

PUEBLO OF ACOMA LAWS 2003 (2019 Replacement)

**TITLE 2
GENERAL CIVIL MATTERS**

This Replacement includes laws enacted since the Pueblo of Acoma Laws 2003 pursuant to Tribal Council Resolutions dated January 1, 2017 through December 31, 2018.

PUEBLO OF ACOMA LAWS 2003 (2019 Replacement)

**TITLE 2
GENERAL CIVIL MATTERS**

These laws may be cited by Title, Chapter, Section and Year as Section or
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PUEBLO OF ACOMA LAWS 2003 (2019 REPLACEMENT)

**TITLE 2
GENERAL CIVIL MATTERS**

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PUEBLO OF ACOMA LAWS 2003 (2019 Replacement)

**TITLE 2
GENERAL CIVIL MATTERS**

Chapter 1. APPLICABLE LAW

2-1-1 Applicable Law. Where no written Acoma law exists, the Tribal Court, to the extent such law is consistent with the traditions and common law of the Pueblo, shall apply federal law. If no federal law is applicable to the case before the Court, the Tribal Court, to the extent such law is consistent with the traditions and common law of the Pueblo, shall apply the laws of the State of New Mexico. If no federal or State of New Mexico law can be applied, the Tribal Court, to the extent such law is consistent with the traditions and common law of the Pueblo, shall look to legal precedents of other Pueblos, tribes, and other states, foreign and domestic.

Origins: A version of this Section was first adopted in the 1971 Ordinance, Chapter 2, Section 2. Revised and restated in Tribal Council Resolution No. TC-DEC-1-99-1 in 1999.

Chapter 2. TORT CLAIMS

2-2-1 Evidentiary Privileges. All evidentiary privileges recognized in the courts of the United States shall be recognized by the Acoma courts in addition to any evidentiary privilege recognized in Acoma law.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-DEC-1-99-2.

2-2-2 Medical Services - Certification. Any person who represents that he or she is a licensed provider of healthcare services on Acoma Pueblo Lands must be licensed by the State of New Mexico or the United States of America. Any person who does not comply with this section is subject to exclusion from Acoma Pueblo lands.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-DEC-1-99-2.

2-2-3 Medical Malpractice.

A. Subject to the provisions of subsection B of this section, and as required by federal and other tribal laws, the Medical Malpractice Act of the State of New Mexico, including, but not limited to, limitations on damages, § 41-5-6 NMSA 1978 (1996 Repl. Pamp.), shall apply to

any medical malpractice actions arising from the provision of healthcare services by any person claiming to be a licensed provider of healthcare services.

- B. Anyone seeking to file a medical malpractice action in Acoma courts must first present the claim to the New Mexico Medical Review Commission. This remedy must be exhausted before filing any claim with the Acoma courts. The parties to the Commission proceedings shall be responsible for any costs assessed by the Commission.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-DEC-1-99-2. (Article 2, Section 1).

Chapter 3. MORTGAGE LAW

2-3-1 Jurisdiction.

- A. Subject to the provisions of Subsection B, the Tribal Court of the Pueblo of Acoma shall have exclusive jurisdiction over all actions arising under this Chapter, including any foreclosure and eviction actions arising on lands located within the exterior boundaries of the Pueblo of Acoma.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-DEC-1-99-2. (Article 1, Section 1).

Annotations: This section was inadvertently omitted from the 2000 Supplement and supplied in this 2019 Pueblo of Acoma Laws 2003. The insertion of this section caused re-numbering to this chapter.

- B. Notwithstanding any other provision in this Chapter, if a federal agency becomes the holder of a leasehold mortgage or other lien under a federal mortgage loan guarantee or insurance program, such as the Section 184 Indian Home Loan Guarantee program, the United States may file a foreclosure action in the appropriate federal court. Such action shall be governed by the laws governing the applicable federal program and any other applicable federal law.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-DEC-1-99-2. (Article 1, Section 1).

Annotations: This section added as part of Tribal Council Resolution No. 2018-10 adopted on May 21, 2018 to allow federal agencies to file actions in federal courts. It is consistent with Acoma Law as determined by Acoma Appellate Forum in *Carmona v Acoma Pueblo Tribal Court*, 25 ILR 3123 (1998).

2-3-2 Establishment and Purpose of Mortgage Law.

- A. It is necessary to adopt a Mortgage Law which are culturally sensitive to the traditions of the Pueblo of Acoma, to provide for the mortgaging of Pueblo Trust Land for home financing, the foreclosure of mortgaged Leasehold property upon default, and the eviction of persons who refuse to peaceably vacate property upon termination of a Lease or where property has been foreclosed upon.
- B. The purpose of this Law is to assist Tribal members in obtaining home and business mortgage financing on lands within the jurisdiction of the Pueblo of Acoma, including Trust Land or Restricted Land, by prescribing procedures relating to recordation, foreclosure, and eviction in connection with Mortgages given to secure loans made by Mortgagees.

Origin: Adopted in 1999 by Tribal Council Resolution No. TC-NOV-23-99-2A. (Article 2, Section 1).

Annotations: Part A is found in Tribal Council Resolution No. TC-NOV-23-99-2A, at Section No. 6 of the "Whereas" Part B found in Article 2, Section 1 of the Pueblo of Acoma Mortgage Code as reviewed and adopted by Tribal Council Part B added by Tribal Council Resolution No. 2017-043 adopted November 3, 2017.

2-3-3 Limited Waiver of Sovereign Immunity.

- A. The Pueblo and its Designated Housing Entity hereby authorize a limited waiver of immunity from suit, with respect to specific controversies or claims described in this Chapter that may arise out of or relate to the Pueblo's or its Designated Housing Entity's obligations under a mortgage or lease entered into by the Pueblo or its Designated Housing Entity under a mortgage assumption pursuant to Article IV, Section 1(d) or Section 8(b)(3) of this Chapter. In connection with such limited waiver, the Pueblo and its Designated Housing Entity consent solely to the jurisdiction of the Pueblo of Acoma Tribal Courts or the jurisdiction of the appropriate federal court as described in Section 2-3-1(B) with respect to (a) actions in equity brought by any party to such mortgage or lease seeking specific performance of any of the Pueblo's or its Designated Housing Entity's express obligations thereunder and (b) actions at law only for actual damages which shall consist exclusively for remaining sums secured by a mortgage. This waiver of immunity is not intended, nor shall it be construed (a) to extend to any claim for punitive or compensatory damages, (b) to waive the Pueblo's or its Designated Housing Entity's

immunity from suit for any other purpose or with respect to any controversy, claim, or other matter not specifically mentioned in this Section or (c) to extend to the benefit of any person other than the parties to a mortgage or lease or their successors or assigns. This limited waiver of immunity from suit shall not be construed as an admission of liability of the Pueblo or its Designated Housing Entity as to any claim for damages or as an agreement or willingness to pay any amount as damages absent a judicial determination of liability, and the Pueblo or its Designated Housing Entity shall have the right to defend any of such claim fully on the merits.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-NOV-23-99-2A (Article 1, Section 2). Revised in 2003 by Tribal Council Resolution No. TC-NOV-5-03-VA.

Annotation: In 2003, Tribal Council added the "Designated Housing Entity" to the provisions of this Section, Tribal Council Resolution No. TC-NOV-5-03-A..

This section was amended as part of Tribal Council Resolution No. 2018-10 adopted on May 21, 2018 to allow federal agencies to bring actions in federal court. It is consistent with Acoma Law as determined by Acoma Appellate Forum in *Carmona v Acoma Pueblo Tribal Court*, 25 ILR 3123 (1998).

2-3-4 Definitions.

- A. "Caciques" shall mean the designated leaders of the Antelope Clan, who along with members of the Antelope Clan are considered the traditional caretakers of the land belonging to the Pueblo of Acoma.

Origins: Adopted in 2003 by Tribal Council Resolution No. TC-NOV-5-03-VA.

Annotations: Amended to reflect that "Caciques" means the "designated leaders of the Antelope Clan," as part of Tribal Council Resolution No. 2017-043 adopted on November 3, 2017.

- B. "Designated Housing Entity" means the entity designated by the Pueblo to implement and manage its U.S. Department of Housing and Urban Development funded housing programs and other programs. The Pueblo of Acoma Housing Authority is the Pueblo's Designated Housing Entity as of the date of the revision of this Chapter.

Origins: Adopted in 2003 by Tribal Council Resolution No. TC-NOV-5-03-VA.

- C. "Land Assignment" means a transfer of an interest in tribal lands by

the Caciques and members of the Antelope Clan to an enrolled Tribal member in accordance with the traditional laws of the Pueblo.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-DEC-1-99-2. Revised in 2003 by Tribal Council Resolution No. TC-NOV-5-03-VA.

Annotations: In 2003, Tribal Council clarified who assigns the land (the Caciques of the Pueblo) and how (under "traditional" law). Amended as part of Tribal Council Resolution No. 2017-043 adopted on November 3, 2017 to insert "and members of the Antelope Clan" after "Caciques."

- D. "Lease" means [a] written agreement for the use of land, including Trust Land or Restricted Land, or other Real property, under specified conditions and for a certain period of time.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-DEC-1-99-2. Revised in 2003 by Tribal Council Resolution No. TC-NOV-5-03-VA.

Annotations: In 2003, Tribal Council modified the word agreement with "written" and inserted the last phrase of this definition beginning with the word "under".

- E. "Leasehold estate" means an interest in Real property established pursuant to a Lease between an owner of land or land interest as Lessor, and a second party as Tenant.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-DEC-1-99-2. Revised in 2003 by Tribal Council Resolution No. TC-NOV-5-03-VA.

Annotations: In 2003, Tribal Council inserted the phrase "second party as Tenant" in lieu of "third party as lessee".

- F. "Lessor" means the owner of land or land interest, including the Tribe. The Tribe shall be the beneficial or equitable owner of Pueblo Lands underlying a Leasehold estate on which a Mortgage has been given. The Lessor shall include the successor(s) or assign(s) of such Lessor.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-DEC-1-99-2. Revised in 2003 by Tribal Council Resolution No. TC-NOV-5-03-VA.

Annotations: In 2003, Tribal Council deleted "Trust" from the phrase "Pueblo Trust Lands" and deleted the phrase "Restricted Lands".

- G. "Mortgage" means an agreement under which a party lends money to

a homeowner and the homeowner agrees to pledge the home and the land (if held in fee [by the home owner]) or leasehold interest (if restricted land) as security for the loan. If the homeowner fails to pay the loan, the lender may foreclose on the home and the land or leasehold interest in a legal proceeding. The home and leasehold interest may then be sold under the supervision of [a] Court and the proceeds used to pay the debt. Any document that meets the standards of this definition is a mortgage, regardless of the title on the document.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-DEC-1-99-2. Revised in 2003 by Tribal Council Resolution No. TC-NOV-5-03-VA.

Annotations: In 2003, Tribal Council provided the above new definition. In 2018, bracketed language added to conform to tribal law.

- H. "Mortgagee" means any creditor lender or any successors or assigns of any such lender, who takes or receives a mortgage or leasehold mortgage. This definition also includes any subsequent holder, whether by assignment, succession or otherwise, of the original Mortgagee's right, title or interest in and to the Mortgage and/or the mortgaged property, together with the improvements. This term includes, but is not limited to, the Secretary of the U.S. Department of Housing and Urban Development, the Secretary of the U.S. Department of Veterans Affairs and the Secretary of the U.S. Department of Agriculture, and federal government Sponsored Enterprises such as Fannie Mae and their designees.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-DEC-1-99-2. Revised in 2003 by Tribal Council Resolution No. TC-NOV-5-03-VA.

Annotations: In 2003, Tribal Council added the last phrase of the first sentence beginning with "who takes..." Tribal Council also inserted the last sentence in this subsection. Also, Tribal Council adds the word "creditor" in the first sentence in lieu of "mortgage". The phrase "and federal government Sponsored Enterprises such as Fannie Mae" was inserted after "U.S. Department of Agriculture" as part of Tribal Council Resolution No. 2018-10 adopted on May 21, 2018 to address HUD concerns.

- I. "Mortgage foreclosure proceeding" means a proceeding in the Pueblo of Acoma Tribal Court or, a federal court pursuant to Section 2-3-1(B): to foreclose the interest of the Mortgagor(s), and each person or entity claiming through the Mortgagors in land, including Restricted Land, on which a Mortgage has been made by a Mortgagee: and to either (i)

order sale of the residential property; or (ii) to assign such interest of the Mortgagor to the Mortgagee or the Mortgagee's successors or assigns.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-DEC-1-99-2. Revised in 2003 by Tribal Council Resolution No. TC-NOV-5-03-VA.

Annotations: In 2003, Tribal Council deleted the term "Trust Land" from the definition of "Restricted Land". The modified definition includes "Trust Lands". Amended as part of Tribal Council Resolution No. 2018-10 adopted on May 21, 2018 to explicitly allow mortgage foreclosure proceedings to be brought in Federal Court.

- J. "Mortgagor" or "Borrower" means any eligible Tribal member or entity borrower who has executed a Mortgage on land [held by the Mortgagor or Borrower] or its beneficial interest in Restricted Land [or fee land held by the Pueblo]. This definition also includes any heir(s), successor(s), executor(s), administrator(s) or assign(s) of such borrower.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-DEC-1-99-2. Revised in 2003 by Tribal Council Resolution No. TC-NOV-5-03-VA.

Annotations: In 2003, Tribal Council deleted the term "Trust Land" from the definition of "Restricted Land". Cross reference definition for "Restricted Land". The modified definition includes "Trust Land". Bracketed language added in 2018 to conform to tribal law.

- K. "Nuisance" means maintenance on the mortgaged property of a condition which:

1. Unreasonably threatens the health or safety of the public or neighboring land users; or
2. Unreasonably and substantially interferes with the ability of neighboring Real property users to enjoy the reasonable use and occupancy of their property.

Origin: Adopted in 1999 by Tribal Council Resolution No. TC-DEC-1-99-2.

- L. "Pueblo" refers to Aak'u me' or the Pueblo of Acoma.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-DEC-1-99-2. Revised in 2003 by Tribal Council Resolution No. TC-NOV-5-03-VA.

Annotations: In 2003, Tribal Council inserted the traditional name of the Pueblo (Aak'u me').

- M. "Real property" means land and whatever is erected or growing upon or affixed to the land, including a house, except that real property shall not include items of cultural significance as defined by tribal and federal law.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-DEC-1-99-2. Revised in 2003 by Tribal Council Resolution No. TC-NOV-5-03-VA.

Annotations: in 2003, Tribal Council added the "exception" clause to this definition.

- N. "Restricted Land" means land within the jurisdiction of the Pueblo, including trust lands, that is subject to restrictions against alienation imposed by federal treaty, statute, executive order, or the Pueblo.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-DEC-1-99-2. Revised in 2003 by Tribal Council Resolution No. TC-NOV-5-03-VA.

Annotations: In 2003, Tribal Council added the phrase "including trust lands" to the definition of Restricted Lands.

- O. "Subordinate lienholder" means the holder of any lien, including a Mortgage, perfected by the recording of a lien as set forth under this Chapter, after a lien previously perfected pursuant to this Chapter; provided, however, such definition shall not include the Pueblo with respect to a claim for a tribal tax on the mortgaged property, where applicable.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-DEC-1-99-2. Revised in 2003 by Tribal Council Resolution No. TC-NOV-5-03-VA.

Annotations: In 2003, Tribal Council deleted the phrase "subsequent to the recording of a mortgage under this Chapter" and replaced it with the phrase "by the recording of a lien as set forth under this Chapter."

- P. "Tenant" means any person who occupies land or other Real property, including Restricted Land, as lessee, under a Leasehold Estate with the Lessor.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-DEC-1-99-2. Revised in 2003 by Tribal Council Resolution No. TC-NOV-5-03-VA.

Annotations: In 2003, Tribal Council deleted the term "Trust Land" from the definition of "Restricted Land". Cross Reference definition of "Restricted Land." The modified definition includes "Trust Land".

- Q. "Tribal Court" means: (i) Pueblo of Acoma Tribal Court; or (ii) such body as may now or hereafter be authorized by the laws of the Pueblo to exercise the powers and functions of a Tribal Court of law.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-DEC-1-99-2.

- R. "Tribal member" means any person enrolled as a tribal member under the laws of the Pueblo of Acoma.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-DEC-1-99-2.

- S. "Tribal Recording Office" means the office designated by the Pueblo to perform the recording functions required by this Chapter.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-DEC-1-99-2.

- T. "Tribe" refers to the Pueblo of Acoma.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-DEC-1-99-2.

- U. "Trust Land" means land within the jurisdiction of the Pueblo, title to which is held by the United States for the benefit of the Tribe or an individual member of the Pueblo of Acoma.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-DEC-1-99-2.

Annotation: Added as part of Tribal Council Resolution No. 2017-043 adopted on November 3, 2017.

- V. "Unlawful detainer action" means a suit brought before the Tribal Court or a federal court pursuant to Section 2-3-1(B) to terminate a Tenant's or Lessee's interest in a dwelling and/or lease, including an interest in Restricted Land, prior to eviction from the property.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-DEC-1-99-2. Revised in 2003 by Tribal Council Resolution No. TC-NOV-5-03-VA.

Annotations: In 2003, Tribal Council deleted the phrase

"Mortgagor's or Tenant's interest in land, including Trust Land or Restricted land, and/or to evict any person for occupancy of such property" and inserted a new concluding phrase beginning with "Tenant's or Lessee's...". Amended as part of Tribal Council Resolution No. 2018-10 adopted on May 21, 2018 to explicitly allow mortgage foreclosure proceedings to be brought by federal agencies in Federal Court.

- W. "Waste" means spoil or destruction of land, buildings, gardens, trees, or other improvements on the mortgaged property which result in substantial injury to such property.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-DEC-1-99-2.

- X. "Writ of restitution" is an order of the Tribal Court or a federal court pursuant to Section 2-3-1(B):

1. Restoring an owner, Lessor, Mortgagee (or other successor in interest) to possession of land or Real property, including Restricted Land, subject to a Mortgage.
2. Evicting a Tenant or other occupant from such property.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-DEC-1-99-2. Revised in 2003 by Tribal Council Resolution No. TC-NOV-5-03-VA.

Annotations: In 2003, Tribal Council deleted the term "Trust Land" from the definition of "Restricted Land". Cross Reference the definition of "Restricted Land". The modified definition includes "Trust Land". Amended as part of Tribal Council Resolution No. 2018-10 adopted on May 21, 2018 to explicitly allow proceedings to be brought by federal agencies in Federal Court.

Land Assignments

2-3-5 Land Assignments.

- A. Land shall be assigned only to Tribal members eligible for land use rights in accordance with tribal law established by the Caciques and the Antelope Clan of the Pueblo. The Caciques and the Antelope Clan have the exclusive authority under Pueblo law to assign land belonging to the Pueblo. Such authority shall include but not be limited to, the authority to:

1. Validate land assignments.

2. Cancel a land assignment where an assignee has not used the land within two (2) years from the date of assignment or where a borrower's leasehold interest on the assigned land has been foreclosed.
 3. Reassign land that has reverted to the Caciques and the Antelope Clan, to another Tribal Member.
 4. Determine succession to land assignments in accordance with traditional laws.
- B. No land assignment shall be valid without the signature of the appropriate Cacique.
- C. In no instance shall the following lands be assigned for purposes of obtaining a leasehold mortgage.
1. Land in the "old" Acoma area and its surrounding valley.
 2. Flood plains areas, including, but not limited to, the area south of Acomita Lake.
 3. Irrigable lands as determined by the Pueblo of Acoma Water Rights Commission.
 4. Grazing lands, except where specifically authorized by the Pueblo of Acoma Tribal Council.
 5. Areas where no infrastructure (electricity, water and sewer) exists.
- D. Where a land assignment is held by more than one person, the person seeking a Lease on the land assignment, or a portion thereof, shall obtain the consent of all other assignees to assign their interests in the land assignment to the person seeking the Lease.
- E. Land assignments and Leases shall be considered land interests. Succession to any land interests shall be in accordance with tribal law, including traditional laws of inheritance.
- F. No compensation shall be allowed for land assignments reverting back to the Caciques and the Antelope Clan.
- G. No person shall sell or trade a land assignment without the knowledge and consent of the Caciques and the Antelope Clan. No land assignment in the "old" Acoma area and its surrounding valley shall

be sold.

Origins: Adopted in 2003 by Tribal Council Resolution No. TC-NOV-5-03-VA.

Annotations: Amended as part of Tribal Council Resolution No. 2017-043 adopted on November 3, 2017 to conform to Tribal law add references to the Antelope Clan.

Mortgaging of Land and Leasehold Interest

2-3-6 Mortgage of Leasehold Estate.

- A. Any tribal member who has a land assignment granted to them pursuant to tribal law may, with approval of the Pueblo, obtain a lease on the land, and mortgage the leasehold estate for the purpose of obtaining home financing on said land, except that no leasehold estate shall be obtained on lands described in Section 2-3-5(C).
- B. The Pueblo's Designated Housing Entity may, with approval of the Pueblo, obtain a lease or other land interest on lands set aside by the Pueblo for housing development and (i) mortgage the leasehold estate for the purpose of obtaining home financing on said land; or (ii) sublease lots to tribal members for home mortgaging.

Annotation: Amended as part of Tribal Council Resolution No. 2017-043 adopted on November 3, 2017 to clarify that Pueblo of Acoma Housing Authority may obtain any type of land interest from the tribe, and either mortgage it or sublease lots to tribal members for mortgaging.

- C. All leases shall include an implied right of way to the leased parcel. No leasehold exceeding 150' x 150' shall be mortgaged.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-NOV-23-99-2A (Article 2, Section 2). Revised in Tribal Council Resolution No. TC-NOV-5-03-VA.

Annotations: In 2003, Tribal Council substantially changed the language in this section. The Pueblo of Acoma Laws supply the information in brackets. Amended as part of Tribal Council Resolution No. 2017-043 adopted on November 3, 2017.

2-3-7 Priority. A Mortgage recorded in accordance with the recording procedures set forth in this Chapter shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim (except a lien or claim arising from a tribal tax assessed against property subject to the Mortgage or other tribal assessment).

Origins: Adopted in 1999 by Tribal Council Resolution No.

TC-NOV-23-99-2A (Article 2, Section 3). Revised in Tribal Council Resolution No. TC-NOV-5-03-VA.

Annotations: In 2003, Tribal Council included the phrase "or other tribal assessment" at the end of the sentence.

2-3-8

Recording.

- A. The recording of Mortgages and Leases on lands held by the Pueblo located within the exterior boundaries of the Pueblo, including Restricted Land, shall be at the Bureau of Indian Affairs Area Land Titles and Records Office. This provision shall in no instance apply to other land uses, such as grazing privileges.

Annotations: In 2003, Tribal Council added "held by the Pueblo" in the first sentence and deleted "Trust Land" from the sentence. Also, Tribal Council added the last sentence to this subsection.

- B. Where a Mortgagee requires that a Lease or Mortgage also be recorded in the county recorder's office in the state in which the mortgaged properties are located, the Lease or Mortgage shall also be recorded at such county recorder's office. Recording at the county recorder's office shall be only for notice and convenience purposes and is not intended to give the county regulatory authority over restricted lands.

Annotations: In 2003, Tribal Council added the last sentence of this subsection.

- C. The Tribal Recording Office shall be maintained in the Tribal Court, or should be Realty and Natural Resources Department other designated office, and shall maintain a system for the recording of Mortgages and such other documents as the Pueblo may designate by law or resolution including, without limitation, any Lease.

- D. The Tribal Recording Office shall endorse upon any Lease and/or Mortgage or other document received for recording the following:

1. The date and time of receipt of the Lease and/or Mortgage or other document.
2. The filing number, to be assigned by the Tribal Recording Office, which shall be a unique number for each Lease and/or Mortgage or other document received.
3. The name of the person in the Tribal Recording Office receiving the Lease and/or Mortgage or other document.

- E. Upon completion of the above endorsements, the Tribal Recording Office shall make true and correct copies of the Lease and/or Mortgage or other security instrument and shall certify each copy as follows:

PUEBLO OF ACOMA) ss.

I certify that this is a true and correct copy of a document received for recording this date.

Given under my hand and seal this _____ day of _____.

(SEAL)

Signature

Title

- F. The Tribal Recording Office shall maintain such copies in the records of the recording system and shall return the original Lease and/or Mortgage or other document to the person or entity that presented the same for recording.
- G. The Tribal Recording Office shall also maintain a log of each Lease and/or Mortgage or other document recorded in which there shall be entered the following:
1. The name(s) of the Mortgagor(s) of each Mortgage, identified as such.
 2. The name(s) of the Mortgagee(s) of each Mortgage, identified as such.
 3. The name(s) of the grantor(s), grantee(s), or other designation of each party named in any other documents including any Lease.
 4. The date and time of receipt.
 5. The filing numbers assigned by the Tribal Recording Office.
 6. The name of the person in the Tribal Recording Office receiving any Lease, Mortgage or other document.

- H. The certified copies of any Leases, Mortgages and other documents and the log maintained by the Tribal Recording Office shall be made available for public inspection and copying, subject to the payment of reasonable copying fees.

Annotations: In 2003, Tribal Council added the concluding phrase of this sentence beginning with "subject to....".

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-NOV-23-99-2A (Article 2, Section 4). Revised in 2003 by Tribal Council Resolution No. TC-NOV-5-03-VA.

Foreclosure Procedures

2-3-9 Pre-Acceleration and Pre-Foreclosure Notice.

- A. Upon the default of the Mortgagor(s) and prior to instituting any acceleration clause or foreclosure proceedings, the Mortgagee shall notify the Borrower, the Pueblo and its Designated Housing Entity in writing of its intention to initiate such actions. The notice shall provide the basis for the proposed acceleration or foreclosure, the amount of the delinquency and the cure period, which must be at least sixty (60) days, during which time the Mortgagor can prevent such acceleration or foreclosure, and a statement that upon expiration of the 60 days, the Lessor or its Designated Housing Entity may exercise its right to acquire the Leasehold estate subject to all valid liens and encumbrances, and subject to Mortgagor's right to cure the payment default during that time. Such notice must be hand-delivered or sent by certified mail to the Borrower, the Governor of the Pueblo and the Executive Director of the Pueblo's Designated Housing Entity. Automatic acceleration clauses are not allowed.

Annotation: Example of an Acceleration Clause: The Mortgagee may, as allowed by and except as limited by the federal government and this law, require immediate payment in full of all sums secured by the mortgage or security instrument if the Mortgagor defaults or breaches any stated covenant within the Mortgage or security instrument. Automatic acceleration clauses are not allowed.

- B. Upon receipt of notice, a qualified staff person from the Pueblo Governor's office and/or the Pueblo's Designated Housing Entity shall assist the lender in its efforts to work with a defaulting Borrower, and ensure that: (i) the Borrower is informed of the reason for the proposed acceleration or foreclosure; (ii) the Borrower is informed of the Borrower's rights and duties regarding the proposed acceleration

or foreclosure; and (iii) assistance is provided to the Borrower in a lender's attempts to negotiate a settlement of the proposed acceleration or foreclosure. That staff person may also assist with arranging for and conducting any face-to-face interviews.

Annotations: The reference to the "designated housing department" or "entity" is the Pueblo of Acoma Housing Authority ("PAHA"). Cross reference to Title 16. Amended as part of Tribal Council Resolution No. 2018-10 adopted on May 21, 2018 to address U.S. Veterans Administration concerns.

- C. Other than to hand-deliver the notices required by [Section 2-3-9(A) and (E)] of this [Chapter], no Mortgagee shall enter Pueblo lands to contact a Mortgagor concerning possible foreclosure unless said Mortgagee has first obtained the consent of the Governor of the Pueblo or his designee which shall not be unreasonably denied. Contact of the Mortgagor shall be permitted only where the Mortgagee is accompanied by a law enforcement officer of the Pueblo, other Pueblo official, or an employee or representative of the Pueblo's Designated Housing Department or Entity. Any reasonable request for escorted access will be given expedited approval.

Annotation: Amended as part of Tribal Council Resolution No. 2018-10 adopted on May 21, 2018, substantially re-written to address U.S. Veterans Administration concerns, deleting "written consent shall be given only after negotiations under paragraph (b) above are unsuccessful or where the Governor or his designee determines that contact of the Mortgagor would aid a negotiated settlement."

- D. Upon the failure of negotiations and upon the expiration of any applicable cure period, which shall be at least sixty (60) days provided Lessee under a mortgage or security instrument, the Lessor or its Designated Housing Entity shall have the right of first refusal to acquire the Leasehold Estate (subject to all valid liens and encumbrances), and the right shall continue for thirty (30) days following service of the Court's order of foreclosure described in [Section 2-3-17].

Annotation: Amended as part of Tribal Council Resolution No. 2018-10 adopted on May 21, 2018 to address HUD concerns by deleting "Tribal" before "Court".

- E. The Mortgagee shall notify the Borrower, the Pueblo and its Designated Housing Entity in writing of the availability of the property. Such notice must be hand-delivered or sent by certified mail to the Borrower, the Governor of the Pueblo and the Executive Director of

the Pueblo's Designated Housing Entity. The right of first refusal shall be exercised by written notice to the Mortgagee within sixty (60) days from receipt of the Mortgagee's written notice.

- F. During the sixty (60) day period in which the Pueblo or its Designated Housing Entity may exercise the right of first refusal, the Mortgagor may cure a payment default by paying the amount of the arrearage, which shall be the sum of the monthly payments missed up to and including the date of payment, plus standard and normal late fees.

Origin: Adopted in 1999 by Tribal Council Resolution No. TC-NOV-23-99-2A (Article 3, Section 1). Revised in 2003 by Tribal Council Resolution No. TC-NOV-5-03-VA.

Annotation: In 2003, Tribal Council substantially revised the subsections in this section. Notably, the 1999 Tribal Council Resolution did not allow enforcement or acceleration clauses. The 2003 changes allow acceleration, but only after 60 day notice is given.

Annotation: Pueblo of Acoma Laws supply the bracketed information in the subsections consistent with the enacting Tribal Council Resolution.

Annotation: The Reference to "Designated Housing Entity" is Pueblo of Acoma Housing Authority ("PAHA"). Cross reference to Title 16.

2-3-10

Mortgage Foreclosure Proceedings. In the event of default of the Mortgagor(s), and upon expiration of any applicable cure periods under a Mortgage and expiration of the Lessor's first right of refusal in the preceding section, the Mortgagee or its successors and assigns, may commence a Mortgage foreclosure proceeding in the Tribal Court or, a federal court pursuant to Section 2-3-1(B):

- A. By filing a verified complaint:
1. Citing authority for jurisdiction of the Court;
 2. Naming the Mortgagor(s) and each record owner, including the Mortgagor's assignees and each lien holder, claiming through the Mortgagor(s) subsequent to the recording of the Mortgage, including each Subordinate lienholder (except the Pueblo with respect to a claim for a tribal tax on the mortgaged property), as a defendant;
 3. Describing the property subject to the Mortgage;
 4. Stating the facts concerning: (a) the execution of any Lease

and/or the Mortgage; (b) the recording of the Mortgage; and (c) the alleged default(s) of the Mortgagor(s); (d) the total balance due; (e) any other facts as may be necessary to constitute a cause of action; and (f) a statement that the Mortgagee has complied with the provisions of this Chapter; and (g) a request for specific relief;

5. Having appended as exhibits true and correct copies of each promissory note, Lease, if any, Mortgage, and, if applicable, assignment thereof relating to such mortgaged property;
6. Including an allegation that all relevant requirements and conditions prescribed in the Mortgage and the Lease, if any, have been complied with by the Mortgagee or its successors or assigns; and
7. Otherwise satisfying the requirements of the Court;

- B. The complaint must be served upon the Mortgagor with a summons, issued as in other cases, requiring the Mortgagor(s) and each other person or entity claiming through the Mortgagor as defendants to respond to the complaint and to appear for a hearing upon the complaint on a date and time specified in the summons, and filing a copy of such summons with the Court.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-NOV-23-99-2A (Article 3, Section 2). Revised in 2003 by Tribal Council Resolution No. TC-NOV-5-03-VA.

Annotation: In 2003, Tribal Council added subsection A(4)(d),(f) and (g) to the laws; Also, Tribal Council added a new subsection A(7) and a new subsection B. The previous subsection B was revised and is now located at subsection C.

Annotation: Amended as part of Tribal Council Resolution No. 2018-10 adopted on May 21, 2018 to address HUD concerns requiring deletion of former section B. ("No claim for a deficiency judgment shall be maintained by the mortgagee".)

2-3-11

Service of Process Procedures. The laws of the Pueblo governing services of process and all other matters relating to the conduct of Tribal Court proceedings shall apply to any Mortgage Foreclosure Proceeding pursuant to this Chapter brought in Tribal Court.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-NOV-23-99-2A (Article 3, Section 3).

Annotations: This section was inadvertently omitted from the 2000 Supplement and supplied in this Pueblo of Acoma Laws 2003. The insertion of this section caused re-numbering to this chapter. Amended as part of Tribal Council Resolution No. 2018-10 adopted on May 21, 2018 to address HUD concerns limiting applicability of tribal service of process procedures to Tribal Court proceedings.

2-3-12 Possession During Foreclosure. The Mortgagor is entitled to remain in possession of the mortgaged property during the foreclosure action, unless the property has otherwise been abandoned.

Origins: Adopted in 2003 by Tribal Council Resolution No. TC-NOV-5-03-VA.

2-3-13 Dismissal of Foreclosure upon Payment by Mortgagor.

- A. The foreclosure proceeding shall be dismissed if the Mortgagor, before judgment, tenders to the Mortgagee or its successors or assigns payment of the total amount required to be tendered, including costs of the filing of a civil action.
- B. Notice of tender. To invoke this section, the Mortgagor must tender payment to the Mortgagee or its successors or assigns and file with the Tribal Court or, a federal court [where an action is pending] pursuant to Section 2-3-1(B) a notice of tender, indicating that the Mortgagor is tendering the amount described below.
- C. Amount required to be tendered. The amount tendered shall consist of the following:
 - 1. Arrearage. The arrearage amount shall be the sum of the monthly payments missed up to and including the date of the tender. This may also include standard and normal late fees.
 - 2. Costs and fees. Reasonable costs and fees, including attorney's fees, determined by the Court, but in no event shall they exceed costs actually incurred.
- D. Disputes regarding cost. Where the Mortgagor and Mortgagee or its successors and assigns are unable to agree on reasonable costs and fees, the Mortgagor shall nonetheless file its notice of tender and tender payment of costs and fees to the Court, indicating that this amount is disputed. The Mortgagee shall file a petition with the Court that details the amount in dispute, within five (5) business days of the Mortgagor's filing of the notice of tender. The Court shall stay the proceedings for no longer than twenty (20) days pending resolution of

the dispute.

- E. Dismissal of stay. Where the Court's determination of reasonable costs and fees exceeds the amount tendered, the stay shall be lifted if the Mortgagor fails to file a revised notice of tender and tender additional payment within ten (10) days after the date of the Court's determination is filed.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-NOV-23-99-2A (Article 3, Section 4). Revised in 2003 by Tribal Council Resolution No. TC-NOV-5-03-VA.

Annotation: In 2003, Tribal Council inserted a new last sentence at subsection (C)(1). Tribal Council also deleted subsection (C)(3) because acceleration clauses are no longer prohibited. Cross reference Section 2-3-9(A)(1).

Annotation: At subsection (D), Tribal Council deleted the reference of "fee" before "petition" in the second sentence and inserted "that details the amount in dispute" in the same second sentence.

Annotation: At subsection E, Tribal Council added a new concluding line which begins with "and tender...".

Annotation: All sections amended as part of Tribal Council Resolution No. 2018-10 adopted on May 21, 2018 to address HUD concerns to allow federal agencies to bring actions in federal court.

- 2-3-14 Cure of Default by Subordinate Lienholder. Prior to the entry of a judgment of foreclosure of a Mortgage pursuant to this Chapter, any Mortgagor or any Subordinate lienholder may cure the default(s) under the Mortgage. Any Subordinate lienholder who has cured a default shall thereafter have included in its lien the amount of all payments made by such Subordinate lienholder to cure such default(s), plus interest on such amounts at the rate stated in the promissory note evidencing the subordinate lien.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-NOV-23-99-2A (Article 3, Section 5).

- 2-3-15 Power of the Court. If the alleged default(s) have not been cured, judgment shall be entered:

- A. Foreclosing the Mortgagor's interest in the mortgaged property, and each other defendant named in the complaint upon whom proper and timely service has been made, including each Subordinate lienholder and;
- B. Assigning such mortgaged property to the Mortgagee or the

Mortgagee's successor or assignee or ordering sale of the residential property, or of a subset of the property that will suffice to satisfy the judgment. The Court has the authority to enter a judgment against the defendants for any and all amounts secured by the Mortgage that are due to the Mortgagee.

Annotations: Amended as part of Tribal Council Resolution No. 2018-10 adopted on May 21, 2018 to address HUD concerns. The sentences, "[T]he Mortgagee must ensure that the price for which the property is sold is commercially reasonable. If the sales price is greater than the amount of the judgment, then the Mortgagee shall provide the difference to the Mortgagor within ten (10) days of the Mortgagee's receipt of the money. There shall be no judgment for a deficiency against the Mortgagor" were removed. The sentence "[t]he Court has the authority to enter a judgment against the defendants for any and all amounts secured by the Mortgage that are due to the Mortgagee" was added.

- C. Where the facts and law presented to the Court demonstrate that foreclosure is not warranted under this Chapter, the Court shall dismiss the complaint.
- D. Upon a showing of good cause, the Court may restrain the party in possession of the property from doing any act to cause injury to the Real property during the foreclosure proceedings, including, but not limited to, the creation of a nuisance or waste of the property, and may allow the Mortgagee or his designee access to the mortgaged property for the purposes of preserving and securing the property.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-NOV-23-99-2A (Article 3, Section 6). Revised in 2003 by Tribal Council Resolution No. TC-NOV-5-03-VA.

Annotation: In 2003, Tribal Council added a new last sentence to subsection B and inserted new subsections C and D.

2-3-16 Right of First Refusal During Foreclosure.

- A. The term "Pueblo" as used in this Section means "the Pueblo or its Designated Housing Entity".
- B. The Pueblo shall have the right of first refusal regarding all property to be sold pursuant to these foreclosure proceedings.
 - 1. Notice to the Pueblo. Upon commencement of judicial foreclosure proceedings, the Mortgagee or its successors or

assigns shall give written notice by certified mail, of these proceedings to the Pueblo.

2. Right to Conduct an Appraisal. The Pueblo may conduct an appraisal of the property during or immediately after the foreclosure process. If the property in question is occupied, the Pueblo will make all reasonable efforts to respect the privacy of the homeowner, but the homeowner may not unreasonably interfere with the Pueblo's right to conduct the appraisal.
3. Exercising the Right to Purchase after Foreclosure. Upon entry of an order of foreclosure, a copy of the Court order shall be served on the Office of the Governor, Designated Housing Entity, or on another agent designated by the Pueblo of Acoma Tribal Council to receive such notice. Within thirty (30) working days of the service of the order, the Pueblo may provide written notice to the Mortgagee or its successors or assigns that the Pueblo elects to purchase the residential property for the amount of the judgment, or for some other amount agreed upon by the Pueblo and the Mortgagee. At the same time the Pueblo provides such notice to the Mortgagee, or at some other time agreed upon by the Pueblo and the Mortgagee, the Pueblo must tender payment. If the Pueblo does not exercise its right to purchase the property within thirty (30) days of the date of service of the Court order, the Pueblo will be deemed to have waived its right of first refusal.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-NOV-23-99-2A (Article 3, Section 7). Revised in 2003 by Tribal Council Resolution No. TC-NOV-5-03-VA.

Annotations: In 2003, Tribal Council increased the time frame for Pueblo to exercise its rights to purchase the property. Amended as part of Tribal Council Resolution No. 2018-10 adopted on May 21, 2018 to address HUD concerns. The sentence "[i]f the amount paid is less than the commercially reasonable price of the house, the Pueblo will pay the difference to the Mortgagor" was removed.

2-3-17

Cancellation of Land Assignment. Upon a judgment for foreclosure, the Lender shall send a notice to the Pueblo's Designated Housing Entity to request the Caciques to cancel the land assignment of the party foreclosed upon and to reassign it to another eligible tribal member. The Caciques will cancel the land assignment to the party foreclosed upon, and reissue the land assignment to a new Mortgagor approved by the lender. Inaction by the Caciques in canceling the land assignment shall not affect the leasehold estate. The Pueblo will assign the lease to a new Mortgagor that has been

approved by the lender.

Origins: Adopted in 2003 by Tribal Council Resolution No. TC-NOV-5-03-VA.

2-3-18 Right to Reinstate after Foreclosure.

- A. After an order for foreclosure has been entered by the Court, the Mortgagor may at any time up to five (5) business days prior to the commencement of bidding at any sale ordered by the Court, reinstate the mortgage and prevent sale or other disposition of the real estate by doing the following:
1. Paying or tendering in the form of cash, cashier's check or certified check all sums, including any reasonable late penalty fees, required to bring the account current, with the exception of any amounts due by operation of any acceleration clause that may exist in any note, leasehold mortgage or security agreement; and
 2. Performing any other obligation which the Mortgagor would have been bound to perform in the absence of default; and
 3. Paying or tendering any expenses properly associated with the foreclosure and incurred by the Mortgagee, including, but not limited to, reasonable attorney's fees, advertising fees and trustee's fees, to the date of the Mortgagor's payment of tender under this section.

Origins: Adopted in 2003 by Tribal Council Resolution No. TC-NOV-5-03-VA.

2-3-19 Foreclosure Sales.

- A. All sales of mortgaged property under a judgment of foreclosure shall be monitored by an official appointed by the Court after consultation with the Pueblo Governor.
- B. The sale shall be conducted by public auction at the Governor's office after notices of sale have been published, served, and posted as described below.
- C. At least thirty (30) days before the sale, notice of sale must:
1. Be published in a newspaper of general circulation in the Pueblo; and

2. Be mailed to each party in the foreclosure case at the address provided for service of papers in the case and to the Governor; and
 3. Posted at the Governor's office and in other tribal buildings. The lender shall be responsible to mail notices of sale of parties in the foreclosure case and to the Governor's office, and to provide the notice of sale to the Governor's office for publication and posting by tribal officials at least forty (40) days before the sale.
- D. All proceeds from sale of the foreclosed property shall be applied to the payment of the debt secured by the mortgage. Any proceeds shall be applied as follows:
1. First, to the expenses of the sale, including the costs of notice and a reasonable fee for the official conducting the sale, except that no Pueblo or federal employee or employee of a tribal entity shall be paid a fee for such service.
 2. Second, to the discharge of the debts adjudged by the Court to be due on the mortgage foreclosed in the foreclosure action.
 3. Third, to the discharge of the claims for other mortgage holders whether or not foreclosed, which are junior to the first priority lien on the mortgage foreclosed, in order of seniority.

Origins: Adopted in 2003 by Tribal Council Resolution No. TC-NOV-5-03-VA.

Annotation: Amended as part of Tribal Council Resolution No. 2018-10 adopted on May 21, 2018 to address PAHA concerns. The sentence, "[T]he remainder returned to the Mortgagor" was removed.

Eviction Procedures

2-3-20

Unlawful Detainer. A Tenant or other occupier of land or a beneficial interest in Restricted Land subject to a Mortgage or Lease shall be guilty of unlawful detainer if such Tenant shall continue in occupancy of such property under any of the following situations:

- A. Without the requirement of any notice by the Pueblo or Lessor:
1. After the expiration of the term of any Lease or sublease;
 2. If such Tenant has entered onto or remains on the Real

property of another without the permission of the owner and without having any substantial claim under a Lease or title to such property;

3. After the Lessor has terminated such Tenant's tenancy pursuant to the Lessor's procedures; or
4. After a Mortgagor's interest in land, including Restricted Land, has been foreclosed in a Mortgage foreclosure proceeding in the Tribal Court or, a federal court pursuant to Section 2-3-1(B).

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-NOV-23-99-2A (Article 4, Section 2). Revised in 2003 by Tribal Council Resolution No. TC-NOV-5-03-VA.

Annotation: Amended as part of Tribal Council Resolution No. 2018-10 adopted on May 21, 2018 to allow federal agencies to bring actions in federal court.

B. After having received at least seven (7) days notice of termination and notice to vacate the premises, the Tenant or occupier remains in possession of such property contrary to the terms of the notice as follows:

1. When such Tenant has received notice: (a) that he or she is in default in the payment of ground or unit rent; and (b) requiring him or her to either pay such rent or surrender possession of the occupied property and such Tenant has not either surrendered possession of such property or paid the rent within the time period provided in such notice;
2. When such Tenant shall continue to fail to keep or perform any condition or covenant of any Lease or other use agreement under which the property is held after he or she has been given notice to comply with such condition or covenant or else to surrender the property;
3. When such Tenant continues to commit or to permit Waste upon or maintain a Nuisance upon the occupied property after having been given notice to either cease such Waste or maintenance of Nuisance or to surrender the property; or
4. When such Tenant violates a material covenant of any Lease designed to protect the health and safety of persons.

Origins: Adopted in 1999 by Tribal Council Resolution No.

TC-NOV-23-99-2A (Article 4, Section 2). Revised in 2003 by Tribal Council Resolution No. TC-NOV-5-03-VA.

Annotation: In 2003, Tribal Council deleted the term "Trust Land" from the definition of "Restricted Land". The modified definition includes "Trust Lands".

2-3-21 Procedures for Service of Notice.

- A. Notices required or authorized under [Section 2-3-20] of this Chapter shall be given in accordance with established Court rules and procedures or policies of the Pueblo's Designated Housing Entity. In the absence of such rules and procedures, notices shall be given in writing by either:
1. Delivering a copy personally to the Tenant or occupier or to any adult members of his or her family residing on the Leased or mortgaged property; or
 2. Posting said notice in a conspicuous place near the entrance to said property, and by sending an additional copy to the Tenant or occupier by certified mail, return receipt requested, property addressed, and postage prepaid.
- B. Proof of service by either of the above methods may be made by affidavit of any adult person stating that he or she has complied fully with the requirements of either of these two methods of service.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-NOV-23-99-2A (Article 4, Section 3).

Annotations: Pueblo of Acoma Laws supply the bracketed information in subsection A consistent with the enacting Tribal Council Resolution. Amended as part of Tribal Council Resolution No. 2018-10 adopted on May 21, 2018 to address federal government concerns.

2-3-22 Complaint and Summons. The Lessor or the Mortgagee (including its successors or assigns) shall commence an action for eviction by filing with the Court, in writing, the following documents:

- A. A complaint, signed by the Lessor, the Mortgagee (or its successors or assigns), or an agent or attorney on their behalf including the following:
1. Citing authority for jurisdiction of the Court;
 2. If the property is mortgaged, naming the Mortgagor(s) and each record owner claiming through the Mortgagor(s)

subsequent to the recording of the Mortgage, including each Subordinate lienholder (except the Pueblo with respect to a claim for a tribal tax on the property subject to the Mortgage), as a defendant;

3. Describing the property subject to the Mortgage or Lease;
4. Stating the facts concerning (a) the execution of any Lease and/or the Mortgage; (b) the recording of any Mortgage; and (c) the facts upon which he or she seeks to recover, including the fact that a mortgage has been foreclosed in a Mortgage Foreclosure Proceeding in the Tribal Court or, a federal court pursuant to Section 2-3-1(B), if applicable; and
5. Stating any claim for damages or compensation due from the persons to be evicted.

Annotation: Amended as part of Tribal Council Resolution No. 2018-10 adopted on May 21, 2018 to address federal government concerns.

- B. The complaint must be served upon the Mortgagor with a summons, issued in accordance with established Court rules and procedures. In the absence of such rules and procedures for the issuance of a summons, the summons shall require defendants to appear for hearing upon the complaint on a date and time specified in the summons. The hearing date specified in the summons shall be no less than six (6) nor more than twenty (20) days from the date of service of the summons and complaint. The summons must notify the defendants that judgment will be taken against them in accordance with the terms of the complaint unless they file with the Court an answer and appear for hearing at the time, date, and place specified in the summons.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-NOV-23-99-2A (Article 4, Section 4). Revised in 2003 by Tribal Council Resolution No. TC-NOV-5-03-VA.

Annotation: In 2003, Tribal Council added a new concluding clause to subsection A(4) beginning with the phrase "including...". Also, at subsection B, the word "trial" is replaced with "hearing" throughout the subsection. Amended as part of Tribal Council Resolution No. 2018-10 adopted on May 21, 2018 to address federal government concerns.

2-3-23

Service of Summons and Complaint. A copy of the summons and complaint shall be served upon the defendants in the manner provided by the Court rules for service of process in civil matters. In the absence of such Court

rules, the summons and complaint shall be served by one of the two methods provided in [Section 2-3-21] of this Section.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-NOV-23-99-2A (Article 4, Section 5).

Annotations: Pueblo of Acoma Laws supply the bracketed information in this section consistent with the enacting Tribal Council Resolution. Amended as part of Tribal Council Resolution No. 2018-10 adopted on May 21, 2018 to address federal government concerns.

2-3-24 Power of the Court.

- A. The only issues on an action for eviction shall be the right of actual possession and whether the defendant has caused waste or other damage to the property to which the petitioner is claiming the right of actual possession. A Mortgagee who has foreclosed on a Leasehold estate shall be deemed to have the right to actual possession. The merits of ownership of land interest shall be an issue to be determined by the laws of the Pueblo. An action for eviction may not be brought in connection with any other action other than an action for waste or other damage to the property, nor may it be made the subject of any set off or counter claim.
- B. The Court shall enter a Writ of restitution, if:
 - 1. Notice of suit and hearing is given by service of summons and complaint in accordance with the procedures provided herein.
 - 2. The Court:
 - a. Finds that the occupier of the property subject to the Mortgage or Lease is guilty of an act of unlawful detainer; or
 - b. Determines that the Tenant failed to respond to the complaint.
- C. Upon issuance of a Writ of restitution, the Court shall have the authority to enter against the defendants a judgment for the following: (1) back rent, unpaid utilities, and any charges due the Lessor under any Lease or occupancy agreement; (2) any and all amounts secured by the Mortgage that are due the Mortgagee (or its successors or assigns); (3) damages caused by the defendants to the property other than ordinary wear and tear; and (4) costs and reasonable attorney's fees incurred in bringing suit.

- D. At the hearing where the eviction is ordered, the Court shall inform the defendant that if he or she does not vacate the premises voluntarily by the effective date, he or she will be subject to forcible eviction, and his or her property will be subject to storage, sale, and disposal as set forth in [Section 2-3-27] below.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-NOV-23-99-2A (Article 4, Section 6). Revised in 2003 by Tribal Council Resolution No. TC-NOV-5-03-VA.

Annotations: In 2003, Tribal Council amended subsection A to allow waste or other damages to be issue in actions for eviction. Amended as part of Tribal Council Resolution No. 2018-10 adopted on May 21, 2018 to address federal government concerns.

- 2-3-25 Enforcement. Upon issuance of a Writ of Restitution, the traditional Tribal Sheriff or the tribal law enforcement officers shall within five (5) days enforce the Writ of Restitution by removing the defendants and their personal property from the property which is unlawfully occupied and levy damages and costs against the defendants incurred by the traditional Tribal Sheriff or the Police Department in such removal. In cases involving a Mortgagee (or its successors or assigns), the Writ of Restitution shall be enforced no later than sixty (60) days after the date of service of the summons and complaint, subject to [Section 2-3-26].

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-NOV-23-99-2A (Article 4, Section 6). Revised in 2003 by Tribal Council Resolution No. TC-NOV-5-03-VA.

Annotation: In 2003, Tribal Council inserted the phrase "against the defendants" to clarify who damages and costs will be levied against.

- 2-3-26 Continuance in Cases Involving the Mortgagee. Except by agreement of all parties, there shall be no continuances in cases involving the Mortgagee (or its successors or assigns) which will interfere with the requirement that the Writ of Restitution be enforced no later than sixty (60) days from the date of service of the summons and complaint.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-NOV-23-99-2A (Article 4, Section 8).

- 2-3-27 Storage of Property. Following forcible eviction of the defendant and/or other occupants, the former occupant's personal property shall be stored by the Lessor or 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 shall pay the reasonable costs of its removal and

storage. If they do not pay such costs within thirty (30) days, the Lessor or owner is authorized to sell the property in order to recover these costs. The Lessor or owner shall provide the evicted occupants with pertinent information concerning the sale, including the time, date, and location. Any proceeds from the sale in excess of the costs of the sale, including storage and removal costs shall 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 Lessor or owner. Property not sold or reclaimed may be disposed of by the Lessor or owner.

Origins: Adopted in 1999 by Tribal Council Resolution No. TC-NOV-23-99-2A (Article 4, Section 9). Revised in 2003 by Tribal Council Resolution No. TC-NOV-5-03-VA.

Annotation: In 2003, Tribal Council added the phrase "costs of the sale, including" in the fifth sentence. Also, Tribal Council inserted a new concluding sentence.

Chapter 4. REPOSSESSION CODE

Origins: Adopted in 2004 by Tribal Council Resolution No. TC-APR-28-04-VF.

2-4-1 Purpose of the Repossession Code. The purpose of this Repossession Code is to protect the health, safety, and welfare of the Pueblo community while providing creditors and their agents a process for peaceful repossession of personal property located within the territorial jurisdiction of the Pueblo.

2-4-2 Definitions.

- A. "Personal property" means all things that are movable at the time of their identification in a purchase transaction and in which a creditor has an interest in such property or otherwise has collateral in such property. The term specifically includes, but is not limited to automobiles, mobile-homes, farm equipment, and other goods purchased under a purchase transaction. The term does not include real property interest.
- B. "Creditor" is a person who has an interest in personal property or who holds collateral to secure a payment for an obligation or other performance of an obligation which is created or provided for under a purchase transaction. This term also includes, but is not limited to, lessors or licensors.
- C. "Debtor" is a person who owes payment or other performance of an obligation pursuant to a purchase transaction, whether or not the

debtor owns or has rights in the personal property. This term also includes, but is not limited to, lessees or licensees.

- D. "Purchase or purchase transaction" mean taking by sale, lease, security interest or by other voluntary transaction creating an interest in personal property.

2-4-3 Registration of Creditors or Agents. Creditors or their agents seeking repossession of personal property within the territorial jurisdiction of the Pueblo shall register with the Tribal Court. Creditors must register annually with the Tribal Court and pay any registration costs or fees. Payment of registration costs or fees is in addition to any required filing fee for commencing a repossession proceeding.

2-4-4 Self-Help Remedies Eliminated. All self-help remedies for the recovery of personal property are eliminated.

2-4-5 Election of Remedies. Any creditor who elects the remedy of repossession from the territorial jurisdiction of the Pueblo shall not be entitled to any deficiency judgment against the debtor after the sale of the personal property. A creditor who elects to repossess shall be barred from any further collection efforts by the creditor or its agent on obligations of the debtor based on the underlying contract. An election to repossess shall be the creditor's sole and exclusive remedy.

2-4-6 Process for Repossession of Personal Property. Personal property shall not be removed from the territorial jurisdiction of the Pueblo except by order of the Tribal Court in an appropriate legal proceeding. The following procedure shall govern the process for repossession of personal property:

- A. Commencement of Repossession Proceeding. Except as otherwise provided for in this Code, the creditor shall file a verified civil complaint with the clerk, accompanied by any required filing fee. The complaint shall state proof of registration and proof of the right to repossess the personal property from the named defendant. The complaint must be accompanied by sufficient proof of indebtedness. The creditor has the responsibility to furnish such proof.
- B. Time of Hearing. Hearing on the claim shall be scheduled for the first available date, at least forty (40) days after the claim is filed but not to exceed 90 days from the day the claim is filed, whether service is by mail or made in person.
- C. Service. The clerk shall furnish the plaintiff with a copy of the notice showing the time and place of hearing. Each defendant shall be served with a copy of the complaint and a notice of the time and place

of hearing on this claim, a request to sign a written consent for voluntary repossession, and, in case a written consent is denied by the defendant, a request to file an answer setting forth any counterclaims or defenses with the Tribal Court prior to the hearing date. The defendant shall serve either his written consent for voluntary repossession or his answer within twenty (20) calendar days after the service of the complaint is made upon him. The plaintiff shall serve a reply to any answer within twenty (20) calendar days after service of the answer.

Service by mail shall be made by the clerk by registered or certified mail, return receipt requested. Service in person may be made by a Peace Officer or other person appointed by the Tribal Court who is not a party to the case. If the defendant cannot be found or service by mail is returned undelivered, the plaintiff may, at his own expense, provide notice by publication in a local newspaper of general circulation within the territorial jurisdiction of the Pueblo for two (2) consecutive publication dates.

- D. Proof of Service. The return postal receipt, filed in the case record, shall constitute proof of service by mail. The affidavit of service by the person making service, filed in the case record, shall constitute proof of service in person, and the affidavit of publication, filed in the case record, shall constitute proof of service by publication.
- E. Joint Collection Visit. Upon order of the Tribal Court for voluntary or involuntary repossession, the Tribal Court shall require a Peace Officer to accompany the creditor during the collection visit to the home of the debtor or to the location of the personal property.

2-4-7 Voluntary Repossession. At any time, the debtor may provide the Tribal Court with a written consent signed by the debtor, for the voluntary repossession of personal property. Prior to accepting the debtor's voluntary repossession written consent ordering a voluntary repossession, the Tribal Court shall schedule a hearing between the parties and determine whether the written consent was voluntarily signed. If the Tribal Court determines that debtor signed the written consent voluntarily, then the Tribal Court shall issue a Voluntary Repossession Order and arrange a Joint Collection Visit as provided in Section 2-4-6 the "Process of Repossession of Personal Property."

2-4-8 Defenses or Limitations on Repossession.

- A. Repossession of personal property shall not be ordered if 1) the debtor, intending to become current under the purchase transaction provides the Court or the creditor with payment of all late installments, including any applicable penalties, costs, and interest associated with

the late installments or if 2) repossession will cause undue hardship on the debtor. If repossession will cause undue hardship on the debtor, then the Tribal Court shall order satisfactory arrangements for the payment of the balance due, plus penalties and interest, between the creditor and debtor.

- B. Repossession of personal property on which the balance has been reduced below \$300.00 is not allowed, but the Tribal Court shall order satisfactory arrangements for the payment of the balance due, plus penalties and interest, between the creditor and debtor.
- C. Repossession of personal property shall be ordered only if the debtor defendant has missed at least two consecutive payments under a purchase transaction.
- D. Force or intimidation shall not be allowed in any repossession process.
- E. An acceleration clause in any purchase transaction shall be unenforceable as contrary to the public policy of the Pueblo.

2-4-9

Default on Satisfactory Arrangement Plan. Where appropriate, the Tribal Court may arrange Satisfactory Arrangements between the debtor and creditor for the payment of the entire balance due, including penalty and interest in installment payments of a mutually agreeable amount. If the debtor fails to make two consecutive scheduled payments, or a total of five scheduled payments, under the Court Ordered Satisfactory Arrangement plan, and the Creditor submits a Motion for Repossession accompanied by a sworn affidavit and certificate of service on the Debtor, then within five days, the Tribal Court shall issue an order for repossession of the personal property.

2-4-10

Violations - Penalty.

- A. Any nonmember of the Pueblo, except persons authorized by Federal law to be present within the territorial jurisdiction of the Pueblo, who is found to be in willful violation of this Chapter may be excluded from the territorial lands of the Pueblo and shall not be allowed to re-enter the territorial lands of the Pueblo at any time in the future unless special permission is obtained from the Governor, for the purpose of processing a repossession of any personal property located within the territorial jurisdiction of the Pueblo.
- B. Any business whose employees are found to be in willful violation of this Chapter may be denied the privilege of doing business within the territorial jurisdiction of the Pueblo.

- C. Any Indian who violates any provision of this Chapter shall be guilty of a crime, and upon conviction shall be punished by a fine of not more than \$5,000.
- D. Any person or business who is found to be in willful violation of this Chapter may be assessed punitive damages.

2-4-11 Civil Liability.

- A. Any person who violates this Chapter and any business whose employee, agent or contractor violates such Chapter is deemed to have breached the peace of the lands under the territorial jurisdiction of the Pueblo, and shall be civilly liable to the debtor for any loss caused by the failure to comply with this Chapter.
- B. The debtor has the right to recover an amount not less than the total amount paid for the personal property, plus ten percent, plus attorney fees and costs, from a creditor or its agent who willfully violates this chapter.
- C. The debtor may also recover punitive damages from a creditor or its agent who willfully violates this Chapter.

Chapter 5. PUEBLO OF ACOMA PREVAILING WAGE LAW

Origins: Adopted in 2003 by Tribal Council Resolution No. TC-DEC-3-03-VE, repealed by implication and superseded by Tribal Council Resolution No. TC-OCT-22-29-VIc.

Annotations: The 2003 Prevailing Wage Law applied to all development projects funded, in whole or in part, by the U.S. Department of Housing and Urban Development. The 2009 Prevailing Wage Law expands this scope to all development projects funded by any state or federal monies.

2-5-1 Applicability.

- A. This [chapter] shall be known as the “Pueblo of Acoma Prevailing Wage Law”. This Law shall be applicable to all development projects within the geographic boundaries of the Pueblo of Acoma funded by any federal or state monies, in whole or in part, unless otherwise provided for by federal law as a condition of receiving such funding.
- B. Any employer who contracts to develop a project covered by this Law, shall pay wages in an amount not less than the wages prevailing in the locality, as determined by the Pueblo of Acoma, to employees

involved in the development of projects covered by this Law.

- C. This law supersedes the federal Davis-Bacon Act (40 U.S.C. 276a et seq.) on projects covered by this Law, as allowed by existing federal law.
- D. Application of this Law necessarily excludes the applicability of the federal Contract Work Hours and Safety Standards Act (40 U.S.C. 327) and the federal Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in federal Department of Labor regulations (29 CFR Part 3). All other applicable federal laws continue to apply to projects covered by this Law.

Annotation 1: Cross reference to Section 16-4-3(C) Pueblo of Acoma Laws 2003. This section is consistent with Section 16-4-3(C).

Annotation 2: Formerly codified at Section 16-8-1, Pueblo of Acoma Laws 2003. The 2009 law replaced the term "HUD" with "any federal or state monies, in whole or in part" and replaced "grant" with "receiving such" in subsection A. The 2009 law replaced the phrase "Section 104(b)(3) of NAHASDA (25 USCA § 4114 (b)(3))" with "existing federal law" in subsection C. The Pueblo of Acoma Laws supply the bracketed information.

2-5-2

Definitions.

- A. "Agreement" means any contract or agreement for the development of projects covered under this Law.
- B. "Development projects" means any project involving the construction, renovation, rehabilitation, repair, or demolition of a building or structure of any type, including but not limited to, streets, roads, sewers, mains, waterlines, power lines, excavating, clearing and landscaping. Development means all types of work done on a building or structure or work at the site thereof, including, but not limited to, altering, remodeling, painting and decorating, transportation of materials and supplies to or from the site, and the manufacturing or furnishing of materials, supplies or equipment on the site, by persons employed at the site by the contractor or subcontractor.
- C. "Employee" means any person who receives compensation from another party (normally a contractor or subcontractor) for work performed on a project covered under this Law. Owners of a company working on a project are not "Employees", and are exempt from the requirements of this Law.

- D. "Employer" means any person, government entity or company who hires persons to perform work or services on a development project covered under this Law.
- E. "Locality" means the geographical boundaries of the Pueblo of Acoma lands and a radius of twenty-five miles from the geographical boundaries of the Pueblo of Acoma lands.
- F. "Laborers or Mechanics" means those workers employed in the construction or development of a project covered by this Law, at any tier, whose duties are manual or physical in nature, including those workers who use tools or who are performing the work of a trade; as distinguished from mental or managerial.
- G. "Prevailing Wages" means the wages as determined by the Tribe as prevailing in the locality, for each class of architect, technical engineer, draftsman, technician, laborer and mechanic employed in the development, and all maintenance laborers and mechanics employed in the operation of projects covered under this Law.
- H. "Tribe" means the Pueblo of Acoma.

Annotations: Formerly codified at Section 16-8-2, Pueblo of Acoma Laws 2003. The 2009 law deletes ",including contracts or agreements for the sale or lease of homes developed by funding covered under this Law" from the concluding phrase of subsection A. The 2009 law deletes the term "home" immediately before each instance of "building" in subsection B. The 2009 law deletes definitions for "HUD," "NAHASDA," and "PAHA" which caused re-lettering to the remainder. The 2009 law replaces the term "reservation" with "lands" in subsection E.

2-5-3 Payment of Prevailing Wages Required.

- A. Payment of not less than prevailing wages as established by this Law shall be paid to all architects, technical engineers, draftsmen, technicians, laborers, and mechanics employed in the development of any project covered under this Law, and to each maintenance laborer or mechanic employed in the operation of projects covered under this Law.
- B. Exemptions. This law shall not apply to:
 - 1. Any individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work;

2. Contracts not in excess of \$2,000.
- C. Payment of the established wages shall be on a regular schedule and not less frequent than bi-monthly.
- D. Payment will be made in the amount of the full wages earned. No deductions shall be made, either directly or indirectly, from the full wages earned other than the following:
1. Deductions made in compliance with the requirements of applicable federal, state or local law, such as federal and state withholding taxes and federal social security and Medicare taxes;
 2. Deductions of sums previously paid to the employee as a bona fide prepayment of wages (payment advance) without discount or interest. A *bona fide prepayment of wages* is considered to have been made only when cash or its equivalent has been advanced to the employee and the employee had complete freedom of disposition of the advanced funds;
 3. Deductions required by a court to be paid to another, including payment to the contractor or subcontractor, except that deductions shall not be made in anticipation of a court order;
 4. Deductions constituting contributions on behalf of the employee to funds established by the employer or representatives of employees, or both, for the purpose of providing retirement, medical, life or workers compensation insurance, or other types of employment benefits for the benefit of employees, so long as no profit or other benefit is otherwise obtained by the employer in the form of commission, dividend, or otherwise;
 5. Deductions voluntarily authorized by the employee which serve the convenience and interest of the employee;
 6. Deductions for the reasonable costs incurred in travel where the employee was provided funds by the employer for travel and the employee was required to submit a travel expenditure report along with receipts of the travel, and did not do so or owed the employer a part of the advance travels in the amount shown in the travel expenditure report;
 7. Deductions for the cost of safety equipment (e.g. safety shoes,

safety glasses, safety gloves and hard hats) of nominal value voluntarily purchased by the employee from the employer, provided that the purchase is not a condition of employment or continued employment and the employer does not monetarily benefit from the purchase except as a reimbursement for his actual cost of purchasing the equipment.

- E. Any employee covered under this Law shall be compensated at the rate of 1.5 times their normal wage rate for hours worked in excess of 40 hours per week. The type of compensation will be governed by the employment policies of the employer.
- F. Apprentices and Trainees covered under an employer's apprentice or trainee program may be used by employers covered by this Law. The Tribe, may require the employer to submit proof of the program, and if none is received within ten (10) days of request, may require the employer to re-classify an employee.

Annotations: Formerly codified at Section 16-8-3 of Pueblo of Acoma Laws 2003. The 2009 law deletes "Prime" immediately before "contracts" in subsection (B)(2). The 2009 law replaces "made" with "paid" in the first sentence of subsection (D)(2). The 2009 law deletes the last sentence of subsection E which stated: "i.e. PAHA maintains a "paid" overtime policy for its force account employees and a "compensatory time" policy for its maintenance employees." The 2009 law replaces "utilized" with "used" in the first sentence of subsection F. The 2009 law deletes "PAHA or any other recipient of HUD funds, who enters into an agreement with an employer under this law" after "Tribe" in the second sentence of subsection F.

2-5-4 Establishment of Prevailing Wages/Classifications.

- A. The Tribe shall establish work classifications for all positions covered by this Law. The classifications shall include provisions for apprentices and trainees. The wages for each classification will be determined as set forth in this Article.
- B. Tribe to Conduct Wage Survey. Not less than annually, the Tribe shall arrange for a wage survey to be conducted to determine prevailing wages under this Law. The Tribe may direct that any tribal agency that administers funds covered under this Law conduct the wage survey.
 - 1. The Tribe (or the tribal agency designated to conduct a survey) shall obtain wage rates from all available sources in the locality, of each class of profession or trade included in the

survey and shall establish the prevailing wage at not less than the average wage paid to each class of profession or trade included in the survey. The survey shall also include the classification for trainees in all trades. The survey data may be collected by telephone, mail or personal visit.

2. Wage rate shall include salary but not the value of benefits paid to or on behalf of the employees.
3. The results of the survey and the prevailing wage shall be contained in a "Schedule of Prevailing Wages", which shall list each covered class of profession, trade and trainees and the hourly rate for each, and the effective dates of the Schedule.
4. In any year that the Tribe does not conduct a survey, the wage rates shall be adjusted pursuant to the Cost of Living Index for the area, published by the American Chamber of Commerce Research Association.

Annotations: Formerly codified at Section 16-8-4, Pueblo of Acoma Laws 2003. The 2009 law replaces "PAHA or any other entity" with "any tribal agency" in subsection B. The 2009 law replaces "entity acting under the discretion of the Tribe" with "tribal agency designated to conduct a survey" in subsection (B)(1). The Pueblo of Acoma Laws supply the bracketed information.

2-5-5 Employer Requirements.

- A. Payment of Prevailing Wages and Access to Records. Each covered employer, including the Tribe and its agencies, when performing under an Agreement, shall pay prevailing wages, and shall maintain payroll records reporting the following for each employee: name, address, classification, hourly rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. The payroll records shall be available for inspection and copying during the regular office hours of the Governor of the Tribe, or the tribal agency entering into an Agreement with the employer. Employers shall maintain payroll records for a period of three years from the date of completion of the contract. Any employee shall be entitled to inspect and copy his or her payroll record.
- B. Schedule to be Provided. The Tribe shall provide every covered employer at the time bids or proposals are solicited with a copy of the currently effective Schedule of Prevailing Wages.
- C. Posting of Wage Schedules. At all times while performing under an

Agreement, each covered employer shall post at the job site and in its principal office a copy of the Schedule of Prevailing wages furnished by the Tribe.

- D. Employee Reporting Requirements. Each Covered Employer will submit to the Tribe, and the tribal agency with which it executed an Agreement, a payroll summary with their final pay request. This summary will list all employees used on the project with hourly rate paid and total hours worked. Labor lien releases for all employees shall also be included. Where the covered employer is the Tribe or a tribal agency, the summary shall be filed in the contract files in lieu of submission.

Annotations: Formerly codified at Section 16-8-5, Pueblo of Acoma Laws 2003. The 2009 law replaces "PAHA" with "its agencies" in the second line of subsection A, inserts "Governor of the" immediately before "Tribe" in the second sentence of subsection A, and replaces "PAHA or entity" with "or the tribal agency" in the second sentence of subsection A. The 2009 law replaces "PAHA, or entity" with "and the tribal agency" in the first sentence of subsection D. The 2009 law replaces "PAHA, or other tribal entity" with "or a tribal agency" in the last sentence of subsection D.

2-5-6

Contracts/Agreements.

- A. Any Agreement between a covered employer and the Tribe, or tribal agency administering federal or state funds covered under this Law, shall contain a provision requiring that not less than prevailing wages as established by this Law, shall be paid to all architects, technical engineers, draftsman, technicians, laborers and mechanics employed in the development of projects covered under this Law, and each maintenance laborer and mechanic employed in the operation of such projects.
- B. Each Agreement shall contain a provision which imposes as a penalty an amount equal to the difference between the wages paid and the amount of wages required under this Law and a further penalty of \$500 per day for each day an employer fails to pay the proper rate or maintain required records or allow the Tribe or an employee to inspect payroll records as required by this Law or fails to provide a copy of such record upon request.
- C. Each Agreement shall contain a provision that the Tribe or tribal agency as the case may be, may withhold portions of final payments and/or impose liquidation damages for the settlement of any pending labor claims and penalties.

- D. The Agreement shall provide that the Tribe or tribal agency, as the case may be, and any adversely affected employee may bring an action against an employer for failure to comply with the requirements of this Law, and may seek interest on the unpaid wages at the maximum rate allowed by the law. The Tribe, or tribal agency, as the case may be, may seek penalties as set forth in the preceding section. In addition, in any such action the Tribe, or tribal agency or the employee shall be entitled to recover from the employer reasonable attorneys fees in addition to his or her other costs of suit.

Annotations: Formerly codified at Section 16-8-6, Pueblo of Acoma Laws 2003. The 2009 law replaces “PAHA or any other entity” with “or tribal agency” and replaces “HUD” with “federal or state” in subsection A. The 2009 law deletes “,PAHA, other tribal entity” immediately after “Tribe” in subsection B. The 2009 law replaces “,PAHA, or other tribal entity” with “or tribal agency” in subsections C and D.

2-5-7 Enforcement. The Pueblo of Acoma Human Resources Office shall be charged with the enforcement of this Law and shall submit not less than bi-annual reports to the Tribal Council of the Pueblo.

Annotations: Formerly codified at Section 16-8-7, Pueblo of Acoma Laws 2003. The 2009 law replaces “PAHA” with “The Pueblo of Acoma Human Resources Office” to the beginning of the sentence and adds “Tribal Council of the” immediately before “Pueblo.”

Chapter 6. APPLICATION FEE FOR LAND USE OF PUEBLO LANDS

Origins: Adopted in 2011 by Tribal Council Resolution No. TC-APR-21-11-VIb.

2-6-1 Findings. The Pueblo of Acoma Tribal Council (“Tribal Council”) finds and declares that:

- A. The Pueblo possesses inherent sovereign powers over Pueblo Lands; and
- B. From time to time, the Pueblo must review and evaluate applications for leases, rights-of-way or easements, permits, and other land encumbrances affecting Pueblo Lands; and
- C. The Pueblo cannot rely on the Bureau of Indian Affairs to conduct or pay for all the economic, environmental, safety, and legal reviews that are necessary to ensure that the interests of the Pueblo of Acoma are protected prior to any approval of such applications; and

- D. The Pueblo of Acoma has limited financial resources and will not bear the cost of reviewing such applications for land use of Pueblo Lands.

2-6-2 Purpose. The purpose of the Application Fee for Land Use of Pueblo Lands is to defray the costs of reviewing and evaluating an application for land use of Pueblo Lands by requiring applicants to pay a Land Use Application Fee.

2-6-3 Definitions. When used in this Chapter, the term:

- A. “Lease” means any agreement between the Pueblo and a person that grants a right of possession of Pueblo Lands for a specified purpose and duration in accordance with applicable federal law and regulations.
- B. “Other Land Encumbrances” means any agreement between the Pueblo and a person that encumbers Pueblo Lands in accordance with applicable federal law and regulations.
- C. “Permit” means any agreement between the Pueblo and a person that grants a revocable privilege to use Pueblo Lands for a specified purpose. “Permit” includes sand and gravel and material permits, but does not include other permits that are regulated by other sections of the Pueblo of Acoma Laws and where those sections require payment of a fee to the Pueblo.
- D. “Person” means any individual, group of individuals, corporation, partnership, limited liability company, association, state, municipality, commission, political subdivision of a state, interstate body, the federal government or any federal agency or any other entity, but does not include the Pueblo or any of the Pueblo’s arms or instrumentalities.
- E. “Pueblo” means the Pueblo of Acoma, a federally recognized Indian tribe.
- F. “Pueblo Lands” means any land or any interest in land owned or held by the Pueblo, or held in trust by the United States for the Pueblo. Pueblo Lands is synonymous with the definition of “Civil Jurisdiction over Property within Pueblo Territorial Jurisdiction” as that term is used in Chapter 2 [of Title 1] of the Pueblo of Acoma Laws 2003.

Annotation: Pueblo of Acoma Laws supply the bracketed information. Cross-reference to §1-2-2, Pueblo of Acoma Laws 2003.

- G. “Right-of-Way” means an agreement between the Pueblo and a

person that approves an easement or right-of-way in, over, under, through or to Pueblo Lands in accordance with applicable Pueblo and federal law and regulations.

H. “Tribal Council” means the governing body of the Pueblo.

2-6-4 Application for Land Use of Pueblo Lands. Any person seeking 1) a new or renewed right-of-way, 2) a lease, 3) a permit, and 4) any other land encumbrance of Pueblo Lands (collectively referred to as an “application for land use of Pueblo Lands”) shall be required to submit an Application for Land Use of Pueblo Lands to the Acoma Office of Realty and Natural Resources and pay a **Land Use Application Fee** to the Pueblo of Acoma.

2-6-5 Amount of Land Use Application Fee. Once the applicant submits an Application for Land Use of Pueblo Lands to the Acoma Office of Realty and Natural Resources, the Acoma Office of Realty and Natural Resources shall forward the Application to the Governor’s Office for determination of the Amount of Land Use Application Fee. The amount of the **Land Use Application Fee** shall be set by action of the Governor and Tribal Council and shall be an amount sufficient to cover the Pueblo of Acoma’s costs to review and evaluate an application and/or negotiate the terms of a right-of-way, lease, permit, or other land encumbrance that will authorize the business use of Pueblo Lands.

2-6-6 Calculation of Land Use Application Fee. The Land Use Application Fee shall include the Pueblo of Acoma’s costs of:

- A. reviewing any environmental and safety impacts of the proposed land encumbrance;
- B. determining the monetary value of the land use rights to be authorized;
- C. conducting any necessary negotiations with the applicant including matters of compensation;
- D. obtaining legal counsel and professional consultant services required by the Pueblo of Acoma; and
- E. conducting administrative review and processing of the subject application or proposal.

2-6-7 Payment of Land Use Application Fee. The **Land Use Application Fee** shall be non-refundable and shall be paid in full to the order of the Pueblo within thirty (30) calendar days of receipt by the applicant of a written notification by the Pueblo as to the Amount of Land Use Application Fee.

Once the Pueblo collects the Amount of Land Use Application Fee, the Pueblo shall begin to review the Application for Land Use of Pueblo Lands.

2-6-8 Appeal of Land Use Application Fee Amount. Any applicant who objects to the amount of the **Land Use Application Fee** set by the Governor and Tribal Council may appeal the amount and the timing of payment of the fee to the Tribal Court. The decision of the Tribal Court shall be final and not subject to further review or appeal.

Chapter 7. CIVIL TRESPASS LAW

Origins: Adopted in 2011 by Tribal Council Resolution No. TC-APR-21-11-Vlc.

2-7-1 Findings. The Pueblo of Acoma Tribal Council (“Tribal Council”) finds and declares that:

- A. The Pueblo possesses inherent sovereign powers over Pueblo Lands; and
- B. From time to time, the Pueblo approves leases, easements or rights-of-way, permits, and other land encumbrances affecting Pueblo Lands; and
- C. Trespass upon Pueblo Lands causes substantial economic damage and other harm to the Pueblo.

2-7-2 Purposes. The purposes of this Civil Trespass Law are to:

- A. Set the terms upon which the Pueblo will consent to persons to obtain an interest in, enter upon, remain on, or otherwise use Pueblo Lands;
- B. Designate administrative responsibility for responding to trespasses on Pueblo Lands;
- C. Provide a mechanism to remedy trespasses upon Pueblo Lands; and
- D. Specify charges and penalties for trespasses to Pueblo Lands arising from use of Pueblo Lands without a valid lease, easement, right-of-way, permit or other written land encumbrance.

2-7-3 Definitions. When used in this Chapter, the term:

- A. “Compliance Incentive Charge” means an amount equal to twenty percent of the original trespass charge for the first month plus ten percent of the then-current trespass charge times the number of

months following notification of person in trespass for the second and subsequent months.

- B. “Governor” means the chief executive officer of the Pueblo.
- C. “Lease” means any agreement between the Pueblo and a person that grants a right of possession of Pueblo Lands for a specified purpose and duration in accordance with applicable federal law and regulations.
- D. “Other Land Encumbrances” means any agreement between the Pueblo and a person that encumbers Pueblo Lands in accordance with applicable federal law and regulations.
- E. “Permit” means any agreement between the Pueblo and a person that grants a revocable privilege to use Pueblo Lands for a specified purpose. “Permit” includes sand and gravel and material permits.
- F. “Person” means any individual, group of individuals, corporation, partnership, limited liability company, association, state, municipality, commission, political subdivision of a state, interstate body, the federal government or any federal agency or any other entity, but does not include the Pueblo or any of the Pueblo’s arms or instrumentalities.
- G. “Pueblo” means the Pueblo of Acoma, a federally recognized Indian tribe.
- H. “Pueblo Lands” means any land or any interest in land owned or held by the Pueblo, or held in trust by the United States for the Pueblo. Pueblo Lands is synonymous to the definition of Civil Jurisdiction over Property within Pueblo Territorial Jurisdiction as that term is used in Chapter 2 [of Title 1] of the Pueblo of Acoma Laws 2003.

Annotation: Pueblo of Acoma Laws supply the bracketed information. Cross-reference to §1-2-2, Pueblo of Acoma Laws 2003.

- I. “Realty Officer” means the realty officer of the Pueblo’s Office of Realty and Natural Resources.
- J. “Right-of-Way” means an agreement between the pueblo and a person that approves an easement or right-of-way in, over, under, through or to pueblo lands in accordance with applicable Pueblo and federal law and regulations.

- K. “Secretary” means the Secretary of the Interior or his authorized representative.
- L. “Trespass” means the unauthorized possession, occupancy, holding over upon, entry upon, or use of Pueblo Lands.
- M. “Trespass Charge” means the annual rental value of the total acreage encumbered by the property of the person in trespass which is equal to the encumbered acreage times the highest annual rental value per acre anywhere on Pueblo Lands as determined by the Realty Officer. A monthly trespass charge is then determined by dividing that annual rental value by 12. The trespass charge may be changed at any time to reflect the then-current highest annual rental value on pueblo lands.
- N. “Tribal Council” means the governing body of the Pueblo.

2-7-4. Applicability.

- A. Except as otherwise provided in subsection (B) of this section, this Civil Trespass Law applies to all Pueblo Lands and to all persons holding or claiming an interest in, possessing, holding over upon, entering upon, or otherwise using, Pueblo Lands.
- B. This Civil Trespass Law does not apply to persons who are Pueblo members holding or claiming an interest in, possessing, entering upon, or otherwise using Pueblo Lands under a valid homesite assignment granted by the Pueblo or the United States in accordance with applicable Pueblo and federal law or regulations.

2-7-5 Construction.

- A. The provisions of this Civil Trespass Law are to be liberally construed to effectuate the intent, findings, and purposes of the Tribal Council set forth in sections 2-7-1 and 2-7-2 of this Law, but not to conflict with applicable federal law and regulations.
- B. Nothing contained in this Civil Trespass Law is to be construed to diminish, limit, or otherwise adversely affect any right or remedy otherwise held or available to the Pueblo or its members under other applicable law.

2-7-6 Compliance with the Civil Trespass Law; a condition of future consents, grants and agreements. The provisions of this Civil Trespass Law are incorporated as a term and condition of the consent, approval, or grant by the Tribal Council of every lease, easement or right-of-way, permit, or other land encumbrance of Pueblo Lands.

2-7-7 Prohibition against trespass. It is unlawful to trespass upon Pueblo Lands. Each day that a person trespasses constitutes a separate violation.

2-7-8 Penalties.

- A. Any person who knowingly or intentionally trespasses shall be subject to a civil penalty not to exceed \$5,000 for each violation.
- B. Any person who negligently trespasses shall be subject to a civil penalty not to exceed \$1,000 for each violation.
- C. In determining the amount of a civil penalty, the Realty Officer shall consider the seriousness of the violation or violations, any economic benefit to the person in trespass that results from the violation, any history of violations, any good-faith efforts to comply with applicable requirements, and any other factors as justice may require.
- D. If a trespass occurs as a result of holding over, then the person in trespass shall pay a monthly trespass charge plus a compliance incentive charge, in addition to any charges required under a right-of-way, lease, permit or other land encumbrance agreement. If the trespass is the result of knowing, intentional or negligent action of the person in trespass, the penalties specified in subsections (A) and (B) of this section may be added to trespass charges and compliance incentive charges and to any other damages specified in section 2-7-9.

2-7-9 Damages.

- A. Any person who trespasses shall be liable to the Pueblo for all damages proximately cause by such violation.
- B. Damages proximately caused by a trespass shall be determined by the Realty Officer based upon:
 - 1. the highest of the economic benefit to the person, the economic detriment to the pueblo (including, but not limited to, lost opportunity costs), or the sum of the trespass charge and the compliance incentive charge;
 - 2. the expense of enforcing this Civil Trespass Law against the person in trespass;
 - 3. the expense of removing the property of the person in trespass;

4. the expense of restoring Pueblo Lands damaged by the trespass; and
5. All other consequential or special damages proximately flowing from the violation of this Civil Trespass Law by the person in trespass.

2-7-10 Information and Investigation.

- A. Upon receipt of information indicating a trespass, the Realty Officer shall investigate to determine whether a trespass has occurred.
- B. If the Realty Officer's investigation reveals a trespass, the Realty Officer shall, after notifying the Governor, proceed in accordance with section 2-7-11 of this Civil Trespass Law.

2-7-11 Enforcement. Whenever the Realty Officer finds that a person has trespassed, the Realty Officer may take one or more of the following actions:

- A. Issue a "Preliminary Notice of Trespass and Order to Comply" to the person in trespass in accordance with section 2-7-12 of this Civil Trespass Law;
- B. Issue a "Preliminary Notice of Assessment of Penalty and Damages" to the person in trespass in accordance with section 2-7-13 of this Civil Trespass Law;
- C. Request the Tribal Council for permission to initiate proceedings to exclude the person in trespass from Pueblo Lands; or
- D. Enforce the lease, easement or right-of-way, permit, or other encumbrance to which the person in trespass is a party in accordance with section 2-7-20 of this Civil Trespass Law.

2-7-12 Preliminary Notice of Trespass and Order to Comply.

- A. A Preliminary Notice of Trespass and Order to Comply must be in writing, identify the person in trespass, the location and date of the trespass, and contain a short statement of facts indicating the nature and circumstances of the trespass.
- B. The Preliminary Notice of Trespass and Order to Comply must specify any one or more of the following actions to remedy the trespass:
 1. Removal of the person in trespass or property of the person in

trespass or both from the premises;

2. Compliance with the terms, conditions, covenants or restrictions of any applicable lease, easement or right-of-way, permit, or other land encumbrance;
 3. Any other action as may be necessary to cure the trespass; or
 4. Specify a reasonable period of time within which the person in trespass may cure the trespass. The Preliminary Notice of Trespass and Order to Comply however may not require any action or specify any time period inconsistent with any provision of the applicable lease, easement or right-of-way, permit or other land encumbrance.
- C. The Preliminary Notice of Trespass and Order to Comply shall advise the person identified therein of the rights available under section 2-7-16 of this Civil Trespass Law.
- D. The Realty Officer shall serve the Preliminary Notice of Trespass and Order to Comply upon the person identified in the notice provision, if any, of the applicable lease, easement or right-of-way, permit, or other land encumbrance if any.
- E. Nothing in this section prohibits the Realty Officer from assessing any penalties or damages or both for trespasses by the person in trespass occurring before service of a Preliminary Notice of Trespass and Order to Comply or before the completion of any cure period provided in the Preliminary Notice of Trespass and Order to Comply.
- F. The alleged trespasser shall have fifteen (15) calendar days to respond to the Preliminary Notice of Trespass before a Final Notice of Trespass may be issued.

2-7-13

Preliminary Notice of Assessment of Penalty and Damages.

- A. A Preliminary Notice of Assessment of Penalty and Damages (“Preliminary Notice of Assessment”) may be served with a Preliminary Notice of Trespass and Order to Comply or at any time thereafter.
- B. The Preliminary Notice of Assessment of Penalty and Damages must be in writing, identify the person who is trespassing, the location and date of the trespass, and contain a short statement of facts indicating the nature and circumstances of the trespass.

- C. The Preliminary Notice of Assessment shall specify:
1. the amount of any penalties assessed in accordance with section 2-7-8 of this Civil Trespass Law, and the basis of its calculation of the amount.
 2. the amount of any damages assessed in accordance with section 2-7-9 of this Civil Trespass Law, and the basis of its calculation of the amount;
 3. the time period for which each assessment is made;
 4. specify the date payment is due; and
 5. advise the person identified therein of the administrative hearing rights available under section 2-7-16 of this Civil Trespass Ordinance.
- D. The Preliminary Notice of Assessment must be served upon the person identified in the notice provision, if any, in the applicable lease, easement or right-of-way, permit, or other land encumbrance.
- E. The alleged trespasser shall have fifteen (15) calendar days to respond to the Preliminary Notice of Assessment before a Final Notice of Assessment may be issued.

2-7-14 Special Land Use License.

- A. In lieu of imposing any penalties under section 2-7-8 of this Civil Trespass Law, the Realty Officer may issue a special land use license to the person in trespass for a period not to exceed three months to allow temporary use of Pueblo Lands in the absence of a valid easement or rights-of-way, permit, or other land encumbrance, provided that the person in trespass:
1. has filed an application for renewal with the Secretary or the Pueblo or both in accordance with applicable law; and
 2. pays a monthly non-refundable special license fee for the special license.
- B. The Realty Officer may renew the special license for an additional period of three months.
- C. The Realty Officer shall determine the monthly amount of the special license fee based on:

1. the amount of acreage applied for;
 2. the prevailing annual per acre rental value of pueblo lands as established by the Realty Officer which may include using a pueblo lands valuation model, precedent rights-of-way on Indian lands in New Mexico, and other considerations;
 3. dividing the annual rental value by 12; and
 4. adding a cumulative 1.5% settlement incentive charge per month (.015 times the first monthly rental value and .015 times the prior monthly rental value for each subsequent month).
- D. The Realty Officer may revoke the special license if the person in trespass:
1. fails to pay the special license fee; or
 2. does not diligently and in good faith pursue negotiation of the subject lease, right-of-way, easement, or permit.

2-7-15

Payment of Penalties and Damages.

- A. Penalties and damages assessed pursuant to section 2-7-13 of this Civil Trespass Law shall be due and payable upon receipt of a final notice thereof and shall become delinquent 30 days thereafter, unless an appeal is timely filed with the Tribal Court. If an appeal is filed with the Tribal Court, and the Tribal Court upholds the decision of the Realty Officer, then the penalties and damages assessed shall become due and payable on the date of the Tribal Court's decision, and shall become delinquent 30 days thereafter.
- B. Payments shall be made by certified check made payable to the order of the Pueblo.
- C. Interest on any delinquent payment of penalties and damages shall accrue from the date of assessment thereof until paid. The interest shall be assessed at five percent above the highest prime rate listed on the date of assessment by any bank operating within New Mexico, and shall continue in effect until the assessment is paid or otherwise discharged.
- D. Monies collected through payment of assessments of penalties and damages, and any interest thereon, shall be deposited in the Pueblo's general fund.

2-7-16 Hearing Procedures. The Realty Officer shall notify any person who receives a Preliminary Notice of Trespass and Order to Comply and/or a Preliminary Notice of Assessment of Penalty and Damages that an administrative hearing and opportunity to respond to the Preliminary Notice are available if requested within fifteen (15) calendar days of receiving the Notice. The hearing shall occur within fifteen (15) calendar days of receiving a request for hearing, unless a request for extension is requested. Extensions of up to thirty (30) calendar days may be allowed. The Realty Officer shall develop procedural regulations to govern the procedures to be followed in administrative hearings pursuant to this section. At a minimum, the regulations shall provide:

- A. For the hearing to be public;
- B. Assurance that procedural due process requirements are satisfied;
- C. For the maintenance of a record of the hearing proceedings and assessment of costs of any transcription of testimony that is required for judicial review purposes; and
- D. For the hearing to be held on Pueblo Lands.

Such regulations may also govern notices, delegation of authority to hear a matter, hearing procedures, and any other conduct or activity reasonability related to meet the intent of this Law.

2-7-17 Written Decision of the Realty Officer. After a hearing, the Realty Officer shall issue a final written decision supported with findings of fact and conclusions of law. The Realty Officer shall decide whether a Final Notice of Trespass and Order to Comply and/or a Final Notice of Assessment of Penalty and Damages shall be issued. The written decision shall be issued not more than fifteen (15) calendar days after the hearing and shall be mailed by certified mail, return receipt requested, to the person identified in the notice provision, if any, of the applicable lease, easement or right-of-way, permit, or other land encumbrance.

2-7-18 Appeals to the Pueblo of Acoma Tribal Court.

- A. Any person who receives a Final Notice of Trespass and Order to Comply and/or a Final Notice of Assessment of Penalty and Damages may file a Notice of Appeal with the Tribal Court and the Realty Officer within 15 calendar days of the service of the Final Notice of Trespass or Final Notice of Assessment. The aggrieved party shall file a Notice of Appeal, pay any court fees, and state the specific basis of appeal as described below:

- B. The Notice of Appeal must be in writing and:
1. Identify the person who is alleged to be trespassing, the location and date of the alleged trespass, and contain a short statement of facts indicating the nature and circumstances of the alleged trespass;
 2. Specify the order or assessment being appealed;
 3. Specify the legal basis for the administrative appeal; and
 4. Contain a statement of facts upon which the appellant relies in support of the appeal and any argument as appellant may care to make in support of the appeal.
- C. A copy of the written Notice of Appeal shall also be delivered to the Realty Officer who shall, within ten (10) business days after receiving a Notice of Appeal, provide a copy of the administrative record to the Tribal Court Clerk.

2-7-19 Tribal Court Hearing and Decision.

- A. Upon receipt of the written Notice of Appeal, the Tribal Court clerk shall schedule a hearing before the Pueblo of Acoma Tribal Court. The Tribal Court shall hear the appeal within 60 calendar days of receipt of the notice of appeal. Upon request or agreement of the appellant, a delay of not more than 30 calendar days may be granted.
- B. Notice shall be afforded to the parties at least fifteen (15) business days in advance of the date set for hearing. Each party at the hearing may be represented by counsel. The Tribal Court shall not take new evidence, unless the party offering new evidence shows that such evidence is relevant and material to the issues on appeal and was unavailable to the party during the proceedings before the Realty Officer. The Tribal Court shall base its decision on the whole record. The Tribal Court may send any appeal back to the Realty Officer for further fact finding or reconsideration or both.
- C. After the hearing, each party shall have ten (10) business days to submit in writing proposed findings of fact and conclusions of law. A final decision of the Realty Officer shall not be reversed unless it is arbitrary or capricious, an abuse of discretion, not supported by substantial evidence in the record, outside the scope of the Realty Officer's authority, or otherwise contrary to law.

- D. The Tribal Court shall issue written findings of fact and conclusions of law, stating the decision and grounds thereof, within twenty (20) business days from the date of hearing.
- E. The decision of the Tribal Court shall be final and shall end the appeal process.

2-7-20 Enforcement of lease, easement or right-of-way, permit, or other land encumbrance.

- A. The Realty Officer may take any action authorized or allowed under the provisions, terms and conditions and covenants of an applicable lease, easement or right-of-way, permit, or other land encumbrance agreement relating thereto as well as such action as may be authorized or allowed under the applicable law.
- B. If necessary, the Realty Officer may request the Secretary or other appropriate federal, Pueblo, or state official or agency to enforce:
 1. the provisions, terms, conditions and covenants of any lease, easement or right-of-way, permit or other land encumbrance agreement relating thereto; and
 2. federal, Pueblo, state or local law or laws applicable to any lease, easement or right-of-way, permit, or other land encumbrance agreement relating thereto, or relating to the conduct of business or other activity on the Pueblo Lands involved.

2-7-21 Judicial Enforcement. At the request of the Realty Officer, the Tribal Council may direct the tribe's legal counsel to bring a civil action in any court of competent jurisdiction to enjoin a trespass or to obtain payment or enforcement of any assessment of damages or penalties, or for any other relief as may be authorized or allowed under any applicable law.

2-7-22 Rules and Regulations.

- A. The Realty Officer may promulgate rules and regulations as may be necessary to implement this Civil Trespass Law.
- B. The Realty Officer shall publish proposed rules and regulations for public review and comment for at least 30 days. Thereafter, the rules and regulations become effective upon review and approval by the Tribal Council.
- C. The effectiveness and enforceability of this Civil Trespass Law does

not depend upon the adoption of regulations under this section.

2-7-23 Amendments. The Tribal Council may amend the Civil Trespass Law.

2-7-24 Severability. If any provision of this Civil Trespass Law as enacted, or as later amended, or its application to any person or circumstance, is held invalid by a final judgment of a court of competent jurisdiction, then the invalidity shall not affect other provisions or applications of this Law that can be given effect without the invalid provision or application, and to this end the provisions of this Law are severable.

2-7-25 Effective Date. This Civil Trespass Law applies to any trespass occurring or continuing after the date the Tribal Council enacted this Law.

Chapter 8. TRIBAL EMPLOYMENT RIGHTS OFFICE ORDINANCE

Origins: Enacted by Tribal Council Resolution No. TC-AUG-08-16-VIc.

2-8-1 General Provisions.

A. Title. This Ordinance shall be known as the Tribal Employment Rights Ordinance.

B. Purpose. The purposes of this Ordinance are:

1. To ensure compliance by employers on Pueblo of Acoma lands with federal and tribal laws that are intended to prevent employment related discrimination against Native American Indians;
2. To ensure compliance by employers on Pueblo of Acoma lands with federal and tribal laws that are intended to give preference in employment, contracting and sub-contracting, and training to Native American Indians; and
3. To ensure the maximum utilization of Native American Indian workers in all employment opportunities on and near Pueblo of Acoma lands.

C. Statement of Policy.

1. Jobs in the private employment sector on and near the Pueblo of Acoma are an important resource for Native American Indians residing on and near the reservation.

2. This Ordinance is consistent and supplemental to existing federal and tribal law prohibiting employment discrimination against Native American Indians and providing employment and contract preference to Native American Indian employees and Native American Indian-owned enterprises.
3. Native American Indian unemployment on the Pueblo of Acoma continues to be a problem of sufficient magnitude to warrant the enactment and implementation of this Ordinance which is designed to improve employment opportunities for Native American Indians living on and near the reservation.

D. Jurisdiction.

1. This Ordinance shall apply to all employers located or engaged in business on Pueblo of Acoma lands. It shall not apply to any direct employment by the Pueblo of Acoma.
2. This Ordinance is not intended to preempt or interfere with the rights or obligations set forth in the Pueblo's Personnel Policies and Procedures. The Pueblo of Acoma is not subject to the provisions of this Ordinance.
3. Contract disputes are contractual and will not be within TERO's scope of work or cause for contractor operation shutdown. Contract disputes shall be resolved through specified contract procedures for such disputes or through a court of competent jurisdiction.

E. Definitions.

1. "Compliance Agreement" means a certification signed by an employer and the Tribal Employment Rights Office (TERO), setting forth how each employer will meet "In Preference" hiring goals and that they will comply fully with the TERO Ordinance. The "Compliance Agreement" must be executed prior to commencement of any portion of a contract or sub-contract within Pueblo of Acoma lands.
2. "Core Crew" mean the essential, permanent employees of employer. The employees must have been regular employees for at least six (6) months. "Core Crew" requests must be submitted in writing with rationale for each position before start of any project work, and approved by TERO Program Manager.

3. "Council" means the Pueblo of Acoma Tribal Council.
4. "Employer" means any person, company, contractor, subcontractor or other entity located or engaged in work on Pueblo of Acoma lands. The term "employer" shall include contractors and subcontractors of state, county, tribal and all governmental agencies. The term shall not mean or include the Pueblo of Acoma when they are employers.
5. "Engaged in Work on Pueblo Land" means that during any portion of a business enterprise or specific project, contract or subcontract, an Employer or any of his employees spends time performing work within the exterior boundaries of the Pueblo.
6. "Native American Indian" means any person enrolled in a federally recognized tribe and recognized by the United States pursuant to its trust responsibility to Native American Indians.
7. "Native American Indian Owned Business" means a business that is at least 51 % operated and controlled by a Native American Indian.
8. "Native American Indian Preference" means a preference for Native American Indians in all aspects of employment, including but not limited to: hiring, training, promotions, layoffs, contracting and subcontracting for work within the Pueblo of Acoma lands. Qualified, available Native American Indians shall receive Native American Indian Preference according to negotiated Compliance Plans.
9. "Located on Pueblo of Acoma Lands" means that during any portion of a business enterprise or specific contract or subcontract, an employer maintains a temporary or permanent office or facility within the exterior boundaries of the Pueblo of Acoma.
10. "Near the Pueblo" means within reasonable daily commuting distance of the Pueblo.
11. "Office" means the Acoma Tribal Employment Rights Office.
12. "Program Manager" means the Program Manager of the Acoma Tribal Employment Rights Office.
13. "Pueblo" means the Pueblo of Acoma.

14. "Tribal Court" means the Pueblo of Acoma Tribal Court.
15. "Wage Scale" means Davis Bacon Wages or Pueblo of Acoma locally prepared wage rates as determined by the TERO office monitored by the Program Manager.

2-8-2 Tribal Employment Rights Office.

- A. Program Manager. The Program Manager of the Tribal Employment Rights Office (Office) shall be responsible for administering the provisions of this Ordinance.
- B. General Authority of Program Manager. The Program Manager of the TERO shall have the authority to hire staff, to obtain and expend funds from tribal, federal, state, or other sources to carry out the purposes of this Ordinance, to establish employer record-keeping requirements, and to take such other actions as are necessary for the fair enforcement of this Ordinance.
- C. Specific Authority

The Program Manager shall have the authority to:

1. Investigate violations of the provisions of this Ordinance;
2. Impose and enforce penalties on employers who violate the provisions of the Ordinance;
3. Develop and promulgate regulations necessary to implement the provisions of this Ordinance;
4. Develop, impose, and enforce numerical hiring goals and timetables that reflect the available Native American Indian labor pool and other employment opportunities for each craft and skill category.
5. Require employers that have established training or apprentice programs to provide preference to Native American Indians in those programs.
6. Establish and maintain a tribal office that maintains a record of qualified, employable Native American Indians that is to be used by employers to fill vacancies;
7. Prohibit any employer from imposing employment qualification criteria that serve as barriers to Native American Indian

employment unless the employer can demonstrate that such criteria are bonafide occupational qualifications;

8. To work cooperatively with other tribal programs to establish counseling and support programs for Native American Indian workers to assist them in retaining employment;
9. To enter into cooperative agreements with federal and state agencies, subject to Tribal Council approval, to minimize employment discrimination on the reservation, to promote Native American Indian Preference in hiring, training, and contracting and to otherwise ensure compliance with this Ordinance;
10. To establish an approved wage scale for the Pueblo of Acoma on an annual basis and monitor salaries for compliance to ensure equitable compensation of Native American Indian workers.
11. To monitor salaries to ensure compliance with approved Pueblo of Acoma wage scale;
12. To assess TERO fees on employers to support the operation of the Tribal Employment Rights Office.

2-8-3 Tribal Employment Rights Program.

- A. Scope. All employers shall give preference to Native American Indians in hiring, promotion, training and all other aspects of employment, contracting and subcontracting, and shall comply with the terms of this Ordinance and its implementing regulations and a Compliance Agreement executed under this Ordinance.
- B. Compliance Agreement. Each employer shall be required to meet with the Program Manager at the TERO office and negotiate and execute a "Compliance Agreement" which sets forth:
 1. The minimum number of Native American Indians the employer shall hire during any year that the employer is located or engaged in work on the reservation; numerical goals and timetables for each craft, skill area, job classification, etc., used by the employer including, but not limited to general labor, skilled, administrative, supervisory, and professional categories;
 2. Wage scale provisions and salary compensation terms;

3. Employer shall provide proof of workers compensation insurance;
 4. The reporting requirements the employer shall provide the Program Manager on issues, including but not limited to the frequency of reports, the number of Native American Indians employed, a record of persons hired, fired or promoted during the reporting period, and an assessment of how close the employer is to meeting the hiring goals set forth in the Compliance Agreement.
- C. [Surveys]. The numerical goals set forth in the Compliance Agreement shall be based upon surveys of the available Native American Indian work force and of projected employment opportunities on the reservation.
- D. [Periodic Review]. Compliance Agreements shall be reviewed at least annually and revised as necessary to reflect changes in the number of Native American Indians available or changes in employer hiring plans.
- E. [Temporary Business]. No employer who intends to engage in temporary business on Pueblo land shall commence work on the reservation until a Compliance Agreement has been negotiated and signed by both the Program Manager and the employer representative. An employer who has established a permanent place of business on Pueblo land shall negotiate and execute a Compliance Agreement within 30 days from the date the employer receives notification from the Program Manager that a Compliance Agreement is required.
- F. [Violations]. Any violation of an executed Compliance Agreement shall be a violation of this Ordinance.
- G. [Emergency Hires]. When the TERO Office is closed and a Native American Indian worker is unable to continue working, emergency hires will be allowed, but such hires will be hired for a maximum of 3 days only.
- H. Job Qualifications and Personnel Requirements. An employer shall not use qualification criteria or other personnel requirements that serve as barriers to Native American Indian employment unless the employer is able to demonstrate that such criteria or requirements are required by bonafide occupational qualifications.

I. Program Manager.

1. The Program Manager shall establish and maintain an office to assist employers in placing qualified Native American Indians in job positions.
2. An employer shall not hire a non-Native American Indian in violation of the Compliance Agreement until the Program Manager has certified within a reasonable time that no qualified Native American Indian is available to fill the vacancy. For purposes of this section, "reasonable time" shall be defined as follows:
 - a. Construction jobs: the Program manager shall have 48 hours from time of notice of manpower needs to locate and refer a qualified Native American Indian;
 - b. All other employment: the Program manager shall have 5 working days to locate and refer a qualified Native American Indian.

The Program Manager may grant a waiver of a time period upon a showing by the employer that such time period imposes an undue burden upon the employer or his business.

J. Training.

1. The Program Manager shall identify training programs necessary in order to increase the pool of qualified Native American Indians for employment on Pueblo land.
2. The Program Manager may initiate and sponsor training programs for employers to participate in, or the Program Manager may work with employers to establish and sponsor their own training programs to assist Native American Indians to become qualified in the various job classifications used by employers.
3. The ratio of Native American Indian trainees to fully qualified workers shall be negotiated as part of the Compliance Agreement. For construction projects, the number of Native American Indian trainees shall be no less than the minimum ratio established by the United States Department of Labor.

K. Unions. Employers with collective bargaining agreements with a union are responsible for informing such unions of this Ordinance and

TERO rules and regulations. Unions will give preference to Native American Indians in job referrals regardless of which referral list they are on. Temporary Work Permits will be granted to Native American Indians who do not wish to join a union. Nothing herein shall constitute official tribal recognition of any union or tribal endorsement of any union activities on Pueblo of Acoma lands.

- L. Contractors & Subcontractors. The Native American Indian Preference requirements contained herein shall apply to all contractors and subcontractors of an employer. The employer shall have the initial and primary responsibility for ensuring that all contractors and subcontractors comply with these requirements and both the employer and his contractors and subcontractors shall be subject to the penalties set forth herein for failure to comply with the Ordinance requirements.
- M. Preference in Contracting and Subcontracting. Each employer shall give preference to tribal-owned or Native American Indian-owned businesses in the award of contracts or subcontracts, subject to federal laws. The Program Manager shall maintain a list of tribal-owned and Native American Indian-owned businesses which shall be supplied to the employers upon request. Native American Indian owned business shall be certified by the Tribe.
- N. Layoffs. In all layoffs and reductions in force, no Native American Indian worker shall be terminated if a non-Native American Indian worker in the same job classification is still employed. The non-Native American Indian shall be terminated first if the Native American Indian possesses threshold qualifications for the job classification. If an employer lays off workers by crews, all qualified Native American Indian workers shall be transferred to crews to be retained so long as non-Native American Indians in the same job classification are employed elsewhere on the job site. Exceptions may be non-Native American Indians hired as "Core Crew" according to negotiated Compliance Agreements.
- O. Promotion. Each employer shall give Native American Indians preferential consideration for all promotion opportunities and shall encourage Native American Indians to seek such opportunities. For each promotion or supervisory position filled by a non-Native American Indian, the employer shall file a report with the Program Manager stating what efforts were made to inform Native American Indian workers about the position, what Native American Indians, if any, applied for the position and if a Native American Indian was not chosen, the reasons therefore.

P. Compliance Fees. The Program manager shall assess and collect a Compliance Fee based upon the following schedule:

1. Every employer with a contract to be performed on Pueblo land in the sum of ten thousand dollars (\$10,000) or more shall pay a compliance fee of three (3.0 %) of the total amount of the contract. Such fee shall be paid by the employer prior to commencing work on Pueblo of Acoma lands.

Annotation: Tribal Council Resolution No. 2018-013 adopted on June 11, 2018, amended this subsection to change the compliance fee from 1.5% to 3.0%.

2. Compliance Fees shall be used for the TERO Office operating budget and the percentage shall be reviewed and may be adjusted annually to remain consistent with the national average. The Compliance Fees program shall go through the Pueblos' Annual Budget Process.

3. The Compliance Fee shall only be assessed against those employers who engage in contract work or establish their business on the reservation after the enactment of this Ordinance. This fee shall not be assessed or collected from religious and non-profit employers. The Program Manager shall be responsible for collecting the fees and may establish regulations as are necessary to insure a fair and timely fee collection process. Projects beginning off and ending on, or beginning on and ending off the reservation will be considered one hundred percent on-reservation, thus subject to the full Compliance Fee. However, if fifty percent (50%) or more of the work is off-reservation, the Program Manager is authorized to negotiate an appropriate Compliance Fee.

Q. On Site Inspections. The Program Manager shall have the authority to make on-site inspections during regular working hours in order to monitor an employer's adherence to the terms of this Ordinance and the employer's Compliance Agreement. The Program Manager shall have the right to inspect and copy all relevant records of an employer, of any signatory union or subcontractor of an employer, and shall have the right to speak to workers and to conduct an investigation on the job site. All information collected by the Program Manager shall be kept confidential unless disclosure is necessary or ordered as part of any federal or tribal judicial or administrative proceeding.

2-8-4

Violation Procedures

A. Investigation by the Program Manager. Whenever a violation of this

Ordinance or an Agreement negotiated hereunder has been alleged and is brought to the attention of the Program Manager, the Program Manager shall initiate and complete a prompt and thorough investigation of the alleged violation. The Program Manager shall seek to achieve an informal settlement of the alleged violation, with a written report of findings.

B. Issuance of Citation

1. If the Program Manager determines that a violation of the Ordinance or an Agreement negotiated hereunder exists, and an informal settlement cannot be achieved, the Program Manager shall issue a warning to the employer. This warning shall specify the nature of the violation and direct that the violation be corrected within three (3) days or sooner where warranted.
2. If the violation is not corrected within the time specified, the Program Manager shall issue a citation to the employer which shall:
 - a. Be in writing and in the name of the Pueblo;
 - b. State the name of the violator;
 - c. Bear the signature of the Program Manager or his authorized representative;
 - d. State the name and section number of the Ordinance provision or Agreement violated;
 - e. State a brief summary of facts constituting the violation; and
 - f. State a time and place the employer must appear to answer to the violation at a Program Manager Hearing.

- C. Tribal Court Hearing. The employer shall be entitled to a hearing before the Tribal Court no later than 10 working days after receipt of a Citation. Hearing procedures shall comply with the requirements of due process, but will not be bound by the formal rules of evidence. The employer shall be entitled to present evidence and to call witnesses to demonstrate that the employer has complied with the requirements of this Ordinance or that the employer made a best effort to do so and therefore should not be subject to sanctions. On the basis of evidence presented at the hearing, and the information

collected by the Office, the Tribal Court shall determine whether or not the employer complied with this Ordinance.

If the Tribal Court determines that the employer is out of compliance and has not made a best effort to comply, the Tribal Court shall impose one or more of the sanctions provided for in the Ordinance, as appropriate, and shall order the employer to take such corrective action as is necessary to remedy any harm done to the Tribe or individual Native American Indians by the employer's non-compliance. The Tribal Court shall send written notice to all parties within ten (10) working days after its decision in the matter.

- D. Emergency Relief. When the Program Manager determines that a violation has occurred that is of a critical nature requiring immediate remedial action, the Program Manager may issue a citation without delay, stating sanctions to be placed on an employer. An employer shall have the right to appeal to the Acoma Pueblo Tribal Court, any imposition of emergency sanctions on an employer by the Program Manager.

- E. Individual Complaint Procedure. Any Native American Indian who believes that an employer has failed to comply with the Ordinance or who believes that they have been discriminated against by an employer because they are Native American Indian, may file a complaint with the Program Manager. The complainant shall be responsible for providing the Program Manager with evidence of the discriminatory practices. Upon receipt of a complaint supported by sufficient evidence of discrimination against a Native American Indian complainant, the Program Manager shall conduct an investigation of the charge and shall attempt to achieve an informal settlement of the matter. If voluntary conciliation cannot be achieved, the Program Manager shall file a citation with the Tribal Court which will hold a hearing on the matter, shall make a determination on the validity of the charge, and shall order such relief as is necessary to make whole any Native American Indian who is harmed by the employer's non-compliance or discriminatory behavior. The decision shall be in writing and shall be sent to all parties. In conducting the hearing, the Tribal Court shall have the same powers, and shall be bound by the same hearing requirements as provided in Subsections D and E of this Section.

2-8-5

Penalties

- A. Penalties for Violation. Any employer who violates this Ordinance or an agreement negotiated hereunder shall be subject to penalties including, but not limited to:

1. Denial of the right to commence or continue business on Pueblo lands;
 2. Suspension of operations on Pueblo lands;
 3. Payment of back pay and/or damages to compensate any injured party;
 4. An order to summarily remove employees hired in violation of this Ordinance or Agreement negotiated hereunder;
 5. Imposition of monetary civil penalties; and
 6. An order specifying requirements for employment, promotion, and training Native American Indians injured by the violation.
- B. Monetary Fines. The maximum monetary penalty that may be imposed for a violation is five hundred dollars (\$500). For purposes of the imposition of penalties determined by the Court or sanction by the Program Manager, each day during which a violation exists shall constitute a separate violation.

2-8-6

Enforcement Authority

- A. The Program Manager shall be entitled to pursue the enforcement of any order of the Acoma Tribal Court when necessary to collect penalties or to ensure compliance with the terms and conditions of any order issued by the Acoma Tribal Court.
- B. Any cost associated with the enforcement of such Order issued pursuant to this Ordinance shall be assessed on the employer that is out of compliance. These may include, but not be limited to: document reproduction costs, filing fees, attorney fees and costs incurred by TERO office staff related to securing enforcement of the Order.
- C. Employers that do not comply with the provisions of this Ordinance, and leave the reservation before enforcement penalties or an order by the Acoma Tribal Court, may be denied the right of contracting or doing further business on Acoma Pueblo lands.
- D. Jurisdiction. The Acoma Pueblo Tribal Court is hereby granted exclusive jurisdiction to hear, review, and decide any issues regarding implementation, interpretation, or enforcement under this Ordinance. The decision of the Tribal court shall be final and binding

- E. Authority. In ruling on matters arising under this Ordinance, the Court shall have the authority to assess and collect civil penalties; to enjoin or mandate actions to enforce the revisions of this Ordinance; and to provide any other relief the Court deems lawful and equitable. Provided that, no money damages may be claimed in any suit against the Tribe, the Tribal Employment Rights Office or its officials engaged in their official duties under this Ordinance.
- F. Sovereign Immunity. Nothing in this Ordinance shall be construed as a waiver of sovereign immunity of the Pueblo of Acoma, nor of the tribal sovereign immunity possessed by the Tribal Employment Rights Office or its officials engaged in their official duties under this Ordinance. Accordingly, nothing in this Ordinance shall be construed as any authority for a claim for money damages against the Pueblo, the Tribal Employment Rights Office or TERO Officials acting pursuant to their authority under this Ordinance.

Chapter 9. EMINENT DOMAIN CODE

Origins: Enacted by Tribal Council Resolution No. 2017-053 on December 15, 2017.

Annotation: Tribal Council Resolution No. 2017-053 erred in adopting this "Eminent Domain Code" as Chapter 8 of Title 2. Chapter 8 of Title 2 of the Pueblo of Acoma Law and Order Code is the "Tribal Employment Right Ordinance." Therefore, the Eminent Domain Code has been codified as Chapter 9 of Title 2 of the Pueblo of Acoma Law and Order Code.

2-9-1 Short Title

- A. This Chapter shall be cited as the "Eminent Domain Code."

2-9-2 Definitions. As used in the Eminent Domain Code and unless the context otherwise requires:

- A. "Action" means the condemnation action.
- B. "Appraisal" means an opinion as to the value of or compensation payable for property, prepared by or under the direction of an individual qualified by knowledge, skill, experience, training, or education to express an opinion as to the value of property.
- C. "Condemn" means to take or damage property under the power of eminent domain.

- D. "Condemnation action" includes all acts incident to the process of condemning property after commencement of suit.
- E. "Condemnee" means a person who has or claims an interest in property that is the subject of a prospective or pending condemnation action.
- F. "Condemnor" means the Pueblo, a political subdivision of the Pueblo, or a corporation wholly owned by the Pueblo as designated and authorized by resolution of the Legislative Council to condemn specific property.
- G. "Costs" means the reasonable fees, charges and expenses necessarily incurred in an action, including the fees and charges of expert witnesses, costs of transporting the court and jury to view the premises, and other recoverable costs.
- H. "Court" means the Tribal Court of the Pueblo of Acoma and includes, when the context requires, any judge of that court.
- I. "Facility" means all of the plant and equipment of a Utility and includes the tangible and intangible property, without limitation, owned, operated, leased, licensed, used, controlled, or supplied for, by, or in connection with the business of the utility.
- J. "Improvement" includes any building or structure, and any facility, machinery, or equipment that cannot be removed from the real property on which it is situated without substantial damage to the real property.
- K. "Litigation expenses" includes all expenses reasonably and necessarily incurred in the condemnation proceeding, including those incurred subsequently to the filing of the petition, in preparing for trial, during trial, and in any subsequent judicial proceedings, and including reasonable attorney's fees, appraisal fees, and fees for the services of experts where such fees were reasonably and necessarily incurred to protect the condemnee's interest in the proceeding, in preparing for trial, and in any subsequent judicial proceeding.
- L. "Pueblo" means the Pueblo of Acoma.
- M. "Person" includes a natural individual, partnership, corporation, association, other legal or fiduciary entity and a governmental entity.
- N. "Personal property" means any property other than real property, and includes both tangible and intangible property.

- O. "Prime rate" means the daily prime rate as published in the Wall Street Journal.
- P. "Property" means real or personal property.
- Q. "Public use" means the use is for the common good or general welfare of the public and not for the benefit of a particular individual or entity.
- R. "Real property" means land or any improvements upon or connected with the land, and includes any corporeal or incorporeal interest therein, including, without limitation, leases, easements, profits, and licenses.
- S. "Service" means any act performed, anything supplied, and any facilities used or supplied by a utility in the performance of the utility's duties to its patrons, employees, other utilities and the public.
- T. "Utility" means:
 - 1. any plant, property or facility for the generation, transmission or distribution, sale or furnishing to or for the public of electricity for light, heat or power or other uses;
 - 2. any plant, property or facility for the gathering, manufacture, storage, transmission, distribution, sale or furnishing to or for the public of natural or manufactured gas or mixed or liquefied petroleum gas, propane or butane for light, heat or power or other uses;
 - 3. any plant, property or facility for the supplying, storage, distribution or furnishing to or for the public of water for manufacturing, municipal, domestic or other uses;
 - 4. any plant, property or facility for the production, transmission, conveyance, delivery or furnishing to or for the public of steam for heat or power or other uses;
 - 5. any plant, property or facility for the supplying and furnishing to or for the public of sanitary sewers for transmission and disposal of sewage produced by manufacturing, municipal, domestic or other uses;
 - 6. any plant, property or facility for the supplying and furnishing to or for the public of telecommunication services; or

7. any plant, property or facility for the supplying and furnishing to or for the public of renewable energy including, without limitation, solar, wind, hydropower, geothermal, landfill gas, anaerobically digested waste biomass or fuel cells that are not fossil fueled. Renewable energy does not include fossil fuel or nuclear energy.

2-9-3 Condemnation of Property for Public Use

- A. The Pueblo shall have the power to condemn real and personal, tangible and intangible property within the Pueblo of Acoma whenever such real and personal, tangible and intangible property is deemed by resolution of the Pueblo of Acoma Tribal Council to be necessary for a public use, even if such property is already committed to an existing or prior public use. The exercise of eminent domain shall be initiated by the Tribal Council adopting a resolution identifying the real and personal, tangible and intangible property to be taken for a public use, the condemnor, all known condemnees, and the use for which the property will be taken.

2-9-4 Compensation to Property Owner.

- A. The property owner shall be justly compensated for such condemnation by the condemnor.

2-9-5 Agreement on Compensation or Other Relief.

- A. At any time before or after the commencement of an action, the parties may agree to and carry out according to its terms an agreement, compromise or settlement as to any matter, including payment of all or any part of the compensation agreed upon or other relief.

2-9-6 Negotiation and Appraisal.

- A. A condemnor shall make reasonable and diligent efforts to acquire property by negotiation.
- B. Unless prohibited by law, if the condemnor or condemnee has caused appraisals to be prepared for the property, he shall make such appraisals available to the other party during the negotiation period.

2-9-7 Appraisal; Offer.

- A. If the parties are unable to negotiate a settlement, the condemnee

may, within thirty (30) days after written notice by the condemnor of its intent to file a condemnation action in court, give written notice to condemnor requesting an appraisal to determine the amount that would constitute just compensation for the taking of the condemnee's property and obtained from:

1. one appraiser appointed by the condemnor;
 2. one appraiser appointed by the condemnee; and
 3. one appraiser jointly appointed by the appraisers for the condemnor and condemnee.
- B. The condemnee and condemnor shall appoint their respective appraisers within fifteen (15) days after notice has been given by the condemnee to the condemnor pursuant to the provisions of subsection (A) of this Section, and the third appraiser shall be jointly appointed within fifteen (15) days thereafter.
- C. The appraisals shall be in writing and signed by the appraisers. The appraisers shall deliver copies to each party personally or by registered mail or certified mail, return receipt requested.
- D. The fees and expenses of the appraisers shall be paid by the appointing parties. The condemnee and condemnor shall share equally in paying the fees and expenses of the jointly appointed appraiser.
- E. After receiving a copy of the appraisals provided for pursuant to this Section, the condemnor shall establish an amount which it believes to be just compensation and submit to the condemnee an offer to acquire the property for the full amount so established. If the condemnor tenders an offer pursuant to this Section, the amount offered for the property shall not be less than the amount of compensation shown by the final common appraisal of the three appraisers, or if all three appraisers do not agree, the offer shall not be less than the appraisal prepared by the condemnor's appraiser. Notwithstanding the above, the condemnor's offer may take into consideration any damages penalties, and/or fines due and owing the Pueblo for a Utility's trespass accruing both before and after enactment of the Acoma Civil Trespass. The condemnee must reject or accept the offer made by the condemnor pursuant to this Section within fifteen (15) days after the offer is tendered.

2-9-8

Preliminary Efforts to Purchase.

- A. Except as provided in Sections 9 through 28, an action to condemn property may not be maintained over timely objection by the condemnee unless the condemnor made a good faith effort to acquire the property by purchase before commencing the condemnation action.
- B. An offer to purchase made in substantial compliance with Sections 5 and 6 is prima facie evidence of good faith under Subsection (A) of this Section.

2-9-9

Purchase Efforts Waived or Excused. A condemnor's failure or inability to make reasonable and diligent efforts to acquire property by negotiation, make appraisals available pursuant to Subsection (B) of Section 6 or appoint appraisers upon request of the condemnee pursuant to Subsection (A) of Section 7 does not bar the maintenance of a condemnation action in the manner authorized by law, notwithstanding timely objection, if:

- A. Compliance is waived by written agreement between the condemnee and condemnor;
- B. One or more of the condemnees of the property are unknown, cannot with reasonable diligence be contacted, are incapable of contracting and have no legal representative or own an interest which cannot be conveyed under the circumstances;
- C. Due to conditions not caused by or under the control of the condemnor, there is a compelling need on the part of the condemnor to avoid the delay in commencing the action which compliance would require;
- D. The condemnee fails to provide any appraisals required pursuant to Subsection (B) of Section 6; or
- E. The appraisers provided for pursuant to Section 7 fail to submit the appraisals to the parties within thirty (30) days from the date that the jointly appointed appraiser was appointed.

2-9-10

Entry for Suitability Studies.

- A. A condemnor and its agents and employees may enter upon real property and make surveys, examinations, photographs, tests, soundings, borings, and samplings, or engage in other activities for the purpose of appraising the property or determining whether it is suitable and within the power of the condemnor to take for public use, if the condemnor secures:

1. The written consent of the owner and, if applicable, any other person known to be in actual physical occupancy of the property to enter upon the property and undertake such activities; or
2. An order for entry from the court.

2-9-11 Court Order Permitting Entry for Suitability Studies.

- A. If the condemnor is unable to secure the written consent of the condemnee pursuant to Section 10 and, if applicable, any other person known to be in actual physical occupancy of the property, he may apply to the court for an order permitting entry.
- B. After notice by the condemnor to the condemnee and, if applicable, any other person known to be in actual physical occupancy of the property and unless good cause to the contrary is shown, the court shall make its order permitting and describing the purpose of the entry and setting forth a description of the property and the nature and scope of activities the court determines are reasonably necessary to accomplish the purposes of the proposed taking and entry authorized to be made upon the property. The order may include terms and conditions with respect to the time, place and manner of entry and authorized activities upon the property which will facilitate the purpose of the entry and minimize damage, hardship and burden, and may require a deposit pursuant to Section 12.
- C. The condemnor shall have delivered any order issued by the court to the condemnee, if known and, if applicable, any other person known to be in actual occupancy of the property personally or by registered mail or certified mail, return receipt requested.

2-9-12 Deposit of Probable Compensation.

- A. An order permitting entry under Section 11 shall include a determination by the court of the probable amount that will fairly compensate the condemnee and any other person in actual physical occupancy of the property for damages, if any, for physical injury to the property and for substantial interference with possession or use of the property found likely to be caused by the entry and activities authorized by the order, and may require the condemnor to deposit with the court before entry that amount or a surety bond in that amount from a surety acceptable to the court.
- B. If a deposit is required, such funds shall be deposited in an interest-bearing account at an institution acceptable to the court. Interest on

such deposit shall accrue for the benefit of the condemnor.

- C. Any amounts deposited shall be retained on deposit until released by the court.
- D. Surety bonds shall remain in effect until the bond is released by the court.

2-9-13 Modification of Court Order Permitting Suitability Studies.

- A. After notice and hearing, the court may modify an order made under Section 11.
- B. If a deposit or surety bond is required or the amount required to be deposited or the amount of the surety bond is increased by an order of modification, the court shall specify the time within which the required amount must be deposited or the surety bond increased, and shall direct that any further entry or specified activities or studies under the order as modified be stayed until the required deposit or increase in the surety bond has been made.

2-9-14 Recovery of Damages, Costs and Expenses.

- A. A condemnor is liable to the condemnee and, if applicable, to the person in actual physical occupancy of the property for physical injury to and for substantial interference with possession or use of property caused by its entry and activities upon the property made pursuant to Section 10. This liability may be enforced in civil action against the condemnor or by application to the court in the circumstances provided by Subsection (C) of this Section.
- B. In an action or other proceeding for recovery of damages under this Section, the prevailing claimant shall be allowed his reasonable costs. In addition, the court shall award the claimant his litigation expenses incurred in any proceeding under Section 11 or 13 if it finds liability pursuant to Subsection (A) of this Section and that the condemnor entered the property unlawfully or failed without just cause to substantially comply with or wrongfully exceeded or abused the authority of an order made under Section 11 or 13.
- C. If funds are on deposit or a surety bond has been required under Section 12 or 13, the condemnee or other person claiming damages under Sections 11 or 13 may apply to the court for an award of the amount he is entitled to recover. The court shall determine the amount and award it to the person entitled thereto and direct that the payment be made out of the money on deposit or pursuant to the

provisions of the bond. If the amount on deposit or the amount of the surety bond is insufficient to pay the full amount, the court shall enter judgment against the condemnor for the unpaid portion.

2-9-15

Notice.

- A. If notice of a hearing or other matter pursuant to Sections 5 through 14 is required, except for specific notice requirements as otherwise provided, notice shall be given:
1. By mailing a copy thereof at least ten (10) days before the time set for the hearing by certified, registered or ordinary first class mail addressed to the person being notified;
 2. By service of copy thereof at least ten (10) days before the time set for the hearing upon the person being notified in the manner provided by the Rules of Civil Procedure for the United States District Court for the District of New Mexico for service of summons and complaint; or
 3. If the address or name of any person is not known and cannot be ascertained by reasonable diligence, by publishing a copy thereof at least once a week for two (2) consecutive weeks, in a local newspaper of general circulation, the last publication of which is to be at least five days before the time set for the hearing.

2-9-16

Petition; Parties.

- A. Unless otherwise specifically provided by law, if property is sought to be appropriated for public use by the Pueblo pursuant to Section 3 of this Chapter, and the condemnor and condemnee cannot agree to the transfer of the property or interest in question, the condemnor may file a petition with the court; provided however, the petition shall not include any property which is not contiguous to property to be condemned and which is not within the court's jurisdiction.
- B. The petition described in Subsection (A) of this Section shall include but not be limited to the following:
1. a designation of the Pueblo as petitioner, as the person on whose behalf the property is sought to be taken;
 2. a statement by the petitioner of its authority to bring the action;
 3. a general description of the public use for which the property is

- being condemned;
4. a statement that the action is brought pursuant to and in compliance with the provisions of the Eminent Domain Code;
 5. an accurate description of all property (including without limitation Facilities and Improvements) and a surveyed description of the real property to be condemned describing the property by metes and bounds or center line description tied at regular intervals to statutory corners or other monumented points incorporated in the petition with or without reference to maps or plats attached to the petition. The property of each condemnee to be condemned shall be separately described, and any tract under separate ownership shall be consecutively numbered for ease in identification, provided that interests of several owners in the same property may be described and numbered together;
 6. the interest to be taken;
 7. an allegation that the petitioner has been unable to agree with one (1) or more of the defendants having an interest in particular property as to just compensation;
 8. a statement of the amount offered as compensation for each property affected; and
 9. a map, plat, or plan included or attached to the petition showing any improvements to be constructed and indicating the property of the condemnee to be condemned.
 10. unless an appraisal was prepared pursuant to Section 7, a request for the appointment of three commissioners to assess the damages which the condemnees may severally sustain in consequence of the proposed taking.
- C. The petition may also include a request that the court grant the condemnor the right of immediate possession as provided in Section 21, and that the court hold a hearing concerning the matter within thirty (30) days from the date of filing of the petition.
- D. The petition shall name as defendants, and shall list their addresses, if known, all the parties who own or occupy the property or have any interest therein as may be ascertained by a search of the records, and if any such parties are known to the petitioner to be minors or persons of unsound mind or suffering under any other legal disability, when no

legal representative, custodian or guardian appears in their behalf, the court shall on motion appoint a guardian ad litem to protect the interests of those under any legal disability. The following additional parties shall be named as defendants:

1. if the record owner of the property sought to be condemned is deceased and there has been no recorded legal disposition of the property, the deceased and his known heirs shall be named as defendants, and if the heirs are unknown to the petitioner, they shall be named and designated as defendants under the style of "unknown heirs of _____, deceased";
2. if the estate of any such deceased person is in the process of being administered in any court, the personal representative of such deceased person shall also be named as a defendant;
3. if the property sought to be condemned is held in trust and the petitioner has knowledge of the trust, the trustee shall be named; and
4. where the name of the party holding title or any interest therein cannot be determined, such parties shall be designated as "unknown owners or claimants of the property involved."

2-9-17 Notice of Condemnation.

- A. Upon filing a petition in condemnation in court, the clerk of the court shall issue and give notice of condemnation which shall contain:
 1. a copy of the petition and the appraisal, if one was prepared;
 2. the title of the action;
 3. the name or designation of the court in which the action is brought as well as the cause number;
 4. a direction that the defendant appear and answer to the petition within thirty (30) days after service of notice, and a statement that unless the defendant appears and answers, the petitioner will apply to the court for the relief demanded in the petition;
 5. the name and address of the petitioner's attorney shall appear on every notice; and
 6. a general statement of the nature of the action.

- B. If the condemnor in his petition requests an order for immediate possession, notice of such request shall be incorporated in the notice provided for pursuant to Subsection (A) of this Section.
- C. If an appraisal has been prepared pursuant to Section 7, the condemnor shall file a copy of it at the time the petition is filed and shall deposit with the clerk of the court the amount determined by the Appraisers, as that sum may be reduced pursuant to Section 7(E). The deposit shall be managed pursuant to the provisions of Subsections (E) through (G) of Section 19.

2-9-18

Appointment of the Commissioners; Assessment of Damages; Payment.

- A. If the appraisers have not been appointed pursuant to Section 7 and if the court is satisfied that proper notice of the petition has been given, it shall appoint one (1), two (2) or three (3) disinterested commissioners who are familiar with the property values in the area of the proposed taking. The commissioners shall assess the damages which the condemnees may severally sustain by reason of the proposed taking and make a report to the clerk of the court within thirty (30) days, unless extended by the court for good cause shown, setting forth the amount of damages. The clerk of the court shall file the report prepared by the commissioners shall state the damages allowed each condemnee separately, together with a specific description of the property for which such damages are assessed.
- B. Any number of condemnees may be joined in one petition, and the damages shall be separately assessed for each property.
- C. The condemnor shall pay to the clerk the amount assessed pursuant to Subsection (A) of this Section.
- D. Upon the failure of the condemnor to pay the assessment, the court may upon motion and notice by the party entitled to damages, enforce payment by execution.
- E. By motion before entry of judgment, the condemnee may apply to the court to withdraw an amount not to exceed two-thirds (2/3) of the amount deposited pursuant to Subsection (C) of this Section. The condemnee shall specify in his motion the property for which the deposit was made and the amount requested to be withdrawn.
- F. A condemnee who withdraws funds pursuant to Subsection (E) of this Section waives all objections and defenses to the condemnation action, except for any claim to greater compensation.

- G. The court shall direct that the funds deposited pursuant to Subsection (C) of this Section and not withdrawn pursuant to the provisions of Subsection (E) of this Section be treated as other deposits made such as the posting of bonds. However, the funds must have a separate record of accounting maintained by the Acoma Controller or its designee. The Acoma Controller will invest the funds in federal securities or in a federally insured interest-bearing account in a financial institution. All income from such investment shall accrue to the benefit of the condemnee. No funds in excess of the applicable dollar insurance maximum shall be deposited in any institution.

2-9-19

Report; Notice of Filings; Exceptions.

- A. Upon the filing of the report of the commissioners prepared pursuant to Section 19, the clerk of the court shall notify the attorneys of record for all of the parties such proceeding who have entered appearances or, if not represented by an attorney, all parties who have entered appearances, at their respective post office addresses of record, of the filing of the report.
- B. Failure to give notice as provided in this Section or failure to receive the notice shall not operate to extend the time for filing the exceptions to the report of the commissioners.
- C. The report of the commissioners may be reviewed by the court in which the proceedings are had on written exceptions filed in the clerk's office by either party or any party within thirty (30) days after the time of the filing of the report in the clerk's office. The court shall either confirm the report or order a second appraisal, either by the commissioners already appointed or by three other qualified commissioners to be appointed for that purpose.

2-9-20

Trial.

- A. Within thirty (30) days after the filing of the petition a party if an appraisal has been prepared pursuant to Section 7 or after the final confirmation of the report of the commissioners, a party may demand trial of any issues remaining in the cause. The cause shall be tried de novo.
- B. If no issues other than compensation are raised, the court shall render a final judgment awarding the property to the condemnor contingent upon payment of the awarded compensation to the condemnee. The court shall render final judgment upon decision of all contested questions of law and fact.

2-9-21 Order of Immediate Possession Prior to Judgment.

- A. At the time of filing the petition, the condemnor may apply to the court for an order for immediate possession of the property proposed to be taken.
- B. Upon filing the petition, the court shall set a time for hearing within thirty (30) days of the filing, and notice shall be given as provided in Section 17.
- C. At the time of the hearing, the court shall make an order authorizing the condemnor to take immediate possession of the property if it finds that the use for which the property sought to be condemned is a public use and that immediate possession is necessary.
- D. If the order is granted pursuant to Subsection (C) of this Section and no offer was made pursuant to Section 7, the court shall require the condemnor to deposit with the court an amount established by it. Money from the deposit may be invested and disbursed as provided in Subsections (E) through (G) of Section 18. Upon final confirmation of the report of the commissioners, the deposit made pursuant this Subsection shall be adjusted to reflect that report. The adjustment, however, shall not require the condemnee to refund any amount withdrawn pursuant to Subsection (E) of Section 18, but any amount withdrawn shall be credited against the total amount awarded pursuant to Section 23.
- E. The order for immediate possession shall describe the property to which the condemnor is authorized to take possession. The description may be by reference to the petition. The order shall also state the date at which the condemnor is authorized to take possession of the property.

2-9-22 Possession; No Effect on Other Rights.

- A. By taking possession pursuant to the provisions of Section 21, the condemnor does not waive the right of appeal of the judgment, the right to abandon or the right to request a new trial.

2-9-23 Determination of Compensation and Damages; Interest.

- A. For the purposes of assessing compensation and damages, the right thereto shall be deemed to have accrued as of the date the petition is filed, and actual value on that date shall be the measure of compensation for all property taken, and also the basis of damages

for property not taken but injuriously affected in cases where such damages are legally recoverable; the amount of the award shall be determined from the evidence and not be limited to any amount alleged in the petition or set forth in the answer. If appropriate, condemnor shall present evidence of any and all damages and penalties due and owing the Pueblo for a trespass accruing both before and after enactment of the Acoma Civil Trespass Law.

- B. Whenever just compensation shall be ascertained and awarded in such proceeding and established by judgment, the judgment shall include as a part of the just compensation awarded interest at the prime rate plus two (2) points, compounded daily, upon the unpaid portion of the compensation awarded from the date the petition is filed to the date of payment or the date when the proceedings are finally abandoned. The judgment shall not include interest upon the amount represented by funds deposited by the condemnor pursuant to the provisions of Sections 19 and 21.
- C. The court shall have the power to direct the payment of fines, penalties, damages, delinquent taxes, special assessments and rental or other charges owed out of the amount determined to be just compensation and to make orders as the court deems necessary with respect to encumbrances, liens, rents, insurance and other just and equitable charges.
- D. The judgment shall credit against the total amount awarded to the condemnee any payments or deposits paid over to him before the date of entry of judgment by the condemnor as compensation for the property taken, including any funds which the condemnee withdrew from the amount deposited by the condemnor pursuant to the provisions of Section 18 or 23. The judgment may also recognize and credit against the total amount awarded to the condemnee, any damages and penalties due and owing the Pueblo for a Utility's trespass accruing both before and after enactment of the Acoma Civil Trespass Law, to the extent the same have not been previously recognized.
- E. If the amount to be credited against the award under Subsection (D) of this Section exceeds the total amount awarded, the court shall require that the condemnee pay the excess to the condemnor.
- F. The price paid for similar property by one other than the condemnor may be considered on the question of the value of the property condemned or damaged if there is a finding that there have been no material changes in conditions between the date of the prior sale and the date of taking, that the prior sale was made in a free and open

market and that the property is sufficiently similar in the relevant market with respect to situation, usability, improvements and other characteristics.

2-9-24 Litigation Expenses.

- A. The court shall award the condemnee his litigation expenses whenever there is a final determination that the condemnor does not have a right to take the property sought to be acquired in the condemnation proceeding.
- B. Before awarding litigation expenses pursuant to this Section, the court shall review the reasonableness of such expenses and fees.

2-9-25 Measure of Damage to Remainder in Partial Condemnation.

- A. In any condemnation proceeding in which there is a partial taking of property, the measure of compensation and damages resulting from the taking shall be the difference between the fair market value of the entire property immediately before the taking and the fair market value of the property remaining immediately after the taking. In determining such difference, all elements which would enhance or diminish the fair market value before and after the taking shall be considered even though some of the damages sustained by the remaining property, in themselves, might otherwise be deemed non-compensable. Further, in determining such values or differences therein, elements which would enhance or benefit any property not taken shall only be considered for the purpose of offsetting any damages or diminution of value to the property not taken.

2-9-26 Proof of Payment; Recording Judgment.

- A. After the condemnor has made payment in full to the clerk of the court in accordance with the judgment in the condemnation action, the clerk shall certify upon the judgment that payment has been made.
- B. As may be necessary, a copy of the judgment showing payment shall be recorded in the BIA Realty Office and thereupon the title or interest in the property affected shall vest in the condemnor.

2-9-27 Costs; Compensation of Commissioners.

- A. Except as expressly provided by law, the costs of the proceedings to condemn property shall be paid by the party seeking the condemnation, including the costs of the final report of the commissioners, if applicable.

- B. If applicable, the court shall allow the commissioners reasonable compensation for their services. Such compensation shall be taxed as costs in the proceedings.

2-9-28 Easement; Abandonment.

- A. Except as specifically provided for by law, when an easement has been taken by eminent domain for public use and the public use is subsequently abandoned, the easement is extinguished and the possession of the property reverts to the owner or his successor in interest free from any rights in the condemnor.

2-9-29 Public Uses.

- A. Property may be condemned by the condemner for the public use of the Pueblo for:
 - 1. public buildings and grounds;
 - 2. canals, aqueducts, reservoirs, tunnels, flumes, ditches, conduits for conducting or storing water for drainage, the raising of banks of streams and the removing of obstructions;
 - 3. roads, streets, alleys and thoroughfares;
 - 4. public parks and playgrounds;
 - 5. ferries, bridges, electric railroads or other thoroughfares or passways for vehicles;
 - 6. canals, ditches, flumes, aqueducts and conduits for irrigation;
 - 7. any plant, property or facility for the generation, transmission or distribution, sale or furnishing to or for the public of electricity for light, heat or power or other uses;
 - 8. any plant, property or facility for the gathering, manufacture, storage, transmission, distribution, sale or furnishing to or for the public of natural or manufactured gas or mixed or liquefied petroleum gas, propane or butane for light, heat or power or other uses;
 - 9. any plant, property or facility for the supplying, storage, distribution or furnishing to or for the public of water for manufacturing, municipal, domestic or other uses;

10. any plant, property or facility for the production, transmission, conveyance, delivery or furnishing to or for the public of steam for heat or power or other uses;
11. any plant, property or facility for the supplying and furnishing to or for the public of sanitary sewers for transmission and disposal of sewage produced by manufacturing, municipal, domestic or other uses;
12. any plant, property or facility for the supplying and furnishing to or for the public of telecommunication services;
13. any plant, property or facility for the supplying and furnishing to or for the public of renewable energy including, without limitation, solar, wind, hydropower, geothermal, landfill gas, anaerobically digested waste biomass or fuel cells that are not fossil fueled. Renewable energy does not include fossil fuel or nuclear energy;
14. public airports or landing fields incident to the operation of aircraft;
15. flood control;
16. community development projects;
17. housing;
18. parking facilities;
19. cemeteries;
20. historic areas and landmarks;
21. cultural properties; and
22. such other public uses as determined by the Tribal Council.

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