Jemez, a federally recognized Indian Tribe, has the powers of self-government by reason of its original tribal sovereignty, and

WHEREAS, by virtue of the Pueblo's original tribal sovereignty, the Pueblo of Jemez Tribal Council possesses the power to exercise legislative powers over the activities of all persons, Indian and Non-Indian alike, to protect tribal interests within the lands of Jemez Pueblo, and

WHEREAS, the Pueblo of Jemez Tribal Council is exercising the power to legislate and enact civil and criminal tribal laws to control the conduct and activities of tribal members and non-tribal members, and

WHEREAS, the Pueblo of Jemez Tribal Council has considered the benefits, impacts, disadvantages, and advantages to enacting the Pueblo of Jemez Tribal Law & Order Code which also includes "Exclusion & Removal of Persons", "Wildlife Conservation Code and Hunting, Fishing, & Trapping Regulations", "Repossession of Property", "Traffic Code", and "Real Estate",

WHEREAS, the Tribal Council proclaims that adopting the Pueblo of Jemez Tribal Law & Order Code along with its specific titles as our tribal laws further strengthens our Tribal Sovereignty, protects our land and resources of our Pueblo for ourselves and our children, contributes to the judicial needs of the Pueblo and provides for the orderly administration of tribal justice, and assures the maintenance of law and order on the Pueblo of Jemez, and

WHEREAS, adopting the Pueblo of Jemez Tribal Law & Order Code with its Titles does not alter, affect, or change the traditional procedures and sanctions used in our Tribal Court and neither is the Code intended to limit the powers of the Governors.

NOW THEREFORE BE IT RESOLVED that the Pueblo of Jemez Law & Order Code with comprised sections from Title I through Title VIII is hereby adopted as the tribal laws of the Pueblo of Jemez, subject to future amendments as provided in the Code, and

BE IT FURTHER RESOLVED that the Pueblo of Jemez Law & Order Code with its Titles will become effective on August 23, 1995.

Office Of The Governors

PO Box 100 • Jemez Pueblo • New Mexico • 87024
(505) 834-7359 • Fax (505) 834-7331

C E R T I F I C A T I O N

I, the undersigned as Governor of the Pueblo of Jemez do hereby certify that the foregoing resolution was passed at a duly called meeting of the Tribal Council on the 23rd day of February, 1995, in which 6 voted for and 0 voted against.

Paul S. Chinana
Paul S. Chinana, Governor
Pueblo of Jemez

ATTEST: Vincent A. Loya

Joe Talabo
Councilman

Rosendo Pacheco
Councilman

Joe L. Lopez
Councilman

Councilman

Paul J. [Signature]
Councilman

Antonio [Signature]
Councilman

Jose L. [Signature]
Councilman

Councilman

TITLE VIII

REAL ESTATE

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TITLE VIII

REAL ESTATE

CHAPTER 1. FORECLOSURE OF REAL ESTATE

SECTION 8-1-1 JURISDICTION.

It is hereby declared that the civil jurisdiction of the Tribal Court includes jurisdiction over all proceedings to foreclose a mortgage on any real property on the Jemez Pueblo Reservation. An action of foreclosure to recover the possession of real property is maintainable in the Tribal Court after a breach of the obligation for which the mortgage is a security. A mortgage, including any FHA insurance mortgage, which is properly recorded with the Tribal Court, shall have priority over any subsequently recorded mortgage or lien of any kind.

SECTION 8-1-2 SCOPE AND DEFINITIONS.

1. A mortgage is an agreement under which some party, usually a bank, lends money to a landowner and the landowner agrees to pledge his land as security for the loan. If the landowner then fails to pay the loan, the bank may foreclose on the land in a legal proceeding. The land is then sold under the supervision of the Court and the proceeds used to pay the debt.

2. This Chapter shall apply to all actions to foreclose mortgages or liens on trust land on the Jemez Pueblo Reservation. A foreclosure will be ordered where such mortgages or liens are authorized by and valid under federal law. This Chapter shall also

apply to all actions to foreclose on fee land, or an interest in fee land, on the Jemez Pueblo Reservation owned by an Indian or Indians.

3. A mortgagor is a party who mortgages the property, the debtor or buyer of the house.

4. A mortgagee is a party who takes or receives a mortgage, the creditor.

SECTION 8-1-3 PROCEEDINGS IN TRIBAL COURT.

1. Complaint. Foreclosure proceedings may be instituted in the Tribal Court by filing a complaint. A foreclosure is a procedure where the mortgagor (buyer) is deprived of his rights to the property for failure to make payment or failure to perform obligations in the mortgage. The complaint must be filed in accordance with the Tribal Court Rules of Civil Procedure and shall include:

- A. A legal description of the property sought to be foreclosed.
- B. A description of the mortgage which gives rise to the action. A copy of the mortgage shall be attached to the complaint.
- C. Allegations to the particulars of the default which gives rise to the action.
- D. The total balance due and owing to the mortgagee.

E. Allegations of facts showing notice as required by subsection (B) of this section and that the default has not been cured pursuant to Section 8-1-4. A copy of the notice shall be attached to the complaint.

F. Whether any other proceedings have been had in any Court for collection of any part of the debt, secured by the mortgage, and if there have been, the details and particulars of such actions, including the amount of any judgments rendered and the amount collected.

G. Whether plaintiff intends in a later and separate action to seek a judgment for any deficiency which remains due to him after sale of the mortgaged property against parties who are personally liable for the debt secured by the mortgage.

2. Order and Notice. At the time the complaint is filed, the Court shall issue an order and notice scheduling a hearing on the complaint not less than fifteen (15) days after the complaint is filed. The order and notice shall inform the defendant that at the hearing the Court will determine whether proceedings for foreclosure will begin. The Court shall furnish the plaintiff with a copy of the notice showing the time and place of the hearing and shall affix such notice to the copy of the complaint to be served on each defendant. Service of process should be made in accordance with the Tribal Court Rules of Civil Procedure. Service of process shall also be made on the Area Director of the Bureau of Indian Affairs, Albuquerque Area Office.

3. Possession During Foreclosure. During the foreclosure action, unless the property has been abandoned, the mortgagor is entitled to remain in possession of the mortgaged premises.

4. Hearing. At the hearing, the Tribal Court shall have the following options:

A. Begin foreclosure proceedings. If the facts and law presented at the hearing demonstrate that foreclosure is warranted under this ordinance, or if the defendant fails to appear, the Court may begin foreclosure proceedings.

B. Defer foreclosure. In an action for foreclosure for failure to pay the mortgage, where the mortgagor depends on social security or public assistance for funds for payment of the mortgage, the Court may defer foreclosure where the reasons for nonpayment of the mortgage is delay in the receipt of such funds, provided that the defendant agrees in writing and on penalty of contempt, that when the check for social security or public assistance funds is received, it shall be delivered to the Court for payment of the mortgage.

C. Foreclosures filed after March 15. In an action for foreclosures where there is a growing crop on the property and when the foreclosure proceedings are commenced after March 15, of any year, the mortgagor may not be dispossessed of his property until such crop has been harvested and the mortgagor is entitled to retain such crops unless the mortgagee provides otherwise.

**SECTION 8-1-4 RIGHT TO CURE MORTGAGE FORECLOSURE
DEFAULT.**

1. After a notice of intention to foreclose has been given pursuant to Section 8-1-3 (B), at any time up to five (5) business days prior to the commencement of bidding at any sale ordered by the Court, the mortgagor or anyone in the mortgagor's behalf, may cure the mortgagor's default and prevent sale or other disposition of the real estate, by tendering the amount or performance specified in subsection (B) of this section.

2. To cure a default under this section, a mortgagor (debtor) shall:

A. Pay or tender in the form of cash, cashier's check, or certified check all sums, including any reasonable late penalty, required to bring the account current, with the exception of any amounts due by operation of any acceleration clause that may be included in any note, mortgage, or security agreement;

B. Perform any other obligation which the mortgagor would have been bound to perform in the absence of default or in the absence of the exercise of an acceleration clause, if any; and

C. Pay or tender any expenses properly associated with the foreclosure and incurred by the mortgagee to the date of debtor's payment or tender under this section. These costs and expenses may include, but are not limited to, advertising fees, trustee fees, and reasonable attorney's

fees.

3. Cure of a default pursuant to this section restores the mortgage debtor to the same position as if the default or acceleration had not occurred.

SECTION 8-1-5 INJURY TO PROPERTY.

The Court may, upon a showing of good cause, by injunction, restrain the party in possession from doing any act to the injury of real property during the foreclosure proceedings, and may allow the United States Department of Housing and Urban Development access to real property on which it holds a mortgage for purposes of preserving and securing it.

SECTION 8-1-6 FORECLOSURE SALES.

1. In all actions of foreclosure, the Court shall have authority, instead of decreeing that the mortgagor be foreclosed and barred from redeeming the mortgaged property, to order and decree that the property be sold and the proceeds be brought into court to be applied to the payment of the debt secured by the mortgage.

2. All sales of mortgaged property under a judgment of foreclosure shall be made by an official appointed by the Tribal Court for that purpose.

3. The sale shall be conducted by public auction, at the Governor's office or at a place on the Jemez Pueblo Reservation convenient to potential buyers, after such notices as required by

the Court. Notice shall be reasonably calculated to assure that potential buyers are aware of the sale and shall, at a minimum, include;

- A. publication of a notice of sale in a newspaper of general circulation on the Jemez Pueblo Reservation;
- B. notice mailed at least thirty (30) days before the sale to each party to the case at the address provided for service of papers in the case;
- C. notice mailed at least thirty (30) days before the sale to the Governor of the Pueblo;
- D. posting of notices of the foreclosure sale at the Governor's office and in other tribal buildings open to the public.

4. The officer or person making the sale shall issue to the purchaser an appropriate document entitling the purchaser to the property, immediately upon approval of the sale by the Tribal Council, if such approval is required by law.

SECTION 8-1-7 APPLICATION OF THE PROCEEDS OF SALE.

1. The proceeds of any sale of foreclosure shall be applied as follows:

- A. First, to the expenses of the sale, including the costs of notice and a reasonable fee by the official conducting the sale, except that no tribal or BIA employee shall be paid a fee for such services.

B. Second, to the discharge of the debts adjudged by the Court to be due on the most senior mortgage foreclosed in the action.

C. Third, to the discharge of the claims for the mortgage holders of other mortgages whether or not foreclosed, which are junior to the most senior mortgage foreclosed, in order of seniority.

D. Finally, if upon a sale of the whole mortgaged property, the net proceeds exceed the amount of the mortgage debt, this excess amount shall be returned to the mortgagor after payment of all related expenses.

2. If the proceeds, or any part thereof shall remain in the Court for a term of three (3) months without being applied for, the Court may direct that it be invested at interest for the benefit of the parties entitled thereto, subject to order of the Court.

3. If, upon a sale of the whole mortgaged property, the net proceeds shall be insufficient to pay the mortgage debt, the Court may enter a decree against the mortgagor or other party to the suit who is liable for the payment of the mortgage debt for the amount of the debt remaining unsatisfied after applying the proceeds of such sale to the debt.

4. If the mortgagee shall become the purchaser at such sale, the mortgagee shall be entitled to credit the amount of the purchase money against the debt, and shall be only required to pay the excess of the purchase money over the debt owed to the mortgagee, together with such additional amounts as may be

necessary to defray the expenses of the sale.

CHAPTER 2. LANDLORD AND TENANT PROCEEDINGS

SECTION 8-2-1 JURISDICTION

It is hereby declared that the civil jurisdiction of the Tribal Court includes jurisdiction over all landlord and tenant proceedings respecting any real property on the Reservation.

SECTION 8-2-2 FORCIBLE DETAINER OR EVICTION

An action of forcible detainer, or eviction, to recover the possession of real property is maintainable in the Tribal Court when:

1. A party, by force, intimidation, fraud, or stealth, has entered upon the prior actual possession of real property of another and detains the same;
2. A party, after entering peaceably upon real property, dispossess by force, threats, or menacing conduct the party in possession;
3. A party, by force or by threat or violence, unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise;
4. A lessee, or tenant in person or by subtenant, holds over after the termination of the lease or expiration of the term;
5. A lessee, or tenant, in person or by subtenant, fails to pay the rent for seven (7) days after it is due;
6. A party continues in possession after a sale of the real property; or
7. A party continues in possession after a judgment in

partition or after a sale under an order or decree of a court of competent jurisdiction.

SECTION 8-2-3 NOTICE TO QUIT.

A. When required -- when, on whom, and how served. In all cases arising under subsections 4, 5, 6 and 7 of Section 8-2-2, three (3) days written notice to quit or remove must be given to the lessee, tenant, subtenant, or party in possession, before proceedings can be instituted for forcible detainer or eviction. Notice shall be in writing and must be served in accordance with Tribal Court Rules of Civil Procedure.

SECTION 8-2-4 PROCEEDINGS IN TRIBAL COURT

1. Complaint. Eviction proceedings may be instituted in the Tribal Court by filing a civil complaint. This complaint must be filed in accordance with Tribal Court Rules of Civil Procedure and shall include:

- A. A legal description of the property from which the tenant is sought to be evicted.
- B. A description of the lease which gives rise to the action. A copy of the lease shall be attached to the complaint;
- C. Allegations of the particulars of the default which gives rise to the action;
- D. The total balance due and owing to the landlord;
- E. Allegations of facts showing notice as required by subsection (B) of this section. A copy of the notice shall be attached to the complaint.

F. Whether any other proceedings have been had in any Court for collection of any part of the debt secured by the lease, and if there have been, the details and particulars of such actions, including the amount of any judgments rendered and the amount collected.

2. Order and Notice. At the time the complaint is filed, the Court shall issue an order and notice scheduling a hearing on the complaint not less than fifteen (15) days after the complaint is filed. The order and notice shall inform the defendant that at the hearing the Court will determine whether the defendant and all other occupants of the premises and their personal belongings will be forcibly evicted. The order and notice shall also fix a date, not less than fifteen (15) days after the complaints is filed, for a hearing on the demand for a judgment for money or other relief, unless the defendant consents that such matters be heard at the hearing set on the demand for eviction. The Court shall furnish the plaintiff with a copy of the notice showing the time and place of the hearing and shall affix such notice to the copy of the complaint to be served on each defendant. Service of process should be made in accordance with the Tribal Court Rules of Civil Procedure.

3. Hearing. At the hearing, the Tribal Court shall have the following options:

A. Begin eviction proceedings. If the facts and law presented at the hearing demonstrate that eviction is warranted under this ordinance, or if the defendant fails

to appear, the Court may order eviction.

B. Dismiss the complaint. If the facts and law presented at the hearing demonstrate that eviction is not warranted under this ordinance, the Court may dismiss the complaint.

C. Defer eviction. In any action for eviction for failure to pay rent, where the defendant depends on social security or public assistance for funds for payment of rent, the Court may defer eviction for nonpayment of rent where the reason for nonpayment of rent is delay in the receipt of such social security or public assistance funds, provided that the defendant agrees in writing and on penalty of contempt, that when the check for social security or public assistance funds is received, it shall be delivered to the Court for payment of the rent.

SECTION 8-2-5 FORCIBLE EVICTION.

1. Where the Court orders an eviction, and the defendant or any other occupant of the premises refuses to vacate voluntarily by the effective date of that Order, the defendant or other occupants may be forcibly removed from the premises by a Bureau of Indian Affairs police officer, tribal police officer or tribal officials. At the hearing where the eviction is ordered, the Court shall inform the defendant that if he/she does not vacate the premises voluntarily by the effective date, he/she and the other occupants will be subject to forcible eviction, and their property will be

subject to storage, sale and disposal as set forth in Section 8-2-6.

2. Following eviction, the Court may allow the Housing Authority or the United States Department of Housing and Urban Development access to any property leased by either or them for purposes of preserving and securing it.

SECTION 8-2-6 STORAGE OF PERSONAL PROPERTY FOLLOWING FORCIBLE EVICTION.

Following forcible eviction of the defendant and/or other occupants, the former occupants' personal property shall be stored by the owner of the premises for at least thirty (30) days, either on the premises or at another suitable location. In order to reclaim their property, the former occupants must pay the reasonable costs of its removal and storage. If they do not pay such costs within thirty (30) days, the owner is authorized to sell the property in order to recover these costs. Upon receipt by the former occupants, the landlord must provide them with pertinent information concerning the sale, including the time, date and location. Any proceeds from the sale in excess of the storage and removal costs must be remitted to the former occupants. Nothing in this Section shall be construed to prevent the former occupants from reclaiming property remaining after the sale if they can arrange to do so in a manner satisfactory to the owner.

SECTION 8-2-7 DEFINITION OF LESSEE.

As used in this ordinance, "lessee" refers to a person who may have secured rights to possession of a house leased by the Tribe

and subject to rules and regulations of the Department of Housing and Urban Development. The rules and regulations of the Department of the Interior pertaining to leases of tribal lands are not intended to apply to such lessees.